House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 017 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, September 28, 2006

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

Thursday, September 28, 2006

● (1535)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order.

We are continuing our debate on Bill C-9, an act to amend the Criminal Code on conditional sentence of imprisonment. We have before the committee witnesses from three different organizations. They will testify and we will have the opportunity to question them.

From the John Howard Society of Canada we have Mr. Graham Stewart. Welcome.

From the Canadian Association of Chiefs of Police we have Pierre-Paul Pichette. Welcome to the committee. I see you have the Deputy Chief of Central Saanich Police Service, Mr. Clayton Pecknold, with you. Welcome.

From the Canadian Resource Centre for Victims of Crime we have Krista Gray-Donald. Welcome to the committee.

I will ask Mr. Stewart to start the process. Please keep your remarks to about ten minutes, and that will allow time for questioning from the members here.

Mr. Graham Stewart (Executive Director, John Howard Society of Canada): Thank you, Mr. Chair, for the invitation to come and speak to you about Bill C-9. I'm happy to be here.

First, I'll give you a bit of background. The John Howard Society is a national charity made up of organizations that work with offenders to help them reintegrate into the society as law-abiding citizens. We have about 12,000 members across Canada who are engaged with us.

I'd like to acknowledge that the debate with respect to conditional sentencing is an appropriate one. It's very important for Parliament to be actively engaged in decisions about the use of discretion, and particularly judicial discretion, in sentencing. And the second point is that we're pleased to see that the bill before us, while it tries to restrict the use of conditional sentence, does not challenge its purpose or its objectives.

The question before us, as we see it, is a fairly simple one. The question is whether it is ever justified to give a conditional sentence for an offence where the maximum prison term permitted by the Criminal Code is ten years or more. If it is justified, then Bill C-9, which precludes conditional sentences in every such case, is excessive.

I'd like to talk to the question of the justification, and will do so, but I'd like to begin by just pointing out that over the last 30 years Canada and the United States have been engaged in a very substantial experiment in justice. Thirty years ago, in 1974, the incarceration rate in Canada was 90 per 100,000, and in the United States it was 149—very similar. Thirty years later, the incarceration rate in Canada is 108, up slightly, while the incarceration rate in the United States is 749. It's a 600-times increase in incarceration.

Over those years, crime has gone up and crime has gone down in both countries, largely in unison. In fact, if you look at murder, which is the best recorded, the murder rate in both countries has gone up and down dramatically over those 30 years at the same time, in spite of the fact we've got very different criminal justice systems.

No one benefits from inflated incarceration rates. Canada is much better off than the U.S., where enormous resources are diverted to maintain an inflated rate of imprisonment, while factors relating to their higher violent crime rates have largely gone unaddressed. The reason for Canada's lower incarceration rate is largely sentencing policy that guides sentences so they are proportional to the gravity of the offence and the degree of the responsibility of the offender, and are based on a presumption that the least intrusive measure will be used.

This raises the question: why have a principle of least intrusive measures? The reason is that no other principle makes sense. I had a conversation with one of the past commissioners of the Correctional Services of Canada, who was telling me of a situation in which their principle of using no more force than necessary was being questioned as to whether it was too soft, and his response was to say that we could change that, we could change it to use just a bit more force than necessary.

When we don't have the notion of the least intrusive measure, then we inevitably start moving towards a chaotic system. Least intrusive measure is not the same as popular levels of intrusive measures. When the level of intrusiveness satisfies everyone, then the harshest penalties become the norm.

The implications of least intrusive measure, if we're to have sentencing based on that principle, is that each case must be assessed individually before a sentence is passed; and secondly, options must exist that are less intrusive than is the norm for such offences generally.

Bill C-9 attacks these notions directly by precluding conditional sentences where the maximum term is ten years or more, and in so doing it precludes individualized assessments in the least serious cases or where the mitigating factors are strongest.

Secondly, it really prevents the courts from being able to justify and explain the sentences they pass, other than with reference to the legislation. The existing legislated limitations on conditional sentences, along with the substantial direction from the Supreme Court, are serious limitations. These limitations are reflected in the fact that only 6% of all convicted cases receive a conditional sentence. The existing restrictions effectively avoid the use of conditional sentences in clearly inappropriate situations, while avoiding rigid and arbitrary measures that conflict with the principles of sentencing.

Today, conditional sentences are being used cautiously and in appropriate cases. More than 50% of the cases are summary offences, only 47% are indictable, and the terms of sentences for conditional sentences are double those of prison terms that people might get. So they're being used cautiously. They're also being used in conjunction with penalties that make them very firm and punitive.

Finally, where cases arise that seem to be inappropriate, we have an appeal system of courts right to the Supreme Court. They have been active, they have reversed decisions, and they've added considerably to the limitations that are placed on conditional sentences. It's a system, I think, that works; it's also open and visible.

Our courts have acted responsibly, but our courts can not speak for themselves. Courts do not engage in public debate about their sentences, and therefore I think are easy targets. Bill C-9 promotes distrust in our judiciary, and that has serious consequences that must also be considered. If we cannot trust the courts with conditional sentence decisions, then where can we trust them?

Using a ten-year maximum term as the point of ineligibility will only introduce new areas of unfairness, without an appeal process to address those circumstances. The Canadian Sentencing Commission characterized the maxima in criminal justice as “unrealistic” and “disorderly”. They went on to say, “Little guidance for anyone can be expected from these maxima.” Presumably “anyone” includes Parliament.

Is it really that hard to imagine situations where a conditional sentence is appropriate for a theft over $5,000, for the theft of computer services, for theft of a credit card, for a break and enter, possession of break and enter instruments, or theft from the mail? Could we not imagine some circumstances where those would be appropriate?

In brief, it is our view that the purpose and principles of sentencing found within section 718 of the Criminal Code are substantially correct and should not be ignored or interfered with. The sentencing courts, with reviews through appeal up to the Supreme Court of Canada, are competent and the only bodies capable of establishing appropriate and just sentences.

Public confidence in conditional sentencing can not be achieved over the longer term through measures that depend on arbitrary and rigid sentencing rules such as those proposed by Bill C-9. Further, it's our view that research over many years has demonstrated that the deterrent effect of higher penalties is very unlikely to have a significant impact on crime rates generally, and particularly unlikely to have an impact on those who are typically being given conditional sentences.

The impact of Bill C-9 will be disproportionately felt by vulnerable people, based on income, class, ethnicity rights, and other factors beyond their control. The public perception of the justice system will be distorted by having discretion moved from the courts and judges to the prosecutors, for the decisions will not be apparent and will be melded into plea bargaining situations that are already viewed critically by many in the public.

Court proceedings and trials will become very expensive, consuming a great deal of time. Prison costs will go up substantially, particularly for provincial and territorial institutions, with estimates of as many as 4,000 or up to a 20% increase in provincial incarceration rights, in institutions that are probably the worst institutions in Canada. They're the most crowded, they have the fewest programs and services, and are the most dangerous in many respects. Many don't meet the minimum UN standards on the conditions of imprisonment.

Equally troubling is the substantial amount of money that would be spent with respect to this bill that represents lost opportunities in other areas, such as prevention and treatment, where it could be spent much more effectively to reduce crime generally.

It's our position that sentencing is an individual process that must reflect the specifics of the offence and the offender. The courts must have a full range of options available and the discretion to choose those that are most appropriate.

● (1540)

Conditional sentences cannot be applied fairly or appropriately under the restrictions proposed by Bill C-9. While some direction on the use of conditional sentences is appropriate, those limits should not undermine the good purposes of conditional sentences or unreasonably restrict the courts from using this option in appropriate situations in order to remain consistent with the fundamental principles of sentencing.

We do not believe that inflexible sentencing provisions can make the system more appropriate, effective, or principled. Our recommendation, therefore, is that Bill C-9 be withdrawn or, in the alternative, that measures intended to give greater guidance to the courts in the use of conditional sentence be consistent with the fundamental principles of sentencing. This would mean that the guidelines would be presumptive or advisory, but not mandatory.

Thank you.

● (1545)

The Chair: Thank you, Mr. Stewart.

Mr. Pichette, go ahead, please.

[*Translation*]

Mr. Pierre-Paul Pichette (Assistant Director, Service Chief, Corporate Operations, Canadian Association of Chiefs of Police): Thank you, Mr. Chairman.

I am Assistant Director of the Montreal Police Service. With me today is Mr. Clayton Pecknold, Deputy Constable of the Saanich Police Service, in British Columbia.

We are appearing before you today as representatives of the Canadian Association of Chiefs of Police. We are both Vice-Chairs of the CACP's Legislative Amendments Committee.

I also want to take this opportunity to convey greetings from our President, Mr. Jack Ewatski, who is the Chief of Police for the City of Winnipeg.

The Canadian Association of Chiefs of Police represents the leadership of Canada's law enforcement agencies. Ninety per cent of its members are directors, assistant directors or other senior officers with a variety of municipal, provincial or federal police forces in Canada.

Our Association's mission is to promote effective enforcement of Canadian and provincial laws and regulations for the purpose of protecting the safety of all Canadians. Thus we are regularly called upon to take a position on legislative reforms. We are always enthusiastic participants, along with government officials, in consultations concerning criminal law reform, just as we are doing today before this Committee.

I will now turn it over to my colleague, Mr. Pecknold, to present our views on Bill C-9. He will be making his comments in English. Following that, I will have some closing remarks.

[*English*]

Mr. Clayton Pecknold (Deputy Chief, Central Saanich Police Service, Canadian Association of Chiefs of Police): Good afternoon, Mr. Chair and honourable members. Thank you for giving me the opportunity to speak to you today.

Many of you will know that the CACP appears before your committee and before the Senate on a wide range of bills. Generally speaking, we tend to appear on bills that consist of amendments to substantive offences and those affecting police powers. However, while Bill C-9 deals solely with the matter of sentencing, we do have some comments that we hope will be of assistance to you.

We understand you have a busy session ahead of you, with many bills. I would like to take the opportunity to give you a snapshot of our association's overall view of criminal law reform.

With respect to Bill C-9, the proposed changes to the scope of the conditional sentence orders, the CACP supports the bill and believes that conditional sentence orders are an inappropriate response to violent or other serious crime. We would, however, offer two points for consideration.

