



House of Commons
CANADA

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

JUST • NUMBER 062 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, November 24, 2005

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Chair

Mr. John Maloney

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•(1110)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I call our meeting to order.

This is the 62nd meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We are dealing with Bill C-215.

Our witnesses this morning include Kim Pate, from the Canadian Association of Elizabeth Fry Societies; James Loewen, from the Church Council on Justice and Corrections; Kent Roach, as an individual, from the University of Toronto; and from the Canadian Council of Criminal Defence Lawyers, Andy Rady, representative.

Mr. Kramp would like to follow up after everyone's finished. I propose that we deal with these witnesses from now until 1 o'clock, and Mr. Kramp would then proceed. Mr. Warawa would like to bring his motion after all the witnesses are finished.

Yes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): On a point of order, the orders of the day that I'm looking at say that we're doing committee business, and that we're going to deal with Mr. Warawa's motion. Has there been a change? If so, I'm sorry, I just wasn't informed.

The Chair: You want to do the motion first?

Hon. Paul Harold Macklin: I'm looking at the orders of the day, and I'm just wondering....

The Chair: We try to accommodate all of the requests. We have some gentlemen here who have to catch a plane, and in view of the adverse weather conditions—

Hon. Paul Harold Macklin: All right, that's fine. If they've got an issue, that's different; I just didn't know. Because there will be debate.

The Chair: Ladies and gentlemen, if you just hold tight you'll see a little action here.

Mr. Warawa, it's been requested that we follow the orders of the day.

Hon. Paul Harold Macklin: Well, no, I'll withdraw the request, Mr. Chairman. I just wanted to know if there was a reason why we were not following the orders. There is a reason, and that's fine.

Mr. Vic Toews (Provencher, CPC): No, there is no good reason. I think we should proceed.

Hon. Paul Harold Macklin: You don't think their concern about getting a plane is a reason?

Mr. Vic Toews: This vote will take, what, five minutes?

Hon. Paul Harold Macklin: But there's going to be debate as well.

The Chair: Mr. Toews, Mr. Warawa made the request to come last....

Are you now telling me you want to change?

Mr. Mark Warawa (Langley, CPC): Well, I think the point has been made by Mr. Macklin. It's on the agenda, and I agree that—

The Chair: All right, sir, present your motion.

Mr. Mark Warawa: The motion is that we deal with the clause-by-clause on Monday. It's a very important bill, and with the limited time that this Parliament may have, I think we should consider it.

I so move that we do a clause-by-clause on Monday.

The Chair: Comment? Mr. Macklin.

Hon. Paul Harold Macklin: I would oppose that for a number of reasons, not the least of which is the fact that one of the witnesses we were supposed to see today has not been able to make it because of the weather. Hopefully he can make it on Monday.

I think the whole idea of terminating our deliberations and witness testimony and moving on to clause-by-clause is premature. When the committee voted for an extension of time to hear witnesses, it was also voting for more time to gather and consider evidence in relation to the sentencing. We have not received the evidence that was promised by the Canadian Centre for Justice Statistics on sentencing practices and patterns. We will not likely have it in time, between now and Monday, to be able to assess that data. In fact, we invited Mr. Jones, who appeared here, to come back with his data before this committee and offer a further presentation on it. Finally, I would note that members from more than one party expressed interest in getting his interpretation on the range of statistical data, including homicide rates in other countries involving firearms.

I would also note that there was a strong concern raised by victims advocate Steve Sullivan, when he appeared before us, concerning the use of plea bargaining by crown prosecutors. He suggested that we hear from crowns about the impact of mandatory minimum sentences on plea bargaining practices, as well as the impact of extreme maximum sentences. As I recall, Mr. Moore agreed that the crowns should be heard from.

We know there are serious concerns also about the constitutionality and legality and the ultimate effectiveness of most of the individual sections of this bill, so I think it would be at the very least precipitous to move so quickly to a clause-by-clause stage.

As well, a factor that I think we could take into consideration is the fact that the Minister of Justice recently announced that he would be bringing forth very shortly—and I believe “very shortly” may be this week—a strategy to deal with gun crime, including legislative proposals to create new offences and to impose mandatory minimum sentences in some areas, and an initiative to work with provincial crowns on firearm-related prosecutions.

I'm suggesting that it really isn't productive to race to clause-by-clause when so many members have requested more material that in fact has not been brought forward. I think Mr. Marceau asked for information on the American sentencing patterns for assault offences. Mr. Comartin wanted to know further whether the cause of the decline in the U.S. murder rate was attributable to the aging population or to gun control measures. Mr. Toews and Mr. Breitkreuz wanted crime data broken down by riding.

Much of what we as a committee have asked for in fact hasn't been brought before this committee, and I just don't see the rush to go forward when in fact another few days might give us the answers we would need.

Thank you.

The Chair: Thank you, Mr. Macklin.

Mr. Cullen has indicated a request to speak.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

I just have a quick question, because I don't want to keep the witnesses waiting, and Mr. Kramp is here. I know there was some discussion about possible amendments coming forward, but is that likely?

The Chair: We have not received any, or the clerk has not received any.

Mr. Vic Toews: I am not aware of any.

An hon. member: Neither am I.

The Chair: In response to that question, Mr. Comartin....

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I intend to move at least one, and from my discussion with Borys, he's planning on moving at least one, if not two.

The Chair: Do you have them available in both official languages?

Mr. Joe Comartin: No, I thought we should wait until we have the decision on the motion.

The Chair: Mr. Marceau, did you have your hand raised?

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Mr. Chairman, I had requested additional information which I have not yet received. One of the witnesses that I wanted to hear from on this very important topic is the Barreau du Québec, which will not come as a surprise to anyone.

I understand our colleague Warawa's impatience. I was in somewhat the same situation as he is yesterday, at the Subcommittee on the Process for Appointment to the Federal Judiciary. The subcommittee concluded that, rather than doing something that is so important in a half-baked and possibly poor way, we were better off continuing the work during the next Parliament.

Mr. Chairman, I have been working on the judiciary appointment process for months. Yesterday I said in the subcommittee that we would be doing a disservice if we were to rush through the work. Gun use and crime is a very important issue. If we were to rush to adopt this bill too quickly, without knowing all of the facts, we would be doing a disservice to a cause which, in itself, is valid. This is why my colleague Lemay and I will be voting against Mr. Warawa's motion.

• (1115)

[*English*]

The Chair: Ms. Sgro, please.

Hon. Judy Sgro (York West, Lib.): Thank you very much.

I will go on record that I do support the intent of Mr. Kramp's motion, and I understand what he's trying to achieve here, but it's premature to move so quickly. I want to explore further this whole issue of plea bargaining that's going on, which I think is part of the problem we've got. I think for us to move forward without seeing the amendments...and there are some others of us who may want to move other amendments. There's some work to be done here, but we're trying to rush through too quickly something that's critically important and that we need to look at much more carefully. So it's premature to try to move to clause-by-clause. I say that sincerely, because I do support the intent of the motion. I want to see the amendments that both Borys and Mr. Comartin are suggesting will come forward, and I want to hear more about the plea bargaining.

So let's not just play politics here; these are important things. I appreciate Mr. Kramp's energy and the effort he's put into this, and I don't want to see it just passed by a committee and go nowhere, because we all know that the government is supposed to fall on Monday night, unless the sky clears. So there's absolutely nothing to be gained on this by our rushing this through, other than the fact that we are probably not doing our job of due diligence in making sure we pass things at the committee for the right reasons, and not for political reasons.

The Chair: Is there any further discussion?

Mr. Comartin.

Mr. Joe Comartin: Just quickly, Mr. Chair, I recognize the danger of passing this, but I also recognize that it's not going to get through the House before the election. What we're really talking about here is that this justice committee, this standing committee of this Parliament, take a position with regard to increasing the penalties and sending that message out to the criminal community—organized crime gangs, in particular—that this is coming. I think for that reason alone....

The minister has clearly taken the position that he's going to do something about it, if he's ever given the chance. We have the opportunity to do it right now and to send that message out. We heard from a number of witnesses of the importance of Parliament taking a position on this. As part of the educational program, if I can put it that way, we have an opportunity to do something about this today before Parliament goes down.

The Chair: Thank you.

I'll call the question. All those in favour of Mr. Warawa's motion, please indicate.

Mr. Richard Marceau: A recorded vote.

Mr. Joe Comartin: Yes, a recorded vote.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): Mr. Chair, unfortunately I was a little bit delayed in getting here. Could I hear the motion?

I'm sorry, but I've been rushing around from committee to committee.

(Motion agreed to: yeas 6; nays 5)

The Chair: Can we move on to our witnesses, please?

Ms. Pate.

Mrs. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Thank you very much, Mr. Chair, and thank you to the members of the committee for inviting us to appear here.

We want to go on record: the Canadian Association of Elizabeth Fry Societies and many other equality-seeking groups have taken clear positions in opposition to mandatory minimum sentences.

Our organization is extremely concerned about the efforts and the publicly stated positions of some of the attorneys general of the provinces in favour of instituting additional mandatory minimum sentences in addition to those that are proposed through this bill. In fact, very recently we wrote to Minister Cotler commending him for the position he has taken up until recently regarding taking every public opportunity to educate the public and to educate his colleagues, many of you around the table, about the fact that there is no persuasive evidence to support the notion that mandatory minimum sentences are effective, that they deter others, that they prevent crime, or that they will solve any of the gun violence issues that are currently of significant issue to members around this table as well as to our organization, many other organizations, and the Canadian general public.

We also at that time further urged Minister Cotler to elucidate the reality that there is every reason to believe that additional mandatory minimum penalties for firearms such as the ones suggested in this bill will have the same effect in Canada of increasing the unfair enforcement of the law and generating more wrongful convictions. Particularly given the focus of this bill, it will likely have a devastating effect on the African Canadian community by incarcerating more young black men at a disproportionate rate.

Despite the rhetoric that is emerging from many areas, many states in the United States, such as Michigan, and many places in other parts of the world, such as the Northern Territory in Australia, are

now retreating from the position and the criminal law strategy of imposing more mandatory minimum sentences, this in light of their negative experiences with the consequences of imposing more mandatory minimum sentences. Such jurisdictions have clearly identified the negative impact of mandatory minimum sentences as including unfairness, wrongful convictions, and skyrocketing incarceration rates for African Americans, aboriginal people, women, and in particular those who are most marginalized, this without any discernable deterrent benefit.

We know from the Royal Commission on Aboriginal Peoples in this country and from many provincial reports, such as the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, that we already have a problem of systemic racism in the enforcement of our criminal law. Mandatory minimum sentences will only reinforce this trend by further targeting the African Canadian community and generating a false impression that gun violence can be stemmed by such punitive responses. We are also concerned that more mandatory minimum penalties will exacerbate the over-incarceration of aboriginal people, which we have only begun to take steps to address in this country.

Like most people in Canada, I personally, and our organization, abhor violence, and we are extremely concerned about gun violence and other gun-related offences. We recognize that some people believe that a simplistic reaction of longer and more punitive sentencing is an appropriate response to real and perceived increases in particular crimes. Many researchers and practitioners alike have long disputed the validity of such approaches. We value such experience and expertise and have urged the Canadian government already, and we urge you as a committee, to recognize the importance of maintaining Canada's commitment to taking a principled approach built upon the framework of our charter and human rights protections in order to best intervene in ways that promote public safety.

In 2001 our organization and the Osgoode Hall Law School co-sponsored a colloquium on mandatory minimum sentences, from which was issued a special edition of the *Osgoode Hall Law Journal*. If you don't have copies of it and you'd like it, I commend it to you. It's some of the finest and best research available. In fact, it was put in place because of the fact that there was very limited research available in Canada.

I'd like to draw your attention to a previous witness's evidence. On October 18, Mr. Kramp, the mover of the bill, presented in evidence a quote from Professor Elizabeth Sheehy, and I have the article he was quoting from; it was actually the introduction to that edition of the *Osgoode Hall Law Journal*. He took part of the quote and indicated that there is sparse evidence in Canada.... I'm not verbatim quoting what Mr. Kramp said. However, I think it's important for you to realize that the entire quote.... I spoke to Professor Sheehy to confirm whether this is still the case. In fact, she reiterated that there is more research now as a result of the work we did on the colloquium and as a result of this *Osgoode Hall Law Journal*. More recently, I know the Department of Justice has contracted with Professor Julian Roberts, who has also produced research about the effect of mandatory minimums and the use of them internationally.

