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Chair: Mr. Randeep Sarai





# Standing Committee on Justice and Human Rights

Thursday, December 1, 2022

• (1545)

[English]

**The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)):** I call this meeting to order.

Welcome to meeting 41 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of October 31, the committee is meeting to begin its study of Bill C-9, an act to amend the Judges Act.

Today's meeting is taking place in a hybrid format pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I would like to make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your microphone, and please mute yourself when you are not speaking. For interpretation for those on Zoom, you have the choice at the bottom of your screen of either the floor, English or French. For those in the room, you can use the earpiece and select the desired channel.

I will remind you that all comments should be addressed through the chair.

For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

On our agenda today, we will be proceeding to the clause-by-clause consideration of Bill C-9. If time permits, we will try to continue in camera our progress on our study of the draft report on the government's obligation to the victims of crime.

On our first item of business today, we will have officials from the Department of Justice with us for any technical questions.

I would like to welcome Shakiba Azimi, counsel, judicial affairs section, public law and legislative services sector; and Patrick Xavier, acting deputy director and senior counsel, judicial affairs section, public law and legislative services sector.

If we're ready to start clause-by-clause consideration of Bill C-9, I would like to provide members of the committee with some instructions and a few comments on how the committee will proceed.

As the name indicates, this is an examination of all clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote.

If there are amendments to the clause in question, I will recognize the member proposing each one to explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on. Amendments will be considered in the order in which they appear in the bill and in the package that each member received from the clerk. Members should note that amendments must be submitted in writing to the clerk of the committee.

The chair will go slowly to allow members to follow the proceedings properly.

Amendments have been given an alphanumeric number in the top right corner to indicate which party submitted it. There is no need for a seconder to move an amendment. Once moved, you will need unanimous consent to withdraw it. During debate on an amendment, members are permitted to move subamendments. These subamendments must be submitted in writing. They do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment to an amendment has been moved, it is voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will vote on the short title, the title and the bill itself. If amendments are adopted, an order to reprint the bill may be required so that the House has a proper copy for use at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments as well as an indication of any deleted clauses.

**Hon. Rob Moore (Fundy Royal, CPC):** You should be done by now.

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

I know we are all pretty well versed in this, but I feel that it's still my duty to go through it.

To begin the clause-by-clause study, the chair calls clause 1.

(Clauses 1 to 11 inclusive agreed to)

(On clause 12)

**The Chair:** We have amendment NDP-1.

Mr. Bachrach, do you want to speak to it?

**Mr. Taylor Bachrach (Skeena—Bulkley Valley, NDP):** I'm happy if you just want to call the vote, but perhaps I should introduce it.

**The Chair:** Go ahead and introduce it.

**Mr. Taylor Bachrach:** Thank you, Mr. Chair.

Thank you to the committee for allowing me to sit in for my colleague, Mr. Garrison. I'll do my best here.

NDP-1 is an amendment that Bill C-9, in clause 12, be amended by replacing the line 13 on page 6 with the following:

alleges sexual harassment or that alleges discrimination—or improper conduct that is substantially similar to discrimination—

I believe this was based on a concern brought to the committee by the National Council of Canadian Muslims, which appeared before you as a witness during the consideration of Bill C-9.

The goal here, if I understand it correctly, is to avoid complaints being summarily dismissed at the screening stage. It's to ensure that complaints are heard and investigated through that first stage, to increase public confidence in the process. I think that's a summary of why that amendment was brought forward.

Thank you.

• (1550)

**The Chair:** Okay.

Mr. Anandasangaree.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** I'm just wondering if we can hear from counsel on this.

**The Chair:** Sure.

Would either one of you, Ms. Azimi or Mr. Xavier, want to comment on this?

**Mr. Patrick Xavier (Acting Deputy Director and Senior Counsel, Judicial Affairs Section, Public Law and Legislative Services Sector, Department of Justice):** Sure. I'm happy to comment on it.

I think the term “substantially similar to discrimination” is a bit vague. It doesn't really have a clear legal meaning, so it's discrimination or it's not. For something that is “substantially similar” to it but is not discrimination, exactly what that means and how it could constitute misconduct would seem a bit unclear.

