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—
Chair

Mr. Art Hanger

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• (0905)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the Standing Committee on Justice and Human Rights to order on Tuesday, April 17, 2007. Pursuant to the order of reference of Monday, October 30, 2006, Bill C-22, an act to amend the Criminal Code on age of protection and to make consequential amendments to the Criminal Records Act, is before the committee. We are now into clause-by-clause consideration.

We have, from the Department of Justice, Ms. Carole Morency, acting general counsel, and of course the parliamentary secretary, Mr. Rob Moore.

Just before we go into clause-by-clause, I know there have been a number of groups and individuals who wanted to appear before the committee in reference to Bill C-22: CASE, Beyond Borders, REAL Women of Canada, Ms. Dawn Stefanowicz, other concerned citizens—and I know there were other submissions as well. Unfortunately, we couldn't get to all of them. I know we set a timetable, but I would like to thank those individuals for submitting briefs in spite of the fact that they couldn't come to testify personally.

To begin with, on the bill itself, I trust everyone has the information before them, including copies of the amendments.

First we should deal with NDP-1. Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I don't have that amendment in front of me, Mr. Chair.

Could this stand down? I need to review this. I think I'm going to be withdrawing this particular amendment.

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): You have the second one as well. We don't understand it.

The Chair: Do you mean NDP-1 and NDP-2?

Mr. Joe Comartin: Probably we should do both. The second one I do want to proceed with.

The Chair: Okay, what is your appeal then? Do you want to stand them both down for the time being?

Mr. Joe Comartin: Yes.

The Chair: We'll stand clause 1 down and deal with your amendments immediately after.

Mr. Joe Comartin: Mr. Chair, perhaps before we do that, I don't know if there is a position here with regard to whether these are admissible at this point. If there is, I would want that ruling at this stage before we proceed.

The Chair: Well, we need the motions to be moved before any ruling can be submitted.

Mr. Joe Comartin: All right, let's let them stand down for a minute, then.

The Chair: Is it agreed that clause 1 be stood down for the time being?

Some hon. members: Agreed.

(Clause 1 allowed to stand)

The Chair: Okay, we have a new clause noted here, Liberal motion 1, on page 3.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, I'd like to raise a point of procedure in order to make sure I understand correctly.

[English]

The Chair: I'm sorry, Mr. Ménard.

[Translation]

Mr. Réal Ménard: Would it be possible to stand clause 1 and continue our work, or does clause 1 impart meaning and consistency to all of the other clauses?

[English]

The Chair: Yes, we can proceed with the rest of the bill.

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I move the amendment.

[Translation]

The members of the committee heard witnesses discuss several decisions handed down by provincial appeal courts stipulating that section 159 was invalid. This section states that persons under 18 years of age who engage in anal sex are committing a criminal act. Certain witnesses recommended that this section be repealed in its entirety.

As the objective of Bill C-22 is to change the age of consent for all sexual activities, repealing section 159 would have the effect of harmonizing the age of consent for all sexual activities of whatever nature.

• (0910)

[English]

The Chair: I don't know if there is anyone else who would like to make a submission in reference to section 159, and in particular to Liberal motion number 1, but I will make a ruling if there is no further discussion.

Mr. Petit.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Section 159 is not included in the substance of the bill we have before us. Whether we are talking about various sexual activities, the age of consent or anything else, this is not included in this bill. With all due respect for the opposite opinion, the amendment labelled LIB-1 which is similar to NDP-3, should not be debated because our committee does not intend to repeal provisions in an act. I understand the position of the other party very well, but I think that from a technical and substantive perspective, we could not touch it.

[English]

The Chair: Thank you, Mr. Petit.

Ms. Jennings, am I ruling?

Hon. Marlene Jennings: May I just respond before you rule?

The Chair: I'll give you that opportunity.

[Translation]

Hon. Marlene Jennings: In light of the fact that the basic objective of Bill C-22 is to prevent young people of less than 16 years of age from consenting to sexual activities, since the current legal age of consent is 14, it does not make sense that a particular sexual activity should continue to be illegal. In that case, setting the legal age of consent at 14, as does the current Criminal Code provision, or at 16 if Bill C-22 is passed, is nonsensical. The objective of the bill is to set a legal age of consent, an age of protection. But we would be excluding a particular sexual activity from that protection threshold. I think that this falls, as we say in English,

[English]

within the scope of Bill C-22, and I would hope the chair would rule to that effect.

The Chair: Thank you, Ms. Jennings.

Mr. Petit, your comments have been noted.

Mr. Comartin.

Mr. Joe Comartin: Thank you.

On the same point, I want to support the amendment, obviously because it's the same as mine, but also on the same argument that we've heard from Ms. Jennings. It is clearly within the scope of this legislation.

We're dealing with legislation that is going to alter the age of consent in this country, and in a significant way, quite frankly. This section of the code is simply another section that deals with the age of consent with regard to a specific sexual activity, and it is in

contradiction—and I think that's the important point—to what we are doing in the balance of this bill.

If anything, by passing this bill, we re-emphasize section 159 as being out of keeping with what we're doing in the balance of the bill. From that perspective, the amendment is within the focus of the bill.

I think it's our responsibility, as legislators, to not pass laws that are going to produce this kind of very extreme contradiction, where we're raising the age on one side and retaining an even older age on another issue.

I want to support the amendment as being in order, and then deal with it subsequently.

Thank you, Mr. Chairman.

• (0915)

The Chair: Thank you, Mr. Comartin.

Ms. Freeman.

[Translation]

Mrs. Carole Freeman: We support Ms. Jennings and Mr. Comartin. We share their point of view. Indeed, we can't exclude this sexual activity in section 159, which governs all other sexual activities.

I thus support Ms. Jennings' amendment.

[English]

The Chair: Thank you.

Mr. Ménard.

[Translation]

Mr. Réal Ménard: Mr. Chairman, I think that Ms. Jennings and Mr. Comartin were well-advised in introducing this amendment. I'm going to give you an example that you will surely like, as a former police officer. This is a little like the legal plain view tenet. We are legislators and it is incumbent upon us to correct injustice that is drawn to our attention, insofar as we respect the purpose of the bill.

It is as though we obtained a detailed search warrant from the court and saw certain objects that had been illegally acquired in a room and did not seize them in our search.

The plain view concept exists both in common law and civil law. You have surely resorted to it when you were a police officer. This is a little like legislative plain view. A provision of the law which is archaic and discriminatory has been brought to our attention. I think you have to assess the admissibility of this motion in a liberal manner. I am using the word "liberal" in the 19th century philosophical sense, let me make that clear. We have to have a generous vision of that which is admissible.

If this amendment could survive until the bill reaches the reading stage in the House of Commons, I am sure that we could respectfully convince our leaders and the Speaker of the House that it is in keeping with the objective of the bill.

I thus invite you to consider it with generosity. I'm convinced, Mr. Chairman, that we are going to correct a discriminatory situation that has no real justification.

[English]

The Chair: I appreciate your analogy, sir, because I too have executed a number of warrants, including drug warrants. I knew that even though there was something in plain view, I had to go back and get another warrant to seize any other items. That has certainly been substantiated in the court of law.

I don't know if there's any other comment, but Bill C-22 amends certain sections of the Criminal Code. This amendment actually proposes to change another section of the Criminal Code, section 159. Given the fact that it is dealing with another section, then according to Marleau and Montpetit, on page 654,

For a bill referred to committee *after* second reading, an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is specifically being amended by a clause of the bill.

I must therefore rule the amendment inadmissible.

Ms. Jennings.

● (0920)

Hon. Marlene Jennings: I'd like to challenge your decision.

The Chair: Okay. Shall the ruling of the chair be sustained?

Mr. Joe Comartin: Can we have a roll-call vote, by name?

The Chair: A recorded vote.

[Translation]

Mr. Réal Ménard: Is the vote on upholding the chairman's decision?

[English]

The Chair: The question is, shall the ruling of the chair be sustained?

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: It is likewise for NDP-3, which is on page 4.

Mr. Joe Comartin: Well, not quite, if I may, Mr. Chair. Do I need to move it?

The Chair: Are you speaking to NDP-4?

Mr. Joe Comartin: Yes. I want to go to NDP-4, which is on the same section, but a different point.

