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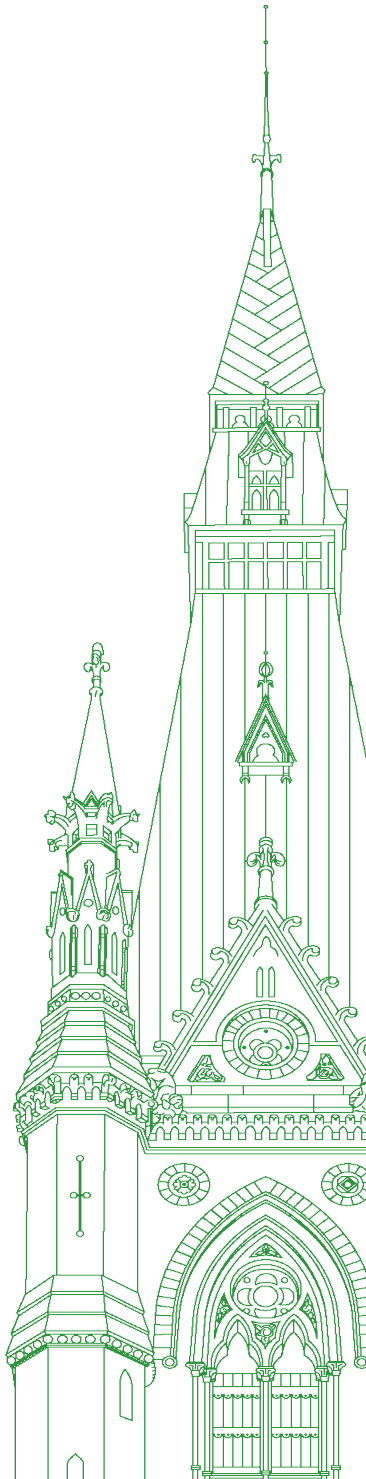

Chair: Ms. Lena Metlege Diab

Standing Committee on Justice and Human Rights

Monday, March 18, 2024

● (1105)

[*Translation*]

The Chair (Ms. Lena Metlege Diab (Halifax West, Lib.)): Good morning, colleagues.

[*English*]

I call the meeting to order.

Welcome to meeting number 98 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order adopted by the House on February 7, 2024, the committee is meeting in public to continue its study of Bill C-332, an act to amend the Criminal Code (controlling or coercive conduct). As you know, today's meeting is to go through clause-by-clause.

Members are attending in person or virtually. I believe we have no witnesses outside of members. Of course, I'll introduce the people in front of us in a moment.

I think members by now know what the rules are if they're attending virtually. I think we're okay with that. There are no witnesses attending virtually.

I want to welcome the officials who are assisting us today for our clause-by-clause study of Bill C-332.

[*Translation*]

We welcome senior counsel Nathalie Levman and counsel Ellen Wiltsie-Brown, from the Criminal Law Policy Section of the Department of Justice.

May I extend a welcome to both of you.

[*English*]

Thank you very much for being with us. We will count on you for any technical information we require on any of the amendments, or for anything that any member wants clarified or that I, as the chair, wish to have clarified.

I'm ready to start with clause-by-clause, but I want to give a few instructions first, as I'm mandated, I think, to do.

As you all know, 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 are amendments 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. The chair will go slowly to allow all members to follow the proceedings properly. Amendments have been given a number in the top right corner to indicate which party submitted them. Once an amendment is moved, unanimous consent is required in order to withdraw it.

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. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will consider and vote on the title and then on the bill itself. If amendments are adopted, an order to reprint the bill is required so that the House has a proper copy for use at report stage. Finally, the committee will have to order the chair to report the bill to the House. That report will contain only the text of any adopted amendments, as well as an indication of any deleted clauses.

I will move to clause-by-clause consideration.

Before the chair—that's me—calls clause 1, there's an amendment on page 1 of the package seeking to create a new clause 0.1.

Mr. Maloney, would you like to move G-1?

● (1110)

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Yes, I would, Madam Chair. Thank you.

This is a straightforward amendment that seeks to amend the Criminal Code to require that anybody convicted under this new offence be subject to their name being added to the prohibition order when the offender is convicted with respect to a gun prohibition.

The Chair: Does anyone have anything to say on that?

Shall G-1 carry?

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

(On clause 1)

The Chair: We'll go to clause 1 and G-2.

Mr. Maloney.

Mr. James Maloney: Madam Chair, I would like to move this amendment. It's a substantive amendment, and I believe it reflects a lot of the evidence we have heard before us over the course of the discussion in the last few weeks and reflects the consultations that had taken place in the process leading up to the discussion of this piece of legislation.

It reflects, for example, what we've been referring to as the Scottish approach. It changes the nature of the offence. It focuses more on the accused. It addresses concerns that were raised throughout our discussion that might, as previously proposed, result in victims reliving some of these horrors they had been put through. I think the amendment is quite comprehensive, changes some of the terminology and captures much of the language that we all, I believe, supported during the course of our debate.

I will leave it there, Madam Chair, and look forward to hearing from others.

The Chair: Before we continue, I have to inform you that if G-2 is adopted, BQ-1, BQ-2, BQ-3, LIB-1, BQ-4, BQ-5, CPC-1 and BQ-6 cannot be moved due to a line conflict.

As *House of Commons Procedure and Practice*, third edition, states on page 769:

> Amendments must be proposed following the order of the text to be amended. Once a line of a clause has been amended by the committee, it cannot be further amended by a subsequent amendment as a given line may be amended only once.

I now have a list of speakers. Before we go to the list of speakers, I'm personally going to ask the staff who are here to support us to provide us a bit of a technical explanation.

● (1115)

Ms. Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Chair. I'd be very pleased to give a technical overview of the various components of the proposed provisions in this amendment.

This proposed coercive control offence would prohibit engaging in "a pattern of conduct", which is the act element of the offence, with the intent to cause an accused's intimate partner to believe their physical or psychological safety is threatened, or being reckless as to whether their pattern of conduct could have this effect. This is the fault or mental element of the offence.

In respect of the mental element in proposed subsection 264.01(1), a person who intends to cause their intimate partner to believe their safety is threatened either desires that outcome or is virtually certain that their conduct will result in that outcome. A person who is reckless as to whether their conduct could cause their intimate partner to believe their safety is threatened is aware that their conduct is likely to have that result and proceeds to engage in the conduct despite that risk.

This approach is closely modelled on the mental element in Scotland's domestic abuse offence, but uses terminology that has meaning in Canadian criminal law. For example, "intimate partner" is defined in section 2 of the Criminal Code as including "current or former spouse, common-law partner and dating partner". "Pattern" has been interpreted in the context of the dangerous offender provisions to apply where conduct is engaged in at least twice. "Safety" has been interpreted in the criminal harassment and human trafficking context to include psychological safety.

I'll now move to the act element of the offence in proposed subsection 264.01(2). The act element is, as I've said, engaging in a pattern of conduct. That is defined as "any combination, or any repeated instances" of any of three types of conduct—first, violence, including attempted and threatened violence toward the intimate partner, the intimate partner's child, their animal or anyone known to them; second, "coercing or attempting to coerce the intimate partner to engage in sexual activity"; and third, conduct that could in all the circumstances reasonably be expected to cause the intimate partner to believe their physical or psychological safety is threatened.

Notably, the first two categories of conduct constitute criminal conduct in and of themselves. The last category encompasses subtler forms of conduct that are generally non-criminal behaviours in other contexts.

The definition of this third category of conduct is informed by the Criminal Code's definition of exploitation for the purposes of the human trafficking offences. It uses an objective test and relies on the concept of physical and psychological safety. Appellate jurisprudence interpreting that definition clarifies that the test is objective, meaning that the focus is on whether the conduct could reasonably be expected to have the prohibited consequence, not on whether it actually had that consequence. In particular, proof that the victim actually feared for their physical or psychological safety is not required to meet the test.

A non-exhaustive list of examples of this third category of conduct is provided to assist criminal justice practitioners in identifying conduct that could reasonably be expected to cause a complainant to believe their safety is threatened, including more subtle forms. This list is informed by relevant legislation in other jurisdictions, as well as input from Justice Canada's 2023 engagement process, including the lived experiences of survivors.

● (1120)

The list highlights that abusers may engage in subtle forms of abuse that do not constitute criminal offences in and of themselves and that may not be readily recognizable as coercive, particularly if considered out of context. This approach is also informed by the coercive control offences that have been enacted in Scotland, New South Wales and Queensland.

Clear act elements may also assist with interpreting and applying the offence. For example, courts may infer the offence's mental element from evidence that the accused repeatedly engaged in the prohibited conduct.

