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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

Today is meeting number 48 of the Standing Committee on Justice and Human Rights. It's Wednesday, November 19, 2009, and I note that today's meeting with the minister is being televised.

You have before you the agenda for today. First, we have the Honourable Rob Nicholson with us to open our review of Bill C-52. During the second hour, we have with us Shirish P. Chotalia, the government's order-in-council appointee as chair of the Canadian Human Rights Tribunal.

At the end of today's meeting we'll leave a little time for an in camera meeting to discuss adoption of a steering committee report for our work plan going forward.

Once again, a reminder to turn off your BlackBerrys or switch them to vibrate, and if you do have to take calls, please take them outside of this room. Thank you.

By order of reference, we are now considering Bill C-52, an act to amend the Criminal Code on sentencing for fraud. To help us with our review of this bill, we have with us the Honourable Rob Nicholson.

Welcome back, Minister. I understand you have some support with you: Catherine Kane—welcome back—as well as Joanne Klineberg.

Minister, you have ten minutes for presentation, and then we'll open the floor to questions.

The Honourable Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much, Mr. Chair.

The short title of this was just pointed out to me. You can refer to it as the Retribution on Behalf of Victims of White Collar Crime Act. It's also known as Bill C-52. This enhances the sentencing provisions for fraud, in particular white collar crime.

The Criminal Code already criminalizes a vast array of what could be called white collar crime, such as bribery, credit card fraud, and forgery, and with the passage of Bill S-4, identity theft, Mr. Chairman. I'm glad to get that one passed. That's an important contribution in this area.

The offence of fraud is the most important offence in our arsenal against white collar crime. Fraud consists of two elements: deception or dishonesty, coupled with an actual loss of money or other items of economic value or merely the risk of such loss. So you can see the breadth and flexibility of this offence is adequate to capture security-related frauds like accounting frauds that overstate the value of securities issuers to shareholders and investors, misstatements about the state of the company, or Ponzi schemes of this sort, which has attracted so much attention recently in the United States and Canada.

The fraud offence is also an effective weapon against other kinds of fraud, such as mass-marketing fraud, real estate or title fraud, home renovation fraud, health care fraud, or other kinds of insurance fraud, tax evasion, and old scams now perpetrated with new technologies.

For too long I believe our justice system has not focused enough on the scam artists who take advantage of the trust of others. With the global economic downturn, as I indicated, massive Ponzi schemes have been revealed. I think that underlines the point we've made here and in the House of Commons and to the public at large that we must send a new, stronger message in this area.

The government has a comprehensive plan for sending that message. As members of the committee, you are all aware that the key aspect of the government's response is Bill C-53, which eliminates accelerated parole under the Corrections and Conditional Release Act. This is the responsibility of the Minister of Public Safety, but of course it is a legislative initiative I strongly support.

Another piece of our plan is Bill C-42, which will put an end to conditional sentences for fraudsters, among others.

Let me return to Bill C-52, the Retribution on Behalf of Victims of White Collar Crime Act. To improve the law quickly the government wanted this piece of legislation to be entirely focused. For this reason, the various sentencing measures in this bill are targeted at fraud offenders specifically. The current maximum penalty is 14 years imprisonment, the highest maximum in the code short of life. The maximum sentence is adequate, but we believe that more can be done to ensure that sentences reflect the devastation caused by fraud.

The first amendment in Bill C-52 is a mandatory penalty for fraud in excess of $1 million. Fraud over $1 million is currently a statutory aggravating factor. This bill will convert that aggravating factor into a circumstance that results automatically in a mandatory penalty of at least two years in prison. Any fraud or series of frauds that result in the loss of more than $1 million must necessarily have been the result of a complex, well-organized, well-planned scheme and quite likely supported by additional crimes, like forgery. Any fraud that rises to this level of loss must be considered serious.

Many frauds, as we know, are larger than this, so it's important to be clear that two years is the floor, not the ceiling. The actual sentence imposed for a larger fraud will obviously reflect all the additional blame for the elements of that fraud, many of which are captured by existing aggravating factors under section 380.1 of the code. This bill will supplement those aggravating factors with new ones if the duration, complexity, magnitude, or degree of the planning was significant; if the offence had a significant impact on the victim, given their personal circumstances; if the offender failed to comply with applicable regulatory or licensing regimes; or if the offender concealed or destroyed relevant records.

● (1535)

All of these factors highlight, in one way or another, conduct or results that are completely unacceptable to Canadians. The new aggravating factors, in conjunction with the existing ones, will be applied by sentencing courts to arrive at a just sentence on the particular facts of each case.

Another new measure is the introduction of a prohibition order that can be part of the sentence. The Criminal Code has several prohibition orders in place that are designed to help prevent offenders from reoffending. One such example is the order that is often made against a person convicted of a number of child sexual offences. The order, for instance, could prohibit them from, among other things, working in schools or other places where they would be in a position of trust or authority over young people.

Along the same lines, this bill will enable the court to order that the convicted offender be prohibited from having control over or authority over another person's money or real or valuable securities—up to life. Breaching this prohibition order will itself be an offence.

Other aspects of Bill C-52 focus on improving the responsiveness of the justice system to the needs of victims. It contains provisions designed to encourage the use of restitution orders in fraud cases. The Criminal Code currently enables judges to order offenders to pay restitution to victims in appropriate circumstances. Restitution may be ordered to help cover monetary losses incurred by victims, among other things as a result of the loss of property caused by a crime. Bill C-52 would require judges to consider restitution in all cases in which an offender is found guilty of fraud. If a judge decides not to make a restitution order, he or she would have to give reasons for declining to do so.

The bill would require a judge, before imposing a sentence on an offender, to inquire of the crown whether reasonable steps had been taken to provide victims with an opportunity to indicate whether they are seeking restitution. This is designed to ensure that sentencing does not take place before victims have had a chance to indicate that they would like to seek restitution from the offender, as well as allow time for victims to establish their monetary losses.

The bill contains provisions aimed at encouraging courts to consider the impact that fraud can have, not only on individuals but also on groups and communities. The Criminal Code currently requires courts, when sentencing an offender, to consider a victim impact statement describing the harm done to or the loss suffered by a victim of the offence. Canadian courts have already in previous cases considered impact statements made on behalf of a community.

This bill would explicitly allow courts to consider a statement by a person on a community's behalf describing the harm done to or the losses suffered by the community when imposing a sentence on an offender found guilty of fraud. A community impact statement would allow a community to express publicly, and to the offender directly, the loss or harm that has been suffered in order to allow the community to begin a rebuilding and healing process.

Mr. Chairman, those are the major elements of this bill. I look forward to the speedy passage of this important piece of legislation.

Thank you.

● (1540)

The Chair: Thank you, Minister.

We'll move to Mr. Murphy, for seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Minister, for appearing again.

I want to say, first of all, that form 34.1 is an excellent idea. I think all of us who have had some experience in listening to or hearing about cases before provincial courts know that in some cases the issue of an ask for restitution is missed. It's a very good housekeeping item. I know that most competent prosecutors and provincial court judges and police forces don't miss them, but it's a very good housekeeping measure, I would say.

I do want to ask you two questions about this bill, Mr. Minister. One is based on what must be a difficult job for a judge, in certain circumstances involving what we're now calling white collar crime, to grapple with. The second question can only be posed to you in the House because you've had such a long history in justice issues.

The first question comes from the *Red Deer Advocate*. It's a very difficult case involving a 49-year-old woman who stole more than $5,000 from her company. In sentencing, the judge was really between a rock and a hard spot because that woman was a single mother and caregiver of foster children, and the need to put her away had to be balanced with respect to community interests. At the time I had this article I don't know what the judge did, but I want you to comment on the hard case that this presents for a judge in a case where there is white collar crime and where prosecutors are making statements in court that white collar crime has a major impact on our society, and the federal government wants to introduce legislation to enhance penalties for white collar criminals.

I want to be sure from you, Mr. Minister, that judges won't be handcuffed when looking at cases of where to put a person like this —this 49-year-old single mother—in prison, and won't necessarily be goaded towards that.

The second question, then, is about your experience in 1992, if you can remember back that far. I, of course, was just a young lawyer. You were involved with Mr. Mulroney's government at that time when they adopted early day parole in cases involving people who had been involved in fraud for the same sections of the code we're dealing with. At the same time, that government moved towards being tougher with violent offenders. The point of the article here is that there has been a move away from that because this was all before Madoff, before Lacroix, and there has been recognition from all sides of the House, I think, that white collar crime at the higher level needs to be recognized with tougher sentences. What I'm saying is, do you recognize in the criminal justice issues that governments as astute and strong as Mr. Mulroney's in 1992 moved away from being tough on criminals, recognizing that there has to be a balance as to what is more prevalent in the day? In that time, white collar crime was not a priority, would you say?

