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# Standing Committee on Justice and Human Rights

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Chair: Mr. Randeep Sarai





## Standing Committee on Justice and Human Rights

Wednesday, June 21, 2023

• (1700)

[English]

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

Welcome to meeting number 73 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order adopted by the House on March 22, the committee is meeting in public to continue 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.

I'd like to take a few moments for the benefit of the witnesses.... Actually, I'll pass. I think you are all well experienced, and so are Mr. Caputo and the analysts online. I think we're good to pass on Zoom instructions.

I welcome the officials from the Department of Justice, who will help us by answering technical questions about this bill and the amendments. We have with us Nathalie Levman, senior counsel, and Ellen Wiltsie-Brown, counsel, both from the criminal law policy section.

Welcome, both of you.

We're ready to start clause-by-clause. I'd like to provide members of the committee with some reminders on the process.

Members should note that new amendments must be submitted in writing to the clerk of the committee. During debate on amendments, 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.

All of you received the agenda and the amendments package again yesterday. Let's now proceed with the clause-by-clause study of the bill.

I will now call clause 1 and Bloc amendment 1, number 12547306.

[Translation]

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

I understand the intent of Bill S-224, but I found it a bit incomplete in its proposed form. We suggest some amendments, which you have received, and we would be prepared to vote in favour of Bill S-224 if they were adopted.

First of all, our amendments pertain to the proposed paragraph 279.04(1)(b), which says "any other similar act". That seems somewhat broad to me. So we want to limit the scope by saying that it has to be an act that takes advantage of the person's vulnerability. Thus, it should be established not only that the person who is accused of exploiting someone has committed an act similar to those mentioned, but also that he or she has taken advantage of the person's vulnerability.

The bill also proposes to repeal subsection 279.04(2) of the Criminal Code, which we thought was a bit bold, since it would eliminate, from the burden of proof, the need to show that the victim was, in a way, harmed by the act. We are proposing to add a criterion that says the victim fears for their safety. It is still different from the provision currently in the Criminal Code, but it would ensure that the Crown has a minimum of evidence against the accused. Our first criterion is that the victim fears for his or her safety.

The second criterion we propose regarding paragraph (b) is that the victim cannot give informed consent given their age or any aspect of their personal situation, including their financial or psychological situation. The victim is often a vulnerable person, either because they are too young, or because they are financially dependent on the person who is exploiting them, so to speak, or because they are simply under their psychological control.

We think those are important criteria. Before a person is convicted of a crime as serious as this one, it seems to us that the Crown should discharge a minimum burden of proof. We propose that you adopt this amendment as it is worded.

Thank you, Mr. Chair.

[English]

**The Chair:** Thank you.

Please go ahead, Mr. Caputo.

**Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC):** I have a question here, and I would love for our legal experts to weigh in. My understanding from hearing from the witnesses is that this is a crime that can be quite insidious in that oftentimes people don't even know that they're being trafficked. That is the nature of the crime itself. The manipulation is so substantial and the nature of the victimization is such that a person doesn't even realize that they're being taken advantage of. One of the reasons that convictions are so difficult in this type of crime is because the person may not even have real fear, or they are themselves afraid to testify as to fear.

While I can stomach easily the first part, which is paragraph (b) in proposed subsection 279.04(1), I do have some issues with paragraph (a), because to me it seems to go against what the witnesses told us. I'm curious to hear from the analysts about their opinions on this, because, again, it seems as though this doesn't require the court to do so, but because it's there, they're likely to consider it. I would like to hear from Mr. Fortin on that point.

Thank you.

• (1705)

[Translation]

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

Thank you, Mr. Caputo.

I am also preoccupied by this aspect, and you are so right to raise it. There are people who are being exploited who are not aware of it for a variety of reasons.

In my opinion, paragraph 279.04(2)(b) covers this type of situation:

(b) is able to give informed consent considering their age or other personal circumstances, such as their financial situation or mental condition.

This means that a person who is not aware that they are being exploited by another person, due to their personal situation, is covered and protected under paragraph 279.04(2)(b), and the exploiter will be found guilty of the crime he or she is accused of.

However, in the case of a person who is considered a victim, depending on the meaning of the word, but who is able to give informed consent and who consents in an informed way to the actions of the accused, we believe that the accused should not be convicted for that.

Every crime necessarily involves an aggressor and a victim. If there is no victim, usually there is no crime.

Unless, again, the victim is not able to give informed consent or is not aware of the situation but is rather a kind of silent witness.

I think paragraph 279.04(2)(b) takes into account Mr. Caputo's concern. I think that is a very valid and important concern.

