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# Standing Committee on Justice and Human Rights

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**Thursday, September 22, 2016**

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**Chair**

**Mr. Anthony Housefather**



## Standing Committee on Justice and Human Rights

Thursday, September 22, 2016

•(1110)

[English]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.):**  
Good morning, ladies and gentlemen.

[Translation]

Welcome to the Standing Committee on Justice and Human Rights.

[English]

Pursuant to the order of reference of Thursday, April 21, 2016, we have before us an act to amend the Criminal Code regarding inflicting torture, Bill C-C-242.

I'd like to take this opportunity to welcome some members who are substituting this morning and haven't been with us before. Ms. Stubbs is here, and Mr. McCauley, Ms. Hardcastle, and Mr. Rusnak. It's nice to have all of you here. I'm sure you will very much enjoy our witness, Mr. Fragiskatos.

Mr. Fragiskatos, it's a pleasure to have you here as well, although you subbed on the committee before. We're very excited to hear from you on your bill. I'll invite you to make opening statements.

**Mr. Peter Fragiskatos (London North Centre, Lib.):** Thank you very much, Mr. Chair.

Thank you, colleagues.

It gives me great pleasure to appear before you today to formally address my private member's bill, Bill C-242, an act to amend the Criminal Code (inflicting torture).

It is humbling to see the bill reach the committee stage, and I would like to make clear from the outset that I am willing to enter into a dialogue that will make the bill stronger and more legally palatable from your perspective. As stated in the House of Commons earlier this spring, I am open to a range of amendments and encourage committee members to make any suggestions they believe will improve the bill.

Furthermore, should you require a clarification as to why I chose a certain direction, please do not hesitate to ask following my statement.

I am not an expert law-maker; however, I did a great deal of research and consulted widely prior to tabling the bill that has come before you today. I also taught human rights policy at the University of Western Ontario prior to becoming an MP. It was there that these sorts of issues were first encountered by me and inspired the bill.

Part of my Ph.D. thesis also focused on issues of torture, hence my interest in the issue.

With that said, after being drawn ninth in the private member's bill lottery, I felt a responsibility to take advantage of this good fortune by putting forward a meaningful reform. I might have sought for a particular cause to be given special recognition or to have a forgotten historical event commemorated. Such initiatives certainly have their place, yet I felt the need to go in a different direction.

Article 5 of the Universal Declaration of Human Rights states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Thankfully, Canadian law does not ignore this principle. A torture offence exists in section 269.1 of our Criminal Code.

The problem, however, is that section 269.1 only applies to state officials. Examples include police or military personnel who might inflict severe pain repeatedly and over a prolonged period of time to intimidate or coerce as a way to extract information, or for some other purpose. Yet when the same actions are perpetrated by private individuals who have no tie to the state, the offence is usually called aggravated assault. As many as you are already aware, kidnapping is also applied as a charge, and assault with a weapon or forceable confinement are other possibilities as well.

Some detractors believe these charges are good enough. They believe that although torture committed in the private realm can happen, the problem is in fact exaggerated.

I would respond to that criticism by saying, tell that to those who have endured torture. I will only point to a few examples. There are many others that have occurred in recent years. The details, while difficult, are extremely important.

In 2006, a Calgary man was made to take off his clothes and had his hands and feet tied with cables. He was then left to hang from the ceiling joists while his torturers punched, cut, and whipped him with a belt before spraying him with butane. This happened over a period of days. Two individuals were found responsible. The first was a youth who could not be sentenced in adult court. The second pleaded guilty to assault with a weapon and received a two-year sentence for what amounts to an example of torture.

In 2008, a Brampton man had his toe cut off, was beaten with a bat, cut multiple times with salt rubbed in his wounds, and had a plastic bag put over his head. This took place over several hours and seems to have been done with the intention of obtaining information about a theft. The individual who carried out the action was found guilty of aggravated assault and forcible confinement and given a sentence of less than 10 years. The more appropriate word choice would have been “torture”, because that is exactly what took place. In fact, the judge used the word “torture” to describe the victim’s experience.

In 2010, Dustin Paxton beat, starved, burned, and cut off the lip and part of the tongue of his victim in a well-known Alberta case. This seems to have happened for perhaps as long as two years. While a dangerous offender designation was assigned by the courts, Paxton was charged with aggravated and sexual assault, even though torture more properly captures what took place.

The need to call crimes what they are is not simply an academic matter. In order for victims to heal, their suffering must be acknowledged. This is a long-established human rights principle. Indeed, this lesson underlined the Truth and Reconciliation Commission process on residential schools. Using terms such as aggravated assault does not adequately speak to the grave human rights violations that have been committed.

• (1115)

Finally, some criticize the bill because it calls for a sentence of up to life imprisonment, while the existing state torture law only offers a maximum of 14 years. It is true that this is inconsistent and I believe strongly that a much stiffer sentence for acts of state torture is certainly warranted. However, I am also extremely open to suggestions and amendments to the specific sentence that would make the bill more legally responsible from your perspective. Thus, rather than aiming to do everything, and as a result accomplishing nothing, I placed my focus on a gap that has been almost completely disregarded by Canadian legislators until this point. I did so after consulting with victims, their families, and civil society organizations. I also worked through various drafts and continuously consulted with the Department of Justice.

The legislation was drafted by expert bureaucrats trained in the law. I value the support they provided, and the passion they show for their work each and every day. The world is shaded in grey, and so too is most legislation. Given a choice between ignoring an unjust status quo, or changing it imperfectly, I opted for the latter. Torturers aim to rob individuals of their dignity. They do so through the intentional and repeated infliction of severe pain, suffering, and humiliation over a prolonged period of time for the purpose of intimidation or coercion. These actions have no place in a free and open democratic society such as Canada.

Furthermore, it is true that torture, from an international legal perspective, has traditionally been understood as a state crime. I acknowledge that, I respect that, but add crucially, that the definition has indeed shifted. The committee against torture, which is responsible for monitoring the UN torture convention, has said that torture in the private sphere qualifies as torture. This view has been accepted by other states. The proposed legislation shares much in common with existing torture laws in Australia and France. Both

countries, extremely important allies of Canada, have strong torture laws that apply to state and private actors. Canada should follow suit. Recognizing such a change would acknowledge the ordeal experienced by those who have suffered torture, and punish torturers accordingly. Cases of extreme violence and inhumane conduct have happened in Canada, and could take place again. It’s time to act and make positive change happen.

With that said, in addition to receiving support from an abundant number of individuals, colleagues from various parties, and groups from across Canada, I would like to highlight a few truly significant national endorsements that Bill C-242 has received.

The Native Women’s Association of Canada, the voice for indigenous women and girls in this country, has offered its full support of the bill. Amnesty International has committed its support, in principle, for what Bill C-242 is trying to achieve. They also firmly condemn torture in the private sphere.

The Canadian Nurses Association has endorsed the proposed legislation. The CNA is the national professional voice of nearly 139,000 registered nurses across Canada. The Canadian Federation of University Women, a non-partisan, equality-seeking, self-funded organization of close to 9,000 women in 112 clubs across Canada, has committed to being a fervent advocate for the proposed legislation. Its representatives are here today.

Furthermore, I would also like to thank the residents in my riding of London North Centre for their unwavering support. I have heard from my constituents and recognize their desire to see the proposed legislation succeed. The support of the London Abused Women’s Centre, and its director Megan Walker, is extremely and sincerely appreciated, as is the support of the chief of police services in London, John Pare. I thank them both very much.

With that said, I would also like to commend Linda MacDonald and Jeanne Sarson, from Nova Scotia, who will appear before you shortly. These two women are staunch advocates for the inclusion of torture in the private sphere into the Criminal Code. They have worked for over two decades to advance this important cause—not just in Canada, by the way, but in the international domain as well.

Once again this is not a perfect piece of legislation, but then again I am not sure if any piece of legislation is ever perfect. However, I am open to any potential amendments suggested by this committee. This would include lowering the term of punishment.

It would be a sincere shame to have this important bill defeated because of concerns related to technicalities that could easily be altered. I ask my colleagues here today, when reviewing the bill, to ask yourselves the following questions. Do you believe that human rights matter? Do you believe torture has no place in our society because it robs individuals of their humanity and of their dignity? Do you believe the way to enhance public safety is not by building more jails, or through the politics of division and fear, but through enshrining human rights principles into the law and into our Criminal Code?

• (1120)

If you answered “yes” to these questions, then we must work together to ensure that Bill C-242 is strengthened and referred back to the House for further consideration.

To conclude, the bill is not about me. It has never been about me. I dedicated the bill to all victims of torture when I first put it forward, and that has not changed. To them I say, your voice matters. I have listened to you, and I am working and willing to do whatever is necessary to ensure the bill continues to progress.

