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Chair

The Honourable Paul DeVillers

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

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● (0900)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I'd like to call this meeting to order. It's a meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We're continuing our study 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 with us this morning four groups of witnesses. From Canadians Addressing Sexual Exploitation, we have Dolina Smith, the president. From REAL Women of Canada, we have Gwendolyn Landolt, the national vice-president. Welcome. From the Criminal Lawyers' Association, we have Paul Burstein, the director, and Karen Unger, a barrister. From the Canadian Resource Centre for Victims of Crime, we have Steve Sullivan with us again.

Welcome to all of the witnesses.

I think the clerk has explained the procedure. We start with opening statements of approximately 10 minutes, and then we proceed to questions from the members. We have the time slotted here from 9 until 12 o'clock, but we have a motion to deal with, so I'm suggesting we go until about 11:30 and then deal with the motion at that time.

We'll start with Ms. Smith from the Canadians Addressing Sexual Exploitation. Go ahead, please.

Mrs. Dolina Smith (President, Canadians Addressing Sexual Exploitation): Thank you. It is an honour to be here.

As has been said, I am from Canadians Addressing Sexual Exploitation. This is the organization that sponsors the white ribbon of signatures campaign each year. Many of you who are members of Parliament have received large white ribbons from your constituency, so it will be of no surprise to you that I am speaking about the age of consent.

With the present age of consent at 14, all child protection laws relating to child prostitution, child pornography, sex tourism, Internet luring, as well as the amendments recommended in Bill C-2 are at risk because judges use the age of consent to acquit adults charged with offences under these laws. This offers no protection to Canadian children who are under the age of 18 but over the age of 13. Stated another way, Canadian law as it is now written offers more protection to adult sexual predators than it does to the children who are victims of these predators.

With the present age of consent for sexual activity at 14 years, every Canadian teenager is a potential target for adult sexual predators.

In 2002, the Internet luring law was passed. At that time, CASE wrote letters to the justice committee and many members of Parliament stating that the law was good but, because of the age of consent law, would not protect children from sexual predators. Sadly, we have been proven correct. Just last month in Ottawa, for example, a 31-year-old man from Texas lured a 14-year-old boy to a hotel for sex. The man was charged with Internet luring and abduction, but he could not be charged with sexual assault or sexual interference, because the boy willingly went to the hotel and therefore gave consent.

Under the present laws and the amendments to Bill C-2, the boy will still be considered the guilty party in this offence and in the eyes of the law. He is left with a lifetime of guilt, feeling that he was the one responsible for the actions the man took, because he, the 14-year-old, said yes. Back home in Texas where the age of consent is 17, the man would have been charged and likely convicted. Perhaps that's why he came to Canada.

The government, in the preamble to Bill C-2, states that it has grave concerns regarding the vulnerability of children to all forms of sexual exploitation. We, too, have these grave concerns. We also recognize that the government knows, regarding the United Nations Convention on the Rights of the Child, that the definition of a child is a person under the age of 18. The phrase “under 18” is referred to often in Bill C-2 and the existing Criminal Code. The threshold age for protection of youth in the Youth Criminal Justice Act is also 18 years of age.

The government is aware that provincial premiers, ministers of justice, police organizations, advocacy groups, and the general public have been demanding a change in the age at which young persons under the age of 18 can consent to sexual activity with an adult, yet with Bill C-2, as it is now drafted, it is still legal—still legal—for adults to have sexual activity with vulnerable teenagers of this age group.

It’s really quite simple. Police cannot charge an adult with a crime of sexual activity with a person over 13 and under 18 if it is not a crime listed in the Criminal Code. Bill C-2 does not raise the age of consent; therefore, children receive no protection, and the police have no more power or authority to arrest and charge offending adults.

With Bill C-2, the onus remains on the child to prove that the relationship was not consensual. This means the child is revictimized each time he or she testifies.

● (0905)

Most 14- to 17-year-old children do not have the maturity to recognize the exploitive relationships they are in. Many of these victims are vulnerable, looking for love, security, attention, and even adventure. CASE submits that all children are vulnerable to the influences and persuasions of adults. That is the nature of an adult-child relationship. That is why adults have to take responsibility for their actions. Bill C-2 does not make the adults responsible for sexual activities with children.

The proposed amendments to Bill C-2 are vague and confusing and offer no new protection to children. In fact, Bill C-2 still gives the impression that sexual activity between an adult and a child over 13 years of age can be consensual and therefore legal. This must be changed.

The vague and confusing amendments proposed in Bill C-2 would not have changed the outcome in the following cases.

In Manitoba, a schoolteacher who sexually abused a student attending the school was found not guilty. The judge ruled that he was not in a position of "trust and authority" because he was not the classroom teacher.

In Saskatchewan, two men admitted they picked up a 12-year-old, gave her five beers, and sexually abused her. The judge said they were not guilty because the girl told them she was 14 years old.

In Ontario, a 48-year-old man gave videos and trips to Canada's Wonderland to 15-year-old boys in return for sexual favours. He was not found guilty because the judge said the fact that the boys returned to his house gave consent. She didn't say the fact that he gave them video games and trips to Wonderland were payment for that service.

Recently we received the following e-mail at our office. It's just one of many we receive:

> A married man I know in Edmonton uses a chat room to solicit dates with younger men. He has always told me that he only dates men 18 and over. Recently, I came across text from his chat with a young boy who said he was 16 and in grade 11. The man said he was 38, when in fact he was 66. In the same chat I noted that the 66-year-old man offered to pay $40 to $50 to the 16-year-old for his sexual services. The 16-year-old said he was interested. The 66-year-old also offered to procure a motel room if necessary.

What is the law regarding this type of activity? Sadly, we had to report that the law would protect the man more than the boy because the 16-year-old gave consent to sexual activity with someone old enough to be his grandfather.

If this government is serious about protecting children from sexual predators, the government must raise the age of consent to protect all children under the age of 18. Some feel raising the age of consent to 16 would be acceptable, but CASE submits that 16- and 17-year-olds need protection from adult predators. The law would, of course, have to contain age differentials to protect young people from prosecution in peer-to-peer relationships. We suggest that good age of consent laws should consider other countries, such as Britain and Germany, and design the very best that Canadian children can have.

Using these ideas, I suggest a simple age of consent law. Have zero tolerance for any adult who sexually uses a child over 16—zero tolerance. When the young person is 16 and 17 years old, within the legal definition of a child, the amendments recommended in Bill C-2 could be considered by the courts—the age differential between the child and the adult, the duration of the relationship, the vulnerability of the child, the power and authority of the adult, and the trust relationship between the adult and the child. A law thus written might give adults sober second thoughts.

● (0910)

The justice department, with its current proposed amendment to the Criminal Code, has failed to protect Canadian children. Our law must send a strong message that child sexual abusers are not welcomed in Canada. Canadian children must not be targets for adults' sexual gratification. Canadian laws must protect Canadian children and must no longer give a free ride to adult sexual predators who prey on Canadian children. If the age of consent were raised, Bill C-2 would send a clearer message that in Canada zero tolerance is the standard used when adults use children for sexual gratification. Canadian families deserve nothing less.

I thank you.

The Chair: Thank you very much, Ms. Smith.

I have a couple of points of clarification. Our researcher has just advised me that the Saskatchewan case you referred to on page 3 was apparently overturned by the Supreme Court of Canada yesterday, and the accused has been sent back for trial.

● (0915)

Mrs. Dolina Smith: Hurray!

The Chair: Secondly, your scenario with the married man, the 66-year-old, offering the 16-year-old $40 to $50 for sex, that would be caught by subsection 212(4) of the Criminal Code. For anyone under 18 years of age, it's illegal to pay for sexual services—

Mrs. Dolina Smith: I recognized that was a possibility. But the Kitchener case, when he gave video games and trips to Wonderland, says, well, you know, if you pay in different ways, it doesn't matter. The loophole of the age of consent often trumps the others, we've noticed in court cases.

The Chair: Thank you.

Mr. Toews.

Mr. Vic Toews (Provencher, CPC): On the Saskatchewan case, I also understand that the Saskatchewan Court of Appeal, in respect of the one individual who pled guilty and was sentenced to a conditional sentence for in fact raping this 12-year-old aboriginal girl and feeding her liquor, upheld the conditional sentence that was given to the person who had pled guilty. So the person got a conditional sentence for raping this 12-year-old girl.

The Chair: Thank you.

We're going to end up getting into debate here rather than clarification, so we'd better move on.

We'll now go to Ms. Landolt of REAL Women of Canada, for approximately 10 minutes, please.

Ms. Gwendolyn Landolt (National Vice-President, REAL Women of Canada): Thank you, Mr. Chairman.

First of all, we are grateful that the government is trying to provide protection for children. That is absolutely essential and a major interest of our organization. However, unfortunately, we believe this Bill C-2 will not provide adequate protection. There are two areas we'd like to pinpoint: the child pornography area dealing with artistic merit and the sexual exploitation provision, which we understand was included as an alternative to raising the age of consent. These are areas of grave concern to us.

First of all, with regard to child pornography, the fact is that they have left in a defence of artistic merit. The supposition that child pornography can be excused or defended because it is “artistic” defies common sense and it can never have a legitimate purpose.

We note that the Canadian Conference of the Arts has said this is a loophole that will chill artistic expression. I'm afraid it will not do so, and it certainly should chill artistic expression. We have an Ottawa filmmaker who has made one film on child pornography, and the Canada Council of Arts wants to give him, in March 2004, a further $1,000 to make another film on older men having sex with teenage males. He said this is his freedom of expression. But freedom of expression should not have rights that others do not have. We all know the Charter of Rights has limitations. Those rights are limited. So the freedom of expression should also have a limitation because it causes harm.

It would appear that the protection against artistic merit would fall within section 1 of the Charter, which exempts charter application laws that are demonstrably justified in our free and democratic society. Protecting children certainly is justified in a free and democratic society. Failure to provide this protection by eliminating the defence of artistic merit in the child pornography law is to fail children and to fail one’s legislative responsibility. Merely because a court may possibly sometime in the future have another view is not a valid reason to fail to enact legislation. Rather, a failure to act, which is a failure to remove the artistic expression defence, gives unwarranted deference to the courts on issues that clearly fall within the jurisdiction of Parliament.

We would like to emphasize here that child pornography is harmful to children. Dr. William Marshall of Queen’s University has carried out extensive research and he has found that child pornography is used to seduce the victims or lure them into sexual activity on the grounds that it's normal or acceptable. It also is used to excite the pedophiles themselves. This causes a devastating emotional toll on children who have not only to endure the abuse but also must carry with them the knowledge that there is a visual record of such abuse circulating in society. It also should be made as a point that even when child pornography depicts only fictional or computer-generated children, not actual children, nonetheless such material—again as just previously discussed—is used by deviants in the seduction process to lure children. Child pornography is harmful, and freedom of expression is absolutely no excuse to allow artists to portray children in child pornography.

