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• (1605)

[English]

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

Welcome to meeting number 67 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order adopted by the House on March 22, 2023, the committee is meeting in public to begin its study of Bill S-224, an act to amend the Criminal Code (trafficking in persons).

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.

Since our witness is a member and he already knows how to use the Zoom and interpretation features in the House—and I don't think there's anybody externally who does not know—I won't go into those.

I would like to welcome Dr. Colin Carrie, member of Parliament for Oshawa, the sponsor of Bill S-224, for the first hour of our meeting.

Welcome to the committee, Mr. Carrie. You have five minutes to present if you have opening remarks, and then we will go to questions from members.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

Today I will be speaking to Bill S-224, a non-partisan bill that passed unanimously in the Senate on October 6, 2022.

This bill had its start as Bill C-461, which I was honoured to present in the House on June 17, 2019. Unfortunately, it died on the Order Paper.

I want to thank Senator Ataullahjan for taking up the cause and successfully stickhandling this through the Senate. I want to thank Arnold Viersen for his unending commitment to ending human trafficking. I also want to thank an amazing community of supporters, victims, moms and dads, survivors and many other stakeholders.

I want to share the experience of a survivor that I heard recently at a forum organized by the All Party Parliamentary Group to End Modern Slavery and Human Trafficking. Alexandra spoke to us about her experience, saying:

I walked into the commercial sex industry at 20 years old. I was an adult, over the age of consent and able to make informed decisions for my own body. I believed that I was taking control of my sexuality by using it for personal gains. I

never thought of my boyfriend as a pimp. And I certainly never considered my situation to be trafficking. It wasn't until 10 years after my experience, that I was informed I was trafficked.

She went on:

This is the reality you need to understand: I made choices and I was manipulated. I believed I was a consenting, empowered adult and I was exploited by my boyfriend.

Had the police intervened in Alexandra's situation under our current laws, it's unlikely her case would have fit what they look for, as it's focused on the victim's mindset, and she wasn't afraid.

The purpose of the bill is to align Canada's law so that it is consistent with international law aligned with the Palermo protocol—a protocol that we as a country ratified in 2002—and properly places the focus on the actions of the trafficker. It will facilitate convictions against those who participate in human trafficking in Canada by amending the Criminal Code's definition of exploitation and human trafficking offences, so that the Crown is no longer required to prove a reasonable person in the victim's circumstances feared for their safety or the safety of someone they know. This will put the onus on the perpetrator rather than the survivors.

Our current code reads as follows:

279.04(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all [of] the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

In contrast to our definition, the Palermo protocol views human trafficking as having three distinct elements: the act, the means and the purpose. Human trafficking is defined as the act of recruiting, transporting, harbouring and receiving a person by means of coercion, abuse of power or deception for the purpose of exploitation. This is not reflected in Canada's Criminal Code.

Colleagues, we have a serious lack of convictions here in Canada. The latest statistics from Stats Canada are really compelling. They were released in May 2021 and showed the serious challenge that police face when trying to get a conviction, and it's only getting worse. When examining court decisions from 2018-19 by charge, overall, the vast majority—89% of human trafficking charges—were stayed, withdrawn, dismissed or discharged. Less than one in 10—seven per cent—of the charges resulted in a guilty finding.

Now, I want members to pause and to think about the situation in Canada for victims of human trafficking. A crime is committed. There is no debate as to whether or not the acts have occurred, yet under Canadian law the victim is required to prove fear in order for a conviction to occur.

To emphasize the absurdity of the situation, let's apply this requirement to another crime. Imagine that someone I know comes up and stabs me. How would I prove fear in that situation? Would the offender be convicted if there were proof of their crime but fear could not be proven? I ask you, why do we treat the crime of human trafficking so differently? Human trafficking is a scourge, mostly on vulnerable young people and their families, across Canada.

This overdue change is consistently brought up in conversations by stakeholders across the country and internationally. Vulnerable young people often think of their abuser as their friend and think their abuser cares for them and loves them. Often, the Crown's case depends on the victim's testimony, the only evidence against the trafficker. Without the victim's testimony, there is no case. In Canada, it sometimes takes years to come to court. There, the victims can be victimized again and again. Usually a conviction is not obtained.

