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**Chair**

**Mr. Michael Levitt**



## Standing Committee on Foreign Affairs and International Development

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• (0850)

[English]

**The Chair (Mr. Michael Levitt (York Centre, Lib.)):** Good morning everyone.

I would like to call to order this meeting of the House of Commons Standing Committee on Foreign Affairs and International Development.

We are meeting here this morning on Bill S-240, an act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs).

We have the sponsor in the House of this bill, MP Garnett Genuis, who is going to be providing us with some testimony, and then we'll be hearing some questions from members. Given that there is a lot of interest in this bill in the room, why don't we let MP Genuis get right on with his testimony? Then we can open it up to the floor.

**Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC):** Thank you, Mr. Chair.

Thank you, colleagues.

At the outset, I'd like to start by recognizing the work of Senator Ataullahjan on this bill, as well as others who have proposed similar bills—Mr. Wrzesnewskyj who is here, and who got this ball rolling 10 years ago, as well as Irwin Cotler, for all of his work and support throughout this process.

This bill proposes to make it a criminal offence for a Canadian to go abroad to receive an organ without proper consent. It creates a mechanism by which someone can be deemed inadmissible to Canada if they have been involved in organ harvesting. This touches on a number of different situations. It seeks to respond to the situation in China, where the taking of vital organs from live, and often awake, political prisoners is state policy. It also responds to situations where organs are taken through coercion and exploitation, beyond the reach of even well-meaning local authorities.

In the 10 minutes I have, I don't see it as necessary to repeat in detail all aspects of this issue, which have already been part of the parliamentary record: that organ harvesting is a problem; that Parliament has a legitimate right, and indeed, moral obligation to respond to it; and that the application of extraterritorial jurisdiction, in this case, is appropriate. These are all points that have been well laid out, in the context of the parliamentary debate, but I would obviously be happy to revisit them during the question period.

I wanted to make a few particular points about the impact and timing of this legislation. First, on the issue of the impact, there has been some debate in the House about whether certain provisions of this bill are necessary, and whether certain provisions of the bill are onerous.

One member argued that the inadmissibility provision in the legislation might not be necessary, because those involved in organ harvesting could be deemed inadmissible on other grounds. Another member wondered if the criminal law aspects could be inferred into other statutes. Some members said that there are no known cases of this in Canada, and one member argued that prosecutions under this legislation could be onerous, because they would involve the requirement that prosecutors gather evidence in other jurisdictions.

I disagree with many of these arguments. I argued in response that extraterritorial prosecutions are easier in this case, because the recipient brings back some physical evidence with them, and there's aftercare involved. I pointed out that while any organ harvesting that took place in Canada would already be illegal, this legislation creates a new mechanism by which that crime could be prosecuted if it took place in another country. The presence or absence of documented cases of organ harvesting here in Canada is really beside the point.

I do not believe that any provision of this legislation is redundant or unnecessary. The extraterritoriality provisions are key, but other aspects of the criminal law provisions are substantive, new and important.

Suppose that I'm wrong. Suppose that the bill is, in fact, challenging to administer at points, and redundant in its impact. If that is the case, then it may not do that much good, but it also won't do any harm. Note that prosecutions can only proceed under this legislation if authorized by the Attorney General. If a prosecution is too onerous in a particular case, there simply isn't a need to authorize it in that particular case. The requirement for authorization is a strong check to ensure that these powers are not executed in an unreasonable way, or in a way that runs contrary to the public interest. If the immigration provisions are redundant—I don't think they are, but if they are, so what? Who's made worse off by the extra emphasis around inadmissibility?

One thing that nobody will deny about the passage of this bill is that it would send a strong message about Parliament's, and Canada's, commitment to fighting forced organ harvesting. My point, colleagues, would be that at worst, this is a bill that its most extreme critics would say has low impact. I don't agree with those critics, but even if they're right, we lose nothing by passing this legislation. At worst, it's a symbolic positive impact, but at best, it will save the lives of some of the most vulnerable women, men and children, by cutting off the demand for harvested organs. If we can get other countries to follow suit on this initiative, this will have orders of magnitude more impact on the lives of some of the world's most disadvantaged people.

Whether you believe the impact of passing this bill will be large or small, I hope you will support its swift passage.

On the issue of timing, members know that we are in an election year. This bill has been working its way through the process for the majority of this parliamentary session. Getting a substantive private member's bill across the finish line is not a quick or easy thing to do, and that explains why multiple great bills on this topic, over the last 10 years, did not make it all the way through. If we don't get this done, how much longer will victims have to wait—four more years, 10 more years?

Let's do everything we can to maximize the speed of passage of this bill, so that we can look our children in the eye and tell them that we didn't just talk about good ideas, we actually got good things done.

I am grateful to this committee, and to you, Mr. Chair, for the fact that we're proceeding quickly to clause-by-clause consideration. Clause-by-clause will provide members with the opportunity to propose amendments. I note that this bill was studied by the Senate committee, and substantially and constructively amended at that point. It builds on detailed legal work that includes the work of, as I mentioned, former minister of justice Irwin Cotler.

If members see a vital need to amend this bill before passing, then certainly they're in their rights to do so. I think there would still be a shot at getting the bill passed before the next election.

However, as colleagues know, if passed in its present form, this bill will go straight to royal assent and we will certainly have delivered to victims and their families. I think it will complicate the process if the bill is amended and goes back to the Senate with no guarantee that the Senate will like our new revisions.

The Senate's rules are different from ours. This close to the federal election, all it would take would be for one senator to choose to adjourn the debate in their name. That would, I think, prevent it from proceeding.

Under different circumstances, I would probably have proposed minor amendments myself today. However, we have to take stock of the circumstance we're in. The clock is ticking hard. My sincere recommendation is that we pass this bill in its present form and in so doing ensure it moves forward before the next election.

I hope members who want to propose amendments have been able to consult substantially with the Senate to ensure it will give quick passage to the amended version.