I'd like to go on to the fact that we note there's no minimum sentence in the child pornography law. This is a major failure. Again and again we're finding things like the Robin Sharpe case in British Columbia, where he only received a four-month at-home conditional sentence even though he had 500 photographs of child pornography that he had taken himself in Asia. Stiff sentences for child pornography must be bolstered by a minimum sentence. It lets society know that such material is completely unacceptable and will not be tolerated.

● (0920)

Again another failure of this legislation is with regard to the age of consent. Of course, our concern is, as already mentioned by the previous speaker, that the low age of consent of 14 is one of the lowest in the western nations. This has increased the number of cross-border pedophiles, because Canada is the most wired nation in the world. In fact, we have 10 million Internet users in the country, which is the highest in the world, and the lowest age of consent. That has proved to be absolutely shockingly detrimental to children.

Children of 14 do not have the maturity to make responsible decisions in regard to sexual activities with adults. Sex between young persons and adults leads to long-range problems: sexually transmitted disease, AIDS, unexpected pregnancies, the lowering of self-esteem, loss of education, and it goes on and on.

We have also discovered that the federal and provincial attorneys general have met three times—in 1999, 2000, and 2003—and have all agreed that they would raise the age of consent to at least 16. This has not been complied with. We know that the Youth Criminal Justice Act sets an age of 18. We know children can't get tobacco or alcohol under 18, yet this has been ignored. We want the age of consent to be raised, hopefully to 18, but at least to 16, and to comply with the Youth Criminal Justice Act.

Another problem that we see in this legislation is the sexual exploitation provision. The current law provides protection from an exploitive relationship with a person who is in a position of trust or authority. The amendment widens the circumstances in which the court can look to determine whether it's exploitive. The problem with this provision, however, is that the court is required to analyze each case in which a charge is laid, in order to determine whether the adult is in effect exploiting the child. This approach is highly cumbersome, and it also fails to create the certainty of protection that all children require. It is also far too complex, and using this provision, a skilled defence lawyer can and will shift responsibility for the relationship onto the shoulders of the victim.

In this regard, we note that *Capital Xtra*, the homosexual newspaper, on February 10, 2005, said: "the government strengthened the sexual exploitation laws…in order to stave off demands from provincial justice ministers to raise the age of consent to 16...." The article goes on to say they believe this compromise is "the lesser of two evils." On this, we strongly beg to differ. The amendment may satisfy those who want unrestricted sexual access to children and youth, but it is completely unsatisfactory for those who want children to be protected from adults who desire sexual relations with men.

The argument has been used, well, we don't want children under 16 to be denied their sexual rights. We would like to raise the issue that there is already a provision under subsection 150.1(2) that says that young people with two years' difference in age would be allowed to have sexual activity together. We simply have to amend that provision so that we can raise the age of consent. It is absolutely no excuse for us to say that we can't raise the age of consent because it will deny children their sexual activity. That is absurd and unacceptable.

Therefore, to summarize: one, the defence of artistic merit should be deleted in the child pornography law; two, the child pornography law should include a minimum sentence; and three, the age of consent should be raised from the current 14 years of age to at least 16 years of age, but preferably to 18 years of age, and that should be included in the bill.

Thanks very much, Mr. Chair.

● (0925)

The Chair: Thank you very much, Ms. Landolt.

Now we'll go to the Criminal Lawyers' Association.

Mr. Burstein will commence?

Mr. Paul Burstein (Director, Criminal Lawyers' Association): Yes. Good morning, members of the committee.

Ms. Unger and I are from the Criminal Lawyers' Association. As some of you may know, our association has had the privilege and honour of appearing before this committee many times to speak on other pieces of criminal legislation.

We apologize for the late filing of our written materials. We understand that in due course, once they've been translated, they'll be distributed. As I'm sure you can appreciate from having sat on this committee already, there's quite a lot to this bill, and we've tried to comment on all the provisions and provide you with some assistance in terms of what we suggest you ought to do.

While we've addressed essentially all the proposed amendments in our written submissions in this brief opening statement, Ms. Unger and I propose to focus only on three sets of amendments. First, Ms. Unger will speak very briefly about the procedural and evidentiary changes, the procedural aids, and the changes to the Canada Evidence Act, and then I will deal with the proposed enactment of a voyeurism offence, as well as the real hot button issue, it appears, the changes to the artistic merit defence for a section 163.1 offence.

With that, I'll turn it over to Ms. Unger to speak to the procedural and evidentiary changes.

Ms. Karen Unger (Barrister, Criminal Lawyers' Association): Thank you.

Under Bill C-2, Parliament seeks to amend an array of procedural and evidentiary protections in a way that would make it more comfortable for a broader category of witnesses to testify at a criminal trial. Essentially, all the amendments contain three basic changes. The first one is expanding the age group who can benefit from the more lax procedures. The second is expanding the category of offences where the more lax procedures can be invoked by the broader category of witnesses. And last, there is the creation of a rebuttable presumption; in other words, there is a presumption that must somehow be rebutted by the accused person.

By expanding these categories of situations, these amendments increase the number of cases where there will be, as stated in the new bill, bans on publication, exclusion of people from the courtroom, witnesses testifying behind screens, witnesses testifying via closed-circuit TV in jury trials, and last, child witnesses whose competency to give reliable evidence has not been screened by a judge.

The Criminal Lawyers' Association reminds this committee, as we noted in the introduction of our submission, that it's these sorts of dilutions of the procedural and evidentiary rules, either in some cases by themselves or more likely when they're taken together, that have often led to wrongful convictions in child abuse cases or cases involving child complainants. As we're all aware, cases based on child abuse allegations are not immune from wrongful convictions. You don't have to go centuries back to the Salem witchcraft trials to find cases of wrongful convictions in child abuse cases. As we noted in page 7 of our submission, in the introduction, undoubtedly the most notorious Canadian example of how dilution of procedural and evidentiary rules can lead to wrongful convictions in child abuse allegations is in the Martensville sex abuse case.

Unfortunately, we haven't yet had the benefit of a royal commission here in Canada studying the nature, extent, and causes of wrongful convictions in child abuse cases. However, what we have learned from Canadian commissions of inquiry into other types of miscarriage of justice strongly suggests the further dilution of procedural and evidentiary protections will inevitably result in more wrongful convictions. Wrongful convictions are not a statistical anomaly. We can just look at cases in the United States. The Criminal Lawyers' Association in their submissions identify some examples, and even the most cursory search will uncover plenty of other cases.

This is not to say it's our position that child abuse allegations are false or to say that even most of them are false, but rather, we want to make a point of saying the sad truth is that some are. The purpose of a criminal trial is to make sure we sort out the truthful allegations from the false allegations, and with these new proposals, it's our position that it's not necessarily going to happen.

The Criminal Lawyers' Association supports the objectives of Bill C-2 as set out in the preamble; however, it is our position that it's not enough to say, for example, we want to prevent child abuse. Of course we want to prevent child abuse as well, but it's our position that these provisions do nothing to prevent child abuse. At most, in theory, these provisions are designed to make sure we convict or punish more people. Surely, in the same way we will all agree we want to prevent child abuse, we all want to avoid increasing the risk of wrongfully convicting someone of child abuse.

If we want to prevent child abuse, I can give you a couple of examples that would be helpful: providing more money for proper day care to avoid reliance upon untrustworthy babysitters, and providing more money for the CAS to ensure adequate level of supervision and intervention.

The only thing these provisions might do, in theory, is to encourage more allegations of criminal misconduct.

There are two key questions we need to ask ourselves, the first of which is, will these amendments encourage more true complaints or more false complaints? The second important question we must ask ourselves is, will these amendments increase the risk of wrongful convictions on the complaints that are already coming forward? Again, it's our position that any time Parliament dilutes any of these fundamentals of the adversarial process, the risk of wrongful conviction increases.

● (0930)

Madam Justice L'Heureux-Dubé said in at least a couple of cases of the Supreme Court of Canada that earlier amendments were constitutionally justified because they promoted truth-seeking. Her focus was on the evidence of young children in sexual abuse cases. The difference, however, with these cases is that the Supreme Court of Canada's decisions were based on a wealth of sound social scientific evidence that says there will be a net gain in the number of complaints for the narrow category of situations, that narrow category, as I've just said, being young complainants in sexual assault cases.

Where is the social science evidence, I ask, that says the expansion of these categories is necessary to the truth-seeking function? Knowing that amendments like those proposed in Bill C-2 may increase the risk of convicting the wrong people, innocent people, Parliament must be certain they will advance the proper goals. If there is no evidence, it's our position that these new amendments will in fact increase the number of true accusations, and we cannot tolerate the increased risk of wrongfully convicting some of those accused. That, it's our position, is too high a price to pay for no net gain.

The point we're making is that unless and until you are presented with sound social science evidence that these amendments will help distinguish the guilty accused from the wrongfully accused, the only conclusion history allows you to safely draw is that these amendments will create serious injustice to some members of our society.

Thank you.

The Chair: Thank you.

Mr. Burstein, I point out that there's about three minutes left and that there's certain latitude we can allow.

Mr. Paul Burstein: I understand. I'll just make two very brief points.

One is about the artistic merit defence. Let me say—and I probably am getting myself into a jackpot by saying this—I was trial counsel for Mr. Sharpe at his trial in British Columbia, where Justice Shaw found that there was at least a reasonable doubt that his anthology of short stories had some artistic merit. I say that only because I suppose I have some familiarity with what the evidence was that was presented to Justice Shaw.

I can tell you that it wasn't as though Justice Shaw made his decision in a vacuum. There were three experts who testified about the material, and so it wasn't as though it certainly wasn't a considered decision. But Mr. Sharpe's case actually probably makes it easy for people to say we should abolish the artistic merit defence for child pornography. Mr. Sharpe is not a sympathetic character—that's easy. If all the people laying claim to an artistic merit defence for what we have labelled child pornography were the Sharpes of the world, your job would be easy.

But let me tell you about someone else I represented. I represented Eli Langer, and if you don't know who that is, you go back in your research to the early 1990s in Toronto. There was a young Toronto artist named Eli Langer who was charged criminally for paintings and drawings that he had displayed or that an art gallery in Toronto had displayed. He came from a good family. His father's an orthopedic surgeon. His mother works in the community. He's a fine young man. It so happens that he was exploring the subject of child abuse and he was actually trying to—the testimony was—shock the community into essentially thinking about this very sensitive issue. But he was charged criminally when someone laid a complaint. Had we abolished the defence of artistic merit, Mr. Langer would have been convicted and probably sent to jail if we had added in a minimum punishment.