The Chair: Right. Mr. Comartin, on NDP-4.

Mr. Joe Comartin: I guess I'm asking, Mr. Chair, because we're going to be faced, obviously, with—

The Chair: Mr. Petit.

[Translation]

Mr. Daniel Petit: Mr. Chairman, to be logical, and for your decision to be in keeping with amendment NDP-3, Mr. Comartin first has to introduce it, and then you should make your decision. Otherwise, his amendment is still pending, because he has not presented it.

A decision was made concerning a Liberal Party amendment introduced by Ms. Jennings. According to the Standing Orders, Mr. Comartin must now present his amendment, and then you will render a decision. Otherwise, how can we abide by your decisions? I submit these comments in all humility; the decision is up to you.

[English]

The Chair: Ms. Jennings.

Hon. Marlene Jennings: As long as Mr. Comartin has decided not to move his amendment NDP-3, it's not up to anyone on this committee to attempt to force him to move it. He has decided not to move it.

The Chair: He doesn't have to move it.

Hon. Marlene Jennings: We are now dealing with NDP-4. He has to move it, if he so wishes, and then he will speak to it. If other members wish to speak to it at that time, they may, and then the chair

The Chair: I think that point is clear, Ms. Jennings.

Hon. Marlene Jennings: Yes, but Mr. Petit seems to be off on another planet.

The Chair: Mr. Petit has a statement to make. The matter now is that Mr. Comartin can present his argument for NDP-4.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair.

NDP-4 is again on section 159, but as opposed to the prior two proposed amendments, both from the Liberals and from me, this deals very specifically with the age of 16 years. Again, although there is no reference in the primary bill, Bill C-22, to section 159, we are clearly dealing with the age of consent being fixed in this country, for all purposes with regard to sexual activity, at 16 years.

So again, Mr. Chair, if this amendment is not acceptable and we don't pass it, we're going to end up in this situation, which has been ruled by the courts, all the way up to the courts of appeal in the provinces of Ontario and Quebec, as being contradictory. We're going to be creating a real anomaly here, and it's not the way legislation should be drafted. The government has a real responsibility here, quite frankly, to agree to this amendment and to do it unanimously. This is a simple way of getting around the whole issue of the language that's in Marleau and Montpetit, which I find quite restrictive. At some point we should deal with that in a more global sense. That aside, this is one of the amendments to which, clearly, the government should be agreeing, and it should be going through unanimously both here and when this bill goes back to the House.

On that basis, I would argue that you should rule it in order. It deals specifically with moving the age to 16, as we are doing in the balance of the bill. There's no question that the focus of the bill is to establish the age of consent in this country as 16 for all purposes. I would say this is different from simply repealing section 159, and on that basis you should rule that in fact it is admissible.

● (0925)

The Chair: Are there any other points of discussion?

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chairman, section 159 in the Criminal Code, almost everyone around the table will concede, has some problems, inconsistencies, and constitutional problems. We all acknowledge that. The question is whether or not we are capable, through the mechanism of this existing bill, of amending and fixing those problems.

If all we had to do was list by reference section 159 in the bill we're studying today, then I would say that's okay, we just have to add it by reference. In effect we would be doing the same thing with section 159 that we're doing with all of the other sections. But that is not what Mr. Comartin's amendment proposes to do now. He is inviting the committee to incorporate the basket of section 159 issues into this bill and fix section 159 that way.

I think this runs into the same problem that the earlier amendments had, which is fairly conspicuously being outside the scope of the existing bill. While many of us wish that weren't the case, the fact is the scope of the bill is what it is, and we can't fix section 159 with this bill without offending that parliamentary principle. That's my view.

The Chair: Thank you, Mr. Lee.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I'd just like to say I agree with Mr. Lee. I'd definitely like to amend section 159, but I don't want to frivolously overrule the chair all the time.

The Chair: Thank you, Mr. Bagnell.

Mr. Comartin, the impact of amendment NDP-4 would be very much the same as that of the previous amendments, in that it proposes to change another section of the Criminal Code. I therefore rule the amendment inadmissible for the same reasons.

Mr. Joe Comartin: I'd like to challenge the chair on this point. And again, could we have a recorded vote?

The Chair: Shall the ruling of the chair be sustained? Those in favour, please indicate.

Mr. Joe Comartin: I'm sorry; I asked for a recorded vote.

The Chair: We will have a recorded vote.

(Ruling of the chair sustained: yeas 6; nays 5)

● (0930)

The Chair: Go ahead, Mr. Comartin.

Mr. Joe Comartin: I'm prepared to go back to the first section and my first two amendments.

The Chair: Is the committee in agreement to go back to clause 1?

On amendment NDP-1, Mr. Comartin, please go ahead.

Mr. Joe Comartin: Thank you, Mr. Chair.

Mr. Chair, what I'm attempting to do with these amendments is to extend the provisions on page 2 in proposed subsections 150.1(2.1) and 150.1(2.2)—and then an additional one—on an indefinite basis. What this protection does is that in the case of any relationship that falls into these categories, meaning the parties have been cohabitating and are having a child, or they are married—I think those are the two basic positions—this proposed subsection would not apply to them, no matter what the age gap is between the couple.

It's there in a limited way, in effect retroactively, so that if the relationship exists at the time this law comes into effect, they would have that protection; this part of the code would not operate against them, even if the age gap is greater than five years. We do have relationships of that nature. We heard that from the Juristat people. I don't think we got a definitive figure; my own sense is that

somewhere around 1% of the population fits into that category of relationships of five years or more.

I'm going to refer to both amendments, Mr. Chair. The effect of the first amendment in replacing this wording in lines 23 and 24 on page 2 is that it would extend this prospectively as well as retroactively; it would go on an ongoing basis.

Then the second amendment—and I know it is a bit out of line to do this—would deal with the very specific case of an application under the provincial legislation that is outstanding. That's really what it's dealing with. That application is one to a court in a situation in which the age is under 16 for marriage. There's an outstanding court application for that purpose. A couple wants to marry. It's before a judge by way of a specific court application, so that application would be outstanding, and in NDP-2 we're saying if that were the circumstance, again this subsection of the code, when passed, would not apply negatively to those relationships.

To recap, NDP-1 is on an ongoing basis. If they fall into the category of either a common-law relationship, with a child, or the category of a marriage, this proposed subsection would not apply to them, and under NDP-2 it would not apply if there is simply an outstanding application at the time this proposed subsection of the code comes into effect.

The Chair: Dealing with each one separately, if I read NDP-1 correctly, in proposed subsection 150.1(2.2) on page 2, lines 23 and 24 would be struck and it would read, “matter of the charge if, on the day on which the alleged offence took place”, instead of “on the day on which this subsection comes into force”.

● (0935)

Mr. Joe Comartin: I have to say that I find the wording a bit strange, but that's what the drafters gave us, after a great deal of discussion with them, as a way of extending what the original bill did to provide for this defence on a very limited, retroactive basis. The way of dealing with it on an ongoing prospective basis was to use this type of wording.

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair.

Just to be clear, the bill as introduced has a transitional marriage exemption, but the age of 16 is consistent. The federal government hasn't overall exercised its jurisdiction to set a minimum age to marry. In two instances, the Immigration and Refugee Protection Act states that any person under the age of 16 years will not be recognized as a spouse or common-law partner of a foreign national, and the Federal Law–Civil Law Harmonization Act also prescribes the minimum age as 16 years.

We really don't want to get into making exceptions in the future, as has happened in some other jurisdictions. I want to understand exactly what Mr. Comartin is getting at, but we don't want to make entering into some formal arrangement like marriage or some other partnership a blanket defence, or an excuse for violating the intent of what we're trying to do in Bill C-22. It sets the age of consent at 16 and provides a close-in-age exemption.

Some provinces have a lower age than 16 when someone can marry. Bill C-22 respects that. If a province sets the age when someone can marry at 15, Bill C-22 respects that, but the close-in-age exemption has to be in place. The close-in-age exemption we have set for 14-year-olds and 15-year-olds, for example, is five years. So in those jurisdictions where someone can marry at 15, if it's within five years there's absolutely no conflict whatsoever.