• (1120)

Professor Sheehy says:

Although the legal scholarship on mandatory minimum sentencing in the United States is vast and there is a developing body of Australian jurisprudence on the topic, the Canadian literature remains sparse.

I think in fact there is much evidence internationally that this approach is not productive. As I've already mentioned, jurisdictions in the United States have used mandatory minimums and have taken what is often referred to as a strong law and order approach to crime. They have seen sharp increases in the incarceration of their black community members and a rise in gun violence. Clearly, this approach has failed, and paradoxically, it has resulted in unsafe communities and increased violence. Further, it is well documented that the overincarceration of racialized communities depletes social capital and especially negatively impacts youth and children.

Such an approach does not address some of the root causes of crime, such as persistent poverty, unemployment, lack of educational opportunities, and social marginalization. Imposing new mandatory minimum penalties for gun offences will not reduce crime. It will not create safer communities for African Canadian families and youth. Moreover, this approach to increased gun violence fails to hold people like gun manufacturers accountable for their irresponsible practices, which have resulted in a significant increase in the trafficking of illegal guns and firearms into this country, in particular from south of the border.

Another mandatory minimum sentence or two is not the answer. The problem of increased gun violence requires a long-term and sustained solution that is focused on social and community development and increased opportunities for full participation in Canadian society for African Canadian youth.

I would suggest that this committee could take some leadership in terms of direction for the spending of federal tax dollars by ensuring that some of the rollback is spent on social services. Economic readjustment for those who are the poorest would be far more beneficial if we had more investment in social health and educational services in the provinces with leadership in terms of national standards from the federal government.

Thank you.

• (1125)

The Chair: Thank you.

Mr. Loewen please.

Mr. James Loewen (Member, Board of Directors, Director at Large, Church Council on Justice and Corrections): Thank you, Mr. Chair, and thank you to the other committee members for the opportunity to speak with you on behalf of the Church Council on Justice and Corrections.

The Church Council on Justice and Corrections, CCJC, is made up of a coalition of 11 churches and church-based organizations, one of which is the organization I work for, the Mennonite Central Committee of Canada. CCJC is an organization that is devoted to promoting healing justice, which is also known as restorative justice—

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Loewen, could you speak more slowly, please. The interpreters found it difficult to keep up with Ms. Pate, but they did manage to do so. Now they're starting to be out of breath. They have to be able to breathe.

[*English*]

Mr. James Loewen: All right. I'm a bit excited.

[*Translation*]

Mr. Marc Lemay: I know, it is exciting.

[*English*]

Mr. James Loewen: We propose to speak to Bill C-215 with the insights and concerns that restorative justice would note. These will focus on the four main stakeholders in justice: the victim, the offender, the community, and the state.

Bills like Bill C-215 and numerous other private members' bills indicate that our criminal justice system has failed us. In fact, Statistics Canada reports that 80% of violent, personal, and property crimes go unreported, which points to an overall lack of confidence in the criminal justice system.

There are two basic responses to this recognition. One is to try to make the system better, as this bill is intended to do. The second is to recognize that the system hasn't worked and isn't likely to work, and we had better start creating one that will. CCJC belongs to the second growing group of individuals in Canada, and we believe that crime plus time does not equal justice.

Bill C-215 will only make the problem of gun crime worse by failing to provide an effective deterrent, diverting significant resources that may have otherwise been earmarked for the victims of these crimes, further removing the voices of our communities in the practice of justice, and devaluing the offender's humanity through one-size-fits-all justice.

We agree that it is time to get serious about responding to gun crime. What is also clear is that the status quo will not work. It is time to get creative, access the wisdom and resources of the communities in which these crimes occur, and begin to look at what works, not at what looks to be hard on crime.

In order to get out of the status quo we must begin to consider justice differently. Instead of continuing in the traditional focus on the needs of the state and the status of the offender, let us instead begin to reflect on what justice would look like if the victim were of central concern in the practice of justice. This would lead us to bills that would address key victim needs, provide funds to meet those needs, and allow justice decisions that maximize the victim's experience of offender accountability and amends.

I was pleased when I noted the justified and notable concern that members of this committee, and indeed the sponsor of this bill, had for the victims of gun crime. This kind of concern is all too rarely expressed, and unfortunately even more rarely responded to in any helpful way. Unfortunately, this bill does little for victims, and instead would commit significant resources to incarceration. It offers no assistance in dealing with the aftermath of gun crimes, nor does it provide any genuine response to the impact of their victimization.

This legislation, for the stated purpose of deterrence and specific safety, proposes that for each offence involving a gun, the federal government be ready and willing to spend a minimum of half a million dollars on incarcerating the offender. This sum is to account for part of an overall response to gun crime. CCJC finds it hard to believe that nowhere in Mr. Daryl Kramp's list of other parts of the response is any response focused on the needs and realities of the victims of gun crime.

The problem I bring to your attention is part of the overall pattern of spending in the justice system. We already spend over \$10 billion a year on this system, yet \$2 million is what the federal government made available for victim compensation and support services. If we want to call on the stories of victims in promoting a bill, we ought to give more weight to their needs. To request any investment in this bill—let alone a multi-million dollar one—in the face of such stark inequity is troubling. At the very least, such inequity should require that the bill not only have the support of a wide variety of stakeholders, but it should also require that it can prove responsive to the substantive needs of victims and be broadly effective in reducing gun crime. To date, proof for either is not forthcoming.

Another concern CCJC has is that another key opportunity for victims to experience justice, restitution, is lost when offenders are sent to prison. If an offender can be safely kept in the community, they can work and provide much needed financial restitution to cover the many costs of victimization.

• (1130)

An average robbery produces almost \$15,000 in quality of life expenses, and rape, almost \$41,000 in quality of life expenses.

Clearly, offenders have key responsibilities as a result of their actions. These are primarily responsibilities to the victims and their communities. These include gaining understanding of the impact of their crime, owning that impact as their responsibility, and seeking to make amends for their crime. When we consider Bill C-215 in light of such an understanding of an offender role, we find ourselves agreeing with Mr. Kramp that the current sentencing options are ineffective.

In an interview with Justices Fraser and Little in Kenora, Ontario, both expressed frustration and concern regarding sentencing options and were reluctant to make use of incarceration, as they understood it to be an ineffective justice response. When asked where new sentencing options should come from, both felt that community-developed alternatives were dramatically better than those options available through criminal justice.

In fact, a recent report on the impact of incarceration on crime noted that:

Increasing incarceration while ignoring more effective approaches will impose a heavy burden upon courts, corrections and communities, while providing a marginal impact on crime.

There are more effective crime-reduction approaches available to us.

We draw the council's attention to a report released recently that studied the effectiveness of a Toronto-based program called Circles of Support and Accountability. Circles of Support and Accountability, or COSA, is a restorative justice reintegration program for

high-risk sex offenders. In the executive summary of the report it states, among other things:

Results show that the offenders who participated in COSA had significantly lower rates of any type of reoffending than did the offenders who did not participate in COSA. Specifically, offenders who participated in COSA had a 70% reduction in sexual recidivism in contrast to the matched comparison group...a 57% reduction in all types of violent recidivism...and an overall reduction of 35% in all types of recidivism....

Clearly, if such a program is effective with the highest-risk sex offenders in Canada, it can provide safe responses to other kinds of violence in our communities. Despite their success and the support of police, parole, and corrections partners, they remain severely underfunded and have waiting lists of offenders seeking assistance.

Crime arises out of and occurs within communities. This means that justice needs to be rooted in those communities where the victim lives and from which the offender comes. This complex intermixing of communities contains both the problem and the answers to the occurrence of crime and its reduction.

Bill C-215 represents yet another example of how communities in Canada are disempowered in the practice of justice. This prescriptive, top-down model of justice has left our communities incapacitated in doing justice and is a significant contributor to violence on the streets today.

In the Youth Criminal Justice Act there is an attempt to devolve some justice processes and decisions into the communities in which the crimes occur. This is a very important initial step forward for youth justice in Canada. Similar community decision-making is being granted in cases involving aboriginal offenders using proven and effective methods such as healing circles, mediation, and sentencing circles.

The Law Commission of Canada has done some excellent work regarding directions and issues for criminal justice. The reports, *Transforming Relationships Through Participatory Justice* and *What is a Crime?*, make for illuminating reading when considering issues like those that this bill is responding to.

The members of CCJC are perplexed that in an age of increased awareness of the need for local communities to respond to the complex realities made apparent by crime, Mr. Kramp is introducing a bill that moves in the opposite direction. This bill presumes to understand the complex realities of violence-prone communities and seeks to further disempower the voices of its people for making decisions that affect their children and victims.

When talking with community-based restorative justice programs, it becomes clear that the government does need to play an important role in the process of justice. This role is primarily supportive through providing oversight, funding, coordination, and legislative empowerment to community-based responses to the complex problems made clear by criminal behaviour.

• (1135)

This bill is doing none of those things.

Mr. Kramp is certain that this bill is an important part of an overall response to gun crime. The CCJC says no. We say this bill will only make the problem of gun violence worse, by failing to provide an effective deterrent, by diverting significant resources that may otherwise have been earmarked for victims of these crimes, by further removing the voices of our communities in the practice of justice, and by devaluing the offender's humanity through one-size-fits-all punishment. We agree that it is time to get serious about responding to gun crime, but it's clear that the status quo will not work. It's time to get creative and to access the wisdom and resources of the communities in which these crimes occur, and to begin to look at what responds to key victim and community needs, not at what looks hard on crime but fails to deliver results.

Thank you.

The Chair: Mr. Roach, please.

Prof. Kent Roach (University of Toronto, As an Individual): Thank you, Mr. Chair. My thanks to the committee for inviting me to appear.

I appear as an individual. Just by way of background, I have been a professor of criminal law and criminology at the University of Toronto since 1989. I've written two articles on section 12 of the charter, including one in the Osgoode Hall symposium that Ms. Pate referred to. I've appeared as counsel in three sentencing cases in the Supreme Court of Canada, including one that involved a section 12 issue, although I should add that I was on the losing side.

As someone who is from Toronto, as someone whose parents live in Etobicoke, where I grew up, let me first say that I think something must be done about the scourge of gun violence in that and other cities. But I will add that I don't think what should be done is Bill C-215. I think it is unconstitutional and I think it will be ineffective.

I hope to make eight points today. The first four will address the issue of the constitutionality of the bill. The last four will address the issue of the effectiveness or wisdom of the proposed bill.

First, I would just like to draw the committee's attention to the fact that Mr. Daubney, appearing on behalf of the Department of Justice, said to you that it was almost certain that this bill would be successfully challenged under section 12. That represents not an opinion of a lawyer, not an opinion of a law professor, but the legal opinion of the chief law officer of the Crown. I do not think that opinion should be lightly dismissed by this committee. Indeed, if you're not going to follow that opinion, I would respectfully suggest that you should at least have some other legal opinion to back up the idea that this bill, with an increase of 15 years' imprisonment in some cases, in some cases on top of a life imprisonment sentence, would not constitute cruel and unusual punishment under section 12 of the charter. The Attorney General of Canada has not often said that proposed bills were unconstitutional, and I think that was a moment in this committee's deliberations that cannot be lightly dismissed.

My second point is that I agree with Mr. Daubney that parts of this bill meet the constitutional standard of gross disproportionality. The bill contemplates additional consecutive mandatory sentences. The thing with mandatory sentences that must be remembered is that, by definition, they catch the most sympathetic cases that you can imagine that would be guilty of the crime. This is what Mr. Justice

Lamer said in the first case when he said seven years for importing narcotics doesn't look bad for most people, but what about the teenager coming home from Florida with one joint of marijuana?

I would urge you to think about not the worst cases—because all of the sentences that are effected by this bill have very high mandatorys, often life imprisonment—but about the most sympathetic case in which a person might be guilty under these proposed offences. Think about a young, disadvantaged person, perhaps with fetal alcohol syndrome, perhaps with mental health issues, who uses an unloaded firearm or uses an imitation firearm out of fear and out of desperation. Think about a police officer. I know that representatives of police associations have appeared before you in support of this bill, but think about Kenneth Deane, who was convicted in the manslaughter death with a firearm of aboriginal protester Dudley George. He received a conditional sentence. Under your proposal, he would go to jail for 15 years. So you have to remember that mandatory minimum sentences catch the most sympathetic offenders.