How many cases, I ask you, have there been since the Sharpe trial where people who have been charged with child pornography offences have laid claim or tried to lay claim to the artistic merit defence? Ask yourselves that. I got one call in my entire career from someone in B.C., and I don't even know if it went ahead. Before you eradicate a defence that may afford protection to people like Eli Langer, make sure it's even necessary. Make sure this isn't just a battle cry that's really accomplishing very little.

If this is a law designed to punish Mr. Sharpe, I ask you to look south across the border at what your counterparts in Congress did with respect to the Schiavo case. Just because they didn't like the decision the courts were imposing in the Schiavo case, Congress tried to pass a law designed for that particular case. Don't make a law designed for the Sharpe case; make sure the law is necessary.

The only other brief comments I make are about the voyeurism offence. As you'll see in our written submissions, the association doesn't dispute that it's a good idea to have a voyeurism offence, but we would submit that the way it's constructed right now is very problematic insofar as one of the linchpins of it is a finding that the target of the observations or the recording be in circumstances that give rise to a reasonable expectation of privacy. Well, there are two problems with that.

First of all, it's a very vague and unknown term. Just look at any of the search and seizure law that's out there right now in the appellate courts, and even that of the Supreme Court of Canada. There's a question as to whether or not a group of men gathering together in a hotel meeting room for gambling purposes had a reasonable expectation of privacy. One would think that if you're in a room with 100 people and it was subject to public invitation, there's no reasonable expectation of privacy; the Supreme Court of Canada said there was. So how would we ever know in advance?

More importantly, there's a case where in a lovers' lane somebody parked the car and was engaged in sexual relations, and they were charged with an indecent act in a public place. And the Ontario Court of Appeal, in a case called Sloan, found that a car parked in this lovers' lane was in fact a private place, not a public place. This would mean if someone wanted to deter that kind of activity and they put up a video surveillance camera to deter lovers from parking their cars, and they happen to catch a glimpse or record somebody in a state of nudity or partial undress, they could be convicted under this offence.

The proposal we make is to essentially abolish the reference to “reasonable expectation of privacy” and just make paragraph (a) the offence. That is, if there's an observation or a recording of someone where it could reasonably be expected they were going to be nude or partially nude, that's voyeurism. None of the rest is necessary.

● (0935)

Thank you very much.

The Chair: Thank you, Mr. Burstein.

Now we'll go to the Canadian Resource Centre for Victims of Crime, Mr. Sullivan.

Mr. Steve Sullivan (President, Canadian Resource Centre for Victims of Crime): Thank you, Mr. Chair.

This is the second time we've been here on this particular bill, in a slightly adapted form. I read the papers, and it looks like we might be back again sometime in the future on this bill or another adapted form.

The Chair: Don't believe everything you read.

Mr. Steve Sullivan: I certainly hope that's true, Mr. Chairman, because I think this bill offers some important protections. And I would hate to see us lose the opportunity to pass Bill C-13, which our organization has been pushing for a long time. Yesterday's announcement of the new bill on the CCRA is very important to crime victims in this country. I would hate to see us lose the opportunities of those protections for victims.

I'll keep my remarks brief on this particular bill. I would like to address the issues of facilitating testimony that have been touched on briefly here today.

My position is that these points are often described as victims' rights. They're really not. This is about facilitating testimony for the prosecution. These are prosecution witnesses who are asked to relive in an open court the most horrific events in their lives.

I want to paint you a picture of what it means to get an allegation of sexual abuse or sexual assault to trial. Whether you're a young person, a teenager, a child, or an adult male or female, you have to first convince the police that you're telling the truth. They will then decide whether or not to lay a charge. Then a crown will decide whether you're telling the truth, or whether he or she can get a conviction. Then you go to court. And let's assume for a second that you believe you need these protections to help you facilitate your testimony. You then have to convince a judge that it's appropriate.

Everyone gets legal protection. There are arguments on whether it's appropriate or not. The suggestion that these protections in their expanded form will encourage false allegations is simply ridiculous with respect to those who suggested that. The suggestion that people will sit in their homes and make false allegations of sexual abuse against people they know or don't know and put themselves through a living hell of going to court because they now think they can sit behind a screen when yesterday they couldn't, I think, frankly, is just ridiculous. I have seen no evidence and I haven't heard—and if I misunderstood, I apologize—that there has been any suggestion that the use of these testimonial aids in Canada has led to an increase in wrongful convictions. The use of an example of one case where there were wrongful convictions where these aids may have been used simply isn't evidence.

I think the courts apply these protections quite appropriately. They weigh both balances. These protections aren't used in the majority of cases. Frankly, screens aren't available in most courts.

So let's consider these issues as they are. These are protections for people who have to go and relive the most embarrassing, painful memories in their lives in front of an open court full of strangers, where they have defence lawyers trying to confuse them and suggest that they're not telling the truth. I think the least we can do is, when appropriate, give people the protections that will enable them to give the appropriate testimony to the court. I don't think the suggestion that someone is going to make a false allegation because they can sit behind a screen or not be cross-examined by the person who they alleged raped them is fair.

We've suggested some amendments to these provisions, basically to bring the various sections to be consistent with each other. I won't go through them. One of them, for example, is the provision to exclude the public from the court. In most provisions with Bill C-2, victims have the right, or complainants have the right, to ask the court for these protections. We would like to see that consistent.

The other suggestion we have is that we certainly appreciate and support the amendments to allow a judge to consider a broader range of cases where an accused cannot personally represent himself or herself and cross-examine the witness. It's interesting how many different examples of this bill Mr. Sharpe comes into, because when he was on trial for sexually abusing a young boy in the 1970s—a historical case—he was allowed to cross-examine that witness. So we certainly appreciate those protections, and we've suggested some amendments to bring those different provisions in line.

We have suggested an amendment with respect to publication bans. One of the things we hear from a small number of sexual assault complainants is that sometimes publication bans are imposed without their support or their permission—that there's no consultation, that they're pretty much automatic—or victims have a hard time getting those publication bans lifted if in the future they decide they want to talk publicly about their event. This might not require a Criminal Code amendment. It might be something where we just need to look at increasing education for crowns and increasing communication between crowns and victims.

● (0940)

The child pornography provisions, as you've heard today and I'm sure you've heard in previous testimony, have really garnered a lot of the attention for this bill. It's somewhat ironic, because these provisions have very little to do with what police—law enforcement—are doing across the country.

It was telling that Detective Sergeant Paul Gillespie from the Toronto Police Service, whose unit does incredible work not only in arresting people who possess child pornography but in identifying victims—which is something that isn't given the attention it deserves—never really raised this issue. This is one of the leading law enforcement officers in the country when it comes to child pornography, and he didn't raise the issue. He referred to it in a question, but it wasn't an issue he raised. The reason is that it doesn't have an impact on most of his work. Even if they were to find someone who had drawings, as in the case of Mr. Sharpe, they'd almost always find the person had real child pornography.

Detective Sergeant Gillespie gave you a pretty good scenario of what law enforcement is dealing with, and it's not people like Eli Langer in 1993. It's the Internet, which has exploded. You're seeing thousands of new images loaded onto the Internet every month, and the trend is towards younger victims and more violence. With respect to the different groups that have come and said a certain book or painting will be banned, police frankly don't have the time or the resources to care about books and paintings, because they're dealing with real kids being abused in real time.

We support the provisions in the bill because we think they do strike the appropriate balance. The Supreme Court made it pretty clear you need to have some kind of defence for art. I know the suggestion has been made by some that we use the notwithstanding clause. I think there are legitimate reasons to consider using the notwithstanding clause, but I'm not sure this is one of them. I think it does strike the balance. There are the two tests, legitimate purpose and undue risk to children.

I'll briefly touch on the other hot button issue, which has been the age of consent. We have in the past called for the raising of the age of consent to 16. We've carefully studied the provisions in the bill. I've reviewed a lot of the testimony you've heard. I was here when Mr. Butt from Beyond Borders testified and spoke against the provision, saying it was unworkable.

I was somewhat confused by the testimony because his colleague suggested they would raise the age of consent to 16 but keep these provisions for those up to 18. This struck me as odd, because if the provisions were that unworkable, I'm not sure why we would keep them for a different age category. I've talked to law enforcement officers, some who say this is a tool they would use and others, like Detective Sergeant Gillespie, who were less favourable to it.

I frankly think I'm more optimistic than Mr. Butt was. I'm not a crown attorney, and you can weigh the evidence from each of us. But if this bill, this scheme, is workable in the courts, it's probably a better protection than raising the age of consent. This bill protects a wider range of young people up to the age of 18, and I think that's a good thing.

It's a new provision, and there will obviously be challenges and some confusion. I'm somewhat optimistic that the courts will work their way through. There was confusion when the provision for exploitation by persons with positions of trust was first passed, and we're seeing those provisions used; they've been upheld by the Supreme Court.

I do suggest, however, that the committee include a clause in the bill that these provisions be brought back in five years or so to be reviewed as to how they're working or how they're not working. If Mr. Butt is correct and these provisions aren't workable, then we need to take a second look.

Mr. Butt gave you the example of a young person who was taken to the movies by the adult and was given presents by the adult and who “consented” to the sexual activity. I'm not convinced a court would throw that out. That is a classic pedophile grooming technique, and I would think any competent prosecutor would bring evidence before the court to say this is what pedophiles do and this is what he's done. I'm not sure if the fact that the young person went along with all that and said yes would be the deciding factor. Maybe others with more experience can suggest improvements, but I think the provisions there will allow a court to look at those things and say yes, this is an older man; this is a pedophile who is exploiting this young person, exploiting their age, exploiting the age difference in the relationship by plying them with presents, giving them support, and helping with their homework, all the things Mr. Butt said.

● (0945)

The last comment I'll make is with respect to minimum sentences. That isn't in the bill but it's been talked about. I think the sentences people get for the sexual abuse of children, and in particular the possession of child pornography, in this country are embarrassing. Detective Sergeant Gillespie talked about that, what's out there on the Internet and the kinds of sentences. Fifty per cent get conditional sentences.

I think we need to refocus. I think the suggestion that someone who uses children, children who are being raped and tortured, for their own personal satisfaction and gain is somehow not a serious offender or that this is not a serious offence is simply inappropriate. These are young people in real time being abused. Those images are recorded on the Internet, and people are using those images for their own satisfaction.

We testified in the past that we didn't think conditional sentences were appropriate for sexual offences involving children. We still make that recommendation, and if the committee brought forward amendments about mandatory minimum sentences, we'd probably support them as well.

Thank you.

● (0950)

The Chair: Thank you, Mr. Sullivan.