If we gut this bill, as some appear interested in doing, then we're obviously a lot worse off. Even if we marginally strengthen it, we will likely be worse off unless we can get it done before the next election. I would suggest we consider supporting this bill without amendment so that we can ensure we deliver the justice we want for victims.

In this case, we have a gaping hole in the law that allows Canadians to be complicit in a grievous violation of human rights. In this case, our human rights architecture is like a ship with a gaping hole in the side. Recognizing the urgency of the situation, I say that we need to ensure the hole is patched. If we subsequently need to make improvements to the patchwork, so be it.

If this committee agrees to pass this bill in its present form today or this week, our chances of getting it into law before the end of this Parliament are very good. There have been four bills on this over 10 years. This bill represents the culmination of work done by some of the best human rights minds in the world—people like Irwin Cotler, David Matas and David Kilgour.

Let me close on a personal note. Members know, I think, that my grandmother was a Holocaust survivor. She avoided capture. Despite her lack of privilege, she avoided the torture of the concentration camps because there were people in her community with more privilege who were willing to protect her and to speak out for justice, when and where possible.

As sitting members of Parliament, we all have a form of privilege. We can choose to use that privilege to speak for ourselves, our interests and the interests of our tribe, or we can use it to speak for those who do not have a voice. We can speak for the poor and suffering of the world, like my grandmother in her time, who could not speak to a Parliament or a committee about her situation.

We can be a voice for ourselves or we can be a voice for the voiceless.

I think of the fact that today, in the People's Republic of China, we have Uighur Muslims being put in concentration camps, churches being exploded with dynamite and many others being killed for their organs.

A couple of years ago, I was in Berlin and I spent time exploring the history and the memorials related to the Holocaust. It hit home for me, seeing the crowded urban areas from which Jews were shipped by train to concentration camps. It hit home for me that people saw what was going on. I visited Sachsenhausen, which is outside of Berlin, in the heart of one of the city's suburbs. Many of these atrocities were not well hidden. Ordinary people saw them, knew about them and did not do enough to stop them.

Why didn't they stop them?

Too often, people excuse themselves from doing what is necessary to stop injustice by using "whataboutisms". That is, they get hung up on minor details or irrelevant facts that distract their attention from the bigger picture of injustice being done to the innocent. About the horrors of the slave trade, William Wilberforce said, "You may choose to look the other way but you can never again say that you did not know."

I say to committee members: you know because you have read the stories and heard about the contemporary horrors of human rights abuses, organ harvesting, trafficking and the complicity of some Canadians. We must do all we can to put a stop to this.

Let's pass this bill to ensure it becomes law as soon as possible. Let's maximize our chances of success by recognizing the legislative process as it is. Just like William Wilberforce's audience, you and all of those watching at home may choose to look away but can never again say you did not know.

• (0855)

**The Chair:** Thank you very much MP Genus. Your commitment on this file certainly comes through in your words. We appreciate that.

I would now like to move straight into questions. We're going to begin with MP Aboultaif, please.

**Mr. Ziad Aboultaif (Edmonton Manning, CPC):** Good morning.

Thank you, Garnett, for sponsoring this bill, this legislation. Congratulations on your efforts. I believe this is a very, very important bill. I hope it will pass. I know it will make a difference for thousands of people out there.

I also know that you are passionate about this bill. You have introduced similar legislation, Bill C-350. It is in your mind. I know it's on your agenda.

Do you believe that your legislation, Bill C-350, is complementary to Bill S-240?

Will this piece of legislation provide the protection you had in mind in Bill C-350?

**Mr. Garnett Genus:** I put forward Bill C-350 in Parliament. Bill S-240 is a very similar bill, which Senator Ataullahjan put forward in the Senate. Though slightly different in some of the details, these bills substantively do the same thing.

The design was never for both of the bills to pass. It was just recognizing the difference in process. There are certain aspects of the Senate rules and the House of Commons rules that create different opportunities to move bills forward at different times.

**Mr. Ziad Aboultaif:** It seems that the main reason for organ harvesting and trafficking is the lack of legal donors out there. I'm an advocate of living, legal donors, whether for tissues or for organs.

S-240 can really assist with the demand for organs by explicitly prohibiting organ trafficking and creating consequences for those who attempt to commit these acts. Do you believe, in this instance, that the Government of Canada could make a meaningful difference by working with the provinces to address the supply side as well, through a national organ registry, as has been presented before by me under C-223, and further, from two other members?

• (0900)

**Mr. Garnett Genus:** When we have a case where a Canadian goes abroad to receive an organ for which there isn't consent, we recognize that as feeding and supporting a great evil, which is organs being taken from people forcibly, without consent. We need legislative mechanisms such as we're discussing today to stop that.

However, I think it is reasonable and important to also think about the circumstances that put somebody in that desperate situation, which is a result of a limited supply of organs. That is why I was pleased to support your private member's initiative on this. Thank you for your good work. I was pleased to support and speak in favour of the private member's bill from our colleague Len Webber, which would put the opportunity to indicate that you are an organ donor on tax forms. This facilitates the increase in supply, as well. I was very pleased to see Mr. Webber's bill receive strong support from all parties.

There is an interest in coming at this issue from a number of different angles. It's the old question of fighting crime and fighting the causes of crime. I don't think those things are mutually exclusive. We can and should do both.

Hopefully, by coming at it from both directions, we maximize our chance of success here.

**Mr. Ziad Aboultaif:** I think this bill can speak to many different areas, and hit many targets. One of them is organ donations. I hope that the spirit of supporting the two other bills that are already in the House, from the government side and from all sides, will carry forward this one. I would take this opportunity to call for support for this by all sides and to make sure that we have this opportunity to hit more than one bird with one stone and get the result we need.

I'll leave it to you to make the final comment on this area. To me, it's a very important angle to tackle this bill from. It's something we should pay a lot of attention to. We should make it obvious to all members that this is also a very important element in this bill.