My third point is that this bill would unsettle the existing jurisprudence that has confirmed the constitutionality of the existing mandatory minimums. This bill will give more work to lawyers; it will not necessarily help people. It will unsettle the Morrissey case, which says that a mandatory four-year penalty for criminal negligence causing death with a firearm is constitutional. I disagree with the Morrissey case, but it is good law. This will open all of these cases up to further constitutional challenge. It will open up both the Latimer and Luxton cases, which confirmed the constitutionality of mandatory life imprisonment. There will be good arguments that defence lawyers can make that those are no longer good laws, because you're trying to tack 15 years on top of a life sentence.

● (1140)

Mr. Kramp mentioned the Wiles case from the Nova Scotia Court of Appeal, but that case applies to firearm prohibitions. When you read the Nova Scotia Court of Appeal's decision, you will note that it said it was constitutional, in large part, because of an escape clause in section 113 of the Criminal Code. There is no escape clause in this bill, and, in my respectful view, it is a recipe for injustice and harshness.

My fourth constitutional point echos what Ms. Pate said about the effect this will have on aboriginal and African Canadians. The Supreme Court of Canada in the Gladue case has said that the overrepresentation of aboriginal people is a crisis in the Canadian justice system. We know from the Ontario commission that there is overrepresentation of African Canadian people, and I imagine when we start doing more research, we will find that it has become worse. So it's very important to realize that this bill will largely apply to those groups.

Moving on to the last four points I want to make concerning effectiveness, my fifth point is that mandatory minimum sentences are not effective in deterring crime. The fact that we have seen the gun violence that we have in our cities tells us they are not effective; we already have a mandatory minimum four-year sentence for most of the gun violence that's been reported in Toronto, Winnipeg, and other cities. It's not deterring the people who are using guns; either they think they're not going to get caught or they don't care. So the issue is, will the marginal deterrence of moving from four years to five years, to ten years, to fifteen years all of a sudden stop gun violence? The international research and research conducted by the Solicitor General suggest there is no evidence to show that mandatory minimums deter crime.

My sixth point is that this bill is a symbolic bill. It is there for the self-described reason of sending a message—sending a message just before the election. This problem is too serious just to send a message before the election. We need to do good hard work in getting to the bottom of this problem. As Mr. Loewen said, this offers false hope for victims. It's a band-aid solution that won't help, but it will hurt the most sympathetic people you can ever imagine, who would qualify under these offences.

Seventh, I would just like to say that this will have a huge distorting effect on the system; it will clog up the system. Either accused people will not plead guilty because of these harsh sentences or there will be plea bargaining, with huge pressure on prosecutors in busy courts to “lose the gun”. So you actually could have sentences where the gun disappears, because we can't live with these 10- or 15-year sentences.

What mandatory sentences do is to transfer discretion from judges to prosecutors. Maybe part of this bill is based on a distrust of the judiciary. I hope not, but at least what the judiciary does is public and open and subject to criticism. What prosecutors do is not nearly as transparent. What this bill does is take discretionary power from judges and give it to prosecutors. I think you really have to study that issue before you decide it is good policy.

Finally, I would just say this is a partial solution. We need a multi-pronged strategy: we need to know where the guns are coming from; we need to figure out how to stop the guns; we need to look at issues of enforcement; we need to look at issues of ammunition; and we need to look at issues of employment, recreation, and all of that.

In my respectful view, this is a band-aid that will not solve the problem; it will make things worse.

Thank you very much.

• (1145)

The Chair: Thank you, Mr. Roach.

Mr. Rady, please, for 10 minutes.

Mr. Andy Rady (Representative, Canadian Council of Criminal Defence Lawyers): Thank you.

I'm here on behalf of the Canadian Council of Criminal Defence Lawyers. I am a defence lawyer. I've been practising in that capacity for 23 years, so I represent the people who are charged with gun crimes, as do the rest of the members in our association.

I should say at the outset that even we defence lawyers have a concern about violent crime and gun crime. That shouldn't surprise anyone; we are also citizens of this country. We're concerned about all offences, for that matter. But we also believe very strongly that we cannot be reactionary or respond with the jerk of our knees to what we see and hear on the news, even though the news is very disturbing.

What has been said by the witnesses before me I choose not to repeat, but I would adopt most of what they have indicated. I don't want to be repetitious with you. But the problem here is deeper and requires more than a prophylactic response. The problem of gun crime is rooted in poverty, despair, disparity, and our getting away from teaching what acceptable social values are to members of our community.

Minimum consecutive sentences for gun crime are not going to do the trick. I don't think any politician will run an election on a “get soft on crime” platform. Get tough on crime sounds really good for the voters, but is it good for Canadians, when you really study and look at what we're talking about here? Is this really what we need now? Our association would suggest it is not, for many of the reasons here—the constitutional questions, and what will happen, the disparity that will continue to evolve should this legislation be passed.

I could give you examples of the way something might happen if you looked at this legislation the way I would, potentially, as a defence lawyer, someone who's going to have to represent that person charged with a gun crime. Take the situation where we have a vicious criminal, someone who walks into a corner store to rob it. He has a gun in his hand and he has no doubt in his mind he will use that gun if necessary, but he doesn't. The robbery is committed; he's eventually caught. He now faces, according to this legislation, a sentence on the robbery of up to life imprisonment, plus an additional, by my read, five years because he carried the gun, but no shot was fired and no one was injured.

Take a similar situation, where you have a scared young man going into that store with a gun. This man is not a vicious, hardened criminal. He's just a scared kid who's there to rob for a few bucks. What he does in the course of that is fire the gun to scare people. Let's say that shot hit the storekeeper, something that he perhaps had not intended. Now he's facing not only the life sentence, but also 10 years or 15, depending on whether someone has been injured.

Who do we really want to incarcerate longer? The vicious man who went in there with the horrible criminal intent, or the young scared kid, who during the course of that robbery let the gun go off? What this legislation does is give no discretion whatsoever to the judge who sentences that offender. He has to give the 10 or the 15 years. That's what we're saying. And what our counsel would say is, we have to leave the discretion to the judiciary.

I would suggest that we do not select our judges lightly. We give to them a lot of authority and power in their courtroom, and we respect our judiciary. The other thing about giving the discretion to the judiciary is that if they do make a mistake, if the sentence is not appropriate, there is a court of appeal. If the sentence is either too light or too harsh, it can be reviewed. But when there is a mandatory minimum consecutive sentence, there is no review of that. That is what the law is simply, unless there's a constitutional challenge. And I can tell you that every defence lawyer out there who's worth his salt will challenge this legislation as far as it can go.

Looking at it from the minds of the persons who are out there, one of the concerns would be that if there is a mandatory minimum of 15 years, do I want witnesses? What does that do in the situation if I'm looking at 15 years in jail? This punishment is so tough that people will make sure they fire an extra shot to ensure that potentially they can get away with it. That may sound very cold and calculated, but that's how some people will think.

• (1150)

This legislation is not going to abolish gun crime. As has been indicated, all it is going to do is make the situation tougher on some of our less fortunate communities. It will no doubt put more aboriginal persons in jail, more African Canadians in jail—because those are the statistics we're concerned about—but will it solve the problem? We suggest it won't. The problem exists. Something does have to be done, and it has to be done in the way we educate our people.

It's been suggested that perhaps minimum punishments and increasing them has improved our situation with impaired driving. Well, impaired driving is slightly different. There's a mandatory minimum sentence for impaired driving convictions, but it is not consecutive to an additional sentence, as we're suggesting here. This is a double punishment we're talking about, a supplementary sentence. But what the committee needs to have, and what I urge you to consider, is the real reason behind all of this.

We cannot say impaired driving has decreased because we've increased penalties. As well, it has decreased because we have educated our community that it is now no longer socially acceptable. Drinking and driving among our youth is much rarer than among our older persons.

Frankly, a further example is smoking. A number of years ago this room could have been filled with cigarette smoke, but we don't do that any more. Why? Because we have punishments for it? No. Because we have made it socially unacceptable to do that kind of activity. Now I don't equate that with gun crime, but my point is that it is more than just a band-aid. It is more than a harsh punishment. It is more than a heavy, leaden foot that is going to solve this problem.

We need to educate our youth. We need to educate those who are out there, and we need to tell them.... We need to go back to a situation in which it is unacceptable to use guns and have violence—the way it was in this country for many years. The escalation of gun violence is a new thing. Canada was very much a gun-free environment for so many years compared to other places, such as the United States. What has happened to change us? Is it because our laws became lax? I think not. That is what has to be determined.

In the meantime, to impose legislation like this would do nothing to help the problem. It would only serve—and I don't mean to be disrespectful—the politician who wants to say, well, I have a tough on crime policy. That's all it's doing. That's not going to help.

Thank you.

• (1155)

The Chair: Mr. Toews, you have seven minutes for questions and answers.

Mr. Vic Toews: Thank you very much.

I appreciate the witnesses coming here and bringing forward their positions. It's a relatively consistent position against the bill, and we've heard witnesses on both sides of the issue. I think this testimony gives us another perspective, and that's something we need to consider.

I am concerned about some of the statements made that this bill somehow disproportionately impacts against black or aboriginal young men. My understanding of the bill is that it impacts on criminals who knowingly choose to use guns in the course of criminal activities.

One of the points that hasn't been made, and Mr. Loewen alluded to it but didn't follow it up, was that if in fact the perpetrators of these gun crimes are—and I don't know what the statistics are because I don't look at those kinds of statistics.... We can also safely assume that the victims are black and aboriginal and that these individuals in their communities are not safe today. Children can't go to school. Businessmen won't invest in those communities. Social programs will not work, unless the gunmen and the related crime.... And the real underlying crime here is drugs, we all know that. It's drugs and guns. The drugs are fueling the guns. So we say, let these young men stay out on the street, assuming they are all young men.

Mr. Rady brought forward the example of a vicious man who is a cold, calculating robber, who comes into a store, and he has a gun but knows enough not to fire it. He's facing life imprisonment, plus the mandatory five years. The young, scared man—I don't know what he's scared about, but he's going into a 7-Eleven store with a loaded gun—fires the gun because he's scared. We have to assume, if he's convicted, that this was done deliberately—he had the appropriate *mens rea*, the appropriate *actus reus*—and that he is criminally liable. The suggestion that the vicious man or the cold, calculating robber who doesn't pull the trigger will only get five years is either clearly wrong or illustrates the problem that Mr. Kramp is trying to address, that judges haven't been taking into account the background of that individual, and instead of just giving him five years, they give him life imprisonment.

Mr. Rady has suggested specifically and stated that there's the possibility of life imprisonment. But when do we hear of these robbers getting life imprisonment? That is the problem occurring in our justice system today. The discretion that judges have been given has not been exercised properly, and I think that's evidenced from the sentencing.

We saw, just recently, a horrible case of a 12-year-old native girl in Saskatchewan who was raped by three white men, and the Queen's Bench gave him a conditional sentence—house arrest in that case. The Court of Appeal upheld it. They upheld house arrest. This is just to answer Mr. Rady's statement that the courts of appeal will correct the outrageous kinds of sentences. In fact, this went to the Supreme Court of Canada, Mr. Chair. The Supreme Court of Canada refused to hear it, because essentially it's the Court of Appeal that determines sentences in any jurisdiction.

Is there any suggestion here that this is the full answer to the problem? Obviously not. I don't think there's a member of this committee who would suggest that imposing mandatory minimum sentences is the full answer. Are social programs part of the answer? Absolutely. Are educational opportunities part of the answer? Absolutely. Is having businesses invest in these communities part of the answer? Absolutely. I think the record is clear, Mr. Chair, that unless you get the gunmen and the drug trade off the streets, you will never, never have successful social programs. The two simply cannot coexist.

• (1200)

You need the drug men and the gunmen off the streets so young black children and young aboriginal children can go to school safely, so business people can invest in their communities, and so social workers can actually implement programs that work without fear of the gangs. That's the reality.

So is this part of the answer? Absolutely. Is it the full answer? No one is suggesting that. But the courts have miserably failed in exercising their discretion, and Parliament—

The Chair: Mr. Toews, I appreciate your commentary, but are you going to have a question? Your time is almost up.

Mr. Vic Toews: I know.

I appreciate the fact that there is a wide philosophical gap between the witnesses and myself, and I simply wanted to put it on the record that today we are probably not going to get answers that satisfy me, and these witnesses will not get any satisfaction from me in respect of what they are saying in whole on the bill.