So there are two questions.

● (1545)

Hon. Rob Nicholson: With respect to your first question, I never comment on specific cases. I don't know if this matter is up for appeal or what the sentence was.

The job that we have as legislators, members of the House of Commons and Senate, is to give guidance on the seriousness with which we view certain kinds of conduct. In this particular piece of legislation, we're talking about fraud in excess of a million dollars. Generally, when there is fraud in excess of a million dollars, we are talking about a sophisticated operation that has gone about the business of fleecing individuals or communities and making victims of innocent Canadians.

Are we giving the appropriate guidance to the courts? I have no doubt that we are living up to our responsibilities. For this kind of activity, we now have the most serious maximum penalty, short of life, under the Criminal Code. I think we're sending out the right message. We're saying that we'll start with two years imprisonment for people who are committing millions of dollars worth of fraud and fleecing individuals, making victims of poor innocent Canadians. They can build from there.

I'm also pleased about the aggravating factors that will be taken into consideration. For instance, we will now be looking at the impact on the community. Sometimes it's not just one individual but a group, an organization, that finds itself victimized. I'm glad this is being recognized. With respect to the changes in accelerated parole, I don't have direct responsibility for this matter. My colleague the Minister of Public Safety has that responsibility.

I disagree completely with your comments that the former Conservative government under Mr. Mulroney moved away from being tough on crime. That government passed the very first law to make it a crime to possess child pornography. The mere possession of it became a crime. You'd find it interesting to read the debates of the day. There was a lot of squealing by the naysayers and nervous nellies that were challenging us about bringing this forward. I said it then, and I'll say it again today: this was an important step in the protection of children.

There have been many changes over the years, Mr. Murphy. I think I was on 35 legislative committees looking at changes to the Criminal Code, updating it to catch up with the technology changes that have taken place. We've been sending out the correct message these last four years. Victims and law-abiding Canadians know they can count on this government to stand up for them. I'm proud to be a part of the government that helped to push that agenda.

Mr. Brian Murphy: I hope you understood what I was saying about the Mulroney government. I believe you were parliamentary secretary at the time. They established early day-parole for white collar and non-violent offenders as a counter to getting tougher on violent crimes. I'm not saying that you authored it or that it was a bad thing. At the time, white collar crime wasn't as hot a topic as it is today.

Hon. Rob Nicholson: You're partly correct. I was involved with justice issues as a member of this committee and as the parliamentary secretary. I wasn't Parliamentary Secretary to the Solicitor General, the predecessor of the public safety minister, so I wouldn't be in a position to comment on that. But you're correct about my role there. I believe I was on over 35 legislative committees, working on changing the Criminal Code. I am proud of the record we had at that time.

● (1550)

The Chair: Thank you.

We move over to Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): Minister, in clause 2 of the bill, you take away a judge's discretionary power and you establish “[...] a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars”.

What criteria did you base yourself on to set this benchmark amount at $1 million? Is it because $1 million is a figure that plays in the public's imagination or did you have serious reasons for setting this benchmark?

[*English*]

Hon. Rob Nicholson: We always have profound reasons for everything we do, Monsieur Guimond. At the same time, I should indicate to you that it already is part of the Criminal Code, that one of the aggravating factors if a person is convicted of fraud is if the fraud involves over $1 million. I think that is a good starting point. As you know, when you have a look at these either Ponzi schemes or sophisticated fraud operations, they very quickly surpass $1 million.

With respect to the two years, you may be indirectly referring to the fact that, yes, there are about a dozen cases that I'm aware of where individuals who have been convicted of fraud over $1 million did not get the two years we are proposing here, but that's part of the job we have to do. We have to make sure we send out that very clear message that this kind of activity will not be tolerated and that there will be serious consequences for people who get convicted of this serious crime.

The direct response to the $1 million, again, is that it's already part of the aggravating factors within the Criminal Code, so it's a good fit.

[*Translation*]

Mr. Michel Guimond: Minister, I'm trying to follow along in English. I understood you to say that you are aware of cases of fraud of over one million dollars that did not result in a sentence of two years' imprisonment. In these particular cases, the judges all imposed sentences of more than two years on the persons convicted of fraud. There are documented cases of sentences of six and seven years of imprisonment. For that reason, we find that this provision in the bill makes no sense.

[*English*]

Hon. Rob Nicholson: I actually want to be very clear with you. Thank you for raising it. I didn't say six; there are more than six cases here. My understanding is that there are approximately twelve cases, Monsieur Guimond, where individuals were given sentences of less than two years. Again, we're establishing the two years as a base, and we've added on a number of aggravating factors. So for people who get involved with this activity, you're starting at two years but it can be considerably more. As I indicated to you, and as you're aware, the maximum is fourteen years. I think it sends out the right message. I didn't want you to think I said only six, because it's more than that.

[*Translation*]

Mr. Michel Guimond: Will you undertake to provide the committee clerk with details of cases where persons convicted of fraud over one million dollars received a sentence of two years or less?

[*English*]

Hon. Rob Nicholson: I'll talk to the department and give you the information we were given to be able to make that statement. I'd be glad to do that.

[*Translation*]

Mr. Michel Guimond: Fine then.

What kind of aggravating factors or extenuating circumstances are we talking about? You're implying that judges do not take such factors into account, which is absolutely not true.

[*English*]

Hon. Rob Nicholson: I'm not saying they're not taken into account. I'm saying I'm adding factors to the bill, Monsieur Guimond. There are aggravating factors and I agree with them, and I agree that judges can and should take those into consideration. What we're saying in this bill is that we are adding a number of aggravating factors that I think are entirely appropriate—for instance, even concentrating on the effect on the victim. Let's face it: if you've stolen $2 million from somebody who is very rich, that wouldn't have the same impact as on a victim for whom that $2 million represented everything they owned or was their life savings.

Again, specifying the conditions we want to have taken into consideration, I think, is very important. That's what we're trying to do with this bill. We're actually building on what we have in the Criminal Code, going back to your first question about where we came up with the $1 million. Well in a sense, we're building on what's already in the Criminal Code.

● (1555)

[*Translation*]

Mr. Michel Guimond: The members of the Bloc Québécois feel that you failed to seize the opportunity to eliminate, when you had the chance, early parole after the offender has served one-sixth of the sentence. You informed us in the House that the Minister of Public Safety would introduce these provisions as part of a more comprehensive reform. We want a status report on the reform plans and some idea as to when we can expect to see these proposals.

Minister, we maintain that you should have taken advantage of that bill to do away with early parole for offenders after they have served one-sixth of their sentence. Had you acted more quickly, the amendment would have meant that white-collar criminals like Vincent Lacroix would not be eligible for release after serving one-sixth of their sentence.

[*English*]

Hon. Rob Nicholson: Well, our response is called Bill C-53. The public safety minister has tabled the bill to get rid of accelerated parole, the one-sixth provisions that you're talking about. It goes hand in hand with this particular bill. This is one part of it, and Bill C-53 is the other part.

I encourage you to have a look at that. I think you'll be quite pleased with the provisions of that bill.

[*Translation*]

Mr. Michel Guimond: Again, we deplore the fact that the government and ministers like yourself have not focused on the problem of tax havens. White-collar criminals will spend some time in jail, and a great deal of time as free men. Upon being released from jail, they will return to Barbados, the Cayman Islands or the Turks and Caicos Islands and live off the millions of dollars they embezzled from ordinary citizens.

Why have you not focused your efforts on addressing the problem of tax havens? What good does it do to order the restitution of this money if it is hidden offshore?

[*English*]

The Chair: A short answer, Minister.

Hon. Rob Nicholson: Thank you, Monsieur Guimond. You're very generous with those areas that you think I should take over. You started with the public safety minister, even the finance minister, and all those....

Again, this is very targeted. It's very specific. It makes sense. I think you will find that people within your constituency and those who you speak with will be very supportive of the measures we are taking here.

One of the things we've done is to make the whole system more user-friendly for victims of crime in terms of the impact it has, requiring the crown to have a look at the requests and making sure these are available.

With respect to the accelerated parole provisions, again, we're moving on those. My other colleagues are having a look at this.