We're not aware of any kind of instrument that would define what constitutes “substantially similar to discrimination” and how it might constitute misconduct.

**The Chair:** Is there any other debate on this?

Mr. Van Popta.

**Mr. Tako Van Popta (Langley—Aldergrove, CPC):** I just have a question for counsel.

Could we drop the second part of that so that all it reads is “alleges sexual harassment or that alleges discrimination”?

**Mr. Patrick Xavier:** I think the clause already reads, “that alleges sexual harassment or discrimination on a prohibited ground within the meaning of the Canadian Human Rights Act”. I think that would revert the provision to the original wording.

**Mr. Tako Van Popta:** The question is whether it changes the import to drop the phrase that includes the term “substantially similar to discrimination”.

**Mr. Patrick Xavier:** Yes, if that term were dropped, then so long as we retain discrimination on a ground as set out in the Canadian Human Rights Act, that would be fine. That provides a clear legal standard that screening officers can assess complaints against.

**The Chair:** I guess we'll vote on this, Mr. Clerk. There's no further debate.

Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** I guess my point, Mr. Chair, is that this is not very clear. I think it will complicate the definition. I think, as counsel has indicated, it wouldn't give the clarity that's required for the intention of the amendment.

Certainly overall, in the context of the bill, I think it will render the overall definition to be incomplete and would not give the clarity required for the decision-maker in this process.

**The Chair:** Do we want to vote?

Mr. Bachrach.

**Mr. Taylor Bachrach:** I believe the intention was to avoid an overly prescriptive definition at the very first stage, so that the preliminary investigation could then gain greater clarity in terms of whether it indeed fit the more specific legal definitions that counsel has indicated.

The concern is if there's a case where it's unclear if it meets the specific definition, that the bill should err on the side of moving those complaints through to the first stage of investigation as opposed to dismissing them and excluding them from the process, based on limited information at that initial, pre-investigation stage.

I believe that's the intention.

**The Chair:** If there are no further comments, I guess we'll go to a vote on it.

(Amendment negatived)

**The Chair:** We'll go to NDP-2.

Would you like to introduce it?

**Mr. Taylor Bachrach:** Thank you, Mr. Chair.

NDP-2 is an amendment that Bill C-9, in Clause 12, be amended by adding after line 31 on page 6 the following:

(2) If the reviewing member dismisses the complaint, they shall inform the complainant in writing of their decision and the reasons for it.

The rationale here is that the complainant should be given full and complete information on the reasons for the decision, not simply a summary of the reasons and the decision itself.

• (1555)

**The Chair:** Is there any debate?

Go ahead, Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Again, I would seek some clarity from counsel on this.

**The Chair:** Sure.

Go ahead, Mr. Xavier.

**Mr. Patrick Xavier:** What this amendment seems to do is codify the existing procedural fairness obligation of the council to provide the complainant with notice of the decision, and the reasons for the decision. That's already a right complainants have.

The thinking behind proposed section 87 under clause 12, which requires the CJC to set up a policy on how to notify complainants about the outcomes of decisions, is this: The CJC would establish the policy, then the policy would come under review by the federal courts whenever a complainant applies for judicial review of the council. If the policy is found deficient in some way, it could simply be amended and corrected. You would therefore have an ever-green document that could evolve with the law on the duty of procedural fairness, as owed to complainants. That was the thinking.

The federal courts have already been clear that complainants have this right, so the CJC's policy will have to reflect this right. Whether or not to codify it in the statute is, of course, entirely up to this committee. There's no harm in it.

One thing the committee might consider turning its attention to is the possibility that.... As it is, it might be useful to add a caveat that the reasons should not include any personal or confidential information, or information that might not be in the public interest to disclose. The only reason it might be useful to add a caveat like that is because.... You see that caveat de facto added in other parts of the bill. If the report of a hearing panel is required to be made public, there's always the possibility of redacting it, in accordance with the public interest reasons for issuing a publication ban or holding a hearing in camera. That's to ensure confidentiality, or the public interest reasons for holding hearings in camera or issuing publication bans, can be respected, in terms of what's issued publicly. It might be useful to add a caveat here that personal or confidential information should not be released.