The Palermo protocol was adopted in November 2000. It has 117 signatories, including Canada, and more than 22 years have passed, yet this small but important change is still not reflected in our Criminal Code.

• (1610)

Human trafficking is on the rise. Traffickers seek out young people dealing with substance abuse, traumas, addictions, abuse and homelessness. Women and girls, indigenous children, new immigrants, persons living with disabilities, LGBTQ2+ persons and migrant workers are among the most at-risk groups.

We need to give victims every tool possible to allow the return of their dignity, their humanity. Bill S-224 is another tool, and it is a long-overdue change.

Thank you, colleagues, and I look forward to your questions.

The Chair: Thank you, Dr. Carrie.

Now we'll go to our first round for six minutes, and we'll start with Mr. Brock.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair.

Welcome, Dr. Carrie, to the justice committee. Thank you for the passion with which you stand behind this important piece of proposed legislation.

I listened very carefully to what you said. All of your content was very informative. The biggest takeaway for me, and I guess the most startling aspect of what you had to share with us, is the statistics that exist. Notwithstanding the prevalence of this scourge that you've properly identified in society—it's a worldwide phenomenon, and Canada tends to be a hotbed of criminal activity, particularly in this area—and the popularity of this particular crime, unfortunately the criminal justice system has failed too many vic-

tims, particularly vulnerable victims from marginalized communities, speaking of indigenous women and girls and LGBTQ community members.

I think this is an important step along the way of trying to address these wrongs. I know that, as a prosecutor, I never really had the ability to prosecute a person charged with human trafficking *per se*. Inevitably, the police, recognizing the limitations prosecutors would have in order to be able to prove these offences, would often look at other offences in the Criminal Code to perhaps ease the burden that prosecutors would face.

I'd like to hear your thoughts on this aspect, this particular question. I took some time to review Senator Ataullahjan's interventions in the Senate during one of the committee studies, and what stood out in my mind was her comments that in her view this would lead to a greater ability of prosecutors to be able to prove the case, that this would, in her view, tend to allow more victims to come forward without the element of fear needing to be proven in court. She also mentioned that it would remove the burden of proof on the prosecutor and actually relay that or transfer that to the accused.

I have some concerns about the latter aspect, but I'd like to have your thoughts on the first two.

Mr. Colin Carrie: Thank you very much, Mr. Brock. I really respect your experience.

First, I'd like to talk about the statistics. They're extremely troubling. Back in 2015, human trafficking, if you look at the latest StatsCan report.... There were about 300 reported cases per 100,000. In 2019, it's up to 500 reported cases, so that's a 40% increase in just four years.

We know that because of COVID and all kinds of different things happening right now in our country, the numbers are just going up, so it's incredibly disturbing.

You mentioned Senator Ataullahjan's comments in the Senate. I thought she did a very good job.

The reality is.... Where in the world do we have victims, sometimes child victims—I think 25% of people being trafficked are under the age of 18, and they sometimes, quite often, depend on their trafficker for basic necessities of life, such as food and shelter—having to prove in a court of law that they actually feared their traffickers?

Changing this definition, this long-overdue definition—by the way, we decided 23 years ago to make this change—puts an extra tool in the tool box. It's certainly a very complicated issue. It's not going to be the be-all and end-all, but it's going to give another tool to prosecutors in order to enable more victims to come to court. Now there isn't this unfair burden of victims' having to prove that they feared their perpetrators, which in many cases, even the example I brought forward, just isn't the case.

• (1615)

Mr. Larry Brock: What do you say about the potential for this to enable more victims to come forward? What are your thoughts on that?

Mr. Colin Carrie: I think it's true. When we look at the reality out there in Canada, there are so many reasons victims may not want to come forward. Other countries, for example, have more stringent sentencing and more clarity.

If a young person in particular is being trafficked, just imagine the fear they have going into court, the stigma. The current definition, for example, has the term "reasonableness" in it. You are a lawyer. Lawyers are very smart; they know the system. By having reasonableness in it, you can introduce things like the stigmas that surround human trafficking and other factors that can be put in there to cause doubt.