In and of itself, I think, this a positive move. I know that if you're in the opposition, you're always saying that there's some other bill we could be doing. But this is specifically targeted at those individuals who commit white collar crime. I think these are all very reasonable provisions. I'm hoping that the Bloc will have a look at this and say, "Okay, let's do it."

I have another bill, as you know, to get rid of conditional sentencing. I don't think people who get convicted of fraud should have the ability to go home on house arrest afterwards.

Yes, I want you to pass this bill, but I can also make the pitch that I'd like to see you pass Bill C-42, which gets rid of house arrest for people who commit fraud.

In one sense, I agree with you. Is this the whole show? Is this the whole package? No. It is not the whole package. The bill on getting rid of accelerated parole is an important component of what we have to do, as is getting rid of house arrest for those fraudsters; I have a real problem with that. I know you've heard me before on this, but the idea that you can be convicted of fraud and then get sent home afterwards, or have the ability to get sent home, I have a problem with.

Anyway, that's another bill for another time.

Thank you for your question.

The Chair: Thank you.

We'll move to Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here.

I want to start off the same way Mr. Guimond did, in terms of the analysis you've done. I say it from this perspective: I have an open mind on whether the $1-million figure is the appropriate figure or if it should in fact be a smaller figure or a larger figure; I'm open on that.

You mentioned, in response to his questions, that you think there were twelve cases that the department was able to identify of over $1 million. Do you know over what period of time those twelve cases were?

Ms. Kane may be able to answer.

● (1600)

Ms. Catherine Kane (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): I can undertake to follow up on that. We had a case law review done in the summer of cases that were easy to access. I'm not certain, at the moment, of the timeframe, but they were recent cases.

There were changes to the maximum penalties in the last several years. Some of them were committed before those changes came into force, so they would have been decided under the previous sentencing provisions.

We'll see what we can share with the committee in terms of those cases.

Mr. Joe Comartin: Thank you, Ms. Kane.

In that regard, I'd asked at the previous meeting for our analyst to see what *Juristat* could provide, and they don't have anything on this. So it appears the department may be the only source for information.

I'm seeking other cases where there would be multiple instances of fraud, but the totality of the value would be significant—and I'm going to use half a million dollars and up as significant—whatever information you can provide us in that regard.

Again, Mr. Minister, I am concerned as to whether the $1 million is.... I'm saying this from the perspective that this applies to identity theft crime, that kind of fraud, where people take over or apply mortgages. In my area, they could do that four or five times for the average house, and it would still be under $1 million. I would think in those circumstances a more severe penalty would be appropriate, but it wouldn't qualify under this. That's the perspective I'm coming from, whatever information you can give us.

I want to ask about the community impact statements. Am I correct that this will be the first time this appears in the Criminal Code?

Hon. Rob Nicholson: I believe it is. What you may be pointing out to me, Mr. Comartin—I don't want to put words in your mouth—is that it is possible that a judge could have a community impact statement prior. We want to codify this so that this is part of it. If a group of people who are associated for one reason or another find themselves victims, perhaps one of their members could come forward to say, "Look what you have done to this particular group."

Yes, putting it in the Criminal Code is a first.

Mr. Joe Comartin: There's something in my memory, and I couldn't find it in any of the case searches that I did, but I have the sense that judges have in fact allowed for these statements in the past, having a representative voice come forward.

Hon. Rob Nicholson: It's possible. And there have been cases where a judge has allowed something similar to that. Again, what we are trying to do is codify, which is a very good practice...or a practice that should develop. It's the same in terms of restitution. Making it a little more user friendly doesn't mean it wasn't ever taken into consideration.

Having it codified, having it in the Criminal Code, adds to it and makes sure that it gets used and is considered in cases.

Mr. Joe Comartin: Are we aware if any appeals court has looked at it, where somebody's challenged the judge who allowed that kind of evidence, that kind of statement?

Ms. Catherine Kane: In the context of the work we do in the department with respect to victims, in the Policy Centre for Victim Issues, we've looked at the use of victim impact statements, and some of that work has revealed how courts have accepted community impact statements. To our knowledge they have not been challenged, but a lot of issues are resolved within the judge's own discretion. Because the community impact or victim impact statement wouldn't be totally decisive of the sentence, it's just one more factor, it's difficult to determine how that particular statement has had a bearing on the particular sentence. It's only to assess the impact of the crime on the community, or in the case of a victim impact statement, on the particular victim. It's not to include recommendations with respect to sentencing.

All of the purposes and principles of sentencing have to be taken into account, as well as the information provided by the victim, or in the case of community impact statements, where judges have permitted them, that information. So far it's usually been used in circumstances where sometimes there isn't a victim impact statement. An example is in drug crimes, where there's no particular victim but a whole community feels that their community is at risk in some way because of drug trade in the vicinity, or their property values have gone down, or that sort of thing.

Mr. Joe Comartin: The crystal meth situation in smaller communities.

● (1605)

Ms. Catherine Kane: Right.

Mr. Joe Comartin: What I'm looking for is whether there are any cases where judges have detailed, either at the trial level or appeal level, what they expect, a standard for what the community impact statement should contain.

If there are any cases like that, again, if you could send them to the clerk, we'll pass them on.

Ms. Catherine Kane: Yes, we will undertake to do that.

Mr. Joe Comartin: In terms of the restitution orders, Mr. Minister, I'm guessing you probably have the same experience I've had with these. Our courts are very careful about not crossing over into the civil court line and becoming collection courts. You'll hear judges saying they're not there to collect money. It's an attitude that I think is a problem with the restitution orders.

Is there any thought being given—and this would be at the judicial council level or at the education level of our judges—to providing additional education on the importance of the restitution orders and willingness on the part of the judge to entertain more evidence? That's usually what the problem is. I've seen all too many judges cut off prosecutors who want to put in more evidence as to what the restitution orders should be and in what quantities.

Hon. Rob Nicholson: You raise a very interesting question, Mr. Comartin, including the whole question of provincial jurisdiction in the whole issue of seizing and realizing assets. There have been a number of very good initiatives at the provincial level that we can't forget.

Part of what we're doing is by requiring a judge to have a look at this issue and requiring the crown to respond to these, I think it generally flows that when there are changes to the Criminal Code our judiciary takes note of these. This is not a bill that contains specific provisions with respect to the education of judges. We generally leave that within the system. There are programs and initiatives. But they respond very well. When they see changes they take note of them. Now that we're requiring them to consider restitution from the offender in all cases involving an identifiable victim with ascertainable losses, I think this will be a huge step in the right direction.

The Chair: Thank you.

We'll move to Monsieur Petit. You have seven minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you very much.

Good day, Minister, Ms. Kane and Ms. Klineberg.

I'd like to broach a different subject. Unfortunately, there are still people being accused of major fraud. Quite often, victims of these fraudsters suffer from an economic standpoint. The saddest cases are those of individuals who lose their life savings, or their pension fund.

Persons charged currently are eligible to receive a suspended sentence. This Criminal Code provision still applies. Of course, our Conservative government did try to rectify the problem in the past. I was around at the time. We were never able to strengthen these particular provisions of the act because of extremely strong opposition. The opposition was unwilling to cooperate with us. We encountered many problems. I think everyone remembers Bill C-9. It was completely gutted.

Minister, people are concerned. I've had an opportunity to meet with victims on two or three occasions. I believe you were there as well. You will recall that we met Mr. Davis, whose family had had dealings with Earl Jones, as well as with Mr. Gravel, who was representing certain parties in the matter involving Norbourg and Vincent Lacroix.

The Prime Minister also met with these individuals. I met with them, along with you and the Prime Minister. The problem in fact originated in Quebec. The situation was very intense. We are now aware of other cases in Alberta, but at the time, the problem was confined to Quebec. Many meetings were held.

Most of the victims told you and told the Prime Minister they were concerned that white-collar criminals would not receive adequate sentences. That was the impression they had. I was there when I heard them say this to you. Furthermore, they have the impression, because of the system's shortcomings, that these fraudsters will merely pick up where they left off after they are released. The case of Vincent Lacroix comes to mind. Even the Government of Quebec must turn to the Court of Appeal because it believes that sentences should not run concurrently. The situation has become very serious indeed.

Nevertheless, I do have an important question for you, since we are meeting in public. The committee is considering Bill C-52. What do you say to the people who spoke to me, to you and to the Prime Minister? What do you intend to do to help the victims and put things right?

You know as well as I do that if this effort fails, we will be back to square one. Had Bill C-9 been adopted several months ago, we would not be here today. Could you clarify the situation for me? What do you plan to do for the victims to set things right?

