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# **Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness**

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**Tuesday, October 4, 2005**

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**Chair**

**Mr. John Maloney**

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## Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Tuesday, October 4, 2005

• (1110)

[English]

**The Chair (Mr. John Maloney (Welland, Lib.)):** I'd like to call the meeting to order.

Our witnesses this morning are, from the Department of Justice, Carole Morency, senior counsel, criminal law and policy section; and Nathalie Levman, counsel, family, children and youth section.

I understand you have a presentation for us, and then there'll be questions and answers.

**Mrs. Carole Morency (Senior Counsel, Criminal Law Policy Section, Department of Justice):** Good morning. Thank you.

With the committee's agreement, I propose to use my opening remarks to provide the committee with an overview of Bill C-49, An Act to amend the Criminal Code (trafficking in persons), and of its objectives and key elements, as well as briefly describe what is known about trafficking in persons.

Bill C-49 is another example of the government's ongoing commitment to the protection of the vulnerable. The Prime Minister spoke of the need to remain vigilant in combating trafficking in persons in his address to the United Nations General Assembly in September 2004. Bill C-49 also fulfills the October 2004 Speech from the Throne commitment to introduce legislation to better protect against trafficking in persons.

As well, the committee will recall that during the Minister of Justice's appearance before the committee on main estimates on May 19 of this year, Minister Cotler noted that shortly after his appointment as Minister of Justice and Attorney General of Canada he had identified the issue of trafficking in persons as a priority.

Minister Cotler described the three key objectives of any initiative to combat human trafficking. They are the prevention of trafficking, the protection of victims of human trafficking, and the prosecution of perpetrators of this crime—the three Ps, as we like to refer to them. These are in fact the objectives of Bill C-49.

Bill C-49 proposes the creation of three new indictable Criminal Code offences to specifically denounce and deter human trafficking. Stronger and clearer prohibitions against trafficking will provide greater protection to those who are at greatest risk of being trafficked, and they will facilitate the successful prosecution of traffickers.

Bill C-49 reflects the international community's evolving understanding of the different ways in which human trafficking—often referred to as the contemporary global slave trade—occurs today. In this regard there are four key points that I would like to highlight.

First, trafficking is big business. Global revenues generated by trafficking in persons are estimated to be as much as \$10 billion U.S. per year and to be within the top three money makers for organized crime.

Second, women and children—society's most vulnerable—are the primary victims of human trafficking. Although the clandestine nature of human trafficking makes it difficult to know its real magnitude, UNICEF's estimates indicate that as many as 1.2 million children are trafficked globally each year. The United States State Department's 2004 annual report on human trafficking estimates that 600,000 to 800,000 persons are trafficked around the world each year. Of these, women are 47% of the victims and children are 50% of its victims.

The majority of trafficking victims are trafficked into the commercial sex trade or forced labour. A May 2005 report by the International Labour Organization estimated there are at least 2.45 million people around the world who are currently in situations of forced labour as a result of being trafficked. In Canada, RCMP estimates from January 2004 reported that 800 persons are trafficked into Canada, and anywhere from 1,500 persons to 2,200 persons are trafficked to the United States from Canada, each year. This suggests that Canada is likely a source country, a transit country, and a destination country.

Third, there are many ways in which persons are trafficked, but ultimately trafficked persons are victims of a crime. Victims may be kidnapped or abducted or lured by false promises of legitimate employment—for example, domestic servants, models, or factory or farm workers. Victims are then exploited, usually in the sex trade or in other forms of forced labour. Victims may also be deceived about working conditions despite being aware of the type of work they will perform. Victims suffer physical, sexual, and emotional abuse, including threats of violence or actual harm to their loved ones. Their living and working conditions further compound this abuse.

Fourth, although human trafficking often manifests itself as a cross-border phenomenon, it need not be so. It can also occur wholly within the country; for example, from rural to urban for exploitation in the sex trade, or from urban to rural for exploitation through forced labour in the agriculture industry.

As I said, Bill C-49 is organized around the three Ps. It seeks to address the trafficking of persons in all its forms, and irrespective of whether it occurs wholly within Canada or involves a cross-border component.

● (1115)

Bill C-49 does so by proposing the creation of three new offences. The first, the main trafficking of persons offence, would prohibit anyone from engaging in the specified acts, such as recruiting, transporting, harbouring, or controlling the movements of another person for the purpose of exploiting that person. Where the conduct involves kidnapping, aggravated assault, aggravated sexual assault, or that causes the death of the victim, the offence would carry a maximum penalty of life imprisonment, and the maximum penalty would be 14 years in all other cases.

The second offence would prohibit any person from receiving a financial or other material benefit, knowing that it resulted from the trafficking of another person. In other words, the offence seeks to deter people from profiting from the exploitation of others, even if they do not physically engage in the acts or conduct specified in the main trafficking of persons offence. This material benefit offence would be punishable by a maximum penalty of 10 years imprisonment.

Bill C-49 also proposes prohibiting the withholding or destroying of travel or identity or immigration status documents. This offence would be punishable by a maximum of five years imprisonment.

A key innovation of Bill C-49 over and beyond our existing responses to human trafficking is the fact that these new offences are crafted around the very essence of human trafficking, namely, exploitation. Whatever its form, human trafficking always involves the exploitation of another, whether by forcing them to provide labour or service, including sexual services, or even, for example, services as a drug mule, or to provide human tissue or a human organ against their will. It's all for the purpose of exploiting that person.

In fact, this is how Bill C-49 defines exploitation in the context of human trafficking. It is where a person is forced to do any of these things because of fear for their own safety, or that of someone known to them, such as family members, if they do not comply.

Bill C-49 also proposes consequential amendments that would add the trafficking in persons offence to the DNA data bank and to the sex offender information registry provisions. All three new offences would be added to the wiretap provisions to facilitate police investigations in these cases, as well as to the reforms enacted by Bill C-2 to ensure that victims of trafficking will benefit from the facilitating testimony reforms enacted by Bill C-2.