Quite often victims will recant what they've said; they live in fear of these traffickers. They know the sentences, too, and that they're going to be out in a shorter period of time. This is not designed to be the be-all and end-all, but it will be another tool to give Crown prosecutors the ability to get more people into court and hopefully get more convictions.

Mr. Larry Brock: That's certainly very welcome, so thank you for the opportunity to ask you questions, Dr. Carrie.

The Chair: Thank you, Mr. Brock.

We'll now go to Mr. Naqvi for six minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Mr. Chair.

Mr. Carrie, thank you for being here today and talking about your bill.

I want to start by getting some of your impressions on all the work you've done in putting together this bill. The question that we've often talked about in this committee.... We did a study on sex workers as well. How does one distinguish between someone who's actively involved in sex work versus somebody who is being used to perform sexual work and may naively believe that their trafficker has their best interest in mind?

What have you found as you were working on this bill around that distinction, and what advice do you have for this committee as to how you create that distinction?

Mr. Colin Carrie: The distinction is incredibly important.

When you're looking at prostitution and when you're looking at human trafficking, it's important to realize that human trafficking isn't just prostitution. One of the biggest cases we had in Canada was with workers who were brought over to this country, and then the traffickers were threatening the family back home. We see that quite often.

When you're dealing with human trafficking, the difference between that and prostitution would be that you need a third party in human trafficking. In other words, people don't traffic themselves.

I would be, for example, the human trafficker, trafficking you to somebody else and being able to have control of that situation. Prostitution in itself is not necessarily human trafficking. I think it's important to make that distinction.

Mr. Yasir Naqvi: Is there a legal analysis or legal test that you would propose that creates that distinction?

Mr. Colin Carrie: I think the difference is already quite clear legally. As I said, from the point of view of human trafficking and exploitation, you need to have a third person involved. When you look at sex work, if you want to define sex work and you speak to sex workers, that's a choice they're making.

My opening example is a young woman who entered sex work of her own volition, but when you have a third party involved, it's not necessarily that choice.

• (1620)

Mr. Yasir Naqvi: Your bill deals with a definition of exploitation. I take it more as being presented as a clarification around the definition. The current definition of exploitation in the Criminal Code focuses on the impact of the trafficker's conduct on a reasonable person in the situation of the victim. The current definition has about 17 or so years of case law associated with it.

Can you give this committee some thoughts on what you think will happen to the existing case law as it relates to defining what exploitation is with the passage of Bill S-224, if it passes?

Mr. Colin Carrie: You're correct that there are 17 years of case law, but I would argue that with the current definition, it really hasn't worked. If we're looking at a 7% or 8% conviction rate, something has to change.

I'm sure you'll be having Department of Justice lawyers here. I think they will discuss the case law. They may talk about recent case law in Ontario. I think the Sinclair case was in 2020. In Quebec there was case law. They mentioned, because of the case law, that perhaps now you don't have to prove fear. However, I would argue to committee and to Canadians that a lot of this depends on the judge you get. We're all aware of that case in Alberta in which a federal judge asked a victim, "Why couldn't you just keep your knees together?" I think all of us are offended by a comment like that, whereas if we actually replace the definition with something that is internationally recognized, there will be clarity in that regard and an opportunity that we can move up that 8% conviction rate.

Mr. Yasir Naqvi: In your mind, what's the key difference between the definition in the jurisprudence and the one you present in this particular bill?

Mr. Colin Carrie: The key difference is that the onus will now be on the trafficker—on his behaviour, not the victim's. Currently, in order to get a conviction you have to prove fear. In many cases of human trafficking, as I mentioned in the opening, the person being trafficked may not necessarily fear their trafficker. They may be convinced that it's a boyfriend. Sometimes, sadly, it's a family member, somebody they rely on. That, I think, is absurd. Why are we treating victims of human trafficking differently? Again, I brought up the absurd example of another crime: If I were stabbed, I wouldn't have to worry about proving fear.

Mr. Yasir Naqvi: That's great. Thank you very much.