**Mr. Garnett Genus:** Thank you very much for your comments and your support. Those questions were tough but fair, so thank you for that.

If you'll allow me, I'll add one issue on the inadmissibility provisions, which I neglected to mention during my introductory remarks. The provisions around inadmissibility to Canada in the Immigration and Refugee Protection Act right now deal with gross criminality as grounds for inadmissibility.

In some cases, when we deal with organ harvesting, there are cases of people who are not breaking any law in the country where they are, but they are still in a gross violation of human rights. That is one of the reasons why I think those immigration provisions that are part of this legislation are very important. People could be acting as they are directed, carrying out terrible human rights abuses in a country such as China, where this is a matter of state policy. Those people, I believe, should still be able to be considered under the inadmissibility provisions, because they're involved in a gross violation of human rights.

That's an important area where this law is advancing the discussion. There are cases, yes, where people could be involved in organ harvesting, who are also breaking the law in the country where they are, and those people could be considered inadmissible on both grounds. But there are certainly cases where the new provisions are necessary.

I just add that to my comments at the beginning.

**Mr. Ziad Aboultaif:** Thank you.

**The Chair:** We are now going to move to MP Wrzesnewskyj, please.

• (0905)

**Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.):** Let me begin by thanking Mr. Genuis for sponsoring this legislation. He's already mentioned the long journey that has brought us here. In fact, it's been 11 years. On February 5, 2008, C-500 in the 39th Parliament it was first introduced by me, so I'm feeling very expectant and anxious. I believe that we can get this through our committee this week, and this could be a great example in difficult circumstances in the House of parliamentarians doing what's right on a very important file. We have support of all parties. We have the support of both chambers within our Parliament. It's a rare occasion that we see this type of support, and it will be a demonstration of the legislature and legislators doing their vital work.

You mentioned the great work done by the two Davids: David Matas and David Kilgour. They really shone a light on perhaps the darkest of evils of our current times. Perhaps not in the same way as you see in cases of genocide, but there was something to what you said when you referenced your grandmother. Not since World War II have we seen human horrors on an industrial scale by a state, a government. China has, on an industrial scale, been taking the most vulnerable—people who have been incarcerated for their beliefs—and profiting from a systemic system put in place to literally cannibalize the bodies of those vulnerable individuals.

You're going to get some more tough questions, as you referenced. Mine won't be so much a question, but I want you to further provide context around why it's so important for us to do this. Ten or 12 years ago this first became an issue, and it's the confluence of a number of things that have happened globally. Medical technology wouldn't have allowed for these sorts of transplantations 20 or 30 years ago, so it was a change in medical technology. And then there is this global disparity. You have people of the wealthy west, and you have not just China but destitute farmers in India falling victim to this type of trafficking. You have 17-year-old orphans in Ukraine falling victim. The most vulnerable globally are the victims of this horrific trade in human organs. If people say, "Well, that's far away. It doesn't affect us", it does, in ways that perhaps people need to be reminded of.

I think it was the week after I introduced the legislation—February 5, 2008—that the Toronto Star had headline stories about "Dr. Horror" from Brampton, who lived in a mansion, had a very good life here in Canada, and had a series of clinics in India that preyed upon the most vulnerable. Farmers who were destitute were promised significant amounts of money. They didn't always receive it. It wasn't necessarily explained to them that you can only donate one kidney and not two.

• (0910)

I would like to conclude my statement of support by saying this is a horrific trade. All of the trends that have led to this trade are increasing the income disparities and the number of vulnerable through medical technology.

We should be a leader. We can be an example for other countries by passing this legislation.

I have a minute and a half left if you'd like to comment on any of the statements I've made.

**Mr. Garnett Genuis:** Thank you so much again, Mr. Wrzesnewskyj, for your comments and your work on this.

I want to make sure that people watching this don't get the impression that just because we've been agreeing so far, this is going to be easy. It's February, the parliamentary session goes until June and there are details that are part of the discussion. The continuing engagement of people at home in the decisions we make about how to move forward are critical. Sometimes, even if there's facial agreement, there's still a lot of hard work, and people shouldn't be complacent even though they're seeing agreement. But it's good to see that agreement, and I think we have an opportunity, as you say, for parties to work together. Yes, February 2008 was a long time ago, and it was a longer time ago for me, as I was in school at that time. Hopefully, my kids won't be in high school before we get this done, right?

In the remaining time, Borys, you raised the issue—and I think it's a critical one—of injustice in an interconnected world. In a more globalized interconnected world, there are opportunities for exploitation and injustice. There are a lot of great opportunities that come from interconnectedness, but there are opportunities for injustice and exploitation.

I believe that's why we need to be willing to use more extraterritorial provisions. We did this in child sex tourism. When it came to light that people were going overseas and engaging in this horrific practice of child rape, essentially, we said that in an interconnected world we need new legal tools that respond to new forms of injustice. That means prosecuting people for terrible things that they do overseas, prosecuting even if they're not doing those things within our country.

This is an extension of that principle. An important issue for this committee to explore in general is countering injustice in a more interconnected world where people aren't just exploiting others at home, but might be involved in exploiting others overseas. That will require creative ways of thinking and new legal tools. We can't just be complacent and think that the tools of yesteryear have kept up with the current trends in terms of travel and technology. They haven't. That's why we need to be adaptable as well.

**The Chair:** Thank you very much.

We shall now move to MP Ramsey.

**Ms. Tracey Ramsey (Essex, NDP):** Thank you to the committee for having me here this morning as a replacement for my colleague Madam Laverdière, who couldn't be here.

I think it's clear that the NDP supports this effort and really hopes for that swift passage as well, given the timeline that we're up against, which you've highlighted well. Also, as you know, we strongly oppose the trafficking. The abhorrent treatment of those who are globally manipulated, abused and exploited for their organs is of significant concern to New Democrats as well. We do hope that this moves swiftly.