Last, I would note that Bill C-49 is a first deliverable of a broader federal strategy currently being developed, which will seek to enhance federal responses combating human trafficking and to enhance federal coordination.

In summary, Bill C-49 seeks to enhance our existing criminal law responses to human trafficking, to more clearly denounce and prevent this conduct, to better protect those at risk of being trafficked, and to ensure the accountability of traffickers.

With that, I'd be pleased to take any questions from the committee.

**The Chair:** Okay, thank you very much.

Mr. Warawa, you're going to lead off.

**Mr. Mark Warawa (Langley, CPC):** Thank you, Mr. Chair.

Each of us has a mentor to look to for what they will do in their lives, and William Wilberforce, the conscience of the British Parliament, was the man who led the charge to see slavery eliminated in our world. It is shocking to see the extent to which slavery continues through the trafficking of persons, including into Canada, so I very much do support Bill C-49.

I do have a couple of questions, though. Number one, the Library of Parliament brief provided to us talks on page 4 about dealing with the immigration status of people who are victims of trafficking, people who have been brought into Canada under the guise of having employment, only to find out that they have a debt and have to work off this debt through the sex trade, which is degrading and humiliating. It makes it very difficult for those types of persons to return to their homes: they would be stigmatized and embarrassed and, in some cases, ostracized.

From that perspective, the brief says that in dealing with the immigration status of these people, states like Canada—as in the UN protocol on trafficking in persons—must consider laws that would allow victims of trafficking to remain, either temporarily or permanently.... So my question is, what is the plan to make sure that is not a loophole that would be abused?

● (1120)

**Mrs. Carole Morency:** As an official from the Department of Justice, I'd be stating the obvious that the issue about immigration status is one for the Department of Citizenship and Immigration. But let me explain what our understanding is, because we are working on this through our efforts to develop a federal strategy.

You are absolutely correct that the issue about the status of the victim to remain in the country either temporarily or on a more permanent basis, should the victims wish to seek out that avenue, is an issue that we are aware comes from NGOs dealing with victims. In terms of how we are dealing with it right at this moment, under the existing Immigration and Refugee Protection Act there are a number of avenues that can be accessed by a trafficking victim should they wish to remain in the country, even on a temporary basis.

Those would be the temporary residence permit, as an option, which is a discretionary permit that may be issued to allow foreign nationals to stay in Canada for a specific period of time where there are compelling reasons to remain in Canada and these reasons outweigh any associated risks. There's also a person in need of protection category, which can be used to assist persons where returning to their country of origin would subject them to personal danger or torture, risk to their life, or risk of cruel or unusual treatment or punishment. There's also humanitarian and compassionate grounds, which exists now and may be available for individuals who do not meet the existing statutory requirements or are otherwise inadmissible.

Trafficking victims may not be here illegally. They may be here legally. They may have entered through proper procedures and may have a valid status to be here. Not all do. Some may have entered the country through doctored documents and would be in the situation where they don't have the legal status. Those would be able to seek out assistance through what exists now. Also, if a victim is here and perhaps we want to provide them with an opportunity to stay, should they choose to stay—for example, to support a prosecution—IRPA, the Immigration and Refugee Protection Act, also enables a stay of any kind of removal order to be granted so that the victim can stay and support the prosecution.

In short, there are means that exist now within IRPA, the existing framework, to address trafficking victims' needs. Is there more that can be done within that framework or otherwise? That's certainly one of the issues that the broader federal strategy is looking at.

**Mr. Mark Warawa:** I have one further question. As for the estimates of approximately 600 women and children being trafficked into Canada per year, that number comes from the RCMP, as I understand. Is there a plan, in discussions with the RCMP, that there will be a special task force to deal with this issue now? If we come up with the legislation and the enforcement part, are there going to be special officers, specially trained to deal with this issue on the front lines?

Many of these women and children are afraid to deal with the police. They may be very concerned about sharing their story, and that's why this legislation will deal with this. Even if they say they were not coerced, we're still going to help them get out of that. But do we have the people? Do we have the funding targeted to help these women and children?

• (1125)

**Mrs. Carole Morency:** The short answer is that we are doing some training right now with law enforcement, and the longer answer is that we're continuing to look at how we do more to bring people on board, across the board, for law enforcement.

The Department of Justice, the Minister of Justice, hosted a training seminar for law enforcement that included the RCMP, immigration officers, and Canada Border Services Agency personnel, prosecutors, and others, to try to begin building an awareness of the issue from a Canadian perspective and also to begin building a baseline upon which further educational efforts can enhance our awareness and our responses to this from a law enforcement perspective.

The RCMP, through the Vancouver detachment in B.C., has recently supported the release of a manual for law enforcement officers that does exactly what you've suggested is an important thing. It describes the phenomenon of human trafficking, what are the Canadian responses, what are the other international law enforcement responses to the issue, and what more can be done. The RCMP in Vancouver also hosted a training information awareness session recently.

So those are some of the things that are being done, but you're absolutely correct, with those, we need to do more. In regard to Bill C-49, for example, if and when it is enacted, we would look to support training for how to implement that in the most effective and

efficient way, including with law enforcement, including with prosecutors. So it's a very important issue.

**The Chair:** Thank you.

Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Good morning.

We will indeed be supporting the bill. We spoke out in favour of it and I think it's a big step in the right direction. I do have a few questions, however. As you will see, the defence lawyer in me tends to come out.

I'd like to draw your attention to clause 3 of the bill which amends the existing act by adding section 279.01. When the legislation is passed and this provision takes effect, will victims be able to avail themselves of the witness protection program? I don't think I need to explain to you how this program works.

My second question pertains to clause 4(2) of the bill which amends subparagraph 486(3)(a)(i) of the existing act. The amendments in question pertain to identity protection. Could this matter not be raised ex officio by the court in the case of a victim testifying in a sexual assault case? Could such protection be requested and granted almost automatically? I see this whole list of provisions, 271 and so forth. I would imagine that it will be almost automatic for the court to grant a request of this nature.