Thank you, Chair.

The Chair: Thank you, Mr. Naqvi.

Now we'll go to Monsieur Fortin for six minutes.

[*Translation*]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

Good day, Mr. Carrie. Thank you for coming.

I've been listening to you from the start, and I must say what you're saying sounds reasonable. That said, the part about the reasonable apprehension of fear does not sit well with me. Over the past few years, this committee has conducted several studies on the issue of sexual services and human trafficking, among other issues.

To my great surprise—I had no idea—I learned that women, men and individuals participating in prostitution sometimes hire a bodyguard, a driver or someone to make their appointments. Those individuals came before the committee to ask us to retain their right to organized work, with the best possible working conditions. One can agree with that or not, but that's what we were told. Ultimately, the message they gave us was that, as long as they agreed, as long as they were the key actors, if I can put it like that, it should be allowed.

However, you're eliminating the criterion that the victim have a reasonable apprehension of fear. I'm a bit troubled by that, and I wonder where this is going. Let's say a person participating in prostitution hires someone to make their appointments, and that individual tells the sex worker that they'll have to work Thursday evening from seven to 10. Will that individual be considered to be inciting the sex worker to participate in prostitution, to be engaging in exploitation for the purposes of human trafficking? Ultimately, it's the individual participating in prostitution who decided to have the other person make their appointments.

That may not be best example, but I'm a bit troubled by those concepts. As I indicated, I don't know much about it, but it seems reasonable to me that the individual being exploited must have a reasonable apprehension of fear. Do you agree with me on that point?

● (1625)

Mr. Colin Carrie: Mr. Fortin, first, I want to thank you very much for that question.

[*English*]

I would suggest to you that someone who is participating in prostitution and hires someone for their business is one case where somebody selects that as a choice. The people they would hire to make appointments, etc., is part of that unique situation of choice.

What I'm trying to get at with this particular bill... I'll try to use the same analogy that you made.

Let's assume for a moment that you can imagine the worst human being ever. It's somebody who lies and coerces. He has recruited you. He's done that through force. He's done that and he's maybe provided you with heroin. He may have locked you up in your

room and said that you're not even allowed to go to the washroom until you come out and agree to do what he needs you to do today. He says he needs you to make \$1,000 for him.

You work in that situation for a number of years and you become engaged with this individual. You may start thinking of him as a boyfriend. Down the road, he says to you that he wants you to now look after these other three in his business. He wants you to beat them. He wants you to look after them. It's your responsibility to make \$1,000 per girl for him. If that's not the case, he's going to beat you more. He's going to perhaps not allow you that puppy that he bought you, which is the one thing you love. He says he's going to kill your puppy. He's going to go after your family, your brother or your sister.

This is the difference. This is somebody who is criminally coercing and taking advantage of somebody. Quite often it's somebody who is very young.

[*Translation*]

Mr. Rhéal Éloi Fortin: That's a good example, Mr. Carrie.

You're talking about violence and threats, among other things, and we'll come back to that. However, in those situations, I think that victims would have no trouble convincing a court that they have a reasonable apprehension of fear. In your example, it's very clear. If they have no such apprehension, then I'm a bit concerned.

Proposed paragraph 279.04(1)(b) states that a person exploits another person if they engage in conduct that involves the use or threatened use of force or another form of coercion, the use of deception or fraud, or the abuse of a position of trust, power or authority. It's fairly comprehensive. However, you're adding "or any other similar act". When I read that, it brings me to my previous question: What similar acts could be used to convict someone?

I'll go back to my example. If someone participating in prostitution hires a driver, someone to make their appointments or anyone else, and the person hired tells the sex worker that they have to work because that individual asked them to work that evening and they have something else planned, would that constitute a "similar act"? I don't know.

I think those few words cast a wide net. I like how succinct your bill is; however, it's very broad and that's a bit concerning.

● (1630)

[*English*]

Mr. Colin Carrie: Mr. Fortin, thank you for a very important—

The Chair: Thank you, Monsieur Fortin.

You're slightly out of time. Hopefully, we'll get some time again.

Mr. Garrison, you have six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Let me start by allowing Mr. Carrie to answer that question.