We'll now go to the questions from the members, and we'll commence with Mr. Toews.

In a moment I'm going to have to excuse myself. I'll ask Mr. Breitkreuz to take the chair. I have to go to the House to deposit a committee report.

We'll go for five minutes, Mr. Toews.

Mr. Vic Toews: Thank you very much.

I want to thank the witnesses for their contribution here today.

I don't think my mind has been changed in any way in respect of the evidence I have heard here. I've taken a position much along the lines of what Mr. Butt stated in terms of this exploitive relationship provision. Essentially, I think his testimony was that it's simply not workable and most prosecutors simply won't take those kinds of cases.

I don't think the issue is that it couldn't be proven in some cases, but it's how to prove that, the amount of time a prosecutor will have to spend in trying to prove it. I think that's mainly what prosecutors are thinking about. Most prosecutors—and I speak from some experience in that respect—have all kinds of files. They have no time to prepare. It's an issue of resources. This bill isn't going to give them any more resources. This bill is simply going to make a very complicated test available to them, and most prosecutors will simply say, look, we're simply not going to use it.

What the evidence has been here from the social scientists and others is that a clear message needs to be sent to pedophiles that children under a certain age are simply off limits. We protect children in many respects, in respect of driving licences, alcohol, and various other things. Sixteen seems to be a reasonable age, one many countries, western civilized democracies, have adopted. It sends a clear signal that these children are simply off bounds.

I look at the present situation. I spoke to the Surrey RCMP a few months ago and heard how Americans are now of course coming across the border to exploit our children because of the age of consent being 14. They tell me they're now cooperating with American authorities to prosecute these Americans under American foreign sex tourism laws.

They can come to Canada and sexually abuse 14- and 15-year-old children, and they're not prosecuted here. This new provision is going to do nothing to prevent that, but we're cooperating with the American authorities to prosecute them in the States, where they face sentences of 10 to 15 years. Here they walk away. I think this is just unbelievable.

I read the Saskatchewan Court of Appeal decision where they upheld this conditional sentence, and it was for a brutal, horrible rape of a 12-year-old girl. Two of the people were acquitted—I hope it is right that the Supreme Court has overturned it—because the judge thought these individuals believed this child was 14. That is still present in our law, that you can essentially rape a 12-year-old child as long as you think they're 14. It's unbelievable.

What we need is a clear message, and quite frankly this bill doesn't do it.

Mr. Sullivan, I'd ask you to reconsider your position on this matter.

● (0955)

Mr. Steve Sullivan: I have considered it, and it has been difficult for me because we had previously asked for the raising of the age of consent....

I think one of the benefits of this scheme is that it actually protects kids up to 18, whereas if we just raised the age of consent to 16, we would miss those 17- and 18-year-olds, who also can be exploited. I'm no happier about a 15-year-old having sex with a 17-year-old than I am about them having sex with a 15-year-old. I think this scheme can work. I don't pretend that it's perfect, which is why we asked for the review in five years.

As far as the Americans coming to Canada, it's unfortunate that Detective Sergeant Gillespie didn't have more time to talk to the committee. He's telling me of cases they have of Canadians going to the U.S. So it goes back and forth. It's not just the case of Americans coming here to Canada. He recently had a case. They've arrested a guy now who went down to the U.S. and had interacted with a young person on the Internet. They're cooperating with the American authorities now to prosecute him.

The point about sentencing, though, Mr. Toews—and I'll finish quickly—is absolutely appropriate. I think that one of the biggest problems, one of the barriers, to more prosecutions is that a lot of prosecutors don't see the point of the sentences.

Mr. Vic Toews: Very briefly, what Detective Sergeant Gillespie was saying was that if you raise the age to 16 as a clear signal, and then leave this exploitive relationship provision for the 16 and 18.... I think, frankly, he was just saying, all right, leave it for the 16 to 18. It probably isn't going to do any good, but leave it there. But he made it clear that the age of consent should be raised to at least 16.

So what you're getting then, Mr. Sullivan, is let's call it the best of both worlds. Assuming that this test will in fact work—and I have grave doubts that it'll work—at least we're protecting children to age 16. I would ask your organization to reconsider what Detective Sergeant Gillespie said in that respect. This way, you get both, whether or not the 16 to 18 actually works.

Mr. Steve Sullivan: Actually, I think it was Beyond Borders who suggested raising the age and keeping this provision for the 17- and 18-year-olds.

Mr. Vic Toews: That's correct, I'm sorry.

Mr. Steve Sullivan: If it's that unworkable, if the position is that there's no chance this is working, it would be irresponsible to include it in the Criminal Code, I think.

I'm not a prosecutor, so you can weigh my evidence against Mr. Butt's. You may decide that since he's a prosecutor, you'll give it more weight. I'm more optimistic that this provision can work, based on the experience of the position of trust relationship. I'm sure that had some difficulties. Crown prosecutors weren't sure it would work, and they've proven it to work. But bring it back. In five years or two years or three years, whatever the committee decides, if we're finding these things aren't working, then we look at other options, and one of them would be raising the age of consent.

The Vice-Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): Okay, we'll have to move to the next round of questioning.

Monsieur Marceau.

[*Translation*]

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

Thank you very much for your testimonies; they were very interesting.

I will start with Mr. Burstein. One of the recurrent theme of the discussions the committee has had is the Sharpe case. I know it is not a simple question, but since you were very involved in the Sharpe case, I will ask it. If Bill C-2 had been in force at the time, would the decision have been any different? Tell us also why.

[*English*]

Mr. Paul Burstein: There's little doubt in my mind that the trial decision in Sharpe would have been different, and that's because the proposed amendment adds in a qualifier that not only essentially does the material have to have some artistic merit—and I use that term in a generic sense—but it also cannot cause the risk...or undue harm. I can't remember the exact terminology. So it has the qualifier, "does not pose an undue risk of harm to persons under the age of eighteen years."

So now you have a requirement that the trial judge not only has to be satisfied as to what the Supreme Court of Canada said in the first Sharpe decision, that it was a legitimate attempt at art as opposed to just a way to facilitate child pornography, sort of child pornography masking as art, but it also has to not create an undue risk of harm to children.

The Supreme Court of Canada expressly rejected that as a part of the test that would be appropriate for analyzing whether or not something that meets the definition of child pornography, which, bear in mind, is sexual activity with people under 18, not just children.... We're not just talking about images or writings of sexual activity with children under 10, under 12, under 14, or whatever age you want to say, but anyone under 18. The Supreme Court of Canada quite rightly said that if we have to balance out the artistic qualities of this material, this expressive material, against whether there's a risk of undue harm, the artistic qualities will never win, because of the studies done by the likes of Dr. William Marshall and Dr. Howard Barbaree. That's even for Eli Langer's material, or William S. Burroughs, or we can go through lots and lots.

Bear in mind, the CLA carries no brief for pedophiles. We are against child abuse and child sex abuse. That's obvious. But the danger is that because pedophiles' fantasies are fuelled by even the most benign material.... Dr. Marshall's testimony in the Langer case was that a pedophile's fantasies could be fuelled by the Sears catalogue. It doesn't mean we're going to ban the Sears catalogue. But the point is that you could never have anything that had artistic qualities not cause the risk of undue harm.

● (1000)

[*Translation*]

Mr. Richard Marceau: O.K.

Have you received the briefs of the witnesses we heard today? I would like to hear what you have to say about the suggestions made by Mr. Sullivan on facilitating testimonies.

[*English*]

Mr. Paul Burstein: I'd very much like to comment on Mr. Sullivan's suggestions about facilitating testimony. I don't have the brief, but if I can maybe respond—

[*Translation*]

Mr. Richard Marceau: Do you want the English version?

In the French version, it is at the bottom of page 2. It is in the first recommendations.

[*English*]

Mr. Paul Burstein: I'm not quibbling with Mr. Sullivan. One small point is that when he says to amend section 715, I think he means 715.1. I think section 715 is the provision that allows for using preliminary inquiry testimony, but in any event, I take the provision that the second amendment.... As I read the current amendments, I'm not sure I understand how that differs from...oh, I see. Just give me a moment.

Generally speaking, I don't see that there should be too much concern from the issues that a criminal defence lawyer or, I suppose, the issues of the risk of wrongful convictions would raise necessarily, except I say this. He hasn't spelled it out. I'm not faulting him for this, but one of the positions we take in our submission is that if the amendments confer a discretion on the judge to decide whether in a particular case it's appropriate, the Criminal Lawyers' Association has much less objection. And it's because we trust the abilities of judges. If they're presented with evidence that this particular witness, whether they're 12, 14, or 42, will not be able to give a candid account for whatever reason—mental disability, life circumstances—and if at least on balance that's the case, then a judge can properly exercise his or her discretion.

Our concern with the present amendments is that there's a presumption that all witnesses in this category should have the benefit of this, when that's not what the social science evidence says. Even the evidence that was used back in 1993 by the Supreme Court of Canada referred to the fact that many child complainants may be deterred. In other words, there are some of them who don't need it, and there is no doubt. To deal with one of Mr. Sullivan's points, he suggests that we're saying that there's somehow a causal link between any one of these dilutions of procedure and wrongful convictions. We're not saying that, but I defy him to point to some evidence that says there is no causal link, because we don't have it. There's been no study of it. There's been no royal commission. But we do know, as a matter of fact, that every time you chip away at the adversarial process you're increasing the risk of an unreliable verdict—not in 100% of the cases, maybe not even in 95% of the cases, but remember what we're talking about here. We're talking about increasing the risk of wrongly convicting someone of very heinous allegations. As heinous as it is to think about pedophiles and child abusers, imagine how awful it would be to be wrongfully labelled a child abuser or someone who has been engaged in those acts.

So I don't have anything in principle against what Mr. Sullivan is proposing as long as it's left to the discretion of the judge, and as long as it's not a presumption that applies to all the witnesses. I say that because the party who's in the worst position to show whether it's necessary is the accused. The accused doesn't have access to the witness's psychological or psychiatric background, but the crown does. In other words, the crown would at least be in a position to hear from the witness and know what it is about the witness's background that will make it difficult to testify in court or not use a screen. If it is so obvious, then it won't be difficult to justify.

Sorry, Mr. Chair.

● (1005)

The Vice-Chair (Mr. Garry Breitkreuz): Yes.

We'll now move over to the Liberal side.

Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Mr. Chair, and thank you, witnesses, for being here.

We started off today with a little bit of controversy over the case in Saskatchewan. I know that Mr. Toews came in on a point of clarification trying to deal with the issue before us, dealing of course specifically with what would be an appropriate punishment in that case.

I have before me the Law Society of Saskatchewan commentary that they have published on their website, and it says, “Case commentary provided by the Court of Appeal”. As a lead-in to my question, I'd like to read from that, as it relates to sentencing.

