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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Tuesday, November 27, 2012**

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**Chair**

**Mr. Dave MacKenzie**



## Standing Committee on Justice and Human Rights

Tuesday, November 27, 2012

• (1530)

[English]

**The Chair (Mr. Dave MacKenzie (Oxford, CPC)):** Seeing that the clock is at 3:30, this is meeting number 53 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Wednesday, June 6, 2012, we are studying Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

I would like to thank the panel for coming back. The last meeting was a bit of a problem, in that we never got started, although everyone was here. Our apologies to you for the inconvenience. Sometimes those things happen here. There's really no real explaining, other than that the bells were ringing and we had to leave for votes.

Today we have a panel with the Canadian Human Rights Commission, the Canadian Human Rights Tribunal, and REAL Women of Canada.

If you have an opening address, we'll begin with the Canadian Human Rights Commission.

**Mr. Ian Fine (Acting Secretary General, Secretary General's Office, Canadian Human Rights Commission):** Dear honourable members, thank you for inviting the Canadian Human Rights Commission to contribute to your study of Bill C-279, a bill to amend the Canadian Human Rights Act to include gender identity and gender expression as grounds of discrimination.

[Translation]

I would like to introduce my colleagues. On my right is Philippe Dufresne, the Acting Director General of Dispute Resolution and Senior General Counsel of the Canadian Human Rights Commission. On my left is Tracey Donaldson, Acting Director of Policy and International Relations.

[English]

I have three main points. First, the discrimination or harassment experienced by people who are transgender is often hostile and sometimes hateful and violent. Second, the commission, the tribunal, and the courts view gender identity and gender expression as protected by the Canadian Human Rights Act. Finally, adding the grounds of gender identity and gender expression to the Canadian Human Rights Act would make this human rights protection explicit.

It is difficult to know how many transgendered people there are in Canada. What we do know is that many transgendered individuals are reluctant to identify themselves or seek assistance. Often they

fear being shunned by society, or they fear being harassed or treated unfairly, or they may fear for their safety. Even accessing health care or obtaining identification documents can be difficult. Some feel that doing so threatens their privacy and in turn their security.

In a country where we take pride in being diverse and inclusive, nobody should have to live in fear because of who they are. Parliament designed the Canadian Human Rights Acts to promote equality and acceptance.

[Translation]

This act was created to protect all of us, including vulnerable members of our society, from harassment and discrimination. The Canadian Human Rights Commission is responsible for administering the act and promoting equality.

We receive discrimination complaints regarding employment and services provided by organizations under federal jurisdiction. This includes the federal public sector, as well as private sector companies involved in industries such as transportation, telecommunications and banking. The commission screens all the discrimination complaints it receives. Many are settled through mediation or resolved through a dispute resolution process. In some instances, we refer complaints to the Canadian Human Rights Tribunal for adjudication. The tribunal operates independently of the commission.

[English]

As I mentioned, if someone experiences discrimination based on gender identity or gender expression, they are currently protected under the Canadian Human Rights Act. In the past five years, the commission has received 19 discrimination complaints that raise transgender issues. Eight of these cases are still open.

We at the commission believe that the complaints that come forward do not provide a full picture of discrimination involving gender identity or gender expression. For many, filing a complaint is a last resort. It takes courage. The fear of stigma can be overwhelming for some. It's often easier to remain silent.

This brings me to my last point. In the past, Parliament has amended the Canadian Human Rights Act to ensure that the most vulnerable members of our society are protected from harassment and discrimination. Adding the ground of sexual orientation is one example. Adding the grounds of gender identity and gender expression to the act would make protection of the transgender community explicit. This would promote acceptance and send a message that everyone in Canada has the right to be treated with equality, dignity, and respect.

Thank you for your attention, and we look forward to taking your questions.

• (1535)

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

Mr. Gupta, did you have an opening address?

**Mr. Susheel Gupta (Acting Chairperson and Chief Executive Officer, Canadian Human Rights Tribunal):** I do. Thank you, Mr. Chair.

Good afternoon, and thank you very much, Mr. Chair and honourable members, for the invitation to appear before your committee today as you deliberate Bill C-279.

I thought I would begin by taking a few moments to discuss the mandate of the Canadian Human Rights Tribunal, as it will inform the scope of my presentation. I will then provide an overview of the legal principles that govern us when dealing with discrimination complaints, and in closing, I will provide the committee with some information on cases decided by the tribunal that raised issues of gender identity or gender expression.

The Canadian Human Rights Tribunal is one of the two administrative agencies created by the Canadian Human Rights Act, or the CHRA. The other one is the Canadian Human Rights Commission. While the commission's mandate is multi-faceted and includes a wide range of powers, duties, and functions, the statute has only assigned one main function to the tribunal, and that is the adjudication of complaints.

In the context of the CHRA, this adjudication process is referred to as an inquiry. An individual who believes that discrimination has occurred, within the meaning of the CHRA, can file a complaint with the commission. If the commission believes that an inquiry is warranted, it triggers the adjudicative process by making a request of the tribunal to inquire into the complaint.

The inquiry mandated under the CHRA has been described as quasi-judicial, which essentially means court-like. Hence, the tribunal has many of the powers and attributes of a court. It is empowered to find facts, to interpret and apply the law to those facts before it, and to award appropriate remedies.

The tribunal hearings have much the same structure as a formal trial before a court. The parties before the tribunal lead evidence, call and cross-examine witnesses, and make submissions on how the law should be applied to the facts.

This Parliament only assigned to the tribunal the role of adjudication. The tribunal cannot be involved in crafting policy. It has no regulatory role vis-à-vis discriminatory practices in the federal workplace, nor does it have a public advocacy role. These roles are assigned to other bodies.

A number of consequences flow from the court-like structure and focused mandate of the tribunal. First, its members are required to maintain a high degree of independence from the executive branch of government, in particular from our portfolio department, the Department of Justice.

Furthermore, to conserve their impartiality, it is important for the adjudicator of our tribunal to adopt and retain a position of neutrality

in respect of issues that can and will be debated in cases they may be called upon to decide.

In the context of your current study, these principles prevent tribunal members, including me, from issuing opinions on many of the matters that will be discussed as you review Bill C-279, which is not to say that tribunal members never make findings on issues of gender identity or gender expression. On the contrary, they have been required to do so previously and will likely be called upon to do so in the future. However, they must make these findings in the context of their adjudicative mandate, based on the submissions of the parties in a particular case, along with the evidence led and the applicable legal principles.

This leads me to my next topic. What are the legal principles that the tribunal applies to discrimination complaints? How do we define discrimination?

The answer to these questions originates in our enabling legislation, the CHRA. A useful starting point is section 4, which succinctly sets out the basic liability scheme. Essentially, in this statute Parliament has identified a number of discriminatory practices. Anyone found by the tribunal to be engaging in or to have engaged in a discriminatory practice may be made the subject of a remedial order.

What does the CHRA consider a discriminatory practice?

There are a number of acts and courses of conduct so designated, including denying access to services facilities or accommodation; refusing to employ or continue to employ an individual; establishing a policy or practice that deprives an individual or class of individuals of employment opportunities; and harassment and adverse differentiation, both in matters related to employment as well as in the provision of services, facilities, or accommodation.

However, almost every discriminatory practice in the CHRA, by definition, must be based on a prohibited ground of discrimination. Here is where we arrive at some of the issues raised by Bill C-279.

The CHRA designates 11 prohibited grounds of discrimination, namely, race, national ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record of suspension has been ordered.

As has been alluded to in the House of Commons debates, to the extent that the tribunal has dealt with transgender issues thus far, it has done so within this statutory framework of prohibited grounds, in particular, under the grounds of sex and disability. However, the tribunal has never had to decide a case where the parties put forward sharply opposed arguments on the question of whether or not gender identity or gender expression is protected by the act.

• (1540)

If you will allow me to elaborate, the tribunal has had four cases dealing with gender identity or gender expression that it has been required to adjudicate.

