



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 086

Thursday, November 30, 2023

Chair: Ms. Lena Metlege Diab



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• (1550)

[English]

The Chair (Ms. Lena Metlege Diab (Halifax West, Lib.)): I call this meeting to order.

[Translation]

Welcome, everyone.

[English]

Welcome to meeting 86 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference adopted by the House on June 21, 2023, the committee is continuing its study of Bill C-321, an act to amend the Criminal Code on assaults against health care professionals and first responders.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person and remotely using Zoom. Those who are on Zoom have already been tested and everything seems to be okay.

As it's only colleagues who are on Zoom, I assume that by now you all know the procedure for raising your hand and speaking. I won't go through all of that formally.

[Translation]

The sound checks have been successfully completed.

[English]

Here with us today, to help with our study of the clause-by-clause, we have, from the Department of Justice, Mr. Matthias Villetorte, senior counsel and team leader, criminal law policy section; and Ms. Leah Burt, counsel, criminal law policy section. Welcome.

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

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

I'll go slowly. There is not a lot going on this afternoon.

During debate on an amendment, members are permitted to move subamendments. These subamendments must be submitted in writing. They do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first, and then another subamendment may be moved or the committee may consider the main amendment and vote on it.

Of course, at the end, once it's all done, the committee will vote on the title and an order to reprint the bill if amendments are adopted. Finally, the committee will have to order the chair to report the bill to the House.

We'll begin.

Pursuant to Standing Order 75(1), consideration of the preamble is postponed.

(On clause 1)

The Chair: On amendment G-1, I see that Mr. Maloney wishes to move it.

Is there any discussion on it?

[Translation]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): I want to move a subamendment, Madam Chair. It has been distributed to the committee members. It would replace the word "shall" with "may".

We heard from Justin Mausz, an advanced care paramedic. He completed his Ph.D. and he works as a clinician-scientist and professor in the department of family and community medicine at the University of Toronto. Mr. Mausz seems qualified to address the issues concerning Bill C-321.

When he came to speak, I asked him the following question:

Do you think the bill would still be helpful if it said that the court "may consider as an aggravating circumstance", instead of "shall consider"?

That way, the judge would have the discretion to determine whether it should be considered as an aggravating circumstance in a particular case.

Mr. Mausz responded: "Yes, absolutely." I won't read you his entire response, but he finished with the following statement: "I always think context is important in decisions that must be approached with seriousness."

It's a good idea, in probably 95% of cases, to consider as an aggravating circumstance the fact that the assaulted individual was a health care professional. However, there may be circumstances where this doesn't apply. Mr. Mausz gave the example of a person who, under the influence of adrenaline during an accident, I believe, reacted by saying something like "I'm going to kill you." Everyone knew that this person wasn't violent, that his words weren't sincere and that the reaction was simply the result of the circumstances and adrenaline. Everyone recognized this, including the paramedic. In these types of cases, the judge hearing the evidence must have some leeway to determine whether this constitutes an aggravating circumstance. If the judge finds otherwise, the judge shouldn't feel obligated to consider it an aggravating circumstance in the sentencing process.

In keeping with the evidence heard and in the interest of fairness, I think that we should replace "shall" with "may".

• (1555)

The Chair: Thank you, Mr. Fortin.

[*English*]

I have Mr. Moore, followed by Mr. Caputo.

Hon. Rob Moore (Fundy Royal, CPC): With all due respect to Mr. Fortin, saying that a judge "may" consider the circumstance as an aggravating factor would take away a lot of the impact of what we're trying to achieve here. We want judges to consider that the assaulted individual is a health care provider or first responder. A judge may consider those things now. To say "may" is to suggest, in my view, the status quo, because a judge can certainly do that when considering sentencing.

I would respectfully disagree with this subamendment.

The Chair: Could I, as chair, ask for clarification from the officials in the room, please, with respect to the subamendment and what Mr. Fortin and Mr. Moore said?

• (1600)

Mr. Matthias Villetorte (Senior Counsel and Team Leader, Criminal Law Policy Section, Department of Justice): The object of the proposed amendment, as Mr. Moore and Mr. Fortin pointed out, would be that a court, at sentencing, would not be under an obligation to consider that situation as an aggravating factor.