Moving now to the interpretive provision in proposed subsection 264.01(3), this provision directs consideration of "the nature of the relationship" between the accused and the complainant, including whether the complainant was in a "position of vulnerability in relation to the accused."

This factor is to be considered when determining whether any conduct could reasonably be expected to cause the intimate partner to believe their safety is threatened. The purpose of this provision is to assist in minimizing opportunities for the offence to be weaponized against the victim by requiring consideration of the whole context of the offending and, in particular, any power imbalance between the accused and their intimate partner, which is generally present in relationships marked by coercive control. Situating the alleged conduct in the overall context of the relationship at issue could assist in identifying the true aggressor, including in cases involving mutual intimate partner violence allegations.

Turning now to the penalty provision in proposed subsection 264.01(4), the proposed penalty is a maximum of 10 years on indictment, which would treat the offence the same way as criminal harassment and would ensure its eligibility for dangerous offender and long-term offender designations.

Finally, the “for greater certainty” clause in proposed subsection 264.01(5) clarifies that safety includes “psychological safety”, which has the same meaning it has in the context of the Criminal Code's criminal harassment and human trafficking provisions.

I hope that assists the committee. I will be happy to try to answer any of your questions.

Thank you.

The Chair: Thank you very much. That explanation is extremely helpful and valuable as we continue to do clause-by-clause. I hope it has benefited members as well.

I have a list of speakers, starting with Ms. Gladu. Then it's Mr. Caputo, Monsieur Fortin, Mr. Moore and Mr. Garrison.

Ms. Gladu, we'll start with you.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): Thank you, Chair.

You'll recall that when we were going through testimony, I wasn't opposed to having a list. In fact, I think a list of what constitutes coercive control would be very helpful in the training of police officers and justices. I don't really like this list compared to the list England has, because I think there are some problems in this one.

Let's think about the limit on medications. I was thinking of some of my family members who are bipolar, for example. Sometimes they think they're feeling well and they don't want to take their medication, and their partner basically forces them to take their medication; otherwise, they escalate into a bad place. That's one of the things that are considered coercive control in this list.

I would rather not have the list in there. I thought originally that having a list would mean more convictions, but we heard testimony that in England, 6% of cases that were brought forward saw prosecution, and out of the 700 that were prosecuted, only 3% saw conviction. I'm not sure that this is going to actually fix the problem.

I think there might be a couple of things on the list that are problematic, so I'd prefer not to have it.

● (1125)

The Chair: Thank you, Ms. Gladu.

I would like to receive a response from our guests, who are here to help us, specifically on what Ms. Gladu mentioned.

Ms. Nathalie Levman: It's important to remember that none of the conduct listed in that list can be considered prohibited conduct for the purposes of the offence unless it is considered, in all circumstances, to reasonably be expected to cause the intimate partner to believe their physical or psychological safety is threatened. That is the legal test. That conduct is illustrative of types of conduct that could meet that test and that we know have met that test in real lived experiences, but the test would need to be met before it could be considered prohibited conduct for the purposes of the offence.

The Chair: Ms. Gladu, are you okay with that? Do you have anything to add to that?

Ms. Marilyn Gladu: No. You can go to Mr. Caputo.

The Chair: Mr. Caputo, go ahead, please.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you to our subject matter experts here. I appreciate what you said. I hope I don't paraphrase incorrectly, but what I took you to say is that the legal test requires the outcome—it's the intent to do this or it's reasonable that this is going to follow—as in the wording in the act, that a person would fear.... Again, I'm paraphrasing.

My concern, though, is this. Obviously, that's when we get to the point of conviction. At that point you're before the judge or jury, as the case may be. When we're looking at things like controlling physical appearance or access to health services or medication, my concern is that perhaps we are muddying the waters about what this entails. Obviously, none of us want to see coercive behaviour and any behaviour that's isolating.

Like Ms. Gladu, I have some issues, especially on the medication end or when a person expresses spiritual beliefs. This is something couples are often going to discuss. At what threshold or point does that bleed into criminal behaviour? I understand the test that you've enunciated, but that line is less clear for me. I'm not looking for an answer from the experts. I'm just intervening with some concerns.

The Chair: Thank you, Mr. Caputo.

I personally would like to know if you have anything you can share with the committee and the public at large, who are listening and have a stake in this, on that exact point.

Ms. Nathalie Levman: As I said in relation to the other question, none of that conduct can be prohibited conduct or considered coercive conduct for the purposes of this offence unless it meets the safety test. It has to be considered to be reasonably expected to cause the intimate partner to believe their physical or psychological safety is threatened. However, in addition to that, we have to remember there is a mental element that also needs to be proven, which is either intent to cause the intimate partner to believe their safety would be threatened or being reckless as to whether that would ensue from their conduct.

There are a lot of protections built in to ensure that the list of conduct is truly just illustrative and based on the lived experiences of those who have gone through this or are being subjected to this horrific crime—or soon-to-be crime, perhaps, as it's up to you to decide that. It's very carefully crafted to ensure that only the person who is holding the power in that relationship, not the vulnerable person, would be captured by it through both the intent element and the way this third category of conduct is defined with respect to the legal test. It has, by the way, a lot of appellate jurisprudence interpreting it, so we know what it means, at least in the context of human trafficking, which is an overlapping type of crime.

● (1130)

The Chair: Thank you very much.

Mr. Caputo, please go ahead.

Mr. Frank Caputo: Thank you. That's very helpful.

Just so I'm really clear here, let's take proposed subsection 264.01(6) as an example. A person must cause their intimate partner to believe that their partner's safety is threatened, or they must be reckless to the belief that their safety is threatened, if they engage in conduct that controls the intimate partner's expression, thoughts, opinions or religious or spiritual beliefs. The connection there is that the victim in this case has to feel a threat to their personal safety that the accused either intends or is reckless to, based on how the person is expressing their spiritual beliefs. Do I have that right?

Ms. Nathalie Levman: I think you first need to go to the legal test that's in the third category of conduct, which is whether or not the conduct could reasonably be expected to cause the intimate partner to believe their safety is threatened. The first analysis that a court would need to struggle with is the way in which that particular accused is seeking to control those forms of expression. Could that reasonably be expected to cause the intimate partner to believe their safety is threatened?

In addition to that, the intent element or the mental element would also require proof. That could be inferred from multiple examples of prohibited conduct, including, for example, if the accused engaged in violent conduct, sexually coercive conduct or some conduct from the third category, which is any conduct that could reasonably be expected to cause the intimate partner to believe their safety is threatened.

These are just examples of different ways, as we've seen in the literature and the research, that coercive controllers have sought to control their victims. This has to be read in the context of the overall offence, and you have to remember that the legal test will require proof. It's an objective one, so it's based on what a reasonable person would think in that particular context. Scotland, New South Wales and Queensland also ask for that analysis.

Mr. Frank Caputo: Thank you.

I have one last follow-up question; I apologize. This is very helpful. You're being very clear here.

The first element that would have to be proven beyond a reasonable doubt is.... It's an objective test, not a modified objective test. Is that correct?

Ms. Nathalie Levman: Some may say that you're also supposed to consider all of the circumstances of the offending, which does require an analysis of that particular context. The interpretive provision helps with that. It tells the criminal justice practitioner who's looking at that situation to look at the whole context of the offending to try to identify where a power imbalance is and where a position of vulnerability is.

Mr. Frank Caputo: We may actually be looking at this in part through the victim's eyes objectively, and then there's a requirement of proof of intent or recklessness.

I'm sorry it took me so long to get to that.

Ms. Nathalie Levman: Yes, you are correct.

Mr. Frank Caputo: Thank you.

The Chair: Thank you, Mr. Caputo. Your questions are very helpful.

[*Translation*]

Mr. Fortin, you have the floor.

● (1135)

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

Ms. Levman and Ms. Wiltsie-Brown, thank you for being with us today.

Madam Chair, before I ask my questions, I'd like to make a general comment.

Amendment G-2 makes sense to me at first blush, but I confess I've only had time for a cursory reading. We received the amendment on Friday afternoon. I understand that it respects the deadline we set ourselves, but I had to participate in several activities in my riding, so I didn't have time to get a team together and study all of this. I'm certainly not the only MP in this situation.

It must be said that amendment G-2 proposes a rewrite of the bill. I'm not saying it's a bad rewrite. The problem I see with it, however, is that the testimony we heard was on the old text; the bill was then rewritten on Friday afternoon, and on Monday morning we have to decide whether or not to pass it. This seems to me to be a rather rapid process. I think we would have benefited from working earlier on the new text. At the very least, we could have held a meeting to work with witnesses on the new text.