I understand some of their concerns. I understand that it has to be a multifaceted approach. But to simply dismiss mandatory sentences as ineffective, I don't think the record is clear in that respect. In fact, the American record is very clear that they work.

Thank you.

The Chair: Thank you.

We have an opportunity for a quick response.

Mr. Roach.

Prof. Kent Roach: I agree with Mr. Toews about the victimization point, and I do take that seriously. But I would just ask him to think about the issue of the marginal deterrent value. The gun violence that's going on now is all subject to a mandatory four-year imprisonment. The Supreme Court didn't strike that down. Judges are not ignoring that. That's the law of Parliament and it has been upheld in the Morrissy case.

I guess the issue then is whether you are confident enough that adding a year for possession, six years for discharge, and 11 years for causing bodily harm is suddenly going to significantly change the terrible behaviour we've been seeing in many of our cities.

The Chair: Thank you.

Ms. Pate.

Mrs. Kim Pate: I think the other thing to be cognizant of is the leadership from the African Canadian community. They in fact visited with the Prime Minister recently to bring home the very sorts of messages we are bringing to you today, that there is some real concern and something needs to be done about it. But they're much opposed to this kind of response. Recognizing that the more we put money into this kind of response—the reality is that it will cost a lot of money—the less likely are some of those other responses, which we're very pleased to hear you say are obviously part of the solution.

Those are primarily some of our concerns about not following what the African Canadian community is saying themselves. As you pointed out, they are primarily dealing with both those who are perpetrating the violence and those who are being victimized by it.

• (1205)

The Chair: Thank you.

Monsieur Marceau.

[*Translation*]

Mr. Richard Marceau: Thank you very much.

I would like to hear what Ms. Pate has to say on this issue. I would like an answer that is a bit more complete on the impact this will have on the community. First of all, I think it is quite clear that we will be opposing Bill C-215, but I would like to hear your comments on the issue all the same.

It seems to me that the traditional institutions, which are the state, the neighbourhood church, the community group, the local centre or the sports team are no longer able to reach these young men, who are often from poor communities. Of course I believe that we need to work with these people, but if the state is no longer a factor, if these people no longer have confidence in their regular religious groups and the community groups, and if the local sports team is not the way to deal with these young people, how do we reach them? My question is also for Mr. Loewen, because we are talking about communities. It seems to me that the very existence of street gangs, especially in Montreal, where there is some significant violence, proves that the traditional institutions are no longer working. How can we reach these people and then work with them. Who can do this and how?

Mrs. Kim Pate: I apologize for answering in English.

[*English*]

It's been some time since I've worked with young people and men directly. I've worked for the last 14 years with women.

In discussions with the aboriginal communities, in the partnership we're doing right now with the Native Women's Association of Canada and other groups, and in discussions with the African Canadian Legal Clinic, which includes some of the leadership in the African Canadian community in Toronto, one of the things we talked a lot about was the dislocation from community that has happened among many aboriginal youth because of the long-term impact of colonization and displacement. It is a huge issue that needs to be addressed.

They have lots of ideas about how they can create new options, new communities of support, and pull away from the notion of developing an identity that is related to gang or street violence, that sort of thing. I don't profess to have all the answers, but certainly one of the things they're talking about is ensuring they have the basic human needs met. The ability to feed, clothe, educate, and have housing for their children is fundamental. The ability, then, to create communities of support, to have them understand their history, and to develop some commonality of cause around addressing their community responsibility to their own people for the continuation of their history is part of what they're talking about.

I think that makes a tremendous amount of sense, and I think it is part of why, when we first saw the whole issue of gangs and youth gangs in particular arising in Canada, some communities chose to focus not on gang issues but instead more on community development approaches, so we saw a diminishing of those discussions. We didn't see it, though, in places like Winnipeg and other areas where they focus particularly on gang issues. In fact, it became the preferred means of creating identity for young aboriginal men and women in that area.

[Translation]

Mr. Richard Marceau: Mr. Loewen, I would like to hear your comments on the same point.

[English]

Mr. James Loewen: Again, I'll respond in English.

Programs I work with across Canada that work on justice issues are primarily based in communities and often respond to communities of risk, both aboriginal and immigrant communities, amongst others. What we see is the effect of generations of disempowerment in our communities, where justice has been taken from our communities and placed in the hands of a criminal justice system—of professionals, if you will. What's happened is that our communities have thereby lost the ability to respond to justice problems within them, to crime.

Probably the most stark example of this long-term disempowerment is what's happened to the aboriginal community. When colonization began, their capacity to respond to justice issues was removed from them. It's what's called cultural genocide or cultural violence.

What we're seeing now as an effective response to the violence within their communities is the returning to them of their ability to do justice. I believe a phenomenal example of how effective that can be is a place called Hollow Water. I don't know if you're familiar with that place and that story, where a very broken community called Hollow Water was able to respond to incest and sexual violence in

their community in a way that profoundly impacted the health of that community for the better and led to reunions of families that had experienced incest. There are other profoundly moving stories.

I think our communities have within them the ability to respond to the problems they have within them. We simply need to give them the resources, but programs I work with, community mediation programs, are going under. They have closed.

• (1210)

Mr. Richard Marceau: I'm sorry. I have seven minutes.

[Translation]

Mr. Roach and Mr. Rady, you said that deterrence was negligible. When we raise this point, we are told that even if it doesn't act as a deterrent, at least the individual will be put in jail and, during that period of time, will no longer be walking around with a riffle in our communities, convenience stores and streets. A simple answer, perhaps, but one that has quite an impact. How are we to respond to such a statement?

[English]

Prof. Kent Roach: You're referring to the incapacitation effect. Again, this depends upon the certainty of apprehension. I would just ask the same question I asked Mr. Toews. What is the marginal increase in the incapacitation effect? Also, in building in the incapacitation effect, incapacitation of a particular individual, factor in the cost. Factor in the fact that studies show that long-term imprisonment—the person will eventually be released—will actually then lead to the commission of more crimes.

Mr. Andy Rady: What we're really into here is a discussion of the effectiveness of general deterrents on crime. That's what I think the bill is somewhat about, that if we make the punishment severe enough it will deter people from doing this kind of thing, gun crime. I have my own doubts as to the effectiveness of general deterrents. I'm not certain that persons out there who are going to perpetrate crimes decide not to because the punishment is so great. They perpetrate crimes; they don't think.

People tend to know that in this country for domestic violence you'll probably go to jail. It happens all the time. People don't think when they're perpetrating a crime. I think we can put too much weight on general deterrents and there's too much reliance that this is going to solve the problem. My opinion is that it won't.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Thank you all for being here.

I'm sorry. Who has to leave?

Mr. Chair, the agenda shows that we're going until 2 o'clock. Is that still the intent?

The Chair: Yes. Mr. Kramp would like to follow up.

I think this panel started at roughly 11:15, so that would still give our witnesses who have to go to Toronto time to catch that plane.

Mr. Joe Comartin: Ms. Pate, you made reference to Australia and some of the states in the U.S. that have backed off and actually changed legislation. Am I right on that? I've been looking for that information and I don't think we've seen anything at the committee yet. We keep hearing references to it. I understand there's a study by the ABA in the U.S. that shows states that have backed off. But we haven't seen anything.

I'm asking for a concrete study or an example of states that have gone down the route of being hard on crime and then backed off.

• (1215)

Mrs. Kim Pate: It looks like Mr. Roach has something here that can assist in answering, but the two that I looked up quickly were Michigan in the United States and Northern Territory in Australia, where they certainly backed off. Also, the families against mandatory minimum—

Mr. Joe Comartin: I'm sorry, just to stay with that, what do you mean by backing off?

Mrs. Kim Pate: They were talking about repealing mandatory minimum sentences.

Mr. Joe Comartin: Were they talking, or actually doing it?

Mrs. Kim Pate: I believe both of those did do it, but there are certainly other states that have been talking about doing it.

Mr. Joe Comartin: I'm sorry, Ms. Pate, we're being handed something that's coming from the Department of Justice. Is this the material?

The Chair: I haven't gotten it yet, Mr. Comartin.

Mrs. Kim Pate: Yes.

Mr. Daubney has just handed me "Trends in Mandatory Sentencing Legislation". This is information from the research and statistics division of the Department of Justice Canada. In this it indicates that in 2002, the Michigan mandatory sentencing laws were significantly amended. The effects of these amendments included the following: the elimination of mandatory minimum sentencing for certain controlled substance violations; creation of provisions that permit courts to consider important mitigating factors; and the revision of the quantities of drugs that trigger certain offences.

Mr. Joe Comartin: I'm from Windsor, so I'm right across the river.

My understanding of those amendments was that they didn't include any back-down on gun crimes.

Mrs. Kim Pate: My understanding is—

Mr. Joe Comartin: Maybe we should ask Professor Roach if he knows. That was my understanding.

I'm looking for a jurisdiction that has passed minimum mandatories on gun crime and then backed down, and I haven't been able to find one.

Mrs. Kim Pate: I think a number of them have escape clauses too.

Mr. Joe Comartin: I'm going to ask Professor Roach that one too.

Prof. Kent Roach: I've just received this document, so I can't give you a jurisdiction where they've backed down. But I do understand that in England, in particular, jurisdictions that do use mandatory

sentences generally have an escape clause. The escape clause is there for the exceptional offender.

The gist of my remarks is that I think it's understandable that you think of the worst offender when you're enacting a mandatory minimum, but I also think of the most sympathetic offender. You also have to do so in understanding the limits of our defences, whether they be self-defence, duress, or mental disorder. There are many people who may be acting in a subjective and honest fear for themselves, but it does not amount to self-defence. Similarly with duress. In mental disorders, the defence doesn't catch most of the people who have these issues.

Mr. Joe Comartin: So the escape clause is basically allowing discretion to the trial judge.

Prof. Kent Roach: Yes, but asking the trial judge to justify it sometimes as an exceptional case and to do so through writing. Again, this is the issue of transparency. If you do it that way, you force the judges to justify or attempt to justify their departures, and, as Mr. Rady said, they are subject to appeal. If you only have a mandatory sentence, I think there will still be exceptions made, but the exceptions will be made in the prosecutor's office, perhaps for very legitimate reasons, but from a public interest perspective there will not be the same transparency.

Yes, we can all criticize individual judicial decisions, but that's the very point. A judge has to put pen to paper and go on the record, where when a prosecutor allows some leniency from mandatory sentencing regimes, that happens behind closed doors.

• (1220)

Mr. Joe Comartin: Ms. Pate, I think you were the one who made reference to Professor Sheehy, and maybe, Professor Roach, you will know this. I'm not clear that there is actually any study in Canada now on the pros and cons of minimum mandatory....

Prof. Kent Roach: Perhaps Ms. Pate can add, but Professor Roberts, who is an acknowledged expert—in fact, is now at Oxford—has an article in the *Osgoode Hall Law Journal* that shows that when you do pass a mandatory minimum, there is then a clustering of sentences around the mandatory. What happens is the mandatory minimum then becomes the maximum and you lose the ability to distinguish between the different types of offenders that Mr. Rady was talking about. The first-time offender who's not dangerous is clustered along with the repeat offender.

On the issue of repeat offending, too, as you know, the existing section 85 has an escalator. So if it is a second offender, it is three years. Again, these are not trivial mandatory penalties that already exist in the Criminal Code.

Mr. Joe Comartin: Did he address the issue of plea bargaining in that study? What I'm saying, Professor Roach, is that in my experience, because of the clogging of the courts, we get the charge laid and it is then pled down to a lesser charge so there's no mandatory minimum. Did he address that issue in his study?

Prof. Kent Roach: I don't believe Professor Roberts has, but I think the bulk or much of the American literature that I'm familiar with does address that, and it's really the Americans who have taught us that mandatory minimums transfer discretion.

Mr. Joe Comartin: Yes, but there's no study you're aware of in Canada?

The Chair: One more.

Mr. Joe Comartin: That was it.

The Chair: Thank you.

Mr. Vic Toews: On a point of order, I note that we received a document here that was circulated. I trust it's in French and English.

The Chair: I have a French copy here, if you'd like one.

Mr. Vic Toews: No. I only wanted to make sure we follow that. I didn't receive one and I wanted to make sure we received both.

The Chair: Thank you.

Mr. Cullen, seven minutes for questions and answers, please.

Mr. Joe Comartin: I didn't get an answer to my question.

The Chair: Oh, okay. I'm sorry.