You've mentioned some domestic issues that are a struggle. Like many Canadians, I have a family member who is a donor recipient and who thankfully is here at home, but that limited availability that has people seeking organs globally has become a legitimate issue for us. My colleague Mr. Aboultaif raised the issue of our domestic attempts in trying to address the organ shortage we have. I have a question for you along that line.

Do you agree that the Government of Canada should consider the feasibility of a presumed consent system for organ donation, whereby individuals opt out instead of opting in, which some of the legislation I think is attempting to address? I'll ask that first.

**Mr. Garnett Genuis:** Thank you for your question and thank you for the support of the NDP. I know Ms. Laverdière, Ms. Hardcastle and others have been engaged in discussions around this, as well as Mr. Rankin, your justice critic. He gave an excellent speech on this issue in the House. I appreciate your presence and commitment.

Organ donation is a bit outside the scope of the things I've been most embedded in thinking about the testimony for today.

In terms of a presumed consent model, there are many things we could do short of presumed consent that would substantially increase the availability of organs. There's been a lot of discussion about it in this Parliament, but we haven't yet ventured down the road at all of what Sunstein and Thaler would call nudges in the direction of increased donations.

Those nudges suggest the adjusting of a choice architecture to things like what my colleague Len Webber had proposed in a private member's bill, to have people on their tax forms indicate yes or no on whether they were going to be an organ donor. It is also suggested to automatically have people—in certain kinds of situations, like filling out their taxes—presented with the choice, things like a national organ donation registry with greater public information. Some people would have concerns about presumed consent from a personal liberty standpoint. There are many things we can do before we have that discussion that might solve the problem as it is.

My inclination would be to take those steps first and then we'll see the impact of those steps. Again, that's not a particularly well-thought-out response, because it's outside my focus today. It's an interesting discussion and, obviously, fits into the broader question of how to increase organ donations.

● (0915)

**Ms. Tracey Ramsey:** Yes, I think it's important. Canadians are going abroad seeking organ transplants and treatment they can't receive here. As our colleague pointed out, they're maybe not given the best medical advice that they could be given, so ultimately, it is endangering the lives of Canadians. You spoke about aftercare when they return home and all of those pieces. I do think it fits into what you're attempting to sponsor here.

The other question I have is about other countries. Do other countries exercise extraterritorial jurisdiction over trafficking offences that are related to the removal of human organs? If so, what are some of the best practices we see globally?

**Mr. Garnett Genuis:** Other countries do have similar laws.

It's kind of interesting how this whole effort was started by Canadians, in terms of raising awareness of this. David Kilgour and David Matas did the initial report. David Kilgour mentioned to me that it's a source of embarrassment that you have these prominent Canadian experts who have done this work leading to legislation being adopted in other countries, yet Canada, the source country of these great experts, has yet to pass legislation.

I know Israel, Spain and Taiwan have passed legislation, and other jurisdictions have as well. I was just flipping through the list of countries in my notes. Maybe it will come to me later on. I hope that by Canada doing it, we can increase that global momentum, getting more countries on board.

**Ms. Tracey Ramsey:** What has the impact of legislation been in those countries?

**Mr. Garnett Genuis:** In general, where this has taken place, there's more awareness. It doesn't happen in the same way or at the same levels.

A doctor started this process in Israel. He had a patient who came to him and said he was going to a particular country to receive a heart transplant and it was scheduled for a specific day in the future. Noting his understanding of medicine he said, "Wait, it's not really possible to know that a heart is going to be available." It was through that exchange that it was unearthed that probably somebody was having a life taken in order to have that transplant take place.

A big part of this battle is awareness, but also that disincentive. That's something we're seeing in those countries, it's an increased awareness and the disincentive that's there. It's still a relatively small number of countries that have gone down this road. It's a still relatively new effort. We'll see greater impacts in more countries over time.

● (0920)

**Ms. Tracey Ramsey:** Thank you.

**The Chair:** MP Vandenberg, please.

**Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.):** I want to thank you very much, Mr. Genuis, for putting this incredibly important bill forward, and others before you—Mr. Wrzesnewskyj and others. I'd just like to reassure you that we absolutely support... I have one hundred per cent support for what you are doing. It has been a long time coming. I think that illegal organ trafficking is probably one of the vilest and most inhumane, worst forms of trafficking and of crimes that are happening internationally. Canada should be leading the world in this regard. We also share your urgency to make sure we get legislation passed on this.

In terms of the international community, in the subcommittee on human rights we heard Uighur testimony that they're being asked for DNA samples, which raises a very dark spectre of why are they being asked for DNA samples. The UN Office on Drugs and Crime is saying that armed groups and terrorist groups are now using trafficking, including organ trafficking, as a means of funding their terrorist activities.

No Canadian, I believe, would ever want to receive an organ from somebody where the person was either murdered or was extorted or coerced. I think this is something we all know is absolutely wrong. Could you tell the committee what are the trends internationally? Is this a problem that is increasing? Is this a problem that is getting worse? Is it spreading? What are the international trends?

**Mr. Garnett Genuis:** Thank you very much for your question, and for your support, Ms. Vandenberg.

I found in my notes the list of countries that have passed similar legislation. I mentioned Israel, Spain and Taiwan, but also Italy and Norway are on the list. There are some other examples to look at in terms of similar legislation being enacted. I think you outlined the international trends very well in your comments.

What we see with China is sophisticated, well-organized abuse of human rights. I think it's sort of a stereotype in our language that is false, where we tend to associate technological development—so-called "civilization"—with moral improvement. Those things do not go together in any sort of automatic sense at all. When we look at China we see a systematization of gross violation of human rights. I know the parliamentary secretary, who's here, and I had the honour of working with him on the Canada-Tibet parliamentary friendship group. He's very aware of that in that context, I know, as well as in other contexts in China. You mentioned the situation with Uighurs, the collection of DNA samples, so there's a lot...

