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• (1630)

[English]

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

Welcome to meeting number 72 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order adopted in the House on March 22, 2023, 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. Members are attending in person and remotely using the Zoom application.

Before I go into that, I believe I have consent from everyone, even though the bells are ringing, that we'll go until maybe 10 minutes before the vote. That way we'll get all of the witnesses to speak for their five-minute time and then we'll do the round of questions after the vote, if that's okay.

Is that okay? Good.

Yes, Mr. Fortin.

[Translation]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Mr. Chair, since some of our witnesses are appearing by video conference, I'd like to know if sound tests were done for interpretation.

[English]

The Chair: Yes, they have been tested. They were okay.

[Translation]

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

[English]

The Chair: I'll make a couple of comments for the benefit of witnesses. Please wait until I recognize you by name before speaking. For those participating via video conference, click on the microphone icon to activate your mike, and please mute yourself when you are not speaking. For interpretation for those on Zoom, you have the choice at the bottom of your screen of English, the floor or French. For those in the room you can use the earpiece and select the desired channel. For members in the room, if you wish to speak, please raise your hand. For those on Zoom, please use the "raise hand" function.

The clerk and I will do our best to accommodate you in the rightful order.

Welcome, everyone. We are studying Bill S-224, an Act to amend the Criminal Code, trafficking in persons.

For today's meeting we have with us, via video conference, Dawne Way, barrister, and Wendy Gee, executive director, A New Day Youth and Adult Services. In person, we have Casandra Diamond, founder and executive director, BridgeNorth Women's Mentorship and Advocacy Services.

We will go to you, Ms. Diamond, for five minutes. I have a little cue cards, so could you just pay attention when you are about 30 seconds away and then when your time is up, I won't have to interrupt you?

Perfect, over to you, Ms. Diamond.

Ms. Casandra Diamond (Founder and Executive Director, BridgeNorth Women's Mentorship & Advocacy Services): Good afternoon members. Thank you for inviting me to share with you today. It is a privilege to be here and to have the opportunity to speak not only as the founder of BridgeNorth, but also as a survivor.

I would like to share why I believe Bill S-224 would help trafficked persons.

It would combat trauma bonding, a known psychological impact that people who are trafficked experience as a result of a trafficker's manipulative tactics. Under the proposed amendment, the requirement to prove a reasonable expectation of fear would be removed.

When I was trafficked, I was not afraid all the time, but when I was, it was overwhelming horror. For example, I recall a time when I overheard my trafficker speaking to one of the girls on the phone whom he sent out after a 13-plus hour shift to a so-called after party. I could hear her in the background saying my trafficker's name. She was crying, sobbing, and begging for him to send somebody to come to get her out of there.

There were approximately eight to nine men in that room. They were taking pictures. They were recording, and they were using her in the most violent of ways. They gang raped her, and she called him, "My boyfriend, my trafficker". You see, she was no longer afraid of my trafficker anymore. She saw him as someone who could offer help, and who could keep her safe. It was lost on her that he was directly responsible for the unimaginable sexual violence she suffered at the hands of so many men that night.

She called him and asked, "Could you make them stop?" His answer was, "It will be over soon." This woman didn't fear my trafficker, or her trafficker anymore. She feared the customers who were doing all of those brutalizing things to her.

This woman's story, though, is not unique. I have a similar story of my own, and so do the many whom we serve today. This is why removing the requirement to prove reasonable fear from the definition of exploitation is so very important. The many girls I know who have gone to court have said that proving fear, as is currently required, would hinder their from coming forward.

In trauma bonding, we start to view the trafficker who facilitates violence as someone who is offering help, and this has been proven over and over again. When many of the girls I know see their trafficker in court, they feel love towards their trafficker, and all of their feelings of fear just go out the window because of trauma bonding.

Bill S-224 would support victims by reducing the burden they experience when testifying and trying to prove they feared their trafficker. The proposed amendment would eliminate the difficult requirement that the Criminal Code currently places on prosecutors to show that there was reasonable basis for the survivor to fear for her safety. This would account for situations, like mine, where my trafficker had manipulated me to see him as someone who offered safety and protection, rather than the one who facilitated brutal sexual violence against all those he trafficked, me included. This bill would support victims in coming forward in the court process and reduce barriers, which would allow more victims to feel safe to share their allegations over time.

