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# **Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness**

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**EVIDENCE**

**Tuesday, April 19, 2005**

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**Chair**

**The Honourable Paul DeVillers**

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## Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Tuesday, April 19, 2005

• (0900)

[English]

**The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)):** I'd like to call this meeting to order. It's the meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We're continuing our review of Bill C-2, An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.

We have four groups of witnesses. I'm not sure if they're all here, but we'll commence with those who are. From the Child Welfare League of Canada, we have Mr. Gordon Phaneuf, director of strategic initiatives. Welcome.

From the Salvation Army, we have Danielle Shaw, the director of government relations; and Nancy Turley, adviser. From the Toronto Police Service, we have Detective Sergeant Paul Gillespie.

[Translation]

We also have Mr. J.R. Norman Boudreau, Vice-President of the Volunteer Executive Board, and Mr. David Butt, Board Member of Beyond Borders Inc. Toronto.

[English]

We'll start with witnesses making presentations of approximately ten minutes or less. That will allow more time for questioning by members.

We'll start with Mr. Phaneuf from the Child Welfare League of Canada.

**Mr. Gordon Phaneuf (Director, Strategic Initiatives, Child Welfare League of Canada):** Thank you very much, Mr. Chair.

Thank you for the opportunity to meet with you today and provide evidence to this committee concerning Bill C-2.

I am here today representing the Child Welfare League of Canada, Ligue pour le bien-être de l'enfance du Canada. We are a national organization dedicated to promoting the well-being and protection of children and youth.

We are especially concerned about vulnerable children and youth, those who are abused, neglected, and exploited and those who are at risk of abuse, neglect, and exploitation. These children and youth, who all too frequently experience exclusion, rejection, poverty, and racism, are often not able to fully participate in the benefits and opportunities of Canadian society.

We have a particular interest in those children and youth who are involved in the child welfare, child protection, youth justice, and children's mental health systems. These children, in our view, are particularly vulnerable.

Allow me to quickly mention that a commitment to upholding and observing children's rights is a guiding belief of our organization. The strategic plan for our league clearly states that the provisions of the United Nations Convention on the Rights of the Child must be enacted in Canada and abroad to ensure that all children are protected and supported.

The CWLC is a membership organization. The 102 member organizations of the league are drawn from child and family services; provincial and national associations; universities; and provincial, territorial, and federal departments and agencies dealing with children.

We are rightfully proud of the fact that we have members in all 13 provinces and territories, and together our members serve well over a half a million Canadian families.

The CWLC is a member of the International Forum for Child Welfare and the World Health Organization's Violence Prevention Alliance. It is a founding member of the National Children's Alliance and is represented on the steering committee of the alliance.

The league is one of the participating partners in the Centre of Excellence for Child Welfare, and in partnership with the WHO, the Pan American Health Organization, the Government of Canada, and the Government of Alberta, it is one of the co-sponsors for the upcoming World Conference on Prevention of Family Violence.

In conducting a detailed review of Bill C-2, the league is of the view that in the main, it represents a positive step in addressing several key aspects of the sexual victimization of children.

It enhances our capacity to build on key initiatives recently put into place by the Government of Canada to ensure the protection of children from sexual exploitation. It is our belief that with the proper supports, the bill holds the potential to facilitate the testimony of victims and witnesses who may face barriers to justice based on vulnerabilities.

I would like to briefly outline the six areas of the bill and the position of our organization on those six areas.

First, I'll address the section dealing with the narrowing of the child pornography exceptions and the broader definition of child pornography. We believe this section of the bill strikes a careful and appropriate balance between ensuring the protection of children and a conscientious regard for freedom of expression.

The proposed prohibition against advertising child pornography will address what has been until now an offensive gap in the purview of the criminal law in Canada. Broadening the definition of child pornography to include audio formats allows the law to respond appropriately to the perverse ingenuity of those who would sexually abuse and who are sexually abusing children.

Legislative efforts to protect children must take into account the possible adverse applications of modern technology, and this provision addresses that in part.

The second section deals with expanding the scope of and penalties for sexual exploitation offences. The CWLC endorses the introduction of a broader definition of sexual exploitation. The focus is on the exploitative nature of relationships rather than solely focusing on the ages of the child or the young person and the alleged offender. This expanded definition more accurately and sensitively reflects the dynamics of child maltreatment and the exploitative aspects of that behaviour.

The bill acknowledges the complex nature of sexual relationships and provides the means to address those sexual relationships that involve the abuse of an adult's power over a young person. It is noteworthy that the bill will continue to provide what we believe are the necessary protections to ensure that consensual teen sexuality is not criminalized.

• (0905)

The increased penalties that are proposed reflect the growing recognition in Canadian society at large that the sexual exploitation of children in any form is a crime that warrants serious sanctions. We note that increasing maximum penalties, all things being equal, does not necessarily entail increased sentences.

It is imperative that judicial training curricula, which are currently in use, are updated and reflect the spirit and the substance of the bill.

The third section is on increasing maximum sentences for some child-related offences. The proposed increases to the maximum sentences for some other child-related offences, namely, sexual offences against children, failure to provide the necessities of life, and the abandonment of a child, are strongly endorsed by our organization.

Our sole observation in this regard is that these modifications are long overdue. It is difficult to conceive how the current treatment of child abandonment solely as an indictable offence endured until now. Broadly speaking, in Canada, in the area of child maltreatment, aside from child sexual abuse, where many praiseworthy and indeed cutting-edge reforms have been codified, the Canadian criminal law has been less robust in addressing the other principal forms of maltreatment: child physical abuse, emotional abuse, and child neglect. Given this legacy, the increased sanctions are particularly appropriate.

As important as the issue of child sexual exploitation is, we must remind ourselves, when we address child protection issues in Canada, that consistently, from one end of the country to the other, the form of maltreatment that is most frequently reported to and in turn most frequently substantiated by child welfare authorities is child neglect. This recognition should not mitigate against our efforts to address child sexual exploitation; rather it should serve as a reminder that there is a continuum of violence, which too many Canadian children and youth experience, and that sexual exploitation is an egregious form of abuse amongst several other egregious forms of child maltreatment.

The fourth section is on facilitating testimony by child victims and witnesses—the amendments to the Criminal Code. In brief, the amendments proposed to the Criminal Code to facilitate child victims and witnesses are welcome and on point. We believe these reforms hold the potential to positively impact on the experience of children in the criminal justice system. The use of screens, closed-circuit television, and the presence of a support person are valuable aids to child victims, and their use should be more widely promoted.

Formally, these amendments should strengthen the context in which children and witnesses can interact with the criminal justice system. However, without the necessary supports they are at risk of being relegated to irrelevance.

The amendments to the Canada Evidence Act represent a positive step forward, given the empirical research that indicates that children's testimony is as valid as an adult's. Secondly, the requirement for child witnesses under 14 years of age to promise to tell the truth, rather than to swear an oath or to make a solemn affirmation, is a welcome amendment, as it more appropriately reflects the developmental capacities of children.

The fifth section is on protecting other vulnerable victims and witnesses. The amendments to aid the testimony of other vulnerable victims or witnesses are a welcome development as well. The courtroom can be a stressful environment for victims and witnesses, and the proposed reforms would provide supports that could assuage some of the anxiety associated with the courtroom experience.

With respect to clause 6, the new voyeurism offences are welcome and they address some of the dangers that new technologies can present to our privacy when used inappropriately. Similarly, the proposed offence relating to the distribution of voyeuristic material would help to ensure that the Criminal Code is adapting to the new threats posed by the inappropriate use of the Internet.

I would like to move to our recommendations. The Child Welfare League would say that Bill C-2 is indeed a step in the right direction towards protecting vulnerable children from sexual exploitation. However, legislation is only one component of a constellation of responses that are necessary to a sustained credible strategy dedicated to protecting vulnerable children in the court system from sexually exploitative relationships or from child pornography.

Any change in legislation, no matter how positive, must be met with good policy and sufficient resources to meaningfully implement the changes enacted.

We have specific recommendations. The legislation holds a great deal of promise for children, but that promise will only be fulfilled if concrete steps are taken to ensure the implementation of the proposed reforms.

● (0910)

It is the position of the league that there are four areas that need to be addressed if the promise of Bill C-2 is to be realized. They are: first, judicial training and professional education; second, support for pilot and demonstration projects; third, support for a technical assistance program to ensure access to screens and closed-circuit television technology; and fourth, monitoring research and evaluation studies of the bill itself and its consequences.

With respect to judicial training and professional development, the independence of the judiciary is a cornerstone principle of our system of justice. We recognize that the Government of Canada cannot and should not dictate the training curricula for the judiciary. However, this principle must not inhibit our efforts to ensure that judges and justices have ready access to up-to-date training materials and curricula on child victimization.

Those authorities who are tasked with the administrative responsibility for the provision of judicial training and education must ensure that judges and justices not only have access to specialized training, but are in fact availing themselves of this training. We note that the National Judicial Institute has, in conjunction with subject experts, developed judicial training materials on child abuse, and that the federal government has played an instrumental role in supporting the development of those materials. These partnerships are key elements in promoting the development of appropriate training materials.

Further, specialized training is needed for crown attorneys, victim assistant workers, and other professionals tasked with preparing children for court. The second area of recommendation deals with pilot and demonstration projects.

Bill C-2 proposes a number of progressive steps for child victims and other vulnerable witnesses, but we must not be complacent about these reforms. Other innovations need to be considered, discussed, and studied; new interventions need to be tested; innovative models require assessment and scrutiny. This is an important role for pilot and demonstration projects.

**The Chair:** Mr. Phaneuf, I'm going to have to ask you to wind up as quickly as possible, please.

**Mr. Gordon Phaneuf:** I believe the committee has heard from the London Family Court Clinic and the Child Witness Project at Queen's University. This sort of action-oriented research is exactly what's needed, and we would strongly recommend that efforts be made to ensure that it can continue.

Briefly, the third area is the technical assistance program. The division of power, with respect to the administration of justice in Canada, leaves the provinces with the responsibility of having to address the issue of closed-circuit television and the provision of screens. We would remind the committee that as far back as 1989 and 1990 there were reports being given to the federal government calling for screens and closed-circuit television technology. The fact is, the presence of those technologies in court rooms across Canada

is something of a patchwork. We would recommend that a practical program, time-limited and very focused, be set up to provide 50-cent dollars to the provinces as an inducement to put those technologies into their court rooms.

