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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order.

This is meeting number 55 of the Standing Committee on Justice and Human Rights, pursuant to the order of reference of Wednesday, June 6, 2012, for clause-by-clause consideration of Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

When we adjourned last, we were in clause-by-clause study, and amendment NDP-1 had been presented by Mr. Garrison. I believe we were at Mr. Garrison on his clause.

Before we begin, I should tell you that we have two representatives from the ministry here, Ms. Stone and Mr. Zaluski, to help with any of the legal issues.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair. I will be very brief. We have had a lot of discussion already.

Amendment NDP-1 would remove “gender expression” as a proposed addition to the Canadian Human Rights Act. On our side we have had enough discussion to be able to proceed to a vote on this amendment at this point.

The Chair: Okay.

Go ahead, Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Just to make sure that we are all on the same page here, what I am looking at, which is the first page of my stapled amendments, is called “NDP-9”. It's on page 1. Am I looking at the right amendment? I thought the chair mentioned something about NDP-1.

The Chair: It's on page 3. What you see on page 1 and page 2 we will come back to.

Ms. Françoise Boivin (Gatineau, NDP): We were on NDP-1.

The Chair: It's NDP-1.

Mr. Brent Rathgeber: Are you sure that's the same NDP-1 that we started vetting when we last met?

The Chair: Yes.

Mr. Brent Rathgeber: Thank you.

The Chair: Those in favour of amendment NDP-1?

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

The Chair: NDP-1 being carried, the process is that CPC-2, CPC-3, CPC-4, CPC-5, CPC-6, CPC-7, and NDP-1.1 cannot be put because they all deal with the same line. The same line cannot be amended more than once in the bill.

We are now at amendment NDP-2 on page 10.

• (1535)

Mr. Randall Garrison: I would like to move NDP-2 from page 10.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): On a point of order—

The Chair: I have a bit of a problem, sir. You are not signed in.

Mr. David Anderson: What I am asking for is actually permission to be able to speak to the issues today, and I understand I am not signed in. I realize that. I am asking permission to be able to address the issues as we go through.

The Chair: I will need the consent of the committee.

A voice: No.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I move that he be able to speak.

Ms. Françoise Boivin: Do you need unanimous consent for that?

The Chair: No. It's a majority, so we need to have a vote on that.

Those in favour of Mr. Anderson being...

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

Ms. Françoise Boivin: That's the first time I've seen that. I haven't been here very long, but what does that mean? It's not a seventh member on their...

The Chair: He cannot vote.

Ms. Françoise Boivin: He cannot vote.

Can anybody just come to our committee and not be a member, not be signed in, and just...?

An hon. member: If the majority agrees.

An hon. member: Any member of Parliament.

Ms. Françoise Boivin: Okay. That was my question.

Mr. Randall Garrison: Mr. Chair, if I still have the floor, which I believe I did—

The Chair: Yes, you do.

Mr. Randall Garrison: In discussions before second reading, many members on the opposite side of the House for a definition for gender identity to be added to the bill. I have presented one here that is based on the broad consensus of international law and other laws for gender identity, which refers to the "...deeply felt internal and individual experience of gender, which may or may not correspond with the sex that the individual was assigned at birth."

This is a fairly well-accepted definition of gender identity internationally, so I move the motion.

The Chair: That is amendment NDP-2, on page 10.

Go ahead, Mr. Rathgeber.

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

The members will note that I have proposed an alternative definition of gender identity, which is found in the package of amendments as CPC-8 on page 11. I was caught somewhat off guard with the last vote. Although I did vote against NDP-1, that precluded any debate on close to half a dozen CPC amendments. I understand why that is, but I'm caught a little off guard and I don't want the same thing to happen with respect to any proposed amendments in Bill C-279, clause 1, line 21.

Procedurally I suppose we have to debate both proposed definitions concurrently before we can vote on either of them. If we vote positively on NDP-2, I presume you're going to rule CPC-8 non-votable. I don't know if you can give me a ruling on that in advance.

The Chair: You are correct in your assumption.

Mr. Brent Rathgeber: Therefore, we have to have this debate concurrently. Formally or otherwise, we have to debate CPC-8 and NDP-2 at the same time and let the committee decide which is a better definition, or if no definition is required.

I don't think NDP-2 is necessarily a bad definition, but I would suggest to the members that CPC-8 is actually a superior definition.

The most problematic verbiage in NDP-2 is the words "deeply felt" in line 3 of the proposed amendment. These are serious matters, and the witnesses who have testified, especially those who have testified from the transgender community, all feel very deeply about their gender identify. They feel very deeply about their gender expression.

I think it would naturally be difficult to come to a committee and talk about these very sensitive matters, the tribulations and the trials they have been put through as a result of their gender identity. I think it would be almost axiomatic that anybody who is claiming the protection of gender identity under the Canadian Human Rights Act feels deeply that they have experienced gender identity issues.

What I propose—and this might be shutting the gate after the cows have left—is some sort of objective analysis. I anticipate that the sponsor of the bill is going to oppose me on this proposition, but I would like to see some sort of objective analysis to give credibility to the claim that one has gender identity issues.

Most of the criteria that currently afford protection under the Human Rights Act make it evident upon examination that the person qualifies. When somebody is claiming to have been discriminated

against on the basis of race, ethnic origin, or sex, a cursory look at the individual would likely tell the commissioner or the tribunal that the person in fact falls into a class of individuals that are afforded protection by race, sex, or ethnic origin.

Other criteria that currently afford protection are slightly more tricky—certainly sexual orientation and religion—but with religion, if a matter were to go to an adjudication or to a tribunal, the complainant could at least theoretically be compelled to provide the tenets of his faith to demonstrate that he is in fact a subscriber to the religion he claims to belong to, and is therefore afforded protection against discrimination on the basis of religion as enumerated in section 2 of the Canadian Human Rights Act.

However, with respect to gender identity, I challenge the sponsor of the bill to differentiate between individuals who are genuinely in need of this protection—and I readily admit those individuals do exist—and individuals who might raise it as a matter of convenience.

I think the DSM-IV-TR backs me up on this. Gender identity disorder, or gender identity dysphoria, is a clinical term that refers to individuals who truly believe their inherent gender is something other than the gender assigned to them at birth.

I would suggest to the members of this committee that if a person is genuinely experiencing a gender identity disorder, he or she should be able to provide some sort of objective analysis of it.

• (1540)

Otherwise, in this section it's the individual's "deeply felt internal and individual experience". If I'm reading this correctly, all an individual has to say is, "Yes, I deeply feel that I have gender identity issues" and they're automatically.... It's, "Do you feel deeply about it?" Of course the person feels deeply about it; otherwise they wouldn't be there.

If that is the test for establishing the eligibility for human rights protection, I think we've set the bar too low.

These are serious matters. Individuals who seriously have bona fide gender identity issues ought to be afforded protection, and I accept that premise, but there ought to be some sort of objective way of analyzing it, as opposed to self-describing as having gender identity issues pursuant to the qualifier "deeply felt".

I think other members of the committee may want to wade in on this debate.

The Chair: Thank you.

Go ahead, Mr. Garrison.

Mr. Randall Garrison: Thank you very much.

Mr. Chair, this definition was drawn from the Yogyakarta principles, which were drafted by 29 experts in international law, including the former UN human rights commissioner; 13 current or former UN human rights special mechanism office-holders; two serving judges; and a number of other academics. Seventeen of those experts were women.

While we can, as this bill seems to inspire people to do, speculate on what might happen with cases, this is drawn on something firmly based in international law and practice, and that's the reason it's being included in the bill.

• (1545)

The Chair: Go ahead, Mr. Anderson.

Mr. David Anderson: Thank you, Mr. Chair.

I appreciate the committee's being willing to hear me today.

I have some of the same concerns as those Mr. Rathgeber has mentioned today as we look at the bill, and I have heard from my constituents over the last few months that they are very concerned about what I would call a lack of proper definition of the two terms.

I understand that one of these is likely to be removed from the bill, but I don't think the proposal we see being made in amendment NDP-2 brings us much closer to understanding than does having both of them included.

When I read the lines talking about “deeply felt internal and individual experience of gender”, I wonder how far from “gender expression” that actually is. From my perspective I—and I think from the perspective of the folks I've talked to, they—would see those as being pretty much similar things.

I understand the concerns that Mr. Garrison has in trying to define this term. I think Mr. Rathgeber is being reasonable in his request that at some point there needs to be a little more structure put into the definition.

The criticisms of the bill right from the beginning have been pretty much around the definitions and around trying to find how we can come to a definition that addresses the concerns of persons who feel they need to be protected and the members of the public who feel that this bill doesn't need to be passed as it is.