Bill S-224 would allow us to assist people who are trafficked in licensed systems, whether for sex, labour, or organs. Based on my knowledge and experience in the sex industry, girls are being exploited from region to region, municipality to municipality, and in massage parlours and the like across the GTA. These women are forced to sell sexual services six to seven days a week.

Typically, there is one girl who monitors the phone and who speaks more English than any of the other girls. She is tasked with supervising the other girls who are also being trafficked there. They all live together in the same house. They go almost everywhere together, commuting together and eating together, as they have extremely limited other options.

This tactic can be related to debt bondage, an all too common method traffickers use to reduce one's ability to leave. The girls in these situations are being controlled, directed, and coerced by third party traffickers to engage in these brutally dangerous situations with men who purchase sex, while hiding behind the veneer of offering safety, security and a licensing system that keeps them bonded to their traffickers.

• (1635)

The proposed amendment would help people who are trafficked into Canada from another country, such as those who see their trafficker as someone helping them with language interpretation or helping provide their basic needs, like food and shelter. It will help people who are the most vulnerable in society who are being trafficked and were targeted due to their cognitive impairment, neuro-

divergence or other impairments that impact their ability to understand and process fear.

In summary, Bill S-224 would make trafficking in persons easier to prove as survivors would not have to prove their state of mind, which is inherently subjective. It would provide survivors with fewer barriers to seeking justice. It would remove the tool of manipulation from the trafficker's arsenal, meaning that the trafficker could not hide behind a carefully manufactured lie that he offers to the women that he exploits, even if he succeeds in convincing his victims of that lie. Very importantly, it's trauma-informed and it's "survivor first" legislation.

Canada's trafficking survivors deserve better than what we currently have, and Bill S-224 is that better.

Thank you for your time. I look forward to your questions.

The Chair: Thank you, Ms. Diamond.

We'll next go to Ms. Way via video conference for five minutes.

Go ahead, Ms. Way.

Ms. Dawne Way (Barrister, As an Individual): Thank you for the invitation to address this honourable committee.

In my practice, I represent exclusively complainants in criminal matters almost always in the area of sexual assault or human trafficking. Human trafficking complainants are among the most vulnerable who engage in the criminal justice system, and I thank the committee for the attention to and concern for the vulnerable victims of human trafficking.

I would support any amendment to the code that would assist my clients in their journey through the criminal process, and particularly amendments that would provide human trafficking victims with the same protections granted to victims of sexual assault. The absence of such protections represents a notable gap in the present law.

Since I was contacted by the committee last week, I have thought very carefully about the various impacts of the proposed legislative changes, but reluctantly I must advise the committee that I cannot support the proposed amendment.

I have two main reasons for taking this position. The first is that it is unnecessary, and the second is that the amendment would result in unintended delays and constitutional challenges that would be to the detriment of complainants.

I say the amendment is unnecessary because it is based on a misapprehension of the law, at least as it stands in Ontario. It is not necessary for the Crown to prove that the complainant is fearful. The Sinclair case in the Ontario Court of Appeal indicated that actual fear on the part of the complainant is not an element of the offence.

My point here is that the stated reason for the amendment is to remove the fear component from section 279.04, but that is unnecessary given the current law. Specifically, the Sinclair case lists a number of circumstances the court may consider in assessing whether the complainant objectively had a reason to fear even if no fear is expressed by the complainant. Those circumstances are expansive and include “vulnerability due to age or personal circumstances, such as social or economic disadvantage and victimization from other sources”. There are also other considerations.

In totality, these considerations listed in Sinclair appear to provide a broad range of circumstances the Crown can rely upon to satisfy the court that the complainant had an objective reason to fear as opposed to having a previous subjective fear.

My second concern is about the constitutionality of the amendments. The bedrock of Canadian criminal law is that at all times the Crown attorney bears the burden of proving guilt beyond a reasonable doubt. This burden must never shift. The presumption of innocence is of fundamental importance in the criminal justice system as it serves to place the burden of proof squarely on the Crown.

Let me pause here. I advocate for complainants. My job is to ensure that their rights are protected and that they receive all the benefits they are entitled to under law, but amendments that lead to time-consuming constitutional challenges do not benefit complainants. In fact, they have a detrimental impact on the criminal justice system as a whole.

The proposed amendment would undoubtedly lead to constitutional challenges, and in such challenges it is not uncommon to review parliamentary proceedings to decipher the intention of Parliament. The parliamentary record in this matter may well lead to the conclusion that the intention of Parliament was to shift the burden of proof to the defence and, therefore, lead to a finding of unconstitutionality.

