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Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (1555)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): The Standing Committee on Justice and Human Rights is now called to order.

On our agenda today, pursuant to the order of reference of Tuesday, June 6, 2006, is the debate of Bill C-9, an act to amend the Criminal Code on conditional sentence of imprisonment.

We have before the committee the Honourable Vic Toews, Minister of Justice. We also have Catherine Kane, who is the senior counsel with the Department of Justice and the director of the Policy Centre for Victim Issues.

Welcome.

Hon. Vic Toews (Minister of Justice): Thank you.

The Chair: Just before we get into your presentation, Minister, would it be possible for you to extend your time before the committee, given the matter here? We have started a little late, so that would be advantageous.

Hon. Vic Toews: Let me just see here, before I make any commitments.

The Chair: Certainly.

Hon. Vic Toews: I have a commitment at 6:30—

An hon. member: Indeed....

Hon. Vic Toews: —but I'm not staying here until 6:30.

Some hon. members: Oh, oh!

The Chair: Thank you, Minister. Even an additional half hour would be advantageous.

Hon. Vic Toews: Yes, that's fine.

The Chair: Thank you.

If you would begin your presentation, then that would be fine, thank you.

Hon. Vic Toews: Thank you very much, Mr. Chairman.

During the election campaign, our party made a firm commitment to protect families and Canada's way of life by cracking down on guns, gangs, and drugs. Since assuming office, we have taken leadership in tackling crime, with measures to strengthen communities and assist millions of ordinary, hard-working Canadians. It has been one of our five key priorities, along with helping Canadians get ahead by cutting taxes, including a cut in our GST, and introducing a real child care plan. Parents have already begun receiving child care cheques worth $1,200 a year for each child under six. We're also moving towards a patient wait times guarantee and restoring Canadians' faith in accountable, responsible government by introducing the most sweeping accountability measures in our country's history.

As Minister of Justice, I am pleased that we have followed through on our commitment to tackle crime with tough new measures. We are ensuring that criminals are no longer coddled, and the voices and rights of victims are respected. This is what Canadian families and taxpayers expect, and we are delivering results for them.

I am pleased to meet once again with the members of the justice committee, this time to discuss one of those strong new measures, Bill C-9, an act to amend the Criminal Code on conditional sentence of imprisonment.

As you know, a judge may impose a conditional sentence for house arrest provided that the sentencing judge finds that permitting the offender to do so would not endanger the safety of the community, and would be in accordance with the fundamental purpose and objectives of sentencing. The Criminal Code also forbids the use of this type of sentence where the offender was found guilty of an offence that is punishable by a minimum term of imprisonment, or where the offender was sentenced to a term of imprisonment of more than two years. Bill C-9 would add a fifth prerequisite that would prohibit conditional sentences, essentially house arrest, for offences punishable by ten years or more that are prosecuted by indictment.

As we had the opportunity to hear during second reading debate on this bill, the government's move to reform the conditional sentences is aimed at limiting those sentences to the cases for which they were originally intended to apply. Conditional sentences were never designed to be used for the most serious offenders, a point made repeatedly by members of the Liberal government of the day when they brought forward the concept of house arrest. This is why this government promised to prohibit the use of conditional sentences for serious crimes, including designated violent and sexual offences, weapons offences, major drug offences, crimes committed against children, and impaired driving causing bodily harm or death.

To quote from a paper entitled “The Conditional Sentence of Imprisonment: The Need for Amendment”, prepared in June 2003 by the Alberta justice minister and attorney general on behalf of British Columbia, Manitoba, Ontario, and Nova Scotia:

> Allowing persons not dangerous to the community, who would otherwise be incarcerated, and who have not committed serious or violent crime, to serve their sentence in the community is beneficial. However, there comes a point where the very nature of the offence and the offender should result in actual incarceration. To do otherwise brings the entire conditional sentence regime, and hence the criminal justice system, into disrepute.

The options to reform the conditional sentence of imprisonment put forth in that paper included the implementation of a prohibition against the use of conditional sentences for serious crime.

I am aware that members of the opposition are concerned about the scope of Bill C-9. The ten-year maximum sentence threshold represents a clear and straightforward message that serious crime will result in serious time.

I am open, ladies and gentlemen, to considering reasonable amendments that will improve this bill and ensure its early passage. However, in shaping these amendments, we must take into consideration the commitment of this and previous governments that conditional sentences are not to be used with respect to serious crime. Crimes against the person that are prosecuted by way of indictment, offences like breaking and entering and home invasion, are plainly serious offences in the eyes of many Canadians.

An important aspect of Bill C-9 is that it targets only offences prosecuted by indictment. For instance, a conditional sentence would still be available for assault causing bodily harm, provided it is prosecuted by summary conviction. As I said during debate in the House, in order to ensure that the sentence is proportionate to the gravity of the offence and to the degree of responsibility of the offender, the justice system will have to rely on the discretion of prosecutors and police to charge an offender appropriately, using summary conviction charges in minor cases only.

Another important aspect of this bill is that while many offenders who would have been eligible for a conditional sentence order will in future serve their sentence in custody, not all will. It is anticipated that some will receive a suspended sentence with probation. Some offenders who would now be eligible for a conditional sentence order will likely get a prison sentence that is shorter than the conditional sentence it replaces, followed by a period of probation of several months.

Mr. Chairman, some have expressed concern that this bill would potentially increase the overrepresentation of aboriginal offenders. However, when considering this, we should also note that aboriginal Canadians are also overrepresented as the victims of crime. Bill C-9 is aimed at providing protection to those victims and their communities.

A report released on June 6, 2006, and prepared by the Canadian Centre for Justice Statistics found that aboriginal people were more likely to be victims of crime than were non-aboriginal people. It states that 40% of aboriginal people aged 15 and over reported that they were victimized at least once in the 12 months prior to being interviewed. This figure compares with 28% of non-aboriginal people who did so. Restorative justice is an important tool for aboriginal offenders, but aboriginal victims are as deserving of protection and safety as every other Canadian. Bill C-9 is a step to delivering that protection.

In terms of breakdown by type of offence, the study reports that out of 22,878 violent incidents reported to police on-reserve in 2004, 20,804 were assaults, representing 90% of violent incidents reported to police. Common assault, if prosecuted by indictment, is punished by a maximum sentence of imprisonment of five years, pursuant to section 266 of the Criminal Code, and therefore would not be caught by Bill C-9. The CCJS study found that aboriginal people were twice as likely as their non-aboriginal counterparts to be repeat victims of crime, and three and a half times more likely to be victims of spousal abuse. Finally, the study reports that between 1997 and 2000, the average homicide rate for aboriginal people was 8.8 per 100,000 population—almost seven times higher than that for non-aboriginal people, which is at 1.3 per 100,000 population.

Mr. Chairman, considering these statistics, I believe Bill C-9 is a necessary step to protect aboriginal victims and aboriginal communities in a manner that closely aligns with the purpose and principles of sentencing as set out in the Criminal Code.

Drug offences and drug-related violence remain a growing threat to our communities and to our Canadian way of life. As I stated when I appeared before this committee on the main spending estimates of the Department of Justice, the number of marijuana grow ops has increased dramatically in Canada, spreading into suburban and rural communities. The production and distribution of drugs such as crack cocaine, methamphetamine, and ecstasy have increased as well. Bill C-9 will help to ensure that serious drug offences will result in greater punishment.

This bill applies to the Controlled Drugs and Substances Act, as well as the Criminal Code, by prohibiting the use of conditional sentence for drug offences prosecuted by indictment and punishable by a maximum sentence of ten years or more. Consequently, a conditional sentence order will not be available for trafficking or producing a substance in schedule I or schedule II—except for cannabis—or for trafficking or producing a substance in schedule III if prosecuted by indictment. It would not be allowed, either, for importing or exporting a substance in schedule I or schedule II, or for importing or exporting a substance in schedule III or schedule IV, if prosecuted by indictment.

● (1600)

Mr. Chairman, I would now like to refer to some court cases and submit to this committee that the conditional sentences handed out in these cases were simply unacceptable.

In Regina v. Wong, from the British Columbia courts, the offender, a 42-year-old man and a father of two, pleaded guilty to trafficking in a dial-a-dope scheme involving three sales of cocaine to an undercover police officer. A dial-a-dope operation is a drug enterprise with a certain level of sophistication that permits people at home to order drugs via phone. The drugs are dropped off at a specific location, often at the buyer's home. These types of dial-a-dope operations often involve large amounts of narcotics.

The offender had a previous criminal record at the time of these offences and was under a conditional sentence of imprisonment for related drug offences. Despite the aggravating factors, the court sentenced the offender to two years less a day, to be served in the community—in other words, house arrest.

In Regina v. Kasaboski, an Ontario decision, the 22-year-old offender pleaded guilty to one count of trafficking in methamphetamine and was also charged with trafficking and possession of ecstasy. The facts of this case established that the offender had trafficked 500 tablets of methamphetamine and was later discovered with 200 tablets of ecstasy. The offender had no prior criminal record, but after committing the offences I just mentioned, he was found guilty of failing to attend court and of possessing property obtained by crime.

In sentencing the offender, the court found that he had made substantial efforts to change his life, he had been clean for 17 months, he had held a job in a brewery for 16 months, and his parents were in support of his efforts. The court also said the following:

> Both ecstasy and methamphetamine are dangerous drugs. While the nature of the overall organization with which Mr. Kasaboski was associated is not clear from the facts presented to the court, it is plain that he was well up in the distribution chain. These were not street-level transactions and small amounts, but rather substantial sales for substantial amounts of money. The motive, I infer, was for profit.

The court found that both denunciation and deterrence could be achieved by a conditional sentence of two years less a day.

Another example can be found in Regina v. Basque. In the recent decision of the B.C. court, the offender, a 22-year-old, was found guilty of possession and trafficking in cocaine. The offender operated along the lines of what I described earlier as a dial-a-dope dealer. In reaching its decision, the court found the guilty plea entered by the offender, the fact that he had no prior criminal record, and the fact that the offender was trying to avoid his former lifestyle, to be mitigating. However, the court found the following to be aggravating, and I quote:

> The aggravating circumstances in this case are: (i) the Dial-A-Dope circumstances; (ii) the fact that the drug purported to be trafficked was cocaine; but the most aggravating is the fact (iii) that this offence took place while Mr. Basque was on an undertaking with respect to virtually the same offence.