Mr. Colin Carrie: Thank you very much, Mr. Garrison.

You're looking at the actual definition. This is the Criminal Code, and it's under human trafficking by definition:

For the purposes of sections 279.01 to 279.03, a person exploits another person if they engage in conduct that

(a) causes the other person to provide or offer to provide labour or a service

In other words, that's a third party situation. You brought this up, and I think this is the point you were trying to make. It continues:

(b) involves, in relation to any person, the use or threatened use of force or another form of coercion, the use of deception or fraud, the abuse of a position of trust, power or authority, or any other similar act.

The concern is that it's too broad.

That wording was placed in the bill to capture the primary methods used by traffickers in the Palermo protocol, but it's not exhaustive. There are many methods that traffickers can use to maintain control over the victim.

Further, including that last term, "any...similar act", allows the legislation to be nimble and the courts to be able to stay consistent with the constantly evolving technologies out there. There are new methods used by traffickers to control their victims. With new technology out there, they're finding different ways. That was the purpose of that.

If it were a situation of prostitution, it should not even be captured under this definition.

Does that make sense to you, Mr. Garrison?

Mr. Randall Garrison: I share some of Mr. Fortin's concern about the breadth of the definition in this bill, but I want to back up.

I know it goes without saying, but I am going to say it: Nobody here supports trafficking. What I have most often heard from some law enforcement agencies is, yes, they would like some changes in the Criminal Code, but most of them have said to me that they lack the resources they need to combat trafficking, that it isn't a high enough priority, given their limited resources, to spend the funds to combat it. I'm going to ask you about this.

That's what I've heard from frontline police as the major problem; it's not necessarily the definitional problem in the Criminal Code.

Mr. Colin Carrie: Mr. Garrison, thank you very much for that. I also appreciate the fact that you're listening to police on the ground. When I started engaging on this bill, that is exactly what I did—talk. I found out what was happening on the ground.

I also believe that what you said is correct. The resources aren't there. Now, if you look at the reports in the last few years, you see that the greatest reporting comes from Ontario—where, I think, there is 30% of the population, yet 60% of the reports—and Nova Scotia.

You're going to be having other witnesses here, and I would ask you to put that question to them as well. It's hard to actually prove, but I think, in some people's opinion, the more money they put into the resources to report it, the more reports we're getting. I spoke to Durham Regional Police Service in Oshawa. I must applaud them. Even with a very low volume of resources, respectfully, they're doing a fantastic job.

I really commend the police, because in this situation we now know—and you're aware of it—that the victims quite often don't

trust the police. They don't want to go to the police. The idea is this: What else in this very complicated issue of human trafficking can we do, as a society, to start to address some of the other issues that also need to be reformed?

However, I believe this is an excellent start. When you look at stakeholders, you see that Alberta's strategy, in point one, is to change the definition. The Americans write a report on different countries every year. They're asking Canada to come up with an international definition. As you know, Mr. Garrison, this is not just a Canadian situation; it goes across many different borders.

Mr. Randall Garrison: I would say, though, that the international protocol was written more than 20 years ago, when the understanding of both sex work and the exploitation of trafficking was a lot more limited than it is today. I'm not exactly sure that is a point in favour, going back to something that was written 20-some years ago.

The other group I have talked to extensively, of course, is sex workers. They fear the unintended consequences of expanding the definition of exploitation so that it takes away agency from those who, either from a positive choice or from circumstances they find themselves in, choose to engage in sex work and in doing so employ others to help them administer their business, keep them safe, and all kinds of other things.

When you say, in this definition, "any other similar act", they're worried that this will catch people who are not exploiting them, but are working with them to make their work safer.

How do you respond to that concern among sex workers in Canada?

• (1635)

Mr. Colin Carrie: First of all, they have legitimate questions and concerns, but I don't think they need to be concerned about this. As I said, by definition, when you have a choice, that's not something that will be covered in this change of definition.

Mr. Randall Garrison: Isn't that exactly what the concept of fear being involved guarantees? If the person has to be afraid, then it's not a choice. When you take away that concept of fear, you've written a very broad definition of the activities that, in many ways, denies agency to those involved.