As we know, it takes years for cases to wind through the system. Constitutional challenges are time-consuming and deflect energy and resources. There would be a ripple effect that would add to the delay that continues to plague criminal courts. Please bear in mind that the court system continues to struggle with the burden of COVID-related delays. Further, a finding of unconstitutionality may lead to numerous cases being thrown out.

Again, I raise the issue of constitutionality of the proposed amendments from my perspective gathered from years of experience representing hundreds of complainants in sexual assault and human trafficking cases. We know that the delay in getting a case to trial is torturous for a complainant as they anxiously anticipate facing their abuser in court.

● (1640)

My fear is that this amendment would introduce confusion in this area and be found to be unconstitutional.

Thank you very much.

The Chair: Thank you, Ms. Way.

We'll next go to—

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Excuse me, Mr. Chair. I'm sorry to interrupt.

The Chair: Yes.

Mr. Tako Van Popta: There are nine minutes left. I can't get my app to work, so I'm going to have to go to the House to vote.

The Chair: Okay. We will suspend.

Ms. Gee, we'll listen to you when we return, which will probably be in about 20 to 25 minutes, if that's okay. Then we'll go to a round of questions.

Thank you.

● (1640) _____ (Pause) _____

● (1710)

The Chair: Welcome back.

We'll now resume our opening remarks.

We'll conclude with Ms. Gee.

You have five minutes.

Ms. Wendy Gee (Executive Director, A New Day - Youth & Adult Services): I want to thank the standing committee members for the opportunity to speak today about Bill S-224, an act to amend the Criminal Code, trafficking in persons, to remove the unfair burden placed on exploited individuals who must prove there was an element of fear in their abuse to obtain a conviction in court.

My name is Wendy Gee, and I am a mother of a daughter who was sex-trafficked as a teenager here in Ottawa. In my professional life, I'm the executive director of a charitable organization that provides long-term restorative housing and programming for young women who have been sex-trafficked throughout Canada. I also chair the Ottawa Coalition to End Human Trafficking, a steering committee of 40-plus frontline human trafficking organizations in Ottawa and the region.

When young people come to A New Day, they want to move forward and start their recovery. Many have spent months, if not years, living with sexual violence and physical abuse. The result is horrific trauma, PTSD, and addiction challenges. They have missed most of their formative adolescent lives, which should consist of attending school, making friends and learning life skills that prepare them for adulthood. Instead, they're forced into a life of sexual violence, 10 or more dates per day with strangers who have purchased them for their sexual fetishes, and physical violence, beatings and torture if they do not perform and make money for their traffickers.

Amid this deranged lifestyle is a person, a trafficker, who controls every movement of that victim. This victim becomes dependent on their trafficker for everything from tampons and toothpaste to food and clothing. They develop a trauma bond, where the victim now believes that the trafficker is their protector. They may fall in love with them and feel that the trafficker holds their best interests at heart, including keeping them safe.

The victim is indoctrinated to believe in an “us against them” mentality, meaning the trafficker and the victim are together against the rest of the world, which wants to pull them apart. Is this logical reasoning? Of course not, but a trafficker knows his business, which is manipulation and coercion.

A trafficker will use any tactics to keep making money from their victim, even if that means keeping their victim in love with them. You can understand how challenging it is for a victim to come forward and provide a statement to the police. Even though their situation was horrific, the victims still had their basic needs met, and they found it challenging to believe they were being exploited.

My daughter told me that she loved her abuser, that she only did what she did to help him because he had an addiction. She thought she was complicit, and consented. Now she knows this is not true. She still has days when she struggles with what happened, and very rarely will she discuss it. Honestly, I can't blame her.

The young people I work with say the same thing. They want to move on. They don't want to discuss it anymore because it hurts. They feel shame. They feel stupid. And they believe they consented to the situation.

Throughout my tenure as the executive director of A New Day, only two young women came forward and provided a statement to law enforcement about their trafficking situation. It takes incredible strength to do so. They have to relive their sexual abuse, addiction and violence, and the shame of a horrific lifestyle they were forced to endure. They know that if they provide a statement, they will face their abuser in court and all those repressed feelings will overwhelm them. They also know that they will have to explain why they participated in a lifestyle that put them at risk and why they simply didn't leave. Why should a victim have to explain why someone abused them?