My third question concerns clause 7 of the bill which amends paragraph 738(1)(b) of the existing act. I have a bit of a problem with this provision. I have to admit that I don't know how you're going to make it work. How will you be able to evaluate psychological harm? The provision states: "[...] if the amount is readily ascertainable". That's a tall order, I would say. Contusions or a broken arm are easily visible. However, how does one measure psychological harm? Have any attempts been made to see if a dollar figure can be readily be put on psychological harm and who will ultimately decide on the amount? Will it be the court? The court can issue an order, but will it opt to refer the matter to a civil tribunal?

• (1130)

**Mrs. Carole Morency:** I'd like to answer your question in English.

[*English*]

First, on your question about whether victims of trafficking will benefit from whatever means exist now to protect victims, I think your specific reference was to the witness protection program, which is an official program that the RCMP oversees with provincial counterparts in some jurisdictions. But there are many steps that exist short of the witness protection program that trafficking victims may also be able to benefit from.

So first, on the steps short of the witness protection program, victims will benefit from the reforms that are enacted by Bill C-2 to facilitate their testimony. They will be able to seek an order from the court to enable them to provide their testimony, for example, through the use of testimonial aids, by saying that as a vulnerable person, based on the circumstances of that case, they could show that the use of those aids would be necessary to enable them to provide a full and candid account. In the situation that most trafficking victims find themselves in, victims of sexual assault forced into the sex trade, it's not too difficult to make that argument and to seek the benefit of the aids.

Over and above that, victims of crime can and do receive support and services from victim services. These are primarily within the jurisdiction of provincial governments, and they do seek out those supports—so support through the criminal justice process. In addition, trafficking victims we know are actively seeking or are receiving support from the non-governmental organizations, and we've had the benefit of some of the advice from NGOs on that issue.

As to whether or not a trafficking victim may also be able to benefit from something like the witness protection program, I'm not with PSEPC, I'm not with the RCMP, but there is a program, there are criteria. If this is, for example, a trafficking case and the question is one involving organized crime, the argument could be made, depending on the circumstances, that maybe they would qualify and benefit from the protection that's available through that program.

What Bill C-49 does, though, is basically look at the criminal law's response and how we can facilitate the victim's support of a prosecution through that process. The broader response would be beyond the scope of Bill C-49. But I take the question; I think it's an important one. I think this is a broader issue. Again, the federal strategy we're looking to develop now can help to address that issue.

In terms of your second question as to whether or not it would be made automatically to protect the identity of the victim, again, it's up to the Crown in each case. As I say, the reforms enacted by Bill C-2 basically seek to better protect victims and witnesses who have experienced fairly traumatic situations and may need to benefit from some of the aids that have been available to child victims and witnesses to this point. So certainly the expectation is that, depending on the circumstances, the Crown can make a request and benefit from that on behalf of the victim.

On the third question, dealing with clause 7, again it's a good question in terms of how a trafficking victim would be able to substantiate—

[*Translation*]

**Mr. Marc Lemay:** I'd like to clarify my third question and then you can respond.

Take, for example, a lawyer, whether a defence or a Crown attorney, who states in court that the victim has suffered psychological harm and is currently being treated by a psychiatrist or psychologist, at a cost of \$150 an hour. Ten one-hour sessions have been scheduled.

Is this a good example of the type of psychological harm the cost of which can readily be ascertained?

• (1135)

[*English*]

**Mrs. Carole Morency:** That would be our expectation, that just as a victim would look to seek restitution for costs incurred out of pocket because of physical harm, a victim of sexual assault who is receiving counselling and other support would be able to substantiate that. Again, in the grand scheme of the type of situation that the trafficking victim usually will find themselves in, a slave-like situation, we envision that this would be something that can be substantiated, in much the same way as it is being done now for physical harm.

Note that the restitution provisions are there. Unfortunately they're not used, they're not ordered, that often. It is an issue that at the federal-provincial-territorial level, directors of victim services have been looking at what we can do to facilitate the use of these provisions that exist now to the benefit of the victims. So it's an important issue.

The reason Bill C-49 proposes to add psychological harm to this is very much because that's part and parcel of the harm the trafficking victims do suffer. So we envision it being implemented in much the same way as a victim would now have to try to establish the basis for seeking restitution for physical harm.

**The Chair:** Ms. Morency, did you address his third question completely—or is that it?

**Mrs. Carole Morency:** I believe so.

**The Chair:** Okay.

We'll move on to Mr. Comartin.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair, and thank you for being here, witnesses.

Just to pursue clause 7, I'm not clear if this is a mistake in the material, but in the bill I have, the word “if” is underlined. Is that an amendment? I don't have my code with me, so...

**Mrs. Carole Morency:** Clause 7, dealing with psychological harm?

**Mr. Joe Comartin:** Yes.

**Mrs. Carole Morency:** My version of the bill at first reading has only “or psychological” as the added words.

In adding “or psychological” harm to the existing provision, the drafters have deleted the word “where”.

**Mr. Joe Comartin:** So the wording in the code now is “where”?

**Mrs. Carole Morency:** The wording now in the Criminal Code, paragraph 738(1)(b), begins as follows:

In the case of bodily harm to any person as a result of the commission of the offence or the arrest or attempted arrest

We're just adding “or psychological” harm to (b)...

Oh, I'm sorry, it's at the end. The concluding line of the paragraph, in the original of the Criminal Code, says, “where the amount is readily ascertainable”, and Bill C-49 replaces “where” with “if”.

This is a drafting convention. Drafters always take advantage of any opportunity to improve the language and to have more consistency as and when reforms are enacted. This would be one of the things they do, changing it to “if”.