That was my introductory comment.

Personally, I'd like all parliamentarians to have the time they need to do the work. When an amendment aims to change a sentence or a paragraph, that's fine, that's the usual process. However, to rewrite a bill on a Friday afternoon and have to vote on it on Monday morning seems to me almost disrespectful of the committee's work. I say this with all due respect for my colleagues on the government side. I imagine they're acting in good faith and want to do what's best. That said, I think we're moving a little fast on this one.

For our part, we had prepared some…

Is everything all right, Madam Speaker? May I continue?

The Chair: I quite understand what you're saying. I am checking the dates with the clerk. I see here that the amendments were sent to committee members at 8:56 a.m. on Friday.

Mr. Rhéal Éloi Fortin: I was told they were received at lunchtime, but—

The Chair: I understand exactly what you're saying.

Mr. Rhéal Éloi Fortin: Even if they'd been received at 9:50 rather than noon, it wouldn't have made much difference. Either way, it didn't give us much time.

The Chair: I understand what you're saying.

Mr. Rhéal Éloi Fortin: You'll understand that my party held its general caucus this weekend. I had a tour scheduled in Quebec on Friday. On Sunday, I took part in activities in my riding. Plus, I try to have a personal life at the same time, when that's possible, but I don't always have the time.

So, to receive a new piece of legislation on a Friday morning like that…

The Chair: I understand very well what you're saying. I think everyone's situation is probably the same.

Mr. Rhéal Éloi Fortin: Yes, I can imagine. I'd be surprised if anyone told me that the people around the table had nothing planned for the weekend and that everyone was waiting for the government's amendment so they could work on it all weekend.

That said, we had prepared a number of amendments. I understand that my NDP colleague is going to work with the government on amendment G-2, so maybe I'm wasting my breath. Again, it's somewhat disappointing to think that we did all this work for nothing. I wish I'd known that in advance. Anyway, I don't know if we can incorporate the changes proposed in amendments BQ-1 and BQ-6, which go together, into amendment G-2.

In the current text of the bill, proposed subclause 264.01(1) begins: “Everyone commits an offence who…engages in”, after which amendment BQ-1 proposes to add “without reasonable cause”, to the acts that are listed in the rest of the wording. I'm talking here about the version without the changes proposed in amendment G-2. Can we incorporate this proposal into amendment G-2? It would be in the same place. I think that would be appropriate.

Amendment BQ-6 proposes to delete a passage from the current version of the bill. The provision begins at line 25 on page 2 and provides an exception in cases where “the accused was acting in the best interests of the person”. However, we've heard from witnesses that this can be a bit of an issue. What is considered to be a person's best interests can vary from one individual to another. This wording strikes me as problematic in terms of how the courts might interpret it, or at the very least, how the accused might interpret it. In fact, any defendant could say that he acted in what he considered to be the victim's best interests. In such a case, one could question the *mens rea* and end up acquitting the person on the basis that he believed he was acting in the victim's “best interests”.

That is why we believe this provision should be removed and instead the words “without reasonable cause” should be added to proposed subclause 264.01(1). In this way, the wording would indicate that anyone who engages without reasonable cause in all of the specified behaviours is committing an offence. In this case, if an accused says he had reasonable cause, the courts can assess this fact more generally and objectively. Let's take a situation where the accused individual acknowledges having acted in a controlling and coercive manner, for example by preventing their spouse from going to such and such a place or doing something, but says that they did so because it was really reasonable to do so in the circumstances. That's different from saying they thought it was reasonable. The court, objectively, will judge whether or not there was an element of reasonableness in the actions taken.

It seems to me that this wording would be more respectful of all the situations we're trying to cover. This is new law. Everyone has probably behaved in a controlling and coercive way in their lives, particularly towards their children, and reasonably thought it was necessary to do so. In this case, I think the behaviours in question were often unreasonable. We're tackling the problem. For my part, I fully agree with Bill C-332. I agree with all the arguments that our colleague Ms. Collins presented to us in committee and that our colleague Mr. Garrison also expressed many times in a previous Parliament. Parliament does indeed have to tackle this problem, but I still think we need to proceed cautiously. I think it would be more prudent to state that the actions must have been taken without reasonable cause. That way, if, for whatever reason, the court finds that, in a given situation, the accused acted reasonably, he could be acquitted and not sent to prison for 10 years.

This is the nature of amendment BQ-1. I understand that it is not yet under consideration, since it comes after amendment G-2, which we are discussing at the moment. I mention it, however, from the perspective that we're about to throw everything else in the trash.

● (1140)

First, I'd like to know if the witnesses agree with my interpretation or if I've been mistaken in some way. If the witnesses tell us that it would be wise to do what I propose, is it possible to present a subamendment? I don't know how it could be done. I'll leave the practical matters to you to decide, Mr. Clerk and Madam Chair.

I'd like Ms. Levman and Ms. Wiltsie-Brown to comment on the element of reasonableness, that is, inserting “without reasonable cause” in proposed subclause 264.01(1). The new subclause would thus read, “Everyone commits an offence who, without reasonable cause, repeatedly” engages in the acts that are mentioned.

That was a long question, and I apologize, but I think the explanations were necessary.

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

[*English*]

Ms. Nathalie Levman: Thank you for the question.

Government amendment G-2 is intended to address the concern that the accused should be able to avoid criminal liability if their conduct was reasonable in the circumstances. Specifically, it's because the proposed offence builds in a requirement that conduct that isn't criminal in and of itself must "reasonably be expected to cause"—

[*Translation*]

Mr. Rhéal Éloi Fortin: Can you clarify which part of amendment G-2 you're talking about?

[*English*]

Ms. Nathalie Levman: Yes. It's in proposed paragraph 264.01(2)(c), which reads:

> engaging in any other conduct—including conduct listed in any of the following subparagraphs—if, in all the circumstances, the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety, or the safety of a person known to them, is threatened

It's built in.

● (1145)

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, but that aspect of reasonableness is not what I'm concerned about.

Proposed paragraph (c) says, "if…the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety…is threatened". That part is fine.

However, in some situations, the accused could say that it's entirely reasonable that the partner believed their safety was threatened. The question is whether the accused had reasonable grounds to commit the acts. If, in the opinion of the court, the accused had reasonable grounds to commit the acts, despite the fact that it was reasonable for the partner to believe that their safety was threatened, the accused should be able to be exonerated. That should be a valid defence.

There are two elements of reasonableness, therefore. With regard to paragraph (c), which you're referring to, the question is whether it's reasonable by anyone's standards to believe that the intimate partner may have believed that their safety was threatened. It may be reasonable to think that they may have believed that. However, did the accused have reasonable grounds to act as they did? I don't know if that's clear, but there is a difference between the two. It's not the same element of reasonableness. The notion of reasonableness is not measured in the same way or at the same time.

I didn't see that in amendment G-2. As I said, though, I didn't have time to carefully read each line of amendment G-2 earlier. I just skimmed it.

I'm sure you read it before this morning. I'd appreciate it if you could offer some reassurance in that regard. If not, might it be possible to find a way to include our proposed amendment in amendment G-2?

[*English*]

Ms. Nathalie Levman: I think the concern you've raised is partially addressed by what I've already described in proposed paragraph 264.01(2)(c), but it's also addressed in the clarified mental intent element.

A person cannot be convicted of this offence unless they actually intended to cause a person to believe that their safety was threatened or were reckless as to that fact. If you have reasonable cause or what you did was reasonable in the circumstances, that is also going to be reflected in what the person intended, and the intent element is unlikely to be made out as well. You therefore have two protections built in to the offence as drafted, in my view.

[*Translation*]

Mr. Rhéal Éloi Fortin: I imagine it's pointless to put the same question to Ms. Wiltsie-Brown, who probably agrees.

[*English*]

Ms. Ellen Wiltsie-Brown (Counsel, Criminal Law Policy Section, Department of Justice): I do have the same opinion, yes.

[*Translation*]

Mr. Rhéal Éloi Fortin: That's what I figured.

With all due respect to Ms. Levman, and I do indeed have a great deal of respect for her, I don't find that reassuring, because the criterion of reasonableness mentioned in proposed paragraph 264.01(2)(c) is not the same as the one we proposed in amendment BQ-1.

Maybe I could once again ask my colleague, Mr. Maloney, if we might consider amending proposed subsection 264.01(1) in G-2 to include the words "without reasonable cause" after the words "Everyone commits an offence who".

The Chair: The usual process at this committee is that if you want to move a subamendment, you have to submit it in writing so we can see exactly how it would fit into the text of the amendment.

● (1150)

Mr. Rhéal Éloi Fortin: The problem is that I can't submit it to you in writing, because I just got it this morning.