Going forward, in some cases it would be at the discretion of a judge. I don't know if Ms. Morency wants to expand on that.

Overall, the government doesn't want to create loopholes that will allow some people to get around entering into these types of great-in-age relationships, using the shield of marriage or a prospective marriage.

The Chair: Ms. Morency.

Mrs. Carole Morency (Acting General Counsel, Department of Justice): The only point I would add, as Mr. Moore has indicated, is that there is something of this nature that exists in the United States. In many of the states there is a marriage exception. The exceptions that exist on a permanent basis have been criticized by many as being a way to excuse what is otherwise considered a sexual offence, where the laws of age of consent have been prescribed in a such a way that the accused can bypass them by entering into a married or common-law relationship, as Bill C-22 addresses.

The checks and balances exist within the provinces under their marriage acts dealing with solemnization, and in two provinces and one territory, no one under the age of 16 can marry. In the other ten jurisdictions they can marry under that age only with parental consent and on the approval of a court, for the most part, or in Ontario, Nunavut, and the NWT, with the consent of the minister responsible for marriages.

In each case, the criteria that are stated in their legislation are that it has to be expedient or in the best interest of the young person, or she's pregnant. In that consideration, the court would consider whether or not this consent would authorize what is otherwise prescribed as a sexual assault under the Criminal Code once Bill C-22 comes into effect. That's why Bill C-22 addresses the issue prospectively, so that relationships that exist at the time that Bill C-22 comes into force, be it a married relationship or a common-law relationship, an established one as defined, are protected, notwithstanding that Bill C-22 would otherwise have made it illegal because the partner is more than five years older.

If we look at what stats are available to tell us how often this comes up as an issue, it's true that the director for the Canadian Centre for Justice Statistics testified that based on their information, 0.07% of youth aged 15 years were in a married or common-law situation—72 people per 100,000. If we look at estimates from Statistics Canada for 2005 on youth who were age 15—one male and four females—who are legally married, we don't know the age of their partners.

So it is a very rare example of the question that I understand is at the heart of this amendment, and the provinces have the scope under their solemnization of marriage to deal with that within the scope of the close-in-age exception, and in three provinces never allow it.

● (0940)

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Some of our witnesses suggested that would be challenged constitutionally if the law were not treating everyone equally in those provinces where you can marry under the age.

I would also like to hear from Mr. Comartin again the rationale for his amendment.

The Chair: Thank you.

I'll get to you in a minute, Mr. Ménard.

Mr. Comartin.

Mr. Joe Comartin: Well, I suppose to respond to both Ms. Morency's comments and the question from Mr. Bagnell, I don't agree with the statistical analysis that Ms. Morency has given. The reality is that the numbers are substantially higher than that for people who marry, particularly in the territories. I don't have the numbers in front of me, but to suggest that it's one or four cases is, I think, a misrepresentation of actual reality.

In terms of the rationale behind this, the reason I'm proposing this amendment is to deal with those exceptional cases. Again, I haven't looked at the American experience, so I can't comment on that; I don't know what the criteria are there. But with this amendment, if it went through, we would be allowing the continuation of the use of the provincial legislation. What we're doing is that whether it's a parent in combination with, as in Ontario, a senior bureaucrat, or in combination with a judge in a number of the other provinces—with the exception of the three that Ms. Morency mentioned—we're in effect letting somebody else decide whether this relationship is one that has the right to be sanct...or acknowledged—excuse me, we'll remain secular here—or recognized by the state, even if the relationship is one of an age gap greater than the five years that we're providing for here.

So that's the rationale; it's to deal with those. I agree with Ms. Morency to the extent that these are going to be the exceptional cases, but we've had them in our law for a long time. There are those exceptional circumstances. We in effect allow somebody else, not the accused person or the victim—if we can put it in terms of traditional criminal law—deciding whether this is going to be allowed.

If we pass this amendment, it in effect leaves the existing system in place to deal with those exceptional circumstances where you allow somebody else, whether it's a parent in combination with a minister, or in combination with a judge.... In some cases, I believe some of the statutes allow for the judge alone to make the decision. So it's to allow for that discretion to remain in the system.

The Chair: Thank you, Mr. Comartin.

Mr. Bagnell, does that clarify the point for you?

Hon. Larry Bagnell: Yes, but I do want to clarify the statistic of 72 people per 100,000, which would mean in Canada we're talking about 3,000 cases. That's a lot of cases. If they were murders, that would be a lot of cases to just brush aside frivolously.

The Chair: Mr. Moore, this is in response to the numbers? Go ahead.

Mr. Rob Moore: Number one, 72 in 100,000 refers to common law and married. If we're talking specifically about married individuals, in the Yukon, for example, as a territory, no one under the age of 16 can ever get married. The age for marriage in the Yukon is 16. And as for the number of 15-year-olds, for example, who are legally married, according to Statistics Canada, in 2005, in all of Canada one male and four females were married. In jurisdictions like the Yukon, where the age is 16, no one under the age of 16 is legally married in the Yukon.

I think where there is a little discrepancy in the number is that this is the number of married; the 72 in 100,000 refers to people who would also be considered common law. So that's another basket of individuals, all of whom, I should say, are in a transitional exemption under Bill C-22. Anyone in that situation when this bill comes into force will continue to be allowed to be in that situation, but going forward, this bill sets the age of sexual consent at 16, with that five-year close-in-age exemption.

So if someone under 16 wants to get married, in this bill they're not prohibited from doing so. If they're allowed in their province to get married at under 16 in some exceptional circumstance or otherwise, this bill doesn't prevent them from doing that. But it does have a five-year close-in-age exemption. If it's within the five-year close-in-age exemption, there would not be any criminal fallout from that relationship.

• (0945)

The Chair: Thank you, Mr. Moore.

Mr. Ménard, then Mr. Lee.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I'm a bit confused. I would like to put a question to Ms. Morency and Mr. Comartin.

First, it seems to me that there is a difference between matters of form and the substantive conditions that govern legislation on marriage. The provinces have jurisdiction over matters of form, that is to say how marriages are solemnized, for instance the publication of banns, and the federal level has jurisdiction over matters of substance. Among the substantive conditions, for instance, we find the degree of genetic relationship between individuals, which could prevent them from getting married.

I thought that the age at which one can marry was a substantive condition, but, given that the federal government had legislated on the matter, the provinces had been allowed to include provisions, for instance in the Quebec Civil Code, stipulating conditions regarding age, which are normally substantive conditions.

I would like someone to explain to me whether we consider that age, if ever there were a constitutional challenge and we had to go before the courts, is part of the substantive conditions surrounding marriage or whether it is considered a matter of form only.

Also, I thought that the bill as it stands currently would protect us against the scenario evoked by Mr. Comartin. I would like him to give us an example in order to enlighten us. What situation are you referring to when you talk about provisions of the bill that would not cover the case of married individuals who will not have reached the legal age set out in the bill when it comes into effect? How could that

be possible? To what specific situation are you objecting? This isn't clear to me.

Mr. Chairman, as usual, you are not listening to me, which makes us like an old married couple.

My question is addressed to Ms. Morency and Mr. Comartin.

Mr. Daniel Petit: He did not hear you.

Mr. Réal Ménard: No. We are a parliamentary couple. It goes without saying that we have separate bedrooms. Also, since he is a few years older than me, he is a bit hard of hearing.

Voices: Oh, oh!

Mr. Réal Ménard: Mr. Chairman, with your permission, my question was addressed to Ms. Morency and Mr. Comartin.

[*English*]

Mrs. Carole Morency: To confirm, the federal government does have authority over what we call the "formal capacity". The legal term is "essential validity" of marriage, which includes setting the minimum age to marry. Provincial and territorial governments have constitutional jurisdiction over the solemnization of marriage: setting the procedures, how licences can be obtained. In the course of the provinces doing that, they prescribe a minimum age to marry.

Under constitutional law, if either level of government purports to legislate in an area that is outside its area of competency, it's ultra vires of that government. To the extent that there is an inconsistency between legislation at the two levels of government, the constitutional doctrine of paramountcy says that the federal law prevails.

In this case, Bill C-22 proposes to set a new limit for age of consent. How would that impact in terms of marriages? As Mr. Moore has said, it does not prevent a young person who meets the conditions prescribed by the provincial law from marrying, provided that the partner is less than five years older in age.