Once again, I think that paragraph 279.04(2)(b) covers those cases, while allowing the accused to have a valid defence to offer in the event that, regardless of the circumstances, there is an agreement between two individuals for actions that some or all of us might find unacceptable, but that are not for those two individuals.

[English]

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

Mr. Caputo, was your question to the witnesses or to the analysts?

**Mr. Frank Caputo:** It was to both. I don't mind chiming in here at this point, though, just to reflect on what Mr. Fortin mentioned, and then maybe I can have the analysts weigh in.

What I find difficult—and I understand Mr. Fortin's rationale—is that it seems to be unduly complicating the matter, because the whole point is that this is trust, power and authority for an act by which you're taking advantage of another person's vulnerability. That's his amendment.

Inherent in all of this is the person's vulnerability, which is confirmed by (b), but then (a) seems to run counter to that. I just don't know why we really need either of them, because the whole point is the vulnerability being taken advantage of. To me those two things seem to cancel each other out. I would like to hear from the legal experts on this point, please.

• (1710)

**Ms. Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Department of Justice):** Thank you, Chair.

I do have a comment to make on both 2(a) and 2(b). But I thought I would just back up so that I can make sure that we're all on the same page.

My reading of this amendment is that it would still replace the existing legal test, the existing definition for exploitation, with the one proposed by Bill S-224, which focuses on causing another person to provide labour or services through certain specific illicit means. The Bloc's amendment would further specify what “other similar act” means in terms of taking advantage of another person's vulnerability.

Sub 2 is more like an interpretative clause. There are factors as I understand it that a court could consider when determining whether or not that legal test is met in subsection 1. The first factor is whether or not the victim fears for their safety or the safety of a person known to them. While that is a little bit similar to the existing test in 279.04 (1) it differs because it's entirely subjective, whereas the current legal test in 279.04 (1) is an objective test. We know from appellate case law that it wouldn't determine whether or not the legal test was met but it would be something that a court could factor in, as would paragraph 2(b).

This is the one that causes me a little bit of consternation because it refers to consent. I'd like to bring the committee's attention to what is currently in subsections 279.01(2) and 279.011(2), "No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid." That is consistent with what the previous speaker said, which is where these illicit means are used, the law says it doesn't matter whether someone gave what courts call an apparent yes. The coercive practices used amount to human trafficking.

I would just point that out to you as a legal and a technical matter and a potential inconsistency between 2(b) and existing subsections 279.01 (2) and 279.011 (2).

Thank you.

**The Chair:** Thank you.

Mr. Garrison, then Mr. Van Popta.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you very much, Mr. Chair.

I hope you can give me a little bit of latitude because it's hard to talk about the amendments without talking about the bill as a whole.

We heard two different perspectives from witnesses. One of those I found very persuasive. That was that this bill doesn't actually do anything that would make the struggle against trafficking more effective, that it won't actually provide more resources for targeted trafficking units and law enforcement. It won't actually provide more resources for those who are fleeing trafficking situations in the community. Those who have worked with trafficking issues know that those are the two most important things we can do to help combat trafficking.

In casting a broad net as the original bill does, we risk making the mistake that we've been warned against in all of our discussions about sex work. When you define something too broadly, you capture a lot of things that ought not be captured. I think Bill S-244 defines trafficking in such a way that many practices that are not in fact trafficking would get included under the bill. The danger there is when you make everything trafficking, you miss the real trafficking and you miss the most serious parts of the trafficking offences.

For that reason, I can't see that Bill S-244 is a useful bill. I understand Mr. Fortin's attempt to fix those problems. I think it's a good-will attempt that he's put forward here in these amendments.

My problem at this point is that I know that I've received a petition signed by more than 60 organizations asking us not to proceed with this bill. They have not been consulted on anything that's being suggested by Mr. Fortin. I would be hesitant to vote for these kinds of amendments without hearing from witnesses on the specifics of this. I think we would be better off as a committee defeating the amendments because we haven't had input on the specifics of them, and then defeating the bill or recommending that the House not proceed with the bill in the future.

For that reason, Mr. Fortin, even though I think it's a very good effort to fix the bill, I won't be supporting your amendment and I won't be supporting the bill.

Thank you.

• (1715)

**The Chair:** Thank you.

Mr. Van Popta.

**Mr. Tako Van Popta (Langley—Aldergrove, CPC):** Thank you.

My question is for Ms. Levman.

You made reference to appellate jurisprudence. I don't know if you were referring to the Marcus Sinclair case, which is from the Ontario Court of Appeal, and it said the test is an objective one. I'll read one sentence: "The assessment here was an objective one: could the appellant's conduct be reasonably expected to cause [the complainant] to believe that her safety was threatened." We had witnesses tell us that, too.