However, it's identical to the wording in amendment BQ-1. It amends line 7 of clause 1 on page 1. Proposed subsection 264.01(1) in amendment G-2, which repeats the beginning of the wording proposed in Bill C-332, says: "Everyone commits an offence who engages in a pattern of conduct". In amendment BQ-1, I'm proposing that the words "without reasonable cause" be inserted after "Everyone commits an offence who".

After consulting our knowledgeable analysts, I would point out that it should actually be inserted after the words "commits an offence who", as in amendment BQ-1. The text would therefore read as follows: "Everyone commits an offence who, without reasonable cause, engages in a pattern of conduct".

The English version would say:

[*English*]

> Everyone commits an offence who, without reasonable cause,

Then it's “repeatedly” and the rest of the paragraph.

[*Translation*]

In French, after “*quiconque se livre*”, we would insert “*sans motif raisonnable*”, and the rest of the text would remain the same.

[*English*]

The Chair: I'm going to ask that it be reread by those at the table because I think one of the words you used in English was not correct. Wait just a second.

[*Translation*]

Mr. Rhéal Éloi Fortin: That's what's in BQ-1.

[*English*]

The Chair: We're going to reread what we think you are saying. Just give us a second.

[*Translation*]

Mr. Rhéal Éloi Fortin: Okay.

Ms. Dana Phillips (Committee Researcher): Thank you, Madam Chair and Mr. Fortin.

The text as amended by the subamendment would read as follows:

> 264.01(1) Everyone commits an offence who, without reasonable cause, engages in a pattern of conduct referred to in subsection (2)

[*English*]

The Chair: Madam Gladu, do you have something on that?

● (1155)

Ms. Marilyn Gladu: Yes, I just want to say that I agree with putting that in there.

Hon. Rob Moore (Fundy Royal, CPC): Do we have a speaking list?

The Chair: We do for the subamendment he just put forth. Once we deal with the subamendment, you're the first one on the list on the amendment. I now have to deal with the subamendment.

Can I ask our witnesses if they have any explanatory comments to share with us on adding “without reasonable cause”?

Ms. Nathalie Levman: I would just note, from a technical perspective—

The Chair: That's the word: technical.

Ms. Nathalie Levman: —that the way the amendments are drafted now imports the reasonable analysis to the third category of conduct only, the one that is largely non-criminal in nature. Putting “without reasonable cause” in the chapeau of proposed subsection 264.01(1) would allow that analysis to also apply to conduct that is criminal, as defined in proposed paragraphs 264.01(2)(a) and 264.01(2)(b) in G-2, so violent and sexually coercive conduct.

That's my comment from a technical perspective.

The Chair: Are you saying that somebody can commit something sexually coercive—whatever word you used—if they commit the offence without reasonable cause? I'm sorry. Can you explain again what you just said?

Ms. Nathalie Levman: I'm not sure that it would be successful, but it opens the door to that argument. Engaging in a pattern of conduct without reasonable cause where the pattern of conduct is defined to include sexually coercive conduct and violent conduct opens the door to arguments that engaging in that conduct could be done with reasonable cause.

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: Could you give us an example of where somebody could justify that they had reasonable cause to commit a violent or sexually assaulting act?

The Chair: I don't know the answer to that. I guess we're trying to get a technical explanation.

Is that a possibility?

Ms. Nathalie Levman: As per my previous remarks, I think it would be highly unlikely to succeed, but it opens the door to that type of argument. That is why the reasonableness test is built in to the third category of conduct, which tries to identify and target more subtle forms of coercive conduct that aren't necessary criminal offences in and of themselves. That's why you have the objective reasonable test there to help the court and other criminal justice practitioners identify what types of conduct could amount to conduct that would reasonably be expected to cause the intimate partner to believe their safety is threatened.

The Chair: Mr. Moore, go ahead.

Hon. Rob Moore: Madam Chair, the more I listen, the more frustrating this whole process is, and I'll tell you why.

G-2 is not an amendment to this bill. G-2 is an entirely new bill.

Backing up a bit, in April 2021, this committee agreed that the government should act on controlling and coercive behaviour, including in the Criminal Code. MP Collins, an NDP member, and Mr. Garrison brought forward Bill C-332. We have had three days of witness testimony on Bill C-332. Members of this committee took hours of time to develop amendments to Bill C-332, including us. We have an amendment to increase from two years to five years the time period whereby someone could reflect upon a relationship and achieve a conviction under this legislation. That was based on testimony we heard on Bill C-332.

We have not heard one moment of testimony on G-2. We haven't had the ability to have a witness appear and say, “I agree with clauses 1, 2, 3 and 4; I don't agree with clause 5.” G-2 has never been put to them.

When you look at Bill C-332 and G-2, the amendment is longer than the bill itself. The bill is fewer than three pages and the amendment is three full pages. Mr. Fortin is, rightly, trying to reformulate amendments on the fly, as all of us are, based on what is before us. That's not the way we're supposed to proceed. We have one amendment that wipes out all of our other amendments and wipes out all the consideration we heard on this bill.

For my part, I will be voting against G-2. I'm going to vote in favour of Mr. Fortin's amendment once we figure out that it should only apply to non-criminal actions. It's taking us forever to get there because of how this whole process is unfolding. I think that if the government wanted to bring in their own bill, they should have brought it in. Then we could have heard expert witnesses on that bill instead of bringing in their bill through an amendment to a private member's bill that we've spent all this time considering.

For example, with amendment G-2, based on the testimony I'm hearing from our witnesses—and this is not a reflection at all on our witnesses; they're here to present what the government amendment is and are doing a fantastic job of it—a pattern of behaviour or conduct can be two times. Based on the testimony we've heard, a number of items in this are non-criminal in nature. My interpretation of this is that if someone in a relationship does something twice that is non-criminal, if proof of fear is not required and if that person is the vulnerable individual in a relationship, then we can have criminal action.

It's so easy to contemplate scenarios under here where the threat of criminal action or a criminal charge could be brought. I think Ms. Gladu mentioned one. I see this all the time in relationships. One person says, “I'm not taking my medicine,” and the other says, “The doctor prescribed you this heart medicine; we're not leaving the house until you take your medicine.” The first person says, “Well, I'm tired of this. I'm tired of the way this has been going. I'm not taking my heart medicine.” The other person says, “Well, we're not going anywhere until you take your pills.” If you think that doesn't happen a million times over in Canada, it does. The evidence we have here might be that this wouldn't be captured, but that's exactly what Mr. Fortin's amendment is trying to do: to say that's reasonable.

We understand what we're trying to get to. We're trying to get to the person who says, “I won't give you your medicine unless you do something.” That's coercive. That's threatening. We heard testimony today that proof of fear is not required.

● (1200)

That same person could then say, “You know what? If you keep pushing me to take my heart medicine, I'm going to end it all. I'm going to jump in front of a bus. I'm going to threaten suicide.” That's prescribed in here too. Is that a criminal act? Who's the vulnerable person? Is it the one who needs his heart medicine and is threatening suicide? Are they both vulnerable?

I raise that as just one real-life scenario that we were unable to hear any expert testimony on. There was a tremendous number of really great witnesses who came forward on Bill C-332, but they didn't come forward on G-2. Normally, at this committee, amendments are very direct and focused, but this is a complete rewrite.

I'll be opposing G-2 in favour of the language that was less prescriptive. We heard testimony about whether to be more prescriptive and use examples or to be less prescriptive. We have language in here and have a bill that are the result of a study that this committee did and unanimously passed in 2021.

I applaud any effort to improve the bill, but to ask us right now, on the fly, to come up with amendments to a totally rewritten bill that we've heard no testimony on...I reject it. Our committee should not proceed in this fashion.

It's for those reasons that I will be opposing G-2 in favour of the current reading of Bill C-332. That will further enable us to have some of the amendments that are focused on Bill C-332 considered. According to what you've said, Madam Chair, if G-2 passes, then most of our BQ, Liberal and Conservative amendments go out the window.

At this point in the meeting, I thought we'd be done. I really did. Based on this bill and the support for Bill C-332, I thought we'd be done, but in order to do our job, we need to keep going the way we're going and parse out each one of these elements.

I'm going to be voting against G-2. I would urge my colleagues around the table to do that so we can get on with our consideration of Bill C-332.

If the government wants to bring in a new bill on coercive and controlling behaviour later, it is welcome to do that. It's had three years to do that. At this moment in this committee, when we have less than an hour left, this isn't the time for us to draft a bill, which is what we're doing right now. We're drafting a bill out of thin air.

● (1205)

The Chair: I'll save my comments and questions until we hear from everyone else.