The last piece we speak to, Mr. Chair, is monitoring the research and evaluation studies, which is sometimes missed and is absolutely crucial. Monitoring the use of and experience with existing child victim provisions is key to forming an understanding of their importance. Similarly, the reforms proposed in Bill C-2, if passed into law, will need to be carefully monitored. It will be important to document in a rigorous manner the way in which the reforms are put into practice and how they are or are not used. Dedicated research and evaluation studies are needed to access the experiences of children in the criminal justice system. Studies will need to gauge how the proposed amendments have been used. Future reforms need to be grounded in evidence-based research.

In closing, I would repeat that Bill C-2 holds considerable promise, but its fulfillment requires the constellation of supports that I have outlined. When it comes to child protection, good law is not enough. Protecting Canada's children requires an integrated approach, which involves legislative reforms, training, strengthened service responses, innovative programming, data collection analysis, and research.

Thank you for the opportunity to present.

● (0915)

**The Chair:** Thank you.

Now, from the Salvation Army, Ms. Shaw.

**Ms. Danielle Shaw (Director, Government Relations, Salvation Army in Canada):** Good morning. Bonjour. Thank you very much for the opportunity to appear before you.

Let us commence our presentation by saying that the Salvation Army supports Bill C-2. We encourage members of Parliament to do the same. That said, we have some concerns about the bill as presently drafted.

We're going to comment this morning on certain portions of Bill C-2, not Bill C-2 in its entirety. We will comment on gaps in Bill C-2 with respect to child sexual exploitation, the need to balance the sentencing of offenders with rehabilitation, as well as certain provisions relating to child pornography.

As a front-line social service agency, we constantly see the devastating long-term effects of sexual abuse in our homeless shelters, addiction programs, youth drop-in centres, family services offices, and corrections programs. We have learned that if it's not adequately addressed at an early stage, the long-term effects of sexual abuse can be arrested psychological, emotional, and social development, substance abuse, mental health problems, problems of self-esteem, unemployment, homelessness, and even suicide. A sad and disturbing reality, particularly among male victims, is that those who have been abused often become abusive towards others and thereby perpetuate and expand the damage caused by sexual abuse.

**Mrs. Nancy Turley (Advisor, Territorial Abuse, Salvation Army in Canada):** You will be aware that the subcommittee on solicitation laws is currently studying the provisions of the Criminal Code related to prostitution with the view to making recommendations for law reform. The public debate concerning prostitution addresses the issue primarily from an adult's perspective and suggests that engaging in prostitution is a choice, a choice that adults should be and are free to make.

Unfortunately, studies have revealed that people engaged in prostitution often enter prostitution as minors and that many of those who enter prostitution have been previously subjected to sexual abuse. Studies have also shown that street youth, some of whom come from marginalized backgrounds, are also at greater risk of being recruited into prostitution.

We acknowledge that not every sexually abused child becomes involved in prostitution. However, far too many people engaged in prostitution have been sexually abused as minors and thus have been primed for continual sexual exploitation as adults. In our opinion, such people are not given a genuine choice. As such, we believe every opportunity should be taken to protect those who are at risk of becoming the next generation of sexually exploited adults.

I would like to make a comment about the age of consent. The Criminal Code protects people under the age of 18 years from commercial sexual exploitation and from sexual exploitation by people in a position of trust or authority toward them or with whom they are in the relationship of dependency. It does not currently provide adequate protection when sexual activity with minors falls outside these circumstances. Thus a 14- to 18-year-old who consents to sexual activity with an adult outside these limited circumstances is presumed to have made a free choice, even if the adult is significantly older and is a trusted family friend or high school teacher.

Provincial ministers of justice and several NGOs have suggested increasing the age of consent to sexual activity in order to reduce the prevalence of child sexual exploitation, but like its predecessors, Bill C-2 remains silent on this point. We want to encourage members of this committee to consider this proposal, as it is possible to draft Criminal Code provisions in such a way as to make adult sexual activity with minors a crime without criminalizing the conduct of teenagers.

• (0920)

**Ms. Danielle Shaw:** We want to comment specifically on the proposals in Bill C-2 to increase the maximum sentences on summary conviction offences for child sexual exploitation offences. Society and legislators must take seriously the short-term and long-term effects of sexual abuse on children. Child sex offenders have to be held accountable for their crimes; however, in our opinion, simply punishing them by increasing prison sentences will not adequately address child sexual exploitation.

In our opinion, and in the opinion of one sex offender I met with in preparing for this presentation, an effective strategy must include prevention of sexual abuse, early intervention, individualized treatment plans for offenders, adequate long-term intervention and support for victims, and community-based supports for victims, offenders, and their families. Statistics show that most sex offenders

are sentenced to incarceration in provincial rather than federal institutions and thus serve short-term sentences. Although the public may want you folks as well as law enforcement officials to lock them up and throw away the key, most sex offenders are released back into the community after a relatively short period of incarceration. Even if Bill C-2 is passed, offenders will spend a maximum of 18 months in provincial institutions.

Studies have indicated that sex offender treatment programs have proven effective at managing the risks of recidivism—not curing, not healing sex offenders—giving hope to offenders, to their victims, and to those who work with affected people. In some cases, recidivism rates among treated sex offenders have dropped to as little as 50% of the recidivism rates of untreated offenders. In our opinion, good public policy demands both denunciation of criminal conduct and attempts to rehabilitate offenders for the sake of the offenders, the victims, potential victims, and society at large.

We therefore encourage you not to treat increased sentences as the only solution to the terrible problem of child sexual exploitation, but to go beyond short-term solutions to ensure that adequate resources are allocated to permit effective interventions and ongoing community-based supports as needed.

**Mrs. Nancy Turley:** With regard to the issue of child pornography, we believe that Bill C-2 is a marked improvement over the existing Criminal Code provisions and previous attempts both to define child pornography and to articulate defences to child-pornography-related offences. That said, we do question why the defence related to art remains, particularly visual arts. It is often said that a picture is worth a thousand words. The message conveyed by the works of art that fall within the definition of child pornography may be very harmful indeed.

Child pornography is defined as something that shows a person under 18 engaged in explicit sexual activity or that shows the sexual organs or anal region of a person under 18 for a sexual purpose, or that advocates or counsels sexual activity with a person under 18 that would be a criminal offence under the Criminal Code. Considering this definition, we question what legitimate artistic purpose such art could have.

Studies indicate that child pornography is used by some sex offenders to reinforce cognitive behaviours. The recent case of Holly Jones in Toronto is an example of how pornography was used to fuel her attacker's appetite for a young body, ultimately resulting in her death.

Recently, as the territorial abuse adviser of the Salvation Army, I actually sat with a self-confessed pedophile who explained that pornography not only fuelled his appetite for young bodies, but was also what he used to groom and entice his unknowing victims by normalizing sexual behaviour between adults and children. Child pornography was used to desensitize his victims. In the wrong hands, ostensibly innocent images may have devastating effects.

In closing, we want to say that we have shared only selected portions of our written brief with you this morning in the hope that it will encourage you to do the utmost to work toward the prevention of child sexual exploitation, provide opportunities for victims, offenders, and the community to seek healing from the devastating effects of abuse and strike an appropriate balance between the needs of offenders and those of victims.

We would welcome any questions you have, and we thank you for this opportunity.

• (0925)

**The Chair:** Thank you very much for that presentation.

Now from the Toronto Police Service, we will have Detective Sergeant Paul Gillespie.

**Detective Sergeant Paul Gillespie (Toronto Police Service):** Ladies and gentlemen, it's my true pleasure to be here today. I appreciate the opportunity to speak. I, too, will focus on a couple of areas that are within Bill C-2 and one that I think should be within Bill C-2.

As the previous speaker mentioned, it's legal to be involved in sexual relations with a 14-year-old; however, you're not allowed to take pictures of those sexual relations if you're under 18. It is typical of some of the problems we see. I'm speaking on behalf of law enforcement officers who are there when the rubber hits the road. There are some things that just don't make a whole lot of sense to me. I think 14-year-olds, in regard to the age of consent, do not have the ability or maturity to make decisions that absolutely impact them for the rest of their lives. We see that in our day-to-day dealings.

The term "age of consent" I think could and should be replaced by some term such as the "age of protection", and let's make the age 16 years old. I can't think of one instance in my mind when a 50-year-old or 60-year-old person—a man—should be allowed to engage in legal sexual relations with a 14-year-old. I've been trying for some time. I think it's wrong. Children are children. We have to recognize that. I think the difference in maturity and life skills of a 14-year-old compared to a 16-year-old is tremendous. I think 14-year-olds are children and they need to be protected. There should be an age of protection and I think it should be 16 years old.

When we get into terms of the exploitive nature of the circumstances and trying to get into the mind of the potential offender, we seem to debate this a lot, and it can go on for years. At some point the front-line officer who has to make these determinations has to make relatively quick decisions, as does the trier of fact. A lot of these things simply lack clarity.

My main point in being here today is to stress that no matter what is crafted in Bill C-2, please make it clear so that people who actually have to enforce these laws, who don't have several years afterwards to debate and discuss them, can move ahead in good faith and act in

such a manner that is fitting and represents what was asked to be done. No matter what comes out of this, I don't think the wording is tight enough. I don't think we could ever get wording that is appropriate to explain that a 50-year-old can in fact be involved in sexual relations with a 14-year-old.

The other thing I would like to quickly discuss—and I won't be long—is a real dilemma, and that is the sentencing we see. It is nice to hear that we will be, in some instances, raising the maximum sentences from five to ten years. In all honesty, the optics are wonderful, but we don't get anywhere close to seeing what were the old maximums with repeat offenders.

In Toronto in the last three years, we've arrested about 130 people on child pornography and related charges. About 50% of them have either gotten conditional sentences or probation—about one out of every two. I believe, and the statistics show, that around three out of ten offenders who collect and possess child pornography are also hands-on abusers. This is our real dilemma. The thought that 50% of them can be told to go home, and the thought that this perhaps serves as some deterrent, is simply not accurate. It's not a deterrent for a person to be told to go home and asked not to use their computer, and law enforcement not be given the tools, even if we had the manpower, to check up and perhaps determine if there was non-compliance with certain orders. It's a dilemma because of the overwhelming nature of the Internet and the number of offenders actually out there.

There should be a minimum sentence for a first conviction for child pornography. I would suggest it should be 60 days. I would suggest a second conviction should be two years less a day. I think that would act as a deterrent. There is a minimum sentence in impaired driving convictions, which is 14 days for a second conviction. Certainly there is a minimum sentence for gun offences involved in an indictable offence, which is four years. I think there is a deterrent.