Now, aggravating factors are part of the sentencing process. This doesn't take away the fact that a court will still have to impose a sentence proportionate to the seriousness of the offence and the moral worthiness of the offender. To say "shall consider" means to have an aggravating factor, as we have in subsection 718.2 and other places in the Criminal Code. It's deemed to be an aggravating factor, meaning that in all circumstances it shall be treated as aggravating. This doesn't foreclose a judge from imposing a sentence that is proportionate under the circumstances.

The Chair: Thank you.

Just to clarify, I said "clarification", but I meant "advice". It's my English sometimes. I have to think in three languages sometimes, so I just wanted to clarify that.

A number of people have their hands up. I have Mr. Caputo, Monsieur Fortin and Mr. Davies.

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

Just to build on what Mr. Moore said, the reason we're here and the reason this private member's bill was moved was precisely what is required—that a sentencing judge "shall" consider this. In other words, it's compulsory, as opposed to saying they "may" consider it.

Essentially, we're gutting the whole purpose of the bill if we change it from "shall" to "may". "Shall" is compulsory; "may" is permissive. If it's going to be permissive, we might as well not even be here.

I would be against this subamendment.

Thank you.

The Chair: Okay.

It's Monsieur Fortin, Mr. Davies and then Mr. Housefather.

[*Translation*]

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

The witness Justin Mausz stated the following:

One of my colleagues—the president of our union, as luck would have it—was assaulted by a patient who was under the influence of mushrooms, I believe. It was a drug-affected young man who made a bad choice. He knocked over my colleague, who suffered a concussion and was unable to work for a little while. This young man made a poor decision, and he deserves to be held accountable for that decision, but not necessarily to spend his life in prison or to have his life ruined.

This is what I have in mind when moving my amendment.

I completely agree with Mr. Caputo and Mr. Moore that the court must consider all the facts and that the assault victim's status as a health care professional constitutes a major factor. However, I repeat, I think that we should give the judge the leeway to decide, in certain cases, not to increase an individual's sentence.

Another section of the Criminal Code states that something can be considered an aggravating factor that increases the severity of the sentence, or a factor that reduces it. I can't remember the word used in this situation. In any event, this section seems sufficient.

That said, in this case, we aren't talking about reducing the sentence, but about the need to increase it. The judge would have no choice but to impose a more serious sentence. This may be the right choice in 90% or 95% of cases. However, in some cases, it won't be the right choice. I think that we should trust the good judgment of our courts and let the judge who hears all the facts make an informed decision.

The Chair: Thank you, Mr. Fortin.

[English]

Mr. Davies, go ahead.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Madam Chair.

It's a pleasure to be at this committee. I'm a visitor, but I have a question and a comment to add on this.

I have some background in this. I've introduced legislation as a private member's bill in previous Parliaments on this very point, on making the assault on a health care professional—it didn't have the first responders aspect—an aggravating factor, so I have some background in this. We also heard evidence of this at the health committee in the past.

I find myself very much in agreement with Mr. Moore. The state of the law now is that a court “may” consider any factor that it would consider germane or salient at this point, so if we put in the words “may consider as an aggravating circumstance”, I think it would be no more than restating the status quo. I think what we want to do is change the status quo to send a clear message to society that assaults on health care workers are always wrong, are never okay and are always an aggravating factor.

I'm fortified by the advice, if I'm understanding it correctly, that this does not change the fact that the judge would still fashion an appropriate sentence, taking into account the very appropriate considerations that Monsieur Fortin identified, which may work to ameliorate the sentence.

We want to send a clear message that assaults on health care workers are simply not tolerated in society. I vividly remember the testimony at the health committee, to the effect that there's almost an epidemic. It's happening all the time and not just in hospitals; ambulance drivers and paramedics are facing this all the time. We must send a clear message.

Those are my comments.

I think Mr. Villetorte touched on this, but in the other sections of the Criminal Code about similar situations—like an assault on a peace officer and maybe on a transit driver, if I'm not mistaken—does it say “shall” or does it say “may”? Is it expressed as the court “must” consider it to be an aggravating circumstance or does it give the kind of discretion that Monsieur Fortin's subamendment is suggesting?

• (1605)

Mr. Matthias Villetorte: The aggravating factors in the Criminal Code are deemed to be aggravating, so it's “shall”. If we look at section 718.2, as Mr. Fortin was pointing out, it says that the court, in imposing a proportional sentence, must increase or decrease the sentence to take into account aggravating and mitigating factors.

It then proceeds to deem certain circumstances that relate either to the offence or to the offender to be aggravating in all circumstances. It shall consider that situation to be an aggravating factor in all circumstances.