The whole objective of Bill C-22 is to provide a clear definition of when a relationship between an adult and a young person is exploitative. Bill C-22 is saying that we want to address the adult predators. Bill C-22 proposes that the adult predator be defined as a person who is five years or more older.

Bill C-22 says we know that certain relationships exist that are common-law relationships, or they're already married. They're established. They would meet our definition. They would have the exception. It would continue and then the young person would come of age.

Down the road, if Bill C-22 is passed, the message from Parliament is that anything over the age difference is an exploitative relationship; it's a sexual offence.

I don't know if you have specific examples. I don't have any to offer to the committee about how Bill C-22 might impact specific cases.

• (0950)

The Chair: Mr. Comartin.

Mr. Joe Comartin: I would agree with Monsieur Ménard.

[Translation]

I agree with your question and your analysis: the form is the responsibility of the provinces and the substance is a matter of federal jurisdiction. However, the federal government has set the minimum age at 14 because of other sections in the Criminal Code. You are correct on that point.

[English]

Let me go to a scenario that I think I've thrown out before. In this scenario, that would be a crime under this section once it's in force, because you have a larger age gap than the five years.

Let's take a 15-year-old and let's do the stereotypical relationship of a young woman who is pregnant, with a male person who is 21. There's an application to the court, by way of consent from the parents of the girl. The parents have said they're prepared to allow this to go ahead. This is a relationship that they are prepared to acknowledge as a marriage. They apply to a court—this would be the scenario that you'd go through in Ontario in any event, or you could go to the minister in Ontario—and say this is the situation. They want this to be acknowledged by the state as a valid marriage, and they need the permission of the minister to do it. The parents are consenting, so would the minister consent as well? If he or she does, then the marriage is allowed.

If that scenario developed, it would now be in direct conflict with this law, and there's no question that the federal government has the jurisdiction once they occupy the territory. That's really what's happening here. It hasn't been occupied to this level, so we have effectively allowed the provinces to fix the age of marriage up to this point. We are now doing that at the federal level, with the age of 16 being a minimum age.

[Translation]

Mr. Réal Ménard: Mr. Chair, I would like to make sure that I understood correctly. I am sure that everyone wants to understand as well.

You are saying that, in Ontario, a girl living with a 21-year-old guy, having sexual relations with him and becoming pregnant, would be breaking the federal law that we are about to vote on. But, still under Ontario rules, if she wanted to formalize her marriage, you are saying that even if her parents were in agreement, and she went to a minister, the marriage could not be recognized because federal law takes precedence. That's the situation that you are worried about.

• (0955)

[English]

Mr. Joe Comartin: I think that's a constitutional question, and I'm not sure I have the answer to it. The conduct, however, would still be a criminal act even if the marriage was acknowledged by the parents and the province. We could get through the totally ridiculous scenario of saying we're going to acknowledge the marriage but they can't have a sexual relationship as part of the marriage until the girl is 16 or 18 or whatever it would be. That's not realistic.

Aside from that, even if that marriage were allowed to go ahead by the province, the sexual conduct within the marriage would be a criminal act and the senior person in the relationship would be

committing a criminal act subject to the penalties that Bill C-22 provides.

The Chair: Mr. Moore, in response.

Mr. Rob Moore: I'm just thinking about Mr. Comartin's fact scenario. In Mr. Comartin's fact scenario, under Bill C-22, a criminal offence has already taken place. You have a 21-year-old having sexual relations with someone who, in his fact scenario, was 15 years old. We're not interested, I don't think, in creating a situation where someone is able, then, after a criminal offence has taken place....

The whole idea with Bill C-22 and raising the age of protection is to prevent people who are more than five years older than a 14- or a 15-year-old from entering into relationships with them. So to somehow say that now we can make it all better and pretend that a criminal offence didn't take place by getting married is defeating the purpose of what we're trying to do.

We don't want to see a rush to the altar by these individuals who are in many cases in a position where they could have great influence over this individual. It might be a situation of duress. We've heard examples of where sometimes the young person was in this situation and may not be cooperative, but they're with someone who is significantly older.

I fail to see how this could be accomplished practically. There's already a transitional provision in the bill. To somehow make marriage a blanket defence or to be able to retroactively go back and pretend an offence didn't take place because at some point in the future you're going to get engaged and married, would be defeating the purpose of the bill. Where do you draw the line? If someone gives someone an engagement ring, that offence didn't take place?

It's very clear in this bill. Right now in Canada the age of consent is 14. We've heard witnesses overwhelmingly say that this is too low, that there are adults who are preying on 14- and 15- year-olds. So this bill raises it to 16.

If we allowed our imagination to really get carried away, we could come into some situations, but the statistics that I've seen from Statistics Canada don't bear out the concerns. Number one, in most provinces you have to be 16 to be married anyway, and that's the age of consent in this bill. Number two, in provinces where you don't have to be 16, you can still get married, under this bill. There's no conflict whatsoever as long as you're within a five-year close-in-age exemption. If you're not within the five-year close-in-age exemption, then in your scenario a criminal offence has already taken place. And that's the criminal offence that this bill tries to address.

I understand the intentions, but I can't support creating confusion—I think this is really what this could create—with something that we want to try to keep a very strong and straightforward message on.

The Chair: Mr. Lee.

Mr. Derek Lee: I'd ask Mr. Moore not to dig his heels in just yet. I think we have to talk about this for another couple of minutes.

Firstly, earlier in our proceedings Ms. Morency provided some information. Mr. Comartin, in response, suggested that there must be some misrepresentation. I wouldn't want the record to fail to show that Ms. Morency was simply providing statistics that were publicly available and that there was certainly no.... I certainly didn't see any misrepresentation. I'm not sure that Mr. Comartin intended—

Mr. Joe Comartin: It was my choice of words.

Mr. Derek Lee: He would use a different word now if he had the chance, and he will probably have the chance.

Mr. Joe Comartin: Yes, I didn't mean it in the legal sense, for sure, Mr. Lee.

Mr. Derek Lee: Secondly, I'm going to give notice that I intend to move an amendment to the title of the bill, not to the body of the bill. It's really simple. It now refers to "age of protection". I'm going to suggest that it refer to the age of consent, and I'll explain why later.

Mr. Moore and Ms. Morency have suggested that the proposed amendment would allow a retroactive decriminalization of sexual activity if the parties involved got married. As I read this, that's not the case. The exemption for being married only applies if the parties were married when the alleged offence took place. That is how I read the amendment, and I can't read it any other way.

Mr. Moore seems skeptical about that, but the purpose of this amendment is to remove from criminalization individuals who are legally married at the time when there may have been illegal sexual activity. The point is that they are legally married, and we can envisage, by the wording of this bill, the criminalization of two individuals who are married legally.

This bill is not about marriage; this bill is about sexual activity. We are, by the current wording of this bill, criminalizing sexual activity between two consenting persons who are married. Now, this is a very small number of people. There are only four or five in the whole of Canada that we're aware of now, plus other individuals who may be recognized as spouses in common law, the circumstances of which are already outlined in the bill.

So this is the only issue here for us, because the current government bill already exempts from criminalization individuals in this category who are married on the day the section comes into force. It doesn't deal with people who may have this problem later on in time. Mr. Comartin's amendment is intended to deal with those people later.

I'm of the view that if we, in our work here, can see a criminalization that is not intended, then we should not allow that bill to go forward. We should change it in a way that removes the non-intended criminalization. But if it is the view of members here that we wish to criminalize two consenting persons who are married in the future, albeit only a half a dozen or ten over time, then go ahead and pass the bill.

I wouldn't do that, and I would not shovel our unfinished business, our unintended criminalization, over to a criminal court for fixing, because they won't be too happy about that. They would rather say to Parliament that if we see a problem, we should fix it. If we see an overlap, if we see an inconsistency, we should fix it. If we see a constitutional problem, we shouldn't give it to the courts, we should fix it before it gets there.

Mr. Comartin's amendment comes down to this. The government has already fixed the problem of the criminalization of two persons who are legally married, one of whom is underage. The question is whether we will extend that protection, in the future, to other persons who are similarly legally married, one of whom is under the age.

Thank you.