It says: With respect to the sentence, the Court found no basis to interfere with its length. However, the Court said that the trial judge should have sent Edmonson to jail. This was a grave offence and the young victim was badly violated, particularly because Edmonson took advantage of her vulnerable circumstances. The Court held that a sentence served in the community did not do enough to denounce the unlawful behaviour nor to deter future offenders. The Court would normally have ordered Edmonson to complete his sentence in jail. However, the proper exercise of the court’s powers prevented this in the circumstances of this case.

It said: Edmonson has now served most of his sentence (20 months) under electronic monitoring. Had he been in jail, he would have received early release some time ago. If sent to jail now, Edmonson would qualify for release within a short time and this release would be on less onerous conditions than he is currently serving. Sending Edmonson to jail now is not necessarily harsher than requiring him to served the remainder of the original sentence.

Then they go on to say: In this rare case, the only realistic option was to leave the original sentence in place and the Court dismissed the sentence appeal. However, the Court was clear that anyone who takes sexual advantage of a vulnerable child in like circumstances can expect to be sent to prison for a significant period of time.

I think that maybe puts in perspective what we're really talking about. However, the issue does come up about sentencing, so let's follow through with that. We do seem to have some variations of views here today as to whether there is value in minimum mandatory sentencing for this type of crime.

I would like the panel, if you would, without specifically launching in one direction or another, to give us in a debate fashion how you view the play of minimum mandatory sentencing, especially when we have heard evidence that suggests that in many cases those who participate in these acts are going to be recidivists up to the extent of, in some cases, 100%.

● (1010)

The Vice-Chair (Mr. Garry Breitkreuz): Who would like to be the first one to comment on that?

Ms. Smith.

Mrs. Dolina Smith: I know that Paul Gillespie is in favour of minimum sentencing, and I think that comes because we're not getting any sentencing that makes sense. A doctor with a vault in his basement of child pornography, the largest seizure of pornography in Canada, gets house arrest? And on and on it goes. The judges seem to be very lenient in giving sentences to adults, whether it be possession of child pornography or actual abuse of children. The system we have now is not working. The police on the front lines are asking for minimum sentencing so that at least we have a benchmark to begin with. I think that is important.

The Saskatchewan case is just one. What made is so rare is that she was 12. Everything in the Saskatchewan case should have led to conviction, strong conviction, but it didn't. Every rule was broken in that one with the judges. I would say that citizens like me are seeing children remain as victims and adults walk away with just a slap on the wrist, house arrest, "don't go where children are". This does not make sense, especially when we know that the recidivism rate is very high.

The Vice-Chair (Mr. Garry Breitkreuz): Does anyone else wish to comment on that?

Ms. Landolt.

Ms. Gwendolyn Landolt: I could say that grow operations are the same; it's just the price of doing business. And the price of having sex with children is just a slap on the wrist.

Something has to tell the abusers that if you do this, then there's going to be some ramification. But to have a conditional sentence is absolutely unacceptable. In many areas, we have seen that we cannot rely on the judgment of the judges on the question of sentencing. In many areas—let's say, the grow op, all sorts of areas—we no longer can rely on the judgment of the judges because they have shown themselves not to be able to measure up. So it is absolutely essential this minimum sentence be written into the law.

The Vice-Chair (Mr. Garry Breitkreuz): Mr. Burstein, do you have any comments?

Mr. Paul Burstein: On behalf of Ms. Unger and myself, I just want to say that as I anticipate being here sometime in the future dealing with this Parliament's bill on marijuana, I don't want to somehow suggest, or be seen to be suggesting, that sentencing grow operations has anything to do with sentencing pedophiles.

In any event, leaving that aside, both Ms. Unger and I are appellant counsels as well as trial counsels. I do a lot of appeals in the Court of Appeal of Ontario. Many of them are sentence appeals and many of them are sentence appeals by sex offenders. Perhaps that's just a function of the fact that for criminal law or criminal lawyers, not everyone has the funds to pay for a case, but sex offences typically are committed by white middle-class people who have money to pay for a lawyer and essentially defend themselves to the end. That's not necessarily a good thing, but it's just a reality.

I see what the court of appeal does. If you look at the jurisprudence, as your research staff will tell you, even though there may not be a statutory minimum, you'd have to stand on your head and spit wooden nickels before you're going to get a conditional sentence for the sexual abuse of a child. There are going to be mistakes made, as the honourable member pointed out, but you heard what the Saskatchewan Court of Appeal said. They said this is wrong, and they sent the message to future sentencing judges to say—very strongly, from the sound of it—don't do this. But it sounds as if they applied another valuable sentencing principle, which is that at a certain point in time, since it took so long for the Crown to get its appeal here, it would just be unfair; this person has served their whole sentence. If the Crown had expedited the appeal and got it on in four or five months, I have no doubt the Saskatchewan Court of Appeal would have overturned that conditional sentence and sent the man to jail. Unfortunately, it's more a function of the way the appellate system works than the need to alter and handcuff judges.

I'll just say one last thing. Again, look south of the border. The Americans are moving away from minimum sentences because they tend to cause more hardship and more problems on the margins than they're worth. Why would we want to move towards a system the courts of our neighbours to the south—and they've had it for decades—are now saying is unworkable and causes more injustice?

● (1015)

The Vice-Chair (Mr. Garry Breitkreuz): Thank you, Mr. Burstein.

Mr. Sullivan, do you have any comments?

Mr. Steve Sullivan: I have a brief comment, Mr. Chair.

I'm generally not a big fan of mandatory minimum sentences. I think it's appropriate to take into account individual circumstances, and I probably wouldn't be recommending consideration of this if the courts were applying what I felt, and I think a lot of Canadians would feel, were appropriate sentences. When a detective from Toronto comes and says half our cases get conditional sentences for people who possess tens of thousands of images of kids being raped, then frankly, the courts aren't doing the appropriate thing. Parliament needs to consider sending a message to them, which at the minimum, the mandatory minimum, should be not allowing conditional sentences for these kinds of offences.

I do note, though, in the bill—I don't know the section—that there are some provisions to require judges to consider denunciation and deterrence more. Hopefully that will work, but there needs to be a message sent.

The Vice-Chair (Mr. Garry Breitkreuz): Thank you.

Any brief wrap-up comment, Mr. Macklin?

Hon. Paul Harold Macklin: I didn't hear much as to whether this is the answer in terms of dealing with those offenders who have virtually 100% recidivism rates. I would have appreciated some response in that regard, because I think it is a challenge.

The Vice-Chair (Mr. Garry Breitkreuz): Okay, maybe we can come back to that in the next round.

Mr. Thompson, do you have comments?

Mr. Myron Thompson (Wild Rose, CPC): Thank you.

I appreciate that all of you are here today. I

want to express myself from some experience that I've had. I'm not a lawyer. I'm not an attorney. I have no idea how you would go about prosecuting anybody or defending anybody. The one thing I did learn, after about 30 years of being in the education field, is that if there's one thing that needs to happen in this country, it is some massive improvements to the protection of our children. The experiences I've had, as a principal of a school with grades 1 to 12, were not very pleasant in many cases, and I come from a small rural town.

I can't tell you how many times over that period of time that I've had to work with parents who had 14-year-olds or 15-year-olds who had moved in with an older man and created a common-law relationship, and there was nothing the parents could do to get that child of theirs out of that situation. The police weren't there. I, on my own initiative, once went in and dragged a girl out of the situation, knowing I very well could have been charged at least a dozen times for breaking every law on the books, and I fail to understand.... Through that period of years I expressed that over and over. I think that's why, in 1991, I even had support from the police, who were saying, people like you need to go to Ottawa and start doing something about these injustices.

I don't really much give a hoot about the idea...and it's a hard line, I admit it, and I don't care, because I've seen some atrocities to these kids, with the repercussions being very ill.... The example this morning of a 12-year-old being raped, and we're getting a house arrest, is insane. It's just absolutely insane. And these massive pictures—I've witnessed what the police have been taking away from offenders of children, the child pornography. I've seen all this garbage. I've talked to a number of convicts who have been prosecuted and sent to jail for abusing a child, who have indicated to me that child pornography was part of their life, and definitely probably was a precursor to it. This is something that caseworkers and psychologists have confirmed with me—that although there are no studies indicating it, it probably had a major impact.

Why do we want to mess with that garbage?

Also, some guy comes up and he's got some wonderful paintings that maybe show children in this predicament or that, but it's artistic merit and we have to recognize that. Well, if it is, then learn how to use it in a proper manner that doesn't exploit children. We have to stop it. I'm waiting to hear some solid answers for doing that, but what I'm hearing.... It's no contradiction to Mr. Sullivan, but I'm really disappointed that we don't have the Canadian Resource Centre for Victims of Crime taking a stronger stance on this age of consent.

I really appreciate the REAL Women of Canada. Thank you so much—and Mrs. Smith also—for taking a strong stand on it. I'm trying to get logical about it, but dad gum it, too many children are being hurt, and this industry of child pornography is becoming a billion-dollar, gang-related industry. What do we do about it? Don't we have to really get tough, or do we just have to continually worry about wrongfully convicting the odd individual? I can guarantee you there'll be a lot of children hurt if we don't do something.

So there's a my statement. Please comment, if you'd like to.

● (1020)

The Vice-Chair (Mr. Garry Breitkreuz): Okay. Do you have comments, Mr. Burstein?

Mr. Paul Burstein: I'll just say this to the honourable member.

You may recall Ms. Unger's comments, sir. If you really want to prevent more child abuse, we need more people like you. When you were in the education system, you were prepared to go out and do something. Why did you have to do it? Because there was no social agency, or there was a shortage of people out there who were prepared to take the initiative, and that's because Children's Aid Societies across the country are underfunded. It's because there are no support systems for those 13- and 14-year-old kids who run away from their parents' homes and look for a port in the storm, so they find a pedophile they move in with.

If you really want to do something about the issue, then address the issue. Don't just make a notional change to a law that really isn't going to accomplish the objective.

I'm sorry, sir, I have to tell you, while you talk about wrongfully convicting the odd individual, big deal.... I don't know, go speak to Guy Paul Morin; go speak to Donald Marshall. Ask them what it's like to be wrongfully convicted of a heinous crime and go to jail. Maybe all of a sudden your views might be tempered a bit, in terms of what the consequences of getting it wrong really are.

The Vice-Chair (Mr. Garry Breitkreuz): Mr. Sullivan, do you have any further comment?

Mr. Steve Sullivan: The last time I was here on this bill, and members probably won't remember, my wife was pregnant and I was on call because she was due to give birth shortly. We have a 17-month-old son. There are a lot of things Mr. Thompson and I agree on, and there are some things we don't. I can first assure him and the committee that I wouldn't be recommending or supporting this legislation if I didn't think it was appropriate to protect my son and my daughter.