Mr. Colin Carrie: My response to that would be that when you're looking at human trafficking, as I said, you have a third party involved, not the individual who has actually chosen by their free will to do this.

Again, I used the example in my opening statement of a young woman who made certain decisions voluntarily, but then, after a number of years—if you look at her full testimony at that committee, which I'm sure could be made available to this committee—found herself in a very difficult situation. Her case, under the current law, would not have made the grade as far as getting a prosecution and a conviction.

Mr. Randall Garrison: Without the chair here, it's hard to see the card, so I'm out of time. We'll come around again.

The Chair: Thank you, Mr. Garrison.

Next we'll go to Mr. Caputo for five minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

I'm just going to pick up where Mr. Garrison left off here, Dr. Carrie. Perhaps what we're looking at, when Mr. Garrison was talking about people who are making their choices and whom this is intended to catch, I think, is that Hansard would reflect, or should reflect, that this is meant to capture relationships of exploitation.

What do you say to that?

Mr. Colin Carrie: You're correct. This is not meant to be a broad net. It's a specific net. With human trafficking, as Mr. Garrison said, there's not anybody around this table who is going to be standing up in favour of human trafficking and exploitation. The challenge we're having in this country, Mr. Caputo, is that we have a very low conviction rate, and it's not just one thing; it's a combination of things.

When you choose to make a private member's bill, you make a choice, and as you learn about it, you learn that the issue you brought up is much more complicated. However, if you listen to advocates on the ground, who I think this committee is going to have the privilege of hearing from in different testimonies, I think you'll be satisfied that this bill is going to do what it claims to do.

Mr. Frank Caputo: Yes, I'm sure none of us around this table want to see another person trafficked. It is coercive behaviour that really does strike at depriving a person of their dignity: their physical dignity, their sexual dignity, and all sorts of different things. I think we would all agree that we never want to see any of that done.

If we talk about the conviction rates, Dr. Carrie, I think it really goes hand in hand with the nature of the offence, which is the manipulation. It is the abuse of trust in a lot of cases, and typically, the only way to prove the case is going to be through the victim. There isn't going to be some other mechanism. If the evidence isn't going to be coming from the victim, who themselves may have been manipulated, and who is almost always going to have been abused and, oftentimes, is somebody who is otherwise marginalized, then it doesn't surprise me that we see really low conviction rates. I support making legislation that would enable the courts to deal with what I think is really a plague that we underestimate in our society.

You spoke about onus, and sometimes we talk about onus in law. We talk about reverse onuses a lot—we're not going to talk about that here—but you did mention onus. I just want to be clear. This isn't a reverse onus in the legislation, where it talks about...I think

you said the onus is on the accused's behaviour. What I take you to mean in that case is that we're looking at what the accused person does and not at what the victim perceives. Is that accurate?

• (1640)

Mr. Colin Carrie: That would be an accurate statement. That's right.

Mr. Frank Caputo: In this case, the Crown must prove, beyond a reasonable doubt, what the accused person has done as opposed to what the victim perceived, or would have reasonably perceived. In this case, the Crown would have to prove the causation to provide or to offer labour or a service, so they have to contribute to the person doing that; that's legal causation. Then there has to be some sort of threatened force or coercion, or the use of deception or fraud, or the abuse of a position of trust, power or authority, or any similar act.

That's what we're talking about—that exploitative element that you and I discussed at the beginning of our statement about the burden. Your intention is that the burden would be on the Crown to prove it, rather than on the accused to disprove it. Does that make sense?

Mr. Colin Carrie: Exactly. I think that makes sense to everybody. I mentioned it in my opening statement. Why do we treat human trafficking offences differently from other offences? If it was a straightforward crime—I'll use the example of being stabbed, or something like that—you wouldn't have to prove, in my mind, at the time that there was fear, because that would be absurd.

Mr. Frank Caputo: I've met with a survivor of human trafficking, and it had a profound impact on me. I'm not sure how much time I have left, but that was the thrust of my questions.

Thank you.

The Chair: Thank you, Mr. Caputo.