● (1000)

The Chair: Thank you, Mr. Lee.

Mr. Moore in response, then Ms. Morency.

Mr. Rob Moore: One thing that Mr. Lee said, with which I agree wholeheartedly—and that's why I am saying this—is that this bill is not about marriage; it's about the age of protection. So in going down this trail on the issue of marriage, which is addressed in the bill, we're not dealing with what the reality is out there. Ms. Morency has the numbers; the reality is that this is not taking place. I think there's some breakdown between what Mr. Lee says is the intent of the amendment and what Mr. Comartin says is the intent of the amendment.

In Mr. Comartin's fact scenario, a criminal offence took place, and this is contemplating an older individual marrying someone younger, and thereby becoming exempt from criminal prosecution. This is what we were saying when I talked about some sort of retroactive protection from prosecution.

We've seen some examples, and Ms. Morency can talk about this a little further. I am concerned about us creating a blanket defence for someone pursuing marriage in order to prey on a young individual. I think this bill has done an excellent job of contemplating the scenarios. Also, I haven't heard anything yet that would indicate we should change it, in light of the fact that there are transitional provisions, consistent with provincial jurisdictions, and the numbers certainly bear this out.

From the scenario Mr. Comartin raised, we don't want to look back and provide retroactive protection for someone who's preying on a young person.

● (1005)

The Chair: Ms. Morency.

Mrs. Carole Morency: If I'm reading the amendment correctly, it would amend the whole of proposed subsection 151.1(2.2), which provides a transitional exception, not only for married couples as of the date of coming into force, but also for those in common-law relationships needing a definition.

The numbers provided in testimony by the Canadian Centre for Justice Statistics showed 72 per 100,000 of population. If you look at what we know about how many were married or estimated to be married in 2005, for example, the majority in that category are in common-law relationships. There are no checks and balances in place with those types of relationships.

Again, does this come back to Mr. Moore's point that by extending the transitional exception to make it permanent, you basically open the door to do exactly what Bill C-22 is trying to do, because the overwhelming numbers are in common-law situations? So why bother applying to marry, because a 25-year-old could move in with a 15-year-old, or she becomes pregnant, and this gets around and undermines Bill C-22.

So everything that Mr. Moore has said, but specifically in terms of how I read the amendment to extend the transition exception to both types of relationship, perhaps a handful of marriages and an overwhelming number of common-law situations.... And that's where everyone would go.

The Chair: Mr. Lee, do you have any further response?

Mr. Derek Lee: I understand much better now. Thank you.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chair.

My question is for Ms. Morency.

In Mr. Comartin's amendment, we read "the date on which the alleged offence took place", but in the bill before us, we read "the day on which this subsection comes into force". That's the difference.

A lawyer reading that document knows that the effective date is the date on which it receives royal assent, and that everything in the section can be used as a defence once it is in effect.

But since you draft legislation for the federal government, I would like you to explain to me the difference between "the date on which the alleged offence took place", and "the date on which this subsection comes into force".

When I read the text carefully, I get the impression that it can apply retroactively. The day on which it comes into force is fixed, a lawyer knows that a certain date represents a certain thing. But with the words "the alleged offence", a complainant could bring a complaint in 20 years saying that something happened at a particular time, and the defendant could be found guilty because of the words "date of the alleged offence".

Ms. Morency, I would like to know your opinion on the two texts, both of which have merits. I am not clear on the force of the amendment.

•(1010)

[*English*]

Mrs. Carole Morency: I'm not sure if I'm in the best place to explain. I think perhaps Mr. Comartin might be better placed to explain his understanding of this. But the way I read NDP-1 and NDP-2, it's clear that, as I understand the second one, the intent is to say the new age of consent or age of protection would apply only prospectively—so to cases that arrive after this case. It's not in Bill C-22 now because the law applies prospectively only and would apply only to situations that arise after the new age of consent comes into force. Those who would be caught would be those who are already in the situation, and that's why the transitional exceptions apply.

In terms of the first amendment, again, I probably would share Mr. Comartin's view that the wording is a little bit.... It's not immediately obvious to me as it's been explained to him by the drafters. I'm not sure if Mr. Comartin has a further explanation. But I understand the intent is to basically extend the transitional exception on a permanent basis.

As I say, just having seen it minutes before the committee began its hearing, it strikes me as a bit.... It's not the obvious solution, but I take Mr. Comartin's advice on that.

The Chair: Mr. Petit, does that answer your question?

[*Translation*]

Mr. Daniel Petit: I would just like to ask Mr. Comartin for some details about the question I asked Ms. Morency. I know that you are very knowledgeable about matrimonial law, but in criminal matters, we read the law. When defence counsel is representing an accused, he uses the effective date as a point of reference. He has a date in mind. Now you are replacing the term "date on which the subsection comes into effect" with "the date of the alleged offence".

Ms. Morency left the question I asked her a little up in the air. Does that mean that you are going back in time and that you are providing protection retroactively? You know as well as I do that, in an indictment, you can accuse someone of an offence of a sexual nature 20 years later. I would like to know, if an indictment is made 20 years later, whether your amendment would provide any protection.

In Quebec, for offences of a sexual nature, young women do come before the courts alleging that their father, for example, abused them 10 and 20 years earlier. When you use the term "alleged offence", do you want to provide protection in all cases? We don't do that if we just talk about the effective date. As I understand it, you want the law to be as retroactive as possible. So if a young woman claimed that she was the victim of abuse, that there had been an alleged offence, she would not be able to accuse her attacker. I am just asking the question. At the moment, I don't know any more than you do.

Mr. Joe Comartin: It's a good point. Mr. Ménard said that the two things were different.

[*English*]

I have to say, Mr. Petit, I had not thought of that scenario of the young person coming back 10 to 15 years later and saying that back then, this was a crime. I do know that this would protect. My amendment would raise a defence of saying no, if you were married or living in that common-law relationship as defined by the code, that conduct was not an offence.

So there's no question in my mind that would provide a defence for the senior person in the relationship, but I had not addressed my mind specifically to that. I'm more concerned about the current situation, not one in the future. But in fact it would have that effect, acting as a defence for those future accusations.

The Chair: Mr. Moore, in response.

Mr. Rob Moore: Just so we're not going too far down a trail, if we change the age of consent now, someone is not going to be able to go back 20 years and say that when they were 15 they were in a relationship with somebody who was 21, and now that the age of consent is 16, that was an offence back then. It's the law that applied at the time. Even in those scenarios that Mr. Petit has mentioned where we go back 20 years, it had to have been a criminal offence at the time.

We can't—and we don't—retroactively with this bill criminalize people. And in fact we don't retroactively criminalize relationships that are currently entered into, because there's the transition.

So I think a lot of the concerns I'm hearing raised are not triggered by this bill, actually. There's not going to be a retroactive criminalization of past relationships, and current marriages or common-law relationships are also protected. And the bill works in consistency with provincial solemnization-of-marriage laws, as well. So a lot of what I'm hearing is actually addressed in the bill.

●(1015)

The Chair: Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Mr. Chair, I think we're long past the time; we need to move ahead on this. The long debate on amendment after amendment after amendment is simply slowing the process down.

When I speak to my constituents and they realize the age of consent is 14, many of them can't believe it. So I would be opposed to any measure, Mr. Lee, that would change the name of this bill to "age of consent". I think "age of protection" is very appropriate. That's what we're trying to do with this bill; we're trying to protect the vulnerable children and young people of our country. I would be opposed, then, to this amendment, which would create in my mind a permanent loophole and an opportunity for those preying on young people.

Thank you.

The Chair: Thank you, Mr. Albrecht.

Thus far Mr. Lee was musing. Until I get a written submission as far as an amendment is concerned...

Mr. Harold Albrecht: I wanted to discourage him.

The Chair: Oh, okay, Mr. Albrecht.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

I just have four points on this. One is that in the numbers, we talked about roughly 3,000 married and common-law couples, and then you add a few pregnancies on top of that. Mr. Comartin's amendment would legalize at any one time in the future roughly 3,000 cases—not a few cases—the way the amendment's written. So it's a significant number. In the future, if they decide to be married or be common law, or if they became pregnant, then whether it would be legal is the issue we're considering.