I respect the views of other people who say the age of consent should be raised, but I think this scheme can work and I think it will work. When I prepared for this presentation, I thought about the last time I was here and the situation we were in.

As for your comments on child pornography, I know Detective Sergeant Gillespie and I know you do as well. The kind of stuff they look at every single day—there are no words to describe it. I have seen the faces of some of these children and it's.... I don't know how they do it. I think they need the support of the courts. So when we talk about mandatory minimum sentences, we need to think about the faces of those children, because every time somebody downloads those pictures and uses them for their own gratification, those kids are being revictimized.

Mr. Myron Thompson: If I may point out to the witnesses, I have reached a point of frustration, I think, more than anything else. I started in 1980, when I was the president of the school administrators in Alberta. We talked about this at great length and we just could not get anywhere with trying to get these things done. Now I've been here for 12 years, and I don't think we've gained much. In fact, I think we are losing a lot when I find out child pornography is now a $1-billion industry and gang related.

Please understand that when I talk the way I talk, it's because I'm getting downright mad after 20-some years of seeing no serious change.

● (1025)

The Vice-Chair (Mr. Garry Breitkreuz): Mrs. Smith, you have a comment.

Mrs. Dolina Smith: I'd like to comment that I think Mr. Thompson expresses the feelings of most Canadians. We're getting downright mad.

When Paul walked in, I thought I knew you, and I now know why I know you. Our group intervened in the Eli Langer case, so we were in court at that time.

I just want to read what Justice David McCombs said there. He said:

> ...for artistic expression to flourish, artists must be free to test the limits, to provoke and challenge and of course, to fail. But in the end, society's interest in protecting its children is paramount, and where the safety of children is concerned, community standards of tolerance based on the risk of harm are more important than the freedom of expression, no matter how "fundamental" that freedom may be....

I think when we discuss artistic merit, we discuss all these things. We've got to realize that the risk of harm to children is far more fundamental than any freedom of expression any individual can have, because when we take away that protection of our most vulnerable and of our future, and we destroy them because we are going to protect somebody else's freedoms.... I value my freedoms. I value my freedoms to be here, but I really value my protection of my children, my grandchildren, my neighbours, and every child in Canadian society. That's why I am here—to protect those children.

Whatever it takes, government, do it. Protect the children of Canada.

The Chair: Thank you very much, Mrs. Smith and Mr. Thompson.

Now we'll go to Monsieur Ménard *pour cinq minutes, à peu près.*

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I would like to talk about the minimum sentences you ask for. I will first ask you a simple question. Since you are in favour of a minimum sentence, what should it be?

Then, I would like you to realize that there are thousands of judges in Canada who hand down hundreds of thousands of sentences every year. It should not come as a surprise that once in a while, there is a sentence that seems strange or inappropriate. That's why we have courts of appeal. But I do not think there are more than 150 justices in Canada.

The examples you give us to justify minimum sentences seem to show that judges only give a rap on the knuckles of the accused. Again, I would like you to realize that for most people, a criminal conviction is much more that a knuckle rap. The mere fact of being convicted, of having to appear in court is something else. Have the examples you have given been confirmed by appeal courts?

Finally, I will ask the people who represent the Criminal Lawyers' Association to give us examples of cases which do not warrant, in their view, a prison sentence.

[*English*]

Mr. Paul Burstein: I can speak from personal experience only. Obviously, it's a value judgment to some extent, and it always will be.

But there was one case I represented, which I did on appeal, that involved a historical sexual assault. It involved intra-family sexual abuse. I'd like to say it was of a minor nature, but I don't want to be somehow painted as suggesting that any of it is ever of a minor nature. But you have to understand, in the language of criminal law there is a spectrum in terms of gross violations of sexual integrity—intercourse, etc.—and something on the other end of the spectrum, the touching and the feeling.

In any event, it was historical. The offender was not prosecuted until he was 72 years old, and he had maintained a relationship with his family throughout all those years. His daughters were very supportive of him. His health was very poor. He had been diagnosed with cancer and was likely to die in a short time. The proposal—this was in the early years of conditional sentences—was that he get a conditional sentence. He was sent to jail for 15 months or 18 months. My understanding—I didn't confirm it—was that he ended up passing away while he was in jail.

Is that an injustice? I don't know. Is that common? I'd like to doubt it. Should we make law based on this one example? I don't think so.

I think the bottom line, sir, which you touched upon, is that, yes, we will always get the bad decision on both ends of the spectrum, but for the most part the system we have, with appeal courts and appointing judges of good quality, seems to work.

I should note—and I don't want to go back to Mr. Macklin's question out of turn—there are provisions in the code under the dangerous offender provisions, under the long-term offenders. That's a provision this government imposed about seven or eight years ago in an effort to protect children and vulnerable people, so that even if someone didn't meet the high threshold of being a dangerous offender, you could still get a supervisory order for the recidivist, even if they otherwise got a lesser sentence.

So don't fix it if it ain't broke is what I say. Everyone will always have something to complain about. But it's not if there's a complaint; it's how badly does it need to be fixed.

I think you've correctly identified that, sir.

● (1030)

The Chair: Ms. Landolt.

Ms. Gwendolyn Landolt: Mr. Burstein keeps referring to these incorrect sentences, that they can always be corrected in the court of appeal. Why do we rely on the court of appeal? People have to have money; they have to defend. It costs the state money.

Why can we not have a minimum sentence that gives the message that what you do is wrong?

Mr. Serge Ménard: But it's the Crown that pays to go and appeal a sentence. To increase a sentence, it's the Crown that pays, not any individual.

Ms. Gwendolyn Landolt: Exactly, but why are we having to pay this out if you have a minimum sentence? You know, there are actually over 2,000—

Mr. Serge Ménard: I'm sure it's going to cost us much more in jail money.

Ms. Gwendolyn Landolt: But still the message is clear. Why do we have over 2,000 appeal court judges in Canada, and why do their sentences have to be appealed? Why cannot it be understood that this is the line, this is what matters, and we want to protect children? Why should we have to pay for the appeal—why should we do all that? It's a question of what is right, and it's right that children be protected.

That should be the priority of Bill C-2, which apparently it's supposed to be, but it's got great loopholes, and one of them is that it does not include a minimum sentence. I cannot speak more emphatically on the necessity of minimum sentence. Our organization is absolutely adamant that there must be a minimum sentence on abuse of children and child pornography.

Mr. Serge Ménard: What minimum do you suggest?

Ms. Gwendolyn Landolt: I don't know. You're asking me to make that judgment? At least eighteen months.

Mr. Serge Ménard: I thought you had made it before. I'm sorry. I thought you had an idea already.

Ms. Gwendolyn Landolt: Eighteen months, minimum. Two years.

I wouldn't mind that one little bit, if someone were found guilty of child pornography, as a mother of children. I have friends and I see their children, and I'm saying I wouldn't mind eighteen months or two years as a minimum. Boy, would that ever give a message to all these people who exploit young children.

Mr. Serge Ménard: I think you wouldn't mind five years, either.

The Chair: Merci, Monsieur Ménard.

We'll go now to Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chairman.

We have lots to think about this morning.

I don't think there's anybody around this table, Mr. Chairman, who's not concerned about protecting children. How we do it is obviously a matter of dispute, but I don't think the sincerity of anybody here.... We are most of us parents, some of us grandparents, and have been in positions of trust as it relates to children.

My question is to Mr. Sullivan, to begin with. Like you, I changed my mind on age of consent. I stood in the House some months ago and voted for raising the age of consent from 14, and I don't think that's the answer now. I'm wondering if you could tell me how you came to change your mind on it, and the reason you believe the sexual exploitation clause will deal with it more effectively. I have some follow-up questions as well.

● (1035)

Mr. Steve Sullivan: I'll keep it brief so that you have a chance to ask those other questions.

I think for me the matter was clear. I saw the previous reincarnation of the bill, studied it, and talked to different law enforcement officers. They frankly have different opinions on what would work. A lot of them said, we're not concerned about the 15-year-old, or the 20-year-old, or the 21-year-old; we want to get the 15-year-old and the 40-year-old. Those are the people we all want to target, and I think we can all agree those are not appropriate relationships. They felt this scheme was appropriate and could be an effective tool for them to do that. There are different opinions with prosecutors and different opinions with law enforcement officers. I think the scheme can work. I think...it's new; there will be test periods.

The other thing that led to my decision was that this scheme protects more kids than simply raising the age to 16 would do. We heard testimony about raising the age to 16 and having a five-year close-in-age exemption, that kind of thing. Case by case, a 20-year-old and a 15-year-old could be as exploitive as a 30-year-old and a 15-year-old, and I think this scheme allows law enforcement and prosecutors to examine cases on a case-by-case basis and determine whether the criminal law is the appropriate thing.

As a father, seeing my 15-year-old son or daughter and a 20-year-old or 25-year-old man is not something I'd be happy about, and something we'd certainly have some conversations about, but should that 21-year-old man be prosecuted in a criminal court because he's one year older than the five-year exemption? Those are the grey areas that I'm not sure the criminal law deals with best. I think those can be better dealt with in a lot of family situations.

Having said that, when it is an exploitive relationship, this scheme also allows the use of that, and there's discretion involved.

Ms. Anita Neville: Thank you very much.

I don't know about the whole matter of sentencing. We heard there are 2,000 appeal court judges. I question that figure. I don't know the number, but I think it's substantially less than that.

Mr. Burstein or Ms. Unger, when cases go forward on appeal, do you have any idea of the number of times they go forward to increase sentencing, as opposed to reducing sentencing? Maybe Mr. Sullivan can speak to that.

Mr. Paul Burstein: I can only speak of the Ontario experience, and I state the caveat that this isn't scientific, but I can say this. There is not a very large criminal appellate bar in Ontario. I'm probably pretty friendly with all of them, so I have a rough sense. Also, my former partner is now a lawyer at the crown appeals office in Ontario, and I'm very friendly with some of the people there. So I have a rough sense of it. If I had to guesstimate, I'd say fewer than half are crown appeals, probably in the range of 20% to 30% against sentence.

I can certainly tell you, from conversations I've had with crown lawyers for the appeals office of the Ministry of the Attorney General of Ontario, that they take very seriously sentences that are considered to be too lenient. And the way the system works, so you understand, is that the trial crown, who's obviously closest to the case, has had contact with the victim and knows the facts, will recommend to the appeals office. So it's not as though the appeals office has to be monitoring all the cases across the land. They get recommendations from the trial crowns, and they have great success in going forward on appeals, unless it's like the case in Saskatchewan, where there's been an incredible delay.