● (1610)

[*English*]

Hon. Rob Nicholson: First of all, Monsieur Petit, let me thank you for all the work that you have done for the victims. I want to thank you for that leadership role, particularly within the province of Quebec, and your willingness to meet with victims, your empathy with them, your understanding of what they've gone through, and your commitment to do something about the situation that victims find themselves in. It is very commendable and I'm very appreciative of that, as I'm sure all members of the House of Commons are for your work in that area.

You commented on one particular case. I never comment on a particular case, but I will say in general that one of the provisions in this bill is something that I think is of comfort to a lot of people, no matter how long these individuals serve their prison sentence—and we are going about making sure that they do serve substantial time for the heinous crimes they have committed—which is to have the provision in here for the first time that a prohibition order can be issued by a judge for up to life against these individuals, prohibiting them from handling other people's money or finances either on a professional basis or even on a volunteer basis.

As you know, victims will tell us that they know of instances when people who will eventually be released from prison, when they're released, will immediately get back into this kind of business, handling people's money one way or another. This unfortunately is the only business they know, handling people's money and doing it in a fraudulent manner. So to be able to give that prohibition order for up to life against that individual, to prohibit them from dealing with other people's money and making it another offence if they in fact do engage in that, I think are all steps in the right direction.

But you are quite correct that in our discussion with victims we say this is one part of what we are trying to do with this particular piece of legislation. The Retribution on Behalf of Victims of White Collar Crime Act, this bill, is one part of it, but as I indicated to Monsieur Guimond, our colleague the Minister of Public Safety is coming forward with a bill getting rid of accelerated parole, one-sixth provisions. This is another thing that has considerable appeal among people who want to see justice and fairness in the system. That's one piece of legislation.

But you mention as well Bill C-9 in the previous Parliament, which was to get rid of conditional sentences or house arrest for a whole wide range of serious crimes. I can't speak for the opposition parties—I'm sure they'd want to do that for themselves—but they took out the provisions that related to fraud. So, unfortunately, today, despite the best efforts of people such as you or Mr. Moore, who is the other parliamentary secretary, and our other colleagues here, it's still the law in this country that you can be convicted of serious fraud yet still be eligible for house arrest. We very much disagree with that.

We have introduced the bill again, Bill C-42, which is now before Parliament. I'm hoping that our colleagues in the opposition will reconsider the position they took in the previous Parliament and say they are going to put an end to this; they are going to put an end to people who commit serious crime being eligible to go home after they have been convicted. This is not what Canadians want.

So I thank you for raising that with me, because as you say, when we talk to people who are victims, who are concerned about this area, we always say we have to get this bill passed, this is an important component of what we have to do, but there are other measures, and I assure them and they know by the evidence that we are prepared to help them in other areas. You've identified a couple of those areas and I thank you for that.

● (1615)

The Chair: Thank you.

Mr. Murphy, you have five minutes.

Mr. Brian Murphy: Thank you.

I again remind you that in 1992 a previous government introduced early day parole, but we won't have that argument back and forth.

A lot of people watching will be saying that they do want the perpetrators of white collar crime punished, but more than that, an awful lot of the people want their money back. Yes, we have the CDIC for the banks situation. We have insurance situations. I guess when looking at the justice end of it we realize that criminals have become more sophisticated in white collar crime, and we have to get a little more sophisticated in our response.

For instance, Mr. Minister, you will know that in New Brunswick the Speech from the Throne was given this week. The Attorney General there—and I believe you just had a meeting with the attorneys general across the country—was introducing something called a Civil Forfeiture Act for certain crimes. I'm not exactly sure of the details, but that's the kind of innovative stuff that citizens out there are looking to us as parliamentarians to come up with, safety nets in advance, or the ability to claw in the proceeds of crime and ratchet it up a little more. Can you tell us what your government is doing in that regard?

Yes, punishment is important. Retribution is important. All of those things are very important. But at the end of the day as well, for those seniors who have been swindled and their life savings have disappeared, they don't look at silos of justice, public securities, public safety, and financial institutions. They want to know what we parliamentarians are doing to get victims their money back. What can you tell us about that?

Hon. Rob Nicholson: You touched on a very good point, Mr. Murphy. That is, our provincial colleagues, who have great responsibility with respect to this area, are actually bringing in legislation. One of the things that impressed me in my recent meeting with attorneys general from across Canada is the initiatives by a number of provinces to assist victims in the collection of their money.

Mr. Comartin touched upon the jurisdictional issues that relate to this. On the one hand we're cautioned to make sure we don't go too far into provincial areas of this, but I'm quite impressed, quite frankly, by the level of concern that is taking place at the provincial level with respect to this.

With respect to victims in general, you will know and remember very well the emphasis we have placed on victims as a government with the creation of the office of the first federal ombudsman for victims of crime. This was a great step in that direction. Quite apart from how good a job is being done at the provincial level, and I'm very supportive of their efforts, we want to make sure that the concerns of victims are heard at the federal level. I'm very pleased about the work that is being done within that office. I'm very pleased and proud of the fact that we indeed created that position and that office to make sure that victims' issues are heard.

If you look carefully at the legislation that we have here before you—and these are my responsibilities—requiring the judges to consider restitution from the offender in all cases of fraud involving an identified victim with ascertainable losses is an important step forward. As well, there's requiring the judges to provide reasons if they don't move in this direction and putting the onus on the crown to advise the courts as to what steps have been taken to allow victims to set out their ascertainable and quantifiable losses so that restitution can be considered. This is one of the things victims told us. They don't want these things to go through and then find out it's too late for them to have their issues heard.

Monsieur Petit, myself, and others, when we heard this from these groups, said that makes sense. That's exactly what we should have in here: make sure that there is a forum for their concerns to be heard. You will be one of the first, I'm hoping, to agree with me that these are constructive measures being taken to make sure the system is more user friendly for victims and to make sure that the concerns of victims are before the court.

This is part of it, and I commend our provincial colleagues for what they are doing in this area. I indicated to you the federal ombudsman for victims of crime and the issues he and his office are dealing with. These are all part of it, because, you're right, one piece of legislation is not the whole answer. It's an important part of the answer, but it's not the whole answer. I'm pleased that it's part of a larger context.

● (1620)

The Chair: Thank you.

Monsieur Nadeau.

[*Translation*]

Mr. Richard Nadeau (Gatineau, BQ): Thank you, Mr. Chair.

Good day, Minister.

Sir, the maximum sentence for fraud is 14 years' imprisonment. I am trying to understand how a minimum sentence of two years would deter someone from committing fraud, a white-collar crime. Truthfully, it would have been better to increase the sentence to 16 years. If the punishment is harsher, the deterrent effect is stronger. How could a two-year sentence get a person to think three or four times before committing fraud, when we know that right now, fraudsters face the prospect of 14 years's imprisonment. I just do not understand the logic here.

[*English*]

Hon. Rob Nicholson: I'm not quite sure I understand your logic, Mr. Nadeau. Are you saying that a 16-year maximum is going to start preventing these people from doing it—

[*Translation*]

Mr. Richard Nadeau: No, I'm saying that...

[*English*]

Hon. Rob Nicholson: —or be an incentive for them not to do it? I don't know....

[*Translation*]

Mr. Richard Nadeau: The bill imposes a minimum sentence of two years, when in fact the legislation provides for a maximum sentence of 14 years. Mention was made of parole eligibility after serving one-sixth of the sentence. Why not address the issue of the tax havens that fraudsters can retreat to once they have served their sentence? Why not bring in harsher measures and insist on steps being taken to provide restitution to the victims of fraud?

I want to know how a minimum sentence of two years acts as a deterrent, when provision is already in place for a maximum sentence of 14 years. I don't understand why you would bother with a two-year sentence or include it as a provision in a bill.

Please explain this me.

[*English*]

Hon. Rob Nicholson: To be fair, Monsieur Nadeau, I know the Bloc has a problem every time we bring in these tough sentencing provisions. For the one on trafficking in children, the Bloc voted against the mandatory prison terms for people who traffic in children. If you had a problem with that one, I guess I can imagine why you have a problem with this one. You just don't like the whole idea.

I want to send out the right message to them, Monsieur Nadeau. I want people to know. They may do it anyway. They may say they're going to commit crime anyway, but I want to make sure that there are serious consequences that result from it. Starting off at two years and building on that—and building on that with the aggravating factors—I think sends out the right message to the community that this is not an area to get involved in.

So on that, plus the others—

[*Translation*]

Mr. Richard Nadeau: I'm sorry, Minister, but my time is running out.