Even though these circumstances were present in that case, the sentencing judge sentenced the offender to 12 months imprisonment to be served in the community—again, house arrest.

I submit to the members of this committee that these types of sentences for these types of drug offences are inappropriate. Such cases are not rare. They demand that action be taken by this Parliament to ensure that serious drug crime results in actual incarceration.

Canadians are concerned about sentencing in crimes of violence, as well. It is clear from the case law that house arrest is not a rare occurrence in these cases, either. For example, from Calgary, a Michael John Wilson, age 25, was convicted of manslaughter. Wilson was given a two-year conditional sentence for an incident in which his infant daughter's spine was snapped and her aorta torn, causing her death.

● (1605)

In Toronto, Scott Carew was sentenced to two years of house arrest and 240 hours of community service after pleading guilty to an aggravated assault that left his five-month-old son permanently brain damaged.

In Cayuga, Ontario, James Peart, convicted of ten counts of indecently assaulting boys as young as eight over two decades, was given a conditional sentence or house arrest of twenty months.

In Peterborough, Ontario, Fred Cole, 58, convicted of raping a young girl, was given a two-year house arrest sentence.

R. v. J.G.C., a 2004 case, is a stark example in which the offender, a man in his late thirties, pleaded guilty to sexually assaulting two boys under the age of 14 on several occasions. He used inducements such as video games, candy, cake, and money to gain the trust of one of the boys. The second victim was a cousin of the first. In sentencing the offender to a nine-month house arrest period, the court stated that such a sentence was appropriate because the offender did not represent a threat to the community, did not use force to sexually assault the two boys, and had attempted suicide, which showed a certain degree of remorse.

I personally find the sentences reached in these cases unconscionable, and I'm sure that many members of the public do too. The sentences in these cases do not properly reflect the principles of denunciation, deterrence, and proportionality. This bill will ensure that the sentencing objectives and principles are better reflected in sentences handed down in cases such as these.

I would like to conclude by saying that Bill C-9 is a necessary step toward more just sentences that will protect not only our communities and our children, but also our Canadian values. It will ensure that conditional sentences remain available for those who commit minor crimes and, in all the circumstances, merit the opportunity to serve their sentences at home. But when a criminal commits a serious criminal act, it will ensure that the sentence will be served in custody. The appropriate use of conditional sentences will strengthen confidence in our criminal justice system.

Thank you.

● (1610)

The Chair: Thank you very much, Minister. The committee and I appreciate your presentation, and I know there are many questions to be forwarded to you.

I will begin a seven-minute round of questioning with Ms. Sue Barnes.

Hon. Sue Barnes (London West, Lib.): Thank you very much.

I appreciate the fact that you were here before on estimates and said you would be back with supplemental September priorities because you couldn't answer some of the questions we had then. I'm sure you'll have the answers when you appear before us soon.

I look at Bill C-9, and our party is interested in having some form of restriction on conditional sentencing, so it is a question of what, to what degree, and how we choose the offences that should be there.

We're going to hear a lot of evidence, and we'll have to make our final decisions based on the evidence that's educed before this committee, and our best judgment around the table. But there are a number of issues on which my colleagues and other members will question you.

I note your examples. I also note for the record that the crown could easily appeal those sentences, and I'm sure that they should have or would have in some of those cases. But the fact remains that I thought your presentation today should have included something to do with the costing, because this is going to affect the situation in the provinces and territories throughout the country.

I would like to see tabled before this committee some idea of the projected costing and some acknowledgment or discussion of where you are with your consultations with those who could be most affected in those jurisdictions, because we all know that these sentences will be served at that level and not in federal penitentiaries.

You've also talked about the aboriginal community, and I think it is very true that aboriginal communities are over-represented not only in our penal system, but among the victim community. I agree with that.

It is the amendments that are going to be the work in progress here, Minister. You have now come before this committee twice to say you are amenable to amendments. Are your bureaucrats in the Department of Justice willing to work with the parties, or will we just go through our normal amendment process? In other words, I've noted throughout the summer that in your speeches you have dropped mention of those sections that deal mainly with property. You've been talking about the serious injury parts and the serious crimes, and I think we can come to an agreement on those areas.

There are other things I want to discuss with you, but I will let you give your views and tell us whether the government is going to be amending its own bill.

Hon. Vic Toews: Thank you very much.

First of all, I would prefer that you work with members of the committee rather than bureaucrats. You are the elected members, and I hope, after hearing the evidence, you can determine what you think is in the best interest of the Canadian people. I can tell you that my department is more than willing to work with you.

But I want to point out that there are many property offences that pose a great deal of concern to Canadians. For example, some of the attorneys general are concerned about auto thefts, about the skyrocketing auto thefts. In the city of Winnipeg alone there'd be 9,000 auto thefts in one year, often committed by the same individuals over and over again, with people still getting conditional offences. In terms of other property offences, the Vancouver police related to me that an individual convicted of 124 offences was still receiving conditional sentences.

So the issue of property offence is not something that we should simply dismiss, and say that they're not serious. In fact, the evidence is very clear that violent crimes often begin with property offences. One concern I have is about breaking and entering. What is the difference between a break and enter into a residence and a home invasion? The problem is that you'll see a person in that home invasion. So a break and enter has the potential of being a very serious offence.

I'm trying to meet all of your points here; they're good points, and I appreciate your willingness to work on this bill, because we do need your support in a minority government.

You mentioned the issue of appeal. I was just looking through a newspaper and saw that, for example, the Manitoba Court of Appeal routinely hands out conditional sentences for drug offenders. I'm talking about production of and trafficking in drugs. Quite frankly, I don't see that as appropriate, and yet the courts of appeal in this country are the last resort. There is no further appeal in matters to the Supreme Court other than on a matter of law. It is very rarely granted that a sentence of appeal could ever go to the Supreme Court. So we have inconsistencies right across the country in terms of what is an appropriate sentencing for trafficking.

With regard to your point on the costing, first of all, this costing will be discussed at the attorneys general and Minister of Justice meeting in October. I have been holding individual conversations with provincial attorneys general, who, I might add, are generally supportive of the reforms as set out in this bill. Provincial and territorial officials are developing a paper outlining their views on the cumulative impact on not only Bill C-9 but also Bill C-10, and mandatory minimum sentences for serious drug offences. This paper has not yet been finalized, but it will be discussed at that ministerial meeting.

The increase in operational correctional costs will depend on the proportion of ineligible offenders who will receive a jail sentence and the average length of those sentences. Our estimates indicate that there could be additional jail sentences amounting to 443 prison years, which equates to an annual national expenditure for these sentences of approximately $21.7 million. This represents 1.7% of the present annual operational expenditure by jurisdictions on adult corrections. I look forward to seeing the provincial estimates on that.

Hon. Sue Barnes: Mr. Minister, a lot of other costs would go up with increased incarceration—for instance, the legal aid costs required. Usually in criminal legal aid, potential incarceration is the factor that most determines whether somebody's legal aid certificate is granted. They are underfunded right now.

In our last meeting on estimates, you again didn't have an answer on the situation with legal aid. Where are you now?

Hon. Vic Toews: Where we are on the issue of legal aid is that we extended the agreement for one year so that there would be something in place when the government changed and there wouldn't be a hole in that legal aid funding.

But just on the issue of costs, as you know, estimating future costs—the impact, the benefits—is a very difficult thing to do. Of course, as you will recall from your own gun registry, you had estimated $2 million in total costs, but as I understand it from the Auditor General, it's approximately $1 billion. So the costs that you estimated in that case were a little off, and I'm saying that I want to get all the facts before I start giving cost estimates. You can appreciate that sometimes there are difficulties in giving cost estimates.

● (1620)

Hon. Sue Barnes: Yes.

The Chair: Thank you, Ms. Barnes.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chairman.

Minister, I do not feel that you have fulfilled the task of convincing us to support your bill. It is far too easy for you to come before this committee, refer to six random cases and to say that at the end of the day, the judiciary didn't do a good job.

I have a specific question for you and I would appreciate a specific response. When we met with your officials, they informed us of the fact that for the year 2003-2004, the last year for which figures are available, 15,493 people had received conditional sentences. According to your department's data, how many people received conditional sentences for violent crimes? That is the real burden of proof you must discharge. You cannot simply use two or three examples from case law.

When Bill C-41 was passed, the goal was to free up prison space to make sure that real criminals, in other words those who commit violent crimes, would be behind bars. On the list of offences for which people would no longer be able to receive conditional sentences — our research service provided us with a list of a hundred — some do not involve any violence at all. Obviously, each case must be assessed on its merits, granted. However, I would expect you to be more rigorous when it comes to the figures you are providing for us.

I hope that within the Department of Justice there is some kind of system which allows you to know how many people out of these 15,493 committed violent crimes and received conditional sentences.

That is my first question. I have three others and so I would appreciate short replies.

[*English*]

Hon. Vic Toews: I can indicate that CCJS will be presenting those statistics; I don't have those statistics.

I just want to correct one statement about you indicating that the legal system isn't doing its job. That's not what I said. My concern is with the law that Parliament passed. There were assurances made to the Canadian people that these amendments would not be applied in the case of serious or violent offences. That was an undertaking made to the people of Canada. What I was doing, by bringing forward those examples—

[*Translation*]

Mr. Réal Ménard: Wait a minute.

[*English*]

Hon. Vic Toews: I'm going to finish my answer anyway.

[*Translation*]

Mr. Réal Ménard: No. I'm the one asking the questions.

[*English*]

The Chair: Mr. Ménard....

Mr. Réal Ménard: No, I asked the question; that's my time.

The Chair: Please allow the minister to complete.

[*Translation*]

Mr. Réal Ménard: I find it unacceptable that you do not have an answer with respect to violent crimes. That is the crux of this debate. I was expecting you to be able to answer. It is your responsibility to do so. We are here specifically to consider this bill.