Thank you very much, colleagues.

**The Chair:** Thank you very much, Mr. Fragiskatos, for your very passionate and coherent remarks.

Now we'll move to questions. We're going to do two rounds of questions. The first round is going to be started by Mr. Falk.

**Mr. Ted Falk (Provencher, CPC):** Thank you, Mr. Chairman, and thank you, Mr. Fragiskatos, for coming to committee, and for the work that you've put into preparing the bill and presenting it. I think you've touched on something that is a very important issue and it's probably not lost on any of us.

When I look at the bill I have a lot of questions, and I don't know if you'll get a chance to answer all of them in this first round. First of all, have you had any personal experience yourself with torture?

**Mr. Peter Fragiskatos:** No, I have not. As I alluded to at the outset, I first became aware of this gap in the Criminal Code, the fact that acts of torture that are carried out in the private sphere are not recognized as torture in our law, when I was teaching human rights policy.

I certainly consulted with victims on this. You might wonder why victims aren't speaking. I think one of the reasons that victims have had difficulty coming forward is the experience. This experience is quite traumatizing, as you might well imagine. It's traumatizing and scarring. It's been very difficult for victims to come forward. I think when Jeanne and Linda speak, they will testify to that fact.

**Mr. Ted Falk:** The other thing I'm a little curious about is that you have cited several examples of instances where Canadians have experienced non-state torture, where they've been charged under our existing Criminal Code.

If your legislation had been in place, what difference would it have made in the sentencing, in your opinion? Would it have made a difference? Would the sentencing have been the same or would it have changed things? I don't see in your bill anywhere you're suggesting any minimums, but in fact at the moment you're suggesting a maximum life sentence. You have already identified that you're willing to consider that term as well.

In your opinion, what difference would it have made in the cases you cited?

• (1125)

**Mr. Peter Fragiskatos:** I take my cue from victims. I take my cue from their experience. This is all a matter of perspective. In fact, I think it's safe to say that law is a matter of perspective, certainly when it comes to these sorts of difficult issues. The perspective that I bring to this is not the perspective of someone who taught human

rights policy. It's not necessarily the perspective of an MP. It's the perspective of someone who takes very seriously the victim experience.

The philosopher, Theodor Adorno, said that the condition of truth is allowing suffering to speak. When you ask what difference it would have made, I think—and I know because I've spoken to so many victims—it would have made a huge difference for those individuals.

When the term “aggravated assault” is applied, it describes their experience, but the term “aggravated assault” can also be used to describe a fist fight. That is not appropriate. What these people have endured in the examples that I gave, Ted, and in the many other examples that exist, is torture. We need to call crimes what they are. We need to acknowledge that experience. When we do, healing can begin.

**Mr. Ted Falk:** I appreciate that because you've actually answered the next question I had.

**Mr. Peter Fragiskatos:** Glad to do that for you.

**Mr. Ted Falk:** “What difference would it make to the victims?” is the question I really wanted to get to eventually.

I would like to go back to the question I asked. When it comes to sentencing, what difference do you think it would make? I understand that from the victim's perspective the acknowledgement of what actually happened is important. I get that, and I think you're right. But I'd like to know, from a sentencing perspective, what difference you think your legislation would make.

**Mr. Peter Fragiskatos:** As I said, these crimes extend far beyond aggravated assault and do warrant a term of life imprisonment. However, because of legal ramifications that would follow from that, perhaps the committee will have a problem with that suggestion. If the term of sentence were changed, if it were vastly reduced—say, it was put to 14 years—that's something I in fact would accept because the difference would be that the victim's experience would be acknowledged. That is absolutely crucial.

Sentencing is not only about punishment. It's about helping the victim overcome what they've been through, the experience that they've dealt with, their ordeal. I think on that basis alone we need to acknowledge the suffering that has taken place and recognize exactly what Adorno said, that if suffering is allowed to speak, then we have a condition of truth.

That is why I'm passionate about this bill. I think it's a way to finally allow victims of torture to have their suffering acknowledged, publicly acknowledged, by the body politic.

**Mr. Ted Falk:** You sound like a Conservative.

**Mr. Peter Fragiskatos:** Oh, I can assure you I'm not.

**Voices:** Oh, oh!

**The Chair:** I think he meant it as a compliment. Let's all consider that whatever party you are part of, it is neither a compliment nor something bad. It's all good.

**Mr. Ted Falk:** It's an observation.

**Mr. Peter Fragiskatos:** Fair enough.

**Mr. Ted Falk:** What I'm thinking of is the victims bill of rights that our government passed in the last session. From what you've described to me, that's really the intent of the bill.

**Mr. Peter Fragiskatos:** Well, the victims bill of rights, Ted, did not say anything about acknowledging torture in the private sphere.

**Mr. Ted Falk:** No, so you're enhancing the work that the previous government already did.

**Mr. Peter Fragiskatos:** Sure.

**Mr. Ted Falk:** I understand that, because what you're doing is looking at it from a victim's perspective, through the eyes of the victim, making sure that the victim receives priority in the justice system. I can appreciate that and I want to commend you on that.

**Mr. Peter Fragiskatos:** For me, and I've said this already, this is a human rights bill that is intent on making a change that acknowledges the suffering of victims but does so in a way that says punishment is certainly part of crime, but the way to create a just society is not by building more prisons, is not by re-emphasizing constantly the need for law and order. Of course, law and order matter. How do we achieve law and order in this country, and in any democratic society? Criminal codes are absolutely central to that, but when we enshrine human rights principles into the code, then we achieve a more just outcome.

**The Chair:** Thank you very much. That was a good round of questions.

Next we're going to go to Mr. Bittle.

**Mr. Chris Bittle (St. Catharines, Lib.):** Thanks very much, Chair.

Peter, thank you so much for being here. You've provided excellent testimony on behalf of victims of torture.

First of all, I'll allow you to clarify a point, if you like, from our days in candidate school. I know you're a very strong Liberal and—

**Mr. Peter Fragiskatos:** I believe in the Charter of Rights. I believe in Lester B. Pearson's vision of Canada. Now, Ted was asking very nice questions. Maybe now he's not looking at me in such a fond way, but go ahead.

**Mr. Chris Bittle:** Thank you.

You touched on this, but I wanted to give you another opportunity to describe why it's important for the term "torture" to be applied to the sorts of crimes that you describe.

• (1130)

**Mr. Peter Fragiskatos:** As I said, I think it's absolutely crucial that we acknowledge what has taken place. In the example I gave before, when I said that aggravated assault is a term that can equally be applied to and is applied now to what are acts of torture but it can also be applied to a trivial instance such as a fist fight, that's not my example. That is an example that came to me from speaking with a victim. They told me that, and that resonated with me a great deal. When torture happens we need to acknowledge it, whether it is a military official who was acting in that way, or whether it is a private citizen who was acting in that way. These crimes have happened and we need to acknowledge that they've happened, but we need to call crimes what they are, mainly, as I said, for healing to take place.

**Mr. Chris Bittle:** Are there concerns that your call for life imprisonment puts torture in the private sphere on par with murder, which carries a life sentence? Is that your intention?

**Mr. Peter Fragiskatos:** I suppose I can answer that question from a principled perspective. I think, philosophically, one could make the case that when one is tortured, that crime is on par with murder because one is robbed of one's humanity. It is a murder of a certain type, of a particular type. I take your point that it's on par with murder because I've called for a life sentence, but legally speaking, there are other crimes in the code where a life sentence is applied. Aggravated sexual assault, in section 273 falls in that category. For treason, subsection 47(1), a life sentence is called for there.

It's not terribly inconsistent from that perspective. However, one has to put water in wine sometimes. As legislators, I think we all know and recognize that, and for that reason, if the committee were of the view that the sentence ought to be vastly reduced, even down to 14 years, then I would be open to that.

**Mr. Chris Bittle:** You briefly touched on France and Australia and I believe there are some states within the United States that have similar types of legislation. Are there other examples of that? I know we've also heard the concern from detractors of the legislation that this proposed legislation may not meet international commitments. I was wondering if you could also touch on the fact that France and Australia have this legislation, and perhaps certain jurisdictions in the U.S., and still are within that framework.

**Mr. Peter Fragiskatos:** In "General Comment No. 2", the committee against torture—this is going back almost 10 years ago, by the way—recognized that torture in the private sphere qualifies as torture. As I said in my remarks, the committee against torture has a responsibility for monitoring the UN torture convention. I look at it from that perspective. If torture in the private sphere is recognized as torture by the committee against torture, then certainly the international legal perspective on this has shifted.

Torture, yes, of course, at one time it was considered a state crime, but that has changed. Certainly we see laws in place in Australia and France where torture is recognized. There are American states that have taken action on this as well. A few examples would be Michigan and California. At the international level Australia and France have led the way on that. As far as this legislation goes, it is not reinventing the wheel. There is legal precedent.