Mr. Garrison.

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

Some quite general things were stated there. I will get to Mr. Fortin's subamendment, but I think, with all due respect, they mischaracterize what's gone on in this committee. What is in G-2, from my point of view as the original author of the bill and from very quick consultations just now with Ms. Collins, reflects the testimony we heard and reflects the consultations that took place. It's not true that this appeared from nowhere.

There were always two approaches to the bill: to have a more exhaustive list in the bill or to have those things in prosecutorial guidelines. The original bill suggested that they would be in prosecutorial guidelines, not in the bill. We heard testimony on that. It's not that we never heard about this.

I do not believe G-2 is a complete rewrite of the bill. I believe it addresses many of the things we heard in consultations and in testimony before the committee, in particular for the survivors of coercive control. I know we can all imagine scenarios, but we have coercive control being used by male partners against their female partners very extensively in this country. It is almost always, in cases of femicide, the precursor to femicide.

It's a crisis that's going on, and we've been dealing with it. I made my first attempts to bring this to the committee's attention four years ago. However, we knew the amendment package was coming, and I believe we've had time to look at it.

I think this package does some important things. There were concerns raised over the amendment about whether it should be two years after or five years after. This amendment goes with the word "former", which would include after five years if a judge thinks that's appropriate, so it has addressed the concern over that amendment.

I could go on with a number of others. I think there are two really important improvements here. One is the test of what someone would reasonably believe. That's something we heard from survivors and we heard from other experts. We've also had, in the intervening three-year period, the benefit of experience in other jurisdictions, which this bill reflects.

The final one, which to me is the most important, is in G-2's new proposed subsection 264.01(3). It introduces the vulnerability clause, which should help address the very serious concern that many had that this bill could be used against the victims of coercive control by a controlling partner. I think the vulnerability test that's introduced here largely helps answer that question.

When it comes to the specific subamendment by Monsieur Fortin, I think it has an inadvertent consequence, which would be to change the arguments in the initial cases of coercive control to be about whether criminal acts were reasonable or not. I don't think that's a door we should open in this committee. I accept the testimony of our experts that this bill does cover reasonableness in two other places and narrowly applies that to the third category and not to the criminal acts.

I will be opposing Monsieur Fortin's subamendment and urging us to move forward. I reject the argument that this is a completely new bill and that it came from nowhere. It came from consultations and the testimony we heard before this committee. I believe it's a better version, and I believe it will more effectively address the concerns of the survivors we heard before this committee.

Thank you.

● (1210)

The Chair: Thank you.

Go ahead, Mr. Van Popta.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you for your testimony. It was very clear and helpful. However, I have two questions.

First of all, related to proposed paragraphs 264.01(2)(a) and (b), the intent or *mens rea* section, I think you were saying this wording does not require proof of actual victim fear as an objective test. I accept that on face value, but then I look at proposed paragraph 264.01(2)(c) on the next page, in which you use the wording "could reasonably be expected to cause the intimate partner to believe". What's the difference? Why are you using the phrase "could reasonably be expected to cause the intimate partner to believe" in proposed paragraph 264.01(2)(c), but not also in proposed paragraphs 264.01(2)(a) and (b)? That's my first question, and I'll just throw out my second question.

Following up on what Mr. Moore was saying about having this list of seven items under proposed paragraph 264.01(2)(c), my fear is that, when you draft a list, maybe you're missing something. Maybe instead of seven there should have been eight, nine or 10 examples, because sometimes by including a list you're limiting the scope of the bill.

This came up in a study earlier this session, in October, on Bill S-12, the sex offender registry. Dr. Roebuck, the federal ombudsman for victims of crime, and Professor Benedet were concerned that judges were misunderstanding sexual offences, and were worried about rape myths creeping in. They said that Parliament could respond by setting out a list of factors for judges to consider. We put forward a motion to that effect, and Mr. Maloney had this to say:

> I remember the evidence because I think I was the one who actually asked the question, but in my experience, the more you include, the more you exclude, because crafty lawyers...will see a list and then argue that it's exhaustive.

That's a concern. I thought it was a good comment at the time. He almost convinced me to vote against our own motion. He can comment on that if he wants, but that's not the point. As to my question, in taking a look at proposed paragraph 264.01(2)(c), if we take out the words between the hyphens—"including conduct listed in any of the following subparagraphs"—and then exclude all the subparagraphs, have we completely gutted the intent of proposed paragraph 264.01(2)(c), or is it still effective?

The Chair: Thank you, Mr. Van Popta, for the two questions.

I'll now ask Madam Levman to please comment on those from a technical perspective.

Ms. Nathalie Levman: Proposed paragraph 264.01(2)(c) is obviously creating a non-exhaustive list, and that's been informed by what we heard during the course of Justice Canada's September-October 2023 engagement, as well as much testimony before this committee. My colleague Ellen can provide the committee with some information on what stakeholders' concerns were and why they felt an illustrative, non-exhaustive list was critically important.

Ms. Ellen Wiltsie-Brown: Of the stakeholders who supported or engaged in the "alternative for coercive control" events, one significant concern was implementation by law enforcement and criminal justice practitioners, and including a list in the offence itself would help guide the application but not limit it. It would ask criminal justice practitioners to look at this type of conduct or similar conduct. They also referenced the human trafficking offence, which has such a list and which the Ontario Court of Appeal has since developed further indicators for, so it did not limit it. It has continued to expand as they see new cases and new abuses of vulnerability.

● (1215)

Mr. Tako Van Popta: I will jump in. That sort of answers my question, but my question really is, have we completely gutted proposed paragraph 264.01(2)(c) if we exclude the list, just get rid of it altogether, including the words "including conduct listed in any of the following subparagraphs"?

Ms. Nathalie Levman: What we were trying to imply—and I'll state it directly now— is that if you were to do that, it would be inconsistent with what we've heard from stakeholders, including survivors, who wish to see their lived experiences in the legislation and feel very strongly that criminal justice practitioners need to know what types of conduct, more subtle forms in particular—not the violence and the sexually coercive stuff, but the more subtle forms—should be highlighted in the legislation. If you were to remove that, you would no longer be responding to stakeholder concerns in that regard.

Mr. Tako Van Popta: That's just as we were not responding to Dr. Roebuck's and Professor Benedet's concerns in the previous study.

My first question was why there was a difference in wording between proposed paragraphs 264.01(2)(a) and 264.01(2)(b), and proposed paragraph 264.01(2)(c)—the "could reasonably be expected to" wording. Why not have it in all three paragraphs?

Ms. Nathalie Levman: Proposed paragraphs 264.01(1)(a) and 264.01(1)(b) articulate the mental element of the offence, so those are about what's going on in the accused's mind. If you look at Scotland's approach, you'll see that it's very similar. Scotland uses the concept of harm. We use the concept of safety in the Criminal Code. I believe they're meant to capture the same type of conduct, but the way the intent element is crafted—"intent to cause" a particular effect and "reckless as to whether" the conduct would lead to that effect—is the same.

The inquiry is about what's happening inside the accused's mind at that stage. Then when you move to the act element, you're looking at the actual conduct itself. One example is monitoring a person's finances. Well, we all do that, and when we're in partnerships we do it for each other often. However, that cannot constitute prohibited conduct for the purposes of this offence unless it could reasonably be expected to cause the intimate partner to believe their safety is threatened. That's where the objective element occurs.

Now, from evidence of a person engaging in the prohibited conduct—whether that be the more subtle forms or the violent, sexually coercive forms—courts can infer the mental element, like, for example, intent to cause an intimate partner to believe that their safety is threatened. Obviously, the more evidence you have in that regard, the easier it will be for courts to infer intent. However, both have to be made out for the offence to be proven beyond a reasonable doubt in a court of law.

[*Translation*]

The Chair: Thank you.

Ms. Gladu, you have the floor.

[*English*]

Ms. Marilyn Gladu: Thank you, Madam Chair.

Ms. Levman, I take your point about reasonableness being in proposed paragraph 264.01(2)(c) so that it applies to all of these non-criminal offences. With that in mind, I'm not going to support Mr. Fortin's subamendment.

I think it's important for people watching this clause-by-clause review to understand what happened here. The government brought in G-2 on Friday morning, and G-2 replaces line 6 on page 1 all the way to line 6 on page 3. The only thing that's before line 6 on page 1 is the title, and the only thing that exists after line 6 on page 3 is nothing. It is, in fact, an entire gutting of the bill, putting forward another bill, which they had three years to do after the last coercive control study. We've had no witnesses speaking precisely to this bill.

I also am concerned about the process and will vote against G-2 on that basis.

● (1220)

[*Translation*]

The Chair: Mr. Fortin, you have the floor.