[*English*]

Hon. Rob Nicholson: —the prohibition against these things, I think these are all steps in the right direction.

I appreciate.... I suppose that if I don't get your support on mandatory prison terms for people who traffic in children, I have a feeling that I'm going to have problems getting your support on these—

[*Translation*]

Mr. Richard Nadeau: Minister—

[*English*]

Hon. Rob Nicholson: —but I understand where you're coming from, Monsieur Nadeau.

[*Translation*]

Mr. Richard Nadeau: Sir, you can always change the subject and discuss a free trade agreement with Colombia. We could talk about doing business with criminals in other states. This doesn't exactly make you look tough on crime. But I see that you're an expert in changing the subject.

Why not impose a minimum sentence of four or five years? How can a two-year sentence have a deterrent effect? That's what I would like you to explain to me.

[*English*]

Hon. Rob Nicholson: Would you support a four-year minimum, Monsieur Nadeau? I mean, you know, I think we should all be—

[*Translation*]

Mr. Richard Nadeau: Explain to me the logic behind a two-year minimum sentence.

[*English*]

Hon. Rob Nicholson: Here's what I think. We should all be honest. If we had a four-minute minimum, you'd probably oppose that, and that's fine. I understand where you're coming from, which is that right across the board when we bring in these mandatory prison terms, no matter what the bill is—I gave you a good example—you're against it. That's fair enough.

As for what we're trying to do, we have an obligation, as members of the House of Commons and the Senate, to give guidance to the courts. I've had members ask me, back on one of those 35 legislative committees that I was involved with in the 1980s and the 1990s, “Why are you only putting a five-year maximum?” Make it 10 years for the judge, they say. I'd say, look, the five-year maximum fits in with the type of crime that we are doing this on.

We also do it on minimums. I'm sure you probably would be against having a life sentence as the minimum for people who commit murder. You'd say, “Well, it could be some other sentence”. Well, they're there for a reason: to make sure that there are serious consequences for a certain type of activity.

If you commit murder, yes, you're looking at some very serious minimums. It's called “life” and you're looking at 25 years without parole. Again, that's not up for debate here, nor is the free trade agreement with Colombia, as you pointed out.

But I think this is a reasonable response to that. I am willing to believe that if you talk to your constituents and to the people in the law enforcement agencies, they'll say, “Yes, the Conservatives have it right”. Getting tough on crime and putting in these provisions are steps in the right direction.

● (1625)

The Chair: Thank you.

Before we go on, I've heard a telephone go off a number of times here. Whoever has it on ring, please put it on vibrate or shut it off. Thank you.

Mr. Woodworth, you have five minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you.

Mr. Minister, thank you very much for coming here today and expressing yourself in such an articulate manner.

Just by way of a preliminary, I want to say that I have no doubt, Mr. Minister, that Canadians all across the country and Quebeckers know very well that when we're speaking about fraud, simple easy sentences can sometimes just be the cost of doing business. So I think they will support the idea of a mandatory minimum, which will be much more effective than just the cost of doing business.

Mr. Minister, I also want to say that when you were speaking to Mr. Petit earlier, you were commending him on his concern for victims, and over and over at this committee we have seen your special concern to address the needs of victims of crime. I think you articulate that very well, and people all across Canada thank you for that.

Now, once a fraudster is convicted and before he or she is sentenced, of course, the judge always takes into consideration aggravating and mitigating factors. I have victims in mind too. I'm thinking of a client I had once. She was widowed in middle age. She had to finish raising her children on her own, and within a few years of her husband's death she was cheated out of hundreds of thousands of dollars, in effect her life savings. She had to go back to work and can't enjoy the retirement she was looking forward to. We've also heard evidence at this committee and other proceedings on the problems title fraud creates.

Mr. Minister, I know one of the provisions in Bill C-52 will add certain aggravating factors for fraud offences, and I would be grateful to hear from you how these new provisions regarding aggravating factors will help victims of fraud like those.

Hon. Rob Nicholson: I think they help in a number of ways.

And thank you for your kind comments, Mr. Woodworth, and thank you for all you do in contributing to this committee and with your colleagues. I find your comments and questions very constructive and very helpful, and thank you for all you do to get these legislative initiatives passed.

With respect to the aggravating factors we've put in, I like how they are specific to the individual. I think I mentioned to Mr. Comartin that it does make a difference: if an individual was worth $100 million and lost $2 million, of course that has less impact on him or her than if the $1 million or $2 million represented everything the individual had. So the fact that this is now going to be before the court is very important, in my opinion.

One of the other provisions as well, since you've raised it, is the whole question that one of the aggravating factors we take into consideration is whether the individual concealed or destroyed the documents, because victims want to be able to access those documents. They want to be able to get at that material. And so what we're saying is that we want that to be taken into consideration, because that makes it harder for victims. If you start destroying the documents, then you're looking at possibly a longer sentence than you might otherwise get, and I think that's entirely appropriate. Why? Because we want to make it as easy as possible for victims to have their cases heard.

So again, it's very specific and very sympathetic to the plight the victims find themselves in, so these are more reasons why I hope this bill commends itself to all members of the House and is passed as quickly as possible.

● (1630)

Mr. Stephen Woodworth: Thank you.

Do I have time for another question?

Mr. Minister, one of the other changes this bill introduces is regarding community impact statements. You know, I'm sure, that my community of Kitchener is a very innovative place, and it wouldn't surprise me if we originated community impact statements, but I wonder if you could explain for us the reasoning behind codifying this. And how will community impact statements differ from victim impact statements?

Hon. Rob Nicholson: Actually, that's a very good question. Generally when we talk about victims, we're talking about the individual who has suffered a personal loss, but it's not just that individual in many cases who suffers the loss. Sometimes they're part of a larger community that is bound together by one reason or another. I very much like the idea of codifying, for the first time, the idea that someone can come on behalf of the group or the community and tell the court what impact the convicted individual has had on that particular community.

In my discussions with Mr. Comartin we talked about the fact that a judge can allow these things. There have been community impact statements. Whether they go towards how they affect the sentence is another matter, but making sure that this is codified and a part of the sentencing regime when an individual is going to be sentenced I think is very important. I really believe it's a step forward. I believe strongly in this, as I do the prohibition provisions. The idea that judges can now say that you'll never be able to handle anybody's money on a professional or voluntary basis I think is a huge step forward, which should commend this bill to all members of this committee and to the House. But this goes along with the ability of people to come forward and say that this is what this character has done to the community, this is how he has devastated us; this is how he has made victims of all of us. I think this is really important to be part of that. They're provisions that I particularly like.

As you and other colleagues have said, these are the complaints, these are the challenges that have been brought to our attention by victims who want to see changes in that area. So thank you again for that question.

The Chair: Thank you.

Minister, thank you for appearing before us today.

We're going to suspend for three minutes to allow the minister and counsel to exit, and then we'll reconvene.

●

(Pause)

●

● (1635)

The Chair: I'll reconvene the meeting.

We're pleased to have with us Shirish Chotalia. She is the most recent appointee as chairperson of the Canadian Human Rights Tribunal. With her are Greg Miller, as well as Gregory Smith.

I believe, Mr. Smith, you are the executive director, and Mr. Miller, you're counsel with the tribunal, correct?

Welcome to all three of you.

I think you've been told the process. You have ten minutes to introduce yourself, and then we'll open the floor to questions.

I just want to remind the committee that the purpose of Ms. Chotalia's appearance today is to allow this committee to examine, under Standing Orders 32(6) and 111(2), the qualifications and competence of the appointee to perform the duties of the post to which she has been appointed.

So please proceed.

Ms. Shirish P. Chotalia (Chairperson, Canadian Human Rights Tribunal): Thank you, Mr. Chair.

[*Translation*]

Good day, ladies and gentlemen.

I am deeply humbled to appear before such a distinguished group of individuals who have served Canadian society in so many important different ways. I had an opportunity to review your biographies. It is both an honour and a privilege for me to serve as Chairperson of the Canadian Human Rights Tribunal and to discuss with you my qualifications for this position.

[*English*]

With respect to the tribunal, it is the adjudicative body that hears complaints of discrimination further to the Canadian Human Rights Act. The tribunal, as you're all aware, is governed by laws written by Parliament and that are interpreted by the courts. The Canadian Human Rights Commission investigates complaints, educates the public about human rights, and advocates positions regarding current human rights issues. The commission, as you're aware, is a party that sometimes appears before the tribunal.