The Chair: Thank you.

Mr. Housefather, go ahead.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you, Madam Chair.

I share the view of my colleagues who have just spoken, but I am also concerned that if this was changed, it would create confusion for subparagraph 718.2(a)(iii.2), which deals with health care workers. We're already seeing that for health care workers, when it comes to sentencing, this must or shall be taken into consideration. Now we would be creating a section for health care workers—although I understand that it's broader than just the health care workers covered currently under section 718.2—that would say “may”.

I just want to ask the officials whether that could create confusion where a judge would have two contrary instructions for the same category of people with respect to “one shall” and “one may”.

The Chair: Mr. Villetorte, go ahead.

Mr. Matthias Villetorte: I think there's a potential of confusion if we do have contradictory direction. Section 718.2 would apply in all situations when it comes to health care workers. Although it is different language, it would apply. Then the question would be, at the end of the day, in cases where this proposed aggravating factor applies in the assault provisions, whether the aggravating factor is one that has to be recognized in all situations or not. It has the potential for a bit of confusion and discussion in terms of determining what applies and how.

The Chair: Thank you.

I have Mr. Van Popta, followed by Mr. Fortin.

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

Bill C-321, which we are considering today, amends the Criminal Code by adding section 269.02. I thought I would take a look at what section 269.01 says. It's already existing. It's about judges taking into consideration that the victim is a public transit operator. The language that is being proposed in the bill that is before us today mirrors almost exactly the language of existing section 269.01, which definitely uses the term “shall”: “it shall consider as an aggravating circumstance”.

I think that, just for the sake of consistency with the existing legislation, we need to stay with the original wording of Bill C-321 as it is before us today.

The Chair: We must stop. For some reason there's something wrong with the sound. I'm not sure what it is.

• (1605)

(Pause)

• (1610)

[Translation]

The Chair: We'll start the meeting again.

[English]

There is sound.

[Translation]

Mr. Fortin, you have the floor.

Mr. Rhéal Éloi Fortin: Thank you, Madam Chair. I'll be brief.

Mr. Villette, I don't have the English version of the Criminal Code. Paragraph 718.2(a) of the French version states that "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender," in particular in the cases described further on in the text. Subparagraph 718.2(a)(iii.2) refers to an offence "committed against a person who, in the performance of their duties and functions, was providing health services."

I don't have the English version. Mr. Villette, on the basis of the French version, when paragraph 718.2(a) of the Criminal Code states that "a sentence should be increased or reduced," doesn't that constitute a suggestion rather than an obligation? It's written in the conditional tense. I would like you to clarify this dichotomy.

In addition, for the sake of consistency, I'm a bit concerned that, under proposed section 269.02, the court would be required to consider this factor as an aggravating circumstance, whereas paragraph 718.2(a) of the Criminal Code states that "a sentence should be increased or reduced."

Go ahead, Mr. Villette.

Mr. Matthias Villette: Let's take a step back.

The chapeau of paragraph 718.2(a) basically sets out the aggravating factors. It's found in the section containing sentencing principles. Along with parity, for example, aggravating and mitigating factors are principles that help judges apply the fundamental sentencing principle of proportionality to the gravity of the offence and the degree of responsibility of the offender. As a result, they can determine that certain circumstances are mitigating or aggravating.

It's important to read the rest of the chapeau. Before listing the aggravating circumstances, it says "without limiting the generality of the foregoing." Basically, I think that this wording is a drafting choice. Parliament undoubtedly decided to list the circumstances in this manner to ensure that they would be considered aggravating in all situations.

The Chair: Ms. Brière, you have the floor.

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

In terms of consistency, I just want to point out that the proposed wording in Bill C-321 reflects the wording in subsection 269.01(1) of the Criminal Code, which states that the court "shall consider as an aggravating circumstance the fact that the victim was a public transit operator." We're keeping the same wording.

The Chair: Okay.

We'll now vote on the subamendment.

[English]

(Subamendment negated)

The Chair: We're now going back to the amendment, which is G-1.

Having no one raising their hand to speak on it, shall G-1 carry?

(Amendment agreed to [See Minutes of Proceedings])

The Chair: We will now go to CPC-2, moved by Mr. Moore.

Is there any debate? Does anybody wish to speak on it?

• (1615)

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): I'm sorry. I don't have it in front of me.

The Chair: Okay. Let's wait a minute.