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

Obviously, I won't reiterate the same arguments about my proposed subamendment. The more we talk about it, the more I think it makes sense to pass it. Instead, I'd like to pick up on Mr. Moore's comments.

The list of behaviours in proposed paragraph 264.01(2)(c) includes "threatening to die by suicide or to self-harm". That's subparagraph vii. This means that if a person told their partner they wanted to commit suicide or were engaging in self-harm, and their partner believed their safety was threatened, then that would be a crime. For example, if I believe that my safety is threatened because my spouse is threatening to commit suicide, that becomes a crime. I'm having a hard time following the logic. I'm not a doctor, but I suspect that someone who's threatening to commit suicide or is being self-destructive needs the help of a doctor or a psychologist. That person doesn't need to be told that they could go to jail for 10 years.

I don't imagine that's your intent, but that's what's written, and I have a problem with that. That's one of the problems I raised initially.

If I understand correctly, my Conservative colleagues agree that this is a totally new bill. I know that my Liberal and NDP colleagues worked on it for several weeks, maybe even months. Personally, I read the new wording this morning, and parts of it bother me.

For example, this part is about an individual threatening to their partner to commit suicide or self-harm, which I understand to be cutting one's skin, self-flagellating, or whatever. From what I understand, if the individual's partner believes that their safety is in danger, the individual could be sent to prison.

I have a hard time understanding the logic here. Can you give me some examples or explain it to me more clearly?

[*English*]

The Chair: Madame Levman, I'll ask you again to please give us some technical support on the questions that have been raised. I think you're about to do that, so please proceed.

Ms. Nathalie Levman: Certainly, Chair.

In the circumstance that Monsieur Fortin has described, you'd have a person who has threatened suicide or self-harm. Let's say a court has found that this act could reasonably be expected to cause the intimate partner to believe their safety is threatened. That could form part of the pattern of conduct that is the act element of this offence. However, in addition to proving the pattern of conduct, a prosecutor will also have to prove the intent element or recklessness, as I've already described.

It's not technically accurate to say that one act of threatening suicide that implicates the intimate partner's safety would result in a conviction. The offence is more rigorous than that. It requires proof of the accused having engaged in a pattern of conduct, which that could form a part of, and also having the requisite intent element as per proposed subsection 264.01(1).

[*Translation*]

Mr. Rhéal Éloi Fortin: In that case, Ms. Levman, can you give me one example of a situation in which someone who has engaged in the conduct described in proposed subparagraph 264.01(2)(c)(vii), namely “threatening to die by suicide or to self-harm”, could be convicted of an offence under that section?

[*English*]

Ms. Nathalie Levman: I'm not a prosecutor, but I do understand the components of this offence. What we heard during our engagement process was that this was one of many tactics that people who engage in coercive control of their intimate partners engage in. It would be part of a pattern of conduct, let's say, that may involve violent behaviour, sexually coercive behaviour and other forms of coercive conduct that are more subtle—surveilling, monitoring the victim, denying them ways to express themselves through their culture or religion, for example, and so on. It's a pattern that takes place over time.

I'll just make the quick comment that this is very modern criminal law. This committee has already heard extensive testimony about the criminal law being traditionally incident-based. This is trying to go beyond that. It's trying to capture patterns of conduct, or conduct that takes place over time. Because of that, it's been inspired by the other offence in the Criminal Code that attempts to target conduct that takes place over time. That is the human trafficking offence. There, we also see lots of different coercive-type conduct being engaged in by an accused in order to exploit a more vulnerable person.

It's similar in that regard, but we are looking at a pattern of conduct, which means you cannot ground a conviction on one incident. It's not possible to do so, given the way this offence is constructed.

● (1225)

The Chair: Thank you.

Monsieur Fortin.

[*Translation*]

Mr. Rhéal Éloi Fortin: If I understand correctly, Ms. Levman, a person who tells their spouse that they want to commit suicide or, for some reason that I can't even imagine, do something like slash their wrists or scar themselves, could in no case be convicted of controlling or coercive behaviour. Is that correct?

[*English*]

Ms. Nathalie Levman: That in and of itself would not be enough to ground a conviction, no.

[*Translation*]

Mr. Rhéal Éloi Fortin: So why was subparagraph 264.01(2)(c)(vii) included if it can't ground a conviction?

[*English*]

Ms. Nathalie Levman: Like all the other examples of conduct in that list in the paragraphs, they are the types of conduct that, through Justice Canada's engagement process, we heard are usually engaged in by people who seek to coercively control their intimate partner. The offence is constructed carefully to avoid criminal conviction for the commission of any of that type of conduct.

Also, the safety test would have to be met before it could even be considered prohibited conduct for the purposes of the offence. Then you need more than one incident in order to establish a pattern of conduct, according to the act element of the offence. The intent element as well would need to be proven.

[*Translation*]

Mr. Rhéal Éloi Fortin: Madam Chair, I have a problem with that. We all understand that we're creating new law. But this is not a civil matter. We're talking about convicting someone of an indictable offence and sending them to prison.

I was prepared to vote in favour of Bill C-332. We've heard a lot of testimony about individuals who try to wrongly control their partner. I find these behaviours appalling, and I think they should be punished by the Criminal Code.

That said, the list being introduced here is different from what was in Bill C-332. I feel like I'm repeating a bit of what our colleague, Mr. Moore, was saying earlier, and I don't want to speak for no reason. However, paragraph 264.01(2)(c) says “engaging in any other conduct — including conduct listed in any of the following subparagraphs”. Those provisions will be used to determine whether a situation exists that must be penalized. The list that follows this provision is so long that an individual who tells their partner that they'll commit suicide if the partner doesn't go on vacation with them, for example, could be charged with attempting to control that person and be sent to prison.

We've already heard from a number of expert witnesses, but if they came back to talk to us about this element, they might be able to convince me. I'm among those who are convinced that controlling and coercive behaviour is senseless and is a problem that needs to be addressed. Perhaps everyone here is convinced of that. However, I'm very concerned about the list in this new wording. We have a very important decision to make here. We're changing criminal law and creating new offences. Our role is to legislate. In that sense, we must be prudent, but I feel that we really aren't being prudent.

I believe in the good faith of today's witnesses and of the government, of course, but I'm very concerned when I see this kind of wording and I don't have the opportunity to find out more from the experts who work with victims of controlling and coercive behaviour and with perpetrators every day. We have to look at both sides. We have be prudent and diligent. Right now, I feel we're rushing things, and I cannot condone that.

Nobody has been able to give me a single example in which a person could be convicted of controlling and coercive behaviour because they threatened to commit suicide or self-harm.

If no such example comes to mind as we're creating this legislation, then what will the courts end up doing with it? It's not reasonable for us to proceed like this.

● (1230)

[*English*]

The Chair: Mr. Moore, go ahead.

Hon. Rob Moore: Thank you, Madam Chair.

To expand on that a bit, here's the problem.

Madam Levman, you've mentioned that the government heard about this particular aspect. I can tell you that I don't remember hearing that in the witness testimony we heard. I'm not doubting that you heard it. Maybe someone did. Maybe someone at the table can correct me on whether this became a theme from the witness testimony we had on Bill C-332, but it's introducing an element to us.

I want to just clarify one point. You mentioned, Ms. Levman, that this would have to be a pattern. There's nothing in my reading of this legislation that suggests the pattern of behaviour has to include multiples of these elements.

Your testimony was that a pattern is at least twice, so my reading of this bill—and I'm going to call it a new bill, Bill G-2—is that “Everyone commits an offence who engages in a pattern”—which means two or more—“of conduct referred to in subsection (2)” and “being reckless as to whether that pattern could cause their intimate partner to believe that the intimate partner’s safety is threatened” and a bunch of terms in there that could be broadly interpreted.... If we then go to the items of conduct referred to in proposed subsection 264.01(2), they include, if we go all the way down, proposed subparagraph 264.01(2)(c)(vii), for example. I'll use this one because it's the one Mr. Fortin was talking about, but I could use others from this list. It reads, “threatening to die by suicide”.

That tells me that if someone threatens twice to kill themselves, maybe because they're in a fight with their spouse or intimate partner and they're arguing back and forth over something—it could be anything.... Let's say the person says, “Well, I'm just going to kill myself and end this”, and then a couple of weeks later there's a fight over something different and they say it again. The testimony we've heard today is that by doing twice, it's a pattern. It's a pattern of non-criminal behaviour, because that's what we're talking about here. We're not talking about criminal behaviour. We're talking about non-criminal behaviour that, by virtue of it being a pattern and falling under this legislation, is now criminal behaviour because this is in the Criminal Code. Through their doing these non-criminal things in a pattern, we, with this bill, are criminalizing them, which means we have to be very careful.