What will this mean for incarcerated individuals? I'd like to remind you, as to the two-year provision, that you are about to download the responsibility for incarceration to the provinces. In Quebec, Manitoba and the maritime provinces, how many people will end up in provincial jails? What kind of costs will that amount to for each of these provinces? We are entitled to expect figures from you that are more specific than the rough estimates you have provided for us. It is your responsibility as an elected representative and the Minister of Justice to do this, not the Canadian Centre for Justice Statistics. So, we want to deal with you.

[*English*]

Hon. Vic Toews: Thank you. I'll just continue with my answer.

Our position was not that the legal system is inappropriate, but that this law is inappropriate. The courts are entitled to interpret the law, and the Supreme Court of Canada made a decision, in respect of the conditional sentences, that went completely contrary to the undertaking that was given to the Canadian people by the government at the time. Therefore, I was simply bringing forward examples of cases where this had not in fact been followed, and which demonstrates that the assurances made were not being carried out in reality. Obviously, there was a disconnect between the intended application of the law and the actual application of the law.

I've indicated that the most appropriate body will be bringing forward those statistics. I would rather not guess; I'd rather not give this committee the statistics second-hand. But I can tell you that a conditional sentence is only imposed in approximately 5% of all cases. The most frequently imposed sentence in Canadian courts is a probation order, which is approximately 47%. In 2003—

● (1625)

[*Translation*]

Mr. Réal Ménard: I'm sorry, Minister, but you are not answering my question.

[*English*]

Hon. Vic Toews: I'm going to continue with that answer anyway.

[*Translation*]

Mr. Réal Ménard: Your officials provided us with these statistics. You are not answering my question. I expect you to answer my questions.

You have to acknowledge that your bill is ideological in nature and has nothing to do with criminality as it plays out in communities.

When you appeared with Stockwell Day at a press conference, you had no rigorous arguments to make, no statistics to support your bill. You can't possibly expect to get opposition party support on the strength of the weak arguments you have put forth.

So, if we're talking about putting people who commit violent crimes behind bars, we Bloc members agree.

I was the member for Hochelaga-Maisonneuve when there was a car bombing in 1995. That is when I tabled the first anti-gang bill. I know full well that there are circumstances where incarceration is called for. What I'm worried about, is that you have been unable to distinguish violent offences from non-violent ones.

So, I have a very specific question to put to you and I do not want to hear political philosophy as an answer. Why did you not amend section 718 of the Criminal Code to make sure that under sentencing principles, the judiciary was asked not to hand down conditional sentences for violent crimes?

Let's add another objective to section 718. I'm prepared to vote in favour of that and I'm convinced my colleagues will do the same.

[*English*]

The Chair: Mr. Ménard, will you put your question?

[*Translation*]

Mr. Réal Ménard: However, don't try and push through a Richard Nixon or George Bush-type bill simply because you look to the United States for inspiration.

[*English*]

The Chair: Put your question. Your time is up.

[*Translation*]

Mr. Réal Ménard: My question is the following. Why not amend section 718 to distinguish between violent and non-violent crimes?

[*English*]

Hon. Vic Toews: In 2003 and 2004, there were 15,493 conditional sentences imposed in the country. I anticipate that after Bill C-9 is passed, some offenders who have committed offences and who are no longer eligible for house arrest will receive probation while others will receive a custodial sentence. And based on that year's statistics, about one-third of conditional sentences, or 5,784 of the 15,493, will be ineligible for conditional sentence.

If Bill C-9 is narrowed by eliminating property offences, 2,634 of the 15,493 offenders who received a conditional sentence in 2003-2004 would be ineligible for a conditional sentence. So what I'm saying, Mr. Chair, is that we can narrow this, but the issue isn't violent sentences or sentences for violent crimes alone. The issue is for serious property offences. It may be all right in some members' communities that houses are broken into at a regular rate and that's considered simply a property offence, but I can assure you that the people in my community—and I dare say across Canada—don't consider that simply a property offence. In my opinion, you are violating the personal security of individuals when you break into their homes in that fashion.

I've indicated I'm open to this discussion. I don't understand the hostility of the member. I am open to looking at some of these issues. I'm willing to look at those issues. The organization—

The Chair: Time is up.

Hon. Vic Toews: I'm sorry, Mr. Chair. The organization with the best statistics will be here, will provide. So rather than trying to do it in a heated political fashion, we will try to do it in a rational, informed way. I will do whatever I can, but I can assure you that the most appropriate body will bring those statistics forward.

[*Translation*]

Mr. Réal Ménard: You must know these statistics.

[*English*]

The Chair: Thank you very much, Minister.

Mr. Comartin, you have seven minutes.

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

Let me go back to the cost. Those figures I was just looking at, Mr. Minister, from the briefing that your department gave us back in May of this year, the same figures that you just quoted of roughly 15,500 conditional sentences in Canada.... I think that was in 2003. I didn't note the year. It was 2003?

● (1630)

Hon. Vic Toews: It was for 2003-2004.

Mr. Joe Comartin: So that was the last year we had statistics for. Under Bill C-9, roughly a third of them would no longer be available. You make the point—let me address that first—that some of these may end up with probationary sentences. Mr. Minister, my sense is that a probationary sentence is more restrictive and gives the community more control of the convicted person than a conditional sentence would. Do you agree with that?

Hon. Vic Toews: Well, I've raised that personally with a number of judges. They didn't seem to think so.

I guess it depends on the jurisdiction you're in. In some jurisdictions the types of conditions that can be imposed under a suspended sentence and the probation order are quite broad. Some have indicated to me they are virtually identical to the conditional sentence.

My own problem with conditional sentences is not in theory but with why we have them at all. Why don't we simply amend probation orders, if there is an issue with respect to them? The probation orders are much easier to enforce than conditional sentences. During a two-year suspended sentence, for example, you can bring back the person at any time in the course of that sentence and resentence the individual and really hold the person accountable for the full two years. You can't do that with a conditional sentence, and that's one of the serious concerns about a conditional sentence.

Mr. Joe Comartin: Obviously, I have to throw back at you, Mr. Minister, that you're the minister now; this is the bill you presented to us. I have had similar thoughts, wondering why we have conditional sentences. Why did we create this new methodology for dealing with convicted persons? But you're the minister, so let me—

Hon. Vic Toews: Well, let me answer that. Politically the former government tried to leave the impression that what we are doing is putting people in prison in the community. That's what the cases say; they are serving a sentence of imprisonment in the community. Everybody knows that is a charade, and I think it's that kind of language that brings the administration of justice into disrepute. Why aren't we simply more straightforward with Canadians?

Mr. Joe Comartin: But then, with Bill C-9 you're perpetuating this.

Hon. Vic Toews: What we're trying to do is at least limit the disastrous impact of this kind of bill.

If you're saying to me, “Let's eliminate conditional sentences entirely and just increase the availability of probationary orders”, you might want to talk about that.

Mr. Joe Comartin: We'll take that up.

The second point is the cost. The numbers are the same. I was surprised, quite frankly. Figures I got from your department, again in that same briefing, would have led me to believe with all of those files—and I recognize that not all of them will end up with people being incarcerated, but if all of them did—the figure actually is a quarter of a billion dollars a year as the cost, for the number of additional people who would be incarcerated, to keep people in a provincial institution across this country. I know the figures vary somewhat from province to province, but on average when you do the mathematics, if that many additional people—if all 5,000 additional files—ended up being incarceration files, the figure actually is closer to a quarter of a billion dollars, not $21 million. So I'm wondering how you came to that calculation.

Hon. Vic Toews: As I say, it's—

Mr. Joe Comartin: That's just the operational cost. That's not any additional capital cost for what would be required for a number of provinces to build new institutions.

Hon. Vic Toews: I don't know whether the department official has anything to say to that.

Mr. Joe Comartin: I can't remember whether Ms. Kane was at that briefing. I know Mr. Daubney was.

Ms. Catherine Kane (Senior Counsel, Director, Policy Centre for Victim Issues, Department of Justice): I don't recall whether I was there either, but certainly the figure we have been operating with is that the cost of the Bill C-9 reforms to the provinces would be $21.7 million.

Our colleagues in research and statistics obviously looked at all the data and made a number of assumptions. Not all of those people would be in jail, and we wouldn't know exactly how long they would be in jail for, so they looked at average lengths of additional prison time and so on if no conditional sentence were possible. The result was a best estimate of $21.7 million nationally. In some provinces there would be a greater impact than in others, but across all jurisdictions that would be the increase. That's, as the minister said earlier, about 1.7% of the current provincial corrections costs.

● (1635)

Mr. Joe Comartin: Ms. Kane, that would mean that of those almost-5,000 cases, approximately one third...that only about 10% of them would be additional incarcerations. I don't know where your department could have drawn that assumption. Who did the assuming?

Ms. Catherine Kane: We can provide additional information to you through the minister's office about how those figures were reached.

Mr. Joe Comartin: Could we have that in terms of these two points: what the assumptions were about how many additional people would be incarcerated, and what assumption they made as to what the daily cost of that is going to be? If they have any estimate of whether it's going to require additional capital cost in the way of providing additional cells, I would like that as well.

Ms. Catherine Kane: These are estimates that we developed in the Department of Justice. But as the minister indicated, he's meeting with his colleagues in about three weeks, and we expect that they will indicate their costs from their own perspective, because certain information can only come from the provinces.

Mr. Joe Comartin: I would be really interested in the assumptions they made.

I'm just going to throw this at you. My discussions with Saskatchewan's attorney general indicated that 80% of the files involving first nations were conditional sentences. So it's hard to imagine that you're going to get only a 1.7% increase in incarcerations in that particular province. It boggles the mind.

Once we get those estimates—and I would like to forewarn the people who made the assumptions—we're going to want those people to appear before this committee.

Ms. Catherine Kane: As I indicated, those are national figures with a national average. It does vary by jurisdiction, and it has been noted that in provinces with high aboriginal populations, the impact will be different.

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thanks to the minister for being here.

I have a few questions on the bill. Obviously at some point a line was drawn to indicate that offences with a ten-year maximum sentence were more serious than offences with a lower maximum. So some previous governments, when dealing with the Criminal Code, indicated that those were more serious offences.