I think, as Mr. Rathgeber indicates, there needs to be a more serious, if you want to call it that, or a longer look at what the definition of “gender identity” might be. Getting another opinion on that, as he has talked about, is a reasonable thing to ask for, because as we go through this issue we want to try to accommodate people. People who truly believe that they are of a gender other than that assigned at birth need to be protected; they need to make sure they have that kind of protection. At the same time, we need to make sure that others are not taking advantage of the code as it's written, so I am going to have to disagree with Mr. Garrison that this is an adequate definition.

As was pointed out as well, the other subjects that are chosen here are pretty much identifiable from the outside. In the case of such matters as race, national or ethnic origin, or colour, people can pretty clearly understand immediately that there is a characteristic they can

identify in them. I think the lack here is that such a characteristic is not found in this case.

If I'm married, I'm married not because I have a deeply felt conviction that I'm married; I'm married because I actually went out and got married. If I have a family status, it's a place in a family such that I know what my status and my position is. If I have a disability, I'm well aware and others around me are likely aware of what it is. The same would apply to the other subjects there.

I think we're falling down here. I don't see it as possible to support this bill unless we do a better job of these definitions. Really, the whole legitimacy of this bill depends on our being able to come up with a definition that Canadians are not only going to be able to support but also understand when they support it. To this point, people have not been able to, and I don't think that Mr. Garrison's suggestion of “deeply felt internal and individual experience” is going to be adequate for Canadians to understand what we're talking about.

As well, I'm not sure that it actually deals with the issues the bill is trying to address.

I'm not sure what the solution is. It may be too late to make those amendments here, or perhaps you have some later that will deal with this issue, but I don't think this is a good definition. I'm going to have to vote against it, Mr. Chair.

The Chair: I have Mr. Casey— oh, I'm sorry; I have Mr. Garrison first.

Mr. Randall Garrison: I'll pass, Mr. Chair.

The Chair: I was right the first time.

Go ahead, Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): First off, I do think it's positive that there's a definition being added. I also think it's encouraging that the definition that is being added is adopting principles from international law. I think that's a good practice for us in general terms—not just in this instance, but in many cases.

I have a question for Mr. Rathgeber, and probably a question for our experts as well, but before that, in the case of discrimination based on religion or some other ground, there has to be a discretion left with the Human Rights Tribunal to assess the validity of the claim that one is of one religion or another religion. I think the proposed amendment inserts a degree of skepticism that we've trusted the boards to work through in other grounds of discrimination. I don't see why this one would be different.

My question for Mr. Rathgeber and the panel comes back to the genesis of the wording that Mr. Rathgeber has chosen. We know the wording that has been put forward in NDP-2 had its genesis in internationally recognized principles. With regard to the wording that is chosen in the alternate definitions, is there some body of case law, or something we can point to, that will help us have some predictor of how these are going to be interpreted—in terms of how they're going to be different?

I suppose the same question would go to our legal experts here. Do you have any commentary or advice you could offer with respect to the likely legal interpretation of the contentious words, which appear to be “deeply felt”? I think that would be of great benefit to the committee.

Thank you.

• (1550)

The Chair: Could we first have the officials respond?

Ms. Laura Stone (Counsel, Human Rights Law Section, Department of Justice): We're not able to make predictions about what the tribunal will or will not decide and how they will interpret the scope of any new terms that are added to the act.

I'm not aware of any interpretations of the words “deeply felt”. They're not existent in the act currently.

As for the difference between the two definitions, again, we can't make a prediction as to how the tribunal would interpret one set of words over the other.

Mr. Sean Casey: My sense from Mr. Rathgeber's comment is that his concern is whether these words would automatically require the application of a subjective standard, as opposed to an objective or a blended standard. I think that's the real nub of the issue here. If it's simply good enough to say “I feel it”, does that surpass the test, or is there, if you will.... Does that preclude any degree of objectivity?

Again, I would appreciate any comments or guidance you have with regard to that aspect. I think whether it's purely subjective is the stumbling block.

Ms. Laura Stone: I understand the question.

I'll just speak to my colleague for a moment.

Mr. Stephen Zaluski (Deputy Director General and General Counsel, Human Rights Law Section, Department of Justice): To follow up on what Ms. Stone has said, with respect to the existing grounds in the act, as she has said, there is no element of subjectivity as the existing standard for measuring whether discrimination has been made out in a given case.

Arguably, a parallel could be made with respect to section 13 of the Canadian Human Rights Act, which of course is the subject of another bill before the Senate at this point.

The way section 13 has been interpreted by the courts, and by the Supreme Court of Canada in particular in the Taylor case, does certainly incorporate a subjective component in terms of the way the individual feels that the particular alleged hate speech has impacted upon him or her. Jurisprudentially, there is some move away from the strict language of that section to look at the impact it actually has.

For example, “deeply held feelings of calumny” are, I think, the words the Supreme Court of Canada in the Taylor case to describe the impact that hate speech might have on a victim. That was one of the tests that was used to determine whether a violation of the hate speech provision has been made out. It's not completely foreign to have a subjective element introduced in a ground, but as Ms. Stone has said, how a court or a tribunal would interpret or choose.... How these two definitions would lead to different outcomes is purely a matter of speculation for us at this point.

A voice: Thank you.

• (1555)

The Chair: Thank you.

Go ahead, Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

Like Mr. Rathgeber, I am very concerned with the issue of evidence and of course proving what is “deeply felt”, which would probably be very much subjective. On the other hand, in his amendment, I guess we're talking about an “inherent feeling”, which may be far more objective.

Of course, any one tribunal will want to base itself on some standard so that it could offer some consistency in rendering decisions. I don't know if any one of the two definitions, quite frankly, could provide some sort of a consistent standard. For that reason, I wonder if we're not muddying the waters when we have the Montreuil case, in which the Canadian Forces refused Montreuil's application for enrolment into the forces. It was determined he was suffering from gender identity. Following the precedent set, the federal and provincial tribunals and the Canadian Human Rights Tribunal stated there is no longer any doubt that the discrimination based on transsexuality is discrimination based on sex or gender as well as discrimination based on disability.

Mr. Rathgeber asked the chairman or the president of the commission if this case had been overturned and whether or not it was good law. The answer was yes, it was in fact good law. It hadn't been overturned, so are we in fact muddying the waters here?

If we go to the completely objective criteria, is a tribunal going to be called upon to have expert witnesses testify exactly what “inherent” means? Does it become a battle of experts upon experts? Are there inherent costs associated with it? Would the tribunal want to have some sort of expertise to determine exactly what would be an inherent feeling?

We all know from going to court that you can have as many experts as you can have complainants, and of course the cost and time go up. The tribunal may become confounded by evidence. Do we completely muddy the waters with regard to what is otherwise a consistent ruling that there is no longer any doubt that in the issue of transgender, it's discrimination based on sex and disability?

Why would we want to go down this road? Could you provide us your advice as to whether or not the tribunal might call upon expert testimony in such a case? Is this something that there would be a cost associated with? Would it be a power that the tribunal could compel, having some sort of expert system?

Ms. Laura Stone: If a claimant wanted to bring an expert on their behalf, it would be the claimant who would have to pay for that. The tribunal does not have the power to award legal costs. If a complainant wished to call experts—and I believe they do sometimes call experts—they could do so.

Mr. Robert Goguen: To your knowledge, there would be no financial assistance from a federal instance?

Ms. Laura Stone: No, there is no financial assistance from the government to complainants before the tribunal.

Mr. Robert Goguen: Would there at least be some sort of a database of experts that could be called or could be made available to a complainant? If something is available, would that assistance be rendered to a complainant?

Ms. Laura Stone: Do you mean a government database of experts?

Mr. Robert Goguen: Yes, of people who would have the type of expertise who could possibly cast some light on this.

Ms. Laura Stone: I am not aware of any such database, no. I believe individuals find their own experts.

Mr. Robert Goguen: But you would agree that it's at great cost.

Ms. Laura Stone: You mean to the complainant.

Mr. Robert Goguen: Has a tribunal ever, in extreme circumstances, awarded any kind of funding, or has any department ever funded money for expertise, not even in this kind of a case, to your knowledge?

Ms. Laura Stone: Not to my knowledge, no.

Mr. Robert Goguen: Well, quite frankly, what we're doing, Mr. Chair, is taking a situation where the law is clear and the issue is covered and potentially injecting into it a state of confusion that may be detrimental to those we are trying to serve. For this reason, I can't see why at all we would pass the act, never mind any one of a number of amendments. I'll leave it at that.