The first point is with respect to the scope of the bill. The background material published on the parliamentary website suggests that some criticism of the bill has stated that by placing the eligibility for CSOs at indictable offences carrying a ten-year or greater penalty, the bill captures offences that are not offences of violence or otherwise considered serious. I think we heard my friend from the John Howard Society refer to that. From our point of view, we suggest the opposite is also true, in that one offence in particular is excluded from the scope of the amendment. That is subsection 467.11, which provides a five-year penalty for those convicted or participating in activities of a criminal organization. On the other hand, the other two criminal organization offences, subsection 467.12, commission of an offence for a criminal organization, and subsection 467.13, instructing commission of an offence for criminal organization, are covered by the amendment, as they carry a maximum penalty in excess of ten years.

The CACP is of the view and our organized crime committee is of the view that this is an anomalous result and that CSO should be unavailable for any offence involving a criminal organization. We need hardly remind this honourable committee of the serious threat organized crime poses to the safety and security of Canadians. We respectfully suggest, therefore, that the Canadian public would find the use of the CSO for persons participating in the activity of a criminal organization contrary to a favourable view of the criminal justice system.

This is not to say, however, that we object to the manner in which the bill is drafted. If Parliament is inclined to agree with us on the matter, we would further respectfully caution against an amendment that creates schedules or lists of offences. As the CACP has observed before, the criminal law, and most especially the Criminal Code, has gradually increased in its complexity such as to make it virtually unfathomable in places. Instead, we would suggest an amendment that specifically ensures that all offences committed by a criminal organization are ineligible for CSO.

Our second comment is more general in nature and falls along with the comments on the complexity of the criminal law and the public's general faith in the justice system.

This bill is arguably one of the least complex, in terms of its drafting, that we have seen in recent years. However, while Bill C-9 is not particularly complex, the law of sentencing in the Criminal Code is. As with many aspects of the Criminal Code, the CACP believes that quick fixes and band-aids are no longer sufficient. We believe two things: first, that the criminal law, including the law of sentencing, is in need of a sustained and comprehensive overhaul if the criminal justice system is to regain the eroding confidence of the public; second, that your policing community is well situated to provide meaningful participation and input.

Let me state clearly that this is not an indictment from your police about the Charter of Rights and Freedoms. Clearly, the charter has had an enormous impact on the way the police must do their job and how a criminal trial is conducted. Policing is a much more complex activity than it was before the charter, but so is the world in general, and we recognize that. It is the fundamental duty of all police officers to uphold respect for the law, and this applies with particular certainty to the Charter of Rights and Freedoms.

Police in a democratic society must always be subject to the rule of law, and this is a value the CACP holds dear. However, we do believe that the legislative response to landmark charter decisions has been overly procedurally complex in such a way as to multiply the on-the-street impact of charter decisions to a point, perhaps, not envisioned by the Supreme Court. An example that comes immediately to mind is the addition of subsections 25.1 and 25.2 of the code, in response to the Supreme Court of Canada decision in Campbell and Shirose. This amendment created a procedural regime that in practice has been very challenging to implement with consistency across the country.

● (1550)

To be frank, we have found it difficult to understand how and when this trend to undue complexity found root with the drafters of our criminal law. We intend to take every opportunity to advocate before you and the public for less complexity and more common sense in legislative drafting. I add parenthetically that these are points we make with justice officials frequently in our consultations.

In brief, therefore, we would offer our endorsement of the bill with the strong request that no CSO be available for offences involving organized crime. We would also ask that as this committee moves forward with its work you would consider the context in which the criminal laws must, as a matter of practice, be workable. You need not be reminded, I'm sure, that it is your police who must find their way through an increasingly complex society, using only those tools you allow them to keep, in order to keep the public safe.

For our part, the CACP will continue to offer you the voice of Canadian police leadership as you move forward with your work on this bill and on the many others to come.

Thank you for the opportunity to comment.

I'll ask my colleague to conclude.

[*Translation*]

Mr. Pierre-Paul Pichette: Just to follow up on what my colleague said, I would remind Committee members that all police forces in Canada are anxious to properly enforce the laws and regulations currently in effect.

Clear, unambiguous legislation is a major facilitator for our officers on the ground who, on a daily basis, interact with Canadians, while fostering better public understanding and support.

I, too, wish to thank you for giving us this opportunity to comment on the legislation. We are now available to answer any questions you may have.

[*English*]

The Chair: I'd like to thank the Canadian Association of Chiefs of Police for their presentation.

Krista Gray, would you present?

Mrs. Krista Gray-Donald (Director of Research, Canadian Resource Centre for Victims of Crime): Good afternoon, Mr. Chairperson and members of the committee.

The Canadian Resource Centre for Victims of Crime, or CRCVC, is a national non-profit victim advocacy group for crime victims. We provide direct assistance to crime victims dealing with the criminal justice system as well as advocate for justice reform to better protect their rights and prevent victimization.

The CRCVC is pleased to take part in the debate over Bill C-9 . The proposed change to section 742.1 of the Criminal Code will address concerns that victims of serious and violent crime have expressed to our organization on numerous occasions. These concerns predominantly surround the distress and unease that they feel when they see offenders, not only those who perpetrated their own victimization but also those who commit other serious crimes, sentenced to house arrest, penalties that are not proportionate to the gravity of the offence committed. We believe that the elimination of access to conditional sentences for serious and/or violent crime addresses some of these concerns.

Conditional sentences were introduced in 1996 and allowed for certain sentences of imprisonment to be served in the community or under house arrest. These sentences are neither incarceration nor probation, but fall in between the two. The theory behind the sentencing provisions was that offenders who commit less serious non-violent offences may serve their sentence in the community, avoiding incarceration. They remain under supervision and have restrictions on their freedom and mobility. Conditional sentencing provisions do achieve this end, but some offenders have been receiving conditional sentences for more serious offences, including serious assaults, sexual assaults, and driving offences that result in death or serious harm.

As you're aware, there are several criteria that must be met for an offender to be eligible for a conditional sentence; these are set out in the provisions from 1996. We have seen that these criteria have not sufficiently restricted access to conditional sentences for the offenders who commit the serious and violent offences, who include repeat offenders.

Bill C-9 seeks to address this discrepancy by adding another restriction, focusing on the type of crime that is eligible for house arrest. The amendment to section 742.1 provides that offences tried by way of indictment for which the maximum term of imprisonment is ten years or more are ineligible for a conditional sentence. As such, the CRCVC supports the underlying goal of Bill C-9, but has reservations that the criteria for eliminating access to conditional sentences—that the offence carry a maximum term of imprisonment of ten years or more and be tried by indictment—will leave certain serious and/or violent offences still eligible for a conditional sentence. It also leaves hybrid offences that are ineligible for house arrest if tried by indictment eligible if tried summarily. These offences include sexual assault and criminal harassment.

The CRCVC believes that serious and/or violent offences, especially those that victimize children or other vulnerable people, should not be eligible for a conditional sentence. Of particular concern to our organization are sexual offences. Unfortunately, the ten-year maximum term rule that this bill proposes would not restrict offenders convicted of the following offences from receiving conditional sentences if they met the other criteria: removal of a child from Canada, section 273.3; sexual exploitation, section 153; sexual exploitation of a person with a disability, subsection 153.1(1); voyeurism, section 162; duty to provide necessities, section 215; abandoning a child, section 218; luring a child, section 172.1; abducting a person under 16, section 280. We believe that the above-noted offences are serious and often violent in nature, and therefore the offenders who commit them should not be allowed to serve their sentence under limited supervision within the community.

According to the legislative summary provided on Bill C-9, the Canadian Centre for Justice Statistics estimates that the average cost of supervising an offender in the community in 2002-03 was $1,792. We question how effective that supervision is for the offenders, given that the figure equates with less than $5 per day spent supervising any given offender.

Given that supervision of these offenders is carried out by probation and parole officers who are overworked and come from understaffed offices, it is unlikely that the supervision is very effective for those offenders. We also question the effectiveness of that supervision for certain types of offences and restrictions—for example, the concerns mentioned above and the almost limitless ways that individuals can access the Internet. How is a probation officer to ensure that a sex offender who is not permitted to access the Internet is not doing so when he is not supervised?

Like those offences covered by Bill C-9, the offences we list above often have lasting physical and emotional consequences for their victims. Failing to include them on the list of those offences no longer eligible for conditional sentence minimizes the impact of these crimes and is a failure to address the gravity of these offences. There are numerous offences for which conditional sentences and the associated level of supervision that would be attached to the sentence are appropriate. Research has shown that victims support this view; they do not, however, support conditional sentences for violent offences. We echo that position.

● (1555)

Proponents of conditional sentences maintain that they are a necessary component of the restorative justice process. Restricting the proposed offences from eligibility for conditional sentence does not mean that there is no hope for restorative justice in these cases. Restorative justice principles do not advocate for the reduction of incarceration to facilitate the restorative justice process. Restorative justice is about ensuring that the victim's needs are both heard and addressed.

The CRCVC feels that the provisions for conditional sentencing, as introduced in 1996, have resulted in far too many violent criminals receiving sentences that are too lenient when compared to the impact of their offences. This is not the intent of the provisions. Bill C-9 begins to address this imbalance, and we support the bill in principle. We feel that the proposal can be strengthened so that crimes that are violent and serious in nature, which currently fall outside of its scope, may be included in the legislative change. Adopting a scheme that includes a list of offences that encompasses both those that fall within its scope and those that we feel should be included will serve to limit the applicability of conditional sentencing options to those offences for which the provisions were originally intended.

We would therefore recommend that the following changes be made with respect to Bill C-9.

We recommend it be amended to include the following offences, which I listed earlier: removal of a child from Canada; sexual exploitation; sexual exploitation of a child with a disability; voyeurism; duty to provide necessities; abandoning a child; luring a child; abducting a person under 16; and other serious and violent offences.

We recommend that BillC-9 be amended such that the list of offences that are ineligible for conditional sentence be specified in a schedule rather than the current method proposed by the bill. This would allow for the inclusion of offences not included and the exclusion of those offences for which a conditional sentence is appropriate. And we recommend that the amended legislation be passed by Parliament without delay.

Thank you for the opportunity.

● (1600)

The Chair: Thank you very much.