Prof. Kent Roach: I'd have to go back and look at Professor Roberts' study. It's very difficult to study plea bargaining practices because it goes back to this issue of transparency. But I would be surprised if Professor Roberts doesn't note that phenomenon, because it's a fairly established one.

Mr. Joe Comartin: Do you know if our researcher has that study? If not, could he obtain and circulate it?

The Chair: Thank you, Mr. Comartin.

Mr. Cullen, you have seven minutes for question and answer, please.

Hon. Roy Cullen: Thank you, Mr. Chair.

And thank you to the witnesses.

There was some very powerful testimony today. I think what you did is sort of dissect and vivisection this bill. I can empathize with Mr. Kramp. I had a private member's bill that was dissected and vivisectioned at committee, and it took me two years, but I got it through.

Now, in this particular case, whatever happens to the bill, I've said I think it's over the top a bit, maybe more than a bit. Whether amendments will come in, I don't know. But Mr. Kramp should be congratulated for focusing our minds on this. Clearly it's a very important issue.

Mr. Roach, I think you mentioned you're from the area of my riding, or your parents still live there. For Mr. Wrzesnewskyj, Ms. Sgro, and me, we are very much in the middle of this, as you and your parents would be. We know what it's like to live through this, and it's been focusing our minds—I can tell you that much—in trying to come up with solutions that will make our streets and our citizens safer.

On the argument about potentially filling our prisons with a more disproportionate number of aboriginals or African Canadians, I must say that while I understand this might be a consequence, I think I'm

more aligned with Mr. Toews in saying that whoever the people are who are murdering people and dislocating communities is a separate issue. I think what we need to do is see if the sentencing and the enforcement are right and what we can do at the community level.

I'm a big supporter of community intervention. In fact, in my riding of Etobicoke North, we have a lot of crime prevention programs. We're trying to reach young people before they turn to guns, crime, and violence. We have a program called Breaking the Cycle that's helping young men who want to get out of gangs, get out, and it tries to get them on the right path.

One of the attractions I have for Mr. Kramp's bill is a dichotomy. On the one hand, I think there are some people it might not be possible to rescue. I'm not a behavioural scientist. In my riding, there are many of these young people who come from dysfunctional families—and I'm blessed that I came from a whole, functional family, so I can't really relate to what they're going through or have gone through. But they get booted out of school at a young age, they get involved with their peers, they get hooked on drugs, and they get involved with gangs. It becomes a cycle of guns, drugs, and violence.

The one attraction of Mr. Kramp's bill, which is the dilemma for me, is that it takes away judicial discretion. But in one sense, if we could put those people away—not only as a deterrent—it would keep them away from our society, if they are going to do this kind of thing.

I have a couple of questions. I'll throw them to the group generally, and maybe you could respond. First of all, you deal with a lot of criminals in your work, and I'm wondering, regarding this idea of a deterrent, do you have a sense that when young people go and commit crimes like these...does it ever pass their mind that they could be breaking the law and they could be caught and sentenced severely? Or is that totally remote from their thinking?

Secondly, what is your experience? For these people who are hardened criminals from dysfunctional families and who are into drugs and violence, can they be rescued? Maybe some of them can, but I'm talking about whether there is a proportion that can.

The other question concerns this judicial discretion. I must say there are a lot of Canadians, rightly or wrongly, and a lot of parliamentarians—and I tend to be one of them right now—who are not very happy with judicial discretion. We've seen so many examples. I know we need to be careful with that because we tend to read the paper and pick up on the more obvious cases. But we hear about people being released on bail, then reoffending, recommitting a gun crime.

So I'll throw those comments and observations out and maybe look for any kind of reaction from any or all of you.

• (1225)

Mr. Andy Rady: If I could respond, with respect to your first question concerning the young persons, I don't think they consider what they're doing. I think a lot of them think they are invincible. It's the same situation where you have the 16-year-old with a licence who drives rather crazily down the road at any given time. When you're that young, and sometimes that unthinking, you just think you can do anything.

What happens a lot, in my experience—and this perhaps goes to your second question—is that after a while these persons just grow out of it. Either they have their own tragic demise or they get to a stage where the light bulb goes on and they realize that kind of lifestyle is not going to work. It didn't matter to them how many times we put them in jail or how many times they've been scolded by a judge or by the police or their parents; it's just a question of time when they actually burn out of it.

There are some criminals who, you might say, are hardened criminals and who can come around and can be rehabilitated. Then we have those cases where they're just incorrigible. But what all of this says is that there's no pigeon hole; everyone is different.

Getting to your last question about judicial discretion, I think you made a very good point, in that one of the concerns... And I also fall afoul of this as a defence lawyer. I read about a case in the papers and pass my own judgment on it, and then I realize that I wasn't there hearing all of the evidence, but was relying on a newspaper person who was writing about the case and passing judgment in saying that the judge was wrong. I'm making that error. I've had many cases of my own that have been reported, and the evidence they reported in the paper was something quite different from what actually happened in the courtroom.

So as for the concern about judicial discretion, that judge or jury are there and hear all of the evidence. They hear both sides, because they also hear a prosecutor, not only a defence lawyer, giving a side and making an argument. So we can perhaps be critical in thinking that this may not be a stiff enough sentence, but do we really have all the facts? That's the difficulty we have when we're passing judgment and saying that sort of thing.

One of my concerns, which goes back to what was discussed earlier, is that if we get into too many minimums, if we fetter the discretion of judges too much, then why have them? Why not just say, he's committed a crime, and we don't need a judge to sentence him because we as a group think this is worth 10 years—so there you go. But each case should be determined individually, and that's why we have judges and that's why they have discretion.

•(1230)

Mrs. Kim Pate: In my experience working with young people and adults who have been criminalized and imprisoned, it's about the loss of hope, the loss of opportunity, or never having had those opportunities, which are often key. So when you talk about incapacitating a group, even if you agree with that position, you will have removed a group of people without having addressed the underlying issues in those communities, that they have lost any chance of participating in a meaningful way, of having an ability to make a living and of having an ability to contribute to the community and feeling invested in that community. Then you'll also see the next group of young people coming up anesthetizing themselves to that reality, using drugs, and possibly getting involved in violence.

To go back to the question Mr. Marceau asked, I think some of the best opportunities we've seen—which I've been trying to think of, and I can't grasp the names of these programs, but I will locate them if the committee is interested—are a number of programs where young people, both men and women, who have been involved in

gang activity and violent activity have gone back to those communities and worked with young people there. That kind of peer interaction, that kind of building of community, has been the most effective way we've seen to try to address that. Yes, many of those young people have then gone on to be contributing members of the community.

One of the difficulties with a bill like this is that the chances of people ever being able to retrieve that are very limited.

I'd also point to the research that was done on youth justice issues and the fact that many young people, in order to be able to plan and think ahead, need to have the cognitive and abstracting abilities to think beyond where you are and to predict what will happen because of their behaviour—which aren't things that are just innate, but are learned. Many of the young people we're talking about either have learning disabilities or other issues, where they're not actually getting to that stage of thinking. So we also need to be looking at shoring up the educational supports that are available.

The Chair: Mr. Loewen, did you have a comment?

Mr. James Loewen: I'd just comment that we need to broaden the conversation a bit. It concerns me that we're not talking about victims here. One of the things that comes out for me if we talk about deterrence is what impacts an offender in terms of them understanding what they've done and choosing not to do it again? The most powerful voice for that impact is the victim's voice.

What I've seen in programs, over and over again, across Canada, is that when an offender has an opportunity and the requirement to listen to the impact of what they have done from the voice of the person they have done it to, it profoundly impacts. If you want to talk about sending a message, the victim has the opportunity to send a message far more clearly than any other member of the community or any government body.

Nowhere do we build into our justice system a time where that is required, where if a victim chooses to do so, the victim can speak directly, without any legal obligations, to the offender about what the offender has done. I think we would see a much more effective system if that were part of it. In fact, I suggest that we think about a system that requires offenders to meet with their victims, if the victim so wishes.

The Chair: Thank you.

Prof. Kent Roach: On the issue of public opinion, on pages 5 and 6 of the Department of Justice document, there is some interesting data that suggests that the more people actually know about cases and the more they think about it, support for mandatory sentencing decreases.

On the issue of aboriginal and African Canadian overrepresentation, I guess there are a couple of ways to look at it. One is to look at it as a social problem, which is partly reflected in paragraph 718.2(e) of the Criminal Code, which says you should look at alternatives to imprisonment, with particular regard to the circumstances of aboriginal offenders. I recognize, though, that it is controversial.

Also, though, look at it as the problem of these communities. We tend to think of offenders and victims as if they were discrete categories. I think a lot of these people who may be committing these crimes could easily find themselves being victims. In fact, with the funeral shooting, we see that as kind of a revolving door. So even if you don't accept that it's a social problem and a sign that something is wrong in Canada, when in some provinces 75% or more of the prison population is aboriginal, I think it is also relevant to this issue of whether mandatory sentences will actually work, because people have a lot more going on in their lives.

For you and I, going to prison would be the worst thing that could happen. I would respectfully submit that for some people in these communities, going to prison is not as bad as some of the alternatives, including the alternative of death.

On the issue of judicial discretion, there are lots of different things that can be done apart from mandatory and minimum sentencing. The Canadian Sentencing Commission recommended in 1987 that we have sentencing guidelines. You can have a starting point; you can have aggravating factors. So if there is a conclusion that the problem is judicial discretion, I would suggest that mandatory sentences are kind of the Howitzer of the remedies. Parliament has been using things like aggravating factors, but we haven't yet looked at issues like sentencing guidelines and starting points.

• (1235)

The Chair: Thank you, Mr. Roach.

I would point out to our members here that our time periods are for questions and answers. I know our witnesses are anxious to provide answers, so I would request that our members keep certainly their preambles to a very bare minimum, if any at all, and to get to a question so that we have time for a response from our panel. I don't wish to be discourteous to our panel, but we have timeframes.

Mr. Breitkreuz, on that note, you have five minutes for the question and answer.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Mr. Chair, thank you very much. I will do my best.

I have been listening to your arguments ever since I got to Parliament. You sat there and defended the gun registry, saying it would absolutely help alleviate gun crime. You did it, and now you are arguing, and for the last 30 years you have argued, the exact same line.

We have the statistics for Canada. Back in 1982, violent crime rates in Canada and the U.S. were approximately the same. Now the violent crime rate in Canada is almost twice that of the U.S., almost 900 per 100,000; in the U.S., it's 450 per 100,000. It is dropping rapidly in the U.S. Yet we are supposed to listen to what you have to say and believe it. Why?

The Chair: You're addressing that to whom?

Mr. Garry Breitkreuz: I'm addressing it to all four witnesses, because all four have made these arguments ever since I've come to Parliament.

They're not working. Our violent crime rate is twice that of the U.S. Why should we believe you now, when after 30 years you have been wrong?

Mrs. Kim Pate: I'm not sure where those stats come from.

Mr. Garry Breitkreuz: It's Statistics Canada and the FBI in the U.S.

Mrs. Kim Pate: I would be interested in getting that material, because—

Mr. Garry Breitkreuz: It's available to anybody. This was handed out.

The Chair: Mr. Breitkreuz, was this distributed?

Mr. Garry Breitkreuz: This was handed out.

Mr. Andy Rady: We did not receive it. I can assure you I have not been coming to this committee for 30 years or saying this for 30 years. And I don't like to comment on statistics unless I've had the opportunity to review those statistics. We could probably also produce statistics that show the United States incarcerates more than any other country in the world. So in terms of incarceration, I suppose the United States is nirvana.

Whether that's helping their social programs, whether that's helping their people or their level of poverty, we don't know. Is it putting more people behind bars? Is that what we want? Is that what the issue is here? I don't know. I would suggest it isn't. But I would hesitate to comment on your statistics—

Mr. Garry Breitkreuz: They aren't my statistics.

Mr. Andy Rady: —unless I've had an opportunity to look at them. I appreciate they may come from Statistics Canada and the FBI, but statistics can be taken in different ways.

The Chair: Thank you, Mr. Rady.

Mr. Loewen.

Mr. James Loewen: I've been alive for 34 years. I do know the Church Council on Justice and Corrections did support the gun registry act, and that it came out simply because control of guns seems to make sense for many reasons. Gun crime is certainly one of them.

To say that what we have been doing isn't working is a completely different set of conversations. I do know that if you take a look at the statistics of the programs I work with that do apply the ideas I presented to you in terms of paying attention to the victim, paying attention to the offender, paying attention to community and to state, they have shown a remarkable amount of success.