In the first case, the tribunal has found, on the point that's most relevant to this current discussion, and I quote:

There is no dispute that discrimination on the basis of Transsexualism constitutes sex discrimination as well as discrimination on the basis of a disability.

There have been three subsequent cases that raise gender identity and gender expression issues. In all of them, the tribunal found that discrimination on these grounds fell within the prohibited grounds protected by the CHRA. However, in each of the cases, the key issue relevant to this committee's deliberation does not appear to be a point of contention between the parties.

As you can see, we haven't dealt with a large number of these kinds of cases. That said, in considering the number of cases heard by the tribunal on the given subject matter, there are several important considerations that should be taken into account.

First, not all federal discrimination matters become complaints filed with the commission. Other agencies and boards have concurrent jurisdiction over CHRA matters.

Second, of the discrimination complaints filed with the commission, only a small subset were referred to the tribunal for inquiry. As my friends from the commission have already indicated, some of those complaints end up being resolved through ADR practices or mediation under their process.

Third, of those complaints that are referred to the tribunal, a significant number are resolved by tribunal members mediating the complaints to facilitate settlements by the parties, thus never resulting in a hearing or an inquiry ever being conducted.

In closing, I would simply like to say that I hope this presentation has been of assistance to the committee.

Thank you.

**The Chair:** Thank you.

Ms. Watts, do you have a presentation?

**Ms. Diane Watts (Researcher, REAL Women of Canada):** Yes, thank you, Mr. Chairman.

Thank you for inviting us before this committee.

REAL Women of Canada was federally incorporated in 1983 and is a non-denominational, non-partisan organization of women from all walks of life. We respond to the evidence that the family, consisting of mother, father, and children, is the foundation of society.

Bill C-279 is not just a simple bill merely extending human rights protection to another category of individuals. It has far-reaching ramifications for Canadian society, and based on credible medical studies, the consequences of the bill will be harmful to transgendered individuals themselves.

It may be politically correct, but it will not be helpful to persons with gender dysphoria, that is, gender dissatisfaction. The United Nations rejected the terms "gender expression" and "gender identity". The Geneva-based United Nations High Commissioner for Human Rights' controversial recommendation that gender identity and gender expression be protected rights was overwhelmingly rejected by the United Nations Human Rights Council in March 2012. Similarly, the non-binding UN declaration on sexual orientation and gender identity was never voted on by the UN

General Assembly. In fact, it was directly contradicted by another UN declaration presented by other UN member states.

The United Nations has never accepted gender identity as a legitimate human right, although the term was included in a recent draft resolution condemning extrajudicial executions on the basis of the principles of right to life and the fight against impunity. Even the one country that voted against this recommendation was in favour of the general prohibition of extrajudicial executions, and the party states that did not vote had difficulty with other sections of the resolution presented.

I will describe the scientific evidence on morbidity and mortality related to transsexual persons. This concerns us. A study was conducted in Sweden by various departments of Karolinska Institutet in Stockholm of post-operative transsexual persons, which was unique in that it included the results of a nationwide longitudinal study of 30 years with minimal loss of follow-up. Published in 2011, this Swedish study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide attempts, and psychiatric hospitalizations in sex-reassigned transsexual individuals compared to a healthy control population.

Even though surgery and hormonal therapy may alleviate gender dysphoria, they are apparently not sufficient to remedy the higher rates of morbidity, diseases and disorders, and mortality found among transsexual persons, so the furthering of a declaration of acceptance of this type of medical transformation as a result of Bill C-279, we believe, would not be helpful to transsexual and transgendered individuals.

The Yogyakarta Principles, the source of a gender identity definition, are vague. They can be interpreted to interfere with parental rights to counsel that gender-confused children be helped to continue in the gender consistent with their genetic make-up. By interfering with parental authority, the Yogyakarta Principles contradict the provisions of the United Nations Universal Declaration of Human Rights, which declare that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State"—article 16(3).

On March 31, 2010, the American College of Pediatricians distributed a letter to school officials citing various research studies, which affirmed:

Even children with Gender Identity Disorder (when a child desires to be the opposite sex) will typically lose this desire by puberty, if the behaviour is not reinforced. ... that when parents or others allow or encourage a child to behave and be treated as the opposite sex, the confusion is reinforced and the child is conditioned for a life of unnecessary pain and suffering.

The Yogyakarta Principles would object to parents discouraging their child to identify in this way, and they would discourage counselling to prevent young people from identifying in this manner.

•(1545)

We're concerned about the troubling effects of Bill C-279 if it's passed into law: male access to women's public washrooms and health clubs. There's a situation in Washington where a man who thinks he's a female has been allowed entrance into a health club where children change. A women's pool is there, apparently, and there are young children and adolescents. This presents a problem, and we believe this could present a problem in the future.

Since the terms "gender identity" and "gender expression" are undefined, they apply to anyone who thinks he or she is another sex, whether or not he/she has had hormonal treatment or surgery. In our appendix, we mention a case, *Sheridan v. Sanctuary Investments*, wherein a male thought he/she was a female, was prevented from entering the women's washroom, and went to the human rights commission. The discrimination was recognized and the nightclub was fined \$2,000.

There can be a tremendous permutation of these types of situations, and we believe these are socially disruptive. This allows such individuals to use the washrooms of the opposite sex with impunity. This places females and children at a strong disadvantage and at possible risk, since child predators will be able to use cross-dressing as a pretense to gain access to children in public washrooms.

Second, taxpayers would be required to cover extensive surgery, hormone treatments, and cosmetic follow-up for a lifetime. If transsexualism and transgenderism are protected rights in federal jurisdictions, such as the federal public service, and federally regulated industries, such as banks and airlines, these industries will be required to pay the medical premiums on behalf of the employees to cover extensive surgery and hormone treatment and to accept these employees after such hormone treatment. Assimilating them back into the workplace will inevitably create difficulties.

In Canadian penitentiaries, this issue will also create problems. If Bill C-279 is passed into law, prison officials, at taxpayers' expense, will be required to provide treatment for those inmates claiming they were born the wrong gender. This will lead to difficulties for the transgendered themselves, creating exposure to risks for him or her. This already has occurred in Massachusetts in 2012, when a prisoner given a life sentence for the murder of his wife in 1980 was approved by the court to undergo sex reassignment surgery. The individual now resides in an all-male prison and will face security risks daily as a target of sexual assault by other inmates. Alternatively, if the inmate is transferred to an all-female prison, he/she will also be a target for assault and harassment by other inmates. We're concerned about the consequences of this.

Our conclusion is that transsexual and transgendered individuals must have the same rights as all other Canadians, but should not be given special rights. We're very much opposed to any violence or undue discrimination and assaults. This is part of our Criminal Code. We're very much in favour of the defence of anyone to lead a free life in Canada. Persons with gender identity disorders should receive compassionate counselling rather than be encouraged in their dissatisfaction with their genetically ingrained gender. The DNA does not change after these treatments.

REAL Women of Canada therefore urgently request that this bill not be passed into law.

Thank you, Mr. Chair.

•(1550)

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

We'll begin the rounds with Mr. Garrison.

**Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP):** Thank you very much, Mr. Chair.

Thank you again to all the witnesses for agreeing to return today, despite the rudeness that sometimes appears in our parliamentary procedures.

Before I ask you some questions, Ms. Watts, I have some remarks on your brief, because it's been presented to a House of Commons committee, and I believe that some of it cannot go unchallenged. I have to say to you, without any personal rancour, that some of what you say in your brief is, frankly, offensive. The connection that you attempt to draw to pedophilia—anyone who's taken the time to inform themselves on the issues before us would know and should know that there is no connection between the issues we have before us of gender identity, gender expression, and pedophilia.

Much of the rest of what you presented is simply inaccurate. This includes your references to medical and scientific evidence, which is either outdated or often given a very distorted interpretation. This includes your reference to the rejection of the terms "gender identity" and "gender expression" at the United Nations. In fact, you mentioned in your brief just two weeks ago that the UN resolution on extrajudicial summary or arbitrary executions was adopted, which contains the reference to the rights for protection against discrimination on the basis of sexual orientation or gender identity.