How would the Bloc's amendment change that? You're saying it would become more of a subjective test. Would that have made a difference in the outcome of the Sinclair decision, which I think confirmed the conviction?

**Ms. Nathalie Levman:** Yes, that is one of the appellate cases, but there are a number of them now not only in Ontario but also in Quebec and in B.C., and they all follow the Sinclair reasoning, so we know it is an objective test.

The difference between what's in the code now and what is proposed by Bill S-224, including with the Bloc's proposed amendment, is the bill would change the legal test. The legal test—the test that would need to be proved—would no longer be whether a reasonable person in the victim's circumstances would believe that their physical or psychological safety would be threatened if they failed to do what was being asked of them. The legal test would be whether the accused caused the victim to provide their labour or services through one or another of the illicit means.

Subsection (2) in the Bloc's amendment is an interpretive provision. It's not a legal test. In determining whether that legal test would be met if it was law, the court would then look at whether the victim subjectively feared for their safety. At least, that is the way I'm reading this amendment.

The fear for safety in the Bloc's amendment is different from what is currently in subsection 279.04 (1), which is an entirely objective test, meaning that the Crown does not have to prove the victim in that particular case actually experienced fear. Here, that would be required, and the judge would consider whether the victim experienced fear. Then, I assume if the judge or the jury were to find that the victim did experience fear, that would weigh in favour of the legal test being met.

**Mr. Tako Van Popta:** That would require the victim to give evidence as to her or his state of mind. Is that correct? I understand, under the current legislation, and certainly under Bill S-224 without amendments, that would not require the victim to come to court to give evidence as to his or her state of mind.

**Ms. Nathalie Levman:** Well, that's true of the law right now. The appellate case law is quite clear that proof of actual fear isn't necessary. In fact, paragraph 15 of the Sinclair decision goes over a number of different factors that the courts ought to consider when determining whether the existing legal test is met. Certainly, in the world of Bill S-224 plus the Bloc's amendment, what the court would need to hear is whether the victim subjectively feared for their safety. That's how I read the Bloc's amendment, yes.

**Mr. Tako Van Popta:** That's how I read it too.

Thank you.

**The Chair:** Are there any other comments?

Shall BQ-1 carry?

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** On a point of order, Mr. Chair, I think Mrs. Brière just stepped out.

• (1720)

**Hon. Rob Moore (Fundy Royal, CPC):** I don't think that's a point of order. It's just an observation.

**Mr. Gary Anandasangaree:** Well, it is an observation and potentially a point of order.

**The Chair:** We'll give her the courtesy....

**Mr. Gary Anandasangaree:** Are we okay with a two-minute recess?

**The Chair:** I'll suspend for two minutes.

• (1720)

(Pause)

• (1720)

**The Chair:** We will now resume.

Shall BQ-1 carry?

(Amendment negated [*See Minutes of Proceedings*])

**The Chair:** Shall clause 1 carry?

(Clause 1 negated)

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

**Some hon. members:** No.

**The Chair:** The title doesn't carry.

Go ahead, Mr. Moore.

**Hon. Rob Moore:** I wasn't able to ascertain on that last one whether it carried or didn't carry, just based on the voices.

**The Chair:** I just want to be clear, even though we didn't have the clause carry, I have to say "Shall the bill carry?" and take it back.

I just want to be clear that voting "yes" and saying the bill carried doesn't mean you voted "yes" for the amendment.

Shall the bill as amended carry?

**An hon. member:** Agreed.

**An hon. member:** No.

**Ms. Lena Metlege Diab (Halifax West, Lib.):** You have to take it to the House.

**Mr. Gary Anandasangaree:** I'm sorry. Mr. Chair, can I have a clarification, please?

Are we on the third vote or the fourth vote?

**The Chair:** The title didn't carry. We're on the fourth one, which is "Shall the bill...?"—

**Ms. Lena Metlege Diab:** The Standing Orders mean you have to take it back, so yes.

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

**Ms. Lena Metlege Diab:** Can the clerk or somebody explain the process, please?

It could be the legislative clerk or somebody, because we're a bit confused.

**The Chair:** It's an unusual situation, so I'll let the clerk clarify.

Go ahead, Clerk.

**Mr. Philippe Méla (Legislative Clerk):** Thank you, Mr. Chair.

Yes, indeed, the bill was amended by removing clause 1.

**Ms. Lena Metlege Diab:** Yes. By the Standing Orders, we have to report it back to the House anyway.

**Mr. Philippe Méla:** Yes, you do.

**The Chair:** Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** That means we'll report it back as an empty bill just so everybody's clear.