The burden of someone's violent, coercive behaviour and control should not be placed on the victim who has suffered. I see firsthand what a trafficker's violent behaviour leaves behind: broken noses and bones that were not medically set back in place, fertility issues because of botched abortions, multiple miscarriages, chronic STIs, not to mention the violence of repeated and daily...let's call them “rapes”, because that's what they are. There are also nightmares, trust issues, low self-esteem and self-worth, depression and anxiety, and self-harm in the form of cutting, where wrists, arms, inner thighs, vaginas and necks have been repeatedly slashed to release the mental pain they're enduring, or they can't do it anymore and they return to the life because they feel that's where they belong—overdosing on drugs, and death.

Eliminating the burden of proving they were fearful while they were exploited tells a victim that we believe them, that what they have endured was not a measure of their worth or value, was not indicative of the type of treatment they deserved and was not the result of poor decision-making, and that their victimization will not be continued by our justice system.

• (1715)

Thank you.

The Chair: Thank you, Ms. Gee.

We'll now go to our first round of questions.

We'll begin with Mr. Caputo for six minutes.

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

I want to thank all of our witnesses for being here. I have to say that I was very moved when I read the profiles that you provided. These are difficult things to read. I commend each of you for your bravery and your strength in dealing with something that often flies under the radar.

Ms. Way, I commend you as well for the work you've chosen to do. I've done some hearings on section 278 on the prosecutorial end, and they're very difficult to do. They're difficult to navigate because they're very complex. I thank you for doing those.

I'm not sure if anybody here wants to chime in, but something I think that goes unstated and the general public doesn't understand is the insidious nature of this type of offending. It's almost as though people think it doesn't happen, yet here the three of you are telling us that not only does it happen, but it happens quite regularly.

Do any of you have anything you want to comment on that and the need for the reform in this area?

Ms. Dawne Way: If I could address the committee....

The Chair: Yes, go ahead.

Ms. Dawne Way: Thank you.

In my experience, in my practice, I generally represent complainants in sexual assault and human trafficking in three specific pretrial motions.

Mr. Caputo, thank you for mentioning section 278, which is one of them.

An important thing to realize is that the protections that a victim of a sexual assault, a complainant in a sexual assault matter, are afforded in the Criminal Code are not provided to human trafficking victims unless part of the charges in the indictment include a sexual assault.

I would ask the committee to look at that question at some point and ask yourselves if there is a way that those protections could be extended to victims of human trafficking. It would seem to me that the underlying basis, the underpinnings of why we have those sections that protect victims of sexual assault, completely applies to the vulnerable victims of human trafficking.

At the moment in Ontario, we have a line of cases where courts have gone both ways on the question of whether those protections can be provided to human trafficking victims—but this is being litigated, litigated, litigated. The preponderance of decisions say yes, they should be entitled to those protections, but we also have a few cases that go the other way, so we need clarity in that area.

Mr. Frank Caputo: I suppose it would be as simple as looking at the application provision in section 278, which I haven't looked at, admittedly, in some time. It would say something along the lines of "when a person is charged with section 271"—something like that, or these offences—"section 278 is engaged". I would imagine the amendment would be pretty straightforward by including a couple of relevant sections.

Would you agree with that?

• (1720)

Ms. Dawne Way: Yes, I do, thank you.

Mr. Frank Caputo: One thing, too, I was struck by was, when talking about human trafficking—and this just doesn't get discussed a lot in society.... I can't remember who raised it, whether it was Ms. Gee or Ms. Diamond, the role of pornography and how people are accessing these things, I believe, at a younger and younger age with the proliferation of the Internet. I would imagine that this has contributed, or, based on the witness profiles, it's made a contribution to what you're telling us here today.

Can either one of you expand on that, please, if you feel comfortable?

Ms. Casandra Diamond: I will, if the committee will allow.

Mr. Frank Caputo: Thank you, Ms. Diamond.

Ms. Casandra Diamond: Pornography is used in a variety of ways to groom a victim to find certain sexual practices acceptable. When you're viewing it on TV, traffickers are really just kind of grooming you to find it acceptable. It's the same reason they provide drugs during pornography; it's to reduce inhibitions.

We also know that pornography and the Internet are used in every transaction where trafficking takes place. For example, I work with 12- to 17-year-olds. Any image taken of that child is automatically a child sexual abuse image. Therefore, once it's distributed, it becomes another crime.