**Mr. Joe Comartin:** Like Mr. Lemay, I'll wear my defence lawyer's hat for a second. I'm trying to figure out what the consequences are of that amendment.

Do you know why they changed it? Have there been any cases under this section that...?

**Mrs. Carole Morency:** I'm certain it's merely a drafting improvement. We're often met with this, and we actually welcome opportunities to bring more consistency in terms of language. And that's what this is, replacing “where” with “if”.

**Mr. Joe Comartin:** This amendment, though, is not just with regard to this offence. This is going to apply to all offences where the restitution section can be invoked.

Has there been any study on the need for this? I mean, the existing section is rarely, rarely used. Is there any reason to believe this section will increase the use of it, not only for these offences but for other offences?

•(1140)

**Mrs. Carole Morency:** No, we don't have a formal study that says we should amend it this way to have a broader, more beneficial impact across the board. You're correct in saying, and our understanding is, that the provisions are not used often, generally. There isn't always the ability, on the part of the defendant, to make restitution for some of this. On the other hand....

So yes, it will apply across the board, not just to trafficking victims. Again, to the extent that the restitution provision seeks to repair the harm done to the victim, the out-of-pocket expenses that the victim can demonstrate they've incurred as a result of being victimized in that way, it broadens the ability of the criminal law to recognize the full harm. It also enhances the ability, under the international framework, from the trafficking protocol to...and encourages countries to seek to make all means available to victims to repair the harm they've suffered, whether it's through something like restitution or beyond that.

**Mr. Joe Comartin:** In terms of the use of this section, Ms. Morency, the real problem with it is that our prosecutors are not skilled in knowing this. This remedy has been historically, in our law, a civil remedy. So it's lawyers who practise in the civil litigation field who know how to mount a case in this.

Do you have any indication from the provincial attorneys general that they're going to do anything to prepare their prosecutors to actually use this section, whether it's the physical or the psychological?

**Mrs. Carole Morency:** It's certainly our intention, with respect to Bill C-49, to promote all of the reforms that are being proposed here to the benefit of all trafficking victims. On a broader perspective, we are aware that some provincial victim services are very much doing that right now. They work with victims to assist them to collect restitution. They may be able to waive filing fees for sheriff's writs and things of that nature. As I mentioned, the federal-provincial-territorial working group and directors of victim services are actually

trying to address how to make this work more effectually across the board. What are the best practices? Is there more that we can do?

But as a matter of policy, we try to address issues like this when we undertake Crown training on different issues. The department supported the release of a handbook on criminal harassment. It's just been recently updated. We did exactly the same type of thing to bring to prosecutors' attention all of the means that exist within the Criminal Code to help repair the harm to the victim. So it is a matter of education and awareness.

**Mr. Joe Comartin:** But on my basic question, we have no indication from any attorney general that they are going to step up their end of it, because that's really where it has to be done, not at the federal level.

**Mrs. Carole Morency:** It is one of the issues those in our federal-provincial-territorial working group on victim services continue to deal with as a matter of priority to facilitate victim services.

**Mr. Joe Comartin:** On the duplication we have now—assuming we pass this bill and it becomes law—with the Immigration and Refugee Protection Act, is there some reason why we're not amending the Immigration Act to take those sections out and simply deal with this under the Criminal Code?

As a supplementary to that, if you're the investigating officer and you do have an international trafficking issue, do you lay the charge under the Immigration Act or under the Criminal Code?

**Mrs. Carole Morency:** It's a good question, because we have a number of existing means to address human trafficking cases. Some exist right now in the Criminal Code. We also have the trafficking of persons offence under the Immigration and Refugee Protection Act. Under the IRPA the offence involves a cross-border component, so it has to be an organized and illegal entry into the country. Exploitation is considered to be an aggravating factor for sentencing purposes; it's not part of the main offence itself.

It's an important offence. It's one that we've had since 2002, and basically was Canada's immediate response in implementing our obligations under the United Nations Convention Against Transnational Organized Crime and its trafficking protocol. Canada's first charge under that offence was recently, in April, in Vancouver. It comes at it from a cross-border perspective, and it's an important aspect. It's one way that law enforcement can address it.

•(1145)

**The Chair:** Mr. Comartin, I think we've expired our time.

**Mr. Joe Comartin:** Can I just follow this point?

**The Chair:** Very quickly.

**Mr. Joe Comartin:** There's nothing in the Immigration Act that will not now be in this. You'll be able to use the exploitation provisions. So my basic question is, why don't we repeal the sections of the Immigration Act that have those offences in them, rather than cause any confusion?

**Mrs. Carole Morency:** I don't think it will cause confusion. It will be another set of tools that law enforcement will be able to choose from, given the specific facts of a given case. What will be the most effective response to that case? It may be an IRPA charge, as in the case in Vancouver. It may be a case that will be more easily prosecuted under the new proposed amendments to Bill C-49. It may even be under an existing Criminal Code offence—kidnapping, or one of the others.

In each case law enforcement, with prosecutors, are going to look at the facts of the case, the whole nature of the case, and the penalty that's being proposed. In IRPA, the penalty for that offence is maximum life imprisonment and/or a \$1 million fine. The Criminal Code, Bill C-49, proposes a similar life imprisonment under its most severe form, but it's a different approach and different offences. At the end of the day, it's a broader set of tools for law enforcement to use to ensure they can catch all forms of trafficking.

Bill C-49 will help in particular with trafficking that occurs wholly within the country. It doesn't require that cross-border form. The trafficking offence is also linked with the smuggling offence in IRPA. In many cases we may initially think they're trafficking, but what we read about in the paper is more likely smuggling. So again it's not duplication. There are different avenues to respond to different cases, and Bill C-49 broadens the arsenal for that purpose.

**The Chair:** Thank you, Ms. Morency.

Mr. Cullen.

**Hon. Roy Cullen (Etobicoke North, Lib.):** Thank you, Mr. Chair, and thank you to the witnesses.

I had a question for one or both of you.