This also includes your reference to the use of gender identity protections in attempts to use bathrooms for unlawful activities, such as assault or voyeurism. In fact, on this point, just today—unfortunately, the letters I received from the United States were not able to be translated in time, but I've tabled them with the chair. These are letters from human rights organizations in four states that have protection against discrimination on the basis of gender identity in their legislation. These are Iowa, Colorado, Washington, and California. In each letter, the officials confirm that there have been no complaints and no incidents regarding attempts to take advantage of protections afforded against discrimination based on gender identity in order to use a bathroom or locker room to engage in inappropriate behaviour, such as voyeurism or assault; there have been no incidents in those states that have this protection.

I have in front of me details of 10 requests to meet with your organization from transgender organizations. My question to you first is, if you're appearing here as a witness, why did you ignore these requests or refuse to meet with transgender organizations, who tried their best to get a meeting with you before this meeting today?

**Ms. Diane Watts:** I'd like to respond to some of the other statements you made.

About the pedophilia, unfortunately, the definitions put forward in the Yogyakarta Principles, which are being brought forward consistently and globally, are often so open that they could apply to anyone having any sexual orientation towards anything. So any definition adopted by the committee should include the term "adult", so that we're dealing with adult choice and not someone influencing a child and labelling a child because the child has decided they want to be close to someone who has an orientation towards children.

You may object to many of the things in our brief, but I think it's important that we include the term "adult" in any definition, because many of the terms put forward with gender identity are open to just about anything. It's very, very clear in regard to principles—it's open to any type of identity that anyone chooses to have.

In terms of gender identity and gender expression, the approval of resolutions at the United Nations is very limited—limited to extra-judicial executions; not even judicial executions, but extra-judicial executions, which we would normally call lynchings. So every country objected to that, and defended people, with whatever gender identity or gender expression, from being executed. It's the same with the other resolutions passed. They're very limited, and there have been objections across the board to a wide-open acceptance of these two terms because of the confusion it would cause domestically and to families.

In terms of not meeting with gender identity groups, we had people phoning our office asking to meet with us and we referred them to our literature. We have extensive literature on this issue, and they can learn everything they can from consulting our material. We'll meet before the committee. We'll meet before anyone who's interested in hearing all sides of the situation, but in terms of meeting individually, we don't usually do that before we appear before a committee.

Also, in terms of pedophilia, we have an article in our September-October 2011 newsletter that described pedophile activists forming an organization, B4U-ACT, in Baltimore, Maryland, and holding a conference August 17, 2011, with speakers from several prominent universities. The conference themes were that pedophiles are unfairly stigmatized and demonized by society. Children are not—

• (1555)

**Mr. Randall Garrison:** Mr. Chair, with respect, this has nothing to do with the bill—

**Ms. Diane Watts:** It has everything to do with—

**Mr. Randall Garrison:** It has nothing to do with the bill.

**Ms. Diane Watts:** —our concerns about pedophilia.

**The Chair:** Ms. Watts, we're out of time.

The problem is that we're out of time—

**Ms. Diane Watts:** Thank you.

I can continue, and you can consult our newsletter, if you're interested in—

**The Chair:** Okay.

Mr. Goguen.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Thank you, Mr. Chair.

Thank you to all the witnesses for showing up for round two.

Mrs. Watts, I'll let you continue if you'd like to.

**Ms. Diane Watts:** Yes, I'll continue. Thank you very much.

The conference themes were that:

Pedophiles are "unfairly stigmatized and demonized" by society

"Children are not inherently unable to consent" to sex with an adult

An adult's desire to have sex with children is "normative"

—according to one of the topics of this convention—

pedophiles "have feelings of love and romance for children" in the same way adult heterosexuals and homosexuals have romantic feelings for one another

"The majority of pedophiles are gentle and [normal]"

The [Diagnostic and Statistical Manual of Mental Disorders] DSM should "focus on the needs" of the pedophile, and should have "a minimal focus on social control," rather than obsessing about "the need to protect children".

The specific objective of this conference was to present papers normalizing pedophilia in order to bring pressure on the American Psychological Association to reclassify pedophilia so as to reduce the stigma attached to the practitioners. According to B4U-ACT:

No one chooses to be emotionally and sexually attracted to children or adolescents. The cause is unknown; in fact, the development of attraction to adults is not understood.

The group goes on to say that it does not advocate treatment to change feelings of attraction to children or adolescents. This is the same type of reasoning that was used to bring other disorders into acceptance by the American Psychological Association, and this concerns us greatly, so we're very interested in having a very tightly phrased definition, if you're going to define anything that would specifically exclude pedophiles.

This isn't made public in the general media, but this is information that the committee should be aware of. This is not an unknown conspiracy. This has been going on for quite a while, so there's an objective to have wide-open definitions so that we can progress, supposedly, to this end.

**Mr. Robert Goguen:** Thank you.

Both Mr. Fine and Mr. Gupta seem to confirm what the case law says: that in essence, transsexuals also already enjoy human rights protection, because sex has always been defined as a permanent ground of discrimination. So from a purely legalistic point of view... and we'll concede that perhaps the act would promote acceptance and send a message that everyone has a right to be treated equally with dignity and respect. There's no issue with that, but from a purely legalistic point of view, is this bill not purely symbolic, from that point of view? Does it add anything as a protection that's not already there?

That's for either of you, if you wish.

• (1600)

**Mr. Susheel Gupta:** I'll just state—and perhaps Mr. Fine has more to offer—that as a tribunal is an adjudicated body, I can't really provide an opinion on that. Our cases have spoken for themselves and will continue to speak....

**Mr. Robert Goguen:** The cases clearly indicate that protection is already afforded.

**Mr. Susheel Gupta:** Under the current case law, that's correct.

**Mr. Ian Fine:** To answer your question, as I said at the outset, we currently accept complaints—and have forever—from transgendered individuals under the ground of sex, and sometimes under the ground of disability, and we will continue to do so. To answer your question, strictly speaking, I suppose the legislation isn't necessary, but we see other reasons why it would be important to include these two grounds under our act, and we do support them.

For one thing, it would provide the clarity that I think we believe is missing at this point, because as much as it's true that the commission and tribunals and courts do accept transgender issues as falling under the ground of sex, parties still debate that issue before those very tribunals and courts and question whether or not transgender issues fall under sex. In one case I know of, an issue was raised as to whether or not you could even raise the issue under sex and instead should raise it under disability.

There continue to be these debates, so for clarity reasons, we believe it would be a good thing to add these two grounds. Also, as I said at the outset, it would be a recognition of the discrimination that this group faces: the sometimes hostile and violent acts that this group faces in our society. So it would recognize the vulnerability of this group, of these individuals.

**Mr. Robert Goguen:** Thank you.

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

Mr. Casey.

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

Ms. Watts, in your brief you refer to GLBT rights as special rights. Can you explain to me how the GLBT rights extend beyond the rights that are afforded to every Canadian?

**Ms. Diane Watts:** That would definitely occur if they conflict with parental rights. For example, it's happening in California, I believe. There is an effort to prohibit the counselling of certain GLBT designations to exit those categories and to become what they would think would be more comfortable and more adjusted to their

family and societal surroundings. Now, there are efforts to prevent professionals from counselling these individuals. In the Yogyakarta Principles, if you read them, there are efforts there to say that everyone from the child up has a right to identify the way they want, and if they want to identify like that, the family should not interfere. The family would be an obstruction to their freedom to identify with whatever type of behaviour or identity they would want, regardless of what age. There is also a strong suggestion that there should not be any counselling to dissuade these people.

Where there would be a conflicting right between a child's determination to identify a certain way and the family's efforts to try to bring the child closer to the values of the family, that would be a conflict. And it's the same with the UN human rights declaration. It gives the family a position of special importance in society. It would be a problem if there was a conflict.

For example, in terms of being assaulted or discriminated against unfairly, we should definitely protect every Canadian. Every Canadian should be protected from assault, regardless of what their appearance is.