**Mr. Chris Bittle:** Do you know when France and Australia brought in their legislation?

**Mr. Peter Fragiskatos:** In the case of Australia, it goes back about 15 years. In the case of France, it goes back about 20 years, if my memory serves me.

**Mr. Chris Bittle:** Were there any consequences that you're aware of in the international community for enacting the legislation?

**Mr. Peter Fragiskatos:** No. As far as I know the sky hasn't fallen. The ramifications of those laws have not compromised the international obligations of Australia or France, for that matter, on the issue of torture.

•(1135)

**Mr. Chris Bittle:** Thank you.

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

Ms. Hardcastle, you're up.

**Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP):** Thank you very much for the background on the work that you've done on addressing the capacity for a private citizen to conduct torture, and for another one to have endured it.

I think that brings me to our role and our responsibility internationally. I'd like to hear you talk a little bit more about the optional protocol on torture. The United Nations calls for us to enshrine that in the Criminal Code. Do you think this is an advancement, a step forward for us in that scenario?

**Mr. Peter Fragiskatos:** I think any time we're talking about punishing torture, it is something that we can all be proud of. Torture goes contrary to basic democratic principles, basic human rights principles. Whether it's the optional protocol or a measure such as this, a private member's bill that seeks to make a change to the Criminal Code, I think that's an important step for Canada.

**Ms. Cheryl Hardcastle:** Some of the people or some of the organizations that have been speaking up are women's groups.

In the research that you've done in preparing the legislation, why do you think we haven't used a term like torture in the Criminal Code yet? After all this time—and as my honourable colleague mentioned with regard to a victims bill of rights—why hasn't that been addressed in our legislative history?

**Mr. Peter Fragiskatos:** In the definition of torture, it was recognized as a state crime. It has been understood that way for decades, from the beginning, when international legal norms around torture were established. The definition, as I said, has shifted. I think most of you are lawyers, so I don't have to tell you this. Sometimes it takes a while for law to catch up. That's why I think we don't have a crime along the lines of what I'm calling for written into the Criminal Code. I wouldn't have anything else to say other than that.

Perhaps I would. This is about allowing victims to speak. This is about listening to them. This is a problem in law. Perspective matters, but we need to shift the perspective sometimes and listen to those who have endured suffering. Perhaps on that basis law can change.

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

Next, we have Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Thank you, Mr. Chair.

I would like to carry on talking about the international implications.

One of the government's concerns about the bill is that creating the offence of private torture could seriously weaken Canada's contribution to the global effort to prevent torture under the

convention against torture. This seems to derive from the creation under this act of two categories of torture: state actors and private actors. Would you like to comment on that? Also, why do we have two kinds of torture in this act? Why can't we just encapsulate them into one category?

**Mr. Peter Fragiskatos:** The way I would respond to that, Ron, is to say that if Canada would be in contravention of international legal obligations, then so, too, would Australia and France.

In terms of the second part of your question of why we have two charges and why we can't simply merge them, perhaps this is an issue the committee could look at. We do have established legislation in section 269.1 that deals with state offences. However, there is another aspect. Torture can take place in the private realm as well. With that in mind, I think it makes sense to look at this in a more complex way. The world is shaded in grey, as I said before. Torture can be a state crime, or it can take place in the private domain. That needs to be acknowledged, hence the view that we should have two understandings. If you wanted to merge them, perhaps this is something the committee could discuss.

•(1140)

**Mr. Ron McKinnon:** Australia and France have a single definition of torture.

**Mr. Peter Fragiskatos:** They do, yes.

**Mr. Ron McKinnon:** I think the concern here is that two definitions of torture will cause problems for us internationally.

**Mr. Peter Fragiskatos:** No, respectfully, I would disagree with you.

There is one definition of torture applied in Australia, and, I should be clear, it is the state of Queensland that has this in its law. As far as France goes, in its criminal code, it is merged. Again, they are not in contravention of their international legal obligations. No one has ever suggested that.

**Mr. Ron McKinnon:** I am not suggesting it either, but I guess the government's position is that if we have two versions of torture, we would be in danger of being so.

**Mr. Peter Fragiskatos:** I don't think so. You would have to look at the committee against torture report, in "General Comment No. 2", where acts of torture in the private realm are acknowledged as crimes. The committee has never suggested that if there are two laws, that would somehow compromise the obligations of a state.

**Mr. Ron McKinnon:** I can fully accept that private acts of torture should be recognized as torture, but the definitions of torture are different in these cases. Apparently, it seems that the definition of private torture is more restrictive, more narrow.

**Mr. Peter Fragiskatos:** I am glad you asked that question. I have brought copies that I would be glad to distribute at the conclusion of my remarks.

It is a suggested change, and it would line up the definitions. The only difference would be that in section 269.1 there is mention of officials, which obviously acknowledges the state element. The law that I am calling for would simply take out the word "official" and generalize it, so individual citizens would be liable for punishment if they carry out torture in the private realm.

**Mr. Ron McKinnon:** Thank you.

There is also a provision for extraterritoriality in the bill. I am wondering why you included that and whether it is important. I am also wondering whether someone tried in a foreign country for an offence could also be tried in Canada for the same offence, whether double jeopardy could apply in that case.

**Mr. Peter Fragiskatos:** No, if you look at that, you will see that it doesn't deviate from section 269.1. I consulted with experts in the law and a parliamentary counsel. This is a law that would apply to Canada, and if there are further concerns around that, then it is up to the committee to respectfully look into that and make suggested changes.

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

Before we move to the second round, if my colleagues would permit me, I'd like to try to tie up something that I think Mr. Falk was asking, and has come out a couple of times.

Mr. Fragiskatos, in terms of adding this provision to the Criminal Code, is there a class of people you believe could be tried under the torture provision you're proposing to add that could not otherwise be tried under an existing provision of the Criminal Code? Could there be somebody who we now cannot prosecute for their actions of torture, but who, as a result of adding this, could be prosecuted?

Secondly, I understand the whole issue of victims that you have brought up, and the feelings of victims, but given that torture is a harder-to-prove offence than assault, do you believe prosecutors would actually use the offence of torture?

**Mr. Peter Fragiskatos:** I know that they would use it because I have spoken to crown attorneys who agree very much with this suggested change. I see no difficulty in that regard.

**The Chair:** Would there be anybody who could be prosecuted under this offence who could not otherwise be prosecuted under an existing offence?

**Mr. Peter Fragiskatos:** Well, they could be prosecuted under aggravated assault or kidnapping, but as I said before, that does not match with the experience of those who have endured the violence.

**The Chair:** I understand.

We will now move to the second round of questioning, and we're going to start with Mr. Fraser.

**Mr. Colin Fraser (West Nova, Lib.):** Thank you very much, Mr. Chair.

Thank you, Mr. Fragiskatos for your testimony today and your excellent presentation. I really appreciate the work that you have put into this and your thoughtfulness.

I want to pick up on something that you were just discussing with the chair. My question regards aggravated assault. The way it's structured now, it seems as though torture might be a higher threshold to meet than the existing offence of aggravated assault, based on what you're saying.

Would you consider that aggravated assault would be an included offence with regard to torture? Would you say that somebody could be charged both with torture as you see it in the private realm, as well as aggravated assault, for the same transgression?

• (1145)

**Mr. Peter Fragiskatos:** Individuals are charged in multiple ways. That's common. But torture is a higher threshold of violence. We're speaking about a very specific crime. It's admittedly and thankfully a relatively rare occurrence, but when it happens, we ought to acknowledge that it has taken place.

**Mr. Colin Fraser:** Do you think somebody could be charged both under section 268 and the new proposed section 268.1?

**Mr. Peter Fragiskatos:** I'm not a criminal lawyer; however, individuals are charged with multiple offences on a regular basis, so yes, they could be charged with both. At least, that's my understanding. That's my reading of the law. However, it's not aggravated assault. What they've been through is not aggravated assault; it is torture.

I take my cue from the victims' experience of this. I think we ought to call crimes what they are. I know that there are concerns. Mr. McKinnon raised some concerns about our international legal obligations as well.

Respectful disagreements happen all the time between members of Parliament. Colleagues and folks around the table could have issues with the bill. It's up to the committee to examine that in good faith, and I know you will. I've put forward my view on this.

To get back to what you were saying, Mr. Fraser, I think that torture committed in the private realm is a relatively rare offence that could be applied, and would mirror the situation in a much more just way, legally speaking.

**Mr. Colin Fraser:** Okay. Picking up on that, looking at the past cases for example, these folks were charged with aggravated assault in the examples that you gave, I presume.