In terms of my qualifications, the Canadian Human Rights Act requires the chair to have been a member of the bar of a province for at least ten years. In addition, all members of the tribunal must demonstrate sensitivity, expertise, and an interest in human rights.

I've submitted to the committee my detailed curriculum vitae in English and in French. I will elaborate in terms of some personal background, which may be of interest to you, that you can't read on the paper.

I was born in Addis Ababa, Ethiopia. In 1960 my father, who had obtained his LL.B., B.Sc., and B.Ed. from Bombay University, was searching for an articling position. However, he seized an opportunity to teach in Ethiopia and moved to Addis Ababa, where I was born. Both my mother and father taught there.

In Addis Ababa they saw an ad in the local newspaper for openings in Alberta for teachers. So my parents mailed their résumés to the address. In India they had, of course, studied that Alberta was the breadbasket of Canada. Now, I know that some will disagree, but that's what they had studied. Then, somewhat surprisingly, they received a telegram, in 1964, asking if they could begin immediately. So in October 1964, they boarded an airplane and flew to Edmonton. They settled in a small French-Canadian town, McLennan, 438 kilometres northwest of Edmonton.

We moved to Edmonton when I was four, because my father, at the age of 39, redid his entire law degree at the University of Alberta.

An interesting event occurred in grade 4. I was walking to school and passed in front of the newly opened Alberta Human Rights Commission office in Edmonton. I still recall walking down the street and thinking that when I grew up, I'd like to be a lawyer and work for them, which is odd, because people usually don't think of or choose a law career so early in life.

The office had just been opened, and Peter Lougheed had been newly elected in 1971. His first act of government was to table two bills: first, the Alberta Bill of Rights; and second, the Individual's Rights Protection Act, Alberta's human rights act. These two bills were his flagship legislation.

In terms of my education,

● (1640)

[*Translation*]

I completed my education in the Catholic school system. I graduated with a Bachelor of Laws degree from the University of Alberta. I did my internship and was called to the Bar in 1987. I began practising law with my father at the firm of Pundit & Chotalia. At the same time, I enrolled in a part-time Master of Laws program at the University of Alberta and obtained my Master of Laws in 1991. For my Master's thesis, I drafted a privacy protection bill inspired by Alberta's human rights system.

[*English*]

In the interim, in 1989 I was appointed by the Minister of Labour as a commissioner to the Alberta Human Rights Commission. During this work, I met with aboriginal Albertans and gained an understanding of their concerns.

After this appointment, in 1994 I wrote a legal annotation of human rights law, which is the Annotated Canadian Human Rights Act. I updated this text annually for a number of years. In 1996 I wrote a larger work, called *Human rights law in Canada*, which included the provincial human rights laws of Alberta, B.C., Quebec, and Ontario.

Meanwhile, in terms of the thrust of my law practice, for the first five years I had a general practice, including extensive criminal law work. I then began to focus my practice in the areas of immigration and human rights litigation. I represented both complainants and respondents with issues of fairness and access to justice. For example, I assisted many live-in caregivers who were facing removal for circumstances beyond their control. I brought a constitutional challenge to legislation for a woman who had contracted breast cancer in Canada and was found to be medically inadmissible. I was also involved in major litigation against the Government of the Northwest Territories for a male client who was falsely accused of sexual harassment. The suit was for conspiracy and defamation.

I was counsel for the Alberta Civil Liberties Association in Grant v. Attorney General of Canada, both before the Federal Court Trial Division and the Federal Court of Appeal. The court ruled that not only was the RCMP within its rights to allow a Sikh officer to wear a turban, but was indeed under a duty to accommodate this religious practice.

Over the last number of years I represented a woman who alleged that she was denied the position of a surface rights administrator with an oil company because she was a woman. She also alleged that she was harassed and retaliated against for having filed a discrimination complaint with the Alberta Human Rights Commission. The Alberta Court of Appeal recently ruled in her favour.

Parenthetically, a few years after my Annotated Canadian Human Rights Act was released, I was appointed to the Canadian Human Rights Tribunal as a part-time member. During this tenure, I adjudicated on a variety of cases, including disability in the trucking and shipping industries.

Throughout my legal practice, I have worked toward ensuring that there is fair process for my clients, both complainants and respondents. Recently, in 2008, I was appointed, through an independent vetting committee, as special advocate to represent named persons facing allegations of terrorism. The requirements included expertise and knowledge in human rights law, immigration law, and security law. I had taught terrorism and the law, as well as human rights law, at the law faculty for a number of years at the University of Alberta.

Recently, in 2008, I served as a bencher of the Law Society of Alberta. I was elected by Alberta lawyers to administer the Legal Professions Act of Alberta, which governs lawyers, so we conducted and I sat on a number of disciplinary hearings, as well as competency hearings.

In short, I feel that I bring the qualifications and credentials necessary to serve as chairperson of the Canadian Human Rights Tribunal. I hope that I may draw on my experience as vice-chair of the Access to Justice Committee when I was a bencher of the Law Society of Alberta. I hope to search for ways to improve the efficiency of the hearing process to enable complainants and respondents to access justice in a timely fashion. Indeed, I am seeking to reach out to lawyers, law schools, and stakeholders in the process to develop strategies.

Thus, I look forward to serving Canadians to the best of my ability, and I'm delighted that you've asked me to come here.

I'm happy to answer any questions you may have for me.

● (1645)

The Chair: Thank you very much.

We'll open up with questions from Mr. Murphy. Seven minutes.

Mr. Brian Murphy: Thank you very much, Mr. Chair.

Thank you so much for coming today. We've all read with interest your curriculum vitae and listened to your statement here. We're all incredibly impressed with your credentials, your integrity, your honesty, and we're very pleased, obviously, to say statements in support—I think I speak for my colleagues when I say that—of your nomination.

One thing we've been doing as a committee, among many other things involving the minister's very busy agenda for us, is discussing perhaps even the future of the Canadian Human Rights Commission with respect to, in particular, hate crime complaints.

I do note in your very lengthy CV.... Your CV took a long time to read. None of us have that long a CV at all. Dominic's and mine, in particular, could be read in 20 seconds.

I did happen to notice, because it's of interest to this committee, that you were a member of a panel involving a complaint in 2003; in particular, the complaint involved Richard Warman, and the respondent was Fred Kyburz.

In that decision, on which you were a panel member, Mr. Kyburz did not appear or give any evidence. He was duly served but didn't. His website, which was put up and introduced into evidence, known as the Patriots on Guard website, was the issue. That site had many statements on it that were very detrimental to the Jewish community, linking them to issues of child pornography, and bleeding Russia dry, and I will not countenance any of the other comments being made, but let's say there were six pages of the evidence upon which you, as a panel member, decided.

What I have for you is a question that is pretty simple. The panel got together and wrote a decision accepting the complaint as one based in hate and used these words to summarize it. I just want to ask you, if I could read these words, whether you agree with their content. They are as follows:

> Article 19 of the Universal Declaration of Human Rights provides that such right "... includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media ..."

That goes to the right of free speech.

> While the right to hold and express one's opinions is a cornerstone of a free and democratic society, such a right is not unlimited. In some situations, the protection of society mandates limits on what individuals may say. For this reason, it is unlawful to shout "Fire!" in a crowded theatre when no fire exists, to phone in a bomb threat, or to threaten to kill another person.

The tribunal went on then to quote the Taylor case, with which we're very familiar, and the Supreme Court of Canada's decision. The tribunal, of which you were a part, concluded:

> The Court concluded that while section 13 infringed the right to freedom of opinion and expression, this infringement was justified in light of international commitments to eradicate hate propaganda, and Canada's commitment to the values of equality and multiculturalism. Having found that Fred Kyburz did communicate, repeatedly, by means of the facilities of a telecommunications undertaking within the legislative authority of Parliament, matter that is likely to expose people of the Jewish faith to hatred or contempt, Mr. Warman's section 13 complaint is substantiated.

The simple question is, were you a part of that panel? And were you involved in the expression of this opinion, in writing, and do you agree with its content?

● (1650)

Mr. Stephen Woodworth: A point of order.

My impression is that the rules of what we're about today have to do with inquiring as to the witness's capacity or ability and that questions should relate directly to the witness's ability.

I'm a little concerned if we start down the path of asking this witness to express views about particular cases, or even about particular laws or statutes that she might have had to apply in previous proceedings. I'm new around the table, so forgive me if I'm wrong, but it seems to me that is not what's contemplated by the rules for this inquiry and that we should be focusing not on the witness's opinions about legal matters but rather on her ability and training to do the job.