Reducing recidivism of a high-risk sex offender by 70% is remarkable, simply remarkable.

• (1240)

Mr. Garry Breitkreuz: Can I zero in on one example that you quoted with this Hollow Water reserve, or wherever that was? Other people looking at that, analyzing it, would come up with the conclusion that it was the strengthening of families that produced the results, and that the problem we have is that the erosion of the family in Canada has produced a lot of the problems we're seeing in crime. Wouldn't that be valid?

I agree with Mr. Cullen over there. I think sometimes we analyze these things in a way that is a bit misleading.

Mr. James Loewen: I think you'd be making my exact point, which is that it is not the state that brings peace to our communities; it's the state that brings order. It is our families and it is our communities that are responsible for the health of our communities, by and large. The state's role is to support that and to make it possible.

Mr. Garry Breitkreuz: But then we spent a billion dollars plus on a gun registry without targeting the root causes of violence. So violence in Canada continues to be at unacceptably high rates. You people still support this waste.

Mrs. Kim Pate: While I haven't been coming here for 30 years, our organization did support and does continue to support gun control.

Mr. Garry Breitkreuz: It's not gun control. It doesn't control guns. It's a registry. Anyway, go ahead. I shouldn't interrupt. Go ahead.

The Chair: Thank you, Ms. Pate.

Very quickly, Mr. Roach, please.

Prof. Kent Roach: I also would like to see the source of the statistics. If they're coming from the FBI, then it's reports to the police. I think most criminologists look at victimization surveys as a more accurate measure of criminality in society. But as I say, I haven't seen the statistics.

The Chair: Thank you, Mr. Roach.

Mr. Lemay, five minutes for question and answer, please.

[*Translation*]

Mr. Marc Lemay: Thank you for coming here. You can see that there are two opposing attitudes around this table. There are two ways of viewing the situation: you can advocate for rehabilitation or opt for harsher sentencing. I will not tell you who is in favour of rehabilitation or harsher sentencing, because I believe you have already guessed. I was a criminal defence lawyer for 30 years. I practised in my riding of Abitibi-Témiscamingue, in northern Quebec, especially in the aboriginal communities.

My question is for Ms. Pate. Do you believe that it would be possible to rehabilitate aboriginal people with the sentences provided for in this bill, bearing in mind the fact that they will be absent from their community for such a long time? Obviously, they will not be able to serve their sentence in their community. So they will be absent for a period of time ranging from 6 to 15 years.

Mr. Roach, you alluded to the Morrisey case. Is that in fact the decision rendered by the Nova Scotia Court of Appeal? Very good. I read it.

Mr. Loewen, how can we reconcile the work being done with victims and the sentences provided for in such a bill? Is there any way that we can do this other than by harsher sentencing? Victims must be at the heart of the system. We take care of the accused, but we also have to talk about the victims. I find this very difficult. I was a criminal defence lawyer, and I would imagine that Mr. Rady must be experiencing the same thing. You are defending the accused and the entire family is sitting behind you and attending the trial that goes on day after day, and this is not easy. How can we reconcile these things?

I would like to ask the four witnesses one final question. Perhaps Mr. Roach and Mr. Rady may want to respond. Do you not think that judges have been somewhat soft? Is this bill targeting the wrong individuals? By transferring the sentencing authority from the judges to the crown attorneys, are we not missing an opportunity to tell the judges that they should be adapting the sentences they impose to the crimes committed?

• (1245)

Mrs. Kim Pate: I apologize for having to answer you in English.

[*English*]

In terms of the ability of people to integrate after sentences, yes, the longer they're imprisoned, the more isolated their conditions, the chances of them integrating into the community are less. If you're interested in more, there's the human rights work we've done both in Canada and internationally around the increased isolation, more specifically of racialized groups, once they're in prison.

But certainly it's very difficult, especially if they've come from small communities. Often, communities are not interested; they already have enough challenges. Again, it goes back to reinforcing the need for resources in those communities. The reports we're hearing about everything, from inadequate water supplies...really reinforce the need to have those supports in the community.

The group I was talking about are young aboriginal men and women who have come out of prison and have taken the initiative to work with other young people who are similarly being displaced from their communities into prison. So I think there are some real opportunities to do more effective, long-term work.

Mr. James Loewen: Regarding reconciling working with victims and the criminal justice system, there are some serious problems. I don't pretend that's something that could be done quickly or without some pretty serious disruption in our criminal justice system, whether through the courts or through incarceration or corrections.

There are some very key needs that victims have. There are some immediate costs that occur. There's very little support for those immediate costs. Victims often need the opportunity to hear answers to specific questions from offenders, and they almost never get that opportunity. And there are some things that frankly would probably violate rights that we have written down for offenders simply because we have not put victims centrally to criminal justice. And in fact, the Queen or the state is the victim, which is, if you begin to speak with victims, ridiculous in their minds. They are clearly the victims, not the Queen, not the state.

So I think for us to legitimately work with victims we have to begin to consider very seriously the foundations upon which criminal justice lies. And those will be shaken.

• (1250)

Prof. Kent Roach: The Morrisey case that I discussed is from the Supreme Court of Canada, 2000, 2 SCR 90. I think in that case the court is hinting that four years is pretty close to as far as it wants to go in a case of criminal negligence causing death. So I think if this supports the Attorney General of Canada's opinion that's been expressed to you, then parts of this bill may be unconstitutional.

On the issue of sending a message to judges, the Ontario Court of Appeal has actually been very tough in recent years on crimes with respect to guns, and I don't know for other courts of appeal, but you can do that through aggravating factors, by making it clear to judges that they better have a good reason for not having a severe penalty. Perhaps Mr. Rady can speak more directly to it, but a lot of the crimes that this bill applies to, I suspect, would already be in double digits when you're coming to the sentence. So by tacking on another five, another 10, another 15 years, it's not clear to me that this will be effective.

Mr. Andy Rady: Yes, there are already guidelines under section 718 in the Criminal Code, and thereafter, for sentencing principles that judges follow. In terms of the dissatisfaction with sentences of judges, I really have no answer to that. It seems that there's a perception that they're not sentencing harshly enough. No one wants to say they're going the other way. As a defence lawyer, sometimes I think I know too many judges who do sentence very harshly. But whether that's the case or not, I don't know.

I can say this from experience. When I started in practice a number of years ago, sentences were much more lenient than they are now. Forget for a moment about conditional sentences. First offenders were almost guaranteed probation, in my experience many years ago. Now, if there's any violence whatsoever, first offenders are probably going to go to jail in a lot of cases. So there has been a change, but perhaps it's not been perceived correctly.

Perhaps that's another issue for this committee, as to why there's this perception that judges cannot do the job they're there and being paid to do. I don't know the answer to that.

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

I'd like to thank all the witnesses.

Mr. Loewen, I'm glad you mentioned victims' needs. A good friend of mine, Mr. Mohammed Gilao, tragically lost his son to gun violence this past summer, but my support of this bill predates that tragic occurrence and everything that has happened in Toronto.

I haven't spent a great deal of time with people who are incarcerated in prisons, but I have spent quite a bit of time in what I call victimized or at-risk neighbourhoods. You often hear the term "code of silence" used in the press. I don't particularly like that phrase. I use the phrase "an atmosphere of fear" because there are communities that are victimized.

Unfortunately, whatever it may appear to be, if we say there's a four-year mandatory in place right now, the reality is that not only the perpetrators but most people who live in the at-risk and victimized neighbourhoods pretty quickly know there would be serious consequences should they step forward. We're seeing ghettoization, the creation of mini-Harlems.

There are issues that need to be addressed beyond this bill. I frankly believe that the Harris cuts began this cycle six or eight years ago, and we're bearing the terrible fruit of all the after-school program cuts, recreational program cuts, etc. The government has already announced a tremendous package in regard to social programs that are required. But just as we're now bearing the fruit of cuts from six to eight year ago, it's going to take quite a while to

turn around these neighbourhoods, and perhaps it will take as long a period of time.

I'm going to move along and then wrap up with one question.

Mr. Rady, I was a little disappointed. In fact, I take issue with you. When you spoke, three times you referred to this as politics and that this is the politics of being tough on crime because there is an election. You mentioned that three times.

• (1255)

Mr. Andy Rady: I didn't mention the election.

Mr. Borys Wrzesnewskyj: You did mention the upcoming elections.

Mr. Andy Rady: Mr. Roach did.

Mr. Borys Wrzesnewskyj: Oh, okay.

I really take issue with that coming from expert witnesses. Unfortunately, when witnesses engage in politics at these committee meetings, it undermines some of the things they're perhaps trying to say. When I hear a witness engage in politics at this committee table, I wonder if it shades the information that is provided to us.

I'd finally like to come to Mr. Roach.

You raised a number of issues. One that I find of great interest is an escape clause. Can you provide us with examples? I think it's very important.

There are amendments, and they've now been circulated, which I hope would remove the whole argument on gross disproportionality that might take place in front of the Supreme Court. The 15-year terms would be removed. There are some other amendments, which have been circulated, that would remove that element from this particular bill.

I think that particular point is very important because there may be individual cases. When there is a mandatory minimum, there is also a maximum, so there is flexibility. The judges, and in some cases the jury, can take a look, and there are a range of options available. We're only saying this is the minimum, but there is a range.

The whole concept of an escape clause is very important. Could you expand on it and perhaps give an example of an escape clause amendment to this? That would be very helpful.

Thank you.

Mr. Andy Rady: Maybe I could respond first, before Mr. Roach.

I apologize if you think I was engaging in politics, because I was not. I was simply indicating that this is an issue that's broader than politics. Being tough on crime is very popular for any politician, whether here or in the United States. I'm only asking that this committee, as it is reflecting on this, go beyond that. That is the point I was trying to make. If I didn't make it eloquently enough, I apologize.

You also mentioned consequences, if they become more severe. The answer to that as well is the silence that you talked about will become more deafening, and that is something else to consider.

Prof. Kent Roach: There's an example of an escape clause on page 15 of the DOJ document that was circulated today. It's taken from British legislation, which refers to "exceptional circumstances relating to the offence or to the offender which justify its not doing so". That seems to me to be consistent with section 12 jurisprudence, which talks about the fact that gross disproportionality can occur—either when it's grossly disproportionate to the offence or the circumstances it's committed under or the offender.

The Chair: Very quickly, Mr. Loewen, please.

Mr. James Loewen: I just have a question about the gentleman whose son was killed. Has the offender been apprehended?

Mr. Borys Wrzesnewskyj: Unfortunately, even though there were many witnesses, no, he hasn't been.

Mr. James Loewen: Was there any justice response to your friend—

The Chair: Mr. Loewen, I think I'm going to have to cut you off there, sir.

Mr. Warawa.

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

I do appreciate the witnesses coming here. I found it very interesting. I didn't necessarily agree with all of the comments, but some I did agree with. I'm going to focus on some of the comments that were made that I was a little troubled with.

Before I do that, I just want to make you are aware that Mr. Kramp started on his bill in October of last year, over a year ago now. It wasn't a politically opportune moment. He's been working on this for quite a while, with a lot of input from front-line police officers. So I appreciate his efforts. As we've heard, there's the possibility of amendments. Mr. Kramp is open to them, and hopefully, through input from you and from others, we can come up with a good bill.

I'm going to go over the issues that I had some concerns about, and then maybe you can make comments.

Ms. Pate, you made the comment that Bill C-215 targets the African Canadian community. I'd like to know why you believe this targets that particular community, coming from the perspective that if somebody does the crime, they then should have a consequence, regardless of what community they represent.

Mr. Loewen, you talked about your experience with Circles of Support. I'm very familiar with Circles of Support. My background includes working with a crisis line; I worked with M2/W2, so we probably know a lot of the same people. I'm very familiar with restorative justice and victim and offender reconciliation. You made a comment that community mediation programs are going under. I believe there has to be adequate funding to meet the needs, that we just don't lock people up, that there are programs to help the healing within our communities. I think that's where you're coming from, but I think there has to be a balance where you have a consequence for the crime, too, an adequate consequence for the crime. I believe Mr. Kramp's bill is heading in that direction. You made a comment that this bill will "devalue the offender's humanity". I'd like you to clarify where you're coming from there.

Mr. Rady, you said that additional people would be killed because there would be an incentive to remove any witnesses from the scene.