Of course, these things aren't publicly advertised in terms of exactly what they're doing. It takes the detailed work of people like David Matas and David Kilgour to unearth it. The link to the terrorist financing.... All of these things are emerging and growing problems and they are part of what I referred to earlier, in response to Mr. Wrzesnewskyj's question. They are the changing impacts of injustice in an interconnected world. We need to do all we can to make sure that we are not being in any way complicit in this.

I think your comments about terrorist financing underline another issue here, which is the security dimension of this. I'm not the sort of person who thinks that everything has to be denominated in terms of security. Human rights is enough of a reason for me. I think when you have this very strong potential revenue stream for extremists and dangerous organizations, that has an impact on our own security as well.

**Ms. Anita Vandenberg:** There are Canadians, particularly diaspora communities, who, if they need an organ.... They may have family members abroad or they may be dual citizens who go to their home country, where there might be things that are perfectly legal, in order to get organs. Is there anything in this bill that would preclude somebody from being able to do something like that?

**Mr. Garnett Genuis:** This bill does not in any way seek to restrict people from receiving organs from abroad if there is consent. The requirement is that they don't receive organs from abroad if there is

not consent. Bill C-350, which was a bill I proposed that was wholly the same as a bill proposed by Irwin Cotler, envisioned a system where somebody would bring a certificate with them attesting to that consent. There's some potential value in that, but there's also some complexity around assessing the validity of a certificate in countries where that just may not happen as a matter of course.

The way this legislation is set up, it would be incumbent on the prosecution to demonstrate, based on a typical standard of proof, that there was exploitation or there wasn't proper consent.

Does that mean that there are cases where someone might be involved in organ trafficking and it's difficult to prove or it's difficult to get a conviction? Yes, that's something that prosecutors deal with every day. Certainly for somebody who innocently went abroad and received an organ for which there was consent, doing so in another jurisdiction that has the rule of law or receiving from a family member, the risk that the person would get caught up in a prosecution here is totally nil. If anything, the risk is greater the other way, that someone would do something nefarious and not get caught in a prosecution. At least it's better to have this law than not have this law, even though we're not going to be able to successfully prosecute every case. Again, that's true of any law.

• (0925)

**The Chair:** Thank you very much, MP Genuis. That brings us to the end of the questions for you. We really appreciate your being here. You're hearing from all sides of the table that there is an acknowledgement of the importance of this particular bill. You're right that it's about doing the hard work now to ensure a path forward that will see it successfully passed.

With that, we will suspend. We have David Matas joining us at 9:45 by teleconference.

• (0925)

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

• (0940)

**The Chair:** Thank you, colleagues. We're resuming. We have David Matas on the line.

David Matas is a lawyer and senior legal counsel for B'nai Brith, and he is a subject expert and long-time advocate on the issue of human organ trafficking. We're very pleased to have him join us from Winnipeg this morning by phone.

Mr. Matas, I will ask you to provide testimony, please, and then we will open things up to questions from members. I know there are quite a few.

**Mr. David Matas (Senior Legal Counsel, B'nai Brith Canada):** Thank you.

I had some prior discussions about the bill with some of you. Three different issues have been raised: compulsory reporting, consideration for payment and body parts other than organs. Let me say a bit about each of those issues.



Compulsory reporting is an issue where there was a constitutional question raised, because the bill now says “reporting to a designated authority”. I looked at the definition of “Attorney General” in the Criminal Code because the bill says there has to be consent by the Attorney General. The term “Attorney General” in the Criminal Code is defined to mean the Attorney General or Solicitor General for the province in which proceedings are taken, and the Attorney General of Canada pertains only to Yukon, Nunavut and the Northwest Territories.

That issue of constitutionality, as I see it, can be answered in one of four ways. One is just to leave the bill as it is and to leave the issue of who the designated authority is to the Governor in Council, who could in theory, in consultation with the provinces, designate provincial authorities for each province where the Attorney General or the Solicitor General has the power to consent to prosecution. That would be one option.

A second option would be to change the bill to require the consent of the Attorney General of Canada, as opposed to just the Attorney General, so as to allow for the designated authority to be federal.

A third option would be to change the consent requirement as it exists in some parts of the Criminal Code to be either the Attorney General of Canada or the Attorney General or Solicitor General of the province, which would maximize flexibility in the designation of the relevant authority.

A fourth option is to change the bill so that instead of requiring “reporting by an authority designated by the Governor in Council”, it would require “reporting to the Attorney General”. That would mean the Attorney General as defined in the Criminal Code, which would mean reporting to the Attorney General or Solicitor General in each province where proceedings might be taken. I point out that this is a common form of reporting. There's a lot of reporting legislation right now in Canada for child abuse, for gunshot wounds, and a lot of this reporting goes straight to the prosecutorial authorities.

Those are the options that I saw for the first issue about reporting.

In terms of consideration, the issue that has arisen is whether the bill as it now stands would penalize compensation to the donor for expenses incurred or income lost. There are a couple of ways to deal with that. One is just to leave it to prosecutorial discretion and the consent of the Attorney General and not change the bill.

A second is to have specific wording, and instead of saying “consideration”, say “consideration for the purpose of exploitation”, which is the language used right now in the Declaration of Istanbul on Organ Trafficking and Transplant Tourism. Exploitation is a well-known concept in the Criminal Code, where it's mentioned 36 times. In particular, it's part of the offence of trafficking of persons in the Criminal Code.

The third issue I heard raised was the issue of body parts—whether the reference to organs is too narrow, and whether the bill should also refer to “tissue”. If the bill were amended to refer to tissue, the question would arise whether that's too broad, and whether some forms of tissue would need to be exempted.

Again, there's more than one answer. One is to do nothing, because the fact that something more can be done that is worthwhile

is another argument for doing something, which is in itself worthwhile, and which is in the bill right now. A second answer is to add “tissue”, but to rely on the concept of exploitation to avoid overbreadth. Presumably, consideration for those tissues, which the bill would not intend to capture, would not be consideration for the purpose of exploitation. The third answer is to add “tissue” but exempt specific tissue listed by regulation. I would think there would have to be medical consultation to determine which tissue would fall within the regulation.

