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Chair

Mr. Art Hanger

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● (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call the meeting of the Standing Committee on Justice and Human Rights to order. The orders of the day are for the study of Bill C-9, an act to amend the Criminal Code for conditional sentence of imprisonment.

We have four presentations today: the first from Mr. Gary Mauser, a professor at Simon Fraser University of British Columbia; the second from the Canadian Bar Association; the third from the Canadian Centre for Abuse Awareness, Mr. John Muise; and fourth, from Ms. Isabel Schurman, a lecturer at McGill University.

I'm going to go in the order set out in the notice of meeting. We will start with Mr. Mauser. I would ask that the presenters keep their comments down to ten minutes.

Mr. Mauser has to leave a little early. We appreciate your attendance. I know you're under pressure to get moving; I know the members have some questions for you. So we will ask you to begin, Mr. Mauser.

Professor Gary Mauser (Simon Fraser University, As an Individual): Thank you very much, Mr. Chairman.

I'm Gary Mauser, a professor at Simon Fraser University. I am privileged to be in both the Institute for Canadian Urban Research Studies, in criminology, as well as in the faculty of business administration. I have researched and published in criminology for more than fifteen years. My doctoral training was in social psychology and quantitative methods. My academic research has been published in criminology, political science, as well as business journals.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Mauser, could you please speak more slowly, so that the interpreters have an opportunity to translate what you're saying?

[*English*]

Prof. Gary Mauser: I apologize. I will go more slowly.

My remarks are directed to the question of whether or not incarcerating serious or violent offenders is effective in protecting the public.

My reading of the criminological research suggests that imprisoning serious offenders is indeed effective; that increasing the number of offenders who are incarerated acts to reduce violent crime rates. This effect is especially pronounced with homicide rates. This research supports the wisdom of imprisoning those who have been convicted of serious offences; that is, those punishable by prison terms of ten years or longer.

Some Canadians have a bias against anything American, but to reject American research studies simply because they are American runs the risk of ignoring potentially effective solutions to serious Canadian problems; thus I believe responsible Canadians should examine U.S. justice policies in order to emulate their successes and to avoid their failures. The U.S., being so much larger than we are, simply has a wider and deeper bank of information from which we can learn.

The facts indicate that violent crime rates have fallen faster in the U.S. than they have in Canada. I've had some charts distributed that illustrate this. Between 1992 and 2004, for example, the overall violent crime rate fell 38% in the U.S., but only 13% in Canada. This precipitous drop is even more evident in homicide rates. During the same time period, the homicide rate in the U.S. fell by 41%, while in Canada it only fell 26%.

Criminologists have been studying this drop, which was completely unexpected, with some attention over the past decade. The results of this attention are now becoming clearer. There are literally hundreds of studies. I will limit my discussion to the most important ones.

Especially illuminating is the research conducted by Marvel and Moody, who are among the most respected criminologists in the world. In their time series studies, they found strong results at the national level affirming that expanding prison populations is convincingly tied to reducing violent crime rates.

Marvel and Moody's 1997 research demonstrates that for every 10% increase in the prison population, homicide rates drop 13%. In their studies, of course, they controlled for a wide range of other variables, such as inflation, unemployment, demographic trends, socio-economic factors of a wide variety.

Marvel and Moody found similar but weaker relationships for assault and robbery. They speculate that this weaker statistical relationship is most likely due to the lower quality of arrest data for crimes other than homicide.

Marvel and Moody's results were quite robust, and their research findings have been replicated by other researchers. One study in particular, by Kovandzic and his colleagues in 2004, deserves mention. They not only confirmed Marvel and Moody's earlier findings but also examined the effect on violent crime rates when offenders get out of prison. They found that there was no evidence of a significant positive relationship between prison releases and homicide rates.

Many researchers have observed that prisons are expensive. That's true; however, who ultimately bears the cost of crime is a question of more importance than the cost itself. Yes, prisons cost taxpayers more than does probation or house arrest, but the costs of criminal violence are paid for by the victims—their lives blighted, the lives of husbands, wives, or children lost to criminal violence.

● (1535)

When serious offenders are allowed to escape serious jail time, they are free to commit more violent crimes. Individual Canadians bear these costs.

To take only one example, Jane Creba, who was killed in Toronto on Boxing Day last year, might still be alive had the previous government acted to keep serious offenders in jail longer. Other examples of questionable sentencing decisions are frequently reported in the media.

Research in both the U.S. and Canada suggest that those in social minorities are the victims of violent crime at higher rates than other citizens; thus it follows that increased prison terms will be especially effective in reducing victimization rates among minority members. In Canada, aboriginal victims disproportionately bear the costs of violent crime; thus aboriginal people will be among the primary beneficiaries of a program that incarcerates serious offenders.

Before I conclude, I would like to say a few words about the tendency of some people to refuse to believe statistical studies that do not conform to their previous beliefs. Such a position is buttressed by the cynical claim that statisticians can obtain any results they wish by simply massaging the data.

Such cynicism justifies laziness and ignorance. Certainly, liars and sophists use statistics. Liars misuse words, too, but that does not mean we should give up on language.

In conclusion, despite what you may hear from special interest groups who cherry-pick data, the criminological research is quite clear: longer prison terms for serious or violent offenders has been important in the dramatic fall in violent crime in the U.S. These results support the logic behind Bill C-9, that of incarcerating those who have been convicted of serious offences.

Thank you for your attention.

The Chair: Thank you, Professor Mauser.

I notice that there are two presenters for the Canadian Bar Association. Again, please keep your comments to ten minutes if you possibly can. Thank you.

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair and honourable members.

The Canadian Bar Association is very pleased to have an opportunity to present its views to you today on Bill C-9. The CBA is a national voluntary organization comprising lawyers, law professors, law teachers, notaries, and law students from across the country. The submission you have before you today was prepared specifically by the criminal justice section.

Just a word about the section: it is unique amongst criminal justice organizations within Canada in that its members comprise both crown and defence attorneys, and the submission you have before you marks the consensus of those two groups coming together.

I have with me today Mr. Adrian Brooks, who is a member of the executive of the section. I will ask him to address the substantive areas of the bill.

● (1540)

Mr. Adrian Brooks (Member at large, National Criminal Justice Section, Canadian Bar Association): Thank you, Mr. Chair.

Conditional sentences at the present time are for those individuals a judge has decided do not need to be imprisoned for rehabilitation or for purposes of community safety. Bill C-9 will put some of these people in jail; therefore, without making the community safer, more people will be in jail, and when they get out of jail the risk to the community may well be higher. For this reason, the CBA does not support Bill C-9 yet will make a submission to you that recognizes the significance of serious violent crime.

First with regard to conditional sentence orders, these clearly have a proper place in sentencing. They have dealt with all manner of issues and all manner of sentences. The benefit to society of keeping an offender employed and with their family is too obvious to dispute. Yet at the same time, conditional sentence orders have been significant in the onerous terms that are put on individuals. Individuals may indeed find serving a shorter jail sentence, followed by parole, easier than a conditional sentence order.

Criticism of conditional sentence orders is often centred on the nature of the offence, but conditional sentence orders, it should be remembered, are based on many factors, not just the nature of the offence. They are based on the circumstances of the particular offence and the particular offender, so that any legislation must keep in mind the myriad factors that go into a just sentence. That is why the CBA supports “a more refined tool”, as that term is used on page 4 of the English edition of our brief, page 5 of the French edition.

Because conditional sentence orders provide that much-needed intermediate step between jail and probation, any bill should be slow to restrict the use of conditional sentence orders. Bill C-9 has chosen the Criminal Code's use of maximums as the line between conditional sentence orders being available or not. That line is flawed, for two reasons: one, it is too broad; two, it is not based on a coherent principle.

It is too broad because it will sweep up offences for which there is no reason not to have a conditional sentence order, at the very least as an option. Unauthorized use of a computer or mischief causing damage over $5,000 are examples of some situations in which a conditional sentence order might be best left to a judge. We say it is not coherent to use maximums also because they were never intended to create this kind of black-and-white dividing line.

The current sentencing regime allows a good deal of judicial discretion, and it is important to maintain as much judicial discretion as possible. That is so in order to recognize the very broad range of circumstances that can occur in any particular case, and that it is appropriate that the judges have that discretion. They have the expertise, they listen to both sides, and they make those hard decisions that at the end of the day must be made. If the discretion of judges is limited, what is it to be replaced with?

Bill C-9 gives a broad “one size fits all” substitute that is not a useful substitute; again it is not a refined tool. One example may suffice.

We know that conditional sentence orders are used at different rates in different provinces. Clearly, the judges have used their discretions in different provinces to make the decision as to what their community needs. Bill C-9 will end that, so that individual regional differences will be run over, for in excess of 100 offences.

Bill C-9 as it currently exists is inconsistent with the proportionality principle of sentencing. The proportionality principle creates respect for the law. Bill C-9 removes, for a broad range of offences, that proportionality of sentences for an individual and for an individual circumstance.

I ask you to consider how Bill C-9 will play itself out. Here is an example of an individual who would be sentenced for a counterfeit $20 bill and would not be eligible for a conditional sentence order under Bill C-9.

● (1545)

Judges may well say, in their reasons, that they would not otherwise be sending the person to jail. The judge would say there is no value in taking away the offender's job and the offender's time with family, yet would say that Parliament has left no choice. The judge may well say that an individual ought not to be in jail, wasting taxpayers' money, yet he or she has no discretion to do otherwise. That is why we say, in page 4 in the English version and page 5 in the French version, that this approach can foster disrespect for the law. We say that using proportionality and restraint is not being soft on crime; it is being smart about crime.