I've listened to the presentations and I'm going to begin the questioning with one of my own questions.

I was certain there would be some mention of the issue of the cost to the community, and I'm not talking about just costs involving incarceration in a prison. It has been brought up in our committee several times, about monitoring individuals in the community. I know the police have a responsibility in some regard in that area. The John Howard Society certainly conducts those kinds of—

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Excuse me, but I have a point of order.

I don't understand why you have decided to lead off the questioning.

[*English*]

The Chair: Because I choose to.

[*Translation*]

Mr. Réal Ménard: That is not the proper way to do things, Mr. Chairman. In my opinion, that is a very bad habit.

[*English*]

The Chair: I don't think there's anything wrong with the initiative, Mr. Ménard, and I'm taking the prerogative of the chair to ask a question.

[*Translation*]

Mr. Réal Ménard: But it is the Opposition's prerogative to lead off the questioning.

[*English*]

The Chair: You will have your opportunity, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: It's a very bad habit to acquire, Mr. Chairman. You will not have the Committee's confidence if you do that. It's a very bad habit indeed. That is the Opposition's...

[*English*]

The Chair: Well, I'm asking my question. I do have a question I want to clarify here, and I do have the—

[*Translation*]

Mr. Réal Ménard: The Opposition's prerogative is to lead off the questioning, and I don't understand why you are doing this. We have never prevented you from asking questions, Mr. Chairman, because you clearly have the right to do so, but it is the Opposition's prerogative to lead off the questioning. It's a very bad habit...

[*English*]

The Chair: Mr. Ménard, you've made your point and I'm going to finish my question.

[*Translation*]

Mr. Réal Ménard: We'll have to discuss it...

[*English*]

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chairman, I have another point of order. I really want this to work well here, and I don't think any of us have a problem with you raising an item at any time. You are the chair, but certainly the convention and the way we normally do business here is to go right to questions, first from one of the opposition parties.

So I want to join with Mr. Ménard here in indicating that we're taking note of your decision to offer some words or interrogatories here, but I personally am actually just going to let it go at this point. The point has been made by Monsieur Ménard and we can deal with any other fallout later.

Thank you.

The Chair: For the benefit of the opposition—since it's coming from the opposition—this will be a point of discussion, then, in our next steering committee meeting. I'm sure it will be.

Let me finish.

In regard to the costs of monitoring individuals in our society, I'm not sure if it has really been addressed, that there is a cost involved. It has been brought up in just about every other presentation, and we've heard numbers and figures kicked around about what it does in fact cost.

I know the John Howard Society has been in the business of monitoring individuals in the community, and I thought that would be part of their presentation. Do they in fact monitor conditional sentence individuals? If they do, what does it actually cost the community and society, and in real figures, the John Howard Society?

● (1605)

Mr. Graham Stewart: No, we don't supervise any conditional sentences in Canada. We have no reason to believe that the costs of supervision are other than those in the briefing papers from the parliamentary library. I would suggest that it's something under $2,000. It's clearly much less costly to supervise in the community than to supervise in prison, as most of your costs in prisons really just have to do with the maintenance of that institution, with typically more than two or three staff for every prisoner. Community supervision is clearly a less expensive alternative.

The Chair: So who does monitor conditional sentences?

Mr. Graham Stewart: It is the probation departments, primarily.

The Chair: Would the police association, the chiefs of police, have anything to say about that?

[*Translation*]

Mr. Pierre-Paul Pichette: I would like to approach that from another angle, Mr. Chairman.

We do not monitor individuals who are given a conditional release. On the other hand, we are aware that if you act on our proposal, the trial process will change. The system as we know it now, in terms of agreements between defence and Crown lawyers, will probably change. According to our estimates, officers involved in investigations are likely to have to spend 30 per cent more time in court.

Having said that, although we believe it could be more labourious for a police agency to have to prove an individual's guilt, the position we put forward earlier is the appropriate one.

[*English*]

The Chair: Thank you, Mr. Pichette.

Mr. Murphy is next.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

First of all, I want to thank the witnesses for their evidence. We did receive the handout from the John Howard Society. I noticed that the other parties were referring to some text. It might be quite helpful to us, if it didn't impinge on your rights, to give us copies of those, which the clerk could distribute. There were some figures in there that were quite interesting.

There has been a lot of talk and concern about the victims. I think that's fair game; we're concerned about them as well as the criminals. In that light I would defer mostly in this line of questioning to you, Mrs. Gray-Donald, relative to whom you represent and how you get your information.

I feel the passion and the emotion of what you said—I represent a community, and I mean, it's all through Canada. I was wondering if you could give us a brief overview of your clients: who they are; how they come to you; how you determine, when you make a statement, that you have statistical, objective evidence to back it up, because we do all understand and feel the emotional, subjective side of it.

Mrs. Krista Gray-Donald: The clients who come to our office are generally victims of serious crime, which includes assault, domestic violence, and homicide. Some of those by nature are excluded from the scope of this bill.

We do, however, speak with a number of clients who approach us through contacts with VWAP offices and police-based victim services. That's how they come to our agency, and also through the Internet. We have a fairly large web presence, and our website is fairly well regarded. They come to us, and most of the evidence, yes, that I present is anecdotal. Each case is individual, and the victims present their perspectives individually.

There have also been some studies done. Julian Roberts and Kent Roach did a questionnaire on the victims' perspective on conditional sentencing. Unfortunately, I don't have a copy of the questionnaire with me, but it was published recently. It gives some of the information in the last year or so.

Mr. Brian Murphy: I thank you for that.

This question is to the association representing the chiefs of police. Likewise, we understand that your charges—the people you work above, I guess—are front line. They were here last week, the actual police association, talking about their front-line experience. Again, we accept the subjective passion and the real-life stories. We do accept that. That's obviously very telling for everybody on this committee—but would you help us with any studies or statistics that you have regarding the efficacy of conditional sentences or other forms of sentences in preventing crime from happening again through the same customers?

● (1610)

Mr. Clayton Pecknold: We use the Canadian Centre for Justice Statistics, from which you had a presentation on September 21, I believe it was. I'm not aware of any specific studies with respect to that, Mr. Chair, but I did note on page seven of that report that at least one in five drug trafficking and sexual offences received a conditional sentence. I found that remarkable, especially coming from a province where drug abuse is very much a topical issue.

So I can't offer you an answer directly, but I think there are some stats out there from which you've benefited that, looked at holistically, would perhaps tell you there's some inappropriateness with respect to conditional sentencing.

Mr. Brian Murphy: Well, I'm glad to hear we're all working from the same stats, which are not flawed, but not as complete as they could be. That's pretty much what I'm hearing, that those stats we got last week are what to work from.

What I'm looking at is the aspect that the average conditional "sentencee" is under supervision for something like 400 or more days, and the average imprisoned person is under supervision, in the literal term, of about 30 days. I'm rounding the figures.

Is it not better to have a bad person, who can be—of course, I want to defer to Mr. Stewart on this—rehabilitated, we hope, under some form of the eye of the public for a longer rather than a shorter time? In the imprisonment situation, getting to the victim's point of view, the offender who is incarcerated generally is out without any supervision or monitoring quicker.

Mr. Graham Stewart: The experience we've had in Canada, particularly as documented by the Correctional Service of Canada, is that the process of reintegration through supervision of federal offenders over the last 20 years has shown a continuous improvement in recidivism rates. There is good reason to believe that supervision in the community has much greater effect, in terms of reintegrating a person, than simply locking them up and releasing them.

In the data you've received, for instance, you'll notice that the recidivism rate for those on conditional sentences was 17% over the next year, whereas with prison it's 30%. But that's the year following the completion of the sentence. As you point out, many people on conditional sentences are serving 700 days in the community before their sentence is even completed. So there's good reason to believe that conditional sentences are very effective.

We're also aware of the fact that people being selected for conditional sentences are selected, in part, because they're considered to be low risk. So we have to put that into perspective.

But in the end, if we're trying to determine what is the best cost-benefit situation for reducing crime, then it's very difficult to make a case for imprisonment over conditional sentencing—for the cases that are receiving conditional sentences.

The Chair: You still have some time.

Mr. Brian Murphy: Good.

The $1,742 figure, I think it is, has come under some scrutiny here. The assumption is that it's so woefully inadequate that there is absolutely no level of supervision and that it's completely ineffective in enforcing the conditions given by a judge. There are two points there that I would certainly ask Mr. Stewart about.

Given the proper resources, do you feel that proper supervision could be undertaken? And moreover, do you have any indication that the level of supervision is woefully inadequate? So far, it's an assumption, "Oh well, at $1,700 it couldn't be very much." That's an assumption. From what I read in the statistics, the breach of conditions is not at a 95% rate. People do not end up back in court for the breach of conditions in 95% of the cases; it's a very small percentage of the cases.

There will be the arguments that if a tree falls in the forest, you don't hear it; in other words, if people are out there breaching something and there's not enough supervision, it doesn't get detected.

I see the good police chief nodding to that.

But where's the meat in the sandwich here? Where is the proof that $1,700 is inadequate? I bet that when we have some probationary people here, they're going to say they're doing very well, that they could always use resources but are doing very well.

What would you say, Mr. Stewart?

● (1615)

Mr. Graham Stewart: I would say first of all that this is an average figure that includes, as I understand it, both probation and conditional sentencing. I think if you were able to break those figures out, you'd find the supervision costs for conditional sentencing are often quite a bit greater. Indeed, the intensity of the supervision is greater. Many are under house arrest; many are on electronic monitoring, which in itself is highly structured—and it's something that can be monitored.

There's no one who will say they have too much money. There's no one who will say they can't enrich their service. Indeed, the prison system, I think, is also feeling that they have a tremendous shortage of resources. I haven't heard the argument that we shouldn't send people to prison because there are inadequate resources there.

Community supervision is inherently much less expensive: we're not feeding people; we're not watching them 24 hours a day; we're not having to engage them in programs. We use community services: people can go to school in the community—we don't have to provide a school, as you do in prisons—you have community health access. You have all these sorts of support services that you have to provide in a prison, which have nothing to do with rehabilitation, nothing to do with changing behaviour but are just the cost of running a prison.