I'm wondering about the connection between trafficking in humans for the purposes of sexual exploitation, the linkage or otherwise between that and the position a country might take with respect to the legalization or otherwise of prostitution.

The reason I raise this point is that I was at some meetings of the parliamentary assembly of the OSCE, and in fact there was an officer or rapporteur assigned to deal with the question of sexual exploitation of humans. This rapporteur said that what they had found in their data was that those countries that have legalized prostitution are a greater source, from the point of view of candidates for trafficking. I think they'd probably be more outbound than inbound, if that's a way to present it, but maybe you could speak to that as well. But those countries that have legalized prostitution have more trafficking in terms of sexual exploitation of humans.

I wonder if you have any data to support that or contradict that, or what work you've done in that area.

**Mrs. Carole Morency:** Thank you for the question. Obviously it's one that's very much of concern to us in terms of addressing human trafficking, because of the strong links to the sex trade.

The first thing to note is that prostitution is not per se illegal in Canada right now. It's the activities around it—solicitation, communicating for the purposes of—and of course anything involving young persons under the age of 18 around the issue of prostitution is all prohibited.

Trafficking comes at it from a different angle in the sense that we're not dealing with anything of a consensual nature. Even if a person, a trafficking victim, came to Canada intending to work as a prostitute, that person might still be a trafficking victim because of the situation they actually find themselves in—it's not what they expected. So they're not really consenting to work in those situations.

So in the comparisons between prostitution and trafficking, there are differences, and the premise is that it's not consensual. If you were to change a country's response to how you deal with prostitution and the regulation of the sex trade, we expect that there would be implications for the trafficking issue and how victims find themselves in those situations. And of course, the subcommittee of this committee that is looking at solicitation laws will, I expect, with that report note many of those linkages, because I'm aware from the testimony before the subcommittee on that issue that many of those issues have come to the attention of the subcommittee.

**Hon. Roy Cullen:** That was one of the reasons for my question, because I know our distinguished chair is also chairing a subcommittee looking at this topic, and I haven't been part of those discussions. Is there any data or study that you could apprise us of and maybe refer to the chair for distribution to the committee members where the linkage between...? Is it quite obvious, in the sense that if you legalize prostitution, you're going to increase the incidence of trafficking in humans from the point of view of sexual exploitation, or not?

• (1150)

**Mrs. Carole Morency:** My expectation is that we would have no new information that we could share with this committee that we haven't already shared through the subcommittee on prostitution, and I'm actually looking forward to the committee's report because of the broader review.

I'm aware that within the context of the prostitution solicitation laws review there have been a diversity of opinions. There are some who take the view that we should not further legalize some aspects of prostitution, and I think that comes primarily from law enforcement. There are some at the other extreme who take a different perspective.

I think the point is that from a trafficking perspective, yes, we need to be aware of the linkages, we need to be aware that if changes are made in prostitution laws we need to consider what implications those changes might have across the board. In the area of trafficking persons, we know we should be concerned and look to see whether there are there intended or unintended negative consequences.



But with trafficking, the issue here is that it's wholly non-consensual, and that's why the approach to prostitution is a different issue in and of itself. But when you put the two together—

**Hon. Roy Cullen:** Yes, I guess I understand. I appreciate all that, and I'm interested, of course, in different opinions and views and arguments and debates, but I'm more interested in data. I'll certainly look to the minutes of the subcommittee to see what has been presented there, but I'm interested in the facts—if anyone has done empirical work on the question of whether, if you change a country's approach to prostitution, there's any impact on the incidence of trafficking for the purposes of sexual exploitation. That's what I'm interested in. I understand philosophical discussions, but I'm interested in data and information.

**Mrs. Carole Morency:** It's my understanding that some of the data has been provided to the subcommittee. In the countries where they have taken a different approach, I think some take the view that it has had a negative impact on trafficking.

Again, I look to the subcommittee's report, but I'm not sure there's a consensus on what the implications are. I don't have any further data.

**Hon. Roy Cullen:** It's one thing to argue about data. I know that data is not always black and white. But if you can see an increase or a decrease in the incidents based on policy changes, and you can control that variable, I understand it sometimes is a problem.

I look forward to reading the material that you presented to the subcommittee.

Thank you.

**The Chair:** Thank you, Mr. Cullen.

Mr. Thompson.

**Mr. Myron Thompson (Wild Rose, CPC):** Thanks, Mr. Chairman.

Basically, that was where I was going to go in regard to the report that's coming from the subcommittee. It appears to me that if the report is going to have any bearing on this legislation, we would be premature in passing this legislation until we get the report. Am I wrong in thinking that? Is it worth considering?

**Mrs. Carole Morency:** I wouldn't presume to direct the committee towards any particular course of action, but Bill C-49 responds to a very clear need that we know exists right now. There is a need to strengthen our legal responses to better protect victims and to prevent trafficking.

As I understand it, the subcommittee report, when it comes out, it may have recommendations. It may provide an overview of the history. If it's like other reports, then the government would have a period of time to respond to the report. I suspect there would be continuing debate and discussion about some of the recommendations or the proposed responses to the recommendations, which of course would be welcome but would result in a longer-term process.

Is there an ability to deal with the reforms proposed by Bill C-49 that immediately responds to an identified need? I would suggest there is.

Is there an ability for us to deal with and then consider Bill C-49 in the context of whatever the government's proposed response to the subcommittee's would be? Again, I think that's how we would approach it. We try to look at the issues together, because there are obviously linkages.

**Mr. Myron Thompson:** Thanks.

I don't have a defence attorney's hat, and I don't have a prosecutor's hat, but I do have a Canadian citizen's hat, I hope. My hat is called a cowboy hat.

One thing that I think has been in the backs of the minds of all of us over the last little while is the results of the decisions by the courts. I'm certainly supporting this bill fully. I appreciate this bill being brought forward, but I am wondering about this. Are we once again facing more of the same situations that we faced in many other judicial areas?