**Mr. Peter Fragiskatos:** There was a charge of aggravated assault applied. I could go through the examples again.

**Mr. Colin Fraser:** No, you don't need to do that, but you mentioned the prolonged aspect and the fact that the judges were mentioning torture but they were not able to apply it.

**Mr. Peter Fragiskatos:** They were not able to apply the term, formally.

**Mr. Colin Fraser:** You weren't satisfied, by the sounds of it, with the sentencing result.



**Mr. Peter Fragiskatos:** No, and I don't think anybody would be who believes.... I think that the sentences applied were not long enough. Judges who wanted to apply the term "torture", and did so in their reasoning, could not formally do so because there wasn't an offence in the Criminal Code that would allow them to do that.

**Mr. Colin Fraser:** I want to move on to what was talked about earlier with the experiences of other countries. I appreciate that you said that in Australia, in the state of Queensland, they have a torture provision.

**Mr. Peter Fragiskatos:** Yes.

**Mr. Colin Fraser:** I assume this is a rare charge and that it would be a fairly rare thing. Do you know any specifics on how it has worked there, how many people have been charged with torture, or what the conviction rate is, for example?

**Mr. Peter Fragiskatos:** As far as conviction rates, no, I can't give you that. I've consulted on that with academics based in Australia who have said this has not compromised Australia's international legal obligations. It has been applied. The offence has been used. It has helped to acknowledge the suffering of individuals who have endured great violence. The same is true for the French example.

**Mr. Colin Fraser:** With regard to the victims, in some of these circumstances I would imagine that it occurs within the realm of domestic violence. Could you talk a little bit about how you see the bill addressing issues of domestic violence, and what you think it will do to help the public perception of preventing domestic violence?

**Mr. Peter Fragiskatos:** In my comments, I made mention of Megan Walker. Megan Walker has been a tireless advocate for women's rights in my community of London, Ontario, and across the country.

When I was consulting on the bill, she referenced domestic violence. In her 30 years of experience, I believe, as an advocate, she has come across so many different cases where aggravated assault has been applied, or charges along those lines, when torture is in fact what took place. If we're talking about creating a just society—we do have a just society, but if we're talking about creating an even more just society—we need to recognize that torture in the domestic realm does take place, and that women are the victims in many of these cases.

I mentioned before the various organizations that have come out in favour of the bill. There are many women's organizations. The Canadian Federation of University Women and the Native Women's Association of Canada are just two examples. On a constituency level, the London Abused Women's Centre, has strongly endorsed the bill.

I'm very happy you asked about domestic violence, because I think this would help to properly acknowledge some of the suffering that women in this country have endured.

•(1150)

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

Mr. McCauley.

**Mr. Kelly McCauley (Edmonton West, CPC):** Thank you very much. I'm going to split my time with Mr. Nicholson.

It is wonderful work you've done here, and with a lot of thought. I hope you won't allow it to be watered down.

First of all, I just want to say that I find it immensely ironic that we're discussing your bill today, considering that at the same time we're discussing an extradition treaty to a country that seems to openly and happily torture and execute its citizens.

That being said, and I think Mr. Falk brought it up, have you given thought to minimum sentencing in regard to your bill, or was it only the maximum?

**Mr. Peter Fragiskatos:** I explained already why I put forward a suggestion of life imprisonment. However, there are a lot of lawyers in the room who could look at this and think of an appropriate penalty. I would even say, and I repeat this point because I think it's important, that if you were to take it down to 14 years, and therefore allow the bill to be more legally palatable, I would still think it a just change because it acknowledges the human rights abuse that has been experienced.

**Mr. Kelly McCauley:** I agree with you on that. I would just say that I hope it will not get watered down to that.

I believe in a lot of what you're saying. Especially with the victims' rights groups it's very important. I'm quite happy with the life sentence. I know you've put a lot of work into it, and you have a lot of great answers. Have you given any consideration to a minimum?

**Mr. Peter Fragiskatos:** No, I haven't, but that is—

**Mr. Kelly McCauley:** Okay, that's all I'm asking.

**Mr. Peter Fragiskatos:** If you wanted to take it down to 14 years

**The Chair:** Sorry, Mr. Fragiskatos. He's asking you about a mandatory minimum amount. The 14 years is a maximum sentence, or life is a maximum sentence. He's asking you if you have considered a mandatory minimum.

**Mr. Peter Fragiskatos:** No. If you notice that I'm evading questions, it's because I'm trying to be polite. I don't believe in mandatory minimums.

**The Chair:** That's an answer.

**A voice:** Oh, there you go. Just say that.

**The Chair:** We like frankness at this committee. We don't beat around the bush here.

**Mr. Peter Fragiskatos:** When presenting a private member's bill, one does try to be diplomatic, but I do not believe in mandatory minimums.

There you have your answer, Kelly.

**Mr. Kelly McCauley:** I take it you didn't support the life means life bill yesterday.

**Mr. Peter Fragiskatos:** You saw how I voted, Kelly.

**Mr. Kelly McCauley:** I didn't actually.

**Mr. Peter Fragiskatos:** Oh, okay.

**Mr. Kelly McCauley:** I take it that's a "no". You didn't support it. Again, it's day of irony.

**The Chair:** Mr. Nicholson, welcome back.

**Hon. Rob Nicholson (Niagara Falls, CPC):** Thank you very much.

I apologize for not being here at the beginning of the committee, but I, Mr. Cooper, and Mr. Rankin from the NDP were all in the House today on the motion that's before Parliament with respect to Atlantic Canadian judges on the Supreme Court.

I didn't hear what you had to say but I think you've addressed what I had thought about, so I apologize if you're repeating it again. There is a concept in our justice system that the worse the crime, the higher the penalty. There has been some discussion that if you give a life sentence for torture... As terrible as torture is, generally in our system of law, to murder somebody is even worse.

Would you consider reducing it from the life sentence?

**Mr. Peter Fragiskatos:** I would consider that. It's up to the committee, of course, to discuss that, but I would be open to that, yes.

• (1155)

**Hon. Rob Nicholson:** All right.

**Mr. Peter Fragiskatos:** I gave other examples justifying why I put forward a suggestion of life imprisonment as a punishment. Perhaps that was making a statement and I'm proud to have done that. In our Criminal Code, the punishment for murder is life, but the same applies to high treason, in subsection 47(1). There's a complex discussion to be had around that, but I think the statement that I was putting forward was really to condemn the human rights abuses that have been perpetrated.

You're right. I've addressed it. I'm willing to take it down.

**Hon. Rob Nicholson:** That's excellent news.

I think you addressed this just as I was walking in. Sometimes we use terms that make our laws consistent, either with other countries that we deal with, or consistent with treaties that we've signed. I'll give you an example. When I was justice minister, there were people who suggested that we should change the term "child pornography" to "sexual assault against an infant".

Part of the problem with that, as I saw it, was that there were a number of countries and they all used the same term. In terms of exchanging information, whether you're communicating with Britain, Europe, the United States, or Australia for that matter, they would all use the term "child pornography". As you know, in this day and age we have to have co-operation and there has to be shared information, so if we have a slightly different name for the crime, that would raise another possible issue in court. You're getting information on one thing...so we didn't change the name and it continues to be known as "child pornography".

I thought about that when I first read your bill with respect to torture. There is the United Nations, of course, and there is a certain definition of "torture". This bill tends to expand that. We all agree that you have described terrible circumstances, and the bill certainly seeks to address that, but I was interested in your comments. I think

that Australia is now using the term "torture" and they use it not just for the United Nations' definition of the state-sponsored infliction of torture.

It would be interesting for us, I think, Mr. Chairman, to see if there is some legislation and/or cases in Australia to that effect. Were there any other jurisdictions? Did you say France uses the term "torture" outside of the traditional definition?

**Mr. Peter Fragiskatos:** To be absolutely clear, it's the state of Queensland in Australia that uses that. It's still important, and France is another example.

**Hon. Rob Nicholson:** They use the term "torture"?

**Mr. Peter Fragiskatos:** Yes, indeed, and I want to thank the Library of Parliament for helping me do that research.

**The Chair:** In terms of Mr. Nicholson's suggestion, when the subcommittee met for our next group of witnesses, we did seek to find a comparative law professor who would also talk to us about other states that use "torture" for internal domestic non-state actors. We are researching exactly this question. There are some U.S. states that do this. There's Queensland, there's France, and a couple of others. We're seeking to find that out.

**Hon. Rob Nicholson:** That's good. I think that would be very helpful.

**The Chair:** I agree, sir.

**Hon. Rob Nicholson:** Thank you very much, and again, I apologize that I wasn't actually here for your earlier comments.

**The Chair:** That's fine. They were excellent.

Ms. Khalid.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Peter, for coming in today and making this presentation.