•(1600)

The Chair: Thank you.

Go ahead, Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

I've been desperately trying to find the case that we referred to during committee earlier. I think I have it, but of course, I can't find the section that I want when I want it. I'm going to start from the general premise and see if we're on the same page.

My understanding is that as the law currently exists, both gender identity and gender expression are covered under a subset of sex in the code. Is that correct? Do you agree with that position?

Ms. Laura Stone: My understanding, based on the tribunal decisions to date, is that complaints brought by transsexuals have been understood to be discrimination under the ground of sex. On the tribunal, both federal and provincial, I have not seen a tribunal decision that has used the term "gender identity" or the term "gender expression".

You could say there is some expressive element that has been covered in the sense that in both the Montreuil case, which I think was mentioned earlier, and also in the Kavanagh case, those individuals were in the process of transitioning towards their target gender. They were presenting themselves in their target gender, so there is some expressive content in the sense of their dress and so on. That expressive content has been understood by the tribunal as covered under the ground of sex.

Mr. Kyle Seeback: In this legislation, what we do, in effect, is we have an amendment now to define "gender identity" and to put that definition into the code. My understanding—I don't know if you

know or not—is that there has also been an amendment. I don't know if it's being proceeded upon today or not. I'm now thoroughly confused on all of the amendments—like many of us, I'm sure—but there is, or there was, an amendment that would take out gender expression. If expressive elements have already been deemed to be covered by the tribunal, does taking it out really make a difference? Isn't it already there?

I think that's the way I look at it.

Ms. Laura Stone: Again, I would just repeat that I can't make predictions as to how the tribunal would interpret a particular term. It's an emerging area of the law.

As you know, provincial governments—in Ontario, for example—have added the terms "gender identity" and "gender expression". In Manitoba, "gender identity" has been added. Those provincial tribunals will no doubt develop case law.

The other legal point to make is that with respect to all of the other grounds in the bill, the word "expression" is not actually mentioned. With religion, for example, one may express one's religion through the wearing of a veil or some other religious emblem, and that expressive content is understood to be covered under the ground, but again I cannot make a prediction about what the tribunal will or will not cover in a particular situation.

Mr. Kyle Seeback: But, if, for example, as in the cases we've talked about, expressive elements of gender identity have been determined by a commission to be covered, putting in a definition of "gender identity" and not putting anything in about expression is certainly not going to have the tribunal think that Parliament has said gender expression or expressive elements of gender identity should no longer be covered. I don't think there would be any sort of statutory interpretation that would lead a tribunal to that conclusion.

Mr. Stephen Zaluski: Sorry—is it because expression has been omitted that Parliament did not intend to include it? Is that it?

Mr. Kyle Seeback: That's my question. I don't think it does, but I'm not an expert on statutory interpretation, and I don't know if you are either.

Mr. Stephen Zaluski: Without entering too far into the realm of speculation, I think that's correct. The fact that Parliament has chosen not to include it would not be interpreted to mean that expression is not covered.

To get back to your earlier question, obviously it's up to Parliament to decide what it chooses to do, because, as Ms. Stone has mentioned, expressive elements for other grounds are covered without being expressly mentioned. From the perspective of consistency in drafting, to add a specific reference to gender expression when that is not there for the other grounds could create an apparent inconsistency in the way that the grounds are treated in the act, but again, it would always be a matter for the tribunal, and eventually for the courts, to interpret the significance of any such discrepancy.

•(1605)

The Chair: Thank you.

Go ahead, Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you, Chair.

I just need some clarification here. If this committee is to adopt NDP-2, you've told me that CPC-8 becomes non-votable. Does the same apply to CPC-9 and CPC-10?

The Chair: It's a little bit confusing, but CPC-8 cannot be carried if NDP-2 is carried. CPC-8 can't be put, nor can CPC-9 if NDP-2 or CPC-8 are carried.

Mr. Brent Rathgeber: Is CPC-10 still in play?

The Chair: CPC-10 is consequential to CPC-2 or CPC-5 and CPC-6. Because they have not been carried, it can't be brought forward.

Mr. Brent Rathgeber: It's already out.

The Chair: Right.

Mr. Brent Rathgeber: Can you confirm for me that Mr. Seebach's proposed amendment, which is CPC-7, was deemed non-votable when this committee passed NDP-1?

The Chair: Yes, because it's the same line, and the same line can't be amended twice.

Mr. Brent Rathgeber: I'm a little confused; well, actually, I'm a lot confused. I'm a little confused that Mr. Garrison is actually proposing his amendment, only because I understand there was some suggestion that perhaps some of the alternate definitions of gender identity were actually superior to the definition proposed in this amendment by the sponsor of the bill.

Since we have to deal with this proposed amendment before we deal with the other ones, I'm perplexed as to why the sponsor of the bill would include the qualifier "deeply felt". It occurs to me, first of all, that from a legal perspective it's ambiguous as to what that means. I don't know how an administrator sitting on the Human Rights Tribunal could possibly evaluate whether or not a person's claim to discrimination under the proposed grounds of gender identity is "deeply felt".

That aside, I would think that the individuals who are advocating for this type of legislation would also want to remove the words "deeply felt", because "deeply felt" creates a bar that you have to climb over. It's a gatekeeper level that you have to get over before you can claim the protection of the statute, as opposed to CPC-8, which removes the words "deeply felt".

Then it's only an individual's inherent feeling of gender, as opposed to a "deeply felt" feeling of gender, which I think satisfies both. My concern is that you cannot assess what is and what isn't "deeply felt". It would also address the concern of those who are promoting this type of legislation by not forcing applicants to establish the bar of "deeply felt".

I'd like to put my name back on the bottom of the list. I would like Mr. Garrison to comment on some of the proposed amendments and whether or not he might think there might be some merit to CPC-8 or CPC-9 as opposed to NDP-2.

• (1610)

The Chair: You may if you wish.

Mr. Randall Garrison: I answered your question. The definition is based on international law, so it's not my personal opinion about "deeply felt".

We had a number of discussions away from the table with people about trying to reach a compromise. At that time, I said I was willing to consider your amendments. As people on the other side of the table were not willing to reach an agreement, then whether I like or dislike the amendments is really a moot point.

Again, this is based on international law and based on some precedents in other areas of Canadian law. I'm not just making it up.

The Chair: Go ahead, Mr. Anderson.

Mr. David Anderson: Thank you, Mr. Chair.

Mr. Garrison says that he's not making it up, and I guess it shows up in some places.

I'd like to come back to Mr. Casey's original question, which is important here, because when we start talking about the element of subjectivity, that apparently is not found in the other definitions.

There are two elements of subjectivity in this. One is the person who is involved and the other is the public. If this passes, what is the public's responsibility? What is the public's knowledge in terms of how to determine a person's identity? What will be the factors they will be obligated to use, when this law is passed, to refrain from discriminating against someone?

If the definitions are as subjective as they seem to be, or as this one seems to be, we're going to have a very hard time answering that question.

Ms. Laura Stone: First, it's really important to remind everyone of the coverage of this act. It's in the federal jurisdiction. It covers employment and service providers in the federal jurisdiction. It is the federal government, obviously, and banks, airlines, and so on, so in terms of the public, it's a relatively narrow public.

Your question is exactly how employers and service providers will interpret this term. You mean how they will know whether they have discriminated against an employee or a person seeking service. Is that it?

Mr. David Anderson: Sure. If we're not going to go to the general public, what is their obligation? How will they know what their obligations are, with definitions that are so vague?

I ask this because I think there is something else going on here, to some extent. Mr. Garrison has said in the past that once this is in the Canadian Human Rights Act, the courts and the human rights commissions themselves will define those terms. I'm just asking if there is enough definition here so that employers will know what their obligations are, or is that going to have to be defined, as it has been in the past—and I assume from what Mr. Garrison would like to see, as it will be in the future—by human rights commissions and the courts?

If that's the case, then the definition is too vague.

Mr. Stephen Zaluski: It's a good question. I think that we always have to start from the perspective that it is up to a complainant to demonstrate that they have been discriminated against on a ground that's contained in the act, even for other grounds.

For example, family status right now is a ground in the act whose interpretation is not yet established, and there are different views—legal views, academic views—about what this ground means. With this ground, as with any ground, it would be up to a potential claimant to indicate to their employer, their landlord, the service provider—the potential respondent—that they believe they are being discriminated against by that person on this particular ground.

In that sense, this is something that regularly occurs: the complainant has to take some steps to notify the person they believe is discriminating against them that they believe they are being targeted on the basis of a prohibited ground.