My second point is that yesterday we were discussing the bill with the minister, who said he had consulted all the attorneys general as a

matter of importance. Ms. Morency, I'm wondering what the attorneys general in the provinces think about allowing marriage under 16. What are their thoughts on us making it illegal for some of those marriages to occur? What have they told you?

Mrs. Carole Morency: I can't comment specifically on each jurisdiction. In fact, this is an issue that's been longstanding. As members around the table will know, over the years the Department of Justice has consulted with members of the public and officials in the provinces and territories on issues involving child sexual exploitation, including the age of consent. There typically is a general consensus of support for measures that will better protect children and youth against sexual abuse and exploitation.

On the specific issue of the age of consent, there has been a divergence of opinion in prior consultations or discussions with FPT officials in terms of how and when this would be effected. The former Bill C-2 in the previous Parliament had addressed some of those concerns. Bill C-22 addresses concerns that continue to remain and are shared by provincial counterparts.

In the context of the current FPT discussions, I can say that the age of consent issue was raised with me. After Bill C-22 was raised, there were some questions from FPT officials, on the family law side, about how this would operate. And we had a similar exchange of information to what we've just had with this committee: a discussion of what the division of powers is right now; how provinces do or do not allow young people under the age of 16 to marry, and in what circumstances; and what would be the interplay between Bill C-22 and those powers.

That's as far as I can speak personally. For sure, there have been attorneys general who have spoken publicly in support of Bill C-22. I believe Alberta and Manitoba have. Over the years there's been a range of views generally supportive of the direction of Bill C-22, which is to better protect against adult predation.

●(1020)

Hon. Larry Bagnell: Was there no objection by those attorneys general where they allow marriage under 16?

Mrs. Carole Morency: None that I'm aware of.

Hon. Larry Bagnell: Okay.

What happens if an immigrant couple who exceed the five-year close-in-age exemption are married and immigrate to Canada? If they carry on their marriage, then all of a sudden are they doing an illegal activity?

Mrs. Carole Morency: Again, my understanding is that under the Immigration and Refugee Protection Act, Canada does not recognize a foreign national's marriage or common-law relationship if that young person is under the age of 16. So it doesn't engage on the close-in-age exemption.

Hon. Larry Bagnell: Okay.

My last point is that on the day the act comes into force, if a couple's already engaged in sexual activity.... For instance, for common-law relationships the exemption is a year, and if they've been living together, let's say, for 11 months, we're going to be criminalizing.... I mean, it's unrealistic to ask them to stop at that time. Perhaps it should say that on the day it comes into effect, people already in a sexual relationship, or who have....

How would you deal with this situation of some people who have been living together common law for 11 months? In that particular province, if the exemption happens to be a year, are they going to be illegal? They would be illegal the day this bill's passed, if they were to have sex another evening.

Mrs. Carole Morency: Bill C-22 adopts the current definition of a common-law partner in the Criminal Code, so it's the same definition, an established conjugal relationship of one year or more. We're recognizing the possibility that a couple may have been in a shorter period of relationship and she's pregnant, or a child has already been born of the relationship. In that situation, if you're looking at an established relationship, the greater good would be to protect that established relationship because of the child, even though they don't meet the one-year prerequisite. Bill C-22 contemplates that. But short of those two situations, Bill C-22 does not provide any further exceptions.

Hon. Larry Bagnell: If they've been living together for 11 months and having sexual relations for 11 months, the day after this bill comes into effect, if they have sex again, it will be a criminal offence.

Mrs. Carole Morency: Yes.

Mr. Rob Moore: Mr. Chair, on that point, I agree with people who want to get on with it, but we're talking about protecting young people who are under the age of 16. In all the facts I'm hearing, now the young person is pregnant.

We support Bill C-22. We're trying to prevent these sexual relationships from happening. But once someone becomes pregnant, all the rules go out the window and it's okay that that relationship is taking place. To me, that's kind of defeating the purpose of the bill. We have an age of protection to protect young people. If that young person becomes pregnant, we don't throw the rules and the protection out the window. If they get married, we don't throw the protection out the window.

Hon. Larry Bagnell: That wasn't my question. My question is, if they've been living together for...

Mr. Rob Moore: But that's the scenario that I'm hearing. They're living together and they get pregnant.

Hon. Larry Bagnell: I'm not talking about pregnancy at all. They've been living together for 11 months and having sex every night, and the next day it becomes a criminal offence.

Mr. Rob Moore: Common law is established at one year, and that's a line that has been drawn. We have to draw some lines sometimes. We used to have a line at age 14. Now the line is going to be at age 16, and the close-in-age exemption is five years. For a legal common-law relationship to be established, it's one year, and this bill contemplates people who are in marriages and common-law relationships.

The Chair: Thank you, Mr. Bagnell.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thanks.

Just in the vein of drawing lines and trying to move forward a little bit here, when you take Mr. Comartin's scenario of an attempt to identify exceptions to the rule and therefore make them, it would seem to suggest to me, with what exists now, let's move Bill C-22

aside right now and deal with the age of consent being 14. What exceptions to the rule do we have with the existing legislation, if any at all?

• (1025)

Mrs. Carole Morency: Under the existing legislation, the age of consent is 18. If it's prostitution, child pornography, or where there's a relationship of trust, dependency, or authority, or as was expanded in the last Parliament under former Bill C-2, the court is directed to say that if there is a relationship involving a young person between the ages of 14 and 18, the court is directed to infer that that relationship is exploitative by looking at the age of the young person, the difference in age between the young person and the other person, how the relationship evolved, and the nature of influence exerted over the young person.

In other words, the court looks at the entire situation of that relationship to determine whether the young person's supposed or alleged consent could be accepted in law.

Mr. Rick Dykstra: Currently, a person at the age of 13 could argue that in court.

Mrs. Carole Morency: Consent of a 12- and 13-year-old is only valid with another person provided there's less than two years difference in age. You have a two-year close-in-age exception.

So it's age 18, at the upper limit, for prostitution, child pornography, these other exploitative relationships of trust, dependency, etc.; and at the bottom, a 12- or 13-year-old can engage in sexual activity with somebody who is less than two years older, and age 14 for all other purposes. Bill C-22 would move that bar up to age 16, maintain that lower two-year close-in-age exemption for 12- and 13-year-olds, but for 14- and 15-year-olds, the new ones who would be protected by Bill C-22, Bill C-22 proposes a new, broader close-in-age exception of five years, so less than five years.

Again, it's always provided that there's no relationship of trust, dependency, or authority. Even if it's a peer, a 15-year-old can sexually assault another 15-year-old. If it's not a question of consensual activity, the Criminal Code will still address that as well, because no consent is an assault.

Mr. Rick Dykstra: Given the fact that these parameters exist currently, I fail to understand how the amendment addresses any issue by moving the age to 16. I need some clarification on that, because it makes it seem, Joe, that you could have the same arguments you're making at the age of 16 at the age of 14—and if it were 12, at the age of 12.

The Chair: I'll give Mr. Comartin an opportunity to respond to Mr. Dykstra's point.

Mr. Joe Comartin: No, I think Ms. Morency's point is accurate, that unless you have that near age of two years for the 12-year-old and the 13-year-old, it would not apply, because we're providing in here... This is new. Proposed subsection 151(2.2) is new; that is not in the code at the present time with regard to the 12-year-old and 13-year-old. So this is new.

Mr. Rick Dykstra: That's not what she said. She said that it existed already.

Mr. Joe Comartin: In other sections, but specifically with regard to the marriage and the common-law relationships we're dealing with....

Mr. Rick Dykstra: I'm trying to understand. You haven't given an example of who your amendment would address other than somebody under the age of 16 who would then be in a relationship with someone five years older. So you haven't given a tangible reason why we should even be discussing this amendment.

Mr. Joe Comartin: Because we have 3,000 couples in this country—and it's actually more like 6,000 couples if you take both the 14-year-olds and the 15-year-olds—whose relationships are going to be criminalized.

Mr. Rick Dykstra: No, they're not. In fact, as I understand what Mr. Moore has said, those relationships exist already, and therefore they will not be criminalized.

Mr. Joe Comartin: I realize that. I'm talking on an ongoing basis.