**Mr. Peter Fragiskatos:** I'm glad to be here.

**Ms. Iqra Khalid:** I'm very glad women's rights and abuse were brought up earlier by my colleagues here.

You mentioned from the get-go that you're very passionate about the bill because of the impact on victims, and you want the crime to be named as such. If it was torture then it should be called torture.

I notice that in the bill as drafted, there is a higher burden on a prosecutor to prove in court whether or not torture occurred. We already acknowledge that in the justice system that women, specifically, and vulnerable people go through a lot of stress, especially in trying to get a conviction. I think victims suffer a lot in the courts. How do you think this extra element, with respect to proving that torture occurred, will impact victims, and how does that outcome compare with what you wanted the outcome of the bill to be?

•(1200)

**Mr. Peter Fragiskatos:** As for why the definitions don't line up completely, that came as a result of consultation. The view was that since there is a state torture law on the books in Canada, my proposal would have to differ from that in some substantive and meaningful way. If that has created a higher burden, then that is obviously problematic. It will be up to the committee, I hope, to look at rectifying that.

As I mentioned before, I will be distributing a suggested change that I think will overcome that problem.

**Ms. Iqra Khalid:** Do you want to talk about that change now?

**Mr. Peter Fragiskatos:** Sure. I can read it, if you like.

**Ms. Iqra Khalid:** Thank you.

**Mr. Peter Fragiskatos:** Let me read subsection 269.1(1) of our Criminal Code, so we're all on the same page. Then I'll read the proposed amendment in terms of the "torture" offence.

**Ms. Iqra Khalid:** You can just read the proposed amendment, if that's okay.

**Mr. Peter Fragiskatos:** The existing torture law says:

Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

That's how the existing law reads. I'm glad you asked the question, because I wasn't sure if we were going to deal with my proposed change, so thank you.

**Ms. Iqra Khalid:** Just to clarify, my question was specifically to do with the difference between aggravated assault and the proving of that versus proving torture under your proposed change.

**Mr. Peter Fragiskatos:** It's a more specific offence, but it acknowledges the fact—and it is a fact—that torture takes place. It's relatively rare, thankfully.

Let's think of the standard understanding of torture. It's the imposition of severe physical or mental pain onto another human being. When that has happened, then it needs to be acknowledged. Also, if it has happened, then it's up to the crown to gather the evidence that would allow for the offence to be prosecuted.

In terms of burden of proof, you pointed to a potential problem with how the bill was originally written. I've made a revision. If you compare page 1 with page 2, I've dropped the word "official", basically, so that we're dealing with a generalized torture offence that applies to every person.

**Ms. Iqra Khalid:** So are you saying that if somebody may have been a victim of aggravated assault—was, say, punched a couple of times in an aggravated manner—more people could now potentially be charged with torture as well, if the definition is broadened by the amendments you are proposing to your bill?

**Mr. Peter Fragiskatos:** No. If you follow onto page 3, it is clearly defined that torture is carried out for the purpose of obtaining information from the person or for intimidation or coercion, and it's clearly set out as the imposition of severe pain or suffering onto another human being. It matches exactly with the understanding of torture in subsection 269.1(1).

**The Chair:** I'd like to clarify something now for the committee, since we have your proposed amendment.

Mr. Fragiskatos, do I understand correctly that you are proposing an alternative to the bill before us whereby we would simply amend subsection 269.1(1) of the Criminal Code to remove the requirement that it be an official or somebody acting as a director of an official, so that we would have a consistent definition of torture throughout the Criminal Code for public or private acts and thereby deal with the international obligations and the so-called objection to a differential definition? Is that what you're now proposing to the committee?

•(1205)

**Mr. Peter Fragiskatos:** It's up to the committee. You could go down that road. However if it's the committee's view that doing that would indeed pose a concern regarding international obligations, then I propose a new section 269.2, which would deal with a torture offence applicable to the private realm. It's basically the same wording except that if you look at the first paragraph of the amendment—

**The Chair:** I understand that you're doing this to deal with the so-called objections to having differential definitions and international obligations.

**Mr. Peter Fragiskatos:** That's right.

**The Chair:** Would you now prefer this to be what the committee will do, or is your preference that it be the original bill that we were discussing?

**Mr. Peter Fragiskatos:** This is my preference now.

**The Chair:** You mean what we were just handed...?

**Mr. Peter Fragiskatos:** Yes, indeed. I'm sorry if that wasn't clear. I handed it around and said "the proposed amendment". Certainly this is what I'm okay with.

**The Chair:** We'll recognize that this is now what you're proposing. It's essentially identical to the definition in section 269.1 with an identical sentence except for the fact that it is not at the behest of or done by an official.

**Mr. Peter Fragiskatos:** Exactly.

**The Chair:** Okay.

We're going to move to the Conservatives' round of questions to see if Mr. Cooper or Mr. Falk has anything.

Mr. Cooper.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Fragiskatos.

Unfortunately, I had to be at the House so I missed your presentation and missed all the questions up until now, so I hope I'm not too repetitive.

It goes without saying that although there is no specific Criminal Code provision, other than section 269.1, that expressly refers to torture, that torture, depending on the scope and nature of the act, could fall under a whole series of different sections of the Criminal Code whether it be forcible confinement or kidnapping or aggravated assault. Those various sections are routinely used. The tests are clear. The case law is well developed.

Perhaps you could explain where exactly the void in the Criminal Code is that would form the basis for your private member's bill.

**Mr. Peter Fragiskatos:** Sure, no problem, and it's perfectly fine that you were in the House. You were doing your job.

You ask a very good question. If you go back to the minutes after today, you will see exactly how that question was answered at the outset. Mr. Falk was, I think, the first person who asked me that question.

I quoted Theodor Adorno, the philosopher, who said that the condition of truth is allowing suffering to speak. When we apply a term such as aggravated assault, we're not allowing suffering to speak. If torture has happened, we ought to call it torture, because that reflects the victim's experience. Once that happens, meaningful healing can take place. That is how I answered that question.

**Mr. Michael Cooper:** I want to ask, and perhaps you've already addressed it, because, again, I haven't had a chance to go through your proposed amendments...

**Mr. Peter Fragiskatos:** Okay.

**Mr. Michael Cooper:** Another concern I had, and I raised it when I spoke in the House on your private member's bill, was the difference in terms of sentencing under Bill C-242 and section 269.1 of the Criminal Code. Under section 269.1, the sentence is up to 14 years' imprisonment, whereas under your bill, Bill C-242, it would be life imprisonment.

Arguably, you would be creating two different tests, two different standards, and two different sentences, depending on whether the act was carried out in the state context or the non-state context. Have you been able to reconcile that issue?

**Mr. Peter Fragiskatos:** Michael, when you have more time and have examined the amendment I proposed, you'll see that 14 years is what I'm okay with.

With regard to the call for life imprisonment, some have asked whether I was trying to make a statement with that. I suppose perhaps I was, but I still think that kind of an offence is...and I would say the same for state torture. When torture happens, whether it's by a state official or carried out in the private realm, I think it warrants a discussion as to the punishment, and I think life imprisonment is appropriate.

However, to deal with some of the concerns that exist from a legal perspective, I would be open to an amendment that would take the punishment back to 14 years.

• (1210)

**The Chair:** There is a short time if you want to—

**Mr. Michael Cooper:** Well, I have a short question, and it's a broad question dealing with the question of certainty.

I guess there is some concern about the uncertainty of the test. This is a new test under your private member's bill, so perhaps you could comment on the concern about the uncertainty in terms of applying this new section.

**Mr. Peter Fragiskatos:** Sure.

As for certainty, I would say it's up to the courts to determine. If an offence falls within the definition that's proposed, then that test has been passed. I'm not sure what else to say on that. If an act of torture has taken place, if it is found that an offender has carried out a crime that matches with the definition that is proposed, then it should be provable in court. I don't think it creates any negative consequence from a legal perspective. I don't think it causes a burden issue at all.

Colleagues, that's my humble perspective. I've enjoyed the back and forth—I really have. That's a humble perspective, and you're free to debate it between yourselves whenever you like.

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

Ms. Hardcastle, do you have anything further?

It's your round, and that will be the last round for Mr. Fragiskatos.

**Ms. Cheryl Hardcastle:** Quickly, in light of the amendment—and I appreciate that everybody is getting their heads around it and I don't have the continuity of being at the past meetings—let's just take another minute.

What's the difference if I'm saying we're expanding the definition of torture or I'm saying we're adding it to the Criminal Code? We're adding private torture to the Criminal Code. Is it the same thing essentially, or is there a nuance that you're trying to—

**Mr. Peter Fragiskatos:** I proposed section 269.2 as an amendment because there could be concerns around Canada's international legal obligations. If you were to merge the two, perhaps it could create some issues, although France has done that and there doesn't appear to be a problem.