It is true that different grounds have differing degrees of established meaning. I don't want to take the hate speech analogy too far, but it is an example of a situation in which, when the test that the Supreme Court has come up with—in 1990, in the Taylor decision—is one of whether the victim feels attacked on the basis of deeply felt feelings of vilification or calumny, there is a subjective component to it. It's true that tribunals and courts have struggled with a definition that is more a subjective than an objective one, but I would suggest that it's a difference of degree in many cases, as opposed to a difference of kind.

• (1615)

Mr. David Anderson: There's an argument to be made that it is a large degree when you talk about it as a basis for prohibited grounds, but it has little meaning beyond a kind of internal understanding of something that has happened. I think that's one of the reasons my constituents are concerned about the legislation and one of the reasons we need to take another look at this bill and this definition. It does not seem to address adequately what Canadians would like to see in their legislation.

I understand that Mr. Garrison would like to see this pass, but I'm concerned when I read that his interest is in getting it passed so that the tribunals and the courts themselves can define it. I think that's the job of Parliament, and if we're not able to adequately define this, we shouldn't be passing the legislation, because we're not doing the job we need to do here.

I'm a bit concerned because it comes down to the point that unless someone is willingly and openly making a statement, nobody has an idea whether they have determined what their gender identity is. We certainly see that there are going to be some problems with that.

Many of the definitions we hear are being made up by those who lobby on this; they're not definitions in law and they're not found in legal documents. I have some concerns about creating expressions as we go that don't have definition and then trying to get the courts and the human rights tribunals or commissions to put definitions to them.

I don't know whether anyone else has anything to speak to on this issue.

The Chair: Go ahead, Mr. Rathgeber.

Mr. Brent Rathgeber: I don't want to ignore Mr. Casey's question as to where my proposed definitions came from.

The definition that has been ruled non-votable in amendment CPC-9 comes out of DSM-IV, the Diagnostic and Statistical Manual of Mental Disorders. The other two come from psychological websites, and I'm having trouble finding them, but I didn't make the definitions up. I think one was from the American Psychiatric Association journal. The most formal one has already been ruled non-votable, and it's from DSM-IV.

I fully understand why the sponsor of the bill—

The Chair: Mr. Rathgeber, this is for clarification. I think you said that amendment CPC-9 cannot be put.

Mr. Brent Rathgeber: Yes, I did say that, and I meant to say amendment CPC-10.

The Chair: Okay, it's amendment CPC-10.

Mr. Brent Rathgeber: CPC-10 was the definition that came out of the DSM-IV. Amendments CPC-9 and CPC-8 I found on—

Mr. Robert Goguen: Mr. Chair, I have a point of order. Could you clarify exactly where we are, and what's out and what isn't? I think there's some confusion.

The Chair: We're on NDP-2, on page 10.

NDP-1 carried. Everything down to NDP-1.1 is out.

We're now at NDP-2.

Mr. Kyle Seeback: Mr. Chair, could you list the ones that are out, so that we can just go through and cross them out?

The Chair: Absolutely.

CPC-2 is out.

Mr. Kyle Seeback: Yes.

The Chair: CPC-3 is out.

Mr. Kyle Seeback: Yes.

The Chair: CPC-4 is out.

Mr. Kyle Seeback: Yes.

The Chair: CPC-5 is out.

Mr. Kyle Seeback: Yes.

The Chair: CPC-6 is out.

Mr. Kyle Seeback: Yes.

The Chair: CPC-7 is out.

Mr. Kyle Seeback: Yes.

The Chair: NDP-1.1 is out.

Mr. Kyle Seeback: Okay.

The Chair: CPC-10 is out.

Mr. Robert Goguen: Is CPC-10 already out?

The Chair: Yes, because it was consequential to CPC-2, CPC-5, or CPC-6, and they're out.

• (1620)

Mr. Robert Goguen: Thank you.

The Chair: CPC-8 and CPC-9 cannot be put if NDP-2 carries, and CPC-9 cannot be put if NDP-2 or CPC-8 carries.

Are we okay now?

Mr. Brent Rathgeber: Yes, thank you.

Do I still have the floor, Mr. Chair?

The Chair: Yes.

Mr. Brent Rathgeber: So CPC-10 is non-votable.

In my view, the best definition comes from the DSM-IV. The other two proposed amendments come from online psychiatric manuals. One of them is from the American Psychiatric Association. I'm sorry, but I can't find the other one.

I'm a little troubled, and I'll close with this because I think we need to move forward. Apparently the sponsor of the bill was prepared to consider an alternative definition other than NDP-2, but now is not, so I'm not prepared to consider it. I would remind members of the committee of that position when they vote on NDP-2.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Seeback, go ahead.

Mr. Kyle Seeback: You mentioned the provinces that have added gender identity or gender expression into their own human rights legislation. Do you see there being a problem with an inconsistency between what might be passed by this committee, in this Parliament, and the codes that are going to be or that have been passed provincially?

Ms. Laura Stone: I don't think that poses a problem. The codes are generally similar, but they have slight variations. Some provinces have grounds that are not in the federal act. There are some differences in wording across the many acts that exist.

The Chair: Mr. Anderson, go ahead.

Mr. David Anderson: I have a question for Mr. Garrison.

He has agreed to remove the expression "gender expression". It's generally understood that gender identity and gender expression are two different things and may touch on two different groups.

Does he assume that if he takes out "gender expression", it is going to be covered by "gender identity", or is he saying that those folks who may have a gender expression without having any issues with gender identity, if that's the case, are in a different situation? Doesn't he want to address that?

The Chair: No. He doesn't want to address it.

Mr. David Anderson: It's something that might be worth addressing. Clearly there are two groups of people, and they're not the same group at all times. I don't think he's deliberately trying to exclude anyone, because he has a fairly strong commitment to this bill and the principles behind it, but I just wonder how he sees that

If "gender identity" is going to include everything, then that should be clearly understood, but even in the way we're talking about it here, in the challenges to the definitions or whatever, I'm not sure it's the same as "gender expression".

It looks as though he has an interest in responding to that now.

The Chair: Thank you.

Go ahead, Mr. Garrison.

Mr. Randall Garrison: Just briefly, if you had been here for the sections with the Canadian Human Rights Tribunal, you would have had a written answer to that question.

Second, it's not about my personal opinions. We negotiated a compromise with those who voted in favour of the bill at second reading, which does not include any of the members who are currently trying to amend the bill; this is a compromise to take out "gender expression" as negotiated with those who supported the bill in principle.

The Chair: We're now on NDP-2.

Shall NDP-2 carry?

Mr. Kyle Seeback: Could we have a recorded vote, Chair?

The Chair: The clerk will do that.

(Amendment agreed to: yeas 6; nays 5)

The Chair: As I've already said, CPC-8 and CPC-9 cannot move forward.

Shall clause 1, as amended, carry?

Those in favour?

An hon. member: May we have a recorded vote, please?

• (1625)

Mr. Dan Albas (Okanagan—Coquihalla, CPC): I'm sorry, Mr. Chair; what are we voting on?

The Chair: We're on clause 1, as amended.

(Clause 1 as amended agreed to: yeas 6; nays 5)

(On clause 2)

The Chair: We're now on clause 2.

Mr. Garrison, do you wish to introduce an amendment?

Mr. Randall Garrison: Thank you, Mr. Chair. I'll be withdrawing NDP-3.

Instead, I'd like to move a motion:

That, pursuant to Standing Order 97.1(1), the committee request an extension of 30 sitting days for the consideration of Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression) to allow its members to hold deliberations beyond the present deadline of Monday, December 10, 2012, and that the chair present this report to the House.

The Chair: Go ahead, Mr. Goguen.

Mr. Robert Goguen: I think they're out of time for that motion.

The Chair: The clerk tells me the last day we can table that would be Monday, December 10. That's the date this was to be reported back.

Mr. Brent Rathgeber: That means it's out of time.

The Chair: My understanding is that Monday would be the last day. If this report is not tabled by Monday, it goes to the House unamended, but the request for extension can be presented to the House on Monday.

Mr. Robert Goguen: I challenge the ruling. I'd like a recorded vote.

Mr. Brent Rathgeber: I don't understand the ruling.

The Chair: If he challenges the chair and the ruling....

Mr. Randall Garrison: Chair, if I may, on a point of order, there is a motion on the floor, and if he is opposed to the content of the motion, then his solution is to vote against the motion. You have not made a ruling.

The Chair: What I ruled was that the amendment could go forward and could be presented to the House.

Ms. Françoise Boivin: It was that the motion could go forward.