• (1605)

**Mr. Sean Casey:** Ms. Watts, back in 2005, Parliament was debating legislation around same-sex marriage. You will undoubtedly recall attending at a parliamentary committee hearing—although it wasn't you; it was a witness. Your organization put forward the argument that passage of that legislation would open the floodgates to bigamy, polygamy, and incest. Now, I would expect you would agree with me that this has not happened.

Given what you forecast in 2005 with respect to the same-sex legislation and the very alarming suggestions today connecting this bill with the proliferation of the rights of pedophiles, what makes you think that's any more likely than the predictions you made back in 2005?

**Ms. Diane Watts:** Well, the argument of orientation was brought up in B.C. in relation to polygamy. This was their orientation. It was a part of the argument—not a major part, but it was part of the argument. This was their orientation, having several wives and that type of lifestyle.

On pedophilia, those are just facts. I'm not making that up. There are many people worldwide who want to promote this and who use the same follow-up on the arguments for freedom to identify and to express your sexual orientation. I can give you references that they want to include pedophilia. You heard it from the conference itself in Maryland.

**The Chair:** Very briefly, Mr. Casey.



**Mr. Sean Casey:** You make reference, and we've heard this in many other quarters, to the risks apparently associated with this bill to male access to women's public washrooms. It's my understanding that there is no federal law that prevents it now. How can you say that the defeat of this bill will prevent it?

**Ms. Diane Watts:** Those are customs that Canadians have developed. We don't need a law for everything we do. The custom where Canadians feel comfortable having male washrooms and female washrooms, and that people don't go in the other wash-room.... It is a Canadian custom.

Mind you, people would like to change that, but Canadians have established this custom and they feel comfortable with that. In the case of B.J.'s Lounge, they felt very uncomfortable with a man walking in thinking he was a woman.

**The Chair:** Thank you.

Mr. Seeback.

**Mr. Kyle Seeback (Brampton West, CPC):** Mr. Chair, I'm going to give my time to Mr. Bruinooge, if that's okay.

**The Chair:** Thank you.

Mr. Bruinooge

**Mr. Rod Bruinooge (Winnipeg South, CPC):** Thank you, Kyle. Hopefully, we'll be able to get back to you.

Thank you to all the members for your testimony today. I have a number of questions. Perhaps I'll start with Mr. Fine.

Mr. Fine, we were chatting before this began about some aboriginal topics that you and I have discussed in the past, and perhaps I'll start there with a question in relation to that.

Will first nations communities be subject to this bill?

**Mr. Ian Fine:** Yes, they will.

**Mr. Rod Bruinooge:** Can you perhaps think of any areas within the first nations communities where the passing of this legislation could have an impact?

**Mr. Ian Fine:** I really can't say—I don't know. I've not spoken to any first nations about this particular issue, so I just can't speculate on whether or not it would be an issue.

**Mr. Rod Bruinooge:** Okay.

What is the context of this bill in relation to first nations communities? Perhaps you could give some background to this panel.

**Mr. Ian Fine:** Sorry, just so I understand, when you ask for context, do you mean context around this bill that's before this committee?

**Mr. Rod Bruinooge:** Well, it's in relation to a section 67 repeal.

**Mr. Ian Fine:** I don't know what I can say in answer to your first question more than what I've said. This law, if passed, would apply equally to first nations, to aboriginal peoples.

• (1610)

**Mr. Rod Bruinooge:** Do you believe the mover of this bill is subject to the duty to consult on this bill?

**Mr. Ian Fine:** I really don't know the answer to that question. I think that would be a question that would be better put to the Department of Justice. I really don't know. If there's any duty to consult, I think it would be something that would be of concern to the Department of Justice and the Attorney General.

**Mr. Rod Bruinooge:** I know that in a matter of rights going back to 2005, the Canadian Human Rights Commission did actually acknowledge that a section 67 repeal that was going to extend the Canadian Human Rights Act to first nations communities should at least consider consulting with first nations peoples in relation to the changes that were going to face their communities.

Would you agree that that was a good idea in relation to that implementation?

**Mr. Ian Fine:** I can't recall specifically what we said with respect to consultation and obligation. If you have it there, I'm happy to hear it, but I don't recall exactly what we said about the duty to consult. I believe we discussed it in the context of the government's duty to consult. I'm not sure we discussed it in relation to the commission's duty to consult.

**Mr. Rod Bruinooge:** Do you think it would be a good idea to have a transition period for this bill so that first nations communities could transition accordingly, much like what was done with the section 67 repeal that occurred?

**Mr. Ian Fine:** I really can't comment on that. I really don't know the answer to that question. The law would apply, as I say, to first nations communities as well as to all other Canadians. I really haven't thought about whether or not a transition period would be required in this situation.

**Mr. Rod Bruinooge:** But you would agree it was a good idea for the section 67 repeal? Of course, many first nations leaders called for it and in the end it was put into the bill. I believe it was a three-year transition period. Do you think that's an appropriate timeline?

**Mr. Ian Fine:** For the purposes of that bill and for the purposes of the repeal of section 67, we did support that transition period, yes.

**Mr. Rod Bruinooge:** Would you support a transition period for a bill like this?

**Mr. Ian Fine:** I really can't say. I really can't speculate on whether we would or we wouldn't support that.

**Mr. Rod Bruinooge:** I'm just going back to the topic of consultation. I have spoken with the Assembly of First Nations. They haven't yet had a chance to think about this bill.

Perhaps the mover could speak to it as well. I know he's not in the hot seat today. Nonetheless, in my conversations with the Assembly of First Nations, they hadn't yet heard from the mover and were unaware of the context of the bill in terms of the effect it would have on their communities.

Should this pass, do you think it would be something your organization would engage in, consulting with them to get a better sense of how their communities would interact with this legislation?

**Mr. Ian Fine:** Given that it is not our bill—it's a member of Parliament's bill—I don't know whether we would engage in that unless called upon by Parliament to do so.

**The Chair:** Thank you.

Madame Boivin.

[Translation]

**Ms. Françoise Boivin (Gatineau, NDP):** Thank you, Mr. Chair.

My thanks to our guests for being here.

I almost got a feeling of déjà-vu with Ms. Watts. I do not think that anyone else here was at the meetings of the special committee on same-sex marriage, but I had the great pleasure to be part of that committee in 2005. I heard those kinds of remarks a lot, and I will not go back over Mr. Casey's comments because they were quite clear.

That said, I appreciate your questions, Mr. Bruinooge.

My questions go more to the Canadian Human Rights Commission and the Canadian Human Rights Tribunal.

If I am not mistaken, the intent of this bill is to add an expression to the Canadian Human Rights Act and to amend a few little sections of the Criminal Code. Do you see it the same way as I do?

**Mr. Ian Fine:** I am sorry, I do not understand the question. Could you repeat it?

[English]

**Ms. Françoise Boivin:** The purpose of Bill C-279 is to:

extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives

It's to add an expression. At some point we had "*l'expression sexuelle*". With the amendments, we'll be talking about gender and identity. We understand each other. That's the purpose of the bill.

You understood this?

• (1615)

**Mr. Ian Fine:** To add two new grounds to the list of prohibited grounds in the Canadian Human Rights Act.

**Ms. Françoise Boivin:** Two grounds or new grounds, in writing, that we've been told in both your briefs you're already applying.

**Mr. Ian Fine:** That's right.

**Ms. Françoise Boivin:** So we're not coming out of the sky with something, or the earth is going to open and something brand new is here.

[Translation]

I just want to reflect a little on this idea of going to consult various groups. We are not talking about a government bill, after all, but a private member's bill. Everyone understands that. The principles are not necessarily the same. Perhaps those comments are more for my colleagues. We agree on that.

Mr. Gupta, you were asked the question specifically, but you did not really answer it, I feel, on the basis that your tribunal is quasi-judicial and therefore you should not express an opinion on certain things. But your text does; it says:

As has been alluded to in the House of Commons debates, to the extent that the tribunal has dealt with transgender issues thus far, it has done so within the statutory framework of prohibited grounds, in particular under the grounds of sex and disability. However, as I will explain, the tribunal has never had to decide a case where the parties put forward sharply opposed arguments on the question of whether or not gender identity or gender expression is protected by the act.