It's up to the committee to consider. This is my humble suggestion. This is an amendment I've put forward in good faith; it comes from a good place. If it's the view of the committee to look at section 269.1 and provide a generalized definition, then it would match with what exists in France and in the state of Queensland. Granted, it is a state, but it does have international obligations as well, and there's obviously a precedent there. I don't think Canada would be condemning itself in any way, but that is my humble view, and again, you're free to debate it.

I'm trying to be as careful as possible in dealing with the concern around international legal obligations.

**The Chair:** Ms. Hardcastle, for clarity, what was happening was that a new section was being inserted as proposed subsection 268.1 (1). In that section, there were subtle differences between the definition of torture and some of the wording in the existing subsection 269.1(1) related to public officials and people acting at their behest.

Mr. Fragiskatos is now proposing that we simply replicate the language of subsection 269.1(1), creating again a new section on private acts. However, there would be no distinction in language, other than that we would be taking out the requirement that it be done by a public official.

**Mr. Peter Fragiskatos:** That is correct.

**The Chair:** Did you have any other questions, Ms. Hardcastle?

**Ms. Cheryl Hardcastle:** No. Thank you.

**The Chair:** Mr. Fragiskatos, I want to thank you for being our guinea pig. You are the first member of Parliament who has been here as a private member presenting a private member's bill, so we have all practised on you.

**Mr. Peter Fragiskatos:** Okay, I get it now.

**The Chair:** We all know now how to ask our questions in a better way.

• (1215)

**Mr. Peter Fragiskatos:** I think the questions were excellent. I have quite enjoyed my time here. It really is an honour to speak with colleagues.

**The Chair:** We appreciate your very articulate and well-reasoned explanation. I want to thank you so much for both bringing the bill and coming before us today. Thank you again, Mr. Fragiskatos.

Now we are going to have a brief break to let our next group of witnesses come forward. Ms. MacDonald and Ms. Sarson, if you could come up, that would be great.

We are going to be back in two minutes.

• (1215)

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

• (1220)

**The Chair:** Gentlemen, we are going to reconvene our meeting of the Standing Committee on Justice and Human Rights in the study of the proposed private member's bill, Bill C-242.

We are honoured to have before us two of the seminal writers in this area in Canada. I am pleased to welcome Linda MacDonald and Jeanne Sarson, who are here to testify.

Ladies, welcome. It is over to you, to make your opening statements.

• (1225)

**Ms. Jeanne Sarson (As an Individual):** Thank you.

**Ms. Linda MacDonald (As an Individual):** Thank you.

First, I want to say that Jeanne and I really support the bill, and we thank Peter for bringing it forward. It is an important piece of work.

In the three recommendations we have in the brief that we submitted to the committee, we would agree with the 14-year sentencing. We think that the naming of "torture" is crucial and we want to maintain that. The bill would not be symbolic. It would certainly be a concrete example of supporting human rights and legal rights in this country. Finally, intellectual disability does not always happen with non-state torture.

Jeanne and I come today carrying the voices of many invisible persons in our country, persons who have endured non-state torture

or torture in the private sphere or private realm. Our testimony is based on what we have learned from their courageous voices. We have been advocating for 23 years for their human and legal rights. We are community health nurses, non-state, torture-informed counsellors, listeners of non-state torture atrocities, human rights activists, international lecturers, educators, writers, members of the NGO Canadian Federation of University Women, mothers, grandmothers, and proud feminists.

Jeanne and I live in Nova Scotia, and in 1993 began a small private nursing practice. In August of that year, we met the first woman we came to know as a survivor of non-state torture. Since then, we have provided complex support to 34 persons, mostly women. We have listened to and supported over 1,000 Canadians who have endured non-state torture and approximately 4,000 persons worldwide, from the U.S., the U.K., western Europe, the Philippines, Australia, and New Zealand.

The persons from Canada are Canadian-born. The majority endured non-state torture from infancy onward. That means they were little babies. Some married their torturers; some were their roommates. The majority were trafficked, forced into non-state torture pornography filming, or prostituted. The perpetrators of non-state torture are everyday persons such as parents, extended family, family friends, guardians, strangers, spouses, human traffickers, pornographers, pimps, and johns.

The children are groomed to endure torture as perpetrators pay money, knowing they can harm children who can withstand non-state torture. Bishop Raymond Lahey from Nova Scotia was jailed for possession of child pornography, and a file labelled "child torture" was found on his computer.

"Non-state actor" is a term used by the United Nations, and perpetrators who are non-state actors inflict torture in the private sphere. Key defining elements of torture are that it is intentional and purposeful, inflicting severe pain and suffering with the ultimate goal of shattering the persons' relationship with themselves.

To give you a better sense of what we mean by "non-state torture" and the brutality and gravity of the harm, I will read Lynne's story. She was a woman born in Nova Scotia whom Jeanne and I supported. Sadly, Lynne is now dead. This story was published in the journal of the Canadian Centre for Victims of Torture.

I was called bitch, slut, whore and "piece of meat." Stripped naked and raped—"broken in"—by three goons who, along with my husband, held me captive in a windowless room handcuffed to a radiator. Their laughter humiliated me as they tied me down spread-eagled for the men they sold my body to. Raped and tortured, their penises and semen suffocated me; I was choked or almost drowned when they held me underwater threatening to electrocute me in the tub. Pliers were used to twist my nipples, I was whipped with the looped wires of clothes hangers, ropes and electric cords; I was drugged, pulled around by my hair and forced to cut myself with razor blades for men's sadistic pleasure. Guns threatened my life as they played Russian roulette with me. Starved, beaten with a baseball bat, kicked, and left cold and dirty, I suffered five pregnancies and violent beatings forced abortions. They beat the soles of my feet and when I tried to rub the pain away they beat me more. My husband enjoyed sodomizing me with a Hermit 827 wine bottle causing me to hemorrhage and I saw my blood everywhere when I was ganged raped with a knife. Every time his torturing created terror in my eyes, he'd say, "Look at me bitch; I like to see the terror in your eyes." I never stopped fearing I was going to die. I escaped or maybe they let me escape thinking I'd die a Jane Doe on that cold November night.

● (1230)

Further to this, I can share a questionnaire we give to persons who contact us. Bear in mind that these harms are not endured in isolation as many women tell us they suffered most harms all at that same moment in time. The questionnaire is something we send out to people who contact us, to try to help them see if indeed they could be a non-state torture survivor.

It includes the following: food/drink withheld; chained or handcuffed to stationary objects; savagely and repeatedly beaten, kicked, hung by limbs; burnt, cut, whipped; fingers and toes and limbs twisted; tied naked for prolonged periods; forced to lie naked on a floor; confined to a dark enclosed space or crate or box or cage; electric shock; forcibly aborted; forced to eat one's vomit or bowel movements; raped by one person; raped by a family group; raped by a weapon such as a gun; raped with animals; prevented from using the toilet; smeared with urine, feces or blood; forced under cold or burning-hot water; placed in a freezer; near drowned when held under water in a tub; drugged with alcohol, pills, injections; choked; pornography pictures taken; forced to harm others; forced to watch pets being harmed or killed; threatened that this will happen to you if you tell; called derogatory names.

In most cases, sadly, I can tell you that the majority of people can list off that they have endured most of these. That's a high standard of intention of harming.

The evidence of non-state torture occurring in Canada is not new. There are government reports dating back as far as 1979 noting the torture that women in this country have endured. In this report that we sent to the Minister of Justice we have documented all of the different government reports starting in 1979 stating that torture happened to women.

The first one was "Pornography and its effects: A survey of recent literature". In 1985 there was a written report to the Special Committee on Pornography and Prostitution. It mentions torture. In 1987 a booklet issued by the Canadian Advisory Council on the Status of Women talked about torture and mutilation of women. In 1991 "The War Against Women" was the first report of the Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women. It talked about a husband who tortured his wife. In the 1993 report "Changing the landscape: ending violence, achieving equality" torture was mentioned. We spoke with persons involved

with the report, and also the report itself mentioned that torture happened in every region of Canada.

The 2010 report "Forsaken: The Report of the Missing Women Commission of Inquiry" by Mr. Oppal talked about the right not to be subjected to torture. In 2010 again "Missing Women: Investigation Review" talked about the investigation of Donald Bakker regarding the torture of women in prostitution. In 2013 the RCMP report "Domestic Human Trafficking for Sexual Exploitation in Canada" talked about victims who also reported torture tactics. The 2014 report by the Native Women's Association of Canada mentioned torture many times and says that torture is torture.

This is what we, as a country, know about what's happened with regard to torture and women in our country.

A fundamental point supporting Bill C-242 is that presently there is a patriarchal divide creating discrimination between persons who endure state torture and those who endure non-state torture. The ordeals of torture are the same, yet section 269.1 of the Criminal Code names only state torture, leaving non-state torture to be misnamed and minimized as assault in section 268.