• (1725)

**The Chair:** That's correct.

Okay. Let me get this right. There are two options for this.

If we say "Shall the bill as amended carry?", it goes back as an empty shell, and then it's in the House. The other option is we could have a motion that the committee recommends the bill not proceed, and then we can vote on it that way.

I will go with the first, because it's already written here, it's a little easier for me and I don't want to get into any challenges.

Shall the bill as amended carry?

**Some hon. members:** Agreed.

**Mr. Rhéal Éloi Fortin:** Shall the bill [*Inaudible—Editor*] so it's not too late for voting?

**The Chair:** It's a shell, so it's sent back with no clause. It won't even have a title.

**Mr. Rhéal Éloi Fortin:** No. Come on.

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

**Some hon. members:** Agreed.

**The Chair:** That ends that part.

Is there any committee business?

I see Mr. Garrison and then Mr. Anandasangaree.

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

I'd like to move the following motion. If the motion is adopted, I'll also move that the committee rise and report it back to the House as a report.

The clerk has copies. I think everybody has it in both languages.

That motion is "That, given the rising tide of hate and violence directed toward the 2SLGBTQI+ community at home and around the world, the House call on leaders at all levels of government in Canada to: (a) speak out strongly in favour of Canadian values of equality and inclusion for the 2SLGBTQI+ community; (b) deplore all disruptions of lawful public activities including Pride events and all children's sport and educational activities; and (c) condemn all attempts to disrupt democratic institutions including school boards when dealing with policies concerning equality and inclusion."

If I can, Mr. Chair, I will speak briefly to the motion.

**The Chair:** I would need unanimous consent because it was under 48 hours.

Do we have unanimous consent?

**An hon. member:** No.

**The Chair:** Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** I believe we are in committee business. I'm not aware that the 48 hours is required when all members are here and this is being brought forward from the floor, so I would request that you reconsider that.

**The Chair:** I have consulted with the clerk. Unfortunately, if we don't have 48 hours, we cannot proceed unless we have unanimous consent.

**Mr. Gary Anandasangaree:** Can we ask for a recorded vote?

**Hon. Rob Moore:** It's unanimous consent. That's not how it works.

**The Chair:** Mr. Garrison.

**Mr. Randall Garrison:** The text of this motion was shared with all parties more than 48 hours ago, but I realize that maybe not all members have seen this.

This is the motion that the Conservatives shouted down on the floor of the House of Commons earlier today. It deals with very urgent matters in this country. In one hour, my staff were able to identify 18 incidents in this country, in the last three months, of attacks on children's activities by protesters against equality and inclusion.

It's very timely for us to be able to deal with this. There is no substantive piece here that contradicts any party's public stands. What we're asking is for leadership from Canadians in elected governments of all levels to stand up for inclusion and equality and against hate.

I would ask again for the Conservatives to consider whether they would let the vote on this motion go forward today given the urgency of what's happening in our communities.

We had a story just come out yesterday about transgender folks in Winnipeg who are receiving regular death threats and are working with the police to stop those death threats. This is why this leadership is so important.

We could have a long debate on why this is happening in our country, but it's something deplorable and something new in the level of its intensity. For me, the fact that it targets children is what makes it completely unacceptable.

I would urge the Conservatives to reconsider their denying consent for this to go forward. If not, it will be a notice of motion, and I would ask that it be the first item on our agenda when we come back in the fall.

● (1730)

**The Chair:** Since there's no change from the membership, I will look into that, I guess, at the subcommittee when we come back, and we will look at that.

I want to thank everyone for a great session. We have been a very proactive committee. We have done a lot of reports. I think a lot of committees have done a record number of reports, so I really want to thank you for working very co-operatively.

I want to thank our analysts, our clerks, our interpreters, our officials who have come and given us a lot of help, and all the staff in the background, the sound staff and the staff back here. Hopefully, you have a great summer.

I think Iryna is going to be leaving for a different committee. We will miss her. Maybe we will sneak her back.

**Some hon. members:** Hear, hear!

**The Chair:** Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** I want to echo your comments, Mr. Chair. I want to thank everyone, including colleagues, here. We have generally worked very collaboratively over the last session, and we look forward to the same relationship going forward.

I want to thank the clerk, the analysts, all the technical folks and all of our staff for their support.

Of course, we also want to thank you, Mr. Chair. You have handled yourself exceptionally well, and we thank you for your leadership here.

**The Chair:** Thank you.

Thank you, everyone. Have a safe summer.

We're adjourned.







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