It might also be useful to note that the same alleged misconduct—I mentioned this the last time I was here—can provoke a complaint from a wide variety of complainants. The victim of the misconduct can complain, people who have direct knowledge of events can complain, and members of the general public who hear about it in the news can complain. Arguably, not all complainants are necessarily entitled to the same level of reasons. It depends on the context, so adding a caveat that personal or confidential information should not be disclosed might be helpful, in terms of allowing the CJC to tailor the reasons accordingly.

**The Chair:** Thank you.

Go ahead, Mr. Moore.

**Hon. Rob Moore:** Thanks, Mr. Chair.

Thank you for the explanation.

I'm inclined to support amendment NDP-2, but with the caveat raised by Mr. Xavier. I thought he provided some pretty good language. I don't think that was a drafting instruction, so I don't know whether we want to come back to it or need to work out the exact language now. I think it's probably important that the language around personal and confidential material be included in the amendment.

Therefore, this is a friendly subamendment.

**The Chair:** I've been told that it would have to be submitted in writing. Somebody would have to submit it. We can put it in and come back to this one afterwards, if that's something you want to do. A subamendment would be done. We'd vote on the subamendment, then on the amendment, then....

Yes, go ahead, Mr. Bachrach.

**Mr. Taylor Bachrach:** I'm wondering if I can ask, through you to Mr. Xavier, whether the protection of confidential and personal information would be covered under any other statute. If it weren't explicitly included in this clause, are there statutes that would protect those individuals and their identities?

• (1600)

**Mr. Patrick Xavier:** It's not entirely clear. I believe the CJC is exempt from access to information and privacy laws, so I'm not.... Unfortunately, I don't have that answer right in front of me.

Generally speaking, I think the council is very conscious of confidentiality and has always attempted to protect it whenever possible. It might be able to read that into the provision, but the bill has erred on the side of caution and always indicated in those other provisions, as I said, that confidential and personal information need to be protected when it's necessary. To indicate it here would follow the policy that the bill has established in these other provisions.

Another example is proposed subsection 147(3) when there's an independent review of financial provisions. That report of the financial review is issued every five years. Again, there's an exhortation there to protect personal and confidential information. It's to err on the side of caution and ensure that that information is, indeed, protected.

**The Chair:** Go ahead, Gary.

**Mr. Gary Anandasangaree:** Thank you.

Mr. Xavier, to be clear, without this amendment, the right of individuals to get a summary of the information, and the policy that you were talking about earlier that governs what kind of information is to be provided will still be available. Am I correct?

Would this hinder the ability of the policy to evolve as it has evolved over the number of years, or would there be additional restrictions for you to make sure that the policy is in-line with current practices? We're unlikely to amend this act any time soon, so we want to have a longer-term sight on this.

**Mr. Patrick Xavier:** It seems to codify a very basic right to simply receive reasons for a particular decision, specifically the decision to dismiss complaints by the reviewing member. It's hard to see how that would hinder the ability of the policy to evolve. There will still need to be a policy that addresses the notice of complainants, probably in other ways.

It's hard to see how that would hinder evolution of the policy.

**Mr. Gary Anandasangaree:** Mr. Chair, we're inclined not to support this. We feel there are sufficient safeguards in place, and we will not be supporting this amendment.

**The Chair:** Thank you.

Go ahead, Mr. Bachrach.

**Mr. Taylor Bachrach:** I thought that to do justice to my colleague's thinking, I would read the note that he left on this, explaining the rationale:

It is difficult for a complainant to know whether there are grounds for asking for judicial review of a dismissal at the screening level or a decision of a review panel without having the full legal reasons for the outcome. Currently, and continuing under C-9, complainants only receive the decision and a summary of the reasons from the CJC. Ironically, once an application for judicial review has been filed the full legal reasons must be disclosed to the complainant. Both logic and transparency seem to demand that the legal reasons be disclosed at the earlier point in the process.

I would note that I believe Professor Craig Scott from Osgoode Hall law school spoke to this point when he appeared as a witness before the committee.

Mr. Garrison went on to say:

As it stands C-9 inadvertently makes the process more secretive as it reduces the number of opportunities for outside review in its attempt to simplify the process and shorten timelines for resolving complaints. The amendments proposed in NDP Amendments 2 and 3 aim to provide more transparency by providing the complainant with a copy of the reasons for decisions by a review panel as well as the reasons in case of dismissal of a complaint at the initial stage.