If it is believed that this is a recognized right—and I am not asking you to express an opinion on that—is it not better for the tribunal to have something in writing rather than to have to make a legal interpretation? Would it not be preferable to have something written down in black and white?

[English]

I'll address this to Mr. Gupta, since you tried to avoid answering this.

**Mr. Susheel Gupta:** I didn't try to avoid it. The tribunal's role is really to apply the law as Parliament has written it and according to instructions received from the courts. We really don't take a position on whether including the definition would assist the tribunal. I stated as fact in my opening remarks that transgender issues have been found to be discrimination-based on either a combination of sex and/or disability.

**Ms. Françoise Boivin:** I'll give you an example. This justice committee had to review another bill, a private member's bill, which was to remove

[Translation]

section 13 of the Canadian Human Rights Act which prohibited hate speech. On the government side, they said that taking it out would be great because the matter was already dealt with in the Criminal Code. But the hate speech under the Canadian Human Rights Act also dealt with discrimination on the grounds of sex. And if you look at the offences described in sections 318 and 319 of the Criminal Code, you see that they no longer refer to sex.

When something is not written down, it becomes open to interpretation. I cannot believe that having an expression written down on paper does not help a tribunal, its officers or commissioners to understand things clearly.

[English]

**The Chair:** Thank you. We're quite a ways over time.

Thank you, Madame Boivin.

Mr. Rathgeber.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair, and thank you to all the witnesses.

Mr. Fine, you said you had three points, and I certainly agree with the first two.

Discrimination and harassment experienced by people who are transgendered is hostile and violent. I absolutely agree.

The commission and the tribunal view gender identity and gender expression as protected by the Human Rights Act. I absolutely agree.

Your third point is that if this bill is passed it would make the human rights protection explicit. I don't know what that means. I will tell you why I don't know what that means. It's because the tribunal has made it perfectly clear, in the most emphatic of words—and these are their words, not mine—in *Montreuil v. the Canadian Forces* in 2009, that there's no longer any doubt that discrimination based on transexualism is discrimination based on sex or gender as well as discrimination based on disability. I don't know what could be more explicit than that.

What do you mean in your third point that this bill makes that protection more explicit?

• (1620)

**Mr. Ian Fine:** Thank you for your question.

It's more around the debate. It is true that the Canadian Human Rights Tribunal certainly has held that these matters fall within the existing prohibited grounds. There's no doubt about that. Other courts and tribunals across the land have done so. As I have said, we receive complaints on transgender issues under the ground of sex and sometimes disability.

But the reality is that even though the courts have accepted that and we accept that, parties still go before those tribunals and courts and raise arguments about whether or not they are included. So clearly there are some Canadians who aren't in agreement with that notion, who are still fighting about it, who feel that the protection is not explicit or shouldn't be covered by one of the other grounds.

We're simply suggesting to add these grounds to provide more clarity to all Canadians, to make it explicit, and then there's no doubt.

**Mr. Brent Rathgeber:** You want to educate Canadians that if this type of dispute occurs in a workplace, in a bank, in an airline—some place that's under federal jurisdiction—this is the likely outcome.

**Mr. Ian Fine:** At least everyone will know that these issues are covered by the act. There won't be any discussion about it.

**Mr. Brent Rathgeber:** Thank you.

Mr. Gupta I have some questions for you.

The three cases that I am familiar with from your tribunal are *Montreuil v. Canadian Forces*, *Montreuil v. National Bank*, and *Kavanaugh v. Canada*.

Have any of those been appealed to the Federal Court?

**Mr. Susheel Gupta:** If you give me one moment...

**Mr. Brent Rathgeber:** I think there's a fourth that I don't know about. You've adjudicated a fourth time. I was only able to find three.

**Mr. Susheel Gupta:** There are three *Montreuil* cases and the *Kavanaugh*, which you cited.

I believe *Kavanaugh* was upheld on judicial review by the Federal Court.

*Montreuil v. Canadian Forces Grievance Board, 2007*, was also upheld on judicial review by the Federal Court.

The other two I believe were not judicially reviewed, not appealed.

**Mr. Brent Rathgeber:** Your dictum in *Montreuil v. Canadian Forces*—that there's no longer any doubt—is good law in Canada.

**Mr. Susheel Gupta:** That's my understanding.

**Mr. Brent Rathgeber:** Thank you.

You said in your opening presentation that the tribunal is quasi-judicial, which essentially means court-like. I want to challenge that proposition.

You'll agree with me that a complainant before the tribunal is not required to bankroll his own legal counsel.

**Mr. Susheel Gupta:** No, that.... A complainant is required to bring their own case forward.

**Mr. Brent Rathgeber:** But the commission provides an investigator and provides representation for the complaint at the tribunal, correct?

**Mr. Susheel Gupta:** I think Mr. Fine could answer that. Not in every case does the commission participate at the tribunal.

**Mr. Brent Rathgeber:** Okay. You'll agree with me, though, that the tribunal has no jurisdiction to award costs in favour of a respondent if the complaint is dismissed.

**Mr. Susheel Gupta:** That is correct.

**Mr. Brent Rathgeber:** You'll agree with me that the strict rules of evidence are relaxed at tribunal hearings, including the admissibility of hearsay.

**Mr. Susheel Gupta:** That is correct. It's up to each individual member to decide, in their own case, how strict to be with the rules of evidence.

**Mr. Brent Rathgeber:** My last question is regarding disclosure, that a respondent, if subject to a tribunal hearing, is not entitled to depose the complainant in advance.

**Mr. Susheel Gupta:** Neither party is able to.

**Mr. Brent Rathgeber:** Thank you.

Do I have any time left?

**The Chair:** No, you don't.

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Mr. Côté.

[*Translation*]

**Mr. Raymond Côté (Beauport—Limoilou, NDP):** Thank you very much, Mr. Chair.

My thanks to the witnesses for accommodating the vicissitudes of life in Parliament. Like all my colleagues, I apologize.

The committee charged with the task of reviewing the Canadian Human Rights Act, chaired by former Supreme Court Justice Gérard La Forest, came to the following conclusion. Let me quote a few lines:

To leave the law as it stands would fail to acknowledge the situation of transgendered individuals and allow the issues to remain invisible. While these issues are clearly related to sex, this ground may not cover all those encountered in the transgendered experience, especially in the decision to undergo a sex change and its implementation. To say transsexualism is a disability seems to make it a medical matter rather than a matter of life experienced in the opposite gender.

Clearly, former Justice La Forest came to the conclusion that there were some shortcomings that could infringe the rights of transsexual and transgendered people.

• (1625)

[English]

**Mr. Ian Fine:** That's correct. That was Justice La Forest's conclusion. In fact, he recommended that gender identity be added as a ground to the act.

[Translation]

**Mr. Raymond Côté:** Great.

When the Standing Committee on Justice examined Bill C-36, we looked at the possibility of adding an aggravating factor in order to better protect seniors against abuse. I quote my colleague Mr. Seeback who said that the bill also dealt with reporting the behaviour. That would be very useful: it would be nice to know that that sort of behaviour would be reported in every community in the country.

In his speech in the House, my colleague Mr. Goguen said about Bill C-36 that the change would send a clear zero-tolerance message about elder abuse.

Do you think that the bill as presented would allow us to reach the same or similar objectives? I am talking about the amendments to the Criminal Code.

[English]

**Mr. Ian Fine:** I'm sorry, but I just don't feel that I have the ability to address the criminal aspect of this bill or the previous one, and I would feel more comfortable with the changes around the proposed amendments to the Canadian Human Rights Act.

[Translation]

**Mr. Raymond Côté:** I quite understand.

Let us go back to what might be called the rights deficit for an important part of the population.

In the testimony we heard last Tuesday, we were told about the Trans PULSE study and I am going to quote some figures from it. The study gathered data from 433 trans people. It found that 43% of those 433 people had completed postsecondary studies, which is noteworthy in itself. But 50% of them earned less than \$15,000 per year and 71% of them earned less than \$30,000 per year.