● (0945)

Those are the various issues I heard discussed, and the various options I present for your consideration. I realize there's a strategic consideration involved because if there's an amendment then it has to go back to the Senate and in theory any one senator could delay the passage of the bill through the Senate with amendment.

I feel in terms of strategic considerations you're in a better place to deal with them than I am. I leave that to your wisdom.

**The Chair:** Thank you very much, Mr. Matas.

We will now proceed to some questions for you.

We're going to begin with MP Genuis.

**Mr. Garnett Genuis:** Mr. Matas, it's an honour to speak with you even if it is over the phone. Thank you for your excellent work on this issue, as well as some good discussion here about some of the legal details.

These three points we discussed are important. I note that for each of the three you've shown us that not amending the legislation is a strong option. Of course, you're looking at it from a legal perspective. For us, the political perspective is very much doing something versus nothing. That may be the reality we're up against.

I just want to go through these three points again and probe them a little.

On the first point, the issue of reporting and the question of constitutionality, the legislation as it's currently drafted, if I understood you right, would fully allow the Governor in Council to designate the appropriate provincial authorities. That would get around any concerns about constitutionality. It would provide that the government was making the appropriate designations. There wouldn't be any question about treading on the division of powers because of the ability to designate that is open within the legislation.

Did I understand you right on that point?

**Mr. David Matas:** Yes, in terms of constitutionality because right now the Criminal Code says “Attorney General” but includes in that concept the Attorneys General of the provinces. I don't see any real difference between that and the Governor in Council designating provincial authorities to deal with the issues. It strikes me as the same type of constitutional division of powers.

**Mr. Garnett Genuis:** It seems then that, although there are other options for dealing with that issue, the current legislation provides a strong and effective framework for responding to that.

On the issue of consideration, it seems like a pretty “out there” speculation that somebody would attempt a prosecution on the basis of someone's expenses getting covered. Covering someone's expenses so they can provide a voluntary service seems very different from doing something for consideration. In any event, there's prosecutorial discretion but there's also the requirement of sign-off from the Attorney General.

Do you think that is sufficient to ensure a minimally reasonable reading of this as well as those elements of discretion?

Do you think that is sufficient to respond to potential concerns around a wild misinterpretation of the concept of consideration?

● (0950)

**Mr. David Matas:** In principle it could be. I'm familiar with the concept of consent of the Attorney General because it exists in a lot of other provisions of the code.

In particular I've been dealing with the consent of the Attorneys General through the concept of prosecution for incitement to hatred. In British Columbia, for instance, the Attorney General has settled criteria for exercising consent. There's an intermediate step between complete discretion in all cases and something specific in the bill. That is guidelines or criteria, the Attorneys General together or individual Attorneys General could play out for. It's a granting of their consent.

**Mr. Garnett Genuis:** One other quick issue on that is the prospect of changing it to “for the purpose of exploitation”. One possible worry I would have for that is does “for the purpose of exploitation” refer to the intention of the recipient?

Because somebody might be receiving an organ without any sort of specific intent to exploit. In that they may be grossly negligent and their intention is to get an organ for themselves. They are exploiting in fact but they're not seeking exploitation.

Do you understand what I mean?

**Mr. David Matas:** Yes. In general, the criminal law includes both intent and recklessness, so if somebody is wilfully blind, that might well be covered for the purpose of exploitation. If you can't establish the requisite criminal intent, you couldn't get a conviction.

**Mr. Garnett Genuis:** I think it is worth noting that the original version of the bill referred to tissues, but that was removed by the Senate, so any change we would make that would reintroduce the concept of tissues or body parts would raise questions of further back and forth and create greater challenges.

I'm also curious to know if the term “organ” is defined anywhere in the Criminal Code. This bill doesn't include a definition of “organ”, so in a way I think it's open enough for “organ” to include body parts, but not the kinds of tissues that the Senate wanted to exclude—things like embryonic tissues, which raise a lot of other kinds of considerations.

**Mr. David Matas:** I'm not familiar with the definition of “organ” in the Criminal Code, but I don't think we should stray too far from ordinary English language understanding or medical understanding of the terms, and “tissue” is a concept distinct from “organs”. It is possible, I suppose, to define “organs” to cover more than what is

ordinarily understood as organs, but that would raise the issue of a further amendment.

I think that if we have “organs” and not “tissue”, we're stuck with “organs” and not “tissue”. I see that as not necessarily a problem because the bill.... I mean, no matter what legislation you have, you can always think that there is something you can add that might improve it, but there is nothing wrong with the bill as it stands simply because “tissue” is not there.

**The Chair:** Thank you very much.

Parliamentary Secretary Virani.

**Mr. Arif Virani (Parkdale—High Park, Lib.):** Thank you, Mr. Matas. It's always a pleasure to hear from you. Thank you for your long work on the objectives that are being sought by this bill. I will be candid with you and say that there has been some concern expressed—and I share some of the concern—with respect to the financial transaction component, so that's what I am going to ask you about.

It dovetails with what Mr. Genuis just said about how in the Senate there was a differentiation made on “organ” versus “tissue”. I think they were very alive to the issue about reproduction issues and people going abroad to obtain sperm and ova, for example, but they were also quite alive to the issue of people who.... I think the easy case, Mr. Matas, is the one where there is a prisoner, there is clearly no consent and their organs are harvested against their will. That's targeted by this bill. That is something that obviously all parliamentarians want to address.

The tougher case is the situation where, because of the organ shortages in this country, people in desperate circumstances are forced to go abroad to seek organs and end up transferring money in the process of procuring that organ even if they believe they've obtained consent. What I want to ask you is about the aspect of consideration. Specifically what I want to ask you is whether informed consent is enough, simpler, to address the issue?