**The Chair:** There is no further debate.

Unless somebody is going to propose an amendment, I will take it to a vote.

**Mr. Taylor Bachrach:** Mr. Chair, it seemed like we had support for the idea of adding the caveats that Mr. Xavier suggested. If those were provided in writing, could we return to this amendment and—

**The Chair:** We could return to this afterwards, if you want. That's no problem.

**Mr. Taylor Bachrach:** Okay.

**The Chair:** We're on amendment NDP-3. Mr. Bachrach, do you want to introduce that?

**Mr. Taylor Bachrach:** Okay. This is more talking than I counted on. It reads that Bill C-9, in Clause 12, be amended by adding after line 27 on page 8 the following:

“(2) If the review panel dismisses the complaint, it shall inform the complainant in writing of its decision and the reasons for it.”

Again, this has the same rationale as the previous amendment. Perhaps, likewise, we can return to it.

• (1605)

**The Chair:** Are there any subamendments?

Mr. Moore.

**Hon. Rob Moore:** With, I'm assuming, the same caveat, I would be inclined to support it. I see no reason that we wouldn't codify that with the caveat not to disclose personal or confidential information.

**The Chair:** Without further debate of that here, I'll wait.... I'll return to it later if you have a subamendment.

Mr. Moore.

**Hon. Rob Moore:** In the interest of practicality, before someone goes around drafting the caveat, if we knew what Mr. Fortin's intention is in regard to the amended amendment, it might save someone time.

**The Chair:** You're lucky. He's perking up. He's pretty excited that we want to know his opinion.

**Hon. Rob Moore:** It would save someone time.

[*Translation*]

**Mr. Rhéal Fortin (Rivière-du-Nord, BQ):** I didn't understand what you said, Mr. Moore.

[*English*]

Could you repeat that?

**Hon. Rob Moore:** Yes.

Before we go to amending the amendment, are you inclined to support NDP-2 and NDP-3?

[*Translation*]

**Mr. Rhéal Fortin:** I'm in favour of both amendments, but I'm wondering how appropriate it is to insert a caveat because, in my opinion, it should go without saying.

However, I have no major objection to that. If everyone agrees to adopt NDP-2 and NDP-3, including the caveat, I'll agree.

[*English*]

**The Chair:** Thank you, Mr. Moore. That was good.

As to NDP-4, I have a ruling—

I've just been advised of a technical thing. I can go to the next clause, which is clause 13, but I can't go to the next amendment now until we revert back to that.

I will go to clause—

Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Mr. Chair, if we do go back to amendment NDP-2, if that's what you're suggesting, then I do have language that I think may give us a bit of a....

**The Chair:** Can you provide it in writing? You can read it out.

**Mr. Gary Anandasangaree:** I have it in writing, but it's only in English. I would probably need to read it out for the record.

**The Chair:** I think Mr. Bachrach has some as well.

I'll briefly suspend while our great staff get it translated and sent to you in real time. We'll suspend for a minute.

• (1605) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1615)

**The Chair:** We'll resume.

I believe in a few seconds you should all have in your P9 email accounts the subamendment to amendment NDP-2 as well as amendment NDP-3. It should be in both official languages.

[Translation]

**Mr. Rhéal Fortin:** I haven't received it yet.

[English]

**The Chair:** I think he's still sending it. I was a little eager in my announcement that it had been sent. We'll send it to the two witnesses as well, to Ms. Azimi and Mr. Xavier.

I think everyone has it now.

Is there any debate on the subamendment to NDP-2? Are we good?

Go ahead, Monsieur Fortin.

• (1620)

[Translation]

**Mr. Rhéal Fortin:** I just received the subamendment, and I'm reading it now, Mr. Chair.

[English]

**The Chair:** Okay.

[Translation]

**Mr. Rhéal Fortin:** The translation of “shall not include” should instead be “*ne devraient pas inclure*” or “*ne doivent pas inclure*” instead of “*n'incluent pas*”, which I don't think is a good translation.