That's my point of order.

The Chair: You've heard the point of order raised. Is there any further discussion on it?

Mr. Murphy.

Mr. Brian Murphy: Certainly, I'll speak to that.

Obviously my quarrel is not at all, as I mentioned in my preamble, with the qualifications of the candidate. She put before us a very replete curriculum vitae that included this case. I took the trouble to read the case. The case is a matter of record now; it's not a matter of future opinion. It doesn't tie her to any future decision-making. That would be improper. It's the American custom, which I think sometimes the Conservative side wants to take us toward. It's not the Canadian custom to try to tie people into what their future opinions will be. But because it is a CV vetting, I wanted to know the extent to which she was involved in this decision. She was a member of the tribunal, but I don't know if she actually penned the words. I don't know if she remembers the decision. Heaven's, there's so much in her CV that maybe she doesn't even remember the case. But it is pretty current to what we're doing as a committee. It's something that an individual Conservative member has made so important that he wants a full study of this very busy committee's time to take precedence over government legislation, so I think it's fairly relevant.

In closing, I would say that anybody with a CV like this one knows well or not whether she will wish to answer the question. I think she's very well counselled by her own abilities to decide whether she does want to and how she wants to answer this. I don't think she needs the protection of me or Mr. Woodworth to decide whether and how she wants to answer this.

Mr. Stephen Woodworth: May I add to my point of order?

The member opposite has now suggested that the inquiry today should be about our other business and section 13 and the Human Rights Commission generally. I don't think this witness came here today to speak about any of that, so it strikes me that her opinions about that, if we want them, can be had on a day when we're convened and the orders require us to study that issue. Her past opinions can only be relevant to her future conduct. They certainly have no direct relevance to her abilities.

I don't know if we want this committee to go in the direction of asking appointees about their opinions, but I think, quite frankly, that would take us down a long and dangerous road. So I maintain two points of objection now.

Mr. Brian Murphy: Do I get to reply to that?

The Chair: Yes, you do.

Mr. Brian Murphy: Thank you, Mr. Chair.

The purpose of this hearing was to go through the curriculum vitae and ask questions that might be in it. If I was asking questions about something that wasn't in the CV, I might agree with my friend. The tautology—I got in trouble with the professor last time with that whole reasoning—is that you're not allowed to ask questions about what's in a resumé. Are we allowed to ask questions about what isn't in the résumé, like what her favourite hockey team is? Surely she has qualifications that are set out in her curriculum vitae, and I'm asking her about what her involvement was, if any, in a decision that I'm interested in as a member of this committee and a duly elected member of Parliament—elected by one of the narrowest margins the last time, but a duly elected member of Parliament.

A voice: Don't sell yourself short.

Mr. Brian Murphy: Exactly.

I think, Mr. Chair, you have enough to rule on.

● (1655)

The Chair: Thank you. I think you've both been fair in your comments.

Let me say again, this examination is restricted to the competence and qualifications of the candidate for the position. She has a résumé. I don't believe a question of clarification as to whether she was part of a panel or a court or a quasi-judicial body that made a decision is necessarily off base.

In terms of now ranging into opinions as to what she may do in the future, or what she has done in the past in terms of those decisions, I'm not sure those are necessarily directed at the competence and qualifications of the candidate. But I do agree with Mr. Murphy, she's probably quite capable of defending herself and addressing that.

Please.

Ms. Shirish P. Chotalia: I'm certainly happy to reply.

I was a hearing member of the panel. I'm certainly very conversant about the section 13 debate. I'm very well briefed with respect to the Taylor decision. I'm familiar with it. I'm familiar with the tribunal's decision on Lemire. That is on judicial review to the Federal Court. I think there are many issues that arise from the case. As a tribunal member, because some of these individual cases on this very section are before the tribunal currently and may, of course, resurface before the tribunal, I feel it would be improper for me to voice my opinion about my view of section 13.

I will say that the tribunal is an administrative tribunal. We're bound by the decision of the Supreme Court in Taylor and we also are to implement the laws written by the House of Commons, Parliament, and I look to you for guidance on that.

The Chair: Mr. Murphy, you still have a minute and a half.

Mr. Brian Murphy: I'll be very brief.

I don't know how the hearing system works. In a court of appeal where there are three judges, there might be dissent. Is there a mechanism for dissent in these decisions? Am I to read that this was a unanimous decision? I don't know.

Ms. Shirish P. Chotalia: That's what it says, and it is a unanimous decision of the panel. That's what the decision is.

Mr. Brian Murphy: That's all I have.

Thank you again, ma'am.

I'm sorry I caused Mr. Woodworth and me to argue in front of you. If you have children, you know what it's like, I suppose.

The Chair: It was done very professionally, I'll give you that.

We'll move on to Monsieur André. You have seven minutes.

[*Translation*]

Mr. Guy André (Berthier—Maskinongé, BQ): Good day, Ms. Chotalia. I hope you are well. You have a very impressive and lengthy resume.

How would you say the Canadian Human Rights Act is faring at the present time? Is it the focus of many challenges? Has it been called into question by certain groups? For example, section 13 of the act deals with hate messages. We've talked about this a little. This particular provision has been called into question. What are your views on this?

[*English*]

Ms. Shirish P. Chotalia: Again, had you asked me when I was in private practice I would have been happy to answer with my opinion with respect to the particular wording of particular sections. Unfortunately, at this point it's not for me, it's for you, Parliament, to decide how you want these sections to read. In particular, it's for Parliament to decide whether you are satisfied with section 13 as it stands. Are you satisfied with the Taylor decision? Do you want to amend the decision?

There is a conversation between the courts and the House. Parliament writes the law and the courts interpret the law. As a quasi-judicial administrative tribunal, we have to follow the law as interpreted by the Supreme Court of Canada, irrespective of what we may think the law should be. Unfortunately, I can't enlighten you on what I think the law should be because of my position.

● (1700)

[*Translation*]

Given my position, I do not feel that it is appropriate to comment at this time.

[*English*]

In this forum it would be inappropriate because of my position. I might have to adjudicate on that very issue.

I know this is not satisfying. I can only say I would love to express and speak about this issue, but I really would not be able to today.

[*Translation*]

Mr. Guy André: Thank you for your answer.

As Chair of the Canadian Human Rights Tribunal, you play a quasi-judicial role in terms of interpreting the Act. I understand that. What other responsibilities do you have in terms of promoting the Act?

Ms. Shirish P. Chotalia: That's a very good question. I tried to explain my role earlier.

[*English*]

There is a very important difference with the tribunal. We are like the court—it's not a court, but a quasi-judicial board. We hear the matters.

It's the commission that educates the public and advocates certain positions. The commission is certainly free to come here and share its view on section 13, that they think section 13 should be amended in such and such a fashion. That is for the commission.

When the commission was created, it started out of piecemeal legislation that was anti-discriminatory legislation found, for example, in the Ontario human rights act, that you couldn't give insurance, say, to Jewish people or you couldn't sell land to Jewish people. There were provisions in various statutes that were very discriminatory. Then in the 1970s the whole act was put together to create the Canadian Human Rights Act, with a commission to educate Canadians about the virtue of the act.

Prior to that there were also criminal and quasi-criminal provisions. Those were not found to be very effective, because if somebody was found to be in breach of the act, all they could do was incarcerate the person or give them a fine. Then the commission was created, and the mandate of the commission is multi-fold: it's to educate, investigate complaints that come before it, and then to actually take carriage of those complaints before the tribunal. So we are independent.

In one case a number of years ago, there was a challenge to the jurisdiction or the independence of the tribunal because our budget was coming out of the commission's budget. It was felt that we were too close to the commission. That was amended and changed so that we are very independent of the commission.

For example, I don't liaise with the commission on an individual case, but it is my hope that I can liaise with the commission on administrative matters where I hope that we can expedite hearings and give access to justice to parties quicker and in a more efficient fashion.

The Chair: Thank you.

We'll move to Mr. Comartin.

Mr. Joe Comartin: Thank you for being here, Ms. Chotalia.

In terms of your responsibilities, I'm trying to gather how much time you would allocate as the chair to actually hearing cases or making decisions, but on the judicial side of it, the decision-making side of it, and how much of your time is allocated to the managerial, supervisory, and administrative roles for your office and the other tribunal members?

Ms. Shirish P. Chotalia: I'm still trying to get a handle on that myself, because I started on November 2. I would anticipate that I might be spending at least 40% of my time hearing cases, but at this time I'm spending a lot of time doing case management and of course learning all the budgeting, the management, and that sort of thing. I do have small-business experience in running my own firm for 22 years. I can tell you that it has been quite a challenging and intense experience, but I'm very involved in case management at this time.