Serious, violent crime, nevertheless, is a significant issue. The problem is a limited one and easily identified, and that makes the broad sweep of Bill C-9 unnecessary. Our submission accepts that the problem of conditional sentence orders for violent offences can be dealt with by legislation, and we offer three alternative options. They are found on page 6 of the English version and page 7 of the French version.

In conclusion, it is our position that Bill C-9 will put people in jail who ought not to be there. It will not increase public safety; indeed, it may increase the risk of reoffending and thus make our communities less safe. A more focused piece of legislation can deal with the problems of serious offences; Bill C-9 is not that focused piece of legislation.

Thank you.

The Chair: Thank you, Mr. Brooks.

Next on our agenda is Mr. Muise, from the Canadian Centre for Abuse Awareness.

Mr. John Muise (Director, Public Safety, Canadian Centre for Abuse Awareness): Thank you, Mr. Hanger.

Thank you, committee members, for allowing us to appear on Bill C-9.

I should tell you a bit about ourselves. I'm a recently retired 30-year veteran of the Toronto police service. I left there at the rank of detective sergeant, and in my last posting I was in charge of the major case management section and the retroactive DNA section at the homicide squad.

Before that, I spent six years on secondment or loan to the Ontario Office for Victims of Crime, which provided advice to a succession of attorneys general about public safety and support for crime victim issues.

I've volunteered for the CCAA for the last several years and upon my retirement took on the full-time position of director of public safety.

The Canadian Centre for Abuse Awareness has been in existence since 1993. It's an organization that survives solely through charitable donations; we accept no government funding.

The organization has raised awareness about the true cost of neglect through its support of the victims of child abuse.

It's based in Newmarket, Ontario, north of the city of Toronto, and it's powered by a committed group of staff and volunteers who provide support to 70 partner agencies—whether it's fulfilling a child's dream wish, assisting crime victims and adult survivors of abuse, developing abuse prevention programs and resources, or more recently advocating publicly for legislative change.

The CCAA is committed to ending child abuse.

We also have a report. It's called the Martin's Hope report. It's named in honour of Martin Kruze, who was the first survivor of the Maple Leaf Gardens child sex abuse scandal to courageously come forward and publicly disclose.

Convictions were registered in his case against the offender for numerous child sex abuse offences. Only four days after one of the accused, a man by the name of Gordon Stuckless, was sentenced to just two years less a day, Martin tragically took his own life. Although it was too late for Martin, Mr. Stuckless' sentence was increased to five years on appeal.

This proved to be a turning point for the CCAA. Afterwards, the centre conducted ten round tables around the province, and we think this is what's important about our organization. Following those ten round tables, where we spoke to 150 front-line criminal justice professionals, crime victims, and survivors, the CCAA completed the Martin's Hope report, which makes 60 recommendations for change—39 of them directed at the federal government.

We cover a wide variety of areas, including but not limited to the reform of sentencing, parole, and correction laws; the DNA databank; the age of protection; child pornography and the Internet; and children in the sex trade.

One of our recommendations, which is contained within several recommendations about sentencing, is actually about conditional sentencing.

When we spoke to the people around the province at the ten sites, despite the wide variety of voices heard, there was a significant commonality in what was said, with certain themes enunciated at pretty much every site.

When it came to complaints about the justice system, without a doubt the prevalence of conditional sentencing was at the top of the list of those complaints. We suspect that if the same kind of survey was done of those kinds of people in other provinces across the country, we would receive similar complaints.

As all of you here today know, conditional sentences of imprisonment—and that's what they're called—as a sentencing option came to be in 1996 as part of a renewal of sentencing law. The intention was to divert minor offenders from the prison system. In fact, the debate around the amendments at the time—and I remember them—included the fact that it was not intended to be used for serious or violent offences. Ten years of jurisprudence suggests otherwise.

Understand that the CCAA supports targeted and appropriate diversion of offenders from the prison system for less serious crimes. In addition, we support the use of effective restorative justice programs, as part of an overall strategy to reduce recidivism and, if we can, make offenders healthy and whole.

But we and many others believe the expanded use of conditional sentencing for a wide variety of serious offences and offenders has done more to bring the administration of the criminal justice system into disrepute than any other single measure.

● (1550)

Conditional sentencing has been routinely used by judges across this country to sentence literally thousands of serious offenders. Its use is widespread, and Regina v. Proulx at the Supreme Court of Canada has made it clear that there is no presumption forbidding the use of conditional sentencing. It's effectively carved in stone.

Despite the fact that probation orders exists in our sentencing regiment for up to three years, Parliament previously saw fit to add this new option—something that in theory would provide an option between actual incarceration in a correction facility and probation.

What hasn't been confronted in the debate about this, and what I suspect many of your witnesses on Bill C-9 will not confront, is that there is little that resembles prison or incarceration when an offender is provided a so-called conditional sentence of imprisonment or “house arrest”, as it is often referred to. Anyone who—and I know many of you have—has spent time in a courtroom knows that when an offender is about to be sentenced, and he bends over to talk to his defence lawyer, he is not pleading with counsel to implore the judge not to sentence him to “house arrest”. There isn't an offender, except for the most institutionalized of recidivists, who pleads for two years less a day in the nearest provincial jail, when staying at home is a possibility.

Let's be honest, there isn't much about staying at home, watching television, surfing the Internet and having the odd drink, along with the usual handful of caveats that allow travel in and out of the house as necessary, that remotely resembles prison. Quite frankly, it is a fraud that has been foisted on the Canadian public—this notion that these sentences are removals of liberty, worthy of being called imprisonment.

It should also be understood that the police aren't monitoring, and the probation service isn't visiting these offenders. Quite frankly, communities don't know what these offenders are doing, or if they are abiding by the conditions as set out in their orders. Justice this isn't, and enhanced public safety this isn't either.

We note that from the legislative summary provided on www.parl.gc.ca, there is little in the way of research on the effectiveness of conditional sentence orders. One notation does jump off the page, though. In a survey attributed to Professor Julian Roberts, he indicates that the successful completion rate of conditional sentences was 63% in 2000-2001, falling from 78% in 1997-98. The note makes the point that the failure rate was largely attributed to breaches of the increasing number of conditions placed upon offenders, rather than allegations of fresh offending.

That is no doubt the case, but one is left wondering if it has to do with the ever-increasing number of dangerous and serious offenders who have been placed on conditional sentences of late. In any event, the fact that the most recently published successful completion rate is at just 63% is quite extraordinary, when one considers that the police and probation are not proactively monitoring these offenders. The bottom line is that it appears that these orders may have a very significant failure rate, minus any kind of ongoing proactive monitoring. How bad would the rate be if they were being properly monitored? This is more then a little bit troubling.

Regarding the offences identified by Bill C-9, as I indicated, CCAA's Martin's Hope report supports the calls from many organizations to repeal the conditional sentencing provisions of the code. We were heartened when the mandatory minimum sentences were recently passed for a variety of child sex offences, with the net result of a repeal—that conditional sentences could no longer be given for those particularly serious crimes perpetrated against children. One of my past co-workers appeared on that bill.

With respect to the current list of offences, as proposed for exclusion by Bill C-9, with a maximum of ten years or more where the crown proceeds by indictment, we see this bar as being placed sufficiently high.

Although our organization has as its mandate the protection of children, we find it difficult to fathom the outcry over some of the offences included on the list. The property crime rate has more then doubled since the 1990s—that's the crime rate, notwithstanding the fact that many people just don't bother reporting offences, due to a loss of faith in the justice system. How much higher would the rate be if people actually reported all of these crimes?

For many people, the kinds of crimes represented—including break and enter, frauds, and for that matter, cattle rustling—all have a significant impact on lives. Many people suffer lifelong trauma after having their home broken into and ransacked and their keepsakes stolen. Fraud artists victimize the trusting and the vulnerable. Often the elderly are targeted, leaving them destitute and broken.

● (1555)

As for cattle theft, we understand it has been a topic of debate at this committee. It might not track so well here in the cozy confines of Ottawa, or in The Beaches, the tony neighbourhood where I live in Toronto, but for ranchers in British Columbia and Alberta who don't have insurance, it's serious business that impacts on their lives and their livelihood.

As an aside, when I travelled through the beautiful Chilcotin region of B.C. a few years ago, I saw a full-sized billboard that said, “We don't call the RCMP when folks steal cattle around these parts”. I'm not countenancing that behaviour, but the message is clear: they've given up and lost faith in the criminal justice system; they're taking care of business themselves. That's not a good thing, folks.

In any event, we think that the fact of the crown having to proceed by indictment for those offences hybrid in nature and the opportunities that currently exist for accelerated parole review, guaranteeing release after one-sixth of a sentence by paper review for certain of these offences, have not set the bar too low for those concerned about these proposed appeals. In fact, we have one area of concern with respect to the bill, and that is in regard to offences committed against children not being included. Specifically, these offences are assault, assault causing bodily harm, and sexual assault, when the crown proceeds summarily. When a child is the victim, these cases are serious matters, and we would encourage the committee to consider a simple amendment that would include those offences when a child is a victim.

A couple of questions have been raised. If the crown doesn't like a conditional sentence, why don't they just appeal it? Crown appeal divisions are overworked and understaffed, as are the appellate courts. We see this as an entirely inappropriate solution; the law has been identified as problematic; Parliament needs to intervene.