I don't see any deterrents. We monitor news groups and chat rooms, and I have undercover officers in every darkest bowel of the Internet. Canada is thought of, and sought as—it's openly discussed—some place where you really aren't penalized if you get caught for child pornography or abusing children. At times it's advertised as a great spot to go to have sex with a child, that being a 14-year-old, because the majority of the world thinks a 14-year-old is a child.

I deal a lot with international law enforcement and government agencies in the work I do, certainly of late in the last two years. I'll be very honest. It's rather embarrassing when I go abroad and around the world and it's determined that our age of consent is 14 years old. Again, if we could perhaps move that up to 16 and call it an age of protection....

● (0930)

I'd like to make the committee aware that the biggest problem with this child pornography and this Internet thing is that it moves so quickly. I don't know how we could ever stay up and react quickly enough with Internet-specific laws. I do say that Canada does have some of the best laws in the world, and we should certainly be proud of some of the Internet laws we have.

Within a year we're going to have cell phones that have the power to do the same computing as ten of the biggest computers you can find. Life is going to change very rapidly over the next couple of years with the size of storage space. We will see little things called flash cards about the size of a postage stamp. One will be coming out soon, which has the capacity to hold about a million pictures. It's going to be a 64-gigabyte card, which is an incredibly huge flashcard. The point is that this will render cell phones and very small portable devices as the computing devices. We won't have the big computers and the CDs and the floppy disks.

The proof of all of these horrific crimes and the way people interact with each other is going to become much more private and very much harder to detect, and the laws will certainly be much harder to enforce. I think it's important that we go back a step and remember what this is: this is child abuse in regard to child pornography. Again, 14-year-olds are children. I think we have to do our best to protect the children and come up with ways, if possible, as law enforcement and government, to try to—I don't know if we'll ever be able to stay ahead of the curve—identify problems in the future.

That's it, unless you have any questions.

**The Chair:** Thank you very much.

[Translation]

We will now hear from Mr. Boudreau who represents Beyond Borders Inc.

**Mr. J. R. Norman Boudreau (Vice-President, Volunteer Executive Board, Beyond Borders Inc.):** Good morning.

Thank you for having invited us again. Last time, it was about bill C-20. At the time, I was with my good friend, David Matas, the well-known lawyer. At the time, David had made some recommendations about juvenile pornography. Your committee has accepted Mr. Matas's recommendations and we are grateful for that.

Today, we will make a presentation addressing the age of consent.

[English]

What Beyond Borders proposes is that the age of consent be raised to 16 years old and that there be a close-in-age exemption for teenagers so that they would be permitted to have sexual interaction with each other without it being criminalized.

We also recommend that the proposed amendment to Bill C-2 stand for children between the age of 16 and 18. If a relationship is proved to be exploitive between the age of 16 and 18, then the proposed amendment to Bill C-2 should also stand. I think the submission from Beyond Borders would in fact be the best of both worlds.

[Translation]

I would like now to let you hear from my friend David Butt.

[English]

**Mr. David Butt (Board Member, Beyond Borders Toronto, Beyond Borders Inc.):** Hi, I'm Dave Butt. For 13 years I prosecuted child exploitation and child pornography cases. I remain closely involved in the issue, working with the Toronto Police, Paul Gillespie's unit in particular.

I'd just like to offer a couple of thoughts based on my experience in the courtroom, because these are tests that are going to be applied in the courtroom when you're dealing with criminal law legislation. The basic idea—nobody disagrees—is that young teenagers in that critical transitional phase, when they're developing sexuality and have attributes of both childhood and adulthood, need special treatment. They're not children. They're not adults. They need special treatment, and in so many different areas of the law, we accord them that special treatment.

As accused people before the criminal justice system, we have a criminal justice youth system. When it comes to driving, we have graduated licences, so you can get in a car with an adult first, and then after a while you can do certain things, and you have to have zero alcohol and so on. We recognize gradations. You can't drink until you turn 18.

We recognize that there are things these kids are going to have to encounter and wrestle with, but they're moving through a transitional phase. That's the basic reality of teenage years. We're not going to change that. It doesn't matter what laws we have. What do we have to do? We have to work with that. We have to work with that and recognize it. It's a transitional period. So how do we do that in the area of sexual exploitation of children?

First of all, everybody agrees sexual exploitation of young teenagers, 14, 15, 16, is a bad thing. We don't need to spend any time talking about that. How do you address it legislatively? The goal is preventing exploitation, but exploitation as a legal standard? My experience as a prosecutor is that it doesn't work. Let me tell you why.

Have you ever been shocked that somebody you thought you knew well was getting divorced from their long-term partner? Everybody has had that experience. Do you know why? We don't really know the private status of the intimate relationships of even people we think we know well. We're constantly surprised: "I thought they got along great", or "I had no idea he was playing three other women on the side". We don't know what goes on inside private relationships. We are very bad at characterizing the private, intimate relationships of other people.

This bill, by setting an exploitation standard, is asking a judge to do exactly that. It won't work. It's an invitation to an ineffective law, because all the defence has to do is raise a reasonable doubt that maybe it wasn't exploitive. Let me tell you, there are a lot of criminal defence lawyers who are as good on their feet as I am, having done hundreds of prosecutions, and a 14-year-old kid is putty in their hands, especially when their client is a predatory pedophile who has done a really good job of treating that kid well on the predatory path to sexual relations.

Let's just have 30 seconds of the cross-examination. I'm the defence lawyer. I'm cross-examining a 14-year-old who claims the relationship was exploitive: "He took you to the movies, didn't he?" "Yes." "He treated you well there, didn't he? He bought you popcorn." "Yes." "He got you that Britney Spears poster." "Yes." "He helped you with your homework." "Yes." "He was always nice to you, wasn't he?" "Yes." "You wanted to have sex with him, didn't you?" "Yes." Consent isn't an issue.

What judge in the world isn't going to say, "I have a reasonable doubt that this relationship is exploitive"? That's exactly what the predatory pedophiles want. They love it. You step inside their head and you realize that a loosey-goosey standard like exploitive.... If I'm a prosecutor, forget it, I'm not even going there. Don't waste your time.

If you want an effective law that also recognizes this transition from childhood to adulthood, do it this way. As Paul said, 14 to 16 is simply off bounds, except—and this is critically important—recognize that transition. Children are growing into adults. They're starting to experiment with their sexuality. Who do they experiment with? You give them a safe zone—experiment with your peers.

• (0935)

As one politician said years and years ago, the state has no place in the bedrooms of the nation. For the teenagers who are doing things in the rec room when their parents are upstairs, the state has no place in the rec rooms of the nation either.

We need an age exemption, so that 14-, 15-, and 16-year-olds can experiment with their peers. That's a matter for individual families, individual religious consciences, and individual relationships amongst peers; it's not a matter for the criminal law. If you have a five-year exemption, the police would never be walking into a high school to arrest people for doing what teenagers do. Beyond five years, you would say that sexual relationships of adults with those young teenagers are inherently exploitive, and you would outlaw those, with age numbers.

The police, who have to make those decisions on the street and have to lay the charges, would then have clear numbers to go by. Kids would have a zone of experimentation that's safe, if that's what they chose to do. And the pedophiles would get a clear message: you're not going to be able to take advantage of our children, because that, according to Paul, is what they talk on the Internet about doing.

Thanks for your time, and I'll answer any questions.

**The Chair:** Thank you very much.

Thank you to all the witnesses for their presentations. Now to questions from the members.

We'll start with Mr. Toews.

• (0940)

**Mr. Vic Toews (Provencher, CPC):** Thank you very much.

I appreciate the witnesses' testimony here today, as you've certainly given us a lot to think about.

I do want to say, however, that I was very, very concerned when I heard the evidence of the Child Welfare League of Canada. I was struck somehow by the naïveté about what goes on in a criminal courtroom. Perhaps the Child Welfare League is thinking about child welfare proceedings, where the standard is a civil one and where the abuser has to take the stand, but I was struck by the incredible naïveté. When I heard the evidence of Mr. Gillespie, Mr. Butt, Mr. Boudreau, and the Salvation Army to a certain extent, my concerns were realized. They're addressing the concerns I had with the testimony of the Child Welfare League.

I'm speaking as a former prosecutor, but the idea that you can put a child on the stand at age 14—and Mr. Butt said so much better than I did—and think you can somehow prove that a relationship was exploitive is simply naive; it's not going to happen. The idea of educating and training judges is simply naive. I don't say that judges shouldn't be educated, but we as legislators have a responsibility to put policy into law and judges have a responsibility to follow the law.

What we've heard from Detective Gillespie is that judges aren't even putting into effect the maximum sentences now, and we're talking about raising maximum sentences. There needs to be a clear signal to pedophiles: these children are off bounds. Minimum mandatory sentences are the best education a judge can have; that is, Parliament has said, after listening to witnesses, these children need to be protected and you haven't been doing your job of protecting children. This is evident from the cases—case after case after case.

With the age of consent, most reasonable western democratic countries have a limit of age 16—children under that age are simply off bounds. The idea that we're giving conditional sentences to these pedophiles—over 50% of them get conditional sentences. We're not going to address the issue by increasing maximums and educating judges, which we all know are not going to make a difference; we have to put minimum mandatory sentences in place.

There were a number of other ones, but I seem to be missing this, and maybe you can tell me. I'm directing my comments to the representative of the Child Welfare League of Canada. Have you actually talked to police officers? Have you talked to prosecutors? I haven't heard any police officers, prosecutors, or psychologists say.... Psychologists tell us these people are hard wired. Rehabilitation isn't an issue here; we need to keep these people off the street so that our children are protected. Basically, 100% of these people reoffend, from the evidence we've heard here at this committee.

To be educating judges and allowing pedophiles to go back on their computers at home simply isn't an answer. I'm frustrated....

**The Chair:** Mr. Toews, will you allow Mr. Phaneuf enough time to respond?

**Mr. Gordon Phaneuf:** Thank you for the question. I'm not sure we would disagree with all the points you've just raised. I haven't been called naive for some period of time. I'm somewhat long in the tooth on these issues, having practised for the last 20 years.

I worked very closely with the police in this jurisdiction, the psychologists, the therapists, and the social workers in a number of different contexts. That forms our view. I was in a little bit of pain to demonstrate where the league's experience and expertise comes from because we are well networked across the country and with the constituencies of which you spoke.

The one issue I would like to respond to in a substantive way is the matter of judicial training and professional education. We say that with the utmost respect. I fail to see where the naïveté is there, but I do know that the need has been documented, and the work that's been done in that area is commendable.