So I think you should reasonably expect that community supervision is much less expensive than prison. Whether $1,700 is the right figure, I don't know. But I don't think that's the basis on which we should be sentencing people.

Mr. Brian Murphy: I want to suggest that you kind of referred to a study regarding the deterrence rate, that the deterrence factor in sentencing is much less effective for people who normally get conditional sentences. Is that from the same studies that we got last week, or it is something you have that's different?

Mr. Graham Stewart: What I was saying is that the evidence of deterrence generally with crime is quite weak, but I think there's good reason to believe that with conditional sentencing it's even less, primarily because those who are selected for conditional sentencing are usually selected on the basis that they feel substantial remorse. They are seen as low risk by the court. They've already been identified as unlikely to reoffend, so recidivist rates among those who are unlikely to reoffend is low.

Mr. Brian Murphy: You don't have any studies for that? That's just sort of a logical extension.

Mr. Graham Stewart: That right. It's a logical extension.

Mr. Brian Murphy: Okay.

Thank you, Mr. Hanger.

The Chair: Mr. Murray and Mr. Stewart, thank you.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: I would like to explore with you a situation that I find somewhat paradoxical.

We are being asked here to pass a bill that will, in one fell swoop, add more than a hundred new offences. That would mean that people could be given conditional sentences, still on the basis of the parameters set by the Supreme Court in the Proulx ruling, which says that the use of such sentences must not represent a danger for the community, that the offence give rise to a sentence of less than two years, and so on.

Mr. Pichette, you are absolutely right to bring to our attention the fact that logically, most people, based on pure common sense, would agree that individuals who have been involved in organized crime at the highest levels should not be serving their sentence in the community. But by raising this question, are you not pointing to the absurdity of this bill?

In order to meet the goals that we set for ourselves as a society—in other words, people who have been involved in the most serious criminal acts should not necessarily be in the community—is it reasonable to simply include all offences punishable by a term of imprisonment of more than 10 years and use the 10-year threshold across the board? That would mean including offences related to counterfeiting, but also homicides and the most serious offences.

Would it not be preferable to amend section 718, which sets out a framework for the judiciary to use for the purposes of sentencing? That is the position of the Bloc Québécois. Should there not be a specific reference to individuals who have been involved in criminal gangs? We were both here when that whole public debate occurred.

This question is addressed both to the chiefs of police and the other witnesses. Are you not concerned about the idea of having a single threshold—namely offences punishable by a term of imprisonment of 10 years or more? Is this lack of nuance not in fact the kind of thing that we, as legislators, cannot afford? Is there not something worrisome about this way of approaching the criminal law?

Mr. Pierre-Paul Pichette: Our reasoning in that regard, Mr. Ménard, focuses on two points. First of all, there is organized crime. I think we have made our point in that regard. The second issue is violent crime or violence associated with the commission of a crime. That is what we believe to be particularly compelling.

What I can say is that of the clauses we have reviewed in preparation for this presentation, although I may be mistaken, most seem to relate to crimes where violence is associated with the commission of the crime. If that were not the case, I would agree with you.

For example, our colleague from the John Howard Society of Canada listed a number of offences earlier that probably should not be on the list. But I do believe that the whole issue of the use of violence in the commission of a crime should be part of our thinking in this regard.

● (1620)

Mr. Réal Ménard: Before asking the John Howard Society to comment, I have one last question. We have no information with respect to the recidivism rate. I hope we will get some before moving to clause-by-clause consideration of this bill.

Do you have any information about courts or judges who, when dealing with cases involving serious violence, have handed down or permitted sentences to be served in the community, even when that could be considered an affront to common sense? In terms of available sanctions, we all know that this is a marginal occurrence that accounts for only about 6 per cent of sentences and affects a little less than 34,000 people.

Have any of you any information to suggest that there have been abuses and that, in cases that could be seen as an affront to the collective conscience, the courts have a general tendency to use this tool inappropriately? I'm talking about a general trend here. Judges may make poor rulings; we are all aware of that, but I think that it is with that in mind that we should cast our vote.

[*English*]

Mr. Clayton Pecknold: No, not specifically, Mr. Chair, but I would reiterate that the statistic that really struck us was the one to do with one in five drug trafficking and sexual offences.

I suppose it depends on your definition of violence. One could look at it in the strict sense of direct violence, person on person, or one could look more generally, as we do, at the violence this perpetuates on society as a whole, including, of course, organized crime, as it does as well, and on down the street.

That would be the only point I'd make in response.

Mr. Graham Stewart: I want to make the point that when I gave my presentation, I identified a number of offences that I thought were included that I thought could easily...or one could easily imagine a circumstance where a conditional sentence would be appropriate but is excluded by this bill. The other witnesses identified offences that are included as conditions for conditional sentences that they thought should not be. I think that speaks to just how inappropriate it is to use ten years maximum as an arbitrary process. That makes sentencing very arbitrary.

The only maximum sentences developed in the Criminal Code were never developed with this kind of use in mind. That's why the sentencing commission rejected them as a useful tool in the sentencing process.

It seems to me that if we want to have a system that makes sense, we have to let people make the decisions. If we try to do it with an arbitrary rule, we'll always have cases, one way or the other, that seem to be irrational.

[*Translation*]

Mr. Réal Ménard: Allow me to ask one last question.

It is a little misleading to say that one offence in five where people were eligible for a conditional sentence is a drug-related offence. Let's take the example of a young person who is arrested with a cannabis joint in his possession and ends up before the courts. It is not totally irrational, in terms of the administration of the criminal justice system, to think that such an individual could end up in the community. So, I am not prepared to conclude that because one offence in five resulted in a conditional sentence that this can in any way be seen as reflecting abuse of this type of sentence.

Do you share my views in that regard? I think our analysis in this regard has to be a little more rigourous.

[*English*]

Mr. Clayton Pecknold: The statistic was one in five drug trafficking offences, I believe, so I would agree with you it's simple possession. But drug trafficking, I would suggest, is a higher-order offence.

[*Translation*]

Mr. Pierre-Paul Pichette: I just want to say that when we're talking about drug trafficking, it's important to remember that the consequences for society can be significant. That is how we see it—in other words, that we're talking about violence against another person, but also against society as a whole. We have only to see the harmful effects of drug use on our young people to understand that.

Mr. Réal Ménard: Do I have time for one more question?

[*English*]

The Chair: One.

[*Translation*]

Mr. Réal Ménard: Thank you. You're too kind.

[*English*]

Mr. Graham Stewart: I was just going to say that drug trafficking and many of the offences we're talking about here are descriptive categories that engender in one's mind a particular offence, and usually a very serious one. But in fact it actually describes a huge range of behaviour, from circumstances that are relatively minor to very serious. It ranges in everything from two people who are sharing a joint to importing shiploads of heroin.

Again, I think that is the problem with using such arbitrary criteria, as opposed to good judgment, which can only be done on an individual basis.

● (1625)

[*Translation*]

Mr. Réal Ménard: You mentioned that the costs of incarceration will increase by 20%. I believe you were the one who made that statement.

For the benefit of Committee members, could you document that assertion?

[*English*]

Mr. Graham Stewart: That actually came from the parliamentary briefing papers, from the parliamentary library. It indicated that the estimates at that point for the implementation of this bill would result in an increase in the federal prison population of 300 to 400, which is a 3% increase, and an increase of about 3,000, or 20%, in federal-territorial prisons.

[*Translation*]

Mr. Réal Ménard: Thank you.

[*English*]

The Chair: Thank you, Mr. Ménard.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Deputy Chief Pecknold, I wanted to say to you I was really happy with your presentation. It understated a number of other things I didn't agree with, but I've been a strong proponent for a long time of trying to deal with amendments to the Criminal Code on a piecemeal basis, which seems to be the pattern of both the previous government but even more so this one.

One of the difficulties we have, and this is why I'm wondering if you or your association have done any thinking about how to do this.... We are hearing back—and, again, it was true, I think, with both governments, the current and the previous one—that trying to do an omnibus bill, even if it was only the sentencing part of the code, would be a monumental undertaking and there were immediate things that needed to be dealt with.

They've recently done away with the Law Commission. I thought they were one of the groups that might very well have been able to prepare, perhaps, a white paper, a working paper. Now that the Conservatives have cut that, is there anybody else in the academic field who could do this work? And I'm including your own association in that. I'm assuming you don't have the resources, but do you know of anybody in the country who would be able to take on that work?

Mr. Clayton Pecknold: We have, in the past, worked with the Law Commission on a lot of bills and things like that. Quite frankly, I was unaware they had been decommissioned.

Mr. Joe Comartin: Completely gone.

Mr. Clayton Pecknold: I don't know of any specific organization. Our organization, of course, is an amalgam of all the police organizations across this country and we draw on our resources individually.

What I could say, and I can say and I'm authorized to say on behalf of the association, is that we would certainly offer our support and undertaking to whatever agency was able to do that, whatever academic aspect of society was able to work on that. We would acknowledge, of course, that it's an enormous undertaking, but I would suggest that we don't want to shrink from an undertaking simply because of its enormity.

Beyond that, I would simply add that this is something that we, as an association, will continue to suggest as we move through every bill. Through every aspect of legal reform that comes before Parliament, we'll continue to push for a reduction in complexity and for a rationalization of the criminal law, especially with respect to those powers and substantive offences that we use practically every day.

Mr. Joe Comartin: I make the same speech in the House about once every two weeks. I can't say that it's penetrated into the powers that be.

Have you looked at any other jurisdictions, England, Australia, or the United States, where they've done a substantial review or carried out a substantial reform of their criminal codes?

Mr. Clayton Pecknold: On occasion we do engage in some studies. We engaged recently in a study where senior officers were sent to Europe to study investigational practices, in particular in the area of law with respect to disclosure in the criminal trial process. I don't know the specifics with respect to the law in England, but there were some best cases there or some legal precedents that one would say—not in the court context, but in the case of legislation—we felt could be imported into our system and looked at.

So it's out there and we have participated in studies with respect to it.

● (1630)

Mr. Joe Comartin: Thank you.

Ms. Gray-Donald, the list of charges that you've enunciated today as ones that should not qualify for consideration for conditional sentences—I'm anticipating the answer, but I have to ask it anyway—do you have any statistics as to how often, either on an annual basis or over the last few years, those particular charges have been the subject of conditional sentences?