We recognize that the role of pornography really does impact trafficked persons, especially when it comes to their consumption and commercialization or sale. Pornography proliferates images of women being depicted as weaker members who are only good for their hypersexualization..

Those are a few things about the role that pornography plays with trafficked persons.

Mr. Frank Caputo: I'm out of time.

Thank you again for all being here. Thank you, Ms. Diamond, for that.

The Chair: Thank you, Mr. Caputo.

Next, we'll go to Ms. Dhillon for six minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair, and thank you to all of our witnesses for being here today to testify about this very difficult issue.

I'd like to start with you, Ms. Diamond.

In your opinion, do all provinces use the same definition of exploitation? Do you see a difference between the Ontario and Quebec interpretations?

Ms. Casandra Diamond: Let me say that I don't find equal downforce of the law across Canada, which is problematic. It's also problematic that it takes us out of the place of being a global neighbour. On top of the unequal downforce of the law in Canada, we also then are not contributing international members to the global problem of human trafficking.

Ms. Anju Dhillon: Okay. Would any of our other witnesses like to add anything to that?

Ms. Gee or Ms. Way?

Ms. Dawne Way: I can indicate that at least some Ontario courts.... Specifically, there's a Superior Court of Ontario case by the name of D'Souza that commented that our current definition—our current working model—is actually advantageous over the international model. I think the legal framework that we have now actually works.

I represent complainants. I want the situation to be easier for them. I am unhappy when my clients are ground through the system, but we have to tread very carefully in terms of any amendments and take a very close look at the way the legislation and the case law hang together now.

I don't know if the committee is planning to hear from the Ontario human trafficking prosecution team or the Nova Scotia human trafficking team. I would think that those specialized prosecutors may well have an analysis of this law that would be very informative to the committee.

• (1725)

Ms. Anju Dhillon: Thank you, Ms. Way.

If I could follow up with you, we also know that the Criminal Code broadly interprets the human trafficking provisions to hold to account those who are trafficking and those who have also engaged in psychological forms of coercion.

Maybe this is for all the witnesses, but we'll start with Ms. Way.

Can you please give us any ideas for how could we ensure that prosecutors keep the tools that are currently in place if Bill S-224 was to pass?

Ms. Dawne Way: As I indicated, my concern is that these amendments would create, frankly, chaos within the prosecution sector in terms of how they'd be able to deal with the cases that are in the system now and the effect of any constitutional challenges.

I think it would be very problematic to try to have the amendments and then graft on top of them the law that we're already dealing with because it may well conflict. I think that would be a problematic way to proceed.

Ms. Anju Dhillon: Ms. Diamond, would you like to add anything to that?

Ms. Casandra Diamond: I don't think, at this time, I would.

Ms. Anju Dhillon: Thank you so much.

Maybe one of you can answer this question: Why do you think human trafficking and the victimization of women, especially those of indigenous origin, is under-reported?

Ms. Dawne Way: All sexual-related offences are under-reported. I think it just falls under that umbrella. Of course, people who are marginalized are less likely to feel confident to approach the police for help and are sometimes more likely to shirk away from the police.

My clients are complainants in a criminal matter and also are in conflict with the law themselves. That can make it very difficult for victims of human trafficking to engage with the police and report. I do think it also falls under that greater umbrella of under-reporting those sexual assaults.

Ms. Casandra Diamond: We have found that when complaints come in to police, they often will come in as domestics, not as human trafficking. It looks like a couple is fighting. Again, I was trafficked for a decade. I thought he was my boyfriend. Persons are also in this situation, so these often are reported as domestics. Of course, then the trafficker does their job and coerces that victim once again, manipulates the victim once again.

Ms. Anju Dhillon: Thank you so much.

I think I'm out of time.

The Chair: Thank you, Ms. Dhillon.

We'll next go to Mr. Fortin for six minutes.

[Translation]

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

I thank all the witnesses—Ms. Diamond, Ms. Way and Ms. Gee—for being with us today.

Ms. Way, in your presentation, you talked about problems with the presumption of innocence. I'd like you to tell us more about it. If these Criminal Code amendments pass, what problems do you foresee when it comes to the presumption of innocence?

[English]

Ms. Dawne Way: I reviewed the third reading of this bill, and what jumped out at me was this sentence: "This will put the onus on the perpetrator rather than the survivors."