Mr. Rick Dykstra: Yes, but you have to set the bar somewhere. You have to start somewhere. You have to draw the line and say from this day forward this is how the rules now work in this country.

Mr. Joe Comartin: That's not logical.

Mr. Rick Dykstra: If you don't agree with the bill, you can vote against the bill, but to try to move an amendment that gets at the substance of what the legislation is trying to do is contrary to what the legislation is.

Mr. Joe Comartin: That's where we disagree in terms of what we're trying to do here.

Going back, as Mr. Albrecht said, he doesn't want to change the name; this is about protection. It is about protection, that's really what we're talking about. And we're talking about protecting the stereotype we all have, the 50-year-old man and the 14-year-old girl.

Mr. Rick Dykstra: I'm not talking about that. I'm hitting right at the exemptions you're trying to make, because I don't think you or I or anyone in this room has a difficulty with the scenario you just put forward, the scenario saying that we as a government happen to believe that 16 years of age is the correct age to begin having this discussion.

You keep trying to find an exemption that actually doesn't exist, because, for lack of a better term, they'll be grandfathered under the current legislation. So I fail to see how anyone can say, as Mr. Murphy's suggested, that all of these relationships will have to break up within the context of the legislation—that's absolutely not the case. Some of us may wish that they would, but that's not, in terms of legislation, what is actually going to happen.

• (1030)

Mr. Joe Comartin: The existing relationships do not have to break up, because what's in the act now, what's in the bill now, would protect them. But logically, if you say you're going to do that with existing relationships, if those relationships form in the future—not of an exploitative nature, not of a nature that we would say is damaging—they simply form. And those relationships, Mr. Dykstra, are going to continue to form.

Mr. Rick Dykstra: That's why the legislation's being introduced. Now you're speaking to the actual heart and the guts of what this legislation is going to address.

Mr. Joe Comartin: No. Again, I disagree with you. The heart and the guts of this legislation is that stereotype, that's what we're going after. We're going after that 50-year-old and the 14-year-old.

Mr. Rick Dykstra: What you want to do is what you can do with every piece—

Mr. Joe Comartin: What we're not going after is a relationship that's a viable relationship that's in existence at the time, and that's what we're criminalizing if we don't put this amendment in prospectively.

Mr. Rick Dykstra: No, we're not. We've already grandfathered those.

Mr. Joe Comartin: Retroactively. I'm talking prospectively. Those relationships are going to continue to form. You're living in an unreal world if you believe those relationships aren't going to form again.

Mr. Rick Dykstra: Those relationships can continue to form, but under Bill C-22 those relationships are not going to be legal.

Mr. Joe Comartin: You criminalize them. That's not what's intended by this legislation. This legislation is to protect young people who are being exploited, who are being taken advantage of. Those relationships, by their very definitions, are not exploitative, and they're going to continue to form and we're going to criminalize them.

Mr. Rick Dykstra: That's a matter of opinion.

The Chair: Thank you.

Mr. Ménard, on a point of order.

[*Translation*]

Mr. Réal Ménard: Point of order.

Mr. Chair, before voting on this amendment, could we adjourn for five minutes so that our party can discuss it? We would like to check some things with our leader.

Mr. Daniel Petit: There are two amendments.

Mr. Réal Ménard: We are talking about the NDP's amendments. We would like to check some things before we vote.

[*English*]

The Chair: The vote will certainly be coming shortly.

Is there consensus that we suspend for five minutes for further party deliberations?

Mr. Lee.

Mr. Derek Lee: Whatever discussion is left, we are probably very near the end of it now anyway. We can't adjourn every time we want to deliberate clause-by-clause on an amendment. If Mr. Ménard has some special circumstances—

Mr. Réal Ménard: We could have a vote *pour l'ajournement*.

Mr. Derek Lee: I would prefer to continue the debate. If there are some deliberations in the Bloc Québécois on this, they should be doing them right now as we speak. If Mr. Ménard wants me to speak a little longer so he has more time to deliberate, that's good.

[*Translation*]

Mr. Réal Ménard: We are talking about adjournment. Whether you agree or not, we are voting on a five-minute adjournment.

[English]

The Chair: Whatever the committee may feel here....

Pardon?

[Translation]

Mr. Réal Ménard: A five-minute adjournment.

[English]

The Chair: It's not an adjournment here.

Mr. Derek Lee: I don't even want to suspend. I want to continue our discussion and get to the clause. If for some reason Mr. Ménard has not made up his mind on something by the time we get there, I'd be happy to allow him a couple of minutes to make a phone call.

[Translation]

Mr. Réal Ménard: I am within my rights to ask for an adjournment. You have the right to disagree, but I can ask for a vote on it. I don't have to hear your life story.

[English]

The Chair: Mr. Lee has agreed to give you a couple of minutes to make a phone call. We'll suspend for two minutes.

Mr. Derek Lee: No, I want to continue the debate. This committee can walk and chew gum at the same time.

The Chair: Go ahead, Mr. Ménard. Before we take the vote you can make your call.

Mr. Derek Lee: We won't take the vote until you're back.

The Chair: We won't take the vote.

[Translation]

Mr. Réal Ménard: Are we adjourning for five minutes?

Mr. Derek Lee: I am going to speak...

[English]

The Chair: No, there isn't a consensus to do that.

[Translation]

Mr. Réal Ménard: I have a perfect right to ask for an adjournment and to ask for a vote. We are not asking for one just because Mr. Lee disagrees. We have to check some things; we are not going to vote in the dark. We had not heard of this amendment, and we want to check some things. If we do not adjourn, we are going to vote against, because we have not been able to check, and we wanted to. Are we legislators or aren't we? Yes, we are, and we would like to check. We're not asking for the impossible. We need information.

• (1035)

[English]

The Chair: Are you moving to suspend the meeting?

[Translation]

Mr. Réal Ménard: We are asking for a five-minute adjournment.

[English]

The Chair: You are moving that.

[Translation]

Mr. Réal Ménard: I am asking because we need to check some things.

[English]

(Motion agreed to)

The Chair: We will suspend for five minutes.

• (1035)

_____ (Pause) _____

• (1040)

The Chair: I'd like to call the meeting to order.

We have approximately 15 minutes left in this session and there is a vote in the House following this meeting, at a quarter after.

I would now like to get back to NDP-1.

• (1045)

Mr. Joe Comartin: Mr. Chair, I want to move that this amendment—just NDP-1—be put over to the Thursday meeting. We've had some discussion among the opposition parties of an alternative approach, but it's going to take us some time to draft that. It would probably be amendments to this and we would kick it over to then.

I would want to proceed with NDP-2. It has a very narrow scope to it and really just infills what's in subsection (2.2) now.

With NDP-1, we're just going to need some more time to see if we can't get a consensus there.

I can say to you, Mr. Chair, that on this side of the table there's a general consensus that we want to address this point with an amendment, but that my amendment probably doesn't do it. It maybe either goes too far or in some respects leaves some things out. So we're going to need that 48 hours to get it straightened out.

The Chair: The committee would have to be in agreement.

Mr. Derek Lee: What's the business for Thursday?

The Chair: The agenda for Thursday—drafting instructions for the judicial advisory committee report.

Mr. Ménard.

[Translation]

Mr. Réal Ménard: Everyone wants to pass the bill quite quickly. But we accept that Mr. Comartin is expressing an interesting opinion. The committee studying Bill C-35 has a meeting scheduled tomorrow, from 4:00 p.m. to 5:00 p.m. Does the mover have enough time?

Mrs. Carole Freeman: That's today.

Mr. Réal Ménard: Tomorrow afternoon, Mr. Lamer? Right. I was going to propose...But we won't have time. But won't we have the time to draft an amendment so that we can get back together, say, from 3:00 p.m. to 4:00 p.m. to finish studying the bill today, and from 4:00 p.m. to 5:00 p.m. to study Bill C-35? I want us to pass it as quickly as possible. We can also try to do both on Thursday.

Mrs. Carole Freeman: There won't be enough time to draft it.

[English]

The Chair: Mr. Moore.

Mr. Rob Moore: I hear people saying they want to adopt it as quickly as possible. I haven't even heard clearly what we're trying to address with this amendment, but if it's to create some great loophole that because someone is pregnant or living common law that somehow this is exempted, I don't think that's going to be accomplished with further discussion without completely gutting the intent of the bill.