You have several clauses here where we're going to have a maximum penalty of life, a maximum penalty of 14 years, a maximum penalty of 10 years, or a maximum penalty of 5 years. I don't think you can necessarily answer this, but I'm going to ask it just the same. As a citizen, how can I be assured that our courts are going to handle these very serious charges in a way that would be satisfactory to the people who are victims, where they would feel justice has been served? Why does the judicial department continually lack the ability to put in a minimum requirement?

•(1155)

**Mrs. Carole Morency:** Can I perhaps give some context to the penalties that are proposed in Bill C-49, the basis of the comparisons, to perhaps give the committee an indicator of how this compares to other countries' responses.

If we look at what's being proposed in Bill C-49, the maximum penalty of life imprisonment, where the conduct involves death or kidnapping, aggravated sexual assault or assault, is comparable to what we see in other provisions now in the Criminal Code for that type of conduct. It's also comparable to what we have in the Immigration and Refugee Protection Act under the trafficking of persons offence.

It's also comparable, I would suggest, to other countries' treatment of this issue. If we look at legislation, for example, in the United States, they provide up to life imprisonment if the crime involves the death of a victim, kidnapping, or aggravated sexual assault, or up to 20 years in other cases. This is under their federal legislation. The United Kingdom's maximum penalty is up to 14 years on indictment, and in Australia it is up to 25 years of imprisonment for their slavery offence and up to 19 years for their sexual servitude offence, and in New Zealand it is up to 14 years. Bill C-49 looked at other countries' responses, looked at our own responses to similar offences, and proposes a set of maximum penalties that are very much consistent with that.

What can we do to ensure that Bill C-49, and the objective of the bill overall, is fully understood and appreciated throughout the criminal justice system? That would be part of our response in terms of looking to facilitate implementation of Bill C-49 through training, through awareness education on what trafficking is, what its real impact is on victims, and how we can work within the proposed framework from Bill C-49 to ensure that the results in each case fully respond to the facts and circumstances of that case.

In fact, Bill C-49, when we looked at some of the cases that are proceeding now under the Criminal Code, under existing offences that deal with trafficking-related conduct, we see a range of sentences that go up to about nine and a half years. That's because police and courts are proceeding under existing offences. Bill C-49 says maybe we need to broaden how we look at a case so that we understand the full impact on a victim from the start to the finish, and that's why it's focused on the exploitation. All of this sends the message very strongly to all players in the criminal justice system that this is a serious issue. We want to enhance our responses to it, and the Bill C-49 follow-up would try to facilitate that through education and awareness.

**The Chair:** Thank you, Ms. Morency.

Ms. Gagnon is the next questioner, but she is absent, so we'll move on to Ms. Sgro.

We don't do it by party, Mr. Lemay. We do it by speaker. Ms. Sgro is next, and we'll pick up Ms. Gagnon, if she wishes to talk, when she comes back.

**Hon. Judy Sgro (York West, Lib.):** Thank you, Mr. Chair. I'm watching the clock so that we don't go on with too many questions, because I want to make sure that we do manage to get this through today. I actually am going to be pretty brief on it.

I want to congratulate Ms. Morency on the work that's been done by the federal group and the task force between Immigration and the other departments, and Justice, to try to bring forward some clearly important issues for all of us. Part of the concern I have, though, when we're dealing with the exploitation of those who are clearly the most vulnerable in society, who are just looking for ways to get a better life and are very open to being exploited—a big issue is how do we communicate to the law enforcement people in Canada, to our victim services here and abroad, that we have these services here?

In setting up john school and the street light services that I put together in my previous life on these issues, I met many people who came to this country for different reasons and ended up working the streets in different capacities, and I'm concerned that we make sure with the passing of Bill C-49 that we communicate this broadly, so that they know there are these extra services. Often judges are unaware of the fact that we've made changes, that there are diversion programs out there, that there are services for those most vulnerable people. The question is to make sure we are going to communicate this effectively. If we rely on the provinces, it doesn't always happen, and I would expect that we would have a responsibility to ensure that there's a federal communications plan that would also communicate this kind of information to the agencies and so on out there, so that they know there is a Bill C-49 and we've taken some extra steps to ensure they're protected.

• (1200)

**Mrs. Carole Morency:** We would fully concur that's an important thing to do. We've been doing much of that over the last couple of years to enhance awareness of trafficking within Canada as an issue for Canadians. We're working very closely with our federal-provincial counterparts in the criminal justice system to enhance awareness of what exists now.

The issue of trafficking of persons has been on our FPT agenda in a number of fora, to say this is a priority for us. At the January 2005 meeting of federal-provincial-territorial ministers responsible for justice, there was support for Minister Cotler and the federal government's intention to move forward to strengthen our overall response to this issue.

As I say, we've undertaken some education to this point. We've undertaken a fair bit in terms of public awareness and education for victims or those at risk of being trafficked—here in Canada and abroad—through our Canadian embassies and high commissions. We absolutely have a commitment to want to do more of that here and abroad, within our criminal justice system and beyond, and also to work closely with or begin to engage on a more ongoing basis with non-governmental organizations that are working on the front lines on these issues.

As we move forward with a proposed federal strategy to enhance our overall response, we want to build stronger partnerships within the country to enhance our overall response to the issues.

**The Chair:** Thank you, Ms. Sgro.

Ms. Gagnon, do you have any questions?

**Ms. Christiane Gagnon (Québec, BQ):** Thank you, no.

**The Chair:** The Conservative Party?

**Mr. Garry Breitkreuz (Yorkton—Melville, CPC):** Thank you, Mr. Chair.

I have two quick questions. I don't want to hold up the clause-by-clause of this.

I just want to ensure that I have a handle on what was referred to as "unintended consequences". Could you clarify for us what some of them might be? We've been talking about them. In a very short summary, can you just explain what some of these might be?