Our point is that further work needs to be done. There are some reforms being proposed here. As good as the law can be, even if all of the changes that were suggested today were put into the law, it's absolutely crucial that those who are tasked with interpreting the law, with making it work—whether it's on the front line of law enforcement, the Crown, or it's the judge or justice—need to understand the law. They need to be trained in it, even in the more mundane matters of the use of the closed-circuit testimony and the use of screens. Our understanding is that it includes anecdotal information. You asked, have we done it? We have in the past. There are screens sitting on loading docks in some court houses that are just not being used.

The point I was making on the closed-circuit testimony is that there's really an emerging consensus in the country that it is a valuable testimonial aid for children. If we are going to have effective prosecutions like you're calling for, we need to use those innovations. But they're not being used uniformly and consistently across the country. The Child Welfare League of Canada is committed to ensuring that issues like that are brought to the attention of this committee and other fora.

• (0945)

**Mr. Vic Toews:** Just one second. Maybe I didn't catch your background. Are you a lawyer?

**Mr. Gordon Phaneuf:** I'm a social worker.

**The Chair:** Thank you.

Mr. Phaneuf, I wouldn't take personal offence at Mr. Toews' characterization of your naïveté. That's just his normal, endearing style.

[Translation]

Mr. Marceau, you have five minutes.

**Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ):** Thank you, Mr. Chair.

Mr. Gillespie, I am not sure I fully understood the numbers you gave us about pedophiles and child pornographers. You said that in

Toronto, 50% of sentences were conditional sentences or probations. Is that correct?

[English]

**Det Sgt Paul Gillespie:** Yes. In Toronto, in the last three and half years we've arrested about 130 individuals for child pornography and related offences. Of the convictions registered to date, about 50% of them—the convicted—received conditional sentences or probation, so about one out of every two.

[Translation]

**Mr. Richard Marceau:** You say this is well known in chat rooms and that kind of thing. People say that if you are caught in Canada with child pornography, you have a 50% chance to only get your knuckles rapped.

[English]

**Det Sgt Paul Gillespie:** Not the specifics of the 50% in the Toronto jurisdiction. I can't speak to how consistent that is in the rest of the country. That's in Toronto.

[Translation]

**Mr. Richard Marceau:** Thank you.

Mr. Butt, I am not sure I have understood what you said about this five years. Can you explain that once more? I am also a lawyer, not a mathematician. I wasn't very good in math and that's why I became a lawyer. Explain that to me, please.

[English]

**Mr. David Butt:** I became a lawyer for the same reason.

What I'm suggesting is that the Criminal Code be clear in saying that children and young teenagers aged 14, 15, and 16 need protection from adult predators; therefore, it is unlawful for those young teenagers to have sexual relations with anybody who is more than five years older than they are.

This allows them to sexually experiment in the safety of a peer environment, but it also sends a very clear message that if you are a predatory adult, you're going to get arrested and prosecuted, and it will be very easy to convict you because all we have to do is look at birth certificates, instead of having to explore the subjective nature of an intimate relationship and have a judge determine whether or not it is exploitive. It's really problematic for people to characterize intimate relationships, but it's not problematic, and it sends a very clear message, for people to say that beyond a certain age you must let the children and teenagers remain in their child and teen environment to experiment sexually.

• (0950)

[Translation]

**Mr. Richard Marceau:** A 16 year old girl could have relations with a 21 year old man or woman, but not with somebody who is 22 years old. There is a clear limit.

[English]

**Mr. David Butt:** Yes.

[Translation]

**Mr. Richard Marceau:** Very well. And when a young person becomes 17, she can consent to relations with another person whatever her age.

[English]

**Mr. David Butt:** Yes, and the reason is that individuals are going through a transition. They're growing up. They're moving from being children to being adults, and any number you pick will not be the perfect number.

So if you want to pick a five-year peer exemption, that's fine. Some would argue for six years, others would argue for four years. But because people mature at different rates here, we have to pick a number that's applicable.

For example, if driver's licences weren't specific about the age of 16 but said something like "when the child has the judgment to drive safely", it would be an impossible standard to manage. We picked 16 knowing full well that some 15-year-olds are great behind a wheel because they've been driving farm tractors since they were eight; we also know that some 18-year-olds are horrific drivers. But you know what? We picked the number.

It's always a reasonable saw-off, but we pick a number that's enforceable and practical. As a prosecutor in court, I need those standards that are enforceable and practical. They won't be perfect, so I don't say the number has to be any one particular number, but that's the goal.

[Translation]

**Mr. Richard Marceau:** Mr. Butt, I want to hear what you, as a Crown counsel, think of Mr. Gillespie's suggestion. Given the 50% we were just talking about, would you be in favour of giving a mandatory sentence to people convicted of child pornography?

[English]

**Mr. David Butt:** The short answer is yes.

[Translation]

**Mr. Richard Marceau:** Thank you.

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

[English]

**Mr. David Butt:** Could I just elaborate on that for 30 seconds, though?

**The Chair:** Sure, go ahead.

**Mr. David Butt:** My experience is based on the Toronto judiciary and what I perceive to be a failure to recognize the importance of child abuse. Therefore, I don't know if that experience is reflected across the country.

**The Chair:** Thank you.

Mr. Comartin.

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

Thank you all for being here.

I want to deal with the age of consent. You've all raised it, I think, perhaps with the exception of Mr. Phaneuf.

Mr. Butt, you'll know this, and Sergeant Gillespie, you may as well. Remember we used to have the joke back in the 1970s and 1980s about the Twinkie defence? I'm going to jump topics here. You had a case in the United States where a creative defence counsel

put in a defence that his client had overconsumed Twinkies and had taken in all this sugar and had committed, I think it was, a violent crime—a fairly serious one—and in fact was acquitted.

I think, Ms. Turley, it was you who said, and we hear it from Mr. Thompson all the time, that somebody who's been convicted—and I will use the Holly Jones case in particular—comes forward and says, "It was the child porn that made me do it", just like it was "The Twinkies made me do it".

I've never placed a lot of credibility in those people who come forward at that point. It's a good excuse to get off the hook for your own conduct. It's an irresponsible position they take. All the evidence I've ever seen, all the studies I've ever seen, tell me that it has a lot more to do with their chromosomal makeup, sometimes, but more often with the dysfunctional family situations they came out of. So I would like you to address that point, and then I have a second question.

I want to go back to the age of consent issue, and again I would like all of you to address this. We have a problem; we have a constitutional problem in this country. We have provinces that have set the age of marriage at 15. So, Mr. Butt, in your position of taking that age, I assume you would agree that we would have to make an extra exception where the parents or a court have permitted a marriage to take place between two individuals who have a larger gap in their ages than five years.

Finally, Sergeant Gillespie, directly to you, and Mr. Butt you may want to comment on this, is the issue of the 15-year-old. I have a hard time seeing any difference between that 15-year-old and a 14-year-old and a 16-year-old. How would we structure our legislation to continue to prohibit that, and where is the cut-off? Is it 18? Is it 21? If there's a 10-year gap, if there's a 20-year gap in age, do we make that illegal? And practically, how do we do that?

Sorry, I think I asked three questions there, Mr. Chair.

● (0955)

**Ms. Nancy Turley:** I'll address your comments about child pornography. I don't think we're suggesting that every person who looks at child pornography will end up being a murderer. That's not at all what we're suggesting.

However, I think there is evidence to support the fact that—

**Mr. Joe Comartin:** Could you tell me what that evidence is? We keep hearing there's evidence. We've seen none of it.

**Ms. Nancy Turley:** I think the Holly Jones case is an example of that.

**Mr. Joe Comartin:** Do you know what his personal history is?

**Ms. Nancy Turley:** He comes from an extremely dysfunctional background.

**Mr. Joe Comartin:** How is that evidence? How do we judge? Pretend you're sitting here in my seat rather than in yours at this point. How do I know whether the child porn had anything to do with it or whether it was the dysfunctional family he came out of?

**Mrs. Nancy Turley:** The hard thing is that we don't know. It's a bit of it all. What I do know from my own experience as the territorial abuse adviser for the Salvation Army, who is trying to protect the young people in our care from pedophiles—and we know that pedophiles come to churches because they have access to children, and we need youth workers.... We're trying to be very diligent. We've had situations where we've had pedophiles who've come in, and the use of child pornography was very instrumental in how they brought the children in, how they developed those exploitive relationships that initially these kids didn't even recognize as exploitive.

**Mr. Joe Comartin:** Any more than alcohol can be for young children?

**Mrs. Nancy Turley:** In one case in particular—and this is very recent for me—in speaking with this pedophile, it was the use of child pornography that he used to say to this child, “This is okay. Other people are doing it. There's no problem. Don't feel uncomfortable, because see how they do it? We can do it too.” And that clinched the sexual behaviour between this adult and this young eight-year-old boy, which continued for many years afterwards. And as an organization we are now dealing with the fallout from that.

So we're not at all suggesting that child pornography in and of itself causes this. But it is an aspect of the profile of somebody who wants to exploit children. It's another tool for them to use to lure these children and groom them for their own pleasure. I don't think we can just say it is child pornography in and of itself, because we also know that most pedophiles themselves have been abused as children, so we see these patterns of behaviour.

All we're saying is that the use of child pornography enhances that behaviour, and the Holly Jones case is an example of that. He had just looked at these images and went downstairs and Holly walked by. Probably Detective Gillespie can speak to that even more. But I have to wonder if that day, if he hadn't been looking at the pornography, if Holly Jones wouldn't still be alive. But in that moment, that's when he went downstairs and found her.

**The Chair:** I think a couple of the questions were addressed to Mr. Butt.

**Mr. David Butt:** I'll address the connection between the consumption and the acting out. My colleague, Mr. Boudreau, will address the marriage issue.

In respect of the connection between the consumption of child pornography and actually harming a child, I've had occasion to deal with a lot of forensic psychiatrists, and my understanding from them is that the research in this area is not definitive. There is ongoing stuff, but we do not have an answer grounded in research.

**The Chair:** I'll remind committee members that in two weeks we're going to be getting experts in on this subject.

**Mr. David Butt:** Please bear their thoughts in mind.

What we do know right now, from Detective Sergeant Gillespie, is that three in ten of the people they're arresting for child pornography are also acting out against children—three in ten. The academics can debate the causation there—I'm sure it's complicated, and I'm sure

it's worthy of careful attention—but that coincidence of three in ten is troubling and we need to act on it.

● (1000)

**Mr. Joe Comartin:** You're going to use the assault sections of the code more effectively to get longer sentences against them, as opposed to convincing judges that these people should get a harsher penalty because of child porn. You're going after them at that point because they have actually sexually assaulted a child.

**Mr. David Butt:** We lay both.

**Mr. Joe Comartin:** But you're going to get the biggest penalty and the most effective deterrent, limited as it may be, because of the actual physical assault.