[English]

**The Chair:** I'll adhere to your advice on the wording.

**Mr. Rhéal Fortin:** It's not that bad, but....

**Ms. Lena Metlege Diab (Halifax West, Lib.):** [Technical difficulty—Editor] just grammatical. It's nothing personal.

**Voices:** Oh, oh!

**Mr. Rhéal Fortin:** No, no. In fact, you're doing a fantastic job.

**The Chair:** Do we just want to agree—I don't want to amend an amendment—that the wording in French shall be as Monsieur Fortin says?

**Some hon. members:** Agreed.

**The Chair:** Okay.

[Translation]

**Ms. Marie-Hélène Sauv  (Legislative Clerk):** I'd just like to confirm with you whether we are going with “*ne doivent pas*” or “*ne devraient pas*”.

**Mr. Rh al Fortin:** It's “*ne doivent pas*” because “*devraient*” is conditional, and since the conditional isn't in the English text, it would be inappropriate to introduce it in French.

**Ms. Marie-H el ne Sauv :** Okay. Noted.

[English]

**Ms. Lena Metlege Diab:** Again, just on the proposed subsection 94(3) and the other one 94(2), there is no 94(1). Do you know what I'm saying? There's 103(a), (b), (c), so that first one needs to be (1) and then this one as (2)—like subsection (1) and subsection (2). There's no proposed subsection (1) already.

Are you following me?

[Translation]

**Ms. Marie-H el ne Sauv :** Proposed section 94 would become subsection 94(1), and we would add subsections 94(2) and 94(3).

[English]

**Ms. Lena Metlege Diab:** Okay, so that becomes subsection 94(1).

**The Chair:** Okay, so we're all good with the subamendment to NDP-2?

(Subamendment agreed to [See Minutes of Proceedings])

**Ms. Lena Metlege Diab:** I guess. I don't know.

**The Chair:** Shall amendment NDP-2 carry, as amended?

(Amendment agreed to [See Minutes of Proceedings])

**The Chair:** Similarly, shall the subamendment to amendment NDP-3 carry?

(Subamendment agreed to [See Minutes of Proceedings])

(Amendment agreed to [See Minutes of Proceedings])

**The Chair:** As for amendment NDP-4, I have a ruling on that.

Bill C-9 amends the Judges Act by replacing the process through which the conduct of federally appointed judges is reviewed by the Canadian Judicial Council. The amendment seeks to add the Federal Court of Appeal as an additional level in the process of appealing decisions on the removal from office of a federally appointed judge. *House of Commons Procedure and Practice*, third edition, states on page 770 the following:

An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the inclusion of the Federal Court of Appeal in the appeals process constitutes a new concept that is beyond the scope of the bill, and therefore I rule the amendment inadmissible.

Mr. Moore.

**Hon. Rob Moore:** I don't think your rulings are debatable. I know we recently saw a ruling at the public safety committee, when a new amendment was added, which I was shocked to be ruled in order.

I am really surprised. I think, even reading your ruling, that this is 100% within the mandate of the bill and that it doesn't bring in any new expansion of the scope of the legislation. I think it's completely in line with the streamlining of the process. So, with all due respect, I would have to challenge your ruling on inadmissibility, Mr. Chair.

• (1625)

**The Chair:** I let you speak, but it's not a debatable thing. You challenged the ruling, so we will have a vote on the ruling of the chair.

All those in favour of the chair's ruling being sustained?

**Mr. Gary Anandasangaree:** Just on a point of order, to the clerk, if we're voting yes on this, it means we accept the ruling of the chair, right?

**The Chair:** Yes.

(Ruling of the chair sustained)

**The Chair:** Also, the vote on amendment NDP-4 applies to amendment NDP-5 since they are consequential.

Also, if amendment NDP-4 is moved, amendment CPC-1 and its consequential amendment, CPC-2, cannot be moved as they are identical to amendments NDP-4 and NDP-5. I am just letting the members know that.

Amendment NDP-4 is out now, right?

Shall clause 12 as amended carry?

(Clause 12 as amended agreed to on division)

(Clauses 13 to 16 inclusive agreed to)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the chair report the bill as amended to the House?

**Some hon. members:** Agreed.

**The Chair:** Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**The Chair:** We will now suspend for a few minutes to go in camera for a second review of the draft report on the government's obligations to the victims of crime.

*[Proceedings continue in camera]*









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