I'd put it to you this way, Mr. Matas. If someone is obtaining an organ through unethical practices, such as inducing the consent of a person by deceiving them about the need to risks or consequences of the procedure, would that constitute a lack of informed consent on its own?

● (0955)

**Mr. David Matas:** Obviously when it comes to whether or not an offence is committed, in hypothetical examples, that's really something that prosecutorial authorities have to decide based on the facts of the cases, because no case in reality quite conforms to a hypothetical example that we can imagine.

I can see that what's behind the notion of informed consent to a certain extent is trying to in another way get at the issue of exploitation. It's another way of saying that the bill itself may be sufficient already in its terms, but I do think that if the committee wants to be more explicit, it could add the concept of exploitation. Obviously, the intent there is that you not take advantage of the source in any way, whether it's through payment, pressure or incentives. The idea is that it has to be truly voluntary. Of course, the classic case is that of somebody in detention, but there are a lot of non-detention cases where we can think of examples where the situation is not truly consensual.

I think that all Parliament can do is set out principles and set out general language. When it comes to specific cases, I think we really have to leave it to the prosecution to try to capture the intent of the legislation.

**Mr. Arif Virani:** Further to that, Mr. Matas, as the clause is currently structured—this came up when MP Genuis was testifying as well—it creates an offence with respect to the financial flow of consideration. It's not restricted to consent only. I put that out there.

Secondly, I think it's also important that as parliamentarians we target it as much as possible to what you describe as taking advantage—“exploitation” was the language you suggested. Right now, it criminalizes both the the vendor and the purchaser. That's a concern as well. What I would think we are trying to address is the purchaser and also, perhaps, the middleman, the broker who connects a potential purchaser with a potential vendor—the vendor sometimes being what people would describe as the destitute farmer in some developing country—for want of a better example. That's probably the last person we would want to criminalize.

The way I see proposed subsection 240.1(3) as it reads right now, that person would be criminalized. Could you comment on that?

**Mr. David Matas:** My general comment is that one can look at the bill and think of ways it could be amended so that the intent could be more specific and the problems we imagine could be more explicitly addressed. If it were just a matter of the House of Commons making amendments and the bill being passed, I don't think it would be much of an issue.

The problem is that any amendment, even the slightest one, means the bill goes back to the Senate. In the way the Senate functions, as I understand it, any one senator can delay the passage of the bill for any reason, and as a result, the bill could potentially be delayed beyond the next election. With any amendment, it becomes a problem, potentially, of getting it into that cycle.

That's more of a strategic issue than a legal one, and I really leave it to the committee to decide what the risk is of that happening. But if there's no risk of that happening, and it's simply a matter of improving the wording of the bill, then I would say sure, by all means.

•(1000)

**Mr. Arif Virani:** Your opening statement was that a potential improvement in the wording would be “consideration for the purpose of exploitation”. You said “exploitation” is used in 36 different places in the Criminal Code. Did I get that right?

**Mr. David Matas:** Yes, that's right. Some of the uses are not that relevant to the use here, but one that is relevant is the provision on trafficking in persons. It has the concept of exploitation built into it. Indeed, trafficking in persons is so close to trafficking in organs that sometimes trafficking in organs is included within the concept of trafficking in persons.

I think that would be an easy phrase to adopt or an example to follow.

**Mr. Arif Virani:** In terms of the notion of removing the financial transaction component entirely, so that it's just an informed consent-based regime, would that address the objectives of the bill?

**Mr. David Matas:** I think it would have to expand the concept of informed consent, but yes, as long as one interprets informed consent as including the avoidance of exploitation, that would be another way of doing it.

**The Chair:** Thank you very much.

We will move to MP Ramsey, please.

**Ms. Tracey Ramsey:** Thank you, Mr. Matas, for being here via teleconference.

I have a couple of questions for you about whether or not the offences created in S-240 are already covered by the Criminal Code in section 279.01 and subsection 279.04(3).

Could you speak to why that may or may not be?

**Mr. David Matas:** If you look at those sections and you look at the bill, there's a lot more detail here in the bill. Whether it's covered or not becomes an issue, a speculation or uncertainty. The advantage of the bill.... First of all, it does have some concepts that are not in a current law about immigration, but reporting. However, even if you look at the offences that are in the code, they're not as specific. Also, this bill addresses extraterritoriality, which the current provisions in the code do not. They're just local offences.

As far as I'm concerned, if I had a choice between just making the current provisions in the code extraterritorial, with an add-on for reporting and immigration, or the present bill, I would prefer the present bill because it's just a lot more specific and we don't get into the issue of whether it is covered or not covered. We know for sure that it's covered.

**Ms. Tracey Ramsey:** The word “consent” is used in various sections of the Criminal Code, without being defined. I wonder if you can speak to the importance of the Senate adding the definition of informed consent in S-240.

**Mr. David Matas:** I testified before the Senate and I sat through other testimony. This was not a suggestion that I had made, but I recall that when I was there, it was a suggestion that other witnesses had made. It has a medical history because, of course, in the medical profession, you need consent to engage in a lot of medical procedures, so what they're looking for is informed consent. My understanding is that it's drawn from a medical practice of seeking consent. You can't just get somebody to say yes. You have to get somebody to know what's going on, before they say yes. I think that was the point behind it.

•(1005)

**Ms. Tracey Ramsey:** How does the current state of Canadian law on trafficking in human organs compare to international standards?

**Mr. David Matas:** International standards are developing. Right now, there's a treaty that's open for signature and it's come into force through the Council of Europe on organ trafficking that is actually quite close to this bill. It might take a more careful look. My initial reaction is that if this bill were passed, Canada would be in a position to sign that treaty. Canada is an observer state to the Council of Europe and can sign that treaty if it wants to. I think it should. I think this bill would be helpful in putting Canada in a position to do so.