Mrs. Krista Gray-Donald: No, I don't have statistics, unfortunately. We're not in the business of doing statistics. I do, however, have anecdotal evidence that backs up some of them—for example, voyeurism. I received a call from a 16-year-old victim in New Brunswick last week whose father had videotaped her while she was changing, and he received a conditional sentence. Yet she's left with the feelings and the hurt. She feels like she's been raped, and she has all of the side-effects that go along with sexual assault, yet he received a conditional sentence.

Mr. Joe Comartin: Those are all my questions, Mr. Chair. Thank you.

The Chair: You still have time, Mr. Comartin, if you need to use it. No?

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Chair.

I have three points I wanted to touch upon regarding conditional sentences.

Mr. Pichette, what is your impression of how the criminal population views conditional sentences? Is it viewed as a "get out of jail free" card, or is it viewed as genuine supervision? There was some mention made that a conditional sentence actually has a longer supervision period than a custodial disposition, but is it actually viewed that way? Is it viewed by the criminal population as genuine supervision? I'd surely be surprised if both levels of supervision were viewed, in any sense, as close or similar.

On that same point, probation also serves a sense of supervision, a limited sense, like a conditional sentence. Obviously, there'd be longer periods of probation for someone who had a custodial disposition versus a conditional sentence. Could you touch upon that?

[*Translation*]

Mr. Pierre-Paul Pichette: Mr. Brown, in terms of the dynamic underlying the negotiations between defence and Crown lawyers, it is clear that the ability to use provisions such as this to secure a conditional sentence, as opposed to a term of imprisonment, for individuals that are apprehended and brought to trial, will obviously be part of the discussions.

I have no statistics to support my theory, but I can tell you that this is common practice when there are discussions among Crown counsel.

[*English*]

Mr. Patrick Brown: I'd also like to get your impressions, and Mr. Pecknold's too, about this: in terms of the reality of the court system, in the courts I've been in and witnessed.... I'll give you an example. In the Brampton courthouse, close to Toronto, the largest courthouse in the area of my riding, if you look at the plea court, there are 300 or 400 sentencing submissions on some of the dockets in one day. So when we talk about consideration for re-offending, is there actually adequate time to have any discretion, to investigate the genuine ability for a re-offence when you have 300 or 400 potential sentencing submissions and pleas in one day? Do you believe there's adequate time allotted for that?

Mr. Clayton Pecknold: If I understand the question correctly, you're talking about the degree of plea bargains with respect to conditional sentence orders. I was looking at one of the stats—it was before you, as well—a guilty plea in almost 90% of indictable offences. We who work within the system every day know that.... I don't know if I'd use the term "get out of jail free" card, but it's certainly an incentive, in my opinion, for a guilty plea.

On the other hand, we could argue that we save costs, as the police, in terms of witnesses and having to go to court. But we'd suggest there's a further hidden cost in terms of the perception of the people we deal with, the victims of crime we deal with, and their faith in the system and their sense of closure.

Perhaps I might add, I've been listening to the discussion and I see a lot of the stats. They're very offender-focused. We certainly understand the need, from a crime prevention standpoint, to be offender-focused, but our association suggests that we also need to be victim-focused and focused on the outcomes of crimes.

● (1635)

Mr. Patrick Brown: I have a general question for everyone.

I heard some comment about the fact that there would be a requirement for increased use of prisons when you eliminate the use of conditional sentences for these potential crimes. What is your view long-term, not just a short-term picture, if we had this level of deterrence and if we removed the perceptions of simply a slap on the wrist—not two months or three months out, but five or ten years out? Do you believe it will be the cause of having fewer people in the prison system or more? What do you think the long-term benefits of this are? Will it be an adequate deterrent and send the right message, or will it actually cause the jails to fill up even more?

[*Translation*]

Mr. Pierre-Paul Pichette: Canadians' sense of security is one of the issues that all police forces have to deal with. It is connected to the police forces themselves, but also to the rationale behind our legal system and the sentence associated with the crime, as well as the repercussions for society as a whole.

We are in favour of Bill C-9, but we believe that ultimately, the public's perception will change if those who commit crimes are put in jail and have to serve a certain amount of time in institutions for the crime they have committed. I believe that that is where the benefit lies. Allow me to draw an analogy. Car theft in Quebec is becoming, both within our own police organization and in the court system, a crime for which short sentences are handed down. It is no longer a crime.

I think we have to be careful how we use the provisions of the Criminal Code, in order not to trivialize them. If we trivialize them, the goal pursued by the Criminal Code will not be met.

[*English*]

Mr. Graham Stewart: If I could speak to that, Professor Paul Gendreau of St. Thomas University prepared a meta-analysis of studies on the effect of prison terms on recidivism for Public Safety and Emergency Preparedness Canada. He examined every study in North America over the last fifty years that met the criteria of being proper research. What he found was that there was not one study—not one—showing that longer terms in prison reduced recidivism. Generally there was very little correlation at all, but the degree to which there was a correlation, longer terms led to higher rates of recidivism—essentially confirming the notion many of us who work in prisons have that they are in themselves criminogenic environments.

If you take people who typically get conditional sentences who aren't criminalized in their lives and for many it's their first offence, and you put them through a process that first addresses the issues they have—often there are addictions and so on, especially alcoholism—you have much better potential in the long term than putting them into an environment that's inherently criminalized.

Then you have to go through the very difficult process of reintegration after a prison term. After you've been in prison, you've lost your community roots, your job, and your place in society. Coming back is very difficult, and none of those things increase the likelihood of success.

● (1640)

The Chair: Thank you, Mr. Brown.

Mr. Stewart, would you, and possibly the police officers as well, define recidivism? What are your limitations on recidivism? I've heard various definitions and I'm not quite sure.

Mr. Graham Stewart: The definition that was used here was the one the Department of Justice used when it made its briefing to you earlier, which was looking at that point at one year. Recidivism can be one year or ten years or it could be a lifetime. The point is that when you're trying to do these studies, you need a short enough period of time to know whether you're getting better or worse.

One-year recidivism is only good in comparing conditional sentencing to prison. What we find is that with prison, after one year there's a 30% recidivism, and with conditional sentencing there's 17%. So that's a dramatic improvement, and it's indicative that something worthwhile is happening.

It's not to say that after that year there's no recidivism, but we can say that recidivism drops the longer a person is out. So even from federal institutions, after two years in the community the recidivist rate drops quite substantially.

So mechanisms that keep people engaged in the community and allow them to have jobs, work, and so on have greater potential over the longer term, because they are not going through that isolation. The longer you can keep people supervised and productive in the community, the better your chances that they will not recidivate over the longer term.

The Chair: Thank you.

For the police department, is that basically the same rule on recidivism?

Mr. Clayton Pecknold: My understanding of recidivism has always been that a registered conviction would represent the recidivism rate. Of course, we in the policing community know that doesn't always reflect the actual criminal activity, but we live in a legal structure that measures it upon conviction.

Coming from British Columbia, I can inform this committee that we have something called a charge approval system, where charges actually have to be approved by crown counsel before they are proceeded with. We have that. They call it quality control. We actually have one of the lowest conviction rates across the country, and one would ask why. So there is, I suggest, a dark figure of recidivism that is immeasurable.

Mr. Graham Stewart: Could I just explain that a little further, then?

The Chair: Certainly.

Mr. Graham Stewart: No one knows, ultimately, what recidivism is. For one thing, we don't know until the person dies whether they recidivate. So you're quite right; we don't know about offences for which there has never been a conviction. All we can use this data for is a proxy to compare. Is the recidivism rate for people who have been through this process better or worse than those who have been through some other process? I wouldn't want to suggest that any number that's used is an absolute measure of lifetime recidivism.

The Chair: Thank you, gentlemen.

Ms. Barnes.

Hon. Sue Barnes (London West, Lib.): Thank you very much. I think all of your input is important to our process here. I thank you for coming, and I hope I see you in other situations also.

I want to go over the way this bill is currently set up. As you are aware, in the last Parliament there was another bill that set up a different way of looking at a tightening, but not as extensive as this one.

Maybe I'll go first to Ms. Gray-Donald.

We have private members' bills coming forward in the House. A lot of them are in the vein of, because they think this bill is automatically going to make it through and be the law, "Well, let's just put everything up so it's now maximum ten years and we're going to get here."

There's a thing of security and there's a sense of false security around that, and I'll take the example that you gave, the luring offence. There's a private member's bill coming up later this week or next week on that one.

Is it your understanding that if that gets into this category, that would mean there would be no conditional sentencing? I just want to see the depth of your organization's understanding of what would actually happen if that were the case.

Mrs. Krista Gray-Donald: Sorry, just to understand your question, you're asking if it got into this bill by being raised to a ten-year maximum, or using the scheme that I proposed to use as a schedule—either?

Hon. Sue Barnes: Let's just do the Internet luring. You said you wanted it in here. Is it your understanding, then, that it would automatically preclude a conditional sentence on that offence if this were in the bill?

● (1645)

Mrs. Krista Gray-Donald: Yes, but it wouldn't preclude the other types of sentences that could be handed out—for example, probation.

Hon. Sue Barnes: Okay, that's the misinterpretation I'm concerned about, because there are many offences that are captured if you list the offences under that bill.

Let's just presume Internet luring was part of this list currently. It's a hybrid offence. If you have a hybrid offence, under the way this bill is currently drafted, that does not preclude the judge from giving a conditional sentence.

Mrs. Krista Gray-Donald: And that is a problem we do have with the bill, especially with respect to offences that can be violent or sexual in nature, luring being one of them, sexual assault being one of them, or criminal harassment. We think that also needs to be addressed by the bill, that those offences, if tried summarily, can't be eligible for a conditional sentence.

Hon. Sue Barnes: Okay, I just want to go to the chiefs of police association: is that your understanding too?

Mr. Clayton Pecknold: It would be my interpretation of the bill that if it proceeded summarily, then a conditional sentence would be available.

Hon. Sue Barnes: Certainly. So my point to you as a victims organization is that just by having it listed or captured, if it's a hybrid that's not, the conditional sentence on the discretion of the judge would still be there. I just want to make sure that people understand that, that there are still many of the offences in here, not just in the drug category, but in the way this bill is currently set up. And I think it's a fault of the bill, too, because I think there's a miscommunication around some of these issues to the public that is deceptive. So I'm just clearing that one up in particular.