So it happens very frequently. I've been counsel on many. I know it's not an anomaly in any way, and they take it very seriously.

● (1040)

Ms. Anita Neville: Thank you.

Does anybody else want to comment?

I had to leave the meeting for part of the discussion. When Mr. Gillespie was here, he spoke to the whole issue of Internet providers and the potential of prosecuting those who show the pornography. Mr. Thompson referred to 1980, I think, and what we're dealing with in child pornography today is another world through the use of the Internet. Can you or anybody comment on whether you've thought about it and how effective you would see going after the providers to have them take responsibility for monitoring what is set up on their sites?

Mr. Paul Burstein: Let me deal with the legal issue. I know who Detective Sergeant Gillespie is, and I don't want to deal with the enforcement issues.

The legal issue that often comes up in these cases concerns jurisdiction. Where do you prosecute them? You have the provider in Alberta who's hosting the site in Nova Scotia, and the head office is in British Columbia—or maybe worse, it's in the Bahamas, it's in the States, as Ms. Unger points out. It's actually something I had to look into in respect of Internet gambling, where there's the same sort of idea.

If this committee's going to do something, one of the things you'll have to address is that jurisdictional issue. I don't think it's difficult. Right now there's some common law out there; there's a Supreme Court of Canada case in 1985 called Libman, which says essentially that we can prosecute offenders in Canada for crimes as long as they have a substantial connection to Canada. But rather than leave it in the realm of the common law and a bit vague, if you want to give the police the tools.... And again I emphasize that the association isn't against deterring child pornography; we want to see that too—I'm a father. But you have to give the police the tools to make the cases prosecutable, and that's the one issue I can see from a lawyer's perspective. As a defence lawyer on the other side, I'd exploit that, if there was a jurisdictional problem.

So fix that. I can't address enforcement issues.

The Chair: Is there anything further?

Mr. Sullivan, and then we'll have to move on.

Mr. Steve Sullivan: Just briefly, I don't pretend to know what the solutions are, but I think it is appropriate that at some point the service providers accept their responsibility. We don't want to create unrealistic burdens on them that they could never meet to eradicate child pornography from their sites, but certainly they have a role to play in this. And I don't know that they've been as active as they need to be.

But one of the points you've touched on is that the whole scope of child pornography has changed since 1980 or 1993, when Eli Langer was charged. I don't think he'd be charged today because police don't have the time.

I think the toughest issue in the battle on child pornography is police resources. They don't have the time and they don't have the resources. There are police services across this country that have one, maybe two, people trying to tackle this problem and they're always playing catch-up. That's why it's frustrating, in one sense, that a lot of the debate about this bill has been on this art issue. It's not the reality that police forces are facing today. What they're facing is resources and the time and their energy to go into trying to prosecute these people.

The Chair: Good. Thank you.

Thank you, Ms. Neville.

Now, Mr. Warawa.

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

I too would like to thank each of the witnesses, particularly REAL Women and CASE, for being here.

First, there was a comment that if it's not broke, don't fix it. I think Canadians are very upset, and they perceive that it has been broken.

I think it was a stretch to say that you have to stand on your head and spit wooden nickels before you can see examples of inappropriate sentencing. In my community of Langley, British Columbia, a young male adult was recently convicted of sexually assaulting two young girls, one living on each side of him. He received a conditional sentence, which he is serving at home. His young victims see him, and it's stressful to those families. And there are other victims as well—the parents of that offender. There is no good situation here, but was it appropriate to have that person serving his sentence at home? There are grave concerns that it was not an appropriate sentence. The police had a meeting in the community and dealt with that, and assured the neighbours that they were aware of the situation. So Canadians, I believe, are very concerned about the very generous use of conditional sentences for sex offences.

There was also a comment made that it's going to cost our society to put these people in jail. Well, I think the appropriate question is what will it cost, if we don't incarcerate them, to create more and more victims? We heard a week ago today that basically 100% of these people will reoffend. If we're permitting conditional sentences for sex offenders who represent a high risk to reoffend, high being 100%, I believe our responsibility as a federal government is to come up with legislation that ensures the protection and safety of Canadians. That's why we're here today, so I appreciate your comments.

I believe it was REAL Women who made the comment, and I would agree, that the safety of the children is paramount. The freedom of expression is secondary. Now, science uses the expression “deviant”. The study, and the professor from the University of Toronto, used that expression, “deviant”. We've had some witnesses who have come here and called it art. They're asking that we not put a chill on their freedom of expression. CBC was also here asking us to not put a chill, please, on their right to freedom of expression. I'll be asking for comments on this chill aspect. I'm concerned about the desensitization of our society. When graphic sexual images are portrayed on our TVs at inappropriate hours, does it desensitize?

I'd also like comments on the conditional sentencing. I shared the example from Langley. I agree that we should not have legislation based on one case, but what is your opinion on conditional sentencing? Should it be used for sex offences? In terms of a minimum sentence, I think you said 18 to 24 months. You're suggesting that the sentence be served in a provincial jurisdiction, I think.

My leaning is that it should be a federal offence. It should be well over two years, because basically they'll serve one-third of sentence and they'll be out. So if you're saying two years, they're going to be out in less than a year, after one-third of sentence.

Maybe I could have comments from all of you on what you believe should be a mandatory minimum sentence, if you support that concept. Also, should it be served as a conditional sentence?

● (1045)

The Chair: We'll commence with Ms. Landolt.

Ms. Gwendolyn Landolt: First I'd like to go back to the point that freedom of expression for artists should not be curtailed. I want to ask, why not? All of us have to be responsible for the harm we cause. Whether it's a carpenter, a lawyer, a physician, an electrician, everyone in society is responsible for any harm that's caused. So why should artists be excluded from being responsible for any harm they cause? They have no preferential position in our society. They should be held responsible for the firestorm that may result. We know from many studies, not just from Dr. William Marshall, that this material, child pornography, is harmful to children. There are victims out there, and we have to protect the children. The artists should be as responsible as everybody else in society. Freedom of expression is a right under the charter, but every single right in the charter is limited. The courts have limited these rights.

● (1050)

The Chair: Could you address Mr. Warawa's question? His time has expired and he wants answers.

Ms. Gwendolyn Landolt: His question was on mandatory sentence.

The Chair: Yes, minimum and conditional. We would like to hear each of you briefly on that.

Ms. Gwendolyn Landolt: Right from the beginning, I've abhorred conditional sentences because they look to the accused, not to the victim. That has always been an approach I've wondered about. It protects the accused from any harsh sentence, but it doesn't help the victims. It's always been the position of our organization that we shouldn't even have conditional sentences. Everybody should be responsible for the harm they cause. You've raised the issue of making it a provincial offence. Maybe it should be a federal offence. Maybe you're quite right that there should be a minimum over the two years, so it will become a federal offence.

All we want to do is get the message out that this is something that is unacceptable in society, and that message is not being brought out in the present situation.

The Chair: Thank you.

Mr. Sullivan, on the two points precisely.

Mr. Steve Sullivan: We've talked about conditional sentences. Obviously, I don't think it's appropriate for these kinds of offences; for 50% of child pornographers to get them is just inappropriate. We testified in the past on the conditional sentences when the committee reviewed that.

As to the numbers, there's been a bunch of different numbers floated around. There was 60 days, or one day. Realistically, I think two years or more—I think my friends may be able to comment—probably would be struck down as too onerous. As a father, I don't disagree with it, but I think we have to be realistic.

I think where you want to put the hammer down is on the second offence: this person has been before us once and we gave him one day, as I think Mr. Butt suggested, or 60 days, as I think Gillespie suggested, but the second time around it's a different story. The one benefit, though—a technical issue about provincial offences—is that although it may be two years less a day, you can also tack onto that a three-year probation period, which you can't do in the federal system.

The Chair: Ms. Smith, on the two points.

Mrs. Dolina Smith: I have very little comment, except that I would support whatever the police said; Paul Gillespie said 60 days first, and two years less a day for a second offence. They're the ones on the front line. Whatever works to help children I'm for.

The Chair: Ms. Unger.

Ms. Karen Unger: We have to look at the individual circumstances of the offender and the spectrum into which the offence falls. You have the minor offences of that category and you have the more serious ones. So question the accused person who comes before you, who's a first time offender, who's on the lower end of the spectrum, or who has individual circumstances, wherein the person is ill, for example, or it's a historical sexual assault. Mr. Burstein gave the example of a case he had, and I had a similar case. The male was 12 years old at the time; he's now 50 years old. Since then a lifetime has gone by. He's become an adult, he's been married, he has children. Are these people going to automatically come within the minimum sentence provisions?

The Chair: Thank you. Thank you, Mr. Warawa.

Mr. Maloney.

Mr. John Maloney (Welland, Lib.): I would like to address my question to the Criminal Lawyers' Association.

I appreciate that a wrongful conviction is just a horrendous situation for the accused, and it brings the system of justice into disrepute as well. On the other hand, you all know that at the best of times, witnesses are very nervous in court. In situations of sexual offences, for adults as well as children, it's been a traumatic experience and they have to relive it. They also have to face the accused in front of them.

You made the comment, Mr. Burstein, that if you were a defence lawyer, you'd exploit that. That wasn't dealing with this specifically, but it is perhaps a function of defence lawyers to exploit certain situations. I see the protections as an attempt to counterbalance the nervousness or difficulty in facing the accused. In your testimony, I think you resisted the expansion of these protections. Can you tell me which protections you find particularly difficult and, more importantly, why?

● (1055)

Mr. Paul Burstein: Understand that I am also a professor at Osgoode Hall Law School, and part time at Queen's, where I teach trial advocacy. I can tell you that as a matter of trial advocacy, I would very much emphasize to young lawyers and my students that exploiting a witness's nervousness to pressure them more is a very bad tactic if it's in front of a jury. It's only going to cause more sympathy for the person giving testimony. I'm not saying that some defence lawyers don't do it, but it's just bad judgment.

There are bad defence lawyers out there, and yes, they shouldn't go about it that way, but there is a difficulty involved here, sir. I appreciate that the complainants who really were abused or really were the victims of crime find it difficult to testify, and that they shouldn't have to because they've done the courageous thing in coming forward. But do you know what? Contrary to what Mr. Sullivan wants to believe, there are witnesses who do come forward and make false allegations.

I'll give you one prime example: family law disputes. I can't tell you how many cases I've had where there's been a dispute, a marriage has broken down, and the wife makes an allegation, or encourages the child to make an allegation, and the trial judge has found, beyond a reasonable doubt, that it was entirely concocted and fabricated. It was done to position one party in a better way in the family litigation.