In another study done by Egale Canada, 74 transgendered youth said that they were victims of harassment and 34% of them had been the victims of physical violence.

Can we say that there is a rights deficit and that we currently have a problem in terms of the rights of transgendered people?

[English]

**Mr. Ian Fine:** We have the same information available to us. Clearly, we are disturbed by the findings of some of the reports, and certainly around issues concerning mental health, depression, and suicide—all of those statistics are alarming. Clearly, we believe that it is important to add these grounds because these people are marginalized; this group of Canadians is marginalized.

We believe it is a good thing to add this to broaden the protections in the act, to ensure that transgendered people are protected, specifically given what that group has suffered in our society. We think that would be a good thing to extend protections.

Certainly, we know there is a concern around overlap of grounds, but in our experience we have seen that with other grounds under our act, around race, national or ethnic origin, and colour. Oftentimes, we see overlap between the grounds, but we know that it's very important for the transgender community that these grounds be added to the act. We certainly support that.

**The Chair:** Thank you. That ends our time.

We were scheduled for one hour and we're just about right on.

I'd really like to thank the panel. We had no interruptions today, and I'm sure the committee learned a great deal.

We'll take a short break.

• (1630)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1640)

**The Chair:** I understand, Madame Boivin, that you have a motion you wish to move.

[Translation]

**Ms. Françoise Boivin:** Given the time, Mr. Chair, I wanted to see if my committee colleagues would allow me to make a motion. If we do not have time to finish the amendments today, we could continue next Tuesday in order to get this done. We cannot do it on Thursday because the minister is coming to see us.

I would like to make that motion.

[English]

Did you hear me?

**The Chair:** Yes. The clerk explained it to me.

**Ms. Françoise Boivin:** Because we have about half an hour before the bells ring and so on, and I think there are about eight amendments, just in case we're not done by 5:15 p.m., I was presenting a motion that we continue next Tuesday, not this Thursday—just to finish the file and then it's done, because we're still stuck with the December 8 deadline to bring it back to the House. Thursday is the minister, but next Tuesday....

**The Chair:** I think the clerk has indicated it's December 10.

**Ms. Françoise Boivin:** December 10?

**The Chair:** Yes.

So hearing the motion—

**Mr. Brent Rathgeber:** I'm just curious, Mr. Chair, if we have something scheduled for next Tuesday or if this is something that should go to the steering committee.

**The Chair:** We don't have anything scheduled for next Tuesday. Next Tuesday is still open.

**Ms. Françoise Boivin:** It's just in case we're not done. We might be done and we might not be. I don't know.

**The Chair:** Those in favour of the motion?

(Motion agreed to)

**The Chair:** Before we begin, we have one small piece of business: the budget that was circulated by the clerk.

All in favour?

**Some hon. members:** Agreed.

**The Chair:** The legislative clerk tells me that we have a few issues that Mr. Garrison has been made aware of. As he goes through his motions here, we should be able to clear it up or steer our way through.

(On clause 1)

**The Chair:** I understand the NDP has amendment NDP-1?

**Mr. Randall Garrison:** Right. Thank you very much, Mr. Chair.

The package of amendments before you simply remove gender expression, add a definition for gender identity, and clear up a few other technical things in the bill. There is nothing other than that in these amendments.

The first amendment is that Bill C-279, in clause 1, be amended by replacing line 19 on page 1 with the following:

“identity, marital status,”

And then, because the legislation was amended after this was drafted, we have to add:

family status, disability, or conviction for an offence for which a pardon has been granted, or in respect of which a record suspension has been ordered.

So that second part is a technical correction of the amendment, because the statute was amended after this was drafted.

**The Chair:** On NDP-1, Mr. Rathgeber and then Mr. Casey.

**Mr. Brent Rathgeber:** I'm curious as to why “gender expression” is being deleted from this bill. My first instinct is that this narrows the scope of the bill, and I guess my first instinct would be that this is a positive step. As I think the members know, I generally do not support this bill, only because I think it's redundant and not necessary.

But with respect to the specific amendment, removing “gender expression”, we heard quite emphatically from the witnesses here today—and I think it was the individual from the commission, Mr. Fine—that, strictly speaking, none of this is needed. All of this is to

create sort of an awareness within, I suppose, not only the transgender community, but also the community at large, that this type of protection is to be afforded to people who are involved in that community and might be subject to discrimination.

We heard from the individuals from the commission and from the individual from the tribunal that from a legal perspective nothing changes as a result of these proposed provisions. So I put it to the sponsor. Maybe he doesn't agree with them—maybe he thinks there is a legal nuance that escapes me and that escapes the witnesses from the commission and from the tribunal—but if he accepts their legal positing that, strictly speaking, these amendments are not needed, and if all he's trying to do is create awareness and discourage discrimination, which I would support, and I certainly support the elimination and discouragement of discrimination against all groups, why isn't “gender expression” being left within the ambit of clause 2 of this bill to discourage discrimination in that community?

I think unless I hear something convincing from Mr. Garrison, I'll be voting against this amendment.

• (1645)

**The Chair:** Mr. Casey.

**Mr. Sean Casey:** Thank you, Mr. Chairman.

I don't plan to speak to every amendment, but I want to put on the record that the Liberal Party was supportive of the bill in its original form. With respect to this amendment, to Mr. Rathgeber's point, the brief provided by the witnesses indicated that accessing health care, obtaining health identification, can be difficult.

I do believe there is some value over and above the symbolic value in the fact that awareness will be raised by virtue of the passage of this bill. I think in an ideal world, both “gender identity” and “gender expression” should remain. It's my hope that the protections we seek to afford trans people will survive this amendment.

I want to congratulate Mr. Garrison for bringing this forward.

Thank you.

**The Chair:** Thank you.

Mr. Seeback.

**Mr. Kyle Seeback:** I think what we have seen here now is an example of areas in which I'm confused and have concerns.

What we are talking about is removing “gender expression”. Mr. Garrison talked about it when he first made his presentation, saying that he had told a number of people that he would remove gender expression because that's the area in which some people thought there was a problem—maybe I'm paraphrasing—with the bill. To make it a little more palatable for some people, he said he was going to take that out.

I'm certainly appreciative of that. I contrast it with what I heard at committee. I heard the representative from Egale say, and again I am paraphrasing, they have a solid legal opinion that gender identity will include—clearly, in a subset—gender expression. As much as he wanted it to stay in, he was content with its actually coming out because he thought it was still in.

Now I'm hearing from Mr. Casey—and again, Mr. Casey, I am paraphrasing—that they really want it in, and I hope that by virtue of taking it out that it's not gone.

I sit here and am quite confused, as a member of the committee. We certainly haven't heard from anybody from the Department of Justice who could shed some light on whether this would be included in the legislation as it is drafted or whether it needs to be there separately.

That, of course, raises the question in my mind: if it's in there anyway, regardless of its being taken out, should this committee not look at defining gender expression? I'm not saying that I agree or disagree with some of the testimony we heard from the witness today, but we certainly heard that when something is put into a piece of legislation and is not defined, other people are then free to define that phrase.

If we're looking at amending the Canadian Human Rights Act, we as parliamentarians have a responsibility to make sure we're not sending something out that could end up being defined in a way that we had explicitly said we aren't going to define because it is being removed.

These are my concerns with the way we're drafting this legislation. I don't know whether or not Mr. Garrison is going to comment and alleviate my concerns at all, but this to me creates a problem.

Quite frankly, I think this committee should be hearing from other witnesses to decide whether or not this is unequivocally going to be the case.

If it is the case, then I think we have to look at coming up with a definition. I don't think we should be passing legislation whose effects we don't foresee. I think it's our job as this committee to make sure we understand the implications of our legislation.

As far as I'm concerned, at this point that has not happened—certainly not to my satisfaction; I don't know whether anybody else feels that it has been answered satisfactorily. At this point, Mr. Chair, I have to say that unless I have some clarification, I don't want to accept this amendment.