We'll now go to Ms. Brière for five minutes.

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

[*Translation*]

Mr. Carrie, thank you for coming to present your bill to us this afternoon.

Bill S-224 repeals the interpretive provision providing a non-exhaustive list of factors such as a threat, deception or abuse of power that the court may consider in determining whether exploitation or intent to exploit has occurred. There's existing case law on this, namely the Sinclair decision, which dates back several years. The current definition of exploitation was included in the Criminal Code in 2005. That's 17 years of case law.

What will become of all that after your bill passes?

[English]

Mr. Colin Carrie: It will be replacing what's on the book right now. I may be wrong, but the Sinclair case was in 2020, not that long ago. Again, the federal government has a role to play here. When the federal government advocates its role, you'll see provincial courts actually take a role. It took until 2020. The courts are now saying that perhaps we don't have to prove fear, and the courts can interpret that in the way they want.

It depends on the judge. If we change it the way I'm suggesting here, it's going to be very clear in federal law what we mean. There won't be that room for interpretation. It will be a certainty. I brought up that case in Alberta where the judge basically said, "Why couldn't you just keep your knees together?"

The original bill I presented in the House mentioned that perhaps there should be training for judges to understand the intricacies of human trafficking. That is not present in this bill. Again, the choice was made that, in all likelihood, if we take a smaller piece, it's more likely to get through the House.

However, there needs to be more education. There needs to be a whole other group of factors that are taken into account in our country in order to help fight this scourge of human trafficking. This is one small step, but it will make a huge difference.

[Translation]

Mrs. Élisabeth Brière: Indeed, speaking of factors, Canada is a country of origin, transit and destination for men, women and children who are victims of sex trafficking. It's also a destination for men and women subjected to forced labour. The majority of cases where charges have been laid in Canada are national cases. It's no secret that this includes sexual exploitation. In other words, mainly Canadian women and girls are victims of trafficking for commercial sexual exploitation, and the majority of buyers are men.

How will this new definition take into account those factors that make women and girls more vulnerable to human trafficking? Additionally, how will it take into account more vulnerable populations, such as indigenous women and girls and the LGBTQ2+ community?

• (1645)

[English]

Mr. Colin Carrie: I think we have to recognize that there are different populations that are more susceptible to human trafficking, if we look at the demographics. If you're interested, there are different ways through Statistics Canada to look at that, but you rightly pointed out.... I think it's 85% of those who are trafficked are women and girls, and 25%, I think, are under the age of 18.

You also mentioned quite correctly that Canada is a destination for sexual exploitation. When I was looking at my original bill, I attended a round table at what was called UOIT, in Oshawa. It's called Ontario Tech now, but it was a round table put on about human trafficking and exploitation. At that round table, we had the FBI and the Texas Rangers.

In Texas, they have a different system, in which they have these mandatory minimums. If somebody is caught in Texas trafficking six women, he knows he's facing 60 years in jail most of the time.

The officer said to me, "We get this guy to plead out in three months. He's in jail. He's off the street. It's a good thing. Your system is crazy. Listening to these victims here, it may take two or three years to get to court, and then they're revictimized."

If you listen to some of these victims, your heart goes out to them, because they're getting on with their life and changing it, and then suddenly they have to go back to court and they may be faced.... Because they're on trial, the defence attorney is going to make them the bad person. This means that many of these cases will get dropped.

By changing the definition the way I'm proposing here, it's going to take that onus and it's going to be about the perpetrator, the trafficker. It's not about proving that the victim had an element of fear when the trafficking was occurring.

The Chair: Thank you, Ms. Brière.

We'll now go to Monsieur Fortin for two and a half minutes.

[Translation]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Carrie, as I said earlier, I'd like to know how to determine what behaviour constitutes exploitation. The bill states that a person exploits another if they use or threaten the use of force, coercion, deception or fraud, or the abuse of power or trust. That seems quite broad already, but you're adding "or any other similar act".

What do you mean by "any other similar act"?