In the Criminal Code, there are criminal thresholds around evidence and the things we choose to include, as Canadians, as criminal. There are then a bunch of items in here that, per your testimony, are not criminal. Threatening to kill yourself is not criminal. By including it in this list, we are criminalizing it in the context of coercive control. We're making that decision without hearing any testimony about it.

You mentioned that the scenario I described would not be criminal because it would have to involve some of the others, but to be clear, my reading of this is that nowhere in the legislation does it say you have to do any multiples of these things. It could be the same offence, for example, around finances, access to health services or threatening to die by suicide. The same offence—a pattern of that—could be captured under controlling behaviour. We don't have to have multiples.

Is that correct? Nowhere in the bill does it say it has to be more than one of these things.

● (1235)

The Chair: Thank you, Mr. Moore.

Madame Levman.

Ms. Nathalie Levman: If we look at proposed subsection 264.01(2), which is the definition of a pattern of conduct, it says, “A pattern of conduct consists of any combination, or any repeated instances, of any of the following acts”, and then it lists the three categories of different conduct.

Yes, it is possible to establish coercive control based on numerous incidents of conduct that are enumerated in proposed paragraph 264.01(2)(c), provided that they could reasonably be expected to cause the victim to believe their safety is threatened, which is consistent with what I understand to be the overall objective of a coercive control offence. It is to ensure that coercive and controlling behaviour can be the subject of a charge and a conviction, regardless of whether other criminal offences are also committed.

Hon. Rob Moore: Thank you for that.

I guess the question we have to ask ourselves—and I'm glad Mr. Fortin raised this particular one—is this: Should we as a committee, based on just this meeting today—not based on Bill C-332 and not based any of the witnesses who appeared before us at committee—make the conscious decision that in Canada, from now on, if you threaten multiple times to kill yourself, that's a criminal offence? That's what we're doing here.

It could be that we'd hear enough testimony from different groups that would lead us to the conclusion that, yes, there is a way this could be incorporated. The problem is that we around this table have not heard that. I do think, by a plain reading of this legislation, that this part and some of the others are quite troubling. Again, this is not a reflection on our witnesses. It's more directed to the government. The whole approach of introducing a bill that we haven't had....

I heard what Mr. Garrison said. Yes, we heard general testimony about Bill C-332, but we have not had the chance to ask anyone about any of these specific provisions. For example, I would like to have witnesses here to ask them about each one of the itemized new non-criminal offences that through this bill would now become criminal.

I'm just raising that last point to reiterate that, at this point, unless there are people here who will enlighten us through more testimony on each one of these provisions, I will have to vote against G-2 and support the language we've already considered and already had witness testimony on, which is in proposed subsection 264.01(1) of Bill C-332. I did not hear witnesses say that we had that wrong and that this bill won't be helpful. We heard some testimony that said there are models that itemize some things, but threatening to die by suicide was never suggested at this committee. Words matter. By the testimony of our witnesses here today, this is criminalizing non-criminal behaviour in the context of coercive control. Obviously, we have to be very careful about what gets added to that list.

This is just one thing that's been flagged. I don't see how we could be ready to proceed with G-2 on that basis alone.

● (1240)

[*Translation*]

The Chair: Mr. Fortin, the floor is yours.

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

I have another question. When I look at amendment G-2, I see that proposed subsection 264.01(5), which is the last proposed subsection in this amendment, says, “For the purposes of this section, and for greater certainty, a person's safety includes their psychological safety.” I'd like to know what that means.

Personally, I have a number of friends who suffer from anxiety. Nowadays, it seems that many people suffer from anxiety, for reasons I don't know. I have no expertise in analyzing how harmful it is or not. That said, there are people who are anxious for all kinds of reasons, which may be considered invalid by some people, but very valid by others. It's extremely subjective.

When we say that we are also aiming for the psychological safety of individuals, does that mean that each spouse would become responsible for the psychological safety of their partner? I guess that's not what you were getting at. I haven't had time to think about this aspect in more detail. As I was saying earlier, we only read the amendment this morning.

Explain to me how far you wanted to go in terms of psychological safety. What are we aiming for? What will the consequences be if a spouse has psychological problems? Goodness knows that the notion of psychological safety is quite vague and varies from one individual to another, since everyone has different limits.

I would like to hear your explanations.

[*English*]

The Chair: Go ahead, Mr. Garrison.

Mr. Randall Garrison: On a point of order, Madam Chair, I believe Mr. Fortin has a subamendment on the floor.

The Chair: He does.

Mr. Randall Garrison: We've strayed considerably far away from his subamendment. I suggest that we need to deal with his subamendment. Then, if people wish to continue to ask questions about G-2, which don't appear to change their opinion of it, that's their prerogative.

I believe we still have the subamendment on the floor.

The Chair: That's correct. We can't deal with the amendment until we deal with the subamendment.

Can I ask that we vote on the subamendment?

[*Translation*]

Mr. Rhéal Éloi Fortin: May I speak to that, Madam Chair?

The Chair: Go ahead, Mr. Fortin.

Mr. Rhéal Éloi Fortin: Thank you.

I fully understand that my colleague Mr. Garrison thinks that the debate is straying from the subamendment. However, the subamendment that I proposed is to ensure that the offence can only be committed if it's committed without reasonable cause. From there, I am interested in everything in the bill, because it's by understanding the scope of the bill that we can determine whether or not it's important to add a concept of reasonable cause.

As I was saying in my previous question, according to the text of the bill proposed in amendment G-2, psychological safety will be taken into consideration. If it's very broad, as I suspect it is, it's all the more important to set limits on the offence by saying that it must have been committed without reasonable cause.

With all due respect to Mr. Garrison, who wants to see my subamendment defeated as soon as possible, I would like us to make sure that we fully understand the scope of this new bill and then determine whether it's prudent to add this guideline at the beginning, that is to say that an offence is committed only if it was committed without reasonable cause.

The Chair: Thank you very much, Mr. Fortin.

We'll now vote on the subamendment.

● (1245)

Mr. Rhéal Éloi Fortin: Could one of the witnesses answer my previous question before we vote, Madam Chair?

The Chair: Do you have another question?

Mr. Rhéal Éloi Fortin: I asked it, but I didn't get an answer.

I asked a question about the scope of proposed subsection 264.01(5), which states: “For the purposes of this section, and for greater certainty, a person's safety includes their psychological safety.”

I won't repeat everything I said, but I wanted the witnesses from the Department of Justice to explain the scope of this paragraph and what we are specifically aiming for.

The Chair: Okay, thank you.

Ms. Levman, you can answer the question.

[*English*]

Ms. Nathalie Levman: I would point out that the term “safety” is already used in the criminal harassment and human trafficking offences and has been interpreted by appellate jurisprudence to include psychological safety. In that context, it has been interpreted to cover scenarios such as the 2020 Sinclair case at the Court of Appeal for Ontario, which involved a person who was trafficking a young woman. He did not use violence against her, but she was severely economically disadvantaged, she had drug-related issues and she had no place to live. Because of that, she felt that even though he didn't use violence or threaten violence, she had to do what was being asked of her or else she would lose her home and her ability to feed herself.

Those are the types of scenarios that are captured by psychological safety. I would also point out that Scotland, New South Wales and Queensland all use the term “harm” and include psychological harm. This term has been used in Canadian criminal law jurisprudence, as well as in other jurisdictions whose models we are looking to when we craft these offences.

[*Translation*]

Mr. Rhéal Éloi Fortin: I would like to continue, Madam Chair. I don't want to waste the committee's time, but I want to make sure I understand. I promise to be a good boy.

Proposed paragraph 264.01(2)(c) talks about “engaging in any other conduct — including conduct listed in any of the following subparagraphs — if, in all the circumstances, the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety…is threatened.” However, in proposed subsection 264.01(5), it says that it “a person's safety includes their psychological safety.”

I come back to the example I gave earlier, where the partner is anxious and worried. I'm not passing judgment. As I said, there are people very close to me, people I love and respect, who have an anxiety problem. I'm just trying to figure out how the provisions of the bill would apply. Let's take the hypothetical example where my spouse is experiencing anxiety, and I engage in one of the behaviours listed toward her, regardless of what it is, such as controlling the way she dresses or threatening to kill myself. Obviously, if she's feeling anxious, she's going to be all the more concerned about the behaviour.

Proposed paragraph 264.01(2)(c) says you have to look at the context. Aren't we broadening the number of cases where an offence is committed? We could say that the person engaged in such and such behaviour, for example that they threatened to commit suicide, but that, given the context, that is to say that their partner is experiencing anxiety, it was reasonable for the person to expect that it would psychologically affect their partner and that their psychological safety would be affected.