There should not be an onus on the survivors, but there is an onus on the Crown. I'm very concerned that a constitutional challenge to this bill on this record would lead to a finding by the court that this amendment is unconstitutional. That would wreak havoc for all human trafficking prosecutions that are presently in the system. It might even affect ones that have been dealt with that are under appeal. That's my concern, sir. We have to tread very carefully.

The Supreme Court of Canada, in cases like Mills, has said that trial fairness is seen through the eyes of the defendant in terms of their right to full answer and defence—we would all be in agreement with that—and also that courts should consider the interests of the complainant and the interests of society as a whole.

If we go back to my earlier comments, there are other things that could be done to assist human trafficking victims that would not

give rise to a concern that this is unconstitutional because the onus has been shifted.

• (1730)

[Translation]

Mr. Rhéal Éloi Fortin: Thank you, Ms. Way.

Once again, I'd like to come back to something and ask which passage it is. In the current version of the Criminal Code's subsection 279.04(1), one must prove the abuser engaged in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety would be threatened.

In your opinion, is this what transfers the burden of proof to the abuser? We agree that it lightens the Crown's burden of proof, since the Crown prosecutor does not have to prove the victim could reasonably expect that their safety or the safety of a person known to them would be threatened if they failed to comply. The Crown prosecutor avoids this burden of proof, but how does it increase the burden of proof for the accused?

[English]

Ms. Dawne Way: I'm a little bit challenged by your question, sir.

What I understand from some of the committee's other meetings is that there was a suggestion that this amendment would mean that the complainant would not have to provide evidence in court on this issue.

There is nothing in the law that says that the complainant must give evidence. Of course, the Crown can rely on the best evidence it has. In this type of case the complainant almost always has come forward to give evidence. It's even been the case where human trafficking complainants don't want the prosecution to proceed. As we've heard through all these meetings, very often the victims of the crime actually identify with their abusers. If the goal is to protect complainants, to remove that onus from the Crown, I don't think that's a legally sound way to proceed in this matter.

[Translation]

Mr. Rhéal Éloi Fortin: Thank you.

Bill S-224, which I assume you read, replaces subsection 279.04(1) of the Criminal Code. The proposed new subparagraph 279.04(1)(b) introduces the notion of "any other similar act". Do you think it's too vague, or is it a good addition? I'd like you to give me a quick answer; there's only 30 seconds left.

[English]

Ms. Dawne Way: Thank you.

I would ask that the committee look at the Sinclair case from the Ontario Court of Appeal, which gives an exhaustive list of circumstances that the court can look to in assessing whether the objective person would have found fear—not the subjective experience of the complainant.

[Translation]

Mr. Rhéal Éloi Fortin: As a lawyer, do you think the notion of “any other similar act” included in this bill is too vague, or does it comply with the rules?

[English]

The Chair: Be very quick.

Ms. Dawne Way: I'm sorry, sir, but I don't have a quick answer to that. My apologies.

The Chair: Thank you, Monsieur Fortin.

[Translation]

Mr. Rhéal Éloi Fortin: Thank you.

[English]

The Chair: Next, we'll go to Mr. Cannings, please, for six minutes.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you.

I'll stay with Ms. Way.

It seems that one of the goals—perhaps not the main goal—of this Bill S-224, this amendment, is to make it easier to obtain convictions for trafficking offences. I'm just wondering, Ms. Way, if you could comment on whether that would be the case. Also, what are the other factors that might be causing lower rates of convictions for this crime?

• (1735)

Ms. Dawne Way: You've asked a very big question there, sir.

Certainly the criminal justice system is chronically underfunded. We are losing section 11(b) cases because courts are taking too long to complete a case. The case is therefore stayed by the court. These human trafficking cases are very complex.

One thing I have not heard discussed yet is that very often it's not one person who is charged with human trafficking; it will be several. Recently I've had a number of cases where there have been four defendants—four people on that indictment. That makes these very complicated cases. It takes a long time for them to work their way through the system. We need more resources in the court system. We need more courts. We need more judges. We need more Crowns. We need more funding for legal services for complainants. All of those things come to bear.

I do not think as a society we can touch the presumption of innocence and the burden that's on the Crown now. That is what makes Canadian criminal law so fair to all of us, even when it leads to more wrongful acquittals than wrongful convictions. It protects us all. My concern is that the proposed amendment would ultimately be found to be unconstitutional and would cause more problems in the system. It would result in more cases not being brought to justice.