The concern I have in my riding is that regarding car theft or another offence with a maximum ten-year sentence, but which wouldn't be categorized as violent—such as theft over $5,000, breaking and entering with the intent to commit an indictable offence, or being unlawfully in a dwelling house—these are in fact serious offences in my constituents' and my own view, and I think in Canada's view, since we all hear about them as members of Parliament.

Could you please comment a bit on what you and the department have heard in consultation with jurisdictions on the seriousness of what we call property offences? As members of Parliament, we hear complaints about a break and enter, and that someone with a serious problem with recidivism—with multiple offences and convictions—received a conditional sentence regarding this property offence, yet he or she is serving time, so to speak, in the very community where the offence was committed.

Hon. Vic Toews: Thank you.

This summer I've had occasion to travel across the country. I've been able to speak with most attorneys general about the legislation, not only Bill C-9 but Bill C-10 and some of our other initiatives. Generally speaking, I find good support for the legislation among the provincial attorneys general. The concern that has been expressed is the money concern that has been raised here. There's no question about that. But each attorney general is mindful of the fact that in order to stop this revolving door, especially in respect of multiple property offenders, we have to take steps and that there are costs that are involved.

Let me break up the comments perhaps into two parts. Number one is the concern about the Youth Criminal Justice Act and the multiple offenders in that kind of a context where young offenders literally are stealing dozens and dozens of cars in the course of months and there doesn't seem to be any way of holding them accountable under the present act. As you know, the Supreme Court of Canada has recently ruled that denunciation or deterrence is no longer part of the sentencing process under the Youth Criminal Justice Act. That's quite a startling judgment, but I guess based on how the legislation was drafted, that was an appropriate decision. I'm not saying I agree with the result as a matter of practice, but based on their interpretation.

I've also heard from police and victims groups and others about issues of repeat vandalism, break and enters, auto thefts, those types of so-called property offences, and the impact that it's having on their ability to police, in the case of police forces, or in the case of businesses just simply their ability to operate a business in many of the downtown areas. So these individuals certainly do not see property crime as not a serious offence. In fact, it's driving businesses out of certain areas. It's sending their customers into the suburban areas, away from these downtown areas. So it is a serious social problem that these repeat offenders, those who break into homes, are causing.

The impact on an individual who has had their home broken into is quite significant, especially among the older people, who are at best frightened to go out on the street at night, and once their house has been broken into they are frightened to stay in their own home. It changes the lives of these individuals forever.

● (1640)

Mr. Rob Moore: Thank you. I'm glad you mentioned it, because that's certainly what I hear, that these are in fact serious offences.

I want to look also at the work that MADD Canada has been doing. I know there's been consultation with victims groups and with other interest groups. I received this press release from MADD Canada's national president. She says: “We strongly believe that a sentence should reflect the severity of the crime. In the case of violent crimes where a person has been killed or seriously injured, conditional sentences such as house arrest and community service are totally inadequate. When a person drinks, drives, and kills or seriously injures another person, that person should have to do jail time.” It goes on to say, “Our courts have to catch up with the public's sense of justice in what is both fair and effective sentencing”, and the national president calls on parliamentarians to pass the legislation. “We would like to see Bill C-9 out of committee and back into the House as expeditiously as possible.”

Can you comment, Minister, in the time you have remaining a bit on the concerns that MADD Canada has and on their support for this piece of legislation and what that means?

Hon. Vic Toews: Well, I had the chance to see that same news release, which I understand came out today, and MADD Canada is very supportive of Bill C-9, and in particular, legislation to eliminate conditional sentences for violent crimes. Now, their definition of violent crimes may not be the same as for other members of the committee, but I happen to agree with them in respect of the fact that the people involved in impaired driving causing death or injury or criminal negligence causing death or injury are violent crimes.

Under the bill that was before the House in the last Parliament, there was still an ability for judges to hand out conditional sentences or house arrest under that legislation. This legislation that we're bringing forward does not allow for that escape hatch; conditional sentences or house arrest are not appropriate in those kinds of crimes. I'm glad to see that MADD Canada supports our approach to this very serious problem.

● (1645)

The Chair: Thank you, Mr. Moore.

Mr. Ignatieff, you have five minutes.

Mr. Michael Ignatieff (Etobicoke—Lakeshore, Lib.): Mr. Minister, you make reference in your speech to restorative justice. I wanted to note that the justice minister of Saskatchewan has expressed concern about the impact of Bill C-9 on the unique justice programs that have emerged to bridge the gap between aboriginal peoples and non-aboriginal peoples. A specific example of this is the Hollow Water First Nation project in Manitoba. There communities are dealing with extremely serious issues, such as the sexual abuse of children, through court-supervised restorative justice programs. It is very important work that seems to me to have proven its worth.

These are not soft options; these are very determined actions by communities to deal with a horrendous social problem, and they have proven successful, but they depend on that conditional-sentencing capacity of the judge. Have you done any thinking about whether Bill C-9 will negatively affect the capacity of the justice system to work with aboriginal communities to produce these kinds of restorative justice programs that seem to address very serious offences in ways that seem to me—and seem to everybody—to be superior to simple incarceration? Is there some risk that Bill C-9 will simply throw people into jail when there are community solutions that can better deal with the problem?

I have some concern, to widen the frame slightly, that in your concern about judicial discretion you may be doing much more harm than good. This might be an example in which good programs are going to be harmed by your concern, in some cases righteous, about the use of conditional sentencing that is not appropriate; here might be a case in which it really is appropriate, and you might be doing some danger.

Hon. Vic Toews: I'm glad, Mr. Ignatieff, that you raised that issue, because I'm very familiar with the Hollow Water situation, given that I was responsible for it when I was the attorney general of Manitoba. That project was put into place long before conditional sentencing came into effect, so conditional sentencing did not allow that opportunity to arise, as far as I know.

Mr. Michael Ignatieff: But would it be harmed, sir, by this legislation? Have you anticipated the potential negative impact of this on a project that you value?

Hon. Vic Toews: I don't think so. I want to say that I am very much in favour of restorative justice. They have to be dealt with very carefully, but I don't see anything in the former law, which is still in effect with respect to suspended sentences and probation orders, that would prevent the principles of the Hollow Water program from being implemented under that existing law. Conditional sentencing, as far as I know, adds nothing to that.

I could be mistaken as to exactly when the Hollow Water project came into force, but I thought it was in the early 1990s—around 1990 or sometime around then. Conditional sentences only came in in 1995, so I don't see it impacting.

The system was flexible enough to accommodate all of those kinds of programs. If there was really a problem with allowing more conditions or allowing for the imposition of additional conditions, then I think the simplest thing would have been simply to amend the suspended sentences regime instead of bringing in this whole new regime, which caused tremendous problems in terms of enforcement and in terms of understanding it, but we're stuck with that program right now, and I'm trying to make the best of it that I can.

Mr. Michael Ignatieff: Sir, given the concerns I've heard from the Minister of Justice in Saskatchewan and in consulting last night, in preparation for your appearance here, with judges in Saskatchewan on the front line of this, would you undertake to ensure that Bill C-9 has no negative impact on these positive and useful restorative justice programs?

Your answer is saying you see no reason in principle why it shouldn't, and I take that answer as an answer in good faith, but are you prepared to listen to those people in the trenches in Saskatchewan and Manitoba who have legitimate concerns about this and who have voiced their concerns to me?

● (1650)

Hon. Vic Toews: Absolutely, and I will also take into account those from these isolated communities who feel victimized by conditional sentences because the perpetrators are back into the community, and they don't feel protected. So it is a difficult balance.

Are there legitimate alternative justice measures that we can maintain and continue on this? Yes, there are. Will I work toward ensuring that appropriate alternative justice programs are available? Absolutely. I don't believe that we have a single-track system, but there are certain offences that are simply not appropriate for this context.

The Chair: Thank you, Mr. Ignatieff.

Mr. Lemay, go ahead, please.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Minister, when Bill C-9 was tabled in the House of Commons, I had the opportunity to tell you that I was against the bill. Today, I will quote three figures, and I would invite your departmental officials to reflect on them before they go any further.

Fifty-five thousand people have avoided detention since 1996, the year when conditional sentences were established. I'll have a question on that later on. Based on 2002-2003 figures, the average annual cost of incarcerating a person in a provincial jail in Canada is $51,454, whereas it costs $1,792 to monitor an offender in the community. I think, Minister, that these three figures should give you pause, but I will go further.

I am speaking with all due respect for you and your knowledgeable background, Minister, because I know that you were the Attorney General of Manitoba when this case was heard before the Supreme Court and a decision was rendered. I am referring of course to the Proulx decision handed down in 2000, referred to in the Supreme Court decision 1 S.C.R. 61. So, if there are any more significant or more recent decisions to counter the Proulx decision, I would like your department to provide me with a copy of them.

The Supreme Court — and this hasn't been reconsidered since — established 12 principles for the imposition of a conditional sentence. The first is the following:

> Unlike probation, which is primarily a rehabilitative sentencing tool, a conditional sentence is intended to address both punitive and rehabilitative objectives.

As a defence counsel, I practised criminal law for 25 years. I was there when the conditional sentence system was first introduced and I appeared before various instances right up to the Court of Appeal on this matter. I can tell you — and you seem to have forgotten this — that when conditional sentences fail, that automatically leads to imprisonment until the sentence has been served, or to a review and stricter conditions.

I have two very specific questions to put to you. First, does the Department of Justice have statistics on successful conditional sentence cases? You cannot possibly not have those. We would like to have some information on these successes, that is, cases that did not result in a failure, in other words cases where a conditional sentence was imposed, the sentencing took place, and the offender completed the entire term of the conditional sentence. I would like to have these figures.

My final question has to do with your openness to possibly reviewing this bill. Have you considered conditional sentences for terms of up to five years less a day? On the one hand, that would serve as a counterweight to the ten years you are asking for. Moreover, we know that quite often people who receive five-years jail terms or less in penitentiaries get out faster than if they had been sent to a provincial prison where the sentences served are of two years or less. I could give you examples of this type of thing from here to Vancouver.

I hope you have understood my two questions.

● (1655)

[*English*]

Hon. Vic Toews: Yes. I think they're both very good questions.