**Mr. David Butt:** Maybe, maybe not. I would not want to be categorical on this. You could have a mass distributor with a minor sexual offence. There can be situations where, as a prosecutor, you need to address the whole problem in the actual dimensions that it presents to you. If the bigger dimension of this individual's anti-social behaviour is the child pornography dimension, you need to be able to respond to that. If the bigger dimension is the acting out against children, with minor use of child pornography, you need to be able to take that into the mix as well.

**Mr. Joe Comartin:** I'm smiling, Mr. Butt, because it's the difference between being in Windsor and being in Toronto—we don't have those big distributors.

**The Chair:** Mr. Boudreau on the marriage issue, and then we need to move on.

**Mr. J. R. Norman Boudreau:** Regarding marriage, you indicated that at age 15 you can marry in certain provinces. That's true, but only with the consent of the parents.

**Mr. Joe Comartin:** In all three of the territories you can marry at age 15 without the consent of your parents.

**Mr. J. R. Norman Boudreau:** In British Columbia, children under the age of 19 need the consent of their parents to marry. In Quebec, you cannot marry under the age of 16, even with the consent of the parents. In Manitoba, you cannot marry under the age of 17 without the consent of the parents. In Ontario, 16- and 17-year-olds can marry with the consent of their parents, but they cannot marry under the age of 16.

**Mr. Joe Comartin:** We have the problem of the territories.

**Mr. J. R. Norman Boudreau:** Yes.

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

Mr. Macklin, please.

**Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.):** Thank you very much.

Let me follow up on Mr. Comartin's point. You compared the criminal law's treatment of age of consent to the regulatory treatment of those drinking and driving. There's quite a difference between using the criminal law to control a person's sexuality and using regulatory control to deal with someone's ability to drive. A more appropriate comparison was just brought up—the ages at which provinces and territories determine that a person can marry. In most provinces and territories it is possible for a person under age 16 to legally marry, in many cases with court approval.

How do you reconcile the difference in treatment that your proposal would suggest in respect of raising the age of consent under the Criminal Code?

The comparisons need some clarification. This is not a regulatory matter; it's a matter of criminality.

**Mr. David Butt:** With respect to criminality, that's precisely my point. We have the potential for vulnerable young teenagers to be victimized criminally in ways that will have a profound impact on them for the rest of their lives. The standard we're setting up to protect them, an exploitation standard, is, in my humble experience, an impossible standard to apply. We need to do better in finding legislative measures to reach our goal, which we all agree is laudable.

We all want to protect kids from exploitation. But the concept and the legal standard have to be different things if we're going to effectively reach our goal. I'm saying we have to recognize this transition. During the young teenage years, they have to be free to engage in safe sexual conduct with their peers, but they have to be free from the predatory adults. This has to apply to kids in the 14 to 15 age range.

**Ms. Danielle Shaw:** You didn't direct the question to the Salvation Army, but perhaps I can comment on that, and reinforce it, to some extent.

Prior to preparing this presentation, I certainly was not one of the people who would have advocated for increasing the age of consent. I thought there were all sorts of problems with it.

However, I'm a lawyer myself and a mathematician.

• (1005)

**Hon. Paul Harold Macklin:** Somebody has to keep track of illegal billings.

**Ms. Danielle Shaw:** That's right.

I conducted a search of decided cases in Quicklaw. I wanted to look at the existing Criminal Code provisions with respect to the relationship of trust or dependency and to see what charges were brought up, what analysis was done.

I found numerous cases. A 16-year-old girl went to live with a close family friend for the summer and this 37-year-old man had a sexual relationship with the 16-year-old girl. Of course, the analysis was, did she consent or did she...? I mean, she consented, so that wasn't the issue. The issue, then, was whether this was a relationship of trust or authority or dependency. It was a very convoluted analysis. In the end, the young woman ended up with an STD. It was devastating for the family, and so on.

Maybe you don't criminalize things that are emotionally difficult, but I found a number of court cases in which significantly older adults, close family friends, entered into sexual relationships with teenagers, and it seemed to me that something was not quite right here. And the analysis is very complicated once judges get into it.

**Hon. Paul Harold Macklin:** One of the witnesses who appeared before us clearly said that what we would be doing, though, was tending to put more of the onus on the child in this situation by increasing the age of consent and criminalizing, in effect, the child in this situation. How do you react to that?

**Ms. Danielle Shaw:** I don't think so. That was my concern initially, but when I look at the outcomes in these court cases, people are pursuing the adults who have had sexual relations with the children, and in my opinion, the focus of prosecution is on the adult. But it's a very difficult test to meet, to show that there was exploitation.

**Hon. Paul Harold Macklin:** In following that through, I think at least two of you in your representations said that the sexual exploitation offence, as described in the legislation, would in fact be something we should definitely be keeping. Therefore, you must see some value in the sexual exploitation offence itself.

The indicators are the age of the young person, the age difference between the two, the evolution of the relationship, and the degree of control or influence exercised over the young person. I'm getting a sense that you're saying that is still meritorious.

**Ms. Danielle Shaw:** Yes. I think from the Salvation Army's perspective, absolutely, it's meritorious to try to protect people from sexual exploitation. I recognize, however, that the test is very difficult, and even with the existing Criminal Code provision that deals with a relationship of trust or authority or a relationship of dependency, it's very difficult.

**Mrs. Nancy Turley:** I'd like to comment on that. Recently I met with this pedophile. He had a number of victims over many years. As we went through his list...he started developing these relationships in each new community he went to—friendly with the parents, all of this. As I challenged him about his involvement, he would say, "But she came on to me", and I'd say, "But she was 15". In his mind, that was the defence he put out.

As people who are challenging that kind of behaviour, we need to be the ones to say "No, the onus was on you. You were the adult in this situation. You are responsible for what transpired here."

They are 14- or 15-year-old children. They are not capable of this relationship, but they are responsible for dealing with all of the fallout and damage, and we see that in our social service agencies again and again.

**Hon. Paul Harold Macklin:** I tend to agree. I think the exploiter needs to be held to account, clearly, and this does give us an opportunity to do that.

**The Chair:** Time.

**Hon. Paul Harold Macklin:** Are you suggesting my time is up?

**The Chair:** I am, and it's nice to end on a point of agreement.

Mr. Thompson, for five minutes.

**Mr. Myron Thompson (Wild Rose, CPC):** Welcome to all.

First of all, I extend my congratulations to Mr. Gillespie and his team of workers in Toronto for the work they are doing, and the work they have done. It has lifted children out of very precarious positions. There was a well-known situation in one of the Carolinas. I want to extend my congratulations for that hard work. That was really a good job.

I'm not a lawyer. I'm not a crown prosecutor. I'm not a judge. I'm a grandfather who has seven grandkids. As a school teacher I worked with children in secondary education for nearly 30 years. Over that 30-year period of time, I could not believe the number of cases where a 14-year-old or a 15-year-old was caught in a very exploitive situation. I couldn't do a damn thing about it. The police couldn't do a thing about it. The parents couldn't do a thing about it. I want some legislation to come out of this committee that addresses when a 14-year-old or a 15-year-old is caught in a situation.

I can give you one example when I was a principal. A girl was in a room with three individuals who were over 20 years old for five days, and nobody could go in there. The police and the parents couldn't go in there, because she was there with her consent. I went in there. I literally tore the door down and dragged the girl out. I brought her back to school, kicked her in the butt, and took her home. The police informed me there could have been about 15 charges laid in that case, and they would have all been against me for taking that kind of action. That's got to change.

Do you see anything in this legislation that's going to say we can take control of it, as this legislation is written, or does it drastically have to be changed?

In terms of child pornography, Mr. Gillespie, through you and other colleagues across the country in different police forces, I've seen millions of examples of the garbage that's being put out there. I don't think it's even worth the conversation about whether it's a precursor to child molestation. Obviously, it is. I just want the garbage gone. I want it away from my grandkids. I don't want them to be exploited. Does this legislation do that, or does leaving "or art" under "legitimate purpose" kill any possibility?

How am I as a grandfather, how are other parents across this nation, going to say, "I feel more comfortable today because of what the federal government has done with its legislation"? What do we have to do, in your opinion?

•(1010)

**The Chair:** Can we get a response on the defence of public purpose? I think we haven't had much on that one yet.

**Mr. David Butt:** I would be happy to address that.

Just to give you my background, I prosecuted Eli Langer's paintings. I was the prosecutor. That was the first case to test, is it art or is it child pornography? I've got to tell you, the balance you've struck in this law is good, in my view. I wish you could say "no artistic merit defence". It won't work for a couple of reasons.

First of all, the cases at the Supreme Court of Canada have already decided on our charter. Unless you're going to use the notwithstanding clause, my own view is don't even try.

Second, there are visual depictions of the child abuse issue that ought to be protected. I say this as a prosecutor who has done his best to put child pornographers in jail for years. There are. What are they? Art therapy for child abuse, for example. I have close contact, obviously, with forensic psychiatrists who use the material for research purposes to understand and better protect society from these people. They need to do their job. As a prosecutor, I need to receive those images, discuss them with police officers, provide them to the defence lawyers so they can defend their clients.

Tragically, this is a horrible thing, but as a society, when we have to deal with it, we have to handle this material in a few different ways. You're never going to get a perfect balance, but where the balance, in my humble opinion, is well struck is where it says that if there's a dispute between giving artists their freedom and hurting children, children come first. To me, that's what this legislation says, and on that defence, I support it.

**The Chair:** Are there any other comments from any of the other witnesses?

**Mrs. Nancy Turley:** Our stand is that based on the definition we have, child pornography is something that shows a person under 18 engaged in explicit sexual activity, or shows the sexual organs or anal region of a person under 18 for a sexual purpose, or advocates or counsels sexual activity with a person. That's the definition we're talking about here. We're saying, what is a legitimate artistic purpose? What Mr. Butt has described isn't to me an artistic purpose but a prosecutorial purpose. There is a reason for them to need to have access to this.

Out of the overflow of the heart the mouth speaks, and I think out of the overflow of the heart the paint brushes as well. So with artists who are depicting these children for the sake of art work, in my mind, that's a very different issue than using it as part of a prosecution, or using it for the art therapy of a child who's trying to come to terms with what has happened to them.

If the artistic definition is what needs to be considered, how do we actually define what is and isn't artistic?

•(1015)

**The Chair:** Thank you.

Mr. Thompson.

**Mr. Myron Thompson:** I'd like to ask Mr. Gillespie if the police department is still required to go through all this stuff to try to determine if there's any artistic merit there.