**Mrs. Carole Morency:** I'm not sure, but I think my comment in that regard was with respect to what might be the basis of recommendations for the subcommittee's report on the solicitation laws. Depending on what the recommendations might be, or the government's response might be to those recommendations, we would—certainly from a Department of Justice perspective—look to see what kinds of implications dealing with the solicitation laws might have, whether it's trafficking or other related issues. We want to look at the broad implications: good, bad, intended or otherwise. I think that was my intent.

**Mr. Garry Breitkreuz:** So if I were to interpret this, you would be saying there may be legislation coming down the pipes that has not taken into account a bill that may be passed now. They've done all this consultation, but we're not aware that this may be a bill that will be passed, so now that may change what their recommendations may be?

**Mrs. Carole Morency:** No. I was asked a question about what might be coming forward in terms of implications for the solicitation review and Bill C-49. My response was really to say that Bill C-49 would address it immediately. The longer-term response that may come through the subcommittee's report may be quite broad. It may have a lot to do with anything but Criminal Code legislation, because the issue of prostitution cuts across many sectors and all levels of government. I don't know, and I don't want to speculate as to what that report might be, but in the sense of how the government will typically prepare responses to reports from the committee, we do look broadly at whatever the recommendations are, to assess it from across the board.

I hope my comment is not taken out of context, because we have looked at Bill C-49 very broadly in terms of our existing laws and how Bill C-49 works as an additional tool to enhance our responses: not to complicate, not to confuse, and not to make it more difficult—quite the contrary.

•(1205)

**Mr. Garry Breitkreuz:** So in summary, you don't see any amendments that need to be made at this point. Maybe in the future there might have to be, but at this point you think this will address the problem adequately?

**Mrs. Carole Morency:** Yes.

**Mr. Garry Breitkreuz:** Okay.

My second question—and I'm not sure if you are prepared to answer this—is what kinds of funds would be needed to properly enforce this? Have you given any thought as to what it might take, financially, to implement this bill adequately?

I'm concerned. We pass legislation in this House, we give the impression it's been adequately dealt with, but in fact the enforcement of it is something that is going to be essential. That will include everything you've mentioned, from education of police officers to actually dealing with some of the problems that might arise from organized crime. If, as you say, this is one of the third largest money-makers for organized crime, we could have a huge problem on our hands if we interfere with that.

So how are we going to properly enforce this? Have you given any thought to the funds that might be needed for that?

**Mrs. Carole Morency:** The short answer is that we're aware of cases proceeding right now under existing Criminal Code offences for trafficking-related conduct. Provinces that have the primary responsibility to enforce criminal law are dealing with it right now, but with Bill C-49 they may have a more effective way of addressing a case or problem because they may charge.

Similarly with the Immigration and Refugee Protection Act, we already have a trafficking in persons offence. Federal officials, RCMP, CIC, and CBSA are already dealing with cases. We anticipate that Bill C-49 will facilitate choices, and may facilitate the process, the prosecution, and the charging, to provide a clearer set of responses to it. We don't have a cost estimate. We don't anticipate that Bill C-49, over and above what's already being done, will have those types of additional implications.

We expect to want to do more to facilitate awareness implementation, and we'll do that. We're doing it now in concert

with our provincial counterparts, and we hope to do more with the non-governmental organization as well.

**The Chair:** Thank you.

Are there any other speakers from the Liberal side? None.

Mr. Lemay, do you have a further question?

[*Translation*]

**Mr. Marc Lemay:** No.

[*English*]

**The Chair:** Thank you.

Mr. Comartin.

**Mr. Joe Comartin:** In clause 4 there's provision for vulnerable witnesses. As I understand the situation, this is not necessary if Bill C-2 is fully implemented. Can you tell us just where we're at with Bill C-2, and if you have a timeline for when that's going to be fully implemented?

**Mrs. Carole Morency:** Bill C-2, which received royal assent on July 20, does not come into force until it's proclaimed into force. We've been engaged in discussions on a proposed proclamation date with our provincial counterparts. Parliament has a choice of having legislation come into force on receiving royal assent, or on proclamation. The government's proposal on Bill C-2 was to have it on proclamation, because the provinces needed some time to prepare to deal with the new provisions, particularly the facilitating testimony. So we hope to be in a position to identify those dates soon.

Some coordinating amendments are proposed for Bill C-49 to make sure that at the end of the day Bill C-2 reforms that facilitate testimony of vulnerable victims and witnesses will apply to trafficking victims. So clause 4, as you say, won't be necessary, depending on how and when Bill C-2 comes into force. That's why we have a coordinating amendment in clause 8, which we'll be dealing with shortly in the clause-by-clause. But that was the intent.

**Mr. Joe Comartin:** Can you be more specific than soon?

**Mrs. Carole Morency:** No.

**Mr. Joe Comartin:** I'm assuming this bill could end up in the same position. We could go through Senate, proclamation—

**Mrs. Carole Morency:** This would come into force on royal assent.

**Mr. Joe Comartin:** Thank you, Mr. Chairman.

**The Chair:** The Subcommittee on Solicitation Laws is presently reviewing the draft report. One of our researchers here this morning is also a co-researcher on the Subcommittee on Solicitation Laws. If you wish, I could ask her to deal not with the draft report or its recommendations, but with any comments on the evidence with respect to trafficking in persons for the purpose of prostitution.

Do you have any comments to address the concerns that several of our members have?

•(1210)

**Hon. Judy Sgro:** I thought we were here to do the clause-by-clause. Should we not do that first, and then if we have time discuss our subjects?

**The Chair:** Reference was made that everyone is waiting for what the solicitation report is going to say. I'm offering a researcher to make a comment. If you don't wish a comment, then we'll move on to clause-by-clause.

**Mr. Myron Thompson:** I'm willing to wait for the report. Let's carry on with getting this bill done. It's not going to change anything, so let's get on with it.