Would Bill C-9 interfere with restorative justice initiatives? Absolutely not. In the vast majority of cases, there are multiple opportunities to engage in restorative justice long before reaching the point at which a court sees fit to sentence an offender to a period of incarceration. In addition, for those offenders who do end up incarcerated, we would encourage you to focus on enhancing in-custody restorative justice initiatives, and in cases in which offenders have had some success as a result of restorative justice, to tie these successes to earning parole, rather than providing automatic release—i.e., accelerated parole review or statutory release. The end result would be that an offender would receive the dual message of denunciation and deterrence as a result of being incarcerated, coupled with effective restorative justice initiatives tied to earning parole.

Will the police or crown overcharge so as to avoid conditional sentences? Again, we find this hypothesis unrealistic. The crown has the ability to amend charges that the police lay and does so all the time. Crowns make decisions every day about how to proceed, and BillC-9 does not remove that discretion.

In conclusion, although the CCAA would have preferred more extensive amendment of the conditional sentencing provisions of the code, we support the proposed legislation and welcome the direction this government has taken. As indicated, our voice is that of front-line criminal justice professionals, crime victims, and survivors. Additionally, we believe that hard-working and law-abiding Canadians by and large support these kinds of targeted amendments. We do not see this legislation as being driven by ideological considerations, but rather by a concern for enhanced public safety and proportionality in the justice system that recognizes the impact on individual crime victims, communities, and societies at large.

The CCAA supports speedy passage of this legislation as written, and would encourage this committee to consider the additional amendments we have suggested with respect to inclusion of assault, ABH, and sex assault for the hybrid offences by summary when a child is victimized.

Thank you for the opportunity to participate in this most important democratic process.

● (1600)

The Chair: Thank you, Mr. Muise.

Ms. Schurman, you have the floor.

Ms. Isabel Schurman (Sessional Lecturer, McGill University, As an Individual): Good afternoon, ladies and gentlemen.

[*Translation*]

Thank you for giving me this opportunity to speak to you today.

[*English*]

I will follow the lead of my colleagues and tell you a little about why I think I'm here.

I am a criminal law practitioner and professor of sentencing in Montreal. I studied law at McGill from 1979 until I received a first degree in 1982 and a second in 1983. I was admitted to the Quebec Bar Association in 1984. I have either taught courses or lectured at the Université de Montréal, Concordia, McGill University, the bar admission course in the province of Quebec, the Federation of Law Society's national criminal justice program, and training for advocates on the international stage. One of my involvements in the past was with our friends from the Canadian Bar Association, where I was at one point in time chair of the national criminal justice section, and it was a pleasure to do so.

You will hear from people who have a lot more detail, a lot more to say than I do. What I would like very much to do is leave you with a few of the questions that have been in my mind constantly since I heard of and read the contents of Bill C-9.

Bill C-9 preoccupies me greatly because sentencing preoccupies me greatly. Sentencing preoccupies me because it's the nuts and bolts of the criminal justice system. With sentencing we decide who is wrong and how wrong they are. Sentencing is what goes on day in and day out in every courthouse in this country, because, depending on the jurisdiction, 75% to 90% of cases end in guilty pleas. Sentencing, ladies and gentlemen, is essential—one of the essential components of our criminal justice system. Sentencing will tell us an awful lot about who we are as a Canadian society.

If serious violent crime is the issue, then I would respectfully submit to the committee that this bill will not address it. This bill will complicate and confuse criminal justice in this country. It will result in inconsistencies from person to person and from jurisdiction to jurisdiction.

We've spent so much time and energy in Canada looking into sentencing—the Law Reform Commission, a royal commission on sentencing, the 1987 Canadian Sentencing Commission, the 1988 report of the House of Commons entitled *Taking Responsibility.* We've spent money and time and energy trying to come up with solutions to keep Canadians happy in a safe society with fair sentencing policies. These various commissions led to reforms in 1994, among others, Bill C-41, which talked to us about the purposes and principles of sentencing.

Denunciation, deterrence, sure, with rehabilitation and proportionality. Proportionality is very simple: the sentence has to be proportionate to the gravity of the offence and degree of responsibility of the offender. We cannot and will not sentence in the abstract.

Since 1994 we've legislated aggravating factors. We've said that if the crime is motivated by hate, you're going to get a higher sentence. If it's an abuse of a spouse or child, you're going to get a higher sentence. If it's abuse of authority, breach of trust, or related to the benefit of a criminal organization, you're going to get a higher sentence. It's all in the Criminal Code. We've legislated those little by little over the years because we want to make sure that serious violent crime doesn't go unpunished. In 2002 we legislated that an aggravating factor in breaking and entering is to enter a house when you know or believe that there are people inside, to deal with home invasions.

The law is changing to define which are the factors that will make an offence more serious. How will we evaluate the degree of responsibility of the offender? And the law has changed to look at effective alternatives to incarceration.

● (1605)

These reforms grew out of concern that Canada was incarcerating at an extremely high rate compared with other western Commonwealth countries. Canada's rate was some 153 per 100,000—second only to the U.S., which was far ahead of us at 600 or 700—and this despite the fact that commission after commission in this country had decided that incarceration was harsh and ineffective in many cases.

Justice Vancise of the Saskatchewan Court of Appeal made the point in a case called MacDonald that

> Imprisonment has failed to satisfy a basic function of the Canadian judicial system, which was described in the Report of the Canadian Committee on Corrections, *Toward Unity*: "to protect society from crime in a manner commanding public support while avoiding needless injury to the offender".

One of the most prominent jurists in this country made that statement.

Many of these studies also confirm that the length of the sentence was not the deterrent for crime—that the certainty of apprehension and conviction was the biggest deterrent we could hope for in criminal justice, not the length of the sentence.

Our priorities, then, as they are now for all of us, are to keep Canada safe and to choose or develop punishment options that would see public funds—public funds—our money—used wisely and carefully for key sentencing goals, including deterrence and rehabilitation.

No one is pro-crime. No one is untouched by the trauma on an elderly couple of breaking and entering; no one is indifferent to devastation caused by drugs in our society; no one accepts sexual offences against children or adults, against boys or against girls; no one believes auto theft should go unpunished; but as Julian Roberts, a criminologist referred to earlier today here, wrote recently, "The seriousness of the offence cannot be decided before the crime is committed."

This is the single biggest problem with Bill C-9: it creates arbitrarily a blanket category of offences for which the conditional sentence of imprisonment would not be available without consideration of the specifics of the gravity of the offence or the specifics of the responsibility of the offender.

To target all offences proceeded upon by indictment, for example, meaning the maximum penalty is ten years or more, may not have been intended as arbitrary, but that is the result. The giving of contradictory evidence under oath, no matter how minor the proceeding, would not allow a conditional sentence of imprisonment. Unauthorized possession of a firearm, no matter how grave the circumstances—in downtown Toronto, for example—would be eligible under this new law.

Many offences have a maximum of ten years, but they include a vast range of fact situations that are certainly not equal in gravity. The man who touches the assistant's breast at the office party is guilty of sexual assault—as is the man who proceeds to what we used to call a rape of the 18-year-old secretary in the parking lot.

Not all cases of impaired or dangerous driving causing bodily harm are equal. The elderly man who backs up on the shoulder of the road and kills the motorcyclist is not in the same category, perhaps, as the wanton and the reckless disregard shown by a raving drunk who takes the wheel and seriously injures his partner for life.

Not all frauds represent the same degree of premeditation or the same extent of tragic loss. A $1,000 loss to a bank is serious; a $100,000 loss of life savings is serious too.

Some of the offences targeted by BIll C-9 can be proceeded upon only by indictment. Others may be taken as summary or indictable. The crown will make those decisions. What kind of burden are we putting on our crown prosecutors? They are salaried employees of the state, often overwhelmed and overworked, and not individuals named, as are our judges, with guarantees of independence and impartialit. Should it be up to the prosecutor to decide whether the accused has a chance at a rehabilitation program in the context of a conditional sentence of imprisonment? What pressure are we allowing to be put on these officers of the court to eliminate the conditional sentence of imprisonment, when the police or the public clamour for them to charge the more serious offence?

● (1610)

[*Translation*]

I'm sorry; I guess I'm speaking too fast?

Mr. Marc Lemay: It's not for me, it's for the interpreters. But you're very good.

Ms. Isabel Schurman: You're very kind.

Mr. Marc Lemay: It would be better for you to speak more slowly. That's great.

[*English*]

The Chair: Order, please.

Ms. Schurman, could you conclude, please?

Ms. Isabel Schurman: It is not fair to the crown prosecutors and it would create an image of an arbitrary, unfair system of criminal justice.

What of the image of our judges? The judges do not often speak publicly—I don't know if they've been here to speak—but they must also be so concerned that Bill C-9 is sending a message that we don't trust our judges, and that Bill C-9 is removing their discretion as to what they believe will keep Canadians safe.

Faced with a candidate deserving a conditional sentence of imprisonment but charged indictably, the judge may be tempted to sentence too low because the personal price of prison as compared to the gravity of the offence just seems too high. Why remove a tool that has been used in 55,000 cases since 1996?

Certainly there are examples where the conditional sentence of imprisonment did not seem appropriate, and the press releases seem to show that, but there have been studies indicating that when proper information about the details of a case are given to Canadians, they will often disagree with the press report and agree the sentence was appropriate. The judges see all that information; they have all the evidence. The evidence is rarely simple—it's not a bad person did a bad thing. The evidence is evidence of addictions, of learning disabilities, of mental illness, of societal problems, of desperation, of problems requiring therapy, of complex individuals who can remain functioning members of society. Judges are the best placed to evaluate this.