On the issue of 55,000 avoiding detention, this doesn't mean there was any success. I mean, 55,000 people avoiding detention.... It seems to me I hear the same thing about the incarceration rates now for the Youth Criminal Justice Act—that they are so much lower—and somehow trumpeting that as a success. That only says there are fewer youth incarcerated. It doesn't mean the kids are no longer stealing cars. The police tell me something quite different.

[*Translation*]

Mr. Marc Lemay: No, no.

[*English*]

Hon. Vic Toews: I see we're on the same page in terms of 55,000 avoiding detention. I'd probably want to know how many of those are repeat conditional sentences. Are we actually talking about 55,000 people? I don't think so. I'm guessing, but we're talking about probably a third of that number, in terms of actual people. But I'm guessing here and I don't want to guess.

On the cost of incarceration, I think $51,000 is a fair number. You're saying it only costs $1,700 to monitor. That doesn't talk about the full cost to society. As I was told at the Vancouver Board of Trade, the average crack addict on the street steals $1,000 of product a day. That's $365,000 a year, because crack addicts don't take a day off. Their addiction doesn't allow that. They have to steal that product, that same amount, every day.

So you say $55,000 for incarcerating and $1,700 for supervising; they're still out there stealing. And that doesn't talk about the other social costs; this is direct economic cost to a business. The other figure I heard was that for every offender locked up for a year in a serious crime, 15 serious crimes are avoided. Again this gets back to how many people are actually avoiding detention, and deterrence—all those kinds of issues. We don't have the time to talk about that, but you raise very good points that maybe you can discuss as a committee.

Does the department have statistics in terms of success? I think we'll take a look to see what we can provide you on that. Now, on your last point, about conditional sentences being applicable to—

[*Translation*]

Mr. Marc Lemay: Conditional sentences.

[*English*]

Hon. Vic Toews: Yes.

[*Translation*]

Mr. Marc Lemay: I'm sorry, Mr. Chairman.

My question was the following: have you considered conditional sentences for terms of five years less a day, in other words sentences to be served in penitentiaries?

[*English*]

Hon. Vic Toews: I understand that. What you're saying is, instead of only being applicable to two years less a day, make it applicable to sentences of less than five years. If someone were convicted of manslaughter and, for example, got a four-year sentence, the court could then say we're going to imprison that individual in the community. I can tell you I'm not in favour of that. I think we have enough scope in terms of alternatives to sentencing in the under-two-years category. I would not be in favour of expanding that. I think we would just see a multiplication of more serious offenders being eligible for alternative....

The Chair: Thank you, Mr. Lemay. Thank you, Minister.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Minister, for being before us today.

You may recall that in 2005 I had the pleasure of hosting you in Barrie, where we discussed conditional sentences. At the time our police chief, Wayne Frechette, who remains our police chief, expressed his frustration with the process, the revolving door. I hear that again and again from residents and from police officers. I certainly see this as a good sign to combat that concern with our justice system.

There are two things I wanted to explore with you, Minister. One is, are there any international examples you can share with us where the increase of custodial dispositions helps with deterrence? I think the general impression is that it does, but if there have been other examples in different communities I think they would help those who are uncertain with this legislation to see the real benefits of it.

● (1700)

Hon. Vic Toews: My department can provide you with some of those statistics and some of those studies. Certainly the studies in Canada are not very clear on that. I think you're right to look for examples in other jurisdictions. That's something we will have to do. I don't think it's particularly clear from the evidence. For example, there are certain things I think we can say. I did note, for example, an individual stating recently in an interview following the very unfortunate incident in Montreal last week that she had noticed over the last 16 years that gun offences had gone down because of our laws. I also noted that would have been about the same time that mandatory minimum prison sentences for gun crimes were enhanced, which was well before the gun registry was brought in. The gun registry in effect only came into force in the last few years. It really has had no discernible impact in that respect.

I think if you look at the statistics on where we have gone and what has been effective in terms of dealing with gun crimes, there's a good solid argument to be made that mandatory prison sentences for those kinds of gun crimes have resulted in a reduction.

I was speaking to one of my staff who had spoken to prosecutors in the United States, and they talked about the benefits of mandatory minimum prison sentences in respect of certain types of offences. For example, the prosecutor he was talking to indicated that especially in the case of sexual predators the sentences are very effective, because in those cases, when you put one of those sexual predators behind bars, there's no one taking their place. So you will see an actual drop in crime by ensuring that individual is not out on the street. Again, this is anecdotal evidence.

We have studies. For example, I mentioned the study that showed that incarcerating a person for one year for a serious offence prevented the commission of 15 less serious offences that individual would have committed during that one year. We can argue about that, but I think generally speaking—and this is a point I want to make—it's not simply the elimination of conditional sentences, or mandatory minimum prison sentences. It's a combination of a number of issues that you have to bring together. It also involves alternatives to incarceration. Are there individuals we can deal with outside of the penal institutions? The Hollow Water situation may well be one of those examples. There are other examples.

I was involved as the provincial Minister of Justice, and I'm sorry to be always referring to that experience, but it is in a real way much more hands-on than being a federal Minister of Justice, in which case you're not actually involved in the day-to-day enforcement of the Criminal Code. In Manitoba the youth justice committees have been a tremendous success. I don't know how many are still running, but I know when I left that office we were running over 50 in Manitoba and they were tremendously successful, not just with youth, but also with adults, seniors, for example, who for the first time in their life were involved with the law. There was obviously something wrong in their lives. So we made provisions to allow those kinds of individuals to also benefit from the so-called youth justice committee. The theory was that we have a very young senior population in Manitoba. The point is that they were helpful in that respect.

● (1705)

So I think we have to look at it in terms of policing, law, and alternative programs, whether they're for youth or others.

The example I like to point out is New York, where the murder rate was brought down from a high of 2,200 a year to about 550 a year through effective enforcement and laws. That's still high, given the prevalence of guns in that society, but the point is that 1,700 more people were alive last year or the year before because of effective enforcement and tougher laws.

The Chair: Thank you, Minister.

Mr. Brown, thank you.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Chairman.

Mr. Toews, in your remarks today you used different terms. I just want to clarify what you meant by them. You used the terms “house arrest”, “serving sentence in the community”, and “conditional sentencing”.

Hon. Vic Toews: They're basically the same thing.

Mr. Derek Lee: They are all interchangeable.

Hon. Vic Toews: That's right.

Mr. Derek Lee: You're not trying to send us a message that you want to tinker with conditional sentencing.

Hon. Vic Toews: No. I've been criticized for talking about conditional sentences. No one knows what conditional sentences are. Effectively, they're house arrest.

Mr. Derek Lee: Okay. I was looking for another subliminal message. It's not there, so that's great.

Secondly, the debate here, as I see it, is not about conditional sentencing because conditional sentencing is going to remain. Is that right? Do you regard it as a valuable part of the range of sentencing options out there for judges?

Hon. Vic Toews: I don't regard it as being any more valuable than a probation order, in the context of a suspended sentence. But since we have it there, and I understand from some judges that there are additional conditions that you can attach in a conditional order, there seems to be some benefit. I don't understand why we had to establish a whole new regime to do it, but there appears to be some marginal benefit. For that reason I'm not advocating getting rid of the entire program.

Mr. Derek Lee: That's fine. The challenge then is really to identify the specific offences that cause the public and the odd politician to react by saying that a particular conditional sentence does not import enough denunciation, or does not send the right message back to the community.

Hon. Vic Toews: I think you've summarized that very well, Mr. Lee.

Mr. Derek Lee: In a small community the perpetrator of a sexual assault could end up back on the street, across the street from the victim of the assault, after a time that some people regard as far too short.

Other than that, we're trying to identify the offences. The government bill here takes an easy approach. It just throws out a rule of thumb—anything that has a maximum sentence of ten years or more, and a few other bells and whistles. But that includes—

Hon. Vic Toews: I think generally speaking—

Mr. Derek Lee: That's what the government bill does. I agree there are some cases where conditional sentencing should be removed as an option, but I wouldn't have got the whole fishing net out and included everything above a certain threshold. As I pointed out at an earlier meeting, this includes unauthorized use of a computer, and theft over.... If somebody steals your car for five minutes, it's theft over—

Hon. Vic Toews: Well, it's usually joy riding. That's a different offence.

Mr. Derek Lee: It depends on how it's charged, but I'm just saying that theft of a car, without the joy ride, would fall within the category from which conditional sentencing is being removed at this point. I would prefer an approach where we actually go to those sentences where we want to provide a clearer definition, and do it that way.

Unauthorized use of a computer, for heaven's sake, could happen to almost any of these hacks all around the world borrowing computers, and that's not—

Hon. Vic Toews: But Mr. Lee, it was not me who assigned the value of ten years or more to that offence; it was Parliament.

Mr. Derek Lee: That's true.

● (1710)

Hon. Vic Toews: So when Parliament made that determination, obviously it felt it was a very serious offence.

Mr. Derek Lee: It could be.

Hon. Vic Toews: I would say that if something is punishable by more than ten years it's a very serious offence, unless Parliament made a mistake.

Mr. Derek Lee: In this case it's a maximum ten-year sentence. In fact, maybe you've hit the nail on the head, Minister. I'm going to suggest that we re-draw the bill so that sentences greater than ten years max.... You'd start with a much shorter list, and then you could even add to it.

I don't know whether that would include cattle theft, but of all the offences—

Hon. Vic Toews: We've had that discussion about cattle before, Mr. Lee.

Mr. Derek Lee: —I know that some people out west are really irritated at cattle theft.

Hon. Vic Toews: It's a serious issue in my riding.

Mr. Derek Lee: I know that. But it's on the list now, and I'm not so sure, if you had gone around the House of Commons and made a list of the offending categories of offence, that this particular one of cattle theft would have shown up on the list—maybe, maybe.

Hon. Vic Toews: Come to my caucus.

Mr. Lee, I take your point. If you go and actually say all right, everything punishable by more than ten years is what we should eliminate, then look at the ones that drop off. I'm not opposed to you working on that, but there will be certain serious offences that do drop off.

So if you feel that, somewhere in there, there's a better way of doing it, with allowing people in downtown Toronto to get away with stealing cattle or the like, that might be something the House may want to consider. I'm simply pointing out that it is a difficult thing to draft these general rules. We didn't want to list 200 or so crimes. For the purposes of both social policy, in terms of it being a serious offence, and drafting convenience, this seemed to be a reasonable point.