The Chair: I'm sorry; yes. The clerk's advice is that the challenge is that I've said that the motion could be presented to the House.

Let's see if I've understood this correctly this time. The challenge is that I'm accepting the motion here, not the House. The House is up to the Speaker. Okay.

If you're challenging the chair on accepting the motion, the clerk will—

• (1630)

Mr. Brent Rathgeber: Mr. Chair, what have you ruled?

The Chair: I've ruled that the motion can go forward. It's done. He's challenged it, and we vote now on whether the ruling of the chair will be sustained. The clerk will take the vote.

Mr. Dan Albas: Thank you. It's just a question. Can we hear the rationale from the gentleman here?

The Chair: No.

Mr. Dan Albas: No, it's non-debatable. Okay.

The Chair: He challenged the chair.

Shall the chair's ruling be sustained?

(Ruling of the chair sustained: yeas 9; nays 2)

The Chair: The chair's ruling stands. Now we have a motion.

An hon. member: The motion is debatable.

The Chair: Yes.

Go ahead, Mr. Garrison.

Mr. Randall Garrison: Since there is a lot of interest in the bill, it's obvious that the time available today would not allow us to finish the amendments, and therefore that's the reason that those who have expressed so much interest, I'm sure, will be supporting the extension.

The Chair: Thank you.

Go ahead, Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: We also did it for Bill C-394 and Bill C-273, last week. We voted in favour of Bill C-273, sponsored by our Liberal colleague, Hedy Fry, so we could study those provisions thoroughly.

We are at clause 2 and we barely have an hour left. No doubt our new committee member, who has the right to speak but not to vote, has a number of questions because he did not have the benefit of hearing the various witnesses. Given that there is such interest in the topic, as we can see, and if the questions are, as they would say in English, perfectly

[*English*]

genuine and come from the heart,

[*Translation*]

we see no logical reason not to allow the extension, given the small window we have. December 10 is fast approaching. This isn't an unreasonable request, as we see it.

[*English*]

The Chair: Okay. Thank you.

Go ahead, Mr. Rathgeber.

Mr. Brent Rathgeber: I'm confused as to why the motion is brought at 4:25 as opposed to 5:25.

Yes, there is a lot of interest in this bill. These are important matters, and we want to get this right, so we have taken some time and considered alternative definitions of what is and isn't "gender identity". I don't know why this committee would presuppose its progress in the next hour. Maybe we will get through it.

In any event, I would suggest that the motion is premature at this point and I would encourage honourable members to vote against it.

The Chair: Thank you.

Mr. Seeback is next.

Mr. Kyle Seeback: Lots of issues have been raised. I have raised some issues that I think are important.

Through no fault of the committee, we've had a number of votes, by my count, that have interrupted two committee hearings that certainly would have allowed us to flesh out a number of these issues. Officials today have been very helpful with some of the information they've given us, but those are the unfortunate circumstances in which the committee finds itself.

The Chair: Go ahead, Mr. Anderson.

Mr. David Anderson: Mr. Chair, because a bill is confusing doesn't mean it needs to be extended.

I do have a deep interest in this bill. I don't think it is all that complicated, but I think it's very misdirected. There has been a fair amount of time already given to the bill.

I don't have a vote on this so, of course, the other members here will decide that, but clearly Canadians have been heard. I'm not sure it needs to go much further here, because they've told us they're concerned about the bill, concerned about the issues of the gender identity and gender expression that are in the bill.

The NDP seems to be unwilling to.... I tried to address one issue. I'm not sure if Mr. Garrison is withdrawing his cooperation or not, but the reality is that neither of those terms, whether they're in or out of the bill, has been defined, and they haven't been defined in a way that would give any reason for those of us who are parliamentarians to support the bill or to continue to support the bill.

I'm concerned that it's come to committee here and doesn't seem to have changed direction at all. It doesn't seem to have clarified the definitions to a point at which Canadians are going to be comfortable with them, so I'm not sure what's going to be gained by taking more time on this.

It's true that this is a bill that's troubling. It's troubling for a whole number of reasons. It's extending another level of protection to a category of individuals who haven't been covered in the past, and it certainly has far-reaching implications for them and for Canadian society. I think it's because the definitions are so poorly written and explained that we need to get the bill back to the House and try to have it defeated as quickly as possible.

These terms, "gender identity" and "gender expression", are words we've been told today are not words that are in common usage. They're not being used regularly. It seems to me that if this bill is passed into law—and I think actually this is simply a delay tactic by the opposition to try to drag this out a little bit longer—the definitions of these words, as I pointed out earlier, are going to be left to the human rights tribunals and the courts to decide. I simply think that's inappropriate. The committee is too far along now to be able to do anything about that.

They have the amendments. I don't think any of them are adequate in terms of explaining those terms, so typically it should go back to the House. It's time to go back to the House, and I certainly would support that.

The other problem with the definitions is that they're inconclusive. When we talk about the subjectivity of them, they're basically going to make sure that gender norms are confusing for the general public. No one is going to be able to really understand what they are, and so

• (1635)

[*Translation*]

Ms. Françoise Boivin: Point of order, Mr. Chair.

Since we are dealing with the motion, I think we should focus on that. I am listening to Mr. Anderson, and I appreciate his comments and taking note of them, for that matter, but they seem to be more relevant to the amendments. We are dealing with the motion on the extension, because we don't want all the committee's work to go to waste, work that he did not contribute to, and because we don't want the bill going back to Parliament in its original form, meaning without the benefit of witness input and discussion between the parties. I have seen all the efforts made to find some common ground. No one should be pointing fingers at anyone else, especially when that person shows up at the committee out of the blue.

Point of order, Mr. Chair, because I believe we should be discussing the content of the motion, not the amendments, at this stage.

[*English*]

The Chair: Thank you, but I do believe the member is talking to the bill and the reasons we shouldn't extend it. It is directly addressed to this bill and nothing else.

Go ahead, Mr. Anderson.

Mr. David Anderson: I think I should talk to the extension, and then if you want me to talk directly to the motion, I can certainly do that and I will.

I would like to go back to the House of Commons procedure and maybe remind people that we are obliged as committees, within 60 sitting days or from the date of reference, to report back with a private member's bill to the House, with or without amendment. Therefore, the bill's proponents need to do a couple of things: either recommend that the bill not be proceeded with further or request a one-time extension of 30 days to consider the bill or to refer it back to the House.

In the case that they are going to ask for an extension, reasons need to be given. Clearly, no reasons have been given today for an extension, and I'm arguing that there are no reasons for it to be extended. I certainly didn't hear any from the mover of the motion. His reason may be that his amendments might not be passed by 5:30, but he doesn't know that.

As Mr. Rathgeber pointed out, we had another hour here, and now we are spending it discussing this motion rather than discussing the amendment, so if there is any interference that's been run on getting this back to the House, it's been done by the NDP. If they are going to pursue this, they need to have some reasons to give you if this is going to go back to the House, and we certainly haven't got those.

We are told that after considering a private member's bill, the committee may report it to the House but report that it does not believe that the bill should proceed any further. Once a report is presented, a notion of motion can occur and the report is automatically placed on the notice paper. The motion stands in the name of the member who has presented the report, usually the chair of the committee. Well, Mr. Chair, that doesn't apply to this one.

In terms of an extension of consideration, we're told that if the committee feels it will not be able to complete its consideration of a private member's bill referred to it within 60 days, it may request an extension of 30 further sitting days, and only one of those can be sought.

Again, Mr. Chair, there need to be some reasons for that to go ahead, and I certainly haven't heard any.

I guess I am willing to give up the floor to hear those reasons. Then I would probably like to address them as well.

However, I don't see any valid reasons; it looks like the committee has done good work on this, and it's time to report back.

• (1640)

The Chair: Give me a minute to consult with the clerk.

Mr. Anderson's comments are accurate. We must have a reason to request it. I think your motion at this point is requesting the additional time, but without a reason.

A voice: It's fixable.

Mr. Randall Garrison: Mr. Chair, then I will simply say we've had two sessions of the committee interrupted by voting that has reduced the time available to deal with the bill—and I thank Mr. Seeback for raising that—so I move to amend the motion.

The Chair: I have a point of order first.

Go ahead, Mr. Seeback.

Mr. Kyle Seeback: It would seem to me that if the motion was not properly put forward in that there is no reason, then the motion would have to be put again. I don't think partway through debate he can amend his motion.

The Chair: The ruling is that he can propose an amendment. It was properly put, so he can propose an amendment.

Mr. Randall Garrison: Mr. Chair, I propose that we add the reason that because two sessions of the committee were interrupted by votes of the House of Commons, we lacked sufficient time to finish our deliberations on the bill.