Why remove a tool that was not invented here? Europe has successfully used the conditional sentence of imprisonment for a very long time, European countries with lower rates of violence than we have here or than our American friends have south of the border. Our friends to the south have never tried the conditional sentence of imprisonment. Do we really want to do what they've done—fill prisons and see no correlating drop in the violence in society?

The conditional sentence of imprisonment—and on this I'll terminate—brought important changes to Canada that the committee may wish to be aware of. The judges would not use it until probation services had the funds. So probation services across the country were given the funds by the provinces to make sure that the conditional sentence of imprisonment was enforced. It was used when probation was not enough. The Supreme Court of Canada said that. Don't confuse it; don't say it's just another probation. It was used when probation is not enough but when fewer than two years incarceration is enough. Those are the parameters. It's not used in any crime at all.

The comparison was made here before this committee to probation, saying that a suspended sentence is the same thing as a conditional sentence of imprisonment. It is not, ladies and gentlemen. The conditional sentence of imprisonment, a breach followed by an intervening event, is punished by a consecutive sentence, and you cannot do that with a probation order. This is a much more severe, much stronger law-and-order tool than it's being made out to be in some circles.

● (1615)

The Chair: Ms. Schurman, I would ask you to conclude now.

Ms. Isabel Schurman: Okay.

We would suggest that the discretion be left with the judges; that we have faith in the appeal process; that we not overburden the crowns; that we take the money that would be used to build prisons and to provide for extra legal aid for incarcerated persons and use that money in order to help the provinces develop the programs that will help these people not find themselves back in the prison system. Help the provinces use the funds instead of forcing them to use them to deal with the destruction of families, with welfare cycles, and with disproportionate numbers of young men in repeat offence positions. Those funds can be better used than in creating prisons as a result of an overly broad legislative amendment.

The Chair: Thank you, Ms. Schurman.

I would remind the committee that Mr. Mauser, unfortunately, has to leave by five. I know there may be some who would like to question him. I would ask that the committee members realize that and pose any questions they may have of him, starting with Mr. Lee.

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

I can probably wrap it up fairly quickly with Professor Mauser, and then perhaps Ms. Barnes would take the rest of my time.

Professor Mauser, can you tell me what your area of teaching is at Simon Fraser University?

Prof. Gary Mauser: My teaching is in ethics and quantitative methods.

Mr. Derek Lee: Quantitative...?

Prof. Gary Mauser: Quantitative methods—that's statistical applications.

Mr. Derek Lee: All right. I guess that's your strength, your forte, your professional discipline, is it?

Prof. Gary Mauser: My professional training is in social psychology and quantitative methods, right.

Mr. Derek Lee: All right.

I think you were able to distribute for us a few pages reflecting some data, and the clerk confirmed that. I'm looking at page one. I just need a bit of help here, because I'm seeing two different things. I know you've made every effort to be accurate, and I may be misreading this, but as I read it now, I'm looking at two trend lines on the front page. One trend line is shown as CAN—presumably Canada—and the second trend line says EU, which either means *Etats-Unis* or the European Union. Which is it?

Prof. Gary Mauser: In English, it's U.S., which could be South Africa, but it is not. It is the United States.

Mr. Derek Lee: That's the United States of America. Now, this particular chart shows the violent crime rate in Canada in 2004 roughly, or perhaps 2003, at the end of the graph, at just under 1,000 and it shows the American, the U.S., violent crime rate at about 475.

Prof. Gary Mauser: That's correct.

Mr. Derek Lee: So are you saying that the violent crime rate in the United States of America is one-half the violent crime rate in Canada?

● (1620)

Prof. Gary Mauser: Those are the apparent numbers. You're quite correct—although I would point out that in order to be as clear and straightforward as possible, I have used the statistics available on the American FBI site as well as Stats Canada. So these are the official statistics.

Unfortunately, Canada includes many more crimes in their violent crime rate than does the United States. Sexual assault is a much broader category of crime here than there, as is assault in general. So we have a higher violent crime rate because we have more actions called crimes.

If one tries to compare apples with apples rather than use the local definitions of violent crime, one finds that the violent crime rates are almost identical but the U.S. crime rate is slightly higher.

Mr. Derek Lee: Perhaps I could suggest then that it is indeed unfortunate that in your comparison of apples to oranges, rather than apples to apples, it's giving the appearance of Canada having a violent crime rate that is double that in the United States of America. I'm going to have difficulty working with a statistic that's not accurate enough for my use in making public policy decisions, because you've already explained that the violent crime rates in Canada are not double those in the United States. They're in fact either similar or less than.

Prof. Gary Mauser: My intent in both graphs is to focus the viewer's attention on the trends. Rather than heavily manipulate the data, which I did not think the committee wanted me to, I gave you the actual from-the-statistical-sources data so that it would be as untrammelled as possible. If you look at the data, you will see that the trend in Canada is very flat, while the trend in the United States is very steeply declining. That is true in both graphs, and that was the intent of my graphic presentation. I hope that clarifies for the members.

Mr. Derek Lee: It does clarify, and I thank you for that.

I suppose the same commentary would apply to the second graph, which shows the homicide rate trends in Canada and the U.S. roughly coinciding with trend lines down.

Prof. Gary Mauser: That's quite correct.

Mr. Derek Lee: However, the U.S. trend line runs on a graph that is up in the range of six to eight homicides per 100,000, whereas the Canadian graph operates within a trend line that runs from about 2.4 down to 2.3.

Prof. Gary Mauser: That's quite correct.

Mr. Derek Lee: Okay.

Prof. Gary Mauser: And the intent here is not to compare the national problems of racism and the legacy of slavery with a country that was the foremost in the Commonwealth or the former British Empire in eliminating slavery. We do not have the legacy of slavery in this country.

Mr. Derek Lee: We're probably not a country without skeletons and misdeeds of our own—I'm sure we're not—but I take your point.

Thank you, Mr. Chairman.

Ms. Barnes, do you want to...?

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

Ms. Shurman, there was some material that you weren't able to cover. Is there anything in your notes that you would like to put on the record? I'll make some time available.

Ms. Isabel Schurman: There's just the concern about the cost to the provinces of the building of prisons and the amount of money it's going to involve for provinces—not for the federal government, because it's obviously limited to sentences of less than two years; the conditional sentence of imprisonment is only applied in those cases.

We're talking about tremendous costs. If we say there are 55,000 people who have benefited from these sentences, or 55,000 cases since 1996, I believe that what was said here at this committee is that 5,784 of those who received conditional sentences of imprisonment in 2003-2004 would not be eligible under this new provision. I believe testimony given at this committee was that some of them would get a probation instead—so they'd actually get a lesser sentence than they're getting now—and some of them would get jail. But that would mean that even if only half of them got jail, you'd have to build jails for 2,800 or 2,900 more persons per year.

Then you're talking about the economic fallout of that when those people are in jail and not working—families on welfare, cycles of poverty—a lot of it coming under provincial funding and provincial funding obligations.

I think that was probably one of the things I had wanted to state that I didn't, towards the end, being afraid of going a bit too fast for the translators and too slow for the committee.

The Chair: Thank you, Ms. Barnes.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Mauser, I want to try and understand something. You have statistics on homicide rates in Canada as compared to the United States. But I want you to know that conditional sentences do not apply in cases involving homicide. They apply only to crimes which are not homicides, except, obviously, in cases of manslaughter, where that is possible. When murder, premeditated murder, the murder of a policeman, and other similar crimes are concerned, they do not apply.

Have you compiled figures in Canada with respect to the failure of conditional sentences since the legislation came into effect in 1996? Do you have any figures on this, or have you not compiled these data?

● (1625)

[*English*]

Prof. Gary Mauser: Is the question, do I have figures on crimes other than violent crimes?

[*Translation*]

Mr. Marc Lemay: Yes. Also, do you have any figures on failures associated with conditional sentences? Have you compiled any such figures?

[*English*]

Prof. Gary Mauser: No, sir. I am looking at overall general effectiveness of a criminal spending time in jail. That was the intent of my presentation.

[*Translation*]

Mr. Marc Lemay: I see.

Ms. Schurman, I won't go back over your presentation, because I fully agree with everything you said.

I would just like to raise one brief point for the benefit of my friends opposite. If you ever sat on the Law Commission of Canada, you were probably one of the last people to do so, because they have just abolished it. That gives you an idea of what is to come.

Do you agree with me that one of the major legal principles recognized by every court in Canada is individualization in sentencing?

Ms. Isabel Schurman: Yes, absolutely.

Mr. Marc Lemay: If Bill C-9 passes, do you believe that major principle, that is so cherished by our courts of appeal, the Supreme Court and even the majority of lawyers in this country, will be completely demolished?

Ms. Isabel Schurman: Yes, I do. We're talking here not only about individualization in sentencing, but also the discretion judges enjoy to set the appropriate sentence based on the circumstances of the offence, as well as all the personal circumstances of the individual that committed the crime and, very often, has pled guilty. They are interrelated issues, if you will — individualization in sentencing and judicial discretion. Those are two fundamental components of our humane, flexible system of criminal law, one that can truly meet the needs of all Canadians.

Mr. Marc Lemay: Thank you.

This question is for our witnesses from the Canadian Bar Association. I read your report with great interest, as I usually read material from the Canadian Bar Association. On page 6 of your brief, you say: “We suggest consideration be given to the following alternatives [...]”

Should I conclude from this that the goals set out in Bill C-9 are inappropriate, in your opinion, and that we should consider your three recommendations? If so, how are we to go about doing that?

[*English*]

Mr. Adrian Brooks: We are asking you to look at these three options suggested on page 7 of the French and page 6 of the English.