It's our intent to draw a line, and I don't see how you can have a marriage exemption that would retroactively protect someone from a criminal charge, number one. Number two, if someone is already married, it means they're in compliance with the marriage laws. They've been legally married; they're protected. They won't be legally married otherwise. You can't just get married on your own.

I think they're taking a very complicated approach. I think people have it in their mind that there are some things they don't like, which is the scenario with the 50-year-old and the 15-year-old. We don't like that; we all agree. There are some times when it's a 21-year-old and a 15-year-old, and they're married. Maybe that's not so bad, but that can't be accomplished without bringing in all the others.

Unless you want to change the close-in-age exemption or some other thing, what Mr. Comartin is trying to accomplish cannot be done without substantially gutting the bill. The bill is designed to protect people under 16 from being preyed on by people who are more than five years older than they are. And telling them to just enter into a common-law relationship or just get married and we will retroactively protect them from a criminal charge is not the message we want to send. I just don't see how it would be accomplished otherwise.

So I don't support the amendment and I really don't support much further discussion on what would really gut the bill if we're going to steer people into common-law relationships to protect them from criminal charges.

• (1050)

The Chair: Is it your desire, Mr. Comartin, to stand this over?

Mr. Joe Comartin: That is my desire.

The Chair: Given the level of discussion that must happen on this particular clause, I think I'll just stand the whole clause over.

Mr. Joe Comartin: On a point of order, Mr. Chair, I want to go back to the misrepresentation comment and apologize to Ms. Morency.

Ms. Morency and I have worked together on a number of bills, for three and a half years now. She has never done anything that amounted to any misrepresentation. I didn't intend that, but after listening to Mr. Lee, I can well appreciate how it sounded. I should have been attuned to that.

The point I was getting at was with the larger group, that 3,000. That's the number I've been operating under that this bill is going to negatively impact, not the four or five actual marriages.

Again, I apologize to her. I misused terms, and I should not have done that. Many years in the court room and being a politician should have taught me better than that, Mr. Chair. I apologize to her.

The Chair: Thank you, Mr. Comartin.

Mr. Lee.

Mr. Derek Lee: I think the chair has already decided that he would be prepared to stand down this particular clause and proceed with the rest of the bill.

The Chair: Move ahead, yes.

Mr. Derek Lee: I'm happy to do that, but only for the purpose of seeing if we could collectively craft a subsection that would exempt persons who are legally married. That's it. That's the purpose. We may not achieve that, but that's why I'm in agreement.

The Chair: Mr. Moore.

Mr. Rob Moore: I want to be very clear to everyone that this bill does that. Ms. Morency can expand on that.

People who are married right now are not going to be negatively impacted by this bill. People who are in a common-law relationship right now are not going to be negatively impacted in this bill. The only thing we could possibly be proposing is some future amendment that would allow someone to be exempted from our age of consent laws by getting married or by entering into a common-law relationship. It's not if they're married—

Mr. Derek Lee: That's what the amendment is for.

Mr. Rob Moore: If they're married, they are exempted in the transitional provisions. We're talking about the future. We're talking about getting married; we're not talking about if they're married. I want to be clear on what we're trying to accomplish here.

Mr. Derek Lee: Future legal marriages. That's exactly what we're talking about.

Hon. Larry Bagnell: I agree with Mr. Lee. I mean, I agree with Mr. Moore that we don't want to gut the bill. But I can't prejudge the amendment if I haven't see it. It may be a tiny number of people who get married in the future.

I would like to stand this down until Thursday.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: I would like to ask Mr. Lee a question. I have already read his books on procedure. First of all, we are only talking about an amendment, not about changing the act. Since we are all in agreement about passing the bill, and, with the exception of the amendment which will be presented in 48 hours, we could perhaps set some time aside. Some rules of order in Quebec allow the whole to be passed and the amendment to be dealt with later. If Mr. Comartin's amendment is OK, we will include it. We will all be there to vote. If it is not OK, we will have passed the bill.

Let me ask Mr. Lee, since he is an expert in the area. I have already read the book on procedure that he sent us. Mr. Chair, I would like to know what you think.

[*English*]

The Chair: We're not going to get into that debate now. We have one clause, and it has been moved that we stand it down until Thursday. We would like to get on with the rest of this bill.

I have one more speaker. Mr. Dykstra, quickly.

• (1055)

Mr. Rick Dykstra: I'll be as quick as I possibly can.

I have a question, and this is more to the clerks. The difficulty I have is that there seems to be a desire from some members of the committee to move an amendment that would allow for—and I'm going to try to do this as an example—a 21- or 22-year-old to enter into a relationship with a.... Let's say the new legislation is passed. The exemption would mean a 21-year-old could have a relationship with 14-year-old because at some future point they are going to get married.

I would suggest that the amendment is contrary to the legislation. I would like a ruling from the clerks on that.

The Chair: It is not going to be addressed now. It appears that this amendment isn't going to go much further, given the fact that there is going to be some further discussion on it and not a vote on this point. I would like to get on with the rest of the bill if we possibly could.

Ms. Smith, I know you're on the list now. Please go ahead quickly.

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

I have just a brief comment. I would urge the committee not to lose sight of the purpose of this bill, and that is to protect children.

The Chair: Understood. Thank you.

Mrs. Joy Smith: Just listening to the conversation today, I noticed that we're not talking about that very much today.

The Chair: Point taken.

Shall we stand clause 1?

Some hon. members: Agreed.

(Clause 1 allowed to stand)

The Chair: Shall we go to clause 2?

Hon. Larry Bagnell: Is my amendment in clause 2?

The Chair: No, yours is in clause 1, and it shall stay in clause 1.

(Clause 2 agreed to)

The Chair: Do you have an amendment for clause 3? That's a new clause, actually, Mr. Comartin, new clause 3.1.

Mr. Joe Comartin: It's not part of clause 3?

The Chair: No.

(Clause 3 agreed to)

The Chair: Now we have new clause 3.1, NDP-5.

Mr. Joe Comartin: In order to deal with this expeditiously, perhaps I should just ask you to make a ruling, given the ruling you made earlier. Just quickly for the committee, the effect of this is to provide protection against having evidence used—when it's gathered from an individual who's gone in for medical care or treatment as a result of, using this stereotype, a sexually transmitted disease—against the other person in the relationship, who's more than five

years older. It's really just making this evidence—I'm going to be legalistic here—still competent but not compellable, so that the evidence could not be brought forth. That's the effect of it.

It's an amendment to the Evidence Act. There's no way of dealing with it other than by amending the Evidence Act.

The Chair: That's correct. Of course, Bill C-22 amends the Criminal Code and the Criminal Records Act. This amendment, NDP-5, proposes to amend the Canada Evidence Act and is therefore inadmissible.

Mr. Joe Comartin: Maybe the government will get around to doing it right someday, Mr. Chair.

I need to challenge the chair again.

The Chair: Okay. Do you want a recorded vote?

Mr. Joe Comartin: Yes, please.

The Chair: Shall the ruling of the chair be sustained?

(Ruling of the chair sustained: yeas 5; nays 4)

(Clause 4 agreed to)

• (1100)

The Chair: This brings us back to clause 1. Are we finished for the day?

Mr. Bagnell.

Hon. Larry Bagnell: Just so people can think about it for Thursday, I proposed another amendment to clause 1 that's unrelated to what we've talked about. It's a minor amendment that deals with the issue I discovered during our discussion—people who are already in a relationship. All of a sudden it doesn't seem to make sense to overnight criminalize them. They have to leave their apartment, stop sleeping with the person. It's the philosophy of the government to grandfather things that are going on, so my amendment just adds to the grandfathering for those who are legally engaged in a sexual relationship at the time the bill comes into force.

So think about that. If they've been living together for eleven months—

The Chair: You'll have your amendment written.

Hon. Larry Bagnell: I have. I have already submitted it.

Mr. Réal Ménard: Is it time to say goodbye?

The Chair: Well, is there a motion to that end?

Mr. Réal Ménard: Yes, I move to adjourn. It's time to say goodbye.

The Chair: There is a motion for adjournment. All in favour?

The meeting is adjourned.

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