Mrs. Krista Gray-Donald: We understand that, and we feel it needs to be addressed.

Hon. Sue Barnes: If you've gone through this list—and I can put this to all of you—do you think that, for instance section 340 of the code, destroying documents on file, which has a ten-year maximum.... Is that something you think should be part of this?

I'll give you a couple of others: stop mail with intent; instruments for forging or falsifying credit card; public servant refusal to deliver property; criminal breach of trust; theft over $5,000; drawing a document without authority; obtaining an advantage based on a forged document—that could be somebody using a false ID to get into...I don't know, to take a ride on a train or something that requires a pass....

These are also captured, and when I hear your testimony as an advocate for victims, I'm not sure this would be in your catchment area of concern, but it is in the catchment area the way the bill is currently drafted.

Are these types of property offences—and I'll categorize them as that—a matter of concern for you?

Mrs. Krista Gray-Donald: There are property offences that fall under the bill that are appropriate for conditional sentence. We recognize that, and we don't think offences such as the ones you listed should be made ineligible for a conditional sentence.

Hon. Sue Barnes: Okay. Thank you.

I'd like to hear Mr. Stewart on that, and also the other witnesses, please, Mr. Pichette or Mr. Pecknold.

Mr. Graham Stewart: When we submitted our brief, we presented a table of some offences that are both eligible and ineligible. In each case the offences we selected were ones that we thought raised serious questions. Some of the offences that are eligible.... For instance, obtaining valuable security through fraud is eligible—it's a maximum of five—but theft of a credit card is not. It just seems to me that in the real world, those circumstances could easily be reversed in seriousness and be inherently unfair. There are many examples of that.

Our position is not that everyone should get a conditional sentence; ours is to recognize that a conditional sentence is a midway and intermediate sentence. Ours is simply that maximums are a very poor way to select the seriousness of the crime—

● (1650)

Hon. Sue Barnes: Absolutely.

Mr. Graham Stewart: —that the seriousness of the crime has to be examined on the specifics of what happened: not just the offence that occurred, but the responsibility of the defendant. The Supreme Court has been very clear on that. In a number of decisions it has said that anything other than that becomes arbitrary.

But I think it also denies common sense. If we want to have a sentencing system that has a potential to make sense to most people, then it has to be individualized, and that's our position; not that all of these should or shouldn't be included. I'm sure everybody in Canada has their list, but the list we're being presented with is one that was never developed with this in mind.

Hon. Sue Barnes: I would like to hear your input on that, but I think the problem, both for the current government and past governments, to be fair, is how to devise something that captures a person you would not want to see take advantage of this, yet that isn't so wide or such an artificial guideline. And there are problems with the way this one is set up, and there are probably problems with the way the last one was set up too.

I'd like you to comment on that. I hear you on the serious ones. What I'd like to hear you on is some of these others and some of what I've just said to you.

[*Translation*]

Mr. Pierre-Paul Pichette: I'm going to give you the same explanation I gave earlier. In terms of organized crime, in our opinion, this can be defended because of the actual definition of organized crime. Where we agree is that it does depend on the amount of violence used in the commission of the crime. At the same time, we don't really have a definition of violent crime. But I do agree that in terms of the list of crimes you have identified, there are indeed some that probably would not be included under that definition.

As far as we are concerned, the idea of the violence involved is extremely important, whether it is between individuals or in terms of the effect it has on society—in other words, when the crime is perceived by the public as being violent.

[*English*]

The Chair: Thank you, Ms. Barnes.

Hon. Sue Barnes: Mr. Pecknold wanted to answer.

The Chair: I'm sorry. Please go ahead.

Mr. Clayton Pecknold: I'll be brief, Mr. Chair.

The point is that we have difficulty with the idea of what would be viewed as being less serious offences and other offences being captured by the ten-year level. It perhaps underscores our overall point that it's pretty difficult with this Criminal Code. It's full of inconsistencies and contradictions. It's very difficult to continue to build on that without running into these inconsistencies, complexities, and confusions.

The Chair: Thank you, Ms. Barnes.

Mr. Serge Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

I would like to go back to what Mr. Pichette was saying.

Mr. Pichette, you often talk about the importance of perceptions, but most people's perception of our criminal law system is gleaned through the newspapers, television and radio. The fact is that very few people have time to go and sit in a courtroom to see how the system actually operates. They would probably fall off their chairs with boredom after a couple of hours. So in actual fact, people's perceptions depend far more on the newspapers than they do on reality. Do you not agree?

Mr. Pierre-Paul Pichette: The fact is that the media are one of the pillars of our democracy. They are there to provide information to the public. And I believe they have an obligation to do that in a variety of areas.

As regards criminal activity, talking for a moment just about Montreal—and I'm convinced it's the same thing in every city in Canada—some reporters only cover legal cases and are in the courthouse on a daily basis to report on cases the public should be informed about. On the other hand, they obviously cannot report on every case that is heard by the courts.

Mr. Serge Ménard: Yes, but from day to day, those reporters only report on the exceptional cases. And you certainly cannot get a very accurate idea of what goes on in most cases by hearing only about the exceptional cases. Journalists report on sentences that capture people's imagination.

I believe a study was conducted in Toronto that showed that, as a general rule, judges give between 12 and 15 reasons to justify a sentence. The newspapers, however, refer to about one and a quarter. And obviously, the ones they do talk about are the ones that are most likely to capture people's imagination or shock them. Isn't that right?

In other words, whatever we do, it may be best to forget about the public's perception and simply focus on the reality, when attempting to determine whether sentences are unfair or not.

You talked about drug trafficking. You find it somewhat scandalous that only 20 per cent of cases involving drug trafficking result in sentences. You do know the definition of the word "trafficking". It includes the idea of "giving" and "offering". An example would be a young man who offers his girlfriend a joint of marijuana to watch a psychedelic film or engage in other drug trafficking activities.

As a general rule, whatever the type of offence involved, there are fewer less serious cases than there are serious cases. Of course, the public considers drug trafficking to be serious in terms of its consequences for society; you said so yourself. But the serious cases are in the minority, and yet you would like them to be subject to sentences that would be perceived as tough.

Why do you want to prevent judges from having the flexibility they need as regards sanctions, when they are the ones most aware of individual cases—those boring and repetitive cases—and who, most of the time, are really dealing with maladjusted individuals? That is one of the major characteristics of delinquency; delinquents are maladjusted. Do you think that judges are abusing their powers in this regard or that they are not applying this provision properly?

● (1655)

[*English*]

Mr. Clayton Pecknold: I have two points on that. The first is a point of clarification on our opening comments about the public's perception of the justice system. We suggest it isn't simply the result of the perception of sentencing, and I would agree with you, sir, that some extraordinary cases are sometimes sensationalized in the media, which could impact that perception. But our concern with the perception of the justice system also comes from the length of trials, the complexity of trials, the likelihood of a plea bargain.

There is study by Dr. Plecas of the University College of Fraser Valley, a 20-year study commissioned by the RCMP, which talks about how long it takes to investigate a criminal offence now compared with 20 years ago because of the complexity of the law. So I would make the point that our concern about the perception is broader than simply sentencing.

The second point I would make, sir, with respect, is that I couldn't imagine getting a trafficking offence for a simple giving of a joint or something like that. We would never get it past our federal crowns; they wouldn't proceed with it. I would suggest that most of these trafficking offences, by the time they end up in a conviction, are significant trafficking offences.

The Chair: Thank you, Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: Is my time up?

[*English*]

The Chair: Right, unless you have a very short question.

[*Translation*]

Mr. Serge Ménard: Yes. Could you explain why you prefer suspended sentences to conditional sentences, since suspended sentences will still be available? What are your reasons for thinking that suspended sentences are better than conditional sentences?

[*English*]

Mr. Graham Stewart: Sorry, was that directed to me?

Mr. Serge Ménard: No, because I know your answer.

Some hon. members: Oh, oh!

Mr. Serge Ménard: It's for those people who apparently don't realize that we keep suspended sentences. Personally, I'd prefer a suspended sentence if I were judge, because if a guy does not respect the conditions, I'm going to give him a sentence that I think is appropriate.

[*Translation*]

But with conditional sentences,

[*English*]

this means that for 18 months, he can spend 12 months with no problem, and in 16 months he gets a condition and then there are only two months left to do.

So where's the logic? Again, the logic is that you take away from judges the means to individualize the sentences, because to render a sentence in a particular case is always a balance of many factors: the circumstances in which the crime was committed, the circumstances of the accused and the chances he has to be rehabilitated, and also, of course, the gravity, the exemplary....

[*Translation*]

I started speaking English! Let's hope I won't start speaking Spanish.

[*English*]

Anyway, Mr. Stewart, I know everything you're going to say, and I agree.

Voices: Oh, oh!

● (1700)

The Chair: Thank you, Mr. Ménard.

Mr. Serge Ménard: But I'm curious about the other ones, the people representing the victims. What advantage do you see? I'm sure if you take away *sursis* you're going to have more suspended sentences.

Mr. Réal Ménard: We all speak a lot. I'm not alone, as you know.

Voices: Oh, oh!

The Chair: You two have something in common there, and it's more than just the last name.

Thank you for your questions, Mr. Ménard.

Mr. Petit.

[*Translation*]

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

My question is addressed to Mr. Pichette, and perhaps to Ms. Gray-Donald. I will come back to Mr. Stewart after that.

I would like to say right off the bat that I am a member of the new Conservative Party and that, although people don't believe it, we do feel compassion for victims. That is the whole reason behind Bill C-9.

I particularly want to thank Mr. Serge Ménard, because he was my Minister of Public Safety. He worked on very important issues. I'm sure you remember the gang wars, involving the Hell's Angels. Heaven knows you certainly got more than your share of it in Montreal. I also know that he was very tough in terms of the decisions he made as Minister of Public Safety. The gang war that took place in the Montreal region was linked to the drug trade, and to what is known as territory.

Although it may not seem violent at first glance, drug trafficking is extremely violent. Drug traffickers create demand among young people. The small joint that is passed around ends up becoming one joint a day, and then one joint an hour. And young people get their supply from organized groups and drug traffickers.