Hon. Rob Moore: What this amendment does is provide a definition of "first responder", similar to how there was a definition of health care providers. It reads:

...a person who is employed, or formally engaged on a volunteer basis, to be among the first on the scene of an accident, fire or other emergency to provide medical assistance or firefighting services, and includes an emergency medical technician, a paramedic and a firefighter.

Mr. James Maloney: I apologize. I had it. Thanks.

The Chair: Is there any further debate or are there questions for our officials?

Mr. Housefather, go ahead.

Mr. Anthony Housefather: Thank you, Madam Chair.

I just have a question for the officials with respect to the new proposed definition. In my view, including a definition is sometimes good and provides clarity, and sometimes it may unduly restrict what the intention of the bill is.

Could I ask the officials if they believe the proposed definition restricts who may be considered as a first responder or actually brings context that's important to the bill?

Ms. Leah Burt (Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the question.

I think when we're looking at defining terms in the Criminal Code, it can be useful, but it's important to consider which person and activities are going to be captured in order to ensure that it doesn't inadvertently exclude certain groups that were intended to be captured by the bill. It's also important to ensure that terms are internally consistent within the code. "First responder" isn't defined elsewhere in the code, so that's not an issue.

I would just say that the wording... I should say we don't actually have CPC-2. All we have is CPC-1. My understanding is that the definition of first responders is the same. I have that wording in front of me. I don't have the new one.

Mr. James Maloney: I think it's the same. That's the source of my confusion.

Ms. Leah Burt: That's perfect. Thank you.

I guess it's a question of what is intended to be captured by the bill. If the intention is to capture first responders and medical personnel, such as firefighters and paramedics, then it seems like this definition would capture that. There are, of course, other categories of personnel who are in some circumstances considered first responders but may not be captured by this definition, such as correctional officers, probation officers and military personnel.

Also, I think this definition is specific to the provision of medical assistance or firefighting services. For example, in a correctional facility, would a correctional officer who's responding to an emergency that's not a medical emergency be captured by this definition? Possibly not. I guess it's really a question of what's intended to be captured by the bill.

The Chair: Thank you. I think that is very helpful.

Seeing no other hands raised, shall CPC-2 carry?

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

(Clause 1 as amended agreed to)

The Chair: On the preamble, we have amendment G-2. Does the member wish to move it?

Mr. Maloney moves it. Thank you.

Shall G-2 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Shall the preamble carry as amended?

Some hon. members: Agreed.

The Chair: We're now on the title. Mr. Maloney moves G-3. Thank you.

Shall G-3 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Shall the title carry as amended?

Some hon. members: Agreed.

• (1620)

The Chair: The title as amended is hereby carried.

Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Yes, I like that. Thank you very much.

Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Thank you. We'll do so.

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

Some hon. members: Agreed.

The Chair: Perfect. Thank you very much.

Clause-by-clause is done, but please do not leave.

Colleagues, we've been informed that the minister is available on Thursday, December 7 for our study of the supplementary estimates. Is this agreeable? I guess it's agreeable; that was the motion.

That would leave us with having the clause-by-clause study of Bill C-40 next meeting, Tuesday, December 5.

Here's the question. If we go with this date, we would have to adopt a motion to establish the deadline to submit amendments to the clerk of the committee as tomorrow at noon. Are committee members okay with that notice? If you are, we leave things as they are. If you are not, there is an alternative—just so that you know what the alternative is. There's an A and a B and one of the two must be picked.

If you would prefer to have more time for submitting amendments for Bill C-40, the alternative is the following. On December 5, we would deal with some motions that have been on our motions log for a while. We would then do the study on supplementary estimates on December 7 and push the clause-by-clause study of Bill C-40 to Tuesday, December 12, which would give us a deadline for amendments of Friday, December 8 at noon for Bill C-40.

I am in the hands of committee members to all unanimously agree on one of the two options.

Mr. Moore.

Hon. Rob Moore: Thank you, Madam Chair.

Yes, we're fine with proceeding as planned with Bill C-40 on Tuesday and then having the minister appear next Thursday.

The Chair: That's fabulous, team. Thank you very much.

Before you leave, I need a motion that, in relation to the clause-by-clause study of Bill C-40 on Thursday, December 7, the deadline to submit amendments is tomorrow, Friday, December 1, at noon.

Can I please have a mover for that motion?

Mr. Van Popta, thank you very much.

Are all in agreement?

Some hon. members: Agreed.

The Chair: Thank you so much. Everybody, have a lovely evening and a lovely weekend.

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