Mr. Derek Lee: Thanks, Mr. Chairman.

Hon. Vic Toews: The point is well taken, Mr. Lee.

The Chair: Thank you, Mr. Lee.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you for being here, Mr. Minister.

No bad reflections on my friend Mr. Lee from across the way, but it seems to me that when you approach things in the nature that he does, once again you're concerned an awful lot about the criminal. I happen to be more concerned about the victims of crime. I think when we focus on them, we have a different view.

I would like your comments on a couple of things that I have to say. First, I believe one of the most common phrases used in our society today, when I'm out and about, is that it's not the fact that the conditional sentence is problematic; it's the fact that too many times there should jail time that just doesn't happen. That seems to be the problem in the eyes of a lot of people.

I know that for the 13 years I've been here, I've seen a lot of cases that finished in court where they were convicted and they did not receive jail time. I could probably go back over those years to see how many times not only I but several others questioned the sentencing of certain individuals that did not receive jail time, particularly in crimes against children.

I think you probably know me well enough now to realize that a major focus of mine over the years has been crimes against children. I really do not understand how a society such as we have in Canada can see child pornography grow to the industry it has become, to the magnitude it has. We just haven't looked after those kinds of things. It's problematic, creating more crimes against children. According to the samples you give, there's a lot more.

I think people are asking, what is going on? Grain farmers from my riding are in jail for selling their own grain, and the same week a perpetrator of a five-year-old in Calgary—serious crime—gets conditional sentencing? That's what's not making sense to a lot of people, because there are just too many examples of that.

I compliment you, sir, for coming forward with this bill, because I believe it's a great step in correcting that situation. I compliment you for that.

I'm just going to ask one question, and you can comment on anything that I may have said. I'm really concerned about sexual offences that are committed against children. It's very serious. I'm talking about little kids, not 17 and 18-year-olds; I'm talking about little kids. The people in this room know exactly what I mean, because we've seen too many examples of those crimes.

Will this bill prevent anyone who commits a serious crime against a child from getting house arrest?

● (1715)

Hon. Vic Toews: Thank you. Good question, Mr. Thompson. I appreciate the work you've done in this area over the years. You've been consistent in your very clear support of laws that would protect children. I think that's wonderful, and your dedication is very much appreciated.

You will recall that in the last Parliament there was a bill brought forward in respect of certain sentencing, and we were able to bring in certain mandatory minimum prison sentences on certain crimes involving sexual assaults on children. We brought in those mandatory minimum prison sentences and we worked very well with the Bloc at that time to impose weak, even week-long, mandatory minimum sentences, because as soon as we've created a mandatory minimum, a conditional sentence is no longer applicable. So my point was that although I would have liked to have seen stronger mandatory minimum prison sentences in respect of those horrendous crimes, that was all we could get through that Parliament in terms of those, but at least we eliminated conditional sentences for those.

There are certain offences that will involve sexual assault that would still be eligible for conditional sentences under this scheme because they are only punishable by five years. So conditional sentences would not be applicable. But in most of those cases, as I understand it, a crown attorney could, if it's a serious case, proceed by way of indictment, which would then foreclose the possibility of a conditional sentence or house arrest. So we'll have to rely on the discretion of the crowns to ensure that in those serious cases they do proceed by way of indictment. It's a discretion we give to our crowns in many contexts, and I'm not concerned that they are going to exercise that discretion improperly.

So that was perhaps one of the disadvantages about drawing that sentencing line at ten years, because some of these did fall through the cracks in that sense, but there are remedies that the crowns could use in order to ensure that in serious cases the conditional sentencing option simply is not open.

Mr. Myron Thompson: As long as we understand that people are saying protect our kids...protect them. There's too much going on, and do you know what? They don't really care about the costs. As long as the protection for the kids is there, we'll look after the costs. In some way we'll take care of it. I believe that's a strong attitude of the society that pays these bills, and I think we should continue this kind of work, to do as much as we can to answer their call.

Hon. Vic Toews: Just briefly on that point, you'll note that there was a recent survey done among Ontario teachers in respect of the raising of the age of protection from 14 to 16, and there was a high preponderance of support for that legislation. I believe, on average, it was about 75% strongly supporting, so the percentage supporting would have been even higher, and that's not inconsistent with other groups in society. I've seen similar types of surveys done years ago where that protection of children is so important. So I think you're speaking for mainstream Canada when you express your concerns, Mr. Thompson.

Mr. Myron Thompson: Thank you.

It wasn't too long ago they used to hang cattle rustlers, by the way.

The Chair: Thank you, Mr. Thompson.

● (1720)

Hon. Vic Toews: Well, we're not going to bring that back.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Thank you for coming, Mr. Minister.

Of the eight cases or so that you mentioned, how many have reoffended since the conditional sentence that was outlined in your speech?

Hon. Vic Toews: I have no idea.

Hon. Larry Bagnell: You have no idea. So of the thousands of cases in Canada, you hand-pick eight, and you want to eliminate the mechanism that's going to protect Canadians, without even knowing whether it worked or not.

Hon. Vic Toews: The point is that it's not simply rehabilitation, and that, I think, is a serious issue. If you look at these only in terms of rehabilitation and not denunciation and deterrence, I think that is a serious mistake. In those case, even if each of those eight never again ripped an aorta of a little baby and snapped her neck, I would say that simply for deterrence Canadians think that's inappropriate, that someone should not serve a conditional sentence for doing that to a baby.

Hon. Larry Bagnell: Survey after survey shows that what Canadians and all other people want from the justice system is to be safe. They want the person not to reoffend. After prison systems have been failing for years, you're removing the mechanism that academics have suggested is making some headway, without even knowing if it's been successful in the eight cases.

In those eight sentences, what were some of the conditions that would help the person? What would a person have received in those particular eight hand-picked cases? What was in their conditional sentences, other than being at home in their houses?

Hon. Vic Toews: I don't know.

Hon. Larry Bagnell: You have no idea of the benefits the conditional sentences provided to those eight people. Academics, some of our members from the Bloc, and Mr. Ignatieff have suggested the progress this type of sentencing makes toward the objective Canadians want from the justice system. Some of this evidence is in the book *The Virtual Prison: Community Custody and the Evolution of Imprisonment*, written by one of the experts, Julian Roberts, who is editor of the *Canadian Journal of Criminology and Criminal Justice*. It suggests that offenders given community custody orders are punished, yet also given the opportunity to change their lives in ways that would be impossible in prisons.

Ms. Kane, I'm sure the department must have access to research that outlines some benefits for conditional sentencing. Could you comment on some of that research?

Ms. Catherine Kane: The department has some research. I believe it's been provided to the committee; if not, we can make it available.

Unfortunately, there is no conclusive answer with respect to the benefits of conditional sentences. We would certainly like to do more. Professor Roberts has done some research for the department. He's done surveys with criminal justice system professionals and he's done surveys with victims. As noted in his book, he's very much a proponent of conditional sentences. There are certainly cases in which they work very effectively. Then there are others in which society, the public, and others, including victims of crime, react very negatively to them, and cases in which people are not rehabilitated, but there's still not enough time to have tracked those individuals, and it's very difficult to look at a particular case and that person's own recidivism or rehabilitation after the fact. Unfortunately, we're quite limited in the data that's available to do that kind follow-up research.

Hon. Larry Bagnell: If you go back to the speeches at second reading, there was a lot of research mentioned by many speakers, myself included. If a person's been through a conditional sentence, and you compare the data with the person who's been through the prison system, which person is less likely to reoffend?

Hon. Vic Toews: Just a minute. First of all, you're comparing apples and oranges. Those who have been in the prison system have obviously been there for reasons different from the ones—

Hon. Larry Bagnell: Okay, then let me ask about the ones who are in for similar reasons, for similar difficulty of offence.

Ms. Catherine Kane: It's impossible even to answer which of two people who have had the exact same sentence under similar circumstances is likely to reoffend. That's a question you should pose to a criminologist who has had an opportunity to attempt to devise a methodology to do that research.

Hon. Larry Bagnell: We are going to ask a criminologist; I thought the department would have done some research on this before making such a serious move.

I have one last question for the minister. As you mentioned, aboriginal people are disproportionately incarcerated, and that's a big problem. We're not talking about the victims, because that's what I've just outlined. If they're more victimized, they could be even more victimized now that we're taking away some of the healing that they could have. Related to the ones who are incarcerated—I'm not talking about the victimized ones—what are you doing to solve the failure in the Canadian justice system to reduce the incarceration of aboriginal people, especially given that this will increase it?

● (1725)

Hon. Vic Toews: I notice you're very dismissive of victims, and it's unfortunate.

Hon. Larry Bagnell: I'm just dismissive on this question.

Hon. Vic Toews: Our government is concerned about rebalancing the criminal justice system.

Hon. Larry Bagnell: That's not my question.

Hon. Vic Toews: You continually talk about the failure of the prison system. It wasn't my government that was in power for the last 13 years. If the criminal justice system has failed in respect of our prisons, you might want to examine why that occurred.

Hon. Larry Bagnell: You're in charge now. I just want to ask you what you're going to do. These mechanisms are stopping the victims from being victimized again. I just want to ask what you're going to do about the incarcerated aboriginal people.

Hon. Vic Toews: I can tell you that a person who's incarcerated for break and enter will not break and enter into someone's home.

Hon. Larry Bagnell: If they learn crime and get incarcerated again—

The Chair: Mr. Bagnell, your time is up.

Mr. Petit, go ahead, please.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

Thank you, Minister, for your presence this afternoon and for having stated over time with the committee.

I had an opportunity to hear all of the questions that were put to you. All opposition party questions focused on helping criminals rather than good honest people and victims. Everyone seems concerned about outcomes for offenders, but no one seems worried about the good people and the victims.

Earlier on, a distinction was made between violent and non-violent offences. I'm looking at the synopsis of these offences. In my region, we had problems with procuring for almost two years. Young girls under 14 were getting embroiled in gangs and it was all drug-related, cocaine-related. It led to two years of suffering, and yet, everyone was saying that there was no violence. People were growing and selling drugs, but there was no violence. There was nothing.