**Det Sgt Paul Gillespie:** I guess the short answer at the end of the day is yes. This is problematic when we seize hundreds of thousands of images of abuse. We're often asked by the trial judge to categorize, classify, and give different degrees of disgust, or different degrees of activity that a victim might be involved in. So at the end of the day we are typically asked to spend days, if not weeks, counting the images and trying to go through them.

**Mr. Myron Thompson:** That's a shame, if you want to know my opinion.

**Det Sgt Paul Gillespie:** If I can just say one thing, I'm certainly closer to Mr. Thompson's view on this artistic merit defence. But I've had numerous discussions with Mr. Butt, and the reality is that on a very similar issue, it has been discussed and decided by the Supreme Court, so I have to adopt David's opinion on it.

Having said that, I've been doing this for about five years and I've never had a case where we only had evidence against somebody who was on that borderline—almost the Sharpe decision stuff. The unfortunate reality is that even if somebody has things that might have been created by themselves or for themselves, that's not an issue, because they also have 200, 200,000, or 2 million images of awful other issues. That's just the reality, and I think that's because of the Internet.

**The Chair:** Thank you.

Thank you, Mr. Thompson.

*Monsieur Ménard, cinq minutes.*

[Translation]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Mr. Gillespie, you have told us that half of the people convicted of possession of child pornography received conditional sentences or even conditional discharges. Can you tell us how many of those have reoffended?

[English]

**Det Sgt Paul Gillespie:** I would say we have charged approximately five or six of them with reoffending. The problem is resources. In my honest opinion, if I had a team that was able to follow up on compliance issues and try to make determinations that people were doing as they should...I believe the reoffence rate would be considerably higher. I don't have the manpower to confirm recidivism unless it comes in through another door, because we have so many other cases on the go.

[Translation]

**Mr. Serge Ménard:** Five or six on how many?

[English]

**Det Sgt Paul Gillespie:** We've laid charges against about 130 people, and about two-thirds of those have been disposed of. So out of that 80, let's say around 40 people have been given conditional sentences or suspended sentences. In Toronto alone—and I'm not sure if they were charged by any other jurisdictions—we've laid additional charges against five or six people who have reoffended. Again, I don't have the manpower—and that's the problem—to reinvestigate somebody who is supposed to stay at home, and chiefly ask them not to use the Internet or to do this kind of stuff. It's very intrusive, and it's a very lengthy investigation. Actually, I can't go into their houses to make sure they're doing what they should.

[Translation]

**Mr. Serge Ménard:** If I understood correctly, you would like a minimum prison sentence of 15 days?

[English]

**Det Sgt Paul Gillespie:** In my opinion, it should be 60 days, two months—

[Translation]

**Mr. Serge Ménard:** For a first infraction?

[English]

**Det Sgt Paul Gillespie:** —for a first conviction regarding child pornography. Yes.

[Translation]

**Mr. Serge Ménard:** For simple possession?

[English]

**Det Sgt Paul Gillespie:** Yes, absolutely. Again, the word “pornography” doesn't do this topic justice. These are images of child abuse, and I'll be honest with you, in the United Kingdom the word “pornography” is not in their legislation any more. They're called images of abuse. These are horrific crime scene photos and memorializations of torture. Whether somebody has 1, 2, 10, 50, 1,000, 100,000, or 1 million, they're all individual victims. I don't see it as simple possession. This is somebody who has chosen to be involved in the exploitation and further exploitation of these children.

[Translation]

**Mr. Serge Ménard:** I am not asking you why, I want to know if it is correct: you would recommend a minimum prison sentence of 60 days for anyone who had in his possession...

• (1020)

[English]

**Det Sgt Paul Gillespie:** Yes, sir.

[Translation]

**Mr. Serge Ménard:** Mr. Butt, if this was the law, would you charge all those people of an offence that would carry 60 days in prison? Wouldn't you rather look for—as you were doing at the time for importing marijuana—another charge that would not carry a minimum sentence?

[English]

**Mr. David Butt:** I think Detective Sergeant Gillespie has hit the nail on the head that these are images of child abuse. What he did not tell you is that his department has standing orders that they must regularly seek psychological stress counselling on a mandatory basis, simply because their job involves looking at these pictures. It's difficult to imagine—

[Translation]

**Mr. Serge Ménard:** Again, Mr. Butt, I am not asking you why. I am asking you if you would still charge people who could get 60 days of imprisonment. You would still charge them? You wouldn't try to avoid in some cases a minimum penalty?

[English]

**Mr. David Butt:** I would, as I was explaining, because of the corrosive nature of these pictures.

[Translation]

**Mr. Serge Ménard:** O.K.

You know that to have a criminal record for child pornography would be very shameful for anybody here or for 95% of the people. When somebody goes for 60 days in prison, whatever his name, he won't be able to work anymore, he loses his job. After that, you would rely on psychological tools to help him change. That's what you would do in all such cases?

[English]

**Mr. David Butt:** Yes. If I can be permitted to explain why, I deal with the other side of the coin as a prosecutor. These are images of sexual torture, and if we do not recognize that this is what people are consuming, we undervalue our children deeply. To date, people don't understand that sufficiently well, and we need to change that.

Let me give you a comparative example. Thirty years ago, people not only didn't care much about drinking and driving, they joked about it and said, "Let's have one for the road". As a society, it took us a long time, but we slowly learned that there is death and destruction on the highway as a result of what used to be a socially acceptable act. We can no longer minimize the horror of these images.

[Translation]

**Mr. Serge Ménard:** But there were the same minimum statutory sentences at that time, weren't they? It was 15 days for a second offence and three months for subsequent offences.

[English]

**Mr. David Butt:** We had to go through a social process of—

[Translation]

**Mr. Serge Ménard:** Education is what changed the behaviour of people, not minimum sentences.

[English]

**Mr. David Butt:** With respect, my own view of the courts in Ontario is that it is an appropriate stand at this point for Parliament to take to say that when it comes to child abuse, jail—

[Translation]

**Mr. Serge Ménard:** I understand that, Mr. Butt. You want a minimum sentence of 60 days for possession of pornographic material involving children. Do you want the same sentence for sexual assault?

[English]

**Mr. David Butt:** Let me first address the 60-day number. There can be reasonable debate around the number. If you want to call it 30, if you want to call it 20, if you want to say no conditional sentences, if you want to call it three months—this is not a precise science. What I think is important, though, is that Parliament sends a message—and I agree with where you're going on this—that for every offence that involves the sexual exploitation of a child in Canada, you will go to jail. I think there can be no better message sent to protect our children than that: if you sexually exploit a child, you will go to jail. We can debate the numbers—and there's lots of debate about that, and I don't take a firm position on the number—but that message, to me, is an important message in principle that we value our children's sexual safety.

• (1025)

[Translation]

**The Chair:** Thank you, Mr. Ménard.

[English]

Mr. Maloney, five minutes.

**Mr. John Maloney (Welland, Lib.):** Detective Sergeant Gillespie, you indicated that 50% of possession of child porn

charges are conditional discharges. What is the range for the other 50%?

**Det Sgt Paul Gillespie:** Often offenders will have had to serve some time in pre-trial custody, perhaps a couple of days, a week. They're often given credit for that. The most I have seen in Toronto for possession of child pornography of a number—perhaps 2,000 or 3,000—of images is somewhere between six months and nine months for a first offence. We have a second offender who has received upwards of three years, and the individual had almost a million images.

The reality is they are very short sentences, and often only if there are other extenuating circumstances as well. We have had people in Toronto convicted of distribution of child pornography who were given a conditional sentence. They've been running a program that allows them to trade with the rest of the world at will and again have been a given conditional sentence.

There are just not too many that come to light where people got custodial sentences that didn't involve, for whatever reason—perhaps personal reasons, a prior record, or transient in nature—that they were held in custody pending their guilty plea or the nature of the trial.

**Mr. John Maloney:** Mr. Butt, you referenced the corrosive nature of these charges, and you are in the same system as Detective Sergeant Gillespie. Why aren't there more appeals to sentence?

**Mr. David Butt:** The legal system moves very slowly. The appellate court judges work on precedent. So every time they come to examine whether a sentence is fit, what's the first thing the appellate court judges do? They look at the precedents that went before them. In other words, judges, by nature, live their life looking in the rear-view mirror.

I'm asking Parliament to do something very different, to look forward and say, historically, we have not done enough, and the courts, because of their quite proper and quite principled look at precedents, which are behind, can't do the job alone. We need to look forward and say we need to move the yardsticks. The courts have a very slow, accretionary—for good reason—approach to social change. I'm saying children deserve more, quicker, and that's Parliament's role.

**Mr. John Maloney:** And that responsibility is with us to set minimums.

**Mr. David Butt:** Yes.

**Mr. John Maloney:** Do you agree with the numbers? You were playing with numbers here, but what might you suggest as a prosecutor?

**Mr. David Butt:** As a number? You know what, people call me a little bit looser on this and a little laxer. I'd suggest, for a first offence, no conditional sentence. In other words, it will be a minimum of one day in jail. That way Parliament can send a message that everybody goes to jail, but we'll give the judge the latitude to consider the personal circumstances of the offender.

Do you know what one day in jail means? In my court it means you go downstairs in the basement, sign some papers, and come back up. That's a jail sentence. And if you have a low-end offender, that, plus probation and so on, is all you want to impose. That's a jail sentence. I would favour no conditional sentences, but a one-day minimum.

But on the second offence, a year. To me, that's a way of balancing humanity to an accused person and protection of children. You send the message that you're going to go to jail, and the judge can make it as big or as little as he or she wants in the first case. But, boy, if you're back here again, you have no sympathy from us, and deservedly so. That's how I'd do it. But as I say, the numbers are fluid, and people can have different reasonable opinions.

**Mr. John Maloney:** We've heard of the number of images that must be examined in this specific case, and it's just phenomenal. Are there any legislative tools we could give you that would still ensure your convictions but reduce your resource time in having to examine them, catalogue them, and bring forward all these images?

How much porn is enough to get a good conviction?

**Mr. David Butt:** I haven't given thought to the wording of this, but the idea that I think would make sense is that a judge may draw an inference from a selective viewing. So if somebody has eight million images crammed on their hard drive, and the police can demonstrate that in the facts of that case they have taken a reasonably selective view of that hard drive, it's permissible for the judge to conclude that the rest of the images are child pornography—subject always to the ability of the defence to demonstrate otherwise, even just to raise a doubt that it's otherwise.