The Chair: The clerk can write it down.

Mr. Randall Garrison: It is to amend the motion by adding that the reason for requesting the extension is that two sessions of the committee were interrupted by voting in the House of Commons, so we were unable to complete our deliberations on the bill.

The Chair: Now I have Mr. Rathgeber.

Mr. Brent Rathgeber: Am I speaking to the amendment, or am I speaking to the motion?

The Chair: It's on the amendment.

Mr. Brent Rathgeber: The amendment is incorrect, in fact. It's factually incorrect. Two meetings were not disrupted because of votes. There was one meeting disrupted because of votes when we were dealing with clause-by-clause study. One other meeting was disrupted when we had witnesses.

Those witnesses were rescheduled, but the motion, as I understand it—and I don't know that I do, because it has been amended—is to give this committee more time to provide clause-by-clause consideration of the bill.

If the argument is that two meetings of clause-by-clause consideration were to take place, if that is the purpose for the bill, and the chair has ruled that there has to be a purpose for a bill, I would suggest to the committee that it has to be both a valid purpose and stated accurately, based on accurate facts. The mover of the motion and the mover of the amendment to the motion are factually incorrect.

Indeed two meetings of this committee were disrupted because of priority voting in the House, but one of those had to deal with witnesses. We had the witness from Real Women of Canada, and I believe representatives from both the Human Rights Commission and the Human Rights Tribunal. Thankfully, the members of the commission and the member of the tribunal are residents of Ottawa, so it was not too inconvenient for them to be rescheduled and to come back the next day. The witness from Real Women of Canada was gracious and accepted our apologies for the inability to hear from her on the day she was supposed to testify and did come back the next day to testify.

With respect to vetting or clause-by-clause consideration, it's my recollection that this process started one week ago today. We made some, but very little, progress with respect to clause 1, and there were some amendments. That process was supposed to be completed or at least continued on Tuesday of this week, 48 hours ago, and indeed that proceeding and that scheduled meeting for clause-by-clause vetting or clause-by-clause consideration of this bill was, in fact... I don't know if it was cancelled or rescheduled.

In any event, it didn't occur because of the mini-marathon of votes regarding Bill C-45, the budget implementation act implementing Canada's action plan—very good legislation, by the way.

In any event, the mover has proposed for his reason something that's factually incorrect. I would ask that the chair rule it out of order. Failing that, I would ask that the members of this committee vote against it, because it's factually not accurate.

● (1645)

The Chair: Mr. Seeback is next.

Mr. Kyle Seeback: Thank you, Mr. Chair.

I actually wanted some clarification. Maybe it should have been a point of order, but my understanding is an extension will just allow us to continue to finish through the amendments that are in existence. The other ones that have unfortunately disappeared or have been voted down consequentially do not come back.

What we're left with is the remaining pieces of the bill and a couple of amendments. Is that correct?

The Chair: I think your assessment is correct. We continue on from the point we're at.

Go ahead, Madame Boivin.

[Translation]

Ms. Françoise Boivin: Thank you.

I was the first in line, but it's okay, I'll go third.

I simply wanted to tell my colleagues that the approach to Bill C-273 and Bill C-394 was identical to the motion moved by Mr. Garrison. The motion was agreed to, challenged and then agreed to again. Mr. Anderson, who isn't allowed to vote, has shown up here out of the blue and raised some sort of procedural sticking point on the basis that the request has not been justified, when the motion has been agreed to and challenged before.

Since I prefer to have the chair listen to me when I speak, I will wait. I still have the floor. When you spend years at the appeal court, you fall into that kind of habit. When judges start speaking amongst themselves, you say

[English]

there's no fucking—

Sorry.

[Translation]

I withdraw that. He wasn't listening, in any case.

[English]

I was saying how nice you are.

Voices: Oh, oh!

The Chair: I'm still nice.

Ms. Françoise Boivin: You are always nice.

Just to make sure that everybody understands me, I will repeat it in English.

The motion was presented. It was the same motion we adopted without any additions as a committee, and we worked in this committee in a very, I'd say, collaborative way up until this point. We agreed because we thought we didn't want them sent back after all the work we had not yet done, just as is, to the House. It's the same principle.

Maybe everybody has to breathe in a bit. We might finish if we stop all of this. Maybe the light will come and hit people or whatever, but let's move on.

To ask for a reason when there was not even one asked when.... I would like to know why it is so different on Bill C-279, when we even voted yesterday unanimously in the House of Commons on Bill C-273 and we agreed to have the 30 days.

At some point in time, let's move.

● (1650)

The Chair: If I could just answer that one comment, the clerk has provided me with a copy. There was one additional paragraph:

Your Committee's request for an extension is to allow its members to hold its deliberations beyond the present deadline of Monday, December 10, 2012 in order to give Bill C-273 the consideration it requires. Therefore, your Committee requests an extension of thirty days.

It was to give it the—

Ms. Françoise Boivin: Exactly, on the clause-by-clause study.

The Chair: —consideration it requires.

Ms. Françoise Boivin: Are you talking about Bill C-273 or Bill C-279?

The Chair: It was Bill C-279. Bill C-273 and Bill C-279—

Ms. Françoise Boivin: That's what I just said.

The Chair: —were the same, but it was to provide time for deliberations.

Ms. Françoise Boivin: So here it is to provide time to do the clause-by-clause study. What is wrong with that? Geez.

The Chair: Well, to give it the consideration it requires.

I'm sorry....

Ms. Françoise Boivin: Exactly. This one is for the clause-by-clause study. The other one is to have due consideration with witnesses and so on. It's as grand.... Anyway.

The Chair: We are still dealing with the amendment.

I have Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I was just going to ask if there is any chance the parties could take a five-minute break to have a specific discussion and maybe resolve this situation and expedite this matter?

The Chair: Françoise?

Ms. Françoise Boivin: Pardon me?

Mr. Brian Jean: I'm sorry—you weren't listening?

Ms. Françoise Boivin: It was a little taste of some medicine. Pardon me.

The Chair: We will take a three- or four-minute break and see if we can come up with some—

Ms. Françoise Boivin: I have no problem with that.

The Chair: Okay. We will stand down for five minutes.

● (1650) _____ (Pause) _____

● (1700)

The Chair: We'll resume the meeting.

I was somewhat hopeful that there would be some discussions, but I'm not sure that occurred.

I have Mr. Jean next.

Mr. Brian Jean: Mr. Chair, we've already had one clause pass, clause 1, and some subclauses, I believe, if I'm correct on that. If I can clarify—

The Chair: Are you speaking to the amendment?

Mr. Brian Jean: Just to clarify, am I speaking to the amendment or to the motion?

The Chair: To the motion....

Mr. Brian Jean: I'm speaking to the motion, am I not?

The Chair: You're speaking to the amendment of the motion that....

Mr. Brian Jean: Yes, but I'm speaking to the motion itself, and to the amendment of that motion.

What I'm curious about is this. If at this stage this matter is not concluded by 5:30 p.m., the clause that was passed.... I understand that it goes back to report stage, and more amendments can be put forward at that stage.

I want that clarified as well, but I also want to understand if clause 1—

The Chair: That would be up to the Speaker. That is my understanding.

Mr. Brian Jean: Okay, so if the Speaker allowed that to go back and the amendments to come forward, would clause 1 continue to stand, or would it go back so that clause 1 would have never been voted on in this committee?

The Chair: There would be no report to the House.

Mr. Brian Jean: There would be no report on clause 1 being passed at this committee level?

The Chair: It would be reported without amendments.

Mr. Brian Jean: It would be without amendments. Okay. Then whatever was passed today would have no significance. For instance, if we were in favour of one of the amendments put forward by Mr. Rathgeber, which is clause 1 in particular, at this stage we're stuck with clause 1 no matter what. Therefore, to have it go back to the House, we would be able to revisit clause 1. Is that fair to say?

The Chair: That would be my understanding.

Mr. Brian Jean: And then there might be....

Ms. Françoise Boivin: It's up to the Speaker, so you can't be sure of that.

The Chair: Right, but it would go back....

Ms. Christine Lafrance (Procedural Clerk): Usually, what could have been done in committee is not done at report stage.

Mr. Brian Jean: I just want to clarify with Ms. Boivin on that. I know she didn't have the floor and I don't mind her interrupting me at all, but I just want to clarify—

Some hon. members: Oh, oh!

Mr. Brian Jean: I truly don't.

You always come forward with a thoughtful and good legal mind, obviously. Could you expand, Madame Boivin, on why it is at the discretion of the Speaker? I didn't realize that.