Drugs led to theft, procuring and violence. Mr. Ménard said earlier on that he didn't like your philosophy on things. Well, it is much more representative of good honest people and the victims. I would like your opinion on this particular distinction.

Mr. Réal Ménard: Mr. Chairman, I have a point of order.

If some people on this committee want to give the impression that some of us are more concerned about good honest people than others... I am just as concerned about the good people in my riding as you are in yours. If there are problems related to prostitution in your riding, charges can be brought pursuant to sections 210, 211 and 212 of the Criminal Code. Don't confuse the issues, and try to be more rigorous.

[*English*]

The Chair: Thank you, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Don't be holier-than-thou.

[*English*]

The Chair: Keep comments directed to the minister, please.

[*Translation*]

Mr. Daniel Petit: Minister, you introduced Bill C-9, and I'd like to know what the intentions were with respect to violent versus non-violent crimes. There seems to be a problem here. Some crimes might not, at first sight, seem violent. However, when individuals commit these crimes, it leads to more violence toward children, young women, be it sexual assaults, incest or other offences. I would like to hear your comments on this.

[*English*]

Hon. Vic Toews: I think, Mr. Petit, you've made a very good point. The distinction between violent and non-violent is very difficult to make in practice, because, yes, in certain cases where you have someone getting hit over the head with a baseball ball, that's a violent crime. But the situation that you pointed out, drug peddling, for example, then leads to some young man or young woman being addicted and then having to steal or rob in order to support that habit. So the violence leads from the one crime. These are all interconnected, so it's very difficult to say we can only deal with violent crimes, but property crimes aren't really significant. I think we have to look at it from the point of view of the victim.

I want to commend you for bringing that perspective here so that we balance the criminal justice system, because it's not all about rehabilitating an offender. It's also about protecting victims and keeping young children out of a life of crime. The intent was to ensure that where there are serious or violent crimes, these conditional sentences are no longer applied. I recognize in some cases there would be a suspended sentence and probation orders, and again, as I have said, I have a preference for those kinds of orders for a number of very practical reasons.

We chose that ten-year or more criteria as being indicative of a crime that Parliament considered to be very serious. Mr. Lee has pointed out that in downtown Toronto cattle rustling is not that serious. It may well be, though, that in Mr. Thompson's riding or in my riding it is a significant issue. When farmers are struggling to make a life and somebody is stealing their livelihood, it is a serious issue, and one that needs to be punished very appropriately. In some cases maybe a probation order is acceptable, but quite frankly, if Parliament determined that ten years or more was a serious offence—and I consider ten years or more to be a serious offence—we've chosen that.

Are there issues that Mr. Ignatieff or Mr. Bagnell or Mr. Lee have raised? Is it too inclusive because of that too general a rule? I'm willing to deal with that, but I would urge the committee in its dealings not simply to think about the perpetrator of the offence, but also the victim, and I'm pleased to see that there will be consideration to that end because of the comments that you have made, Mr. Petit.

● (1730)

The Chair: Thank you, Mr. Petit.

Ms. Barnes.

I'm going to just advise the committee that I've cut a lot of slack with respect to time for everyone who has asked a question. I'm going to tighten it up now in this next round.

Hon. Sue Barnes: That's fine. Thank you very much.

One of the things that Bill C-70 did in the last Parliament, when we tried to address this matter before Parliament fell, was not only to have the serious personal injury offences included, but also those areas such as terrorism offences and criminal organization offences, and then there was a special designation for those offences for which, on the basis of the nature and circumstance of the particular offence, the expression of denunciation was the uppermost consideration.

Now we know that section 718, the proportionality test that's in the code and our sentencing principle since the 1995-96 time period, sections 718 to 718.2 are still going to be here. One of the concerns this bill brings in a very real manner, Minister, is you talked about the police and the crown having discretion on how they're going to charge, and that brings up another issue of whether they'll be overcharging or undercharging to get around some of the lack of discretion that's going to be in the courtroom.

One of the people the discretion is really taken from is the sitting judge, the judge who hears the facts, the judge who knows the law and the range. My issue here is we have principles of sentencing set out in the Criminal Code that have not been altered, and you have a judge who is dictated to by our Parliament to impose a proportionate sentence when they feel—and it's a two-step process—that a conditional sentence is appropriate. Yet, in essence, if we went forward with this bill as is, there are going to be many situations where that sitting judge does not have the discretion any more.

The way that was dealt with in the prior piece of legislation was having a small out: there was a presumption against having the conditional sentence, but if a judge felt very strongly in that particular fact situation or those particular extenuating circumstances, whatever they would be—and these are circumstances that we have embedded in the Criminal Code itself, which they're supposed to listen to and are supposed to follow the case law that's been enunciated over time on these principles—it's going to be taken away.

Now, I think of things like.... And you downplayed that this is an appropriate vehicle, Minister, and said it's not that important. Treatment orders, for instance, Ms. Kane will tell you are an important part of conditional sentences for many situations in Canada right now, and it's very difficult in other sections to bring into effect.

Where do you, in your own mind, reconcile a sitting judge's discretion and the principle of proportionality and looking at the responsibility of the offender in the code?

That has nothing to do with whether it's victims or police or all of the partners in the justice system—and it is the taxpayer, too. So it is down specifically to the laws we have, because you have not altered those sections. Those sections are fundamental, and there is a way here that we are just.... I'm suggesting to you that maybe it is having the judge do those written reasons in exceptional circumstances, like a presumption against conditional sentences but in exceptional circumstances he or she would have the ability to sit there. We've all seen cases where it doesn't fit the norm.

I'd like your thoughts on that, Minister.

● (1735)

Hon. Vic Toews: Thank you.

The concern I had with Bill C-70 is the small out that you identified, because in my experience, those small outs grow into large manholes through which cases drop regularly. It reminds me, eerily, of the faint hope clause, which was to be used so rarely and of course was used fairly regularly. So I'm very concerned about that type of small out.

Parliament's responsibility is to set the ground rules and to set the floors in terms of sentencing. And I believe that this does not take away from the discretion of judges. I remember, when I was a prosecutor, a judge saying to an individual, “I can give you a choice: you can go to prison or you can go on a suspended sentence with a probation order with treatment.” They usually chose the treatment, and that was long before conditional sentences were ever available. I certainly recall that treatment was a part of programs, and I prosecuted back in the 1970s. Conditional sentences didn't add anything in that respect, that I recall.

If you're worried about some legal problem, there will be no legal problem if you set the rule very clearly by saying that anything that is punishable by ten years or more is not eligible for a conditional sentence. Then the principles in 718 to 718.2, of proportionality and the like, have to be seen in that particular context. Parliament has set a ground rule, and the interpretation has to be in the context of that ground rule. For example, in the case of the mandatory minimum prison sentences in respect of guns, which exist in the Criminal Code today, no one is saying that they offend the principle of proportionality simply because they take discretion away from a judge.

The Chair: Thank you, Minister.

Mr. Ménard, go ahead, please.

[*Translation*]

Mr. Réal Ménard: Thank you, Mr. Chairman.

We know that parliamentarians have a duty to make decisions based on reliable evidence while steering clear of emotions. You know by now that I am a rational man and that I exercise self-control.

[*English*]

Hon. Vic Toews: Did you say irrational? I didn't get the translation here.

[*Translation*]

Mr. Réal Ménard: Don't be so harsh, you know I am a sensitive man.

I heard that your officials had advised you against tabling such a bill. You were told that there wasn't much of a relationship between stricter sentences with less access to conditional sentences and the goal you seek.

So, would you be a generous man — and I know that you are in your heart of hearts — and give us the briefing notes that your officials drafted, so that we could best make decisions based on solid evidence?

You are on the slippery slope of ideology, and you know this very well. You introduce this bill, but provide no solid data to support it. You are not even able to tell us what the rate of recidivism is for people who received conditional sentences. I look forward to hearing what your senior officials have to tell us on Thursday.

We are serious people, you and I, we like politics and Parliament, but in order to make decisions...

● (1740)

[*English*]

Hon. Vic Toews: You tell me what you want tabled, and I will see if I can accommodate you.

[*Translation*]

Mr. Réal Ménard: I would like to see the notes from your officials.

[*English*]

Hon. Vic Toews: But simply because a departmental official has a certain opinion about something doesn't mean that it then becomes government policy. I could well disagree with any one of my advisers—

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

Hon. Vic Toews: —and I think it has been done before.

[*Translation*]

Mr. Réal Ménard: Yes, but these people are well informed; they have had access to data. Your department has access to longitudinal studies and there are people who monitor that. For our part, we simply have to make informed decisions based on evidence while steering clear of all emotion.

[*English*]

Hon. Vic Toews: I think you heard Ms. Kane's statements in respect of the conclusiveness of evidence, but if you tell me what you want, I'll see if I can accommodate that.

[*Translation*]

Mr. Réal Ménard: I would like to see the briefing notes your officials gave you.

[*English*]

You are my friend, you know that.

Hon. Vic Toews: You make the request, and we'll see what we can give you.

[*Translation*]

Mr. Réal Ménard: All right.

Do I have enough time to ask another question, Mr. Chairman?

[*English*]

The Chair: You have time for one very quick one.

[*Translation*]

Mr. Réal Ménard: All right.

[*English*]

Hon. Vic Toews: From a friend to a friend, I guess.

[*Translation*]

Mr. Réal Ménard: Of course.

Having you testify before this committee is so interesting, you should come more often.

Minister, the distinction made between violent and non-violent crimes is significant. In 1996, when conditional sentences were established, a federal-provincial-territorial report was submitted to Minister Rock. Two concerns were expressed. First, some believed that the prison population was going to grow by 50 per cent. Moreover, there was a desire to make sure on the one hand that incarcerated individuals were those who had committed the most violent crimes, and, on the other hand, that those who remained in the community would be able to be rehabilitated. Regardless of what Mr. Petit may say, given his usual lack of rigour, the Bloc Québécois considers that the distinction made between these two types of crime should be front and centre in the public debate. I am certain all citizens would agree with this distinction.

Would you acknowledge that in 1996, when Bill C-41 was passed, the motivation behind it was far more rational than what you have described to the committee this afternoon?