**Mr. Garry Breitreuz:** Will it change anything, Mr. Chair?

**The Chair:** I'm not in a position to say at this time. I can't comment on the report.

**Mr. Garry Breitreuz:** In other words, we're talking about something we don't know about.

**The Chair:** Your instructions are to proceed with clause-by-clause at this time. Thank you.

(Clauses 1 to 7 inclusive agreed to)

(On clause 8—*Bill C-2*)

**The Chair:** Mr. Macklin.

**Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.):** With respect to the two amendments.... We have two technical amendments. They have been discussed before, but let me just briefly touch on them.

First of all, we're proposing to coordinate those with the Bill C-2, the protection of children and other vulnerable persons legislation, and with Bill C-13, dealing with DNA.

The first amendment we're talking about right now would be with respect to clause 8; it deals with Bill C-2. The second amendment is to create a new clause 9; it deals with Bill C-13. Clause 8 is just an eliminating clause.

The objective of both amendments is the same: to ensure that once all three bills come into force—that is, this Bill C-49, Bill C-2, and Bill C-13—no matter in what order they come into force, the final outcome ensures that Bill C-2's new “facilitating of testimony” provisions for children and other vulnerable victims and witnesses are available for all of the trafficking in persons victims and witnesses; and that the main trafficking in persons offence becomes a primary designated....

You know how we spent so much time trying to make sure we had appropriate offences in the primary designation. This will make sure that the main trafficking in persons offence becomes a primary designated offence in that new framework under Bill C-13.

That is the purpose of those two amendments, both in clause 8 and in new clause 9.

**The Chair:** Are there any questions of the officials?

Mr. Warawa.

**Mr. Mark Warawa:** Mr. Chair, I have a question for Mr. Macklin.

Bill C-13 received royal assent about four months ago and has been sitting on the Prime Minister's desk, yet to be enacted. Is the intent of the government, if this carries, and quickly—I think there's consensus to have it rushed through Parliament as quickly as

possible—and the intent of the Prime Minister to see all this legislation, Bills C-49 and C-13, enacted at the same time?

**Hon. Paul Harold Macklin:** I'm not certain there's a specific goal to have them all at the same time, but as soon as all the issues that relate to the implementation of these bills have been taken care of. I think that's all that's being dealt with at the moment: to make sure that at the date of proclamation and any concerns that had been raised about how they would be implemented or the effects of implementing them have been properly dealt with. That's really the only reason for there being any holdup.

**Mr. Mark Warawa:** I was concerned that Bill C-13 had not yet been enacted. I'm hopeful that this is the reason and that we'll see it enacted as quickly as possible. I hope I'm hearing the right thing.

Thank you.

**The Chair:** Mr. Comartin.

**Mr. Joe Comartin:** I'm not clear on why Bill C-13 is being held. What's the specific problem?

• (1215)

**Mrs. Carole Morency:** I'm not sure I'm in a position to fully answer that question, other than that it's a bill that has to be proclaimed into force, that there were some issues identified, and that some further amendments may be required. But I'm not sure what the timing is for any of that.

I guess we could undertake, through Mr. Macklin, to provide the committee with information on this, but in fact the only reason we have to propose a technical amendment for Bill C-49 is that Bill C-49 was tabled on May 12, around the same time as Bill C-13 was coming through the committee. The committee will recall the amendments that were made at committee. We wanted to add the trafficking in persons offence to the DNA data bank; but with the changes made in committee around the same time, the numbering is wrong. The technical amendment being proposed by the government on this one is really just to match it up with the right numbering.

We're just trying to make it all work, so that, as Mr. Macklin said, at the end of the process the intent is there, that when the bills come into force it's all there.

**Mr. Joe Comartin:** I would ask Mr. Macklin to provide us with an update as to what the status of Bill C-13 is. We got all this information at the time, that we had to get it through because we had a number of notorious criminals coming out of custody and weren't going to be able to get their samples. Here we are four months later still waiting.

**Hon. Paul Harold Macklin:** I shall undertake to do so.

**The Chair:** Thank you.

Shall the amendment to clause 8 carry?

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

(Clause 8 as amended agreed to)

**The Chair:** We've heard Mr. Macklin's explanation on new clause 9. Is there anything further to comment upon?

Mr. Macklin?

**Hon. Paul Harold Macklin:** I have no further comments.

**The Chair:** Shall the amendment adding proposed clause 9 carry?

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

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill carry as amended?

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

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

With those slight amendments, do you really think it's necessary?

**Hon. Paul Harold Macklin:** It is a new clause, Mr. Chairman, so I think it likely does need to be reprinted for that purpose.

**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.

**The Chair:** Mr. Comartin had a comment and a request on our scheduling difficulty with witnesses.

Mr. Comartin.

**Mr. Joe Comartin:** It's just to give the committee notice. I did try to get witnesses here for Thursday on Bill C-53, but they're just not

going to be ready. They want to prepare written briefs, and I don't have a witness yet from the commercial sector; I'm still working on that. I'm proposing, Mr. Chair, that we go back to Bill C-53 on the Thursday after the break. Tuesday is already scheduled.

**The Chair:** I think what we'll do is have our clerk shuffle the cards a little bit and see whether we can accommodate your request, Mr. Comartin.

**Mr. Joe Comartin:** Thank you.

**The Chair:** The clerk is now circulating a request from the subcommittee.

**Hon. Paul Harold Macklin:** Mr. Chair, would it be appropriate to excuse the witnesses?

**The Chair:** Yes, most definitely. I'm sorry, we moved on.

**Hon. Paul Harold Macklin:** With a great deal of things.

**The Chair:** This is the Subcommittee on the process for appointment to the Federal Judiciary. They requested \$38,950 for witness expenses.

**Mr. Raymond Bonin (Nickel Belt, Lib.):** I so move.

(Motion agreed to)

**The Chair:** I think, with the committee's indulgence, we'll adjourn until our next meeting.

We are adjourned.

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