I would not put an onus on the accused in a legal sense. You raise a doubt. And do you know what? They can. It's their collection. It's not a difficult task for them to go right to their hard drive and say, "You know what? This folder, those are pictures of my vacation. That folder, those are pictures of my work company picnic." They can do that very easily. The police have millions of images that they otherwise have to sort through.

So the idea of a representative sample...as long as the police have reasonably structured their representative sample.

• (1030)

**Mr. John Maloney:** Not much has been said about Internet service providers and what role, if any, they might play in this equation of fighting pornography, especially child pornography. They take the position that they really don't know what's out there.

So with the advances of technology, as we heard even today, where one little piece of equipment the size of a phone will have the capacity of four computers, should we be looking at this area as well, the ISPs?

**Mr. David Butt:** The short answer is yes. The question, though, is how we should be looking at it.

On the one hand, you have the business people who say, "I don't have the first idea of what's in there. I'm just providing a business. Don't come to me." I think that's irresponsible.

On the other hand, they would have very profound technological challenges if you were to say to them that they are responsible for all the material that goes through their service.

I would come down the middle on that. I would say there is an obligation for this industry to participate in the search for solutions. We have to sit down with them. And I'd have more of a carrot at this stage than a stick, that we will charge them, because those technological issues are very complicated. I think just saying, "You will be charged because you helped distribute it" is not going to be productive. But the incentive to be there at the table working with law enforcement to solve these issues I think is very important.

**Det Sgt Paul Gillespie:** If I might just quickly add, I've been involved in discussions with several ISPs for at least a year now on that topic. In my mind, the reality is they are allowing access to people to go to these terrible chat rooms and news groups. I've been discussing it with the major service providers in Canada. At the end of the day, their reason to me why they can't, perhaps, self-police more what they are doing comes down to a resource issue—they have only two people in this area, they have only three, or they have only four. And these are some of the biggest, wealthiest companies in Canada. It always comes down to their saying they don't have enough people. My short answer is hire more people. They shouldn't be in the middle of this process where people can access this stuff, because there are different ways they could limit or cut off the access.

I'll be honest. I don't think they're motivated enough at this point, and I'm not quite sure why. It would just be for the greater good that they do it. And I agree, David, you have to start softly, but we've been doing it for quite a while now, and we're not getting anywhere.

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

Mr. Comartin.

**Mr. Joe Comartin:** If I can follow that up, Sergeant Gillespie, I come with a bias here. To some degree, not so much with the work we're doing protecting children when they testify, but with the rest of this committee's work, I find it is not really where it's at. The work that you're doing is.

I'm just wondering, has your department or anybody within police agencies across the country made any specific recommendations that this committee, but more likely another parliamentary committee, could follow up on so that we would actually put into play legislation that would require the industry to clean this up?

**Det Sgt Paul Gillespie:** I think so.

Maybe I can start, and David can finish it.

It's just opened so many doors. People have this thought that there are websites out there and that the service provider could do something and all of a sudden you wouldn't be able to access them any more. That is sort of a reality, but it's a very difficult process.

There are news groups and areas on your computer you can get to. You can go to these sites like alt.sex.babies. They're very easy to hit. They're self-explanatory. And it's nothing but horrific child abuse and discussion of that. Those are a lot easier to clean up, and those are the ones we have a great deal of problem with.

The analogy I would make is that if I owned a huge store and in the back of aisle 15 I was selling alt.sex.babies.... I've gone to the service providers and said, "Turn that access off". They say they didn't know it was in their own store. That's not acceptable.

So I think within defined specifics there absolutely is certain stuff that could be done very quickly. They're selling and providing access. I don't think this whole thing about "I don't know what I had" can fly forever.

•(1035)

**Mr. Joe Comartin:** Are you aware of any other countries that have it? I understand England's done a number of things. I think you're following that as well, in terms of using other people to identify, but is there any jurisdiction you're aware of where they have effectively regulated out of existence that kind of child porn?

**Det Sgt Paul Gillespie:** Certainly the Internet Watch Foundation, which is in the United Kingdom, goes out and accesses. They collect tips, and when they identify known child pornography sites in these areas, they notify British Telecom, which is one of the biggest, if not the biggest....

**Mr. Joe Comartin:** But that system really is after the fact. I'm looking at preventive legislation that would force the service provider to prevent that from happening.

**Det Sgt Paul Gillespie:** To do that themselves. Actually, I believe in one of the Scandinavian countries they've actually recently laid charges, with new legislation holding them accountable. They've actually recently charged their largest Internet service provider with not stopping something they should have stopped. They're before the criminal courts. I can find out exactly where and when.

**Mr. Joe Comartin:** If you could, and provide that to the clerk of the committee....

**Det Sgt Paul Gillespie:** Absolutely, yes.

**Mr. Joe Comartin:** Mr. Butt, this is along the same theme of my not thinking this committee is really part of this legislation, or is really all that useful. I say that in part because as far as I know, Langer, Sharpe, and now Beattie are the only three cases I am aware of in which artistic merit, or the new sections that are coming in now, have ever been used in our courts. I am told by Justice there may be a couple more. Are you aware of any cases other than those I have just mentioned?

**Mr. David Butt:** No, I'm not, and I think it's an important point from my perspective as a prosecutor. You need to have a reasonable balance between art and protecting against child abuse in your law. Does that mean it's going to get used every day? No. Is the artistic merit debate an important one theoretically? Yes. Is it an important one practically, day to day in the courts? Absolutely not.

**Mr. Joe Comartin:** So following that up in terms of what you need, clarifying and perhaps simplifying the age of consent, making it easier to be used—that's where the thrust needs to go in terms of the day-to-day practical prosecution.

**Mr. David Butt:** Yes, that's absolutely right.

I'd also like to say that the prevention piece is critically important. As a prosecutor, all I'm trying to do is clean up messes that have already happened. If we can prevent those messes from happening in the first place, we're much further ahead.

It will be a complicated issue, because what the Internet service providers will say to government is, on the one hand, we've got to get in there and clean all this filth out, and on the other hand, with your privacy legislation, you're saying don't go there. We're between a rock and a hard place. What do we do?

I have some sympathy for their position, but I think we need to explore that.

**Mr. Joe Comartin:** But using your same test, when it's about protecting kids, can we shift the onus over, and will the Supreme Court accept that? Can we do a reverse onus here and say you have to establish why you didn't know that was on your...?

**Mr. David Butt:** That's a great idea, and the theme of protecting kids I think can generate a whole lot of consensus about solving a problem and addressing a problem, but before I'd say yes, you can do that, and put a reverse onus in, I'd have to know what it means technologically. Does it mean each company has to have people monitoring everybody's e-mail? That raises hackles for lots of people, and quite reasonably so. What's involved technologically in doing that?

The goal? Absolutely. How you get there? We need to think a little bit more carefully, because privacy is important too.

**Det Sgt Paul Gillespie:** If I can just say one thing, in these meetings over the last one-plus years, with all these issues with the service providers...we keep asking for these meetings so we might come up with solutions. We say bring us your technicians, tell us your challenges, and let's work together. The technicians never come. The lawyers always come.

It's very frustrating, and they always talk about the privacy issues, and we can't because we're not allowed to...but just getting that technical group to the table would certainly be a benefit.

**Mr. David Butt:** It would be a great incentive if a governmental body like this committee, for example, said we're going to make some decisions, and whether you're at the table and part of the discussion or not, we're going ahead anyway. As Paul says, you can have voluntary associations and discussions until you're blue in the face, but until somebody says they're going to make a decision, and here's your chance to affect it, maybe nothing will happen.

**Mr. Joe Comartin:** Mr. Chair, just to finish this, maybe we could put on our agenda at some point that this committee should be sending that message out. It's important.

**The Chair:** Thank you very much, Mr. Comartin.

Mr. Warawa.

•(1040)

**Mr. Mark Warawa (Langley, CPC):** Thank you, Mr. Chairman.

Thank you to each of the witnesses for being here. Again, I am finding this very informative.

I would agree that the age of 14 to 16 years is far too young. I appreciated your examples of comparative age applications. I thought the driver's licence was a good one for basically showing maturity.

The child is growing from childhood to adulthood and there's a transition period. Does that individual have the maturity and cognitive skills to be able to look ahead to his or her best interests? Is it a wise decision to have a sexual relationship with this other person? There are long-term consequences if it's a bad decision.

I would agree with you. The majority of Canadians for a number of years have asked for the age of sexual consent to be raised. It has been very frustrating and puzzling as to why there has been a resistance to raise that age. Hopefully, your being here today will help to spur us in that direction.

We had Dr. Langevin last Thursday. He's a forensic psychologist with the University of Toronto who did a study on 2,000 sex offenders. He provided explosive testimony. Basically, he said that 100% of sex offenders will reoffend. He shared that the circle of support is the only thing that was identified as a way of managing these people, but other than that, they will reoffend. They pose an extremely high danger within the community. Picture-takers were the highest, but he listed criteria. It was very interesting.

I'm going to be asking questions on recidivism and what you would recommend as a way of managing these people. Do we put them in jail, lock them up and throw away the key? Do we release them into the community? Do we use conditional sentencing? Those are some of the questions I'm asking.

I would also like to have your answers on the psychological effects on the police officers, detectives, and investigators who were dealing with these pictures. You had started on that and were cut short. I'd like to have your comments.

My third question would be regarding the growing problem of increased access to these pictures on the Internet.

Detective Gillespie, you said this is a growing problem in that these pictures have become more available and easier to take and pass around. Do we have a growing problem because of this increased availability to pictures? Do we have a growing number of sex offenders or potential sex offenders because of that?

My last question will be on the dangerous offender classification. Is a sex offender classified as a dangerous offender soon enough?

Thank you.

**The Chair:** If anybody kept track of all those questions and in what order, go ahead.

**Mr. David Butt:** I can address those questions.

On what to do with offenders in terms of locking them up, I think we have to realize there is a significant public health component to this. For the most part, child abuse and images of child abuse are all driven by the psychiatric condition of pedophilia. There are situational offenders who are not sexually oriented that way, but as

long as we fail to recognize that there is a psychiatric, psychological, and therefore public health component to this, we need tougher sentences. We also need the kinds of community resources that can address it as a public health problem.

I say the words "public health" on purpose. For example, when we have people with infectious communicable diseases, we don't have any problem telling them they can't work in a restaurant or that if they have unprotected sex with somebody, we're going to charge them with an offence. We don't have any problem taking away the liberties of people who we know are public health problems. I think we have to start thinking of pedophiles as public health problems. Step beyond the criminal justice system. Don't ignore it, but step beyond it and look at those issues as well.