The reason for this is that it is our view that there is, to whatever extent, a problem perceived as it relates to serious violent crime, and that there are other offences swept up by Bill C-9 that do not have that concern. Accordingly, we have made the suggestions, as you have referred to them.

If you are looking for an example of how we are thinking of it or articulating it, you will remember in other provisions of the Criminal Code that there are listed offences for which the particular provision is applicable—for example, taking DNA at sentencing, or wiretap offences. The specific offences are listed, and the specific provision is made applicable to those specific offences. That is really the thinking that's at the heart of the section you've referred to.

[*Translation*]

Mr. Marc Lemay: In paragraph 3 of the English version, it says

[*English*]

“define 'serious violent offences'”.

● (1630)

[*Translation*]

What is meant by “serious violent offences”?

You also say: “We note that jurisprudence is developing on that topic under the Youth Criminal Justice Act.” So, you're referring here to young offenders.

Can you define what is meant by “serious violent offences”? Do you have your own definition? Are there any appeal court rulings or decisions — certainly not Supreme Court rulings, because I would know about them — dealing with this? If not, are you asking us to define the term “serious violent offences”?

[*English*]

Mr. Adrian Brooks: There are no decisions—you are correct in that regard—or I'm sure you would have been well aware of them.

As to definition of “serious violent offences”, obviously there is not a well-developed one in the jurisprudence; it is just starting to be developed. And obviously—and this is part and parcel of the other recommendations that have been made—this legislation can seek to create its own definition of what is a serious violent offence and include the particular sections of the Criminal Code that it says constitute that serious violent offence, and therefore make those ones ineligible or subject to a presumption as they relate to the availability of conditional sentence.

The Chair: Thank you, Mr. Lemay.

Mr. Muise, do you have anything you wanted to comment on in reference to the discussion thus far?

Det Sgt John Muise: Yes, thank you, sir. I have just a couple of things.

One is that I don't think Bill C-9 in any way takes away from the opportunity for a judge to customize, to engage in judicial discretion, or to be flexible. Judges are wonderful triers of fact. They do a great job of that, and all Canadians are grateful, but I think they have lost sight in terms of proportionality. That's why we need Bill C-9.

If we look at the purposes and principles of sentencing in section 718—mine is from 2006, so I hope I'm up to date; I have to get up with the Canadian Bar Association here—it says:

> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Staying at home and hanging out doesn't do that. It's as simple as that. It's not imprisonment. We can't change that; that's what it's called. It is not imprisonment, yet now, because of Regina v. Proulx, it has become the accepted replacement for imprisonment, and it's inappropriate for the vast majority of offenders who get it.

I didn't bring a laundry list of disasters gone wrong in the criminal justice system. I saw that the minister did that at his appearance. I could have brought a list of 200 cases of disasters and lives ruined, souls destroyed, families broken, dreams that will never be reached. The principle of proportionality is not appropriate for so many of those offenders.

Thank you.

The Chair: Thank you, Mr. Muise.

Mr. Comartin, the NDP member, has left. I'm going to split his time between Mr. Lee and the Conservatives. They haven't had an opportunity to question yet.

Mr. Lee, I know you have a question or two yet.

Mr. Derek Lee: I always have one or two. Thank you.

Mr. Comartin did speak with me very briefly.

I want to ask, just for clarification, if Professor Mauser has any 2005 data on homicide in Canada or the U.S. These would be the 2005 homicide statistics.

Prof. Gary Mauser: I have the preliminary numbers, and they don't vary very far from 2004 either way.

Mr. Derek Lee: Could you read them?

Prof. Gary Mauser: I don't have them under my hat. I have seen them. As I remember, homicide is up in both countries—but again, very slightly.

Mr. Derek Lee: All right. We'll see if we can dig that out to the extent that it might be relevant or useful.

I'd like to go to Mr. Brooks.

First of all, I have a two-part question. Could you respond generally to the perceived need to adjust the conditional sentencing accessibility at, let's say, the higher end of the more violent range of offences? There is a sense that perhaps some judges from time to time might move too quickly to a conditional sentence, based on all the local circumstances—all the factors that have been mentioned by Ms. Schurman and others—when in fact the denunciation component of sentencing might deserve a bit more attention. There seems to be a sense out there around the country that there could be an adjustment to remove that option in some classes of sentences, just as a general proposition.

Second, have you one or two suggestions, if any, as to how we might amend this bill to coincide more with the view that you've articulated?

● (1635)

Mr. Adrian Brooks: Just as a general proposition, there is always the concern of the difference between perception and reality, as it relates to violent offences, and how judges treat those violence offences, because—and I believe this point was made by Ms. Schurman—the everyday person who hears the actual facts of everything that is before a judge often has a very different view from that arising as a result of the media view. Of course when we're talking about these situations, we are talking about a smaller percentage of conditional sentence orders that relate to these particular problem areas we hear about as it relates to violent offenders, and that's one reason why the CBA has taken this position. You have a definable, smaller problem that does not require this expansive solution that has its negative consequences.

So that's a general comment that I hope is somewhat responsive to what you have suggested.

As to how to amend this bill, as I say, the CBA takes the position that a different redraft is necessary, which gives a definition of those specific offences for which a conditional sentence either is not available or presumptively is not available, and that the legislation ought to be drafted on that basis, which involves really not a redrafting of what we have here but starting again with a different scenario.

Mr. Derek Lee: Thank you, Mr. Chairman.

The Chair: Thank you.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to all of the witnesses for taking the time to meet with us today.

For the Canadian Bar Association, I have a couple of quick questions. I note also in your recommendation that, and this is sometimes the case, the devil's in the details, because you are acknowledging here, the way I read your recommendation, that there could be the possibility that there are some of these offences, perhaps, that we've grouped as being ineligible for conditional sentences that we should itemize and name as ones for which a judge should not impose a conditional sentence.

I agree that there are situations, certainly, and that's why I support this bill, when a judge should not impose a conditional sentence. I've heard that from the other side too; they've said it's too broad. But I haven't heard yet from the opposition of one of the ones that we've included that they'd like to pull, even the serious violent offences that you've mentioned or property crimes. Mr. Muise mentioned cattle theft, which has come up quite a bit in debate here. At first the question was, why is that included, but when you hear more about the victims you would ask, why not?

I do want to ask the CBA whether there are a few that you would point out that in your opinion should be excluded from a conditional sentence because, as I note in your testimony, a judge says he or she does not pose a threat to society. In theory that's great, it sounds good—the judge has determined they don't pose a threat to society—but the reality is why we're all here today and why we've brought this bill forward. There are cases for which a conditional sentence is seen by society as a joke. And contrary to your claim that to eliminate conditional sentences for some of these offences would bring disrepute for the law, in fact disrepute for the law is in place right now, in my riding and throughout Canada, because of conditional sentences.

So I'd ask for your comment. Are there one or two of these that you'd pull out and say yes, a conditional sentence should not be given for that offence?

● (1640)

Mr. Adrian Brooks: There are over a hundred offences this bill applies to, so it's difficult to do that.

Mr. Rob Moore: I'm just saying one. Name one where a conditional sentence should never be imposed by the judge, of the ones that we've included.

Mr. Adrian Brooks: One that should never get a conditional sentence?

Mr. Rob Moore: Right.

Mr. Adrian Brooks: I think there are a significant number here in my list that have those.

Mr. Rob Moore: It is because currently you can get a conditional sentence in all the ones that we're limiting, and you've said we should define in the Criminal Code a category to target only those types of offences that judges should not consider. So to help the committee, I'm asking you just to name one of those.

Mr. Adrian Brooks: Oh, sure.

I want to make sure I answer the right question. Do you mean ones that should not be part of this legislation?

Mr. Rob Moore: No, I mean ones that should be.

Mr. Adrian Brooks: You mean ones that should be. Well, there are many, starting with the lower numbers of treason, treason in time of war, intimidating Parliament, inciting to mutiny, sedition, breach of duty of care of explosives that causes death—there's a long list.

As I quickly look at my list, it is virtually everything under 100.

Mr. Rob Moore: They should never have a conditional sentence imposed?

Mr. Adrian Brooks: That is a reasonable position to take.

Mr. Rob Moore: Well, that's helpful. Thank you.

Mr. Muise, I did appreciate your testimony. That's the kind of thing we have to deal with as parliamentarians. The Canadian Bar Association suggested that to bring this bill in could bring justice into disrepute, and you've suggested that not to bring this bill in will continue to bring justice into disrepute.

Can you talk a bit about that from the victim's perspective? It is great to hear from the academic world and so on, but you're working with actual victims who see the perpetrators of crimes against them serving their time in the community. I'd like to hear your comments on that.

Det Sgt John Muise: Thank you, Mr. Moore.

I've talked to victims both as a serving police officer and also in the six years I spent at the Office for Victims of Crime, where we managed complicated cases in which victims were being run off the rails by constituent members of the justice system. There is also, of course, my work at the Canadian Centre for Abuse Awareness. These victims were frustrated.

There are a large number of people who don't see the proportionality in staying at home. They are not just crime victims and survivors and front-line criminal justice professionals, but average, hard-working folks, the kind of people with whom I communicate on a regular basis because I'm with this organization. When you tell these people this is actually a sentence of imprisonment, they don't get it; they don't understand it, because it doesn't make any sense to them. Quite frankly, to average people, average folks, hard-working Canadians, it doesn't make any sense, and it doesn't make any sense to me, and I'm somebody who has been in the justice system for 30-plus years. I know some of you think I come at this with a sledgehammer, but I understand the nuances of the system.