Jeanne and I have estimated that a woman, who we will call Sara, who was tortured and raped since infancy, had endured almost 24,000 rapes. This does not include the object and gang rapes or bestiality she was subjected to. Her suffering was not assault. The correct name for the ordeal Sara was forced to endure is non-state torture, because indeed suffering is not symbolic.

In 2012 Jeanne and I, as members of the Canadian Federation of University Women, gave expert testimony related to non-state torture to the committee against torture in Geneva. The committee agreed with the CFUW recommendation to amend the Criminal Code of Canada to include non-state torture by non-state actors, and I'll just read a section of their report:

The Committee is of the view that the incorporation of the Convention into Canadian law would not only be of a symbolic nature but that it would strengthen the protection of persons allowing them to invoke the provisions of the Convention directly before the courts.

Those are the committee against torture's own words.

●(1235)

In 2017, Canada will be reviewed by the committee against torture again. We have submitted a brief to the Department of Canadian Heritage with the same recommendation to revise the Criminal Code. If Bill C-242 is passed, we can go back to the committee and proudly report that Canada has shown great leadership in human rights by including non-state torture in our Criminal Code. The alternative is unconscionable.

**The Chair:** Thank you.

Ms. Sarson, do you also have a statement?

**Ms. Jeanne Sarson:** Yes, I do.

**The Chair:** Ms. MacDonald, you've exhausted the time I had provided for both of you, so Ms. Sarson, if you could be brief, it would be good.

**Ms. Linda MacDonald:** I thought we were here as individuals.

**The Chair:** My understanding was that you had 10 minutes together. If you're here as individuals that's fine, but that means we're going to have to shorten the questions in the question period.

Go ahead and make your statement. We'll just make it a shorter question period.

**Ms. Jeanne Sarson:** Okay.

In reference to naming the infliction of torture, non-state torture victimization causes grievous destructive dehumanization. Some women describe not knowing that they were human beings. Some did not know they had physical bodies or skin, or that having their anus hang outside of their body was not normal. These are impacts of repetitive non-state torture, of which sexualized torture is never-ending.

The severity of non-state torture pain becomes repeated when women's flashback memories surface. Flashbacks transport them into past ordeals, re-experienced at the age when they were tortured. They can refeel the burning and the cutting of their skin, the jaw pain, and the taste of oral torture rapes, trying not to panic when feelings of being unable to breath return. They can re-experience their body convulsing to the electric shock torture, re-experiencing the terror and the horror of when, for example, they were two.

I can shorten that and go on to say that Sara, who Linda mentioned, is 30 years old. She has a master's degree. When her memories came back, she talked about them at the age of two. When she was telling us about one experience, she said, "It can't go into the little door", meaning her vagina. "The monster", meaning penis, "is too big." "The water is turning red," meaning that she was hemorrhaging, "just like the crayons in my colouring book."

What we found is that when women are trying to heal, their memories come back at the age they endured what happened to them.

The other thing that happens is that sometimes, when they're being water tortured, for example, and they're trying to breathe, the panic sets in. The terminology that we found universally is that they say, "We go into the blackness", and we've understood that they go unconscious. Here, again, their suffering is not aggravated assault.

Under "interpretation", I'd like to give you an example of why Linda and I are saying we'd like you to consider that in non-state torture it's not always a significant change in intellectual capacity. I'll give you another example. The youngest person who came to us was in her late teens. She wasn't being believed and she was accused of lying. She was struggling not to kill herself, which is a common response to mental suffering.

She disappeared after a couple of years of our support. Seven years went by, and out of the blue we got this email from a friend, "I'm sure you remember Sophie....she will be graduating from Nursing School with a Masters degree and above a 3.9 GPA. She is happy, enthusiastic participant in life.... She told me, the other day, that she hasn't considered killing herself in a long time. Your kindness and support to her surely helped. I thought you may want to know."

That is evidence that we have to consider exactly what goes on.

In reference to some of the questions that were asked of Peter on why it is important to have legal naming, it's a very inexpensive national intervention. This is what Alex has written to us, "When society minimizes [non-State torture]...it is taken personally...and feels like it is...me...they are looking down on....reinforcing the feeling of how they minimized my worth when they tortured me.... Not having the law care enough...reinforces what the [torturers] said, 'No one will believe you. What makes you think you are so special that someone would even want to save you or care about you!'"

That was her take on why it's very important.

The other thing around naming is that it decreases the social isolation. Many women have told us that they feel like freaks because it's not known what they've endured. That was the other benefit to proper naming.

With regard to the issue of the need to toughen the laws and look at non-state actor torture and keep survivors and children safe, I reference what Jody Wilson-Raybould said about the mandate letter of Justin Trudeau that was sent to her, and Ms. Hajdu's mandate letter. They were asked to look at these issues.

●(1240)

The issue of naming non-state torture gives voice to infants, to preverbal children, and to older children who are not at this table, whose Internet pornographic victimization show sexualized torture and bondage of newborns and of children up to age eight increasing. They're victimized mainly by family and friends. That's documented by the National Child Exploitation Coordination Centre, part of the national police services and Public Safety Canada. I have some of the data in this statement.

Just to let you understand that what we've learned is that people who are responsible for the safety of children.... One example they need to know is that stalking and harassment by family-based perpetrators can begin at age five when parents become volunteers in the school. That's a tactic that women have told us about. That keeps them silent and psychologically captive.

Also, in talking to the police—Linda and I have been talking to the police in the last little while—they are shocked probably by what we're telling them because they tell us they haven't heard some of this before. To educate police, they have to know that the crime of non-state torture happens and they have to know the tools that are used. For example, we surprised them when we said that women have told us that a hot light bulb is used to sexually torture them, if you will, when it's rammed into their vagina as little girls.

Just to talk about law that can inform educational sessions, Linda and I were asked by a grade 12 teacher of students who were studying political science to talk about political advocacy on Bill C-242. The scenario we presented to the students is that they imagine that they're MPs and they have to study Bill C-242 and learn about what non-state torture is. First they started with a questionnaire where they had to decide what they thought the difference was between torture and assault, and I can tell you they picked assault as a lesser crime than torture. After we taught them, they had to make a decision how they would vote on Bill C-242. That's what happened, and they were quite dismayed that there was no non-state torture law in Canada. They believed that such a law is not symbolic and they voted to amend the Criminal Code.

I guess what Peter has said about article 5 of the Universal Declaration of Human Rights.... That's where we started in 1993 when we were shocked to find out that Canada was not recognizing non-state torture as a crime. I think for Canadian society, if we're going to be truth-tellers, we have to admit to what's happening to children of all ages—and adults—in this country.

I hope that's quick.

**The Chair:** Actually, you took pretty much the whole time, so I'm glad you made it shorter because I think otherwise you would have gone over your 10 minutes.

Thank you very much, ladies.

Unfortunately, because the transport committee was a little slow in clearing out of the room, we're a little bit behind. I'm going to ask for four minutes for this round of questions instead of six minutes so that we can be out of the room at one o'clock to respect the time.

Mr. Cooper.

•(1245)

**Mr. Michael Cooper:** Thank you, Ms. Sarson and Ms. MacDonald, for your testimony. Certainly, it was very graphic testimony that reinforced, if there was ever any doubt, how profoundly evil torture is.

You touched a little bit in both of your presentations on this, but I would perhaps ask you to elaborate a little bit. When you look at the Criminal Code and the fact that we have various different sections of the Criminal Code that could apply to various acts of torture, depending upon the nature and the scope of the offence, whether it

be under kidnapping, aggravated assault, or forceable confinement, where do you see the real void as it stands now in the Criminal Code?

**Ms. Jeanne Sarson:** For me, from listening to all the women we've listened to, it's the naming. If it's not named, they tell us over and over again that's a void. It has to be named torture by private individuals or non-state actors.

**Ms. Linda MacDonald:** We've been told by victims who have gone to court that torture named in their victim impact statement was redacted from their statement. They weren't allowed to use the word in court. We know now from research that, when you use a word, it changes your brain, so when you've endured torture and you have to name it something else, then your brain goes into a sense of incongruity or harm. If you can name something correctly, then it promotes healing in your brain.

**Mr. Michael Cooper:** Thank you.

You would agree, then, that under the current Criminal Code, there are not perpetrators who commit acts of torture who are prosecuted under the existing Criminal Code provisions who are getting off in any way, but rather, to the point of doing justice and making sure that justice is done for the victims and their families, they need to call torture what it is, which is torture. Is that a fair interpretation of your previous answer?