Ms. Françoise Boivin: That's what happens when somebody interrupts and they don't hear what we say.

What I said was that I'm not so sure that it's that definite. That's all I said.

• (1705)

Mr. Brian Jean: Could we have the clerk or the analyst confirm that? Certainly that has something to do with how I will proceed. I would like to have that confirmed.

First of all, is it at the discretion of the Speaker as to whether or not he allows amendments at report stage?

Second, is anything that's voted on at committee reported that way?

Third, would the effect of the votes at this committee, in fact, be substantiated at that point?

The Chair: Just bear with us a moment.

Madame Boivin, are you sure you don't want the chair?

Some hon. members: Oh, oh!

Ms. Françoise Boivin: I'm busy.

Some hon. members: Oh, oh!

The Chair: According to the Standing Orders:

For greater clarity, the Speaker will not select for debate a motion or series of motions of a repetitive, frivolous or vexatious nature or of a nature that would serve merely to prolong unnecessarily proceedings at the report stage and, in exercising this power of selection, the Speaker shall be guided by the practice followed in the House of Commons of the United Kingdom.

I don't think that's the one you wanted.

Mr. Randall Garrison: I think we need to go there.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): I think we should study the United Kingdom's procedure and take the committee on the road.

The Chair: As we look at the Standing Orders, I don't think anybody here in this room could definitively say what the Speaker would rule or how he would rule. I think there are reasons to believe

that it could be either way, but the Speaker would obviously make that decision, and I wouldn't want to preclude his judgment.

Depending on how it's read at the time—and probably the Speaker would have the opportunity to take a longer time to study it—he would come to his own conclusion, and I think that's appropriate.

Mr. Jean, I wouldn't want to say—I couldn't say—what the Speaker would rule or wouldn't rule.

Mr. Brian Jean: The uncertainty does have some concern for me, but I understand it to be a discretion—and I am not quoting the words, but I would like them quoted back to me, though—that he will rule them out of order or in fact include them in votes if they're vexatious or if they're.... What was the exact wording? Could I have that wording, please?

Perhaps you could refer specifically to where it's found in the procedure.

The Chair: I will read, or attempt to read, from page 47. It reads: “The Speaker will not normally select for consideration”—

Mr. Brian Jean: I have a point of order on that.

I apologize that I have it in Internet format, so I don't have the page numbers. Is that under report stage and third reading? I have the subtitles.

• (1710)

The Chair: It's under “Report Stage at Second Reading”, Standing Order 76(1).

Mr. Brian Jean: Could you give me the footnote number on that?

The Chair: It's Standing Order 76(5) in the Standing Orders.

Mr. Brian Jean: All right. Please continue.

The Chair: Okay.

It's under “NOTE”. The note reads:

The Speaker will not normally select for consideration any motion previously ruled out of order in committee, unless the reason for its being ruled out of order was that it required a recommendation of the Governor General, in which case the amendment may be selected only if such Recommendation has been placed on notice pursuant to this Standing Order. The Speaker will normally only select motions that were not or could not be presented in committee. A motion, previously defeated in committee, will only be selected if the Speaker judges it to be of such exceptional significance as to warrant a further consideration at the report stage. The Speaker will not normally select for separate debate a repetitive series of motions which are interrelated and, in making the selection, shall consider whether individual Members will be able to express their concerns during the debate on another motion.

Mr. Brian Jean: To me, Chair, it sounds like if that is the case, we can put other amendments on notice, but if they have been voted on... Was it ruled out of order?

The Chair: No.

Mr. Brian Jean: If it's been ruled out of order by the chair of the committee, which obviously none have been—except for the situation where they were ruled out of order specifically—would it be considered to be ruled out of order specifically because, for instance, in this case, amendment number one was voted upon, and then it made the difference in that I think CPC amendments CPC-3, CPC-4, CPC-5, CPC-8, CPC-9, and CPC-10 were then out of order as a result of only that clause 1 being passed?

The Chair: No.

Mr. Brian Jean: But do you understand what I mean, Mr. Chair? I'm not sure if those clauses fit within that, but it is something I need to know before I proceed.

The Chair: CPC-10 has gone, but CPC-8 and CPC-9 are not gone.

Mr. Brian Jean: I'm sorry, Mr. Chair, I was just using those numbers as examples. I want to make sure of the situation. Does it mean that they're ruled out of order because the other amendment passed, which didn't give consideration to Mr. Rathgeber's amendments in particular? Does that mean that the Speaker, obviously, immediately cannot consider those amendments?

That's significant, because they are not ruled out of order by the chair except on the basis that amendment NDP-1 passed.

If we look further at report stage and third reading, it talks about when a committee reports a private member's bill back to the House or is deemed to report a bill back, the order for consideration of the report stage is placed at the bottom of the order of precedence.

I am also wondering whether or not that can be changed with consent of all the parties so that we can move it to the top of precedence, if necessary.

The Chair: All of those decisions will be made by the Speaker.

Mr. Brian Jean: Of course, Mr. Chair, but the Speaker is—

The Chair: I am not going to rule for the Speaker at this committee, so the Speaker will make that decision.

Mr. Brian Jean: I understand, Mr. Chair. I just want clarity. I was a lawyer for a period of time, so I understand specific words and what they mean, and of course common law is governed by precedent and what took place before in case law, in particular, and the Speaker is bound by that case law as well, as he is by precedent, so I am wondering about the precedent of this particular case.

The Chair: I just wish every lawyer would understand the same

Mr. Brian Jean: Lawyers don't understand much, Mr. Chair.

Voices: Oh, oh!

The Chair: We are dealing with the amendment to the motion.

Mr. Brent Rathgeber: I have a....

The Chair: Go ahead, Mr. Rathgeber.

Mr. Brent Rathgeber: I was kidding on the point of order.

Mr. Brian Jean: I am serious about that. Does it mean—

Mr. Brent Rathgeber: So am I.

Mr. Brian Jean: Does it mean...?

My point, Mr. Chair, is significant, though, because it guides what I'm going to do in the next 15 minutes as far as this committee goes, myself personally. I am wondering about whether or not, on the basis of.... You found that because clause 1 stood, all the CPC amendments cannot stand. We did not have the ability to—

The Chair: I'll tell—

Mr. Brian Jean: I understand, Mr. Chair.

The Chair: —you exactly what the Speaker will say.

Mr. Brian Jean: I'm not asking you to do that, Mr. Chair. I'm asking for a specific reference from the legislative clerk, and I'd like to have it quoted on whether that means it's ruled out of order.

A voice: They've been dealt with.

Mr. Brian Jean: They haven't been dealt with.

• (1715)

Ms. Christine Lafrance: I will quote from O'Brien and Bosc.

Mr. Brian Jean: Please.

Ms. Christine Lafrance: It states: "Under the Standing Order, the Speaker has the power to select or group motions in amendment to be proposed at report stage." Therefore, all decisions are the Speaker's.

Mr. Brian Jean: I'm sorry, your mike is.... I can't hear you. I'm sorry.

Ms. Christine Lafrance: Page 783 of O'Brien and Bosc says, "Under the Standing Order, the Speaker has the power to select or group motions in amendment to be proposed at report stage." We cannot say more than the power resides in the Speaker's hands.

Mr. Brian Jean: I understand that, but could you read out the previous two sentences in O'Brien and Bosc, in particular, where you were?

I'm not getting the whole context. That's what I'm saying. There's additional information that I'm not being provided.

Ms. Christine Lafrance: It's just the beginning of the paragraph, so if I go back, I go back in 1985.

Mr. Brian Jean: Okay. Are you on...? I apologize for this. This might not make sense to anybody else, but if you look online, we can find O'Brien and Bosc, which I have in front of me. Could you just tell me the footnote number? That will tell me where I am in the report, and I can find where you are.

Ms. Christine Lafrance: It's number 435.

Mr. Brian Jean: Thank you.

Could I have a minute, Mr. Chair? I don't know if anybody else has anything to say.

That doesn't make sense to me....

The Chair: I have Mr. Rathgeber on the list.

Mr. Brent Rathgeber: I don't remember what I wanted to say, but speaking to the amendment—

A voice: And you are a lawyer?

Mr. Brent Rathgeber: Speaking to the amendment, I understand, in response to Ms. Boivin's query, that with respect to Bill C-273, this committee never had any opportunity to vet it clause by clause. In that situation I think it was automatic, or certainly more appropriate, that the committee vote and the House concur with the committee that there be an extension of time, because the committee had no opportunity to do clause-by-clause consideration of that important amendment to the Criminal Code.