What crimes do they commit? Well, because they don't have enough money, they start by committing robbery. Then they get involved in breaking and entering. The 65-year old lady who is robbed at home is not amused when that happens. Then comes conjugal violence, because of or the other has spent money. They fight, and you know what happens after that. And there's also prostitution. We were talking about mail theft earlier. Welfare recipients in my province end up having their monthly cheques stolen. These people change their identity in order to be able to cash it at the corner store and then go and buy drugs.

How do you expect a person who is 65 years of age to protect herself if she lives in the country and, as is very often the case, it's someone with links to her own family? No crime is really minor. It all depends on who the victim is and when the crime is committed.

I was surprised yesterday to hear it said that 40% of the drugs are entering our prisons. These are people who are locked up and under 24-hour surveillance. And yet 40% of the drugs are entering the prisons. A drug trafficker who has been given a conditional sentence is sitting at home and has nothing better to do than answer the telephone. And with all the electronic and telephone options available today, he could just as easily do that from a bar in the neighbourhood and say that he is at home.

We have been saddled with a ridiculous system. We're told that a person under surveillance costs $1,742 a year. But have you thought about what is made possible as a result of that money? Ridicule may not be fatal, but almost.

Something intrigues me here. Two or three days ago, in the Montreal region and elsewhere, at Pierre Elliott Trudeau Airport and other airports, we heard that drug traffickers had threatened employees who are police officers, and that they bribed even the employees responsible for security. This involves all the airports, the one in Toronto, the one in Montreal or those in British Columbia, where there are also ports that have been infiltrated by criminal groups.

Drugs are streaming into our country and creating all kinds of problems. We practically have to get down on our knees and beg the members of the Opposition to vote in favour of Bill C-9, so that drug traffickers can no longer enjoy the freedom they currently have. I'm wondering whether Bill C-9 is not an indirect way... We've seen this, and we could review all the crimes. Each one has its specific pros and cons.

● (1705)

The Vice-Chair (Mr. Réal Ménard): Mr. Petit, you have already used up five minutes of your time. I am certainly inclined to be generous with you, because I realize that you feel passionate about this, but I would ask that you move directly to your questions.

Mr. Daniel Petit: My question is addressed to Mr. Pierre-Paul Pichette. You heard my preamble, but I would like you to tell me whether Bill C-9... I know what your opinion is, but I would like you to elaborate further with respect to drug trafficking, if you don't mind.

Mr. Pierre-Paul Pichette: I'm sure you understand, Mr. Petit, that I can't talk only to drug trafficking. I have to respect the logic of what has been tabled with the Committee. Our focus is on organized crime.

I have to say that you are right. Drug trafficking is one of the illicit activities carried out by a number of organized crime groups. That is why we are suggesting that when you reach that stage, you consider including organized crime

You talked about the phenomenon of drug trafficking. We can also talk about women or men who are controlled for the purposes of prostitution. They are also controlled by organized crime families or associations.

I understand what you're saying, but I believe that our position, which advocates an approach to organized crime as defined by the usual provisions, is the most appropriate.

The Vice-Chair (Mr. Réal Ménard): Are there any other comments from our witnesses? I will have a very brief question after that.

[*English*]

Mr. Graham Stewart: I think there's a problem when we talk about drugs in such absolutes and say that people are either traffickers or victims. The traffickers plunder others, who become victims by using drugs. The fact is that most drug traffickers who get caught are in fact drug users. Once you start using, that's one of the ways you maintain your habit. It becomes a lot more complicated than just absolutes.

The fact is that four out of five people who went to court did not get a conditional sentence; they were sentenced to jail. That suggests to me that with drug offences, just as with every other criminal offence, you get far more of the low-level offences than the high-level offences. Higher-level offences are harder to investigate; there are not as many of them.

That one-in-five statistic doesn't strike me as surprising, particularly when you recognize that to actually deal with the addiction, 700 days in the community with access to treatment under intense supervision is more likely to bring about a better result than 47 days in jail in the kind of environment you described.

I think we have to not be so absolute about this.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Thank you.

You have the floor, Mr. Lee. As most Committee members had seven minutes of speaking time, that is about the amount of time you will have available to you.

[*English*]

Mr. Derek Lee: Thank you.

I appreciate the evidence and the perspective you've offered here today. One thing that's becoming increasingly clear—and I'll ask our police chiefs if they agree—is that this bill appears to be an exercise in untargeted denunciation. In other words, we don't like the look of people not doing hard time so we're going to remove an instrument that would divert some of these people from hard time. I think one of you gave evidence earlier that you and/or the public don't like the look of offenders showing up on the street soon after.

Wouldn't you agree that this whole exercise of using this ten-year maximum threshold—this inexact, rough, untargeted, arbitrary, imprecise instrument—in the bill is maybe wrong-headed and that we should be looking for another method of defining those offences that should be excluded from the conditional sentencing option?

● (1710)

Mr. Clayton Pecknold: I doubt very much, Mr. Chair, that I'd agree with all those adjectives. I think it's a reality of the Criminal Code that trying to take a broad-brush approach with certain provisions runs into anomalies such as as we've suggested with respect to the criminal enterprise provisions.

I would differ on the issue that it's just that we don't like the look of it. I would say that the public's faith in the justice system goes to the very core of its accountability and the very core of a pillar of our democracy.

We who work in it every day can tell you that the public's faith has generally been shaken in many ways and from many different aspects. It isn't simply a superficial aspect that we don't like the look of it; it goes to the sense of one's feeling that the state has interjected and supported them when they have been the victim of a violent crime.

Mr. Derek Lee: A previous bill in the previous Parliament made an attempt to identify a category of more serious offences that should be exempted from the conditional sentencing option, and that bill included.... I want to find out what your reaction is to this little list I'm going to give you. It's a short list: a serious personal injury offence, and it's defined; a terrorism offence; a criminal organization offence; and an offence in respect of which, on the basis of the nature and circumstances of the offence, the expression of society's denunciation should take precedence over any other sentencing objectives.

Do you think the list and those words define adequately what we all think this bill is trying to do here? Could we be more precise, or have I left something off the list? I didn't mention any drug offences, unless it's a criminal organization drug offence.

Mr. Clayton Pecknold: It would be difficult to answer with precision without reading the definitions of personal injury offence, etc., etc., but for all of the above, certainly in our view we wouldn't support a conditional sentence. Whether there's anything excluded, I don't know.

Mr. Derek Lee: Okay, so from your point of view, that covers at least part of the territory from a public interest point of view, which we're trying to get at here—even though the list may not be complete.

Mr. Clayton Pecknold: It would appear to.

Mr. Derek Lee: I have a question about how police lay charges when there is a hybrid Criminal Code offence, because I'm not exactly sure. In the sections that we refer to as hybrid sections, it's a Criminal Code offence where the person may be prosecuted by indictment or by summary conviction. There are a half a dozen to a dozen of these hybrid offences in the list that would be caught by the current government bill.

Can you tell me who makes the decision to proceed by way of summary conviction or indictment? Is it the policeman who investigates the offence? I want to find out how arbitrary or how calculated the decision is to proceed by way of indictment or by way of summary conviction.

Mr. Clayton Pecknold: It would depend on the jurisdiction. For example, in British Columbia, as I mentioned, we have a charge approval system, so the police would submit a report to crown counsel and recommend a charge, but not recommend whether to proceed by indictment or summary conviction; crown counsel would make that decision. In other jurisdictions where I policed when I was in the Mounted Police, I actually made that decision, but then the crown always reserved the right to proceed by way of indictment or by way of summary conviction. Often, as a young constable, I'd proceed by way of indictment, but they'd proceed by way of summary conviction. I don't know about Montreal.

[*Translation*]

Mr. Pierre-Paul Pichette: It's the same situation in Quebec. It's always a discussion between Crown counsel and the police officers who lay the charges.

[*English*]

Mr. Derek Lee: So in some jurisdictions it will be with the advice of a crown prosecutor, and in other jurisdictions you may have police officers making that decision about whether to go by way of summary conviction or by way of indictment. If we were to leave this bill the way it is, we would have those—I would use the word "arbitrary", but I don't want to call judgments by police officers arbitrary, because they're trying to make the best judgment they can.... But from the point of view of the justice system, without any guide to the police officer making that decision, it might be labelled in some contexts as arbitrary vis-à-vis the procedure.

Would you accept my suggestion then that those decisions could be viewed as arbitrary and would exclude some offenders from conditional sentencing, based on the current government bill?

● (1715)

Mr. Clayton Pecknold: I don't think there's a jurisdiction where a crown counsel wouldn't review that, and they would not necessarily proceed differently from the police officer who may have laid the charge originally.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Thank you.

We have two last speakers before adjourning today's meeting. They are Ms. Gallant and Mr. Moore.

Ms. Gallant, do you still wish to speak?

Mr. Moore.

[*English*]

Mr. Rob Moore (Fundy Royal, CPC): Thank you.

Thank you to the witnesses for your testimony. I found it most useful.

Don't feel bad about not having all kinds of statistics, because that's not why you were invited. I don't know why the opposition continues to ask for these statistics; these are not the bodies that gather all kinds of statistics. You're here to represent the chiefs of police, victims, and the John Howard Society. I wouldn't expect that you would be able to thrill us with all kinds of national statistics.

What I am interested in is your perspective in representing victims, front-line police, and chiefs of police. We hear stories as members of Parliament. Ms. Gray-Donald, who happens to be a constituent of mine, referred to a situation—her mother appeared as a witness before the previous government on the voyeurism provisions—and those anecdotal things are very important.

Mr. Lee said that we don't like the look of people doing hard time. That's not the case at all. The fact of the matter is—and Mr. Pecknold mentioned this—the public is losing faith in our justice system. We have to have faith in our justice system. I think that's so important. We are acting to restore that faith.

The opposition says that this is perhaps arbitrary. Well, in each of the offences that are enumerated here, previous Parliaments set a maximum of 10 years. That's somewhat arbitrary. Maybe some of them should be 10.2 years or 9.6 years maximum, but someone drew a line at 10. We're drawing the line that when proceeding by way of indictment for these offences that Parliament considers serious that an individual not serve time in their community, that we actually bring that denunciation and that deterrent into our justice system so that they have to serve some time in prison.