**Ms. Linda MacDonald:** I would say, but I would also say that, if we did have a crime of non-state torture in the criminal court, more people would come forward, probably, with their stories. I've also been witness to a woman talking to her lawyer about what she had endured, and many of these things that I read about she talked to her lawyer about and he said, "If you brought that in the courtroom, there would be blood on the floor; your blood on the floor. It's not safe for you to mention those things." That was many years ago. We have evolved, but I do believe that we have to become more open to the atrocities that happen in Canadian homes.

**Ms. Jeanne Sarson:** I would just expand that to society. You said the victimized person, but I think every citizen in this country has to understand, too. The law is what names. It helps us understand the culture we live in and the society that is evolving around us. I think it's in a broader context too. Law educates us differently.

**Mr. Michael Cooper:** That's okay, Mr. Chair.

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

Next we're going to go to Mr. Fraser.

**Mr. Colin Fraser:** Thank you very much.

I'm going to be sharing my time with Bill Casey.

Thank you very much for your presentation, for coming here today. Thank you for your 23 years of advocacy on behalf of human rights, and it's really a pleasure to meet you. I'm thankful that you're here today.



With regard to putting non-state torture in the law, you mentioned one of the benefits for the victim is that they feel that naming what they've gone through is somehow a sense of acknowledgement. I wonder if there are other benefits of this as well, and I'm thinking in terms of the deterrent aspect. Do you think that any deterrence is possible if more people are coming forward or there's more chance of people receiving a different type of criminal conviction?

**Ms. Linda MacDonald:** I think that prevention would be possible. The groups that we know are very persistent in harming the victim. If people have children in these families and we access and save the children more quickly, the trauma that they would endure would be much less. If we have people who come forward earlier, health care providers or first responders who know how to recognize non-state torture early in a child's life, and we can bring that to court, then the child can be protected and the prevention of long-term trauma would definitely occur.

• (1250)

**Mr. Colin Fraser:** Just quickly, do you support the proposed amendment, then, that was put forward by Mr. Fragiskatos?

**Ms. Linda MacDonald:** Yes, I do.

**Mr. Colin Fraser:** You're familiar with it?

**Ms. Jeanne Sarson:** Well, just as of today.

**Ms. Linda MacDonald:** It sounds like a good idea.

**Mr. Colin Fraser:** Okay, thank you.

I'll defer to Mr. Casey.

**The Chair:** Mr. Casey, welcome to our committee.

**Mr. Bill Casey:** Thank you, it's a pleasure to be here.

I want to say that Jeanne and Linda are members of my riding, and I've known them for over 20 years. They are the most dedicated human rights workers in my riding, maybe anywhere I've ever seen. They're so committed and persistent in this cause, but it's not their day job. Their day job is helping the sick and the disabled in Colchester County, Nova Scotia. This is their... You can't call it a sideline because it's more than that. They provide a great service in Colchester County in every way. I just want to make it clear that they are valued members of our community, and we're very grateful for the work they do.

I just have one question. If this passes, what will the impact be on society? How will it change?

**Ms. Linda MacDonald:** I think society will change in many ways, because if we name a crime then we make it visible in our country. We start gathering data on the crime. We start to know how prevalent it is in our country. We have statistics. Then we change the interventions with police and in the court system. We change the interventions with the first responders. They'll understand the suffering they're witnessing and hear it differently. We'll educate children to know that non-state torture does happen in our country. For instance, with Lynne, it was her goal to educate young women. She'd never for a moment dreamt that the man she married would torture her. Young people have to know that's a reality that can happen in an everyday relationship.

I think it will make us a better society. We'll evolve. We'll follow the recommendations of the committee against torture and be a guiding light in the global community.

**Mr. Bill Casey:** As much as you and I have talked over the years—it's been over 20 years—your words are hard to hear. Your presentation today is hard to hear.

I'm sure, in some cases, you've had a hard time convincing people of the seriousness of this torture issue.

Do you have a thought on that? The words you used today are words that a lot of Canadians have never heard.

**Ms. Jeanne Sarson:** I guess, Bill, I'd go to the positive.

This is the Universal Declaration of Human Rights, and I'm surprised how many people in Canada do not even know that it exists in this context. We take it to schools. When we educate in the schools, we take the Universal Declaration of Human Rights. We're trying to educate children about equality.

You put it up there and go to article 5, which reads, "No one shall be subjected to torture", and you have say it's only the people who are state tortured who have that human right. They'll look at us and ask how that can be.

We educate different ages: grade 7, high school. Some of them take the universal declaration, kind of hug it, and say that we have something there. They question the inequality that exists when we don't have article 5 applied to every person, regardless of who they are in this country. I would add that it is very significant in how we change our society, our young children.

**The Chair:** It's good to remember that John Humphrey, a Canadian, was the author of the universal declaration.

**Ms. Jeanne Sarson:** Yes, you're absolutely correct.

**The Chair:** He was a former law professor of mine at McGill, and a very great man.

Ms. Hardcastle.

**Ms. Cheryl Hardcastle:** Thank you.

There's so much for this whole committee to deeply reflect on.

I know you were here earlier. One comment I'd like to give you a chance to respond to is with regard to equating torture and what you've described with someone getting a life sentence. I hope you know what I'm getting at without my having to say it.

It was mentioned earlier how our sentencing reflects this hierarchy of crimes. I know there will be more that this committee will have to deeply reflect on. However, on the idea of torture as equated to murder with regard to the small pieces, however you want to go into it, I would like to hear you talk a bit more about how this can be named torture but will still have just an aggravated assault definition on it. You've just changed the name. Is there something problematic with that? I think it's a deeper question for the committee.

You heard some of the comments earlier today. I'd like to hear you respond to that.

• (1255)

**Ms. Linda MacDonald:** Do you mean around the sentencing?

**Ms. Cheryl Hardcastle:** Yes, around the sentencing issue. It's not taking away a life, so why should you have a life sentence?

**Ms. Linda MacDonald:** I feel that the bill is so important that if members in the House are concerned about the inconsistency between state torture sentencing and non-state torture sentencing, I'm willing to let that go. I think it's fair to be consistent. We can't say you're going to have a higher sentence for non-state than state, in my opinion. I'd like to see them both go to 30 years, but that's another issue.

I feel that the bill is so important to go forward, and if that's a blocker, I'm fine with the 14-year sentencing for both. That's my answer.

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

Finally, Ms. Khalid.

**Ms. Iqra Khalid:** Thank you, Chair.

Thank you very much for your very moving testimony today. We don't often see the impacts of violence, and I'm very grateful for the work you're doing with respect to that.

I have a question with respect to your work with victims. Have the people you've been working with gone through the justice system, and have their perpetrators been convicted of any offence?

**Ms. Jeanne Sarson:** No. There are several reasons.

Number one, we don't have a law. If there is no law, they can't go forward and say they have been tortured. As Linda said, their statements are redacted even if they tried to say something.

The women we have worked with don't even know they are human beings, so they don't know they have legal rights and human rights. That is all foreign to them. Many would not have the capacity to withstand what a legal system would do to them until society is open to understanding the brutality that can exist in relationships. None of them have come forward for those reasons: no law, no support, and no social realization of what they have endured and what the impact is of the non-state torture they have endured.

**Ms. Iqra Khalid:** The sponsor of the bill mentioned a few people who have been convicted of aggravated assault.

Having victims who are so sensitive and going through a lot of disabilities with respect to what they have gone through and their experience, putting those victims through the justice system, and having them now prove an offence that carries a very high burden of proof, how do you think that will impact victims going through the justice system?

**Ms. Linda MacDonald:** The women tell us that they want the bill. They really want this bill so that they can be understood and start speaking fully about the atrocities they have endured. If I go to their voices, I know they are willing to try. If we open up our court system to thinking about non-state torture in the everyday sense and educate lawyers, judges, the police, and all of us, then we will evolve through that. But we won't even start if we don't have the law. I think they are ready.

**Ms. Iqra Khalid:** I have no more questions.

**Ms. Jeanne Sarson:** May I just add a little comment?

**The Chair:** Sure, go ahead.

**Ms. Jeanne Sarson:** I have a comment about the burden of proof.

I think we have to start somewhere, and right now there is some proof that infants and young children are being tortured in the pornographic industry. Even if we started there, we would start opening up society to the knowledge that such atrocities are happening. They have the data at the National Child Exploitation Coordination Centre. This is visual data, data the police have and this country has. They can use that and start charging the families, which are the most frequent perpetrators, or the friends who perpetrate. You could start charging them for torture and the burden of proof starts developing more easily.

• (1300)

**The Chair:** Thank you very much, Ms. MacDonald and Ms. Sarson, for coming all this way to testify before us. We very much appreciate your being here. We have listened carefully to what you've had to say. In the same way, we have listened to the sponsor of the bill, Mr. Fragiskatos. We look forward to continuing our deliberations on the bill at our next meeting.

The meeting is adjourned.







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