Neither you nor I are psychologists, but since no psychological experts are here to tell us about it, I'm putting the question to you. What do you think of those provisions? Aren't we greatly expanding the area in which a crime can be said to have been committed?

[*English*]

The Chair: Go ahead, Ms. Levman.

Ms. Nathalie Levman: What you're pointing to is potentially prohibited conduct that will have to be looked at through the reasonableness lens, which is objective but specific to the circumstances of the particular incident you've described. The anxiety of the person will have to be taken into account when determining whether or not that conduct could reasonably be expected to cause the person to believe their safety is threatened. However, in addition to that, you have to prove intent to cause the person to believe their safety is threatened or prove recklessness as to whether or not the conduct will cause that result. There are multiple layers of different items that need to be proven, including a pattern of conduct. It can be just once that you suggested something your partner, who suffers from anxiety, do or not do.

As I said before, we're dealing with ongoing conduct. No one incident in and of itself can ground a conviction for this offence, and everything has to be placed and considered in the context of the relationship as a whole. I believe that's the provision Mr. Garrison referred to earlier on, proposed subsection 264.01(3), which provides another layer of protection to ensure that cases where there are two equal partners helping each other with problems are not caught by this offence.

● (1250)

[*Translation*]

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

I'll come back to what we were discussing. Earlier, Mr. Moore gave the example of a spouse telling his partner that they wouldn't leave the house until she had taken her medication. That would be considered an offence. I understand that there are different levels. You've explained it, and I fully agree.

Let's take the example where an individual reminds his spouse that she must take her medication, otherwise it's dangerous for her health and she could die. He tells her that he loves her, that he couldn't live without her and that, if she doesn't take her medication today, he's going to kill himself. In that case, he would be committing an offence against his spouse.

I know you're going to say that's a far-fetched example, but I'm trying to understand.

In this example, the individual commits an offence against someone he knows to be fragile. His spouse is anxious and refuses to take her medication. Her spouse tells her that, if she doesn't take her medication, life will no longer have any meaning for him and he will kill himself. In that case, he is committing an offence. Once again, instead of sending him to the doctor, he is sent to prison.

Doesn't that seem a bit abusive to you?

[*English*]

Ms. Nathalie Levman: Again, that conduct couldn't be considered prohibited conduct unless it met the reasonableness test in the circumstances, so it may or may not be prohibited conduct.

[*Translation*]

Mr. Rhéal Éloi Fortin: Excuse me for interrupting, Ms. Levman, but time is ticking.

The reasonableness test you're talking about is whether it's reasonable to expect, given the context, that it would be possible for someone to lead their partner to believe that their safety is at stake. There's no doubt about it. If I tell my partner to take her medication or I'll kill myself, I say it because I think it will have an effect on her. So it's perfectly reasonable, and I can't deny it, for me to expect that, in this context, she'll think my safety is at risk.

However, the words that the subamendment seeks to add to the wording will make it possible to assess whether the action was taken with reasonable cause. This is a kind of safety net that we are setting up. In a case where, even if it was entirely reasonable to expect that an individual's behaviour would lead another person to believe that their safety was in danger, if the court finds that behaviour to be based on reasonable cause, shouldn't that person be exempted from an offence? That's another layer of proof, to use your expression.

[*English*]

The Chair: Go ahead, Ms. Levman.

Ms. Nathalie Levman: The circumstances will include why the accused or the person is threatening suicide in that case. I would also underscore that the intent element has to be made out. Although I can't pronounce on what a court would find in a given case, you've described this example as an accused who is just worried for the health and well-being of their partner and isn't intending to cause any harm, be that physical or psychological.

● (1255)

The Chair: The summary and take-away for me is that we need to look at the entirety of the circumstances and not simply one of those sections. All sections that are brought forth here in this bill need to be taken together as a whole, whether by us in the committee when we're voting on it or when it goes to court in any of the circumstances.

What I will do right now is ask that we vote on the subamendment.

Shall the subamendment carry?

Hon. Rob Moore: It's the subamendment that—

The Chair: It's the one Mr. Fortin brought forth.

Hon. Rob Moore: Okay. The witnesses said that the subamendment would also apply to the criminal acts, which would be saying that if it's reasonable....

Can you read out the subamendment in context?

The Chair: I will ask those at the table to do that, because I think they wrote it.

Please go ahead.

Ms. Dana Phillips: Certainly.

It reads as follows:

> 264.01(1) Everyone commits an offence who, without reasonable cause, engages in a pattern of conduct referred to in subsection (2)

The Chair: Thank you.

Shall the subamendment carry?

(Subamendment negatived: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: Now we're back on the amendment. Shall G-2 carry?

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

The Chair: G-2 carries. As a result, BQ-1, BQ-2, BQ-3, LIB-1, BQ-4, BQ-5, CPC-1 and BQ-6 cannot be moved. Since G-2 is adopted, we'll now proceed with the question on clause 1.

Shall clause 1 carry?

(Clause 1 as amended agreed to on division)

The Chair: We're on new clause 2 and G-3.

Would a member please move it?

Mr. James Maloney: I so move.

The Chair: Shall G-3 carry?

Mr. Caputo.

Mr. Frank Caputo: I'm sorry. I know everybody wants to get going, but given my experience, the two most common offences that this section applies to are not listed here. Assault, which is in section 266, and uttering threats, which is in section 264.1, in the context of intimate partner violence, are the times when, in my experience, these orders are sought. There's also potentially section 267, which is assault with a weapon or causing bodily harm.

I'm not sure if the Liberals would see this as a friendly subamendment, but I would include those.

● (1300)

The Chair: It sounds like you are proposing a subamendment. It would need to be provided in writing, to be frank.

Can you repeat it again? I'm going to ask the officials to comment on what you just said.

Mr. Frank Caputo: After “264.01”, add section 264.1. Sections 266 and 267 should be there as well.

The Chair: Ms. Levman, is what he said enough for you to provide us with a bit of an explanation, or should he repeat it?

Would you repeat that again, Mr. Caputo? What is it that you would like us to consider adding?

Mr. Frank Caputo: I think Ms. Levman is good.

I think if we're changing the bill, we should just add the offences that this section uses most.

The Chair: Ms. Levman.

Ms. Nathalie Levman: Proposed subsection 486.3(2) is a provision that prohibits the accused from cross-examining witnesses in cases involving certain offences. The existing list in the law as it is today includes criminal harassment and the three sexual assault offences. This is to try to minimize revictimization of the victims through court processes. We know that sometimes abusers seek to cross-examine victims in order to continue their abuse of them, so this would prevent that. This is a consequential amendment, so all it does is drop proposed section 264.01 into this subsection.

I understand the proposal is to fairly significantly expand it by including uttering threats, proposed section 264.01 and two of the three assault offences—assault *simpliciter* and assault causing bodily harm. I understand that the intention is to prevent people who are accused of intimate partner violence from cross-examining victims when they are charged with assault offences. However, the amendment would apply far more broadly than that to all assaults and all uttering of threats, regardless of the relationship between the accused and the victim. Again, this is a consequential amendment in relation to the proposed coercive control offence.

The Chair: Mr. Caputo, before you start, we're checking with the interpreters to see how many minutes we have, because it's beyond one o'clock.

Mr. Frank Caputo: I'll be very quick.

We are beyond one o'clock, and it would seem as though we're getting into territory that, according to the experts, may not have been contemplated and we didn't hear from witnesses on. I'm not sure if my subamendment was formally moved, but I'll withdraw it if it was not, given what we've heard.

The Chair: Shall G-3 carry?

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

The Chair: We are on new clause 3 and G-4.

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

The Chair: Can I group the rest together or should we go through them separately? Is there unanimous consent?

Some hon. members: Agreed.

The Chair: We have G-5, G-6, G-7, G-8, G-9, G-10, G-11, G-12 and G-13, which are all moved by Mr. Maloney.

Thank you, Mr. Maloney.

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

The Chair: I'll go to G-14, on the title. I'll ask for G-14 to be moved.

G-14 is now moved.

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

The Chair: Shall the title as amended carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Go ahead, Mr. Garrison.

● (1305)

Mr. Randall Garrison: I'll take one moment, on behalf of the committee, to thank all survivors who came forward, whether in consultations or at committee, to tell their stories. This is a result of the bravery they've shown, and I know we all wish to thank them.

Some hon. members: Hear, hear!

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

Some hon. members: Agreed.

The Chair: 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: Thank you very much, everybody. I wish you a pleasant day. This meeting is adjourned.