We have a different situation here. We have a situation where the committee has met. Perhaps not as many minutes and hours have been dedicated to the clause-by-clause consideration as some would like, and certainly not enough to get through the bill, it would appear. However, that may be indicative of a problem: that is, this committee is going to be unable to adequately deal with what are certainly some controversial issues and some unclear definitions with respect to this bill.

Although this is not really speaking to the amendment, but more to the motion, I think we're almost in a situation—in law—a hung jury, where the committee has perhaps reached a point where it's having difficulty proceeding in a particular meaningful way. As a result, although I know I'm still speaking to the amendment, which I still think is based on a factually incorrect statement, I will be voting against the motion, because I think these are issues that only the House will be able to deal with.

The Chair: Thank you.

I have Mr. Albas.

Mr. Dan Albas: I thank you, Mr. Chair.

I appreciate that a lot has gone on in this particular committee, but Madame Boivin mentioned earlier the question of why one bill was reported back to the House without due cause or adequate reasoning—and there was some struggle on that—and why we're requiring this amendment to the original motion by Mr. Garrison. I think part of the answer lies in what Mr. Anderson brought up earlier. As a new member of Parliament, elected last year, I didn't know that there needs to be adequate cause, so I just want to thank my colleague for bringing that forward.

In regard to the issue, though, of the multiple amendments that were put aside because of the first one being adopted, I just think, from my perspective, that they weren't given full consideration. I think that's probably going to have more to do with the Speaker's decision, because I think every member of Parliament should have the right to bring forward an amendment and to have that amendment discussed, particularly if it is some consequence.

In summing up, Mr. Chair, I appreciate the situation that Mr. Rathgeber described earlier, and I certainly look forward to, at some point, a resolution by this body.

Thank you.

The Chair: I have Mr. Goguen.

Mr. Robert Goguen: I'm just wondering if you could read out exactly what we're voting on, since we've....

• (1720)

The Chair: Yes. I'll give you the motion first, and then I'll give you the amendment.

The motion reads:

Pursuant to Standing Order 97.1(1), the Committee requests an extension of 30 sitting days for the consideration of Bill C-279, An Act to Amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression) to allow its members to hold deliberations beyond the present deadline of Monday, December 10, 2012, and that the Chair present the report to the House.

The amendment reads, “because two sessions were interrupted by votes in the House and the committee was unable to complete the deliberations on this bill.”

Mr. Robert Goguen: The motivation is the amendment. Is that correct? Is that my understanding?

The Chair: That's the grounds for asking for the....

Mr. Robert Goguen: The rules provide that you have to provide some sort of a motivation. Those are the ground rules.

Did we actually interrupt two sessions? Did we miss one and a part...? Do we know that? Does the clerk keep records of that?

The Chair: What the clerk is suggesting is it's how you defined it last week. On Tuesday we did not have a meeting. This week we did not have a meeting on Tuesday because of votes in the House. That's why the meeting was cancelled. The week previous, I think everybody agrees that the witnesses were present, and we cancelled that meeting a week and something ago. I don't know the dates.

It's by debate how you calculate it, but....

Mr. Robert Goguen: I just wonder if the amendment has to be grounded in fact.

The Chair: On November 22, the sitting was suspended at 3:29. We came back at 4:22. We adjourned at 4:23.

Mr. Robert Goguen: We spent how much time on the one that was interrupted? Was it exactly one hour?

The Chair: It was one minute. That's from when we came back.

Mr. Robert Goguen: So you're 99% correct. Does that meet the test?

The Chair: I think it does.

I have Mr. Jean.

Mr. Brian Jean: Mr. Chair, I'm greatly concerned by this. I will explain why.

In what I have been given, on page 47 it states that,

The Speaker will not normally select for consideration any motion previously ruled out of order in committee, unless the reason for its being ruled out of order was that it required a recommendation of the Governor General...

In particular, this is what I am interested in, Mr. Chair:

...in which case the amendment may be selected only if such Recommendation has been placed on notice pursuant to this Standing Order. The Speaker will normally only select motions that were not or could not be presented in committee.

“Presented” is the key word I am interested in today. That's my question. Have the amendments by Mr. Rathgeber been presented? They certainly haven't been defeated. Have they been presented? I don't remember him presenting them. Is that what it means when...?

It doesn't say “ruled out of order”. I want to go on, Mr. Chair. I have quite a bit of information here, especially because this actually refers to the House of Commons of the United Kingdom, which I have looked up on the Internet. I found some more information that is very, very telling on this particular issue.

A motion, previously defeated in committee, will only be selected if the Speaker judges it to be of such exceptional significance as to warrant a further consideration at the report stage. The Speaker will not normally select for separate debate a repetitive series of motions which are interrelated and, in making the selection, shall consider whether individual Members...

—of which, Mr. Chair, there are another 298 or so who I'm sure would like to have some say in this particular bill—

...individual Members will be able to express their concerns during the debate on another motion.

My first question is, have Mr. Rathgeber's amendments been presented? Is it considered that they were previously defeated?

Then I go on, Mr. Chair:

For greater certainty, the purpose of this Standing Order is, primarily, to provide Members who were not members of the committee with an opportunity to have the House consider specific amendments they wish to propose. It is not meant to be a reconsideration of the committee stage.

Mr. Chair, I would argue that it can't be called a reconsideration because I never had the opportunity to consider, in the first place, Mr. Rathgeber's amendments, which I think make a better bill.

I continue with my quotation, Mr. Chair. I am not sure if I should stop or not so you could hear this, in particular, for a ruling.

For greater clarity, the Speaker will not select for debate a motion or series of motions of a repetitive, frivolous or vexatious nature or of a nature that would serve merely to prolong unnecessarily proceedings at the report stage and, in exercising this power of selection, the Speaker shall be guided by the practice followed in the House of Commons of the United Kingdom.

I would like to read a couple of issues in relation to the United Kingdom and what they have said in making laws—

• (1725)

The Chair: Mr. Jean, we have a point of order.

Mr. Randall Garrison: Mr. Chair, we have a lot of people listening. We have transgendered people here today. My question is this: when does the point come when the chair would rule that interventions by members on the other side are simply frivolous and vexatious and designed to frustrate the process, rather than to advance the bill? I believe that's what we faced here today. I am very concerned about that.

Mr. Brian Jean: I take exception to that.

Mr. Brent Rathgeber: As do I.

It's a breach of parliamentary privilege.

Mr. Brian Jean: I would like an answer on my presented and previously defeated questions as well, Mr. Chair.

The Chair: The problem is that you are dealing with the report stage in the House, and here we're dealing with an amendment to a motion. We really should focus on that amendment to the motion. What you are talking about is what the Speaker may or may not rule, based on a variety of things at the report stage in the House.

Mr. Brian Jean: With respect, I am not. I'm asking if Mr. Rathgeber's amendments, which I think make better law in this

particular case, were presented in committee. That's my question. Were they presented to the committee? I never saw them presented.

The Chair: What I am saying to you here and now is that the Speaker will decide that at the report stage in the House. I will not decide it, nor will the legislative clerks here be able to decide that. There will be advice given to the Speaker; he will make that decision.

What we're dealing with is the amendment to the motion. That's what we need to deal with.

Mr. Kyle Seeback: Mr. Chair, I would like to respond to that point of order raised. I am going to say that I sat here with this committee through deliberations on the Safe Streets and Communities Act, during which members on that side of the committee spoke and continued debate on that motion for about nine hours because they didn't like it and didn't want to pass it. I find it quite rich for someone to be saying that what is happening here today is frivolous and vexatious.

The Chair: We're getting really close to Christmas, folks, and—

Ms. Françoise Boivin: I don't feel the Christmas spirit, but I would like to address that because how many clauses, Mr. Garrison, does your bill have?

To have the Safe Streets and Communities Act compared to a bill of about four clauses I think is a bit rich, in all Christmas spirit.

The Chair: Madame Boivin, just step back a little bit and realize we're not going to get through this anyway. I see the clock has—

Ms. Françoise Boivin: There are two minutes left.

The Chair: —two minutes left. I think if we focus on what's before the committee—

Ms. Françoise Boivin: Maybe we can vote.

The Chair: I have Mr. Casey.

Mr. Sean Casey: I'll be supporting the motion and the amendment. It's clear that both sides feel the bill can be improved. Why we would send it back to the House without having a chance to discuss those amendments is frankly beyond me.

The Chair: Thank you.

Go ahead, Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): I'd like to ask whether we can put the question. Failing that, I'd like to apologize to everybody attending and watching for how this session has ended up.

The Chair: From my angle, seeing the clock shows 5:30, the meeting is adjourned.

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