Are you suggesting that would happen in the principle of concurrent sentences? Should they get a discount if they kill more people, or are you suggesting that they should be served consecutively?

Those are the three questions. Thank you.

● (1300)

Mrs. Kim Pate: In terms of why we talked about particular groups that would be disproportionately affected in terms of who would be criminalized and imprisoned, I think it relates to the research that already exists from the Royal Commission on Aboriginal Peoples and the Ontario Commission on Systemic Racism. It also relates to the question I had about the statistics that were being presented.

If you're looking at who's policed more, you're also then determining who's more likely to be picked up, to be charged, to be prosecuted, to be imprisoned. Given that we already know there's a bias in the system—

Mr. Mark Warawa: A bias or a statistic?

Mrs. Kim Pate: No, no, a bias. I mean, the Human Rights Commission here has found, and the United Nations Human Rights Commission has reaffirmed, that in fact we have discriminatory treatment of our racialized people, people with disabilities, and now mental health as we've seen those areas cut. As we've seen fewer services to support, there's a default to rely on the police. And I'm not suggesting that the police are intentionally...although some may be.

I would suggest to you that as we pull out more of those resources from those communities, we're in fact leaving it to the police to address. By its very nature, then, they're more likely to be policing the most marginalized, vulnerable communities, and therefore they're also more likely to be criminalized in turn.

I don't know what else to add, except that it's been documented in virtually every province now. It's been documented nationally and recognized internationally. It's an issue that Canada has to deal with.

The Chair: Mr. Loewen.

Mr. James Loewen: There is a specific statement in the bill itself that indicates a devaluation of an offender's humanity, and that is where it makes an exception if the injury occurs to an accomplice. Right there, I stood back and looked at that and asked why an injury to an accomplice is any less harmful or criminal than an injury to others in the room. So right there, automatically, the humanity of the offender is being set aside as less important. That's aside, completely, from the dehumanization that occurs within our corrections community and in prisons themselves.

When we remove people's ability to make choices, when we tell them they're incapable of living in communities safely, and when we essentially warehouse them for a period of time, we are dehumanizing them. We're telling them they are not worthy, and that's been heard a number of times around the table when we refer to "those offenders", "them", "these people". They are us. There but for the grace of God go I, really. If I was part of a racially marginalized group, I can't say I would make different decisions than they're making.

• (1305)

The Chair: Does anybody else wish to comment on Mr. Warawa's questions? We're over time already.

Mr. Mark Warawa: I believe Mr. Rady does.

Mr. Andy Rady: Yes. If the sentence becomes so severe, becomes disproportionate enough, I think you're going to see people, once they've committed those offences, doing whatever they can to try to avoid that punishment, whether that's not allowing any witnesses to be present or whether it's the conspiracy of silence we see in the intimidation of other witnesses. That's going to occur.

That's the point I was trying to make. If the sentence is so severe that they know they're going to be going to jail for a long time anyway, then they're going to do whatever they can to try to avoid that, and that might mean more violence. That's my concern.

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

Mr. Macklin, we have six minutes for two rounds of questioning, so please be succinct.

Hon. Paul Harold Macklin: I'll just take my five minutes, thank you. No, we'll try to share.

One of the things we're talking about here is denunciation. That clearly is, I think, a major thrust of the bill. We can say what we want to say through our legislation in that regard, and through lengthy mandatory minimum sentences we can be effective in delivering the message.

I guess the other question I have, and it comes back to what you just said, Mr. Rady, is that one of the things we really don't seem to have received any statistics on or any knowledge about is whether these individuals who are committing the crimes really know what the sentences are that they are actually facing because of their participation. If we're out there saying we want something that's effective.... Do they know?

Does anyone have a comment on that, because, again, that's the premise upon which we're going forward?

Prof. Kent Roach: A few years ago I did some research on drunk driving, and when there is a deterrent effect of a new law, it is because it is well publicized. So what about publicizing the existing mandatory minimums?

Mrs. Kim Pate: I would agree. I think in most cases, people don't think they're going to be caught, so even if they do know about it, it tends not to have the deterrent effect.

The underlying issue I think you're getting at, and you can correct me if I've misunderstood, is that oftentimes these bills are passed partly because we want people to respect the law. When we have

existing laws that aren't being followed, sometimes ramping them up feels like a way to encourage more respect for the law.

I think the issues many people have talked about, about silence in the communities, about non-reporting.... What we're seeing in aboriginal communities, and we've seen it especially around violence against women—and given that one of the previous members of the committee raised this issue—is that in fact women and children are being discouraged from reporting men in aboriginal communities and in African Canadian communities when they're using violence against them, not because they don't want them held accountable, but because they know they'll be held accountable with a vengeance.

So in fact, if the purpose is to try to stem this violence, putting in this kind of mechanism will likely not have the effect any of us, even if we all agreed with it, would intend. Certainly I suggest it would probably not be what Mr. Kramp is intending by producing this bill.

Hon. Paul Harold Macklin: Another thought goes through my mind when I look at this whole issue. We have a mandatory minimum for murder. Aren't we dealing with murders, for which the mandatory minimum is life? But that doesn't seem to deter people from committing murders. Is it because we don't educate them, or is it because they don't care?

There's a frustration here on my part. Why are we putting in heavier sentences when we have the heaviest of all sentences out there apparently being ignored, or that potential for sentencing?

Mr. Andy Rady: Then I go back to what I indicated earlier, and that's something that has to be seriously considered. How strong is the concept of general deterrence? In other words, we have the most serious punishment for murder, which is life if it's premeditated, with 25 years before you're eligible for parole, but people still commit first degree murder while they know that. I would think everyone in this country knows you're going to go to jail for life if you commit murder, but they do that. How strong, then, is this entire concept of general deterrence?

Hon. Paul Harold Macklin: That's right.

I'll pass off to—

The Chair: Thank you.

Mr. Thompson, please.

Mr. Myron Thompson (Wild Rose, CPC): I'll try to be really quick.

Part of the deterrent is truth in sentencing. Life needs to mean life, and people need to understand that. A lot of people understand that under the faint hope clause you can be out for murder in 15 years. So I believe we have to get some truth in sentencing. You may comment on that if you want.

I want to go back to what Mr. Toews mentioned. Drugs and gangs are what this is all about. We have gangs that are running rampant throughout the country. Gangs have a product: drugs. Gangs have a major tool to distribute their product: guns. We need to really put a heavy concentration on gangs and their activities and try to get the message out.

As a principal of a school, I was asked if I could clean up the problems when I took on that job. I asked them to give me a chance and see where it went. We set in a program of consistent and solid messaging: you will be punished to this degree if you commit this offence; over and over, make no mistake, that's what will happen. We would then be consistent with that. It didn't matter what grade you were from or what sex you were or what race you were or anything else; you would be punished for that crime. I am happy to report that in a year's time, those kinds of things had such an effect that the graffiti disappeared, bullying disappeared, violence stopped. So I know it can be effective. Maybe on a larger scale with the public, I think it could happen.

I'm going to scold you people, because every time I have heard any submissions from any of you over the years—I've been here for 12 years—we always get into this bit about identifying certain individuals out there by their race, their colour, or whatever. You people and all of us have to stop doing that. A criminal is a criminal and a victim is a victim.

● (1310)

The Chair: I don't know where you're coming from, but these people are not here to be scolded; they're here to answer questions.

Mr. Myron Thompson: Well, the more you emphasize the race factor, the more it grows in the community, and that has to stop. The more you mention it, the more it grows, so stop mentioning it.

The Chair: We're open to your response.

Ms. Pate, please.

Mrs. Kim Pate: I want to respond that in terms of truth in sentencing, a life sentence is life. I work with lifers, and have for more than 25 years. Every one of them is serving a life sentence, and nobody gets out at 15 years, even if they're eligible to apply. The earliest people can get out, even if they go through all of the steps of applying to the chief justice, going before a jury, and having 12 community members decide if they deserve to apply for their parole ineligibility period to be reduced—nobody has gotten out before 17 or 18 years. Even then, they're on parole for the rest of their lives. So it's not fair, and it deludes and misleads the public to say there's not truth in sentencing and they're not on life. If they breach those conditions, they go back to prison. That is what happens.

On the issue of not focusing on race, with all due respect, that is closing your eyes to reality. A third of the women in the prisons I go to are aboriginal women. They're 1% to 2% of the Canadian population. To say that we're not seeing the discriminatory impact of our system there is to entirely miss.... In Alberta—and I know you're not from Alberta, you're from Saskatchewan—

Mr. Myron Thompson: I'm from Alberta.

Mrs. Kim Pate: I'm sorry. My apologies. I stand corrected.

When Mr. Justice Cawsey looked at what happens with aboriginal people in Alberta—this was in the early 1990s—he found that 90% of aboriginal men had records by the age of 30, yet they weren't predominantly those causing the greatest harm in the community. So with respect, I think we have to focus on the reality of what is happening.

Mr. Myron Thompson: I don't want people walking down the streets fearing somebody because of their colour.

The Chair: Mr. Loewen has a comment.

Mr. Myron Thompson: And when you keep emphasizing it, that's what happens.

Mr. James Loewen: I would be interested in seeing any study that shows the effectiveness of the approach that you expressed for your school. That would be an interesting study to read.

Mr. Myron Thompson: I just told you, and it's truth.

Mr. James Loewen: You told me. I'd like to see something that backs that up.

Mr. Myron Thompson: I'll give you my superintendent's reports.

Mr. James Loewen: It's interesting to note that there is a program in Alberta called Calgary Community Conferencing, which is a fabulous response to school problems. It may be interesting to note that most people, a huge majority, who get suspended from school through punitive sanctions end up in our criminal justice system, and that's something that's worth talking about.

● (1315)

The Chair: Thank you.

Any other response from Mr. Rady or Mr. Roach?

Very good. This will conclude this portion of our hearing this morning.

Thank you very much to our witnesses for appearing, for their testimony. I think you'll certainly be able to get to the airport in lots of time.

I'll suspend for about three minutes to allow our witnesses to depart and for Mr. Kramp to take his position.

● (1315)

_____ (Pause) _____

● (1321)

The Chair: Could we reconvene, please?

We're hearing from Mr. Kramp as a follow-up witness and then we'll adjourn, but I understand there's a friendly amendment that may come forward.

Mr. Kramp.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Thank you, Mr. Chair.

Actually, I had a number of comments to make, but honestly, I've now changed some of the comments I was planning on making because of the impact of the witnesses here today and the care and concern of my colleagues around the table.

I suppose I can start very simply. For over a year now, simply as an individual member of Parliament, I've attempted to address this important issue that is seriously threatening the health and safety of the Canadian public. As noted by my colleague Mr. Warawa, and by Mr. Cullen too, I do take umbrage with the impression left by Mr. Roach that this was done for political purposes at this particular time. I thank the entire committee for the defence of the purpose of this bill.

Of course, this bill was introduced back in October 2004. It was certainly not because it was a popular political position at that particular time—it was well in advance of this dastardly year we've had in Toronto, with the killings and that—nor because I believed it would be the sole solution to the violent gun crime, but because I felt it was a correct and principled response to violent gun crime. I truly feel in my heart that minimum mandatory sentences for violent gun offences would prove to be an effective deterrent to criminals.

I come at this from, actually, a bit more of an extensive background than simply as a police officer. Sure, I dealt with crimes and criminals as a police officer. I've looked down the barrel of a gun, yes. I worked with my colleagues in the street and I know what they face, but I also went to the homes of victims and advised them that they no longer had a loved one. Believe me, that's an absolutely emotional period in a person's life and it has an enormous effect. You realize just how sacred life is and how cherished it is and how important it is. I ask every member on this committee to just think of what this bill is about: it's about protecting life itself. That's how I view this bill and this is the importance I put on it.

Not only did I do work as a police officer, but I've worked as a counsellor. I've worked as an advocate for victims' rights. I've been a volunteer with community groups. I've worked as a counsellor for the Boys and Girls Clubs of Canada. I do not come from just a "hang-'em high" kind of draconian background, which appears to be the perception among some activist groups with respect to what this bill is intended to be. It's not. I honestly believe this bill is a small part of the solution, and I emphasize that: I recognize it's only a small part of the solution; it should be taken in concert with the reality of the entire problem we have.

I went to our law clerk and said I'd really like to be able to expand the scope of this bill to deal with this and this and this. Of course, I received legal advice back that I couldn't do that because it would stray too far from the original scope of my bill and it would require either more and/or different approaches, a separate private member's bill or a larger government bill. So I recognized that fact. With that, I recognize, again, that this is not—and I emphasize—the sole solution, but it is an absolutely crucial component for achieving some results in combatting crime.