[*English*]

Hon. Vic Toews: I don't want to go into the details of the 1996 bill, which eliminated the right of victims to collect restitution, for example, through the courts. In fact, they were told to go out and get a civil order and then try to enforce a civil order for restitution against, for example, gang members. It was absolutely horrendous in terms of what it did to the administration of justice. Can you imagine a senior person in Montreal whose fence has been destroyed by a street gang member and the gang member has been ordered to give restitution—

[*Translation*]

Mr. Réal Ménard: Let's be honest, that was not the objective of Bill C-41.

[*English*]

Hon. Vic Toews: Let me just finish.

The Chair: Mr. Ménard, we'll allow the minister to answer.

Hon. Vic Toews: The gang member has been ordered to give restitution—

[*Translation*]

Mr. Réal Ménard: That was not the goal of Bill C-41.

[*English*]

Hon. Vic Toews: —and the courts then say, "Oh, I'm sorry, we can't enforce that restitution order for you; you have to get a civil order and go against the gang member personally."

[*Translation*]

Mr. Réal Ménard: You should reread the federal-provincial-territorial report.

[*English*]

Hon. Vic Toews: Again, a fundamental—

The Chair: Monsieur Ménard, your time is up.

[*Translation*]

Mr. Réal Ménard: You're acting in bad faith.

[*English*]

The Chair: Mr. Comartin.

Mr. Joe Comartin: I'll pass, Mr. Chair.

The Chair: Mr. Comartin, you pass?

Mr. Réal Ménard: Can I have your time?

[*Translation*]

Mr. Joe Comartin: I think it's too late, Réal.

[*English*]

Hon. Vic Toews: You can talk to me privately.

The Chair: Mr. Moore.

Mr. Rob Moore: Mr. Minister, a lot has been spoken of today about the discretion and this somehow taking away discretion. But my understanding of the bill is that where a prosecutor in his or her discretion determines that an offence perhaps is on the less serious side, when they look at all the possible offences or situations in which that offence could have taken place and they determine it's on the less serious side, if they proceed by way of summary conviction instead of indictment, there is still the possibility of having a conditional sentence. I would say that is still keeping a good deal of discretion at the level of the crown prosecutor. Do you have any comments on that?

● (1745)

Hon. Vic Toews: No, I think that's a correct observation where the offence is less serious. This is done on a regular basis in the courts. Where an offence is described as a hybrid offence, the crown can proceed by either indictment or summary conviction. The crown does this every day, thousands of times, and makes that kind of distinction.

So in those cases of a summary conviction offence or where the offence proceeded by way of summary conviction, it wouldn't then fall under the prohibition against conditional sentences being imposed. So in regard to the concerns that some of the opposite members have indicated about whether in those minor cases, shouldn't there still be the discretion, that discretion exists not only in that context but also in the context of suspended sentences and probation orders.

Mr. Rob Moore: I've heard a lot of talk about whether some of these offences are serious or less serious. Even though Parliament has already determined that these are in the range of more serious offences in our Criminal Code, you hear talk that somehow some are serious and some aren't serious. But I haven't heard people enumerate which ones then should be pulled out and I haven't seen a clear—

Hon. Vic Toews: We've heard that: the cows and computers from Mr. Lee.

Mr. Rob Moore: What might be a serious crime? We know that in B.C. there's been serious crime with car theft. That might not be as big an issue in my riding, but maybe in someone else's riding it's cattle theft. The victims—and I think it's important that we don't lose sight of the victims—don't want to see someone who has just stolen their car, stolen their cattle, stolen their property, or in the case of a serious break and enter, being unlawfully in a dwelling house, right back in the community. That would be what I think many of us are hearing, that these are the more serious cases and therefore this person should not be serving the sentence back in the community.

How can we look at this from the victim's perspective? When someone in their dwelling house—you talked about that—has experienced a break and enter, is that not a case where a person needs to feel that justice has been served? I think that sometimes this gets lost in our discussion if we move too quickly to looking at the perpetrator, that sense of whether justice has been served in someone's individual case.

Hon. Vic Toews: I think that's very important, and of course you're bringing up another issue where our government has set aside $26 million to enhance victims services across Canada. We think this is very important. It's not only important to give victims a voice, which we believe this funding will help, but to give them an effective voice. Part of it needs to be, of course, an appropriate sentence.

The issue of break and enters, of course, affects people on a regular basis. My son told me two days ago that his apartment was broken into, and not only was his property stolen, but some of my property was stolen. Was that reported to the police? No. People don't report those kinds of things to the police any more because they know that there are no consequences. Do I report that to the police? Does my son report it to the police? No, because it's simply felt that whatever happens, there will be no consequences.

In contrast, I can tell you that in some of the American states, like Florida.... A person was telling me that his car was broken into, along with ten other cars, and they had a forensic unit down there immediately. They took DNA samples from some blood immediately. People were arrested; they were brought to justice. You don't see repeat offenders in that jurisdiction, especially in terms of property crime, because they take property crime very seriously.

Unfortunately, I think because of what our laws have done over a period of time, people say, "You know, I kind of like that article, but what's to be done?" I think that this unfortunate attitude needs to be changed, and we can change it by giving victims an effective voice, not only by allowing them to have a more meaningful say in the court process, but also with effective sentences that speak of deterrence and denunciation and of your property being worth something—the fact that you go out, you get a job, you work for these things—and nobody is entitled simply to steal.

● (1750)

The Chair: Thank you, Mr. Moore

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

With respect to your last response, I wouldn't refer to the American system. It's one of the worst in the world and it has one of the highest incarceration levels, and most of those people have reoffended because the incarceration didn't work.

My question will be related to the victims. We're very concerned—the three opposition parties—about the victims, and we want to protect them, the ones you have talked about who are revictimized, like the aboriginal people, and those people who have not yet been victims. I would propose that this law could make society less safe and create more victims, as opposed to fewer, in three ways.

First of all, for those items where you can only proceed by indictment, some prosecutors who are very reasonable people will not prosecute, because they know that it doesn't make sense for society or for the person for him to go to jail.

Hon. Vic Toews: Mr. Bagnell, can I just intervene here? That is absolute nonsense. If you point out a case where a prosecutor who has a reasonable likelihood of prosecution simply will not prosecute because of the sentence, I'd like to see that—

Hon. Larry Bagnell: You'll see it—

Hon. Vic Toews: —because it contravenes the guidelines of all the prosecutions across Canada.

Hon. Larry Bagnell: You'll see it if reasonable punishment is not available.

The second part of my case is those that can proceed by indictment and summary conviction. Some of those cases will go to summary conviction and will have shorter sentences, when they could have had more rehabilitation and a longer sentence.

And in the final cases, are those—

Hon. Vic Toews: Let me answer that, Mr. Bagnell.

On summary conviction, the conditional sentence is still available. How is it that treatment is not available?

Hon. Larry Bagnell: That's what I'm saying; this is going to be the problem. Prosecutors are going to make it summary; they're going to give him that condition, but it will be a shorter sentence than would have been received under indictment and using a conditional sentence, where he could have got longer treatment and then possibly would be safer to society.

And finally, as the evidence will show, there will be a number of people who are rehabilitated by the various conditions that go with the conditional sentence: the treatment, education, personal treatment, anger management, and drug treatment, etc.

I'm not asking you to believe me because I know you won't. So my question to you is, if the witnesses—and we've got a great slate of very knowledgeable witnesses: excellent criminologists, as Ms. Kane said—suggest that this bill will make society less safe and create more victims, would you be prepared to withdraw either the entire bill or the parts that the expert witnesses prove will make society less safe?

Hon. Vic Toews: Mr. Bagnell, you'll listen to the evidence and you'll make a decision. You're the committee. I am convinced that this is the appropriate approach; it's a balanced approach. It's actually concerned about victims, and it is a movement away from constantly giving all the rights to criminals.

We believe that victims should in fact have a say, and that denunciation and deterrence are every bit as important if not more important than some of the other principles.

The Chair: Thank you, Mr. Bagnell. I know you wanted to share your time with Mr. Lee.

Mr. Derek Lee: Thanks.

The Chair: One question.

Mr. Derek Lee: I'm going to leave a question because there probably isn't an answer yet. But if there is, I'd like to think there might be some information forthcoming later, in the event it truly is an issue.

It has to do with this decision by prosecutors about whether to proceed by way of indictment or summary conviction. In the way this legislation is structured, there'll be a new set of variables inserted into that decision—in other words, when the prosecutor makes the decision. Before, it had to do with the old Criminal Code separation between the summary and the indictable. Now the sentencing options are going to be affected by this.

The question I will leave—because I'm sure there isn't an answer yet—is does this raise the spectre or the issue of a citizen arguing post-charter that he or she is being subjected to arbitrary measures in the prosecutor's decision? It's not a judge making the decision; it's not the law making the decision. Instead, it becomes a prosecutorial decision that has this additional implication or dimension. I'm just raising the issue as to whether or not this might be seen through the charter lens as an arbitrary measure exercised by a prosecutor, affecting the rights and liberties of the individual in a material way and in a way that might not be consistent with the law—

● (1755)

Hon. Vic Toews: No—

Mr. Derek Lee: —also using the criminal law lens. I'll just leave that.

Hon. Vic Toews: No. I think the answer is fairly clear that the kind of discretion being exercised on a daily basis now by prosecutors has not been seen as a violation of the charter.

Mr. Derek Lee: Not yet. I'm simply indicating that now we're loading up the implication of that decision, and whether or not this would change that analysis.... I will leave it with you and your officials.

Hon. Vic Toews: Mr. Lee, it would strike me—

Mr. Derek Lee: And I may ask it again.

Hon. Vic Toews: —as strange that we could repeal the conditional sentence regime entirely, and this wouldn't violate the charter—

Mr. Derek Lee: That could be done.

Hon. Vic Toews: —yet if you allow for some mitigation and discretion within the context that would benefit an accused in certain cases, this would somehow violate the charter. I find that very difficult to believe.

The Chair: Thank you, Mr. Lee.

We would like to thank you, Minister Toews and Ms. Kane, for your appearance here. I think it's been a very informative debate that we've had thus far. Thank you.

The meeting is adjourned.

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