[English]

Mr. Colin Carrie: I was trying to explain it a bit earlier. What we have there is a list, and you have read off the list that is in the bill. These are the most common issues in the Palermo protocol, but it's not an exhaustive list. There are a lot of other things going on, and with the—

[Translation]

Mr. Rhéal Éloi Fortin: I'd like you to give me some examples, because I'm trying to imagine what it could mean.

[English]

Mr. Colin Carrie: It will allow the court to be nimble on any new technologies, for example, that are brought in that would allow a trafficker to coerce and intimidate a victim. I brought an example to you, as well, earlier on, that there are all kinds of different ways that human traffickers coerce and intimidate their victims. There are some extremely horrible ways that they do that.

When you're looking at the technical question and you ask me about this bill, it's almost impossible to list all of them, so the decision was made to come up with a term that could be interpreted by the courts in a situation of human trafficking.

• (1650)

[*Translation*]

Mr. Rhéal Éloi Fortin: We're talking about sending someone to prison. I tend to agree that we need to crack down on that kind of crime. I have no pity for someone who abuses or sells the sexual services of another person. Indeed, I think they should be punished. Nevertheless, as legislators, we must be diligent in our work. We're talking about sending someone to prison, and there is no room for error.

We made a choice. People can agree or disagree, but our society decided that it would rather let criminals walk free than put innocent people in prison. That's called the presumption of innocence. If someone is not found guilty of a crime, they're presumed innocent.

In order to determine whether someone is guilty of a crime, it is our duty, as legislators, to define that crime as clearly as possible.

Mr. Chair, is my time already up?

[*English*]

The Chair: Yes. You're about 45 seconds over, but that's no problem. I know it's a short time.

We'll go to Mr. Garrison for the final two and a half minutes.

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

When the bill was in the Senate, Professor Benedet from the UBC Allard School of Law suggested that if we were going to make this kind of amendment, perhaps there should be another element added. She suggested adding “abuse of a condition of vulnerability” to that definition of exploitation.

I wonder whether you are familiar with her proposal and what you think of that proposal.

Mr. Colin Carrie: Yes. I'd like to thank Professor Benedet, too, for all the work she's done as an expert witness in front of the House and the Senate, I think, in the past. She brought in something she thought should be added to the bill about the vulnerability—and this goes to what Mr. Fortin was saying as well—because it would now look at the victim. In other words, why was that victim chosen? There are certain people out there whom traffickers hunt down and select. Her interpretation would be that the bill should reflect that.

My response to that, Mr. Garrison, would be what Mr. Fortin and I were talking about. When it says “any other similar act”, I think,

that would allow that to be incorporated. However, she does have a very good, strong opinion, and I hope, perhaps, if she is able to come to this committee, that you could delve a little more into what she thinks about that.

In my view, though, it would be handled with what we have there.

Mr. Randall Garrison: I know I'm going to run out of time very quickly here. Most of the examples we've talked about are those that involve sexual trafficking and exploitation, but the existing law and the bill deal with a much broader question of exploitation of persons, including with respect to forced labour.

I wonder whether the changes you're suggesting broaden things so that all kinds of other practices that we wouldn't normally think of as exploitation might be brought under this bill if the definition were changed.

Mr. Colin Carrie: I don't think it is too broad. We have talked about sexual exploitation, but one of the biggest cases we had, I think, was the Domotor family case. This is quite common, if you listen to stakeholders, and I was unaware of this. One witness mentioned that for the cleaning businesses in his area, there was a reason the quote was so low for his office to be cleaned. The people who came in, in the middle of the night, were immigrants, new immigrants and maybe people who were in this country illegally, who were being abused and coerced and intimidated by someone. That trafficker was threatening their families at home if they didn't do the work.

This will deal not only with sexual exploitation. The target is those people who unceremoniously take advantage of new immigrants, people in vulnerable situations. That's the goal of the bill.

• (1655)

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

That concludes our first hour. I want to thank Dr. Carrie for coming in today.

We'll now suspend and reconnect with a new link, since I believe it's in camera.

Mr. Clerk, just nod if it's yes.

Yes.

Okay, so I'll be suspending, and members who are on Zoom, please rejoin via the new link.

[*Proceedings continue in camera*]

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