I'll go back and repeat myself at the risk of doing that. Judges do a great job of being triers of fact, but I think that generally speaking, in this country, they've lost their way in terms of responding to the needs of the community, the needs of crime victims, and the needs of Canadians in terms of justice and enhanced public safety.

Ms. Schurman mentioned about prison being a failure. Prison's a failure because the way we sentence in this country doesn't work. It's a failure because you're guaranteed automatic parole at one-sixth. It tells you nothing; it tells you nothing about learning and responsibility. You're guaranteed automatic parole at two-thirds, even for the most serious, violent crimes. It's statutory release; you get out of jail no matter what, even if you have 200 institutional violations, so in other words, even if you've been a really bad boy in prison, we are letting you out. It's as simple as that.

You wouldn't do that with your son or daughter when they've run off the rails. You wouldn't say, "You've been really bad for the last two weeks. That punishment I gave you of three weeks? I'm going to cut it off now, because you've been really bad." That's what we do in this country. It's no surprise that prison has been a disaster.

In the United States of America it's equally no surprise—and I understand there's a lot wrong with what happens south of the border, and we could all have a wonderful debate about that for hours on end—that when they identified the small group of offenders who commit a disproportionate amount of crime and locked them up, the crime rate dropped in the country, and it dropped precipitously.

I think if we took some of those lessons and put them in play in this country and in Bill C-9 in conditional sentencing, and a variety of other parole and sentencing issues that our *Martin's Hope* report speaks to, we could actually bring down the crime rate, enhance public safety, and—because it's not incompatible—assist with habilitation or rehabilitation of offenders.

● (1645)

Mr. Rob Moore: Do I have time for one more quick question?

The Chair: You have, for one quick one.

Mr. Rob Moore: This comment struck me because, of the whole of the criminal justice system—and I want to make sure I understand it—you mentioned that from a victim's perspective.... We have heard a lot about the offender, and I appreciate all the input we've been given on the interest of proportionality and rehabilitation of an offender; those are all very important perspectives. But from the perspective of the victim, your round tables found that conditional sentencing was their number one complaint.

Det Sgt John Muise: Correct. Some of it's a lack of understanding of what judges are confronted with, but they complained about judges in terms of sentencing. In particular, the number one issue around sentencing was the giving of conditional sentences inappropriately for serious crimes. I know it's anecdotal, but it was at all our sites: London, Toronto, Orillia, Windsor, Belleville, Sault Ste. Marie—the ten sites. That was the number one refrain from people on the front lines, crime victims, and survivors.

The Chair: Thank you, Mr. Moore.

Mr. Mauser, don't rush away if you could hang on for a moment. Ms. Barnes has some questions, but when she is finished, I'm going to give you a couple of minutes to make any comment you may wish before you walk out the door.

Ms. Barnes.

Hon. Sue Barnes: Thank you very much.

We on this side have said that we have always wanted the categories of terrorist organization, criminal organization offences, and serious personal injury offences. If we were to capture those offences that we think could be taken down to smaller categories, those would be the included ones that we would be looking at.

Mr. Brooks, I think people need to understand that when a bill.... In the last Parliaments, our past government sent bills to committee after first reading, so there was a lot of flexibility on how you could amend. Now, a bill sent after second reading is much more circumscribed concerning how you can do amendments.

It is somewhat unfair when my colleague across the way, who knows this, starts asking you to cherry-pick through these things, as if we can just propose lists and schedules, when, the way the current section has been set up, it would be more likely to be in categories. That is something that is important to understand for people trying to come before this committee to give us guidance on how we should amend.

That is why we have been trying to.... There are other ways. There could be ways, for instance, of taking the sections and instead of saying 10 years say 14 years, or life. That would have the element of reducing the list, but again, in a more arbitrary manner than would a categorization of offences. I think we have to understand that.

Also, when it has come here on second reading and you amend, you cannot add new elements and create, for instance, a new sentencing principle, because that would be outside the authority of the amendments that are found when you come before this committee after second reading.

So there's far less flexibility than is being suggested here to do real amendments of this bill. It's a question of a way of finding the categories. I say this so that other people coming before us have this knowledge, so that they come with a more targeted approach that would be helpful to this committee, because we are struggling with it. I believe it is very arbitrary, the way it is right now, for the reasons Ms. Schurman gave us.

Ms. Schurman, I'm not sure whether you're familiar with the studies Professor Mauser gave you. Would you feel comfortable commenting on other studies on over-sentencing? It's been stated in the evidence of Mr. Muise that people don't undercharge or overcharge. I believe there are numerous studies available on that point. You would probably be aware of some of them.

● (1650)

Ms. Isabel Schurman: There are. I am aware of some of them.

I wouldn't be at ease to comment on anything submitted by Professor Mauser today, because I didn't receive it. I don't have the graphs you're referring to or anything else.

There is a very real problem that comes up across the country on a relatively regular basis with questions related to overcharging or undercharging, for all kinds of reasons. Usually it comes down to having put responsibility on the shoulders of perhaps the wrong person.

So yes, there are others. I could try to provide you with some information about them at another time, but I wouldn't be able to speak about them today.

Hon. Sue Barnes: You sent some materials in here on points. The clerk will distribute them to all parties—and it's similar to what would happen for you, Mr. Brooks. I should let you know that it will be over the next few weeks that we will be getting to the place of clause-by-clause.

I would also like a comment from Mr. Brooks, Ms. Thomson, Ms. Schurman, and Mr. Muise about the inclusion. When the previous Liberal government tried to restrain and narrow the areas for conditional sentencing, it did so with the presumption, but it also did not include drug offences. This bill here, other than the hybrid offences in the lower categories of the scheme—the conditional drug bill—will classify even minor uses of certain very serious drugs such that conditional sentencing will not be allowed. I'd like your opinions on whether that should be in or out.

The Chair: Witnesses, precise answers, please.

Mr. Adrian Brooks: Essentially there is such a wide range of circumstance associated with drug offences that it is very difficult to set out particular drug offences that ought to be unavailable for conditional sentences. Drug addiction is such a particular area that this also tends away from allowing it to remain part of the conditional sentence regime.

I hope that answers the question.

The Chair: Thank you, Ms. Barnes.

Did you want to make a comment, Mr. Muise?

Det Sgt John Muise: Thank you, Ms. Barnes.

I don't have the list in front of me; I didn't bring the information research, but from my recollection of my reading of it, it was "trafficking" and "possession for the purpose of trafficking" offences. If indeed there were some straight possession offences included in that, I must have missed them. I suspect that would be an appropriate kind of an offence for you folks to talk about and maybe reconsider.

Hon. Sue Barnes: The way the bill is currently worded, hybrids would be excluded.

Det Sgt John Muise: Right. I understood they were mostly trafficking offences or trafficking types of offences. You mentioned possession. I just didn't see any possession.

Hon. Sue Barnes: Ms. Schurman.

Ms. Isabel Schurman: If they meet the criteria of proof from the Supreme Court of Canada, even trafficking offences would be perfectly appropriate offences for conditional sentence of imprisonment, especially since a tremendous number of people are involved in small trafficking, in small quantities, in smaller areas that have an underlying problem. The conditional sentence of imprisonment allows you to treat the person with the underlying addiction and problem, and perhaps get them out of the criminal justice system.

● (1655)

The Chair: Thank you, Ms. Schurman.

Thank you, Ms. Barnes.

Mr. Mauser, I know you're about to leave the committee. Do you have any other comments that you would like to make before you walk out the door?

Prof. Gary Mauser: Thank you, Mr. Chairman, for this final opportunity.

I would like to reiterate that because the American violent crime and homicide rates have fallen so drastically, we must imagine that they are doing something right. The research that I have shown demonstrates that there is solid proof that imprisonment reduces the homicide rate, reduces the violent crime rate—imprisonment for whatever serious crime.

Many of the prisoners have been in prison for things other than homicide or violent crime. This is talking about imprisonment in state and federal institutions in numbers. This suggests that imprisonment is not a failure, it is a way to protect the public. I can see why a judge or even a defendant might see prison as a failure, but if our goal and our focus is on protecting the public, imprisonment might well help all Canadians.

Thank you.

The Chair: Thank you very much, Mr. Mauser. Have a safe trip back to British Columbia.

Mr. Thompson.

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

Goodbye, Mr. Mauser, and thank you.

To the rest of you, thank you for your interventions today. It's good to have you here.

I know it's a given that there isn't a person in this room, whatever your political stripe or whatever you stand for.... Basically what we're trying to do as a whole is to remember that there are victims out there and they need help. There are just too many victims, and we want it to stop.

Our judge of all we do is the public. I know that in the House of Commons, since I've been here, thirteen years, several million signatures—I'm not talking about thousands—have come in on petitions asking us to do something about the crime in this country. That's from the people who are paying the bills, who pay our salaries, who we serve, and they are not happy with the justice system as we know it today.

If you dared to put a poll out there, I don't think any of us would question for a moment that you would never find a poll indicating that we would get a very high approval rate on our justice system. You certainly wouldn't get it from those who are trying to enforce the laws. I deal with lots of police departments, lots of officers of the law who are very frustrated that they see a revolving door in our justice system, with them re-arresting the same people over and over.

The kinds of crimes that are happening that are really on the rise—and I've watched them carefully since 1993, when I came here—are crimes against children. It's getting absolutely pathetic. I know we've had to have child pornography crime units in Toronto. I know, John, that you're well aware of who they are, how hard they've had to work. With the increase in child pornography and those things related to it, it has turned into a billion-dollar industry. How could that possibly happen? I don't think it would happen if you had a good, solid type of justice system. That's a failure. We're failing our children when this gets to these proportions.