On the psychological effect, when I prosecuted Eli Langer's paintings, people said they weren't that bad. You've had testimony on that. I still get flashbacks. I can see those paintings vividly in my mind. That prosecution was in 1993. There's a psychiatric thing called intrusion that is consistent with post-traumatic stress, and you're suddenly reliving events involuntarily. I relive those paintings, and I can see them right now.

•(1045)

**Det Sgt Paul Gillespie:** What we're seeing under the typical seizure today is not the 10- or 12-year-old frolicking on the beach. The vast majority of the images of abuse that we seize now involve children under the age of six years old, often in diapers, in terribly violent situations, tens and hundreds of thousands at a time, full-length movies. We're seizing almost no new pictures now. In the bowels of the Internet we're working through undercover, they're coming out in full-length movies. From those movies they're split into pictures. They have often romantic soundtracks in the background. We will see a six-month-old baby violently sodomized and raped with wonderful music in the background. This is to normalize in the offender's mind their behaviour, to make them think they're not really so bad. I just want to be clear, because we have been talking about the topic. I just want to make sure we're all on the same page with what we're seeing.

**Mr. David Butt:** In respect of the relationship between increased Internet distribution and increased number of offenders, studies are not there on that. We don't know. The Internet exploded in the mid-1990s. I did the biggest prosecution in Canada for child pornography in 1993. It was 13 videocassettes. Now, millions are standard. So it's very new, and the studies aren't there yet.

Dangerous offender legislation? Big question, simple answer: we need to look really seriously at responding much more effectively, and with more nuance, to the situation of the sexual offender. We're learning much more—Dr. Langevin's study is a great example—about recidivism rates. We need to revisit this. We don't necessarily want to have the full-bore stigma of dangerous offender on every repeat child pornographer, but we do need to recognize them as an ongoing concern, for both public health and criminal law, and have legislation tailored more directly to what we know about them.

In respect of Dr. Langevin's study, Dr. Langevin was a defence psychiatrist in the Langer case. He's well known as a pro-defence psychiatrist. So you know how in politics you always ask, "Who's the speaker?" As a prosecutor, I look and I say, "You know what? If Dr. Langevin is saying that, holy cow, that's got to carry some weight." He's normally going the other way.

**Ms. Danielle Shaw:** I don't know Dr. Langevin myself. I'm not familiar with his research. I have, however, done a fair bit of research in preparation for this presentation. I have been working for the last 13 months with a convicted sex offender, who's presently incarcerated, not for his most recent sex offence but for having breached some terms of release. He drank alcohol.

The point we tried to make in our brief is that there is a risk. We don't want to underestimate the risk that sex offenders will reoffend. I'm not talking about the child pornography offences, but rather sexual touching, sexual interference. That's what this particular person has dealt with. There's a risk that they will reoffend. They need treatment. They need interventions. They need to be re-educated.

This fellow I spoke to, he knew I was coming here today. We talked at length. We spent two and a half hours talking about Bill C-2. What he said to me was that we need to educate kids. We need to teach them "good touch, bad touch". You need to make them street-wise. You need to educate offenders; you need to re-educate offenders. You need to teach them about the consequences of their offences. You need long-term interventions for them. You need support for victims. This comes from someone who is currently sitting in jail, who has a history of offences.

This is someone who has said to me, "I don't understand how this happened this way". He has a history of sex offences, about a 10-year history, on and off. He's had four or five sets of charges for sex offences against children. He said he was never once offered treatment, until 11 months ago.

We've done a catch-and-release thing with him. He serves his time, he gets out—no pre-release planning, particularly if he's in the provincial system, no options for treatment. Now he is facing a dangerous offender designation. Why? Because he's got a long history of offences. He is someone who is receiving treatment. I think he's benefiting from it. I'm not a forensic psychologist or a psychiatrist. He wants to continue, and he wants the support in the community. He knows that if he goes back into the community, he's going to face risk. He said to me the other day, "I don't know if I will re-offend". This is why community-based support is important, because he's got the support on the inside. He's going to have the support when he gets out as well.

Let's not assume that if we lock people up they're going to be okay when they come out.

•(1050)

**The Chair:** You can speak briefly, Mr. Phaneuf, and then we have to move on.

**Mr. Gordon Phaneuf:** I have just one cautionary note. One needs to keep in mind the typology of sex offenders. I believe Dr. Langevin in his research is talking about pedophilic offenders. I just draw the committee's attention to the data coming out of the United States that's published by Dr. Finkelhor from the University of New

Hampshire. He's a highly regarded researcher on child sexual abuse. Based on the data from their national incidence study, which comes out of a health sentinel reporting system—that's data coming from both mandated reporters and non-mandated reporters, and it is considered a very clinically solid data collection system—across the United States the incidence of reported and substantiated child sexual abuse is declining.

One has to be very careful how that's interpreted, and there are many artifacts that need to be looked at in terms of what's occurring with the reporting phenomenon and what things impact on reporters reporting; nonetheless, the trend is one that has to be examined, and public policy officials really have to take it seriously.

**The Chair:** Thank you.

[*Translation*]

Mr. Marceau, you have five minutes.

[*English*]

Then we'll conclude with Mr. Breikreuz.

[*Translation*]

**Mr. Richard Marceau:** I will be very short, Mr. Chair.

I would like Mr. Butt and Ms. Shaw to tell me something. I now know that Ms. Shaw is both a lawyer and a mathematician.

If Bill C-2 had been in force at the time the Sharp case was heard, would the decision, in your opinion, have been different?

[*English*]

**Ms. Danielle Shaw:** I think it might have been, because now Bill C-2 has the two-part test: is there a legitimate purpose related to art, and what is the likely impact of this material on children? I don't know—I wasn't part of the prosecutorial team, I didn't read the transcripts, and so on—but just looking at the law itself, I think there might have been a difference.

**Mr. David Butt:** In my view, absolutely, yes. Remember what one expert witness said in the Sharpe case. He stood up and said, "The least interesting thing about this written work is its subject matter. I look at things like sentence structure and the flow of words, and it has artistic merit from that perspective." A witness I called in the Langer case said, "I often tell my students, when you're assessing art, turn the painting upside down. Forget about the subject matter. Look at the use of colour, the use of light."

From that perspective, the work had artistic merit, and those artists were right, and Mr. Sharpe deserved to be acquitted, the way the law then stood. It's our responsibility to say, "Hang on a minute. The subject matter of the work is important, and if it's advocating child abuse, we don't care if it's artistic: it's a crime."

That's what this law now does. So I say yes, the result would have been different, and this is an important addition to that law.

[*Translation*]

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

[*English*]

To conclude, Mr. Breikreuz.

**Mr. Garry Breitreuz (Yorkton—Melville, CPC):** Thank you very much, and my thanks to the witnesses as well.

Rehabilitation is a very noble objective, and our courts have had that objective. Unfortunately, the courts have treated sexual crimes much the same as other crimes, with conditional sentencing, etc. I think that has been a gross disservice to the protection of the public.

One of you told us—I think it was the Toronto Police Service—that three out of ten of those who use child pornography or images of abuse imitate what they see. I could not sleep after Mr. Gillespie showed us some graphic images here a couple of years ago. To me, that was a shocker.

The lives of our children are being destroyed. In fact, we have dead men and women walking today because of what's happening in our society.

One of you stated that judges by their very nature look in the rear-view mirror. I feel that the protection of our society should be uppermost. Don't we have to have a bit of a shock effect here, if we have what is being termed by you as "low-end offenders" committing offences and maybe just being given a nominal or conditional sentence? Doesn't there have to be enough of a penalty to make it worthwhile for the police and the courts to do the work necessary to get a conviction?

I would like to pose this question to you, and maybe this is a good one to end up with. On the view that the protection of society has to be uppermost, and in light of the remarks I've just made, doesn't there have to be a distinct difference in the law we pass—i.e., Bill C-2—to send a signal to judges that there now is a stricter law in regard to sexual abuse of children and they must now treat this as a completely different law to enforce in our society? Doesn't there have to be some kind of break with the past, so we begin to deal with the very severity of the nature of these crimes?

• (1055)

**Det Sgt Paul Gillespie:** May I start? My answer will certainly be the shortest. I absolutely agree.

We've spiralled down to the point where this case refers back to that conviction, and that conviction refers back to that sentence, and I think we've lost all focus. I think it's time to refocus, and I think that's a really good message.

**Mr. David Butt:** I would agree with that. Absolutely, we need to send a new message, and the message I'd say is that in Canada, if you sexually exploit a child in any way, you go to jail. That's a very clear and convincing message.

And the reason I think it will work is because it's deterrence. We're trying to have these sentences to deter people from acting. People are not deterred from acting in crimes of passion, but pedophiles are a group of people who are particularly susceptible to the logic of

deterrence. It works for them because they plan out their crimes. You don't just all of a sudden abuse a child. You approach a child very carefully over a period of time. These are people thinking ahead and planning their crimes.

And if the sentences are sharp, they're the ones who will think, "Wait a minute. I'm now facing a different sentence. Maybe I should control my sexual behaviour." We all control our sexual behaviour at a certain level. They have to as well, and that kind of message will help.

**Mrs. Nancy Turley:** I'd like to comment as well. Obviously the concern for our children is paramount, but we also have to look at the reality that, yes, we can have sharp sentences, but they are going to get out. And if nothing changes, nothing changes.

So if they just come in, do their two years less a day, or whatever it is, and go back out, with nothing having been worked on to help them be different, to help them maybe develop some impulse control, to have some accountability along the way, we are going to see more recidivism. We aren't going to be able to lock people up and throw away the key.

So as a society we need to invest in these people because we are investing in protecting our society, and if we don't make changes to who they are as people, we'll be back here again looking at these images and the brokenness. We deal with all of that fallout, and it's heartbreaking.

**The Chair:** Mr. Phaneuf, go ahead, please.

**Mr. Gordon Phaneuf:** I have just a very brief comment.

We certainly would agree that serious sanctions are required, and I think it's such a horrendous topic that we sometimes look for a quick fix. I think we have to remind ourselves that Bill C-2 is a step in the right direction, but we can't divorce it from its implementation. The questions that have been raised and discussed today give clear evidence that we need strong, ongoing research in the area.

We have to remember that the first responders to children—law enforcement, social workers, child welfare workers—need the tools, need the training to do their work effectively, and that the legislative response is a key piece, but it's only one of a number of things that need to be done.

**The Chair:** Thank you.

Thank you, Mr. Breitreuz.

And thank you to all the witnesses. It's been a very useful session. Now we'll suspend for five minutes to go in camera on future business.

Thank you.

*[Proceedings continue in camera]*





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