Can you give me a bit of the perspective from a victim and from the police? From the victim's perspective, how do they feel when they've been victimized and the person is serving time in the community where the victim lives? For the police, how do your officers respond when you've done the hard work to bring someone to that point, you've done your job, and then you find out a week or two later that the person you thought was going to be put away for a serious crime is back in the community?

Mrs. Krista Gray-Donald: It does depend on the nature of the offence, but predominantly the emotions that victims describe to our organization centre around being let down by the justice system. They feel their perspective is not taken into account and that the gravity of the offence and their suffering is not taken into account in handing down sentences. There was a case in Orangeville recently where a woman was sexually assaulted by a friend of her husband. He received a conditional sentence. Although there was no penetration, she was sexually assaulted and she did have many of the associated side effects. She felt a conditional sentence did not meet the consequences of the actions.

Another emotion we commonly experience, especially in cases of domestic violence and sexual violence, is fear. The victims do not feel that any consideration has been given to their safety by allowing an offender who has assaulted them, or an ex-spouse who continues to threaten or harass them, into the community. They feel those concerns are not taken into account, whereas if they are incarcerated, they cannot be followed, they cannot be parked in front of their house, and it's much less likely they'll get threatening phonecalls. All these things can happen unchecked while someone is on a conditional sentence.

● (1720)

Mr. Rob Moore: Thank you.

[*Translation*]

Mr. Pierre-Paul Pichette: Mr. Moore, we encourage our police officers to bear in mind that they represent the first level of the judicial process. Ideally, they should not feel any resentment as to what is to happen next.

However, as I said earlier, for some types of crimes—and I used the example of car theft—we are at the point now, at least within my own police service, where we view them with a certain amount of cynicism. Given the number of people who are charged with this crime and the type of sentence they receive... We see these same individuals out on the street the next day. For police officers who end up seeing them again and have to arrest them once more for the same type of crime they were involved in days or weeks before that, it becomes rather repetitive. I won't go as far as to say there is disengagement, but they end up wondering whether they shouldn't be doing something else.

That situation has consequences that we are seeking to minimize, but it is absolutely essential—and I think this is really the message we want to leave with you today—that the provisions of the Criminal Code give equal weight to the concerns of the public, the victims, the accused and the police officers who enforce them, and that there be justice for all. If we can say that is true at all four levels, I think we will have met our goal. But at the present time, as regards some offences, both in my opinion and based on my own experience, we are not meeting that goal.

The Vice-Chair (Mr. Réal Ménard): You may ask one last, brief question.

[*English*]

Mr. Rob Moore: Thank you.

That is what we're trying to restore. We feel that the scales of justice have tipped too far, and we have to take into account the public's feelings, the public's faith in the system, and the rights of victims.

There's always a lot of talk about cost. It might only cost $1,400—that's the average—but that's the most simplistic way to look at it. What's actually being done? We know that $1,400 over the course of the year is not going to buy a lot of supervision. We heard testimony the other day about offenders who forward their home phones to their cell phones—perhaps you've heard of that. So we have to look at protection of society. We're trying to achieve that balance here in some way and move the scale in that direction.

I wonder if you can comment a bit on the cost generally when someone who's on a conditional sentence is out in the community reoffending. If that person is in prison they're not reoffending, but if they're out on the street and continuing to steal cars, I want to know if anecdotally—

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Because eight minutes have already been used, I would ask that your answer be brief. There are two speakers, and I know that people have to go back to their ridings. Who would like to give a brief answer?

[*English*]

Mr. Clayton Pecknold: We can take notice of the fact that criminal investigations are expensive, the trial process is expensive, policing is an expensive activity, and the time they spend dealing with people who violate conditional sentence orders or convicting them of further crimes could be spent doing other types of work.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Thank you.

We have two more speakers, namely Ms. Gallant and Ms. Barnes.

Ms. Gallant, you have the floor.

[*English*]

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you.

My first question goes to Mrs. Gray-Donald. Do victims of sexual assault choose not to press charges knowing that the potential sentence, if there is even a conviction, is merely a conditional sentence?

● (1725)

Mrs. Krista Gray-Donald: That is one of the reasons victims of sexual assaults do not choose to press charges or seek charges. There are a myriad of reasons why victims of sexual assault won't, and they're far too lengthy to be covered by this committee's scope. They know that a slap on the wrist is all that's going to result, so why put themselves through that painful process of reporting the assault, having the examination, and testifying. It is very intrusive, especially for victims of sexual assault. So that is a concern.

Mrs. Cheryl Gallant: Thank you.

Mr. Stewart, in your written submission you state that research over many years has demonstrated that the deterrent effect of higher penalties is very unlikely to have a significant impact on crime rates. Would you please provide this committee with three studies that would support that statement?

Mr. Graham Stewart: Yes, I'd be glad to.

Mrs. Cheryl Gallant: Thank you.

Second, you state that public perception of the justice system would be distorted by taking discretion away from the judges. Judges would still be able to determine the length of the sentences, would they not? There is some discretion on the part of the judges.

Mr. Graham Stewart: The bill would remove the option of a conditional sentence for indictable offences with potential sentences of ten years or more.

Mrs. Cheryl Gallant: And the other statement, "The impact will be disproportionally felt by vulnerable people based on their income, class, ethnicity, race and other...." Those are your words.

Mr. Graham Stewart: Yes.

Mrs. Cheryl Gallant: Removing conditional sentencing means conditional sentences are removed from certain crimes. Are you saying the more vulnerable are more likely to commit the crimes for which the conditional sentencing is removed?

Mr. Graham Stewart: What I'm saying is we're always seeing more vulnerable people over-represented throughout the criminal justice system. But if you look at the ten-year maximum, it's quite clear that, for instance, white-collar property crime is often included, as it's under ten years, while those longer than ten years are excluded. You've got all sorts of property offences that are typically middle-class, white, upper-class crimes. You don't see lower-class people involved in property fraud, or fraudulent instruments, and so on. Things like break and enter, possession of break-and-enter instruments, theft over, and so on are all precluded.

This is a bias that gets reflected in sentencing. It doesn't get reflected in sentencing where there's discretion, but when we go to this rather arbitrary ten-year limit, then those longstanding biases within the Criminal Code start playing out in a very real way.

Mrs. Cheryl Gallant: And for the people who don't have a home to go to for "house arrest", where do they go?

Mr. Graham Stewart: In deciding what to do, a judge always considers the strengths and supports for that person. But the case that would go to the judge that the defence counsel would generate would include how this sentence was going to be administered. And if there wasn't that capacity, the chances are greater the person would not receive that particular sentence.

Mrs. Cheryl Gallant: So regardless of conditional sentencing, lower-income people, who possibly don't even have a home, would automatically go to jail, in the absence of support.

Does the John Howard Society provide any housing for people in this predicament, without a home to go to, to carry out their conditional sentence?

Mr. Graham Stewart: Not for conditional sentencing. We do provide residences, largely for people under supervision from prison. But there's no funding I'm aware of to provide assistance for people under these circumstances. And you're right; it is a problem.

Mrs. Cheryl Gallant: So you have no affiliate organizations that provide a—

Mr. Graham Stewart: No.

Mrs. Cheryl Gallant: Thank you.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Thank you.

You can ask one last question, Ms. Barnes.

[*English*]

Hon. Sue Barnes: Thank you very much.

Studies have said that people will alter their behaviours if they perceive something to be unfair. So if sometimes the charges will be charged at a lower and included offence with the penalties.... If you take away the judge's discretion on a conditional sentencing, we could end up with an anomaly here that you may have some movement going in exactly the opposite way. And I'll just throw out an example: You may get more suspended sentences with probations, or other types of combinations, or very short incarcerations, that type of situation.

First of all, Mr. Stewart, you would be aware of the studies, I'm sure, that have shown those anomalies. People shop a lot of things around. Do you think this could be one of the unintended consequences of this type of situation?

● (1730)

Mr. Graham Stewart: It creates a fraud of sorts. If they feel a person should get a conditional sentence but is technically ineligible and therefore they proceed differently, with let's say a summary offence, or they reduce the charge, whether it's done in court or it's done by the crown, you end up with the same people rationalizing that the defence was different from what it really was. Instead of being able to take the case as it stands, have it presented in court with the harm that was done and responsibility, everything begins to be shaded to predict the outcome that's been decided. The less the legal process is in the open—and courts are in the open—and is put into the backrooms of prosecutors and offices of the judges and so on, the less the public will ever understand sentencing.

It is very complex. I agree with the other witnesses that it's very complicated, and also I agree that what the public hears is a very slim slice of it. But in the end, I cannot believe that confidence in criminal justice will be enhanced by a system that's not transparent.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Ms. Barnes, we are going to stop now because you've already had three minutes and you had 10 minutes on the first round. It is already 5:45 p.m.

Hon. Sue Barnes: No, I only had five minutes.

The Vice-Chair (Mr. Réal Ménard): No, you had 9 minutes and 20 seconds on the first round. In any case, go ahead and ask a very short question.

[*English*]

Hon. Sue Barnes: To follow that up, one of the things that would help alleviate the situation is if, instead of being an absolute, it was a presumption, a presumption against this.... And the way it was phrased in Bill C-70 was unless the judge put in writing. In other words, you can't get a conditional sentence for these listed offences. They had things like organized crime and terrorism offences. They were just there. But there was another section that said if there were exceptional circumstances the judge could put on the record reasons for giving one.

That was designed, I believe, to allow for that unusual situation, that variable situation, not the everyday. It is a presumption for, but there wasn't an alternate way for a judge's discretion.

I would like to hear from the police chiefs on that.

Mr. Clayton Pecknold: First, with respect to the possible anomalous result of more suspended sentences, etc., I could envision that. The only thing I'd say to that is we can only slay one dragon at a time.

With respect to the second part of your question, I think that really ultimately goes to our point about complexity and vagueness, and perhaps presumptions and exceptions to the rule that follows the rule we suggest adds to the complexity.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Thank you, Ms. Barnes.

Are there any other comments?

I want to thank our guests for being with us and sharing that information. The next meeting will take place on Monday at 3:30 p. m.

The meeting is adjourned.

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

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

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