When you go through the justice system, you see farmers going to jail because they sold their own grain—not stolen grain, their own grain. They go to jail, no questions asked, and we bring down the hammer. For a poacher who shoots an elk out of season, there are no questions, bang, it's into jail—you don't dare do that. Mind you, if you rustle a bunch of cattle in my country, they have a sign out there—you were talking about signs—that says "Notice to cattle rustlers: We do not phone 911, we phone Smith & Wesson". When a justice system leads to those kinds of remarks coming back from the public, the public is not happy, so I think this is an effort to try to show the public that we're interested in doing something about it.

Fortunately, over the years, I came from a profession where I really was high on the popularity list. I was a school teacher and a coach, and everybody loved me. Suddenly I got into politics, and right now I'm down there with the used car salesmen, the lawyers, and the rest of the politicians, at the bottom of the heap, because the public feels we've failed them, and we've failed them dismally.

I suggest to all of you, particularly the Bar Association, that, yes, we believe in rehabilitation, yes, you have to do the best you can, but our major focus has to be on the victims. It has to be. If we don't illustrate to the public that this is exactly where we're focusing and that it's our major concern while we deal with trying to rehabilitate and all these other things, we're just going to continually lose ground. We cannot let the perpetrators who violate our laws gain any more inches. They've gained enough. That's the direction we want to move in with this kind of legislation.

Bill C-9, in my view, is a small step in the direction that we need to go to get that pendulum swinging back so that our society will have some confidence in what we're trying to do. They do not have that any more, without a doubt. I believe this bill is a good step in the direction of getting that confidence back. It's not the be-all and end-all. I know there are lot of things to do.

● (1700)

I certainly don't want to see conditional sentencing thrown out the window. There are certain times when it's the right thing to do. But we're trying to sort it out as much as we can in this committee and in this House.

I thank you for your presentations. No, I don't agree with some of you, and yes, I do agree with a lot of what you've said.

I don't want to have you answer any questions. I'd only like you to think about the public. We have created a very unhappy public, and we had better start doing something about it. We need people like you to help us.

Thank you.

The Chair: Thank you, Mr. Thompson, for that dose of reality. I appreciate it.

Mr. Derek Lee: I have a point of order.

I was going to inquire if Mr. Thompson has any expenses for witness fees for getting to the meeting here today.

That's all right. I'll withdraw the point of order.

The Chair: Thank you, Mr. Lee.

Mr. André, I apologize for missing you on the rotation. Please, you have the floor.

[*Translation*]

Mr. Guy André (Berthier—Maskinongé, BQ): Thank you, Mr. Chairman.

I would like to begin by welcoming our witnesses.

I would just like to quickly react to some of the things that have been said here today. I am a social worker by profession. This is the first time I have sat on the Standing Committee on Justice and Human Rights. My initial reaction is to say that we know full well that social conditions have a tremendous impact on crime rates, because a lot of people are disadvantaged and lack appropriate social supports. Often there will be higher crime rates in these groups. As a result, when social programs are severely cut back — this is a message for the Conservatives — crime rates go up.

My question is for Mr. Muise, and I would ask all of you to comment as well. As you and I both know, Bill C-9 adds to the list of offences for which a judge will no longer be able to hand down a conditional sentence, even when he determines, based on all the facts, that it would be the most appropriate sentence.

Mr. Muise, you seem to favour that direction. You basically agree with the idea of adding to the list of offences for which conditional sentences will no longer be available.

Do you have any statistics or other certain facts that have led you to take that position, basically saying that we should be criminalizing more people and putting people in jail as if prisons were places where there can be social rehabilitation?

In Quebec, we very much believe in prevention. We also believe in criminalization, because in some cases, that is the best solution. However, prisons are not places where there can be social rehabilitation. I don't believe that putting someone in prison for ten years and not giving him an occasional opportunity to reintegrate into society via various programs — as Ms. Schurman was also saying — is a better option. All the money that will be invested in these prisons, because of longer sentences could, in my opinion, be more effectively invested in measures aimed at social reintegration.

Are there any statistics that have led you to take this position? I would also be interested in hearing from Ms. Schurman on this, as well as from the others.

● (1705)

[*English*]

Det Sgt John Muise: Thank you, Mr. André. It's a good question

I just want to lead by saying that we're a poor charity, Mr. Lee, but we will pick up the tab for Mr. Thomson's—

Mr. Derek Lee: I think we already have a deal here.

Det Sgt John Muise: Not everybody knows this about me, but over the course of my career as a police officer, I have spent a lot of time working with academics, social workers, and people who were on the front lines trying to help children. I actually was one of the founding members of the original street crime unit, which was the first of its kind in Canada. It was a community-based, education-enforcement hybrid. We worked very hard with local communities and schools to try to get kids before they ended up in prison. We put substantial effort into getting them on the straight and narrow. There was a lot of work involved. Sometimes we were successful, and other times we were not. It's something I'm very proud of. It seems like ancient history now, but certainly the legacy has taken root across the country and there are many police units much like that.

Having said that, there is also another bunch of folks who, for whatever reasons, have run off the rails. When they're sentenced to periods of incarceration, it's either because they already have very lengthy criminal records or they've done something pretty serious.

My experience in and out of court rooms over 30 years is not one of throwing the book away. I see that these judges really work hard not to throw the book at people. So I don't see this sort of sensible half measure for Bill C-9. Parliament has said it's ten years or more. I suspect when they created those maximums.... I know for instance that Mr. Lee and other members of the Liberal Party worked hard to introduce many bills to increase the maximum. So here we are. I guess they saw them as sufficiently serious crimes.

Citizens have lost faith in the criminal justice system. I see this as a natural first step, and like Mr. Thompson, I agree that it's just one piece of it. We have a lot of work to do in terms of our parole legislation and some of our other dangerous—

[*Translation*]

Mr. Guy André: Bill C-9...

[*English*]

The Chair: Very quickly, sir.

[*Translation*]

Mr. Guy André: You are involved at the community level. My question is: what statistics did you base yourself on? This bill contains a new criterion for maximum sentences of ten years and more, for theft of property exceeding $5,000, for example. Conditional sentences will no longer be available for this type of offence. What are you basing yourself on to say that if people are given the maximum sentence, as opposed to a conditional sentence, will mean that rehabilitation is more effective?

[*English*]

Det Sgt John Muise: Thank you.

There is a volume of evidence, most of it from south of the 49th parallel, the United States, that makes it very clear—and it's very convincing—that where you identify the recidivist, the serious offenders, the people who keep committing crimes, and you lock those people up for as long as possible, the concurrent precipitous drop in the crime rate is clear and convincing. That's not currently the way our sentencing parole regimen works. We can't quite get there yet.

I guess what I'm telling you is there is a volume of academic research that says when you put those offenders in jail for extended periods of time, the crime rate generally goes down.

● (1710)

The Chair: Monsieur André, your time is up. Thank you.

Mr. Bagnell.

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

I would just like Ms. Schurman and Mr. Thomson to comment. This chart suggests that violent crime in Canada is higher than in the United States. Without commenting on this chart, from your professional background and knowledge, do you believe in general that violent crime is higher in Canada than in the United States?

Mr. Adrian Brooks: I do not believe that the rate of violent crime is higher in Canada than in the United States.

Ms. Isabel Schurman: Not at all. If the explanation is that the category is defined differently, maybe that explains the anomaly, but not at all—on the contrary.

Hon. Larry Bagnell: I have questions about that testimony, then.

My next question for both of you is that several times today a conditional sentence has been described as just staying at home and watching TV. Can you tell me whether that is all there is involved and how a conditional sentence might be different from being in jail, or different from probation, or whether there's any penalty to it?

Ms. Isabel Schurman: A number of years back, when, in the province of Saskatchewan, the idea of house arrest was going to be used for bail, there was a very skeptical judge at the Saskatchewan Court of Appeal. His name is Bill Vancise. Bill Vancise was skeptical enough to run the experiment on himself and to find out whether this was really incarceration. He wanted to know whether it felt like imprisonment or was just being at home. He wrote a paper, which I would suggest to all of you, called “Home Alone-But Not Forgotten”. The result of his experiment on himself was that there was a very real sense of confinement.

Confinement can be physical. It can also be psychological. Restraint on liberty is a kind of confinement. That's why our Supreme Court of Canada has stated that arrest and detention can also be a psychological state. It's a very real phenomenon. In fact, in a lot of these cases it's not quite as simple as sitting at home and having a drink and that's that. No. In a lot of these cases there are very severe conditions about what you can and cannot drink or do, but there are also very serious reasons why you've been given that conditional sentence of imprisonment: because you have a full-time job and children depending on that income; because there's no purpose in sending the whole family into a poverty cycle; because it makes more sense to keep you being a contributing member of society.

There was some testimony before this committee a number of days ago about what happens if the offender lives next door to the victim. Conditions prohibit that from happening, but there are some places, some small communities in Canada, where counsel have reported that in fact there's a huge effect on the offender who can't just leave the community. He can't just commit a crime and leave. He has to face those people who he's known his whole life, on a day-to-day basis, and that has its own effect as well. So no, it's not a picnic at home.

Mr. Adrian Brooks: There are two aspects that I'd like you to consider. First of all, a conditional sentence order can contain particular conditions of treatment telling an offender he has to take this treatment; he has to go to these places; he has to complete these particular treatment programs. Some of those treatment options you can't order under probation. You can get them only under conditional sentence orders. So that individual is not going to be sitting at home watching TV; he's going to have to go out to that treatment. If he were in jail, he could sit around and watch TV, but he can't under a conditional sentence order.