I'll rehash some of the activities in the testimony you've heard over the last several months. We've heard from national police associations representing literally every police officer in this country. With hardly an exception they endorsed the principles behind this bill. You heard emotional testimony from Mr. Schiemann the other day, the gentleman who lost his son, an upstanding RCMP officer, on March 3 of this year in Mayerthorpe. I don't have to say any more about that.

You've heard also from representatives from other jurisdictions explaining how minimum mandatory sentences with a strong penalty effectively published...and I think that is the absolute key. It was brought forward today and it's been brought forward on many, many occasions. Mandatory sentences aren't going to work if you don't know they're there. They're not going to be a deterrent unless somehow, somehow, you've grabbed the attention of the potential perpetrator of the offence. He has to be aware of the punishment. So there has to be a massive publication process along with a mandatory penalty program, if and when one is implemented.

•(1325)

In Whitehorse earlier this month our justice minister heard from numerous provincial attorneys general calling for tough crime penalties. I've talked to Chief Blair, as an example, and to many other chiefs of police across this country, and we're just not talking about business as usual per se. The reality is that we are dealing with a new criminal element. This criminal element is not just about a simple blue-collar fraud; we're not just talking about someone getting a swat in the beak. What we're talking about here is very serious violent crime. This is what it's about. It's about gangs and guns and drugs and the relationship among them—and how many times have we heard this?

And if this committee has done nothing else, it's raised the consciousness, raised the awareness, across this country of that phenomenon because we've heard testimony from professionals in the field, testimony from statisticians, testimony from victims. This criminal element that we're dealing with now doesn't even run under the principle of honour among thieves. With this group there's only one bottom line, and it's called, "That fix—and how much money does it take?" or "How much money can I make?"

The value of life itself goes out the door when you're dealing with these people. These people tend to be the scum of the earth, and they are a plague upon our society right now, and somehow, some way—I'm not going to say they're incorrigible and they can't be rehabilitated, but if we don't recognize the danger this group now poses to our society....

A lot of people say it's okay, that this is just a phenomenon and we won't have a summer like this because this is just going to go away, and hopefully it won't be repeated again. Well, this is here to stay unless it's dealt with, and there are many solutions. This is not the sole solution, but it has to be one of the key elements in this deal.

So despite these very serious concerns we all have and the 48 gun deaths in Toronto alone, we still do not have any meaningful reform to the Criminal Code because this bill and other initiatives have been, arguably, delayed and/or opposed by various groups or individuals—and of course by some in this government.

Our Minister of Justice has mused publicly about tougher mandatory sentences, and yet he has done so in a most reluctant manner. His actions in fact tell a different story. Our justice minister and, with all respect, our parliamentary secretary have maintained opposition to Bill C-215. They will not entertain any crucial component of consecutive sentences. But most importantly, they've not provided any details of alternatives. On November 15, at the latest, I asked the minister in question period in this House when he intended to provide specific details about his plan to address violent crime in Canada. I sit before you here today still awaiting a response.

In short, this passing attention to this issue appears to be—obviously the suggestion was made of political influence or political interpretation by this committee and this House. Sadly, I do think it's obvious. I think I've come to an accurate conclusion, which almost anybody around this table would share, that pre-election posturing has taken place on this issue. I think that's truly unfortunate because I think the biggest loser in this entire charade, then, is the health and safety of Canadians. So while these comments might be particularly pointed and harsh, they're not meant to be personal. But I think it's a reflection on our Parliament that it hasn't served the needs of Canadians at a time of what I would say is almost a crisis. The deaths are just mounting at an exorbitant rate.

I would like to point out that just last week the parliamentary secretary to the Minister of Justice cited two separate studies saying minimum mandatories don't work. So my question would be, if this government doesn't believe in minimum mandatories, then why are its members still committed to introducing them? The government obviously does not believe these amendments to the Criminal Code are a deterrent, yet they're simply making a promise at press conferences and then further undermining the very idea of effective mandatory minimum sentences. This is a contradiction. You can't have it both ways. At one time you're for it; at another time you say, no, I don't want it. It depends on which particular political environment we find ourselves in. I find that disturbing, quite frankly.

• (1330)

I remind all of my colleagues around this table that Bill C-215 is not about misdemeanours or non-violent crime. This is not about minimum mandatories that have been in place, in which General Counsel Daubney stated there would be a constitutional challenge to an issue like this. And of course he based it on a 1987 ruling in which there was a penalty deemed to be unconstitutional for a narcotics offence. We're talking here about serious crimes against persons. We're talking about a different time in history. We're not talking about back in 1987. We're talking about the reality where people are getting shot, maimed, murdered, killed—serious crimes against persons. That is the reality we have to deal with. So citing studies from back in 1987 certainly doesn't take into account this new criminal reality and this rising threat that we have to society right now.

The Chair: Same old rules. Your time is—

Mr. Daryl Kramp: How much do I have?

The Chair: It has actually expired now, but if you could wind up

Mr. Daryl Kramp: I'll wind right up here then. I'll get rid of all this.

I mentioned before about the success of various programs—the exile program, the Florida 10-20-life. We have a new public opinion poll out, probably from CTV. Need I say any more? We have to be responsive to that as well.

But if I may close this, I will close it in this way, with all respect for the committee members around this table who have tried to combat this evil. I express my gratitude to everyone. Chair, thank you for your handling of this, and to the clerk and my colleagues. Whether we agree or disagree, I express my gratitude to you all.

However, I also express my supreme and extreme disappointment with continued resistance to Bill C-215 resulting in nothing going forward to the House this third reading. My overriding concern remains not in the personal success or failure of this initiative but in the obvious failure of this process to secure a clearly defined solution. I remain hopeful testimony given to this committee will eventually find its way into our justice committee. If nothing else, hopefully this bill will be a catalyst for change and a call to action.

I believe the final word in this hearing should come from the comments contained in Reverend Schiemann's presentation. It pertains extremely well to the issue of violent crime and the decision facing this committee, and I quote, "...all it takes for evil to prevail is for good people to do nothing".

So my suggestion to the ladies and gentlemen of this committee is, what have we done? Something or nothing?

• (1335)

The Chair: Thank you, Mr. Kramp.

We will adjourn at 2 p.m. We have about 23 minutes to do that. I'm going to limit questioning to each party, a four-minute round. If you need more than that, we'll see what's at the end.

Mr. Vic Toews: Thank you, Mr. Chair.

I think Mr. Kramp has certainly summarized my position very well. I want to thank him for bringing this bill forward.

I'm very concerned that in the dying days of this Parliament, the Liberal government would now bring forward a gun bill, after having strenuously opposed stronger sentences for gun legislation.

I want to thank Mr. Kramp for bringing this initiative forward. I know that if Mr. Kramp had not brought this bill forward, we would have heard nothing from the Liberal government.

So in the end, whether this bill passes or not, we know it is because of your determination that there is a change being made. I'm very disappointed that Liberals only see—and I'm not saying all Liberals here, because I know Borys has been very supportive of this bill, and I appreciate that very much. I think he's given a lot of thought to this issue, so I have to limit my concerns then to the minister and the parliamentary secretary.

We will see a new bill coming forward by the Liberals tomorrow on gun crime that will try to leave the impression that they're actually concerned about this. But whatever step forward that bill might mean—and I don't know what it will be—I think we owe it all to you. Your constituents can take a great deal of pride in the efforts you have made in this respect.

Those are my comments. I don't think I need a reply, unless you feel that I haven't sufficiently praised you enough.

Some hon. members: Oh, oh!

The Chair: Thank you, Mr. Toews.

To members of the Bloc, do you have a final comment or question?

[*Translation*]

Mr. Marc Lemay: Mr. Kramp, your bill has served to open our eyes on a situation that exists and which, unfortunately, will continue to exist. Parliament must take steps to try to put an end to this violence.

However, I will not be able to support your bill and I say this with the utmost respect. I would have truly liked to have been able to study this bill further and hear the opinion of several other people. Today we began hearing from individuals who are not necessarily in favour of your bill, but who were proposing solutions, because your bill does not resolve all of the problems.

As a defence lawyer, I can tell you that we will not put an end to the violence you denounce in your bill by filling up our prisons. I am a new member of Parliament and this is my first Parliament, and I can assure you that I will always respect colleagues who present bills to further society. I think that you have come up with something. You have made a proposal that can only help to advance society. Regardless of what may happen over the next few hours, the next few days, the next few months or the next few years, it is clear and obvious that something will happen. You can then say that you are amongst those who contributed to put an end to this type of violence. Thank you.

[*English*]

The Chair: Mr. Comartin has left, but he has indicated to me that he will be submitting amendments by tomorrow.

Mr. Daryl Kramp: Thank you.

In response to Mr. Lemay, thank you very kindly for the courtesy you have provided in this. Although we have a difference of opinion as to the timing, the extent, the scope, and the rate at which we must accelerate change, I still think we both, and the majority of this committee, want to go in the right direction. We do know that with crime, the status quo is not acceptable; that's the bottom line.

There are amendments that are planned to come forward. We've listened to testimony at this committee, and I'm definitely amenable to some suggested changes that address some of the concern that, quite honestly, this bill has some areas that are faulty. With respect to a potential charter challenge, there's an amendment coming in to deal with that. There will also be another amendment coming in to deal with the inclusion of the existing life sentences with that.

So yes, we have been listening. I welcome the involvement of the committee in bringing forth these amendments and recommendations so we can progress forward with the bill, step by step.

Thank you.

• (1340)

The Chair: Thank you.

Mr. Macklin is next for four minutes.

Hon. Paul Harold Macklin: Thank you very much. I do extend to Mr. Kramp my thanks for his bringing forward the bill, because I

think it does get us concentrating on the issues that surround the bill itself.

As he knows, I have a great deal of difficulty with the way the bill has been constructed. I think we can start with constitutionality as being a problem, but I think in the end one of the things that keeps focusing our attention is the number of deaths that are occurring through the use of guns in the city of Toronto. Yet, as I think I pointed out with our last witnesses, we do have for premeditated murder the highest sentence that we have available to us, which is life, and that doesn't seem, as a mandatory minimum, to be in any way deterring these individuals from doing that particular act.

So we do have a problem. One is that we are on the one hand trying to make certain that we denounce the activity, and truthfully, in order to denounce, we as legislators only have certain ways of sending messages, and one of the ways is by setting out penalties that have either a mandatory minimum standard or at least a high maximum level that one can actually achieve if in fact a person is obviously a repeat offender.

The question becomes one of effectiveness, and I think that's where our witnesses today were somewhat helpful, because it's all right for us to denounce and send out the denouncement from our communities, but in the end, what really keeps our communities safe is when these are effective.

Today I think it was suggested that simply doing mandatory minimum penalties isn't the only way to be effective. We have to work with root causes within our community. We have to deal with law enforcement and, as I think was mentioned a number of times, the likelihood of being caught.

If I could go back to Mr. Thompson's comments earlier about when he was running a school and he said there were going to be certain consequences for certain acts that occurred within his school, I suspect he had a fairly good police force, if I can use the term broadly, within that school who were going to bring to his attention all these acts that were committed within that school, and therefore it was a combination of things. Yes, it was setting an absolute penalty, but it was also the likelihood of being caught that was part of the process.

So I think you have to look at our legislative function. You have to look at our enforcement function, and I think in the end you have to look at the community, the social fabric, that we need to work on.

You've brought forward at least a point of focus. You have brought it forward, and we've had a good discussion so far. It's unfortunate we aren't able to continue it, because if you believe as strongly as I think you do in the bill, you won't be voting to dissolve this Parliament, but rather to see us go forward and to see what resolution we could achieve that would be helpful in bringing forward your legislative ideas. I think I've likely said enough about the principle involved. I think there is a combination of ways in which we can seek a better solution, but I thank you anyway for bringing it to focus, because I think this committee always needs a catalyst to get us to focus on issues. So thank you very much.

The Chair: Thank you, Mr. Macklin. That completes our four-minute rounds.

Mr. Wrzesnewskyj had a friendly amendment. We're not going to debate it. Do you wish—

The Chair: Okay. Then there being no further comment, we'll be

• (1345)

Mr. Borys Wrzesnewskyj: No, that's been submitted.

adjourned until Monday at 11 a.m. Thank you.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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