I also think we have to look at further study on this and come up with a definition we can all agree on, to make sure we're not going down the road of unintended consequences.

• (1650)

**The Chair:** Thank you.

I have Ms. Findlay.

**Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC):** Thank you, Mr. Chair.

We did hear today from both the Human Rights Commission and the Human Rights Tribunal. Those are the two entities in our system that have dealt the most with complaints from those in the transgendered community.

I sat as an administrative law judge or tribunal member on the Canadian Human Rights Tribunal for five years. I was an appointee of this government in that role. I dealt with at least one case with a transgendered complainant, which we were able to mediate through

the course of about a 16-hour day. Obviously, if it was settled, it was dealt with to the satisfaction of both sides on that.

So there is no doubt that this jurisdiction is there and it is used in the present form of the Canadian Human Rights Act. However, I have to disagree with my colleague, Mr. Seeback, that we haven't heard enough about this. I think those two witnesses who deal with these matters on a continuing basis were very clear in their evidence. The commission representative said more than once that it would be a clarification of the law to have the term explicit in the law, as opposed to searching within the present grounds to make it fit.

Also, the acting chair of the tribunal made the point that in the cases the tribunal has heard to this date, where they were actually at a hearing as opposed to a mediation, the issue as to whether the transgendered complainant would fit within a category was not contentious. However, I know from having been a tribunal member that just because a tribunal has already applied a case to a certain ground, it does not make it definitive.

I would give the example of the Johnstone case, on which I was the tribunal member, and I won't get into the details because it's still before the courts, ever being appealed. However, the point I'm making is that in that case, the ground that was at issue was family status. And even though there had been many tribunal decisions defining “family status” because it didn't have a definition within the act, it kept coming up over and over again, both before the tribunal and the courts, as to whether family status in fact included, in that case, a young mother with young children, as opposed to your association with another in a family. These are some of the vagaries, of course, of common law, and those who practise in the civil code sometimes will say, well, that's why we codify things.

The point I'm making here is that just because the law as it is now has been applied to transgendered complainants does not mean that further clarity or explicitness would not be helpful, and it does not mean that we should ignore the opportunity to make it more explicit. As far as definitions go, we haven't got there yet, but there is another amendment that will be brought forward before us, which does define “gender identity”, and that is the point.

In my first speech on this matter in the House, I said I could not support the bill in the form it was originally brought, for two reasons.

One, “gender identity” and “gender expression” were both there, and I felt that “gender expression” was less understood by the Canadian public and it was open to further and other interpretations far more than “gender identity”.

Secondly, being a lawyer, I like the idea of having legislation be clear, and a definition was needed. Those amendments have been brought forward. They meet those concerns I had at the beginning. Therefore, I will be supporting this amendment and any others that are before us, because I've read through them and I think they achieve the goal that my concerns addressed.

• (1655)

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

Mr. Garrison.

**Mr. Randall Garrison:** Thank you very much.

My goal in bringing forward the bill was to address a problem for a community much discriminated against within Canada. When I met with some objections over the term “gender expression”, as Ms. Findlay has just said, not being as well understood or defined, I agreed that it could be removed from the bill and we would still make progress. In the best of all possible worlds for me, as for the Liberals, it would still be there, but I’m seeking the maximum support for this bill. As I’ve said to Mr. Rathgeber privately...not just a majority, but I’d like to see as many parliamentarians on side as possible, because it makes a very strong statement to the Canadian public.

For that reason I’m suggesting we narrow the scope of the bill; we take out the more contentious.... We deal with “gender identity”, which has a clear definition, as you’ll see in law, that’s more clearly recognized. If we as a group try to write the definition of “gender expression”, we’ll be breaking new ground in Canadian law, in international law. We’ll be doing something that no one else has really done. At this point, I think I am prepared to say we really can’t do that in this committee, so let’s take the term out.

**The Chair:** Mr. Bruinooge.

**Mr. Rod Bruinooge:** Thank you, Mr. Chair.

I have just a couple of questions on this motion to amend. I think Mr. Garrison has answered some of this.

Going back to some of the comments earlier in relation to the testimony from Mr. Fine, I know it was suggested that he express some clarity on their position. Just going back to my questions to Mr. Fine, I felt there wasn’t a lot of clarity in relation to duty to consult and things of that nature.

My question on this particular motion to amend is again going back to how first nations communities will implement this measure. I know there are a number of systems within first nations communities that I’m not sure have been fully considered yet by this committee. I’m thinking in particular of a practice by the Iroquois to appoint clan mothers and having their input on their processes—processes that have lasted for thousands of years right into modernity.

I think there’s probably some value in getting more input on how these changes will impact those communities. I think it’s probably incumbent on us as parliamentarians to consider that as we move forward on measures like this. I think it’s important; even though there isn’t a specific process that Parliament has identified for movers of bills that have demonstrated impact on first nations communities, I think there is some general consensus that there should be some outreach in relation to changes that will impact first nations communities.

I know when I was working on the section 67 repeal back in 2007, which actually extended the Canadian Human Rights Act to first nations people for the first time, it was a process that lasted some 30 years. If it in fact would have started right after the bill was first brought in, introduced, and passed...and really a process of 30 years was in play for being able to consult with those communities and bring them into a place where they began to absorb the changes and the impacts those changes would have.

Am I suggesting that we need to look at that type of a timeframe in relation to this? Probably not. Clearly in the past, though, I think

there has been that acknowledgement in relation to these important changes that we’re seeing.

Mr. Chair, perhaps this is a question also to you in terms of your process. I know we’re currently dealing with this first motion to amend by Mr. Garrison, but what kind of process are you going to be looking at for amendments to other sections? If I were to put something on the table, let’s say in relation to a transition period, how would you envision that occurring here today or at future committees?

• (1700)

**The Chair:** The committee is its own boss. They decide. So that would be up to the committee.

**Mr. Rod Bruinooge:** Perhaps after we address Mr. Garrison’s first motion, or second—I’m not sure how many he has—there will be an opportunity for other suggestions to be brought to the table, such as an exemption for first nations people or something along those lines?

**The Chair:** If you wish to make a motion, it has to be in writing, and we’ll vote at the end of the bill.

**Mr. Rod Bruinooge:** Okay.

**The Chair:** Just so everybody understands, there was no request, for anyone here, from Justice, which frequently occurs when we do clause-by-clause. So the clerk...we’ve decided that we will invite someone from Justice to be here at the next meeting.

Mr. Seeback.

**Mr. Kyle Seeback:** Thank you, Mr. Chair, and thanks for letting us know there will be someone from Justice here when we reconvene. I think it’s overly optimistic to think we’ll get through clause-by-clause in the next 15 minutes, before the bells ring for our votes tonight.

I don’t want to belabour the point, but Ms. Findlay was talking about a case and people trying to figure out how to fit in to family status. Family status wasn’t defined, and therefore people had to spend time trying to work their cases within previous decisions. That’s the trouble, for me, with the statements I’ve heard that gender expression is going to be somehow covered under gender identity and gender expression isn’t covered. When something is going to be read in, either by a tribunal or a court, and it’s read in without a definition, that gives me some pause, and I think it will give others some pause. I look forward to hearing from members of the justice department on their thoughts about that taking place.

Thank you.

**The Chair:** Thank you.

Ms. Glover.

**Mrs. Shelly Glover (Saint Boniface, CPC):** Thank you, Mr. Chair.

I want to thank the committee for allowing me to take part in this very important discussion today. I am very much in favour of the suggestions put forward by Mr. Garrison. And with all due respect to my colleagues sitting next to me, I believe it's important that we do pursue the suggestions made by Mr. Garrison.

I would point out that one of the amendments clearly does provide a definition. To ignore the fact that there are packaged amendments in front of us and to state there is no definition I think is unfair. I would suggest that members take a look at the package that has been provided by Mr. Garrison so they can be well informed of the intent of those amendments. I know we're going to get to them in clause-by-clause, but in my opinion they are well done. They set out what gender identity is, which reflects specifically on what is felt by a person who is transgendered. It has nothing to do with the behaviour exhibited, which is gender expression and has been removed.