If we extend these protections automatically to everyone in the category, the danger is that it blunts the ability of the defence—and I'm not talking in a violent, aggressive way, but in an appropriate way—to truly test the credibility of the complainant. Cross-examining someone over closed-circuit TV makes it much more difficult to assess the demeanour of the witness. Our courts have emphasized that demeanour is a vital component of a jury's or a judge's ability to assess the credibility of a witness.

Concerning the ability to ban publication, typically speaking, that may be the best way for the defence to uncover evidence to show that the complaint is false. People read about it in the paper and say, “Wait a minute, what's that person talking about? I knew that person growing up. They never had a problem with this particular individual.” And videotaped evidence makes it very difficult to actually test the credibility of the witnesses.

Go back and look at the decisions the Supreme Court rendered about all the predecessors to these amendments. And they're there; sections 715.1 and 486 are already there. Look at what the Supreme Court of Canada said in terms of why they could justify risking an increase in wrongful convictions, and risking diluting the trial process in favour of those amendments. The reason was that there was strong social science evidence that they were necessary.

Where is your evidence that these amendments are necessary? We've heard statements, and I know that everyone says it's important, but who's come forward with a study that says if you don't change the law, as Bill C-2 will, more truthful complaints won't come forward? Where's the evidence that says the system hasn't been working in that regard? If they don't have it, then I say all of them are unnecessary and unjustified.

The Chair: Mr. Sullivan, do you have a comment?

Mr. Steve Sullivan: There's no evidence to suggest that these protections or the ones in this bill have increased wrongful accusations or wrongful convictions. I think it is necessary, when you talk to the victims of sexual assault who have been humiliated by defence lawyers.... Maybe they're all of the bads ones, but you talk to any sexual assault victim in this country, let's say children: defence lawyers take advantage of their situation, try to confuse them, particularly children. I'm not blaming them, that's their job, but let's be realistic about what happens in the courtrooms across this country.

The other thing is, I would never suggest that there are not wrongful accusations or wrongful convictions. What I'm saying is that there's nothing in this bill or in the Criminal Code that would say to someone, I'm now going to make a wrongful accusation or a wrongful conviction. It's just not there. The fact that someone might be able to get a screen is not going to make them decide they're going to make a wrongful accusation.

I agree 100% that these should not be automatic protections. Not all victims want them, not all victims need them. There should be discretion, even though there's a presumption in some of these provisions. You've heard witnesses on Bill C-13, and there's a presumption that people convicted of primary offences are going to give their DNA, and it's only happening in 50% of cases. So the suggestion that because it's presumptive, judges are automatically going to do it simply is not realistic.

● (1100)

The Chair: Thank you, Mr. Maloney.

To conclude this session, before we go to our motions, Mr. Breitkreuz.

Mr. Garry Breitkreuz: I have four questions.

One of you raised the point that we restrict the use of alcohol and tobacco to someone under the age of 18, and we've heard from previous witnesses that not all children mature at the same rate. There's tremendous psychological harm to some of them through being involved in activities they may not have the maturity to make a choice about. Some of the homes maybe don't provide the guidance they should in today's society. TV has desensitized children to some of the harmful effects they may experience as a result of engaging in intimate relationships at too early an age.

So what is more harmful, alcohol and tobacco before the age of 18 or some of these exploitative relationships that may occur? What would be the harm in raising the age of consent, and should we not err on the side of caution in this respect? What would be the harm in doing that, in light of some of the testimony we've heard about the long-term effects of these exploitative relationships on people who don't have the ability to choose, because they may have not matured psychologically yet?

The Chair: Ms. Smith.

Mrs. Dolina Smith: That is one of the questions I was wanting to ask, if I could have asked a question. I have had no evidence given to me in any of my readings or any of my findings that there would be any harm in raising the age of consent. There is no advantage to 14-year-olds in adults having legal permission to use them sexually. There is no advantage to the child, none at all. So I stand firmly by the notion that the age of consent should be raised, with zero tolerance, to 16, with an age differential to protect peer activities, because that's a different situation from that of adults using children. Then we work with the 16- and 17-year-olds.

Mr. Garry Breitkreuz: But some of you are arguing otherwise.

Mr. Steve Sullivan: I think part of the answer was in your question, that young people mature at different rates. Some 17-year-olds shouldn't be having sex with 30-year-olds, but raising the age of consent wouldn't protect those kids. Some 15-year-olds may be more mature in relation to a 20-year-old or a 21-year-old. I think this scheme allows discretion to both law enforcement and prosecutors in trying to capture those offences and looking at the individual circumstances.

Mr. Garry Breitkreuz: But law enforcement officers have come before us and said, because the law is not clear, they can't make those charges, and they don't have time to sift through all of this. Sergeant Gillespie told us clearly that because the law is so fuzzy, they have to use their judgment, and it doesn't stand up in court.

Mr. Steve Sullivan: I agree with you that there are some law enforcement officers who say that, but I've talked to other law enforcements who say differently.

Mrs. Dolina Smith: I don't see how any law enforcement officer can enforce a law that does not exist on the books; we have no law on the books to protect children 14 and over. Can any of you tell me why? It doesn't make sense that we do not protect our children 14 and over from adults. The police can do nothing if it's not in the Criminal Code, and the Ottawa case is one example.

Mr. Garry Breitkreuz: Mr. Sullivan, can you tell us who these law enforcement officers are, because we haven't come across them?

Mr. Steve Sullivan: Probably some years back, I was at a round table discussion of the Canadian Centre for Abuse Awareness, an Ontario group that did a huge study. One of the questions they asked was, should we raise the age of consent? There were three law enforcement officers from the Ottawa police there who said it was not the way to go, because they didn't want to be bothered with the person who was over that age, whether they were a 15-year-old or a 21-year-old. How do you draw that line? Their view was that a scheme giving them discretion was the best way to go.

There have been media reports from the Edmonton Police Service of officers who have said this is a scheme whose approach they could use. So with respect, the fact they haven't come before the committee...you haven't heard from a lot of people.

● (1105)

Mr. Garry Breitkreuz: Should the age of consent be combined with a difference in age between the one who is abusing the younger person and the young person?

The Chair: This is not a cross-examination of Mr. Sullivan. Other witnesses have something to add to that.

Mr. Paul Burstein: I just want to make one comment to you, sir. I accept your logic, and we don't really take a position on the age of consent—and, actually, we hear a lot of things here that we agree with.

I ask you to do this: apply your logic to the provision in Bill C-2 that seeks to erase the competency inquiry. In other words, at the same time as you're saying children aren't mature enough to consent, or to decide whether they can consent, we're now prepared to say that any child under 14 is automatically competent, unless the defence can somehow find evidence otherwise. That goes all the way down to the age of three or four, so I just ask you to take that logic, which I accept, and apply it in that other context.

Mr. Garry Breitkreuz: I believe our legal system should be designed to discover the truth and to ensure that criminals are convicted and that there be a deterrent effect to that. That's where I'm coming from in my next question.

What are some of the key elements in the present legislation that prevent us from discovering the truth? Obviously, there are problems, in my opinion, but we want to ensure that this legislation works. So as a wrap-up, could you give us some comments on where you feel more changes need to be made to this legislation to ensure that the courts and judges are going to protect the victims in our society and will have the tools to do it. What key things do you think still need to be amended in this legislation to do that?

The Chair: Mr. Sullivan.

Mr. Steve Sullivan: We've made some suggestions for amending the facilitation of testimony, and I come back to the point that I think that testimonial aids are really about the court hearing the truth from witnesses. Those testimonial aids are there to help people tell the truth in court, which is not to say that everybody is going to tell the truth in court, from any side certainly. So we favour some tightening up of those provisions.

Frankly, I don't think the child pornography provisions will do much. I think they're fair and draw the appropriate balance, but they're not going to have any impact on law enforcement's ability to combat child pornography.

Mr. Garry Breitkreuz: So what would you like to see changed?

Mr. Steve Sullivan: I actually think our laws with respect to child pornography are pretty good. I think the problems are the resources for police, and the sentences that people get who are involved in this kind of thing. We talked about conditional sentences and mandatory minimums, and I think we need to send a statement that if you use children for your sexual gratification, there's going to be a stiff penalty involved.

Mr. Garry Breitkreuz: Okay.

Mr. Paul Burstein: One thing I'm very encouraged about is that I probably agree with Mr. Sullivan. You heard him say at least two or three times that the police aren't interested in prosecuting or going after material that fits the definition of child pornography but might have artistic merit. So why are we seeking to change it? It's not an issue. There aren't those cases out there.

Even though Mr. Sullivan assures us that the police will use their discretion and not again charge people like Eli Langer, I'm sorry, but I take no comfort in that, because I would never have thought he would be charged in the first place. You're leaving it to the discretion of a police officer. That's not what this body should do. This body should set law.

In terms of the facilitating testimony provisions, again, we're not saying they are going to encourage false complaints. We're saying that if there is a false complaint out there, you can't blunt the impact of the tools our system has cherished for centuries in order to discover which ones are false and which ones are true. We don't want, in any way, to deter the police from discovering true complaints. We're simply saying that once they get to the court, we have to make sure we have the tools to sort the good from the bad. There is going to be a lot more good, and it's harder to weed out the bad ones, but all the facilitation provisions here, unless you have evidence that they're necessary, as you did for the previous ones, shouldn't be changed.

● (1110)

The Chair: A final word for Ms. Smith or Ms. Landolt.

Ms. Gwendolyn Landolt: Again, I'd like to go back. He keeps saying the police are not going to charge for artistic merit. As long as you have that provision in the child pornography law, there are going to be the Eli Langer and there are going to be people, if there's nothing to prohibit them from expressing themselves with regard to the depiction of children.... It's going to be done.

I know the Internet is where the problem mainly lies now, but there's still the problem of “artists”. They can always get their experts to testify that the work is artistic. We saw that again in the Robin Sharpe case. The question is, do you want to protect children? The only way is to get rid of artistic merit.

The Chair: Okay, Ms. Smith.

Mrs. Dolina Smith: I believe that in many ways our child pornography laws are strong, but I believe our police have to have resources to help and they have to have laws to help, like raising the age of consent. Let them get in and make the arrests if needed. I think that is important for child protection.

I also feel very strongly that the Internet and Internet service providers are other issues that have to be looked at if we are going to protect our children from pornography, from child pornography, and from being lured on the Internet. We are living in a very dangerous time for children, and our laws have to be up to the technology that is here. The law that was written in 1992 came before the age of the Internet, so we have to look clearly at that.

The Chair: Thank you very much.

On behalf of the committee, I thank all of the witnesses for your assistance here today.

We'll be suspending for five minutes to allow the witnesses to take their leave. I'm a realist—I'll say two but it will be ten. Then we'll resume in camera.

[*Proceedings continue in camera*]

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