We also do mediations. For example, the commission refers, on average, 80 cases a year to us. About 30 of those may be settled on their own. We also conduct a number of mediations; we offer in-house mediation. I'm going to a mediation tomorrow. About 30 cases out of that total may be mediated, and a mediation is obviously the best thing for the parties. Then the balance of the cases will be scheduled for a hearing.

We have a number of part-time members across the country. Right now, of course, we have an opening for the vice-chair and the full-time member. That's posted right now. There are certainly issues in trying to ensure the due administration of the office, but I'm hoping I will be able to do a number of hearings.

● (1705)

Mr. Joe Comartin: Like everybody else, I am quite impressed with the résumé. But I don't see a lot of managerial administrative experience. I ran a small practice as well for a period of time before I moved on to a larger one. Certainly you have skills from that, but is there anything where you had to manage a larger group?

Perhaps you could indicate to the committee how many full-time tribunal members there are, how many part-time, and then how many additional staff fall under your managerial responsibilities.

Ms. Shirish P. Chotalia: Sure. I've run my own small practice successfully for 22 years, so I've had budgeting and management issues there. And when I was a part-time member of the Alberta Human Rights Commission, although I wasn't the chief commissioner, we certainly dealt with budgeting at commission meetings, and some other administration issues as well. So I had that opportunity at an early age to be involved at that level.

Mr. Joe Comartin: Did that include work in terms of discipline and supervising, if you had a problem employee, if I could put it that way?

Ms. Shirish P. Chotalia: No, I would have to say I didn't do that. At that time, it would have gone through the chief commissioner. As well, when I was a bencher of the law society—and of course the Law Society of Alberta runs on funds from the lawyers—we had to deal with budgeting, finance, and other issues there. So that always came to us as benchers. Again, we had an executive director who dealt with employee discipline.

Even in our office, because there could be a complaint against the tribunal, often it's the vice-chair or our executive director, Greg Smith, to my left, who will deal with the discipline matters, because obviously we have to maintain the integrity of the tribunal.

Mr. Joe Comartin: I have just one final question. I'm surprised that my colleagues to my right didn't ask it. You obviously can speak some French, but obviously you're not fluent. Are you intending to become fluent to the extent of being able to conduct hearings in French?

[*Translation*]

Ms. Shirish P. Chotalia: I hope I get the opportunity. I didn't have many opportunities to speak French in England. That was a bit of a problem. I often find the accent difficult to understand, whether it's a Quebec or an Alberta accent.

Mr. Joe Comartin: Or Parisian.

Ms. Shirish P. Chotalia: I try to communicate in French. My goal is to become perfectly bilingual so that I can hear cases in French.

[*English*]

Mr. Joe Comartin: Merci.

Thank you, Mr. Chair.

The Chair: Thank you.

Who is next on the Conservative side?

Mr. Rathgeber, you've got seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you, Ms. Chotalia, for your presence here this afternoon and for your very impressive résumé. It's always good to see a fellow Edmontonian here in Ottawa.

Following up on my friend Mr. Murphy's questions, I do have some questions regarding the 2003 decision of Warman against Kyburz. You have it in your résumé as Kyberg but in the actual decision I think it's Kyburz, but that's not too germane to my question.

You answered in response to Mr. Murphy's question that there was unanimous decision of the tribunal, and you were a part of that adjudicative body. And I understand that Mr. Warman received compensatory damages from the adjudicatory body in the amount of $15,000. I'm really curious and concerned about that, especially in light of the ruling in paragraph 90 where it states, “Mr. Warman testified that he was not Jewish. In our view, the fact that Mr. Warman was not himself Jewish does not detract in any way from the viciousness of the attacks launched” by Mr. Kyburz.

As you may or may not know, I spend the majority of my legal career in insurance and compensatory and personal injury law, and I'm always concerned about the difference between complainants and actual victims. And in this case and from my reading of it, I didn't see that Mr. Warman was a victim. He testified that he wasn't Jewish. He in fact was an employee, as you undoubtedly know, of the Human Rights Commission at the time that this complaint was filed and adjudicated. I just am really curious to hear you comment, if you recollect, on why the tribunal was predisposed to award him $15,000, in light of the fact that he's not Jewish and therefore logically cannot be offended by the very, very offensive postings of Mr. Kyburz on his website.

● (1710)

Ms. Shirish P. Chotalia: I can again only say that the decision speaks for itself, so it would be improper for me to really voice my opinion on it. It does say exactly what it says. I can advise you that I'm aware of the issues with respect to the punitive versus compensatory issues of the legislation. And again, I think I can't say anything further. No judicial review is taken, it says what it does, and I think all parliamentarians can do.... I think the ball is right in your court. You need to address this issue as a House, as the democratic voice of Canadians, in terms of what you would like to see done with section 13, and we can only apply the law as you've written it.

Mr. Brent Rathgeber: I agree that it is incumbent upon parliamentarians to deal with the very issues raised in this decision and others.

One other case that you were involved in, not as an adjudicator but as a litigator, caught my attention, and that's the highly publicized decision, certainly in Alberta, and I suspect elsewhere, of Vriend v. Alberta and the Alberta Human Rights Commission. You no doubt know the case I'm talking about.

Ms. Shirish P. Chotalia: Yes, I do.

Mr. Brent Rathgeber: From your résumé, I understand you appeared at the Supreme Court on behalf of an intervenor. You were counsel for the Alberta Civil Liberties Association. Is that correct?

Ms. Shirish P. Chotalia: That's correct.

Mr. Brent Rathgeber: For the benefit of my colleagues, you probably recall that Vriend was a decision where the Alberta legislature was basically ordered by the Supreme Court of Canada to include sexual orientation in its human rights legislation, although it had up until that point decided not to.

I was just curious. I'm assuming the Alberta Civil Liberties Association was supportive of the appellant, Mr. Vriend, but I wasn't able to read your factum, so I don't know. Is my assumption correct?

Ms. Shirish P. Chotalia: Well, I was certainly counsel for the Alberta Civil Liberties Association. The factum that we filed with the Supreme Court of Canada was to indicate that the case of Vriend was against the government of the province of Alberta at that time, to say that the Alberta Human Rights Act did not have the words “sexual orientation” as a ground in that act. So if Mr. Vriend had a complaint of discrimination, he was unable to access the Alberta Human Rights Commission. So then the Supreme Court of Canada read the words “sexual orientation” into the act. Of course, in the last version of the Alberta Human Rights Act, which is now the Alberta Citizenship and Multiculturalism Act, the words “sexual orientation” appear there, but until then it was not there.

Now, the Vriend case does not deal with whether Vriend was discriminated against by King's College. Vriend worked in the computer laboratory for King's College and was asked what his sexual orientation was. He told them and then he was dismissed.

Certainly that was the role I played as counsel for the Alberta Civil Liberties Association, to submit a brief to say that the legislation was under-inclusive.

Mr. Brent Rathgeber: Under-inclusive. Thank you.

My last question, if I have time, is this. I know from your résumé you served as a part-time commissioner until 2003, and then you presumably went back to private practice.

Ms. Shirish P. Chotalia: Yes.

Mr. Brent Rathgeber: I wonder if you can walk me through the chronology as to why you left in 2003.

Ms. Shirish P. Chotalia: Okay, sure.

A lot of my part-time work, whether it be as a member of the tribunal or the commission or as an instructor at the University of Alberta, has always been part-time while I've been carrying on my full-time practice. Yes, I wasn't reappointed. There was a three-year term, and we did that work, and then the appointment ended and I wasn't reappointed.

● (1715)

Mr. Brent Rathgeber: Thank you. And thank you very much for your impressive résumé and your attendance.

Ms. Shirish P. Chotalia: Thank you.

The Chair: Well, thank you to all of you. It is customary, although it's not required by committee, to opine as to whether the qualifications and competence of the candidate have been determined.

Is it moved by Mr. Murphy?

Mr. Brian Murphy: I would move that the candidate be fully endorsed by this committee for the post that she has been suggested for.

(Motion agreed to)

The Chair: Thank you.

Ms. Shirish P. Chotalia: Thank you so much. It's been a pleasure to be here.

The Chair: You're very welcome.

We'll suspend for a couple of minutes. We have some committee business, so I'll give you two minutes and we'll reconvene in camera.

[*Proceedings continue in camera*]

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