The second aspect I'd ask you to consider is conditional sentence order versus jail. A person who gets a sentence of two years less a day in jail is probably going to do somewhere around 12 months and then get out on parole on conditions that are going to be nowhere near as onerous as a conditional sentence order. So, for nearly two years you're going to have harsh conditions under a conditional sentence order or sit around and watch TV for a year and then go out with very few conditions. Offenders are going to take the latter and are going to be perfectly happy with the latter. Society is going to meet its objectives with the conditional sentence order.

Hon. Larry Bagnell: For both of you, could an unintended consequence be that without the option of conditional sentences, all these same people will still be out on the streets on probation, but be getting less treatment?

● (1715)

Mr. Adrian Brooks: That's a very real probability.

Ms. Isabel Schurman: I agree with that.

The Chair: Thank you, Mr. Bagnell.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you. My question is addressed to Mr. John Muise, but I would also be interested in hearing the opinion of the other two witnesses who are with us today.

First of all, I have been practising law in Quebec for 30 years. I have a firm of lawyers that deal with criminal matters. I can tell you based on my experience — I'm confirming this — that when the Crown offers us a conditional sentence, the client accepts it right away. No one can tell me that it is not the case. I have enough experience in that area, even though it's not police related experience.

Now I am also a parliamentarian. And I can tell you this: we say that our society is not violent — this goes back to what Mr. Muise was saying — but in some schools in the Province of Quebec, police officers have to be on site on a full-time basis, because there is violence.

Second, as regards series of violent crimes, some of these crimes may not seem violent at first sight, such as taking drugs. People always say that the poor little guy who smokes a joint every day is not doing anything bad, because he is not involved in trafficking. However, if one or two million people in Canada start smoking a joint every day, that means that the underworld is making money. That immediately brings in organized crime. So, people shouldn't think that because I smoke my joint, I'm not encouraging organized crime.

Another perspective was presented. Mr. Muise, you talked a lot about violent crime, and naturally, I agree with you. Mention has been made of mail theft, because we know this is one of the offences. People have been making a big fuss because there will no longer be conditional sentences available for mail theft.

In my province, when a person aged 58 is receiving disability benefits through social assistance, that person's cheque is $892 a month. Very often these people don't live in the city and it's the letter carrier that delivers their cheque. Imagine if a thief takes their cheque by stealing their mail. I can assure you that's pretty devastating for the 58-year old lady who finds herself in that predicament. She has to go back to see her social worker to have another cheque issued quickly. And that creates problems for her, because she isn't well. That theft of less than $1,000 becomes a horrible experience for her, and yet we're only talking about mail theft.

Around this table, we have been trying from the outset to do something for the accused, who become the convicted when their trial occurs, but we aren't talking about the victims. The victims are important to me, and I'd be interested in hearing your comments, Mr. Muise.

Since conditional sentences became available in 1996, can you tell me whether there has been much violence using firearms in Canada? What is the effect of conditional sentences on armed violence?

[*English*]

Det Sgt John Muise: Thank you for the question, and thank you for making it clear that these offenders aren't desperately trying to stop their defence lawyers from getting them conditional sentences of imprisonment in their homes. It doesn't happen. I don't want to be disrespectful, but it's almost humorous—in comparison to prison.

Notwithstanding the fact that nobody is watching them, and if they're having a drink nobody sees whether they're drinking or not, and if they're violating, if they're coming and going, the cops aren't watching, the probation office isn't visiting.... Having said all that, do I have specific research—and we're not a research organization—about the impact, whether gun crime has gone up because of conditional sentencing per se? I don't have that. But what I and my organization and the 150 people who informed the Martin's Hope report believe generally is that the whole sentencing and parole regimen is a big part of why offenders end up back in communities, with little or no impact on rehabilitation, little or no impact on their being healthy and whole.

And until they realize.... Somebody actually read the study. I'll give you an example. In terms of recidivism rates in the way that we conduct ourselves in terms of offenders today, fully 43% of people who had served time in jail, in a penitentiary, had already reoffended and were back before the courts within two years—which means getting out and committing some crimes, getting arrested for those crimes and being brought before the courts, pleading guilty or being found guilty. That's over two years.

I'm not a professor, but I suspect that if you extrapolated that out over eight or ten years, you'd find the true recidivism rate is probably north of 80%.

That tells me, as a former practitioner on the front line of all this, that there's something wrong with the system and it needs to be fixed. What people on the front line, crime victims and survivors, have told us is that the sentencing and parole regimens in this country are big contributors to that. From my own experiences, I believe that.

That's a very general answer to your question, I suspect, Mr. Petit, but that's the best I can do for you today.

● (1720)

The Chair: Thank you, Mr. Petit.

Of the original members—there are a number of substitutes here—Mr. Brown has not had an opportunity to question.

The floor is yours.

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

I have a question for Mr. Muise and for the Canadian Bar Association.

In terms of the input you've given us today, was any of that based upon any consultation or meetings with members of your organization?

With respect, Mr. Muise, I know you put together a report in 2004. If I recall, it was based upon numerous town halls. The question to you, Mr. Muise, is what was the extent of that consultation for the 2004 report?

For the CBA, have you had an opportunity to mail out a survey to members of the Canadian Bar Association or have any formal sessions at one of your conferences on this?

Mr. John Muise: The Canadian Centre for Abuse Awareness went out to ten sites across Ontario: Belleville, Hamilton, London, Newmarket, Orillia, Ottawa, Peterborough, Sudbury, Toronto, and Windsor. We invited some guests, and some other people just said they were coming too. Anybody who wanted to come would come. There were 150 people, including a variety of front-line criminal justice professionals and including social workers and people on the social side, crime victims, and survivors.

We had note-takers. The focus of our doing this was about potential criminal justice reform. We basically asked folks to tell us what they think is wrong with the system. Where themes were enunciated again and again at all of these sites or most of these sites, they made it into this report.

I'll give you an example so that you can understand how it unfolded. Some people would come and say they thought we should take DNA from everybody at birth because it would be a great crime-fighting mechanism. Well, be that as it may, it's not going to sustain a charter test and it's probably not the right thing to do from a human rights perspective. Others who were more informed said we should take DNA at arrest and maybe embargo it or something until somebody's found guilty. But they said we should get it while we have the alleged offender in custody. Others would have varying sorts of notions about that particular subject.

So arising out of all of those, we tried to create recommendations, and we used two barometers for every single one of the recommendations. One, do we think it would sustain a charter test, knowing full well that would be required for every one of them? If the answer was, yes, we thought so—because we don't sit on the Supreme Court.... The other pillar was whether this was going to have an impact on an accused to mount a fair and vigorous defence. We're not in the business of making recommendations that would hurt somebody's right to a fair trial. We don't believe that's what public safety and victims' rights are about; they're not about taking away, they're about improving the system. So those were our two pillars.

Arising out of those consultations over the course of several months at those ten sites, we arrived at the 60 recommendations, 39 of which are federal in nature. These are available on our home page, at ccfaa.com, and if anybody wants a hard copy, I'll be happy to mail them to you. If we do that, though, we won't be able to pay for Mr. Thompson's witness expenses. But they're there to be viewed, and I'm happy to talk to anybody about them afterwards or later.

● (1725)

The Chair: Mr. Brown, do you have another short question?

Mr. Patrick Brown: I'm just hoping for a response from the CBA.

The Chair: Mr. Brooks or Ms. Thomson.

Ms. Tamra Thomson: The submission you have before you was prepared by the members of the criminal justice section. The executive of the section comprises the officers, who are elected, and the chairs of each of our branch sections—branches in every province and territory in Canada. Those people in turn consult with their various branch section members, and then all of that comes together to form the input you see before you. It's based on principles that have been adopted through our national council—the CBA's parliament, if you will.

The Chair: Thank you, Mr. Brown.

Mr. Murphy, we're going to be concluding our meeting here very quickly, but you have time for one question.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Very briefly, I would just say that, from the CBA brief, I got their answer there. I was going to ask about how the criminal justice section is not the whole Canadian Bar, just so people know that, but that's fine. What proportion of the criminal justice section are defence lawyers and what proportion are prosecutors? I'd like to know that, very briefly.

Secondly, on page 5 of your brief, there's something that is very short but has to be full of background information that you couldn't put in—and I appreciate the time constraints and so on. It says:

> In its current form, the proposal will undoubtedly lead to more trials as a result of fewer guilty pleas. That factor alone will eliminate any perceived justice efficiencies, and certainly increase demands for legal aid funding.

Of course, legal aid funding is already under strain.

I know time's an issue here, but if you had some background information on those two big statements, I think we'd all appreciate receiving them in the mail. I don't think you can answer them in three seconds.

Mr. Adrian Brooks: Yes, we will provide you with whatever information we can on the proportion of prosecutors and defence lawyers.

Ms. Tamra Thomson: I'm not sure about the entire membership of the section, but I do know the executive is fairly well balanced between crown prosecutor and defence. There are some who start on one side and then go to the other and back.

The Chair: Thank you.

Thank you, Mr. Murphy. It's unfortunate that we didn't have more time for your line of questioning.

I would like to thank the witnesses for appearing in front of our committee. We've had a good discussion, I believe. It could be a little longer, but as it is with many of these meetings, we just don't get into some things as deeply as we should. But your attendance here has been very much appreciated.

I'm going to be suspending procedures now for thirty seconds. We have some business to contend with before we end up back in the House, if the committee members would stay.

The witnesses are free to leave. Thank you.

[*Proceedings continue in camera*]

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