Mr. Richard Cannings: You mentioned that often there is more than one person on that charge. Do you think that, if we broaden this definition by taking away the question of fear, there's a danger of capturing people who are, perhaps, not really in the trafficking business or into these cases of trafficking, which might be one of

the unintended consequences? Is that something you're concerned about?

Ms. Dawne Way: Here I think that what you may be referring to is the possibility of someone who drives the sex worker somewhere, that that person, somebody who's affiliated but who's not exploiting the complainant, may be caught up in this. Is that what your question is?

Mr. Richard Cannings: Yes, that's more or less it. There could be a number of different tasks these people have.

Ms. Dawne Way: Yes. I don't really think that is something... I don't instinctively go to that particular concern. Sex work in and of itself is not illegal in Canada. I have represented sex workers who are completely self-employed, declare their income and are independent business people. That is not criminal.

I don't really think this amendment would lead to that problem, but also, as I've repeatedly said, I don't think the amendment is necessary and I don't think the Crown now has to prove that the complainant was fearful. They have to prove objectively that they could have been fearful.

Mr. Richard Cannings: How much time do I have?

The Chair: You have one minute.

Mr. Richard Cannings: I'll continue by going back to the business of resources. Are there investigative resources that need to be strengthened in terms of policing, things like that? Where do we need those extra resources to ensure that we can deal with these cases properly?

• (1740)

Ms. Dawne Way: I'm quite sure that any justice participant who comes before the committee will say that their particular sector needs more resources. What I can say is that the City of Toronto has a new courthouse, Ontario Court of Justice, and every day a number of those courts are unable to open because of a lack of staffing. At the very baseline, we cannot open all the courts that are available or that should be available, and we cannot run all of those cases. That, in turn, has a ripple effect that everything gets delayed and pushed down the road.

When you're asked about resources, it starts from the most basic level of the system.

Mr. Richard Cannings: Thank you.

The Chair: Thank you, Mr. Cannings.

I want to thank all of the witnesses for attending.

Thank you, Ms. Diamond, Ms. Way and Ms. Gee.

Ms. Gee, you had your hand up. I'm wondering if you had a point to make before we end this.

Ms. Wendy Gee: I did. I want to clear up something that Ms. Way said. She was talking about a sex worker and a driver. When a youth is being trafficked, they're not a sex worker—and you know this—under the age of 18, usually the drivers are complicit and are part of what's going on in the course of a situation. That is a completely different conversation.

One of the challenges that I'm hearing here right now is that we're talking about funding for court systems when we should be talking about victims and advocacy, and we should be talking about prevention and education in our schools and for parents and caregivers. That is not even being discussed.

I understand that the court system is overburdened, and I don't know how they answer that, because that's not my lane of work. My lane of work is these young women and young men who have been exploited since they were children. I think that's where our focus needs to be.

If we're going to amend the law and it's going to help support them come forward to provide a statement where they don't have the burden of proving that they were scared the entire time, then that's something we need to consider.

The Chair: Thank you.

Ms. Wendy Gee: I'll be quite frank with you: I don't care about the traffickers' rights.

The Chair: Thank you, Ms. Gee.

I want to thank all three witnesses. Thank you for the time—and I apologize for the interruptions we had because of votes. We thank you for your patience. I will conclude that part.

I have some quick committee business. I guess Mr. Moore has left.

We got a letter from FINA, the finance committee, wanting to know if we want to study any of the pre-budget consultations for

the fall. We have to let them know by July 31. I guess they want to offset some of their burden by not doing any justice-related ones. If you let me know, I will answer the letter based on the feedback I get from the vice-chairs as well as other members.

[*Translation*]

Mr. Rhéal Éloi Fortin: On that issue, I think it might be worthwhile for us to make a contribution. However, I don't think our committee should commit all the time it will have available in the fall. I suggest looking at our list of committee business and our priorities when we come back in September, not before. It's a little too soon, and we don't yet know what will be on the menu in September.

[*English*]

The Chair: Thank you, Mr. Fortin.

Unfortunately, Mr. Moore is not here, so I'll get his feedback, as well. I'm of the same inkling of not doing that. We have a lot of studies to do, and we'll get overburdened with those. Some of those will come our way anyway if they're legislation. I'm inclined to say the same. I will also speak to Mr. Garrison, when I get a chance, and then I will clear it with all of you before.

Thank you.

The meeting is adjourned.

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