I make that as a first point. I must add that I am a proud Métis woman and a real Canadian woman. I have had discussions with many aboriginal people. I spent 19 years with the Winnipeg Police Service, seeing horrific acts of violence against these marginalized individuals, from trying to cut the testicles off a pre-operative transsexual, to the most severe of beatings. I can assure this committee that none of us on any side of this table want to see those things occur.

To give hope and opportunity to transgendered people through a bill like this, to give them hope in knowing they will have clarity every single time they report, every single time they want to go before a commission or a tribunal, that gender identity means they can be a transgender individual and not have to rely on sex, which to most people means plumbing, or disability, which is not what many of them feel, I think is imperative. I think it's imperative that this move forward. I think it's imperative that we, as Canadians and parliamentarians, embrace the notion that we are inviting other Canadians to feel the sense of belonging that this bill will give them.

When people say it's symbolic only, I disagree wholeheartedly. I want transgendered individuals to feel they can go to a police service, that they can go to a court, knowing full well that gender identity is in the Criminal Code and the Canadian Human Rights Act. I agree with the Canadian Bar Association when they say it will also provide clarity and public acknowledgment. I agree with Mr. Fine, who asks that there be a leaning towards more explicit language, which is what this bill will do. And I agree with all of the two-spirited people I spoke with at Safe Night off Winnipeg Streets recently who said this is an important bill.

They commend Mr. Garrison. I commend Mr. Garrison. Aboriginal people are typically the most marginalized in my province. They are the ones who, unfortunately, have a high rate of assaults, etc. When you are an aboriginal person who is also transgendered or two-spirited...they suffer tremendous violence. I want them to be protected, so I will be supporting the amendments. I have considered them fully, and I will be supporting them because I believe in what Mr. Garrison is doing. I believe in all of the folks who are sitting in this gallery, and I believe they need this.

I thank you, Mr. Garrison.

I thank you for allowing me to be here, Mr. Chair. I will leave it at that and hope the committee will do this in a timely fashion.

●(1705)

**The Chair:** Thank you.

Ms. Findlay.

**Ms. Kerry-Lynne D. Findlay:** I just wanted to add something on this issue of first nations people. I've dealt extensively with first nations people in many iterations over a long legal career. The case before the tribunal, which I referred to, involved a first nations transgendered person who was a prisoner in our federal system. At the time of the alleged discrimination the person was pre-operative, and at the time we actually held our mediation sessions the person was post-operative, male to female. She was very grateful for an opportunity to bring her issues forward before a neutral tribunal that would be applying human rights jurisprudence to her particular issues. To somehow exclude her, to exclude first nations people from the very protections that we are trying to afford here in this bill and in the act generally, I think would do a grave injustice to first nations people. I think that person would be quite horrified to think that they were somehow less protected under the laws of Canada than any of the rest of us are.

I simply offer that quick example of how I would not support any exclusion of first nations people from something that would seek to protect them.

**The Chair:** Thank you.

Mr. Rathgeber.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

I agree with the very lucid argument of my colleague, Mr. Seeback, regarding the confusion that's caused by definitions or lack thereof, and I find myself in the unique position of disagreeing with Ms. Glover, in that perhaps amendment NDP-1 causes more confusion than clarity. I agree with her when she describes the despicable act of having transgendered persons having their testicles removed or being subject to violent assaults, but I remind all members of this committee that those things are illegal. They're assault, probably assault causing bodily harm, possibly aggravated assault. The provisions of the Criminal Code allow for an aggravating factor based on any bias, and enumerate some of them, and then have a final catch-all of any other similar factor.

As members of the committee know, I feel there's some redundancy here, which is why I require some clarity.



I have a question for Mr. Garrison, if he's prepared to answer it. In his attempt to remove gender expression from his bill, does he think it's covered in his proposed definition of gender identity, which is contained in his second amendment? Or is he confident that it's protected under the current tribunal jurisprudence, which it clearly is in my view. We've heard emphatically from witnesses that transsexualism is discrimination based on sex or gender. Is he satisfied leaving it as a matter of Canadian Human Rights Tribunal arbitration written judgments, or does he believe that it's covered in his next section?

I'm more confused by all of it, because the Canadian Human Rights Tribunal used a different word. They didn't say "gender identity". They stated that transsexualism is discrimination based on sex or gender. I don't know if that's the same as gender identity or gender expression or both.

I put that out to Mr. Garrison to answer if he chooses to, because I am more confused now than I was when we started this process.

• (1710)

**The Chair:** Thank you.

Mr. Bruinooge.

**Mr. Rod Bruinooge:** Thank you, Mr. Chair.

Since it seems we're going to go into a few topics here, perhaps I'll address some of the things suggested by my colleagues in relation to exemptions in transition periods for first nations people. Clearly, the last time we made a specific change to the Canadian Human Rights Act, there was a three-year transition period for first nations people. That is what I suggested earlier.

I think in part due to the fact, it seems to me, that there hasn't been specific consultation with first nations leaders on this bill—the AFN seemed unaware of the bill, the content of the bill, and the fact that it had a significant impact on them—I think it is a good idea to give them time to transition to something that is demonstrably going to impact them, relative to government departments, which, one might argue, are perhaps more able to manage the changes that this legislative body puts forward. First nations communities typically don't have the same degree of bureaucracies that can prepare their governance structures for these substantive changes. That was my suggestion.

Just to clarify with both Ms. Glover and Ms. Findlay in relation to that, I guess from my perspective I just feel that, regardless of the merits of the bill—which they obviously believe in—nonetheless, we as legislators talk about including first nations people and leaders in debates on legislation that will impact them, and I don't feel that we can set that aside in a particular circumstance where there is some cross-party support. I guess that's my point.

I would like to perhaps hear from Mr. Garrison about the discussions that he has had with the AFN in relation to this bill and how he has been able to incorporate their input and get their consultation on it.

**The Chair:** Thank you.

Mr. Seeback.

**Mr. Kyle Seeback:** I have two things. To pick up on Mr. Rathgeber's comment, and Ms. Glover's as well, I certainly do know that gender identity is being defined in this legislation. The definition is right here in the amendment. I've read it.

What I end up with is that we heard from the commission that gender identity and gender expression are already covered. They've already applied that both of those things are covered under the existing legislation. We're now modifying the legislation to explicitly include gender identity, with a definition of gender identity. Does that now mean that gender expression is not going to be covered? Or does that mean that gender expression is covered explicitly, despite gender identity being defined in the legislation? Or does it mean that gender expression is still going to be covered implicitly, despite the fact that gender identity has now been explicitly put into the legislation?

That's where I'm trying to understand to see if we are actually creating a worse patchwork. If somebody is saying that they've been discriminated against on the basis of gender identity, they're now not going to have to prove or take the time to prove that they've been discriminated against, because it's already there. They don't have to fit it in under "sex". But for somebody who is saying that it's based on gender expression, that person is now going to have to go through that whole process and prove that somehow it fits under discrimination based on sex.

I need a flow chart to try to figure out where it's all going.

**Voices:** Oh, oh!

**Mr. Kyle Seeback:** I guess that's where I'm trying to figure out where it all fits in, which is why I look forward to hearing from some officials from the Department of Justice.

Finally, on the point that was raised by Mr. Bruinooge, I was happy to share my time with him today because he raised this issue with me today and I hadn't contemplated it. As well, I don't think anybody on this committee actually contemplated it.

It's one of the things that's raised.... I have the privilege of sitting on the aboriginal affairs committee, and the issue of consultation is raised by members on the opposite side with every piece of legislation that comes before that committee, as to whether or not there was enough consultation, as in, "Did that constitute consultation?", or, "You did not consult". Those are the issues that come up continuously at our committee, so I think it's an issue that we need to look at here at this committee as well.

Those are my comments.

• (1715)

**The Chair:** Thank you.

The bells are ringing. We will meet again on Thursday with the minister to do supplementary estimates (B).

The meeting is adjourned.





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