**Ms. Tracey Ramsey:** The last question that I want to ask you is about like-minded countries that have implemented similar legislation. MP Genus mentioned earlier Israel, Spain and Taiwan. What has been the impact of the legislation in those countries?

**Mr. David Matas:** In Taiwan and Israel, it's been dramatic. Regarding the legislation in Spain, I don't know that Spain had much of a problem with transplant tourism before, but certainly in Taiwan and Israel, there was big transplant tourism before. In both countries, the problem was transplant tourism into China.

After the Israeli legislation was passed, it went from being very common to disappearing altogether or almost altogether.

Taiwan had a similar impact. Taiwan tried to deal with the problem of transplant tourism into China, initially through ethical standards of the medical profession through their health ministry, but that wasn't working very effectively. They felt that they had to move to legislation to deal with the problem and now that they do have legislation, it has had a big impact and there has been a sharp downturn on transplant tourism into China.

In those two countries, the legislation has, practically, been very impactful.

**Ms. Tracey Ramsey:** Thank you very much.

**The Chair:** Given that the bells are going and there's a vote at 10:30, I would just seek unanimous consent to continue sitting up until maybe 10 minutes before the vote, given that it's in close proximity.

**Some hon. members:** Agreed.

**The Chair:** Thank you.

We will continue, and we will now go to MP Wrzesnewskyj please.

**Mr. Borys Wrzesnewskyj:** Thank you, Mr. Matas, for joining us this morning.

We seem to be talking a lot about two issues here: the issue of consent and the issue of a financial transaction. By the nature of this industry—and prior to your book, the exposé—in places it had become an industry.... There are two parts. There's the taking of organs from vulnerable individuals, and then there's the financial transaction. It is an industry in the sense that huge amounts of money get transferred. What makes it particularly horrific is the nature of the industry that it's actually state parties, states whose role is to protect the citizenry, who are the guardians of citizens' well-being, who are involved in the trafficking; or when it's criminal gang

traffickers, as we saw with Dr. Kumar from Brampton who had these clinics in India, doctors and nurses are part of the criminal gangs. They have a Hippocratic oath. The very individuals and institutions that we should trust with guardianship are abusing their position for the financial rewards.

I referenced it earlier, and I'd like to reference it again. I first became aware of this in the summer of 2007, and it was a case in Ukraine where the director of an orphanage, the guardian, was giving consent on behalf of the children who were at the age of 17, just before their 18th birthday when they'd be put out of the orphanages. He was giving consent on behalf of those children to be sold, and the children would then disappear.

I think it's very important, and thank you for the wording from the Declaration of Istanbul, “for the purpose of exploitation”, because there's this whole idea of guardianship and consent. I think that wording provides additional clarity so we don't inadvertently end up dealing with an issue that perhaps there are tax credits that certain states in the U.S. offer. It allows us to specifically deal with the financial transaction part, in the way it's specified in the legislation, because that is the second part of this trafficking. There's the taking of the organs and the financial transaction.

Thank you for that wording. I just wanted to put that on the record. I would like to pass the rest of my time over to Mr. Saini.

•(1010)

**Mr. Raj Saini (Kitchener Centre, Lib.):** Good morning, Mr. Matas. Thank you very much for coming.

I know we've been speaking a lot about financial consideration, but I want to give you a specific example. As you know, there are millions of Canadians who live in Canada but have extended families abroad, me included, especially in southeast Asia. If you have a limited number of family members here and you return back to your origin country and you have an extended family there—whether they be cousins, uncles or second cousins—you might find you have a relative who can donate an organ. Obviously, as you know, in certain countries the public health care system is not robust, so you have to go to the private system. If you decide to cover the expenses for that relative, would this bill criminalize that, as it's currently written? If it does, is there some way to protect a legitimate sort of procedure from one family member to another?

**Mr. David Matas:** I would say that again we're dealing with a situation that is hypothetical. It may well be a situation where if it's put to an Attorney General to ask for consent or it's put to a prosecutor for prosecution, prosecutorial discretion would come into play. Withholding consent of the Attorney General might come into play. One might even have guidelines about how consent would be issued, which could deal with that particular situation.

When we pass any criminal law, I don't think we're saying that every hypothetical example that might fit within the wording is going to lead to a conviction or even a prosecution. In the type of situation that you describe, my own view is that that's not the intent of the legislation. It's not intending to get at that sort of a situation. The issue for the committee is whether the current wording is sufficient to alleviate that concern or whether more specific wording is needed to make sure that that problem doesn't arise.

**The Chair:** Thank you very much, Mr. Matas.

Given that we now have about seven minutes until the time we had set to adjourn, I'm going to thank you for being with us. We have some committee business to go over so. Again, thank you for your advocacy and your leadership for decades on this file.

**Mr. David Matas:** Thank you.

**The Chair:** I recognize MP Alleslev.

**Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, CPC):** A few weeks ago the International Republican Institute and the National Democratic Institute testified before this committee about their promotion of democracy. I think it's important to recognize two elections that they observed, and Canada's appreciation of them.

A joint NDI/IRI observation mission observed Saturday's National Assembly elections in Nigeria, an emerging African democracy. The NDI president said, "The resilience and strong dedication to democracy of the Nigerian people was inspiring to observe. Despite the country's many challenges, the international community should continue to invest in Nigeria's democratic promise." I think I speak

for all parliamentarians here in saying that Canada is proud of Nigeria's march toward greater democracy.

Then, in another election, this past Sunday, Moldova held parliamentary elections that IRI observed, and a Canadian long-term observer from Saskatchewan was part of their team. The results have led to a hung parliament and the IRI mission has congratulated the Central Election Commission of Moldova for running a successful election. Again, I believe I speak for all Canadian parliamentarians in saying we look forward to Moldova's democratic future.

This was a good two days for democracy.

Thank you, Mr. Chair.

**The Chair:** Thank you, MP Alleslev.

We will now go in camera.

*[Proceedings continue in camera]*

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