House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 034 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, November 23, 2006

Chair

Mr. Art Hanger

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● (0940)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call to order the Standing Committee on Justice and Human Rights, on this date, Thursday, November 23, 2006.

We are continuing our discussion and debate on Bill C-10, an act to amend the Criminal Code—that is, minimum penalties for offences involving firearms.

We certainly have the pleasure of being in the city of Toronto. I guess actually Mississauga would be more the area where the airport is, but at least in the area of Toronto. With us, of course, are several witnesses from this region, one being the chief of the Toronto Police Service, Chief William Blair.

Just before I ask Chief Blair to sit at the table, we have one quick item of business that we would like to address. You have a copy of a motion before you, and I would turn to the Honourable Sue Barnes, MP, with the Liberal caucus, to make that motion.

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

In deference to our witnesses, and not wishing to hold them up, I will place this motion, which I would have done if I had not been ill at the end of the two days of hearings we had on the court challenges program and the Law Commission. I'm not going to speak on this. I'm just asking for the vote. We'll take it that everybody, over those two days, had an opportunity to put their remarks on the record.

This is for the reinstatement of the funding for the two programs at the 2005-06 level, and that the chair report the adoption of the motion to the House forthwith. I'll call for a recorded vote, and then that will be all, Mr. Chair, and we can get on with our business of the day.

The Chair: A recorded vote has been called for.

(Motion agreed to: yeas 6; nays 4 [See *Minutes of Proceedings*])

Hon. Sue Barnes: May I ask that you report this back to the House as soon as possible?

The Chair: It shall be reported back to the House.

Hon. Sue Barnes: Thank you, Mr. Chair.

The Chair: Thank you, Ms. Barnes.

Would Chief Blair come to the table?

Chief Blair, the committee, of course, has been studying Bill C-10 and the concern over the issue of offences involving firearms. We've had some meetings already, but the debate certainly has not come to any conclusion at this point. We anticipate several more weeks of meetings and witnesses to be heard.

It's our pleasure, certainly, to be in your city. There was unanimous agreement to attend here to get some first-hand information and make ourselves available to whoever would like to speak.

With that, Chief, the floor is yours. Perhaps you could present, and then I know we will have a series of questions.

Chief William Blair (Chief, Toronto Police Service): Thank you very much, Mr. Chair.

Good morning, ladies and gentlemen. It is a great pleasure to be here. Just as a point of clarification, I am delighted to be able to welcome you to the city of Toronto. You're still in the city of Toronto, although you're right on the edge of our border.

As has been indicated, and obviously by the way I'm dressed, I am the chief of the Toronto Police Service. It is my pleasure to come before you today to speak a little bit about our experience in Toronto as it pertains to gun violence.

As I am sure you are all aware, in the past year in particular, but actually over the past three or four years, we have experienced a significant increase in the level of gun violence in our city. That culminated in what was characterized by the media last year as the year of the gun. It was a year that saw an increase in the number of gun-related homicides in excess of 85% in Toronto, a significant increase in the number of shooting occurrences, and, equally significant, great concern among our citizens about public safety on our streets.

The violence that occurred last year is very much tied to the activities of gangs involved in a wide variety of criminal activities in our communities, most notably drug trafficking. Gangs have increasingly armed themselves with handguns over the past number of years and have been engaged in very public use of those handguns, endangering very many people in our city.

Last year we had a number of very high-profile events in the city, which I am sure you're aware of, but let me recount some of them for you. In July 2005 there was a gun battle engaged in one of our housing communities in which a four-year-old child was injured. The child was shot four times while playing in his backyard. We had another incident where a young man attended the funeral of a friend and was shot down on the steps of the church in which the funeral was taking place.

Perhaps the most widely publicized event, and the one that caused the greatest public concern in our city, was the Boxing Day shooting that occurred at Yonge and Gould last year at about 4:30 in the afternoon on a day when the people of Toronto frequently come down to that location and have historically attended there. Very few citizens in my city have not been down to Sam the Record Man, located at that corner, on Boxing Day.

A number of individuals, about 12 to be precise, were engaged in a dispute over drug territories, and guns came out. There was an exchange of gunfire on the street, and when the smoke had cleared, seven people had been shot, one of them a 15-year-old innocent child who was shopping with her mother. She lay dead on the roadway.

We have conducted a very exhaustive investigation and brought the people who we believe to be responsible for that crime to justice. They are currently before the courts. But the wounds that that event and others like it have inflicted upon our city and our communities remain. There is still a great concern about violence in our communities.

You may have read that this year in Toronto we have mounted an effective response to some of the gun violence we have experienced. I am very proud of the fact that we have undertaken a strategy known as the Toronto anti-violence intervention strategy, in which we have dedicated hundreds of new police resources to the fight against violence. We have been very active in identifying, apprehending, and prosecuting the most violent of offenders, to remove them from our streets and make the communities in which they were preying safer. We've put uniformed officers in those areas that were experiencing violence, and we have had some success in suppressing some of that violence. We have not eliminated it.

We've put a lot of people in jail. We've seized a great number of guns. We have worked very hard with our community partners in an attempt to restore a sense of safety and create opportunities and hope in those communities that had none, where people can now be safer and feel safer. As I indicated, we have had some success, but our success has been limited by the continued violence by a number of individuals.

Even as recently as this week, we had another event where gunmen took out guns and sprayed bullets on Yonge Street, only blocks south of where Jane Creba was killed last year. Hours later, on the 401, three young gunmen fired upon police officers who were attempting to apprehend them after they had robbed a business premises earlier in the evening. The individuals responsible for that are now in custody.

● (0945)

But we continue to see the use of guns in our community. I'm strongly of the opinion, having read the provisions proposed in Bill C-10.... I've spoken to my people, and we're looking very hard at what is happening in our city, and not only in our city, but in cities right across Canada. As the chair of the Canadian Association of Chiefs of Police organized crime committee and of the Ontario Association of Chiefs of Police organized crime committee, I have had the opportunity to speak with my colleagues in every city and every jurisdiction in this country. What we are seeing, certainly across the province of Ontario, and what large urban centres across this country are experiencing, is an increase in gun violence, the availability of guns, and the willingness of criminals to use those guns to enforce their will upon communities to terrorize communities. And what we're seeing very often is even young people gaining access to guns, carrying guns, resolving disputes that used to be resolved with a punch in the nose but now are resulting in a spurt of gunfire, killing not only the protagonists involved, but innocent people in the vicinity. That remains a significant concern across this country. I am strongly of the opinion that in order to reduce this violence, we must accomplish many things. There is no simple answer to this. There is no one answer.

Certainly we have a responsibility to apprehend the most violent offenders and to take them off the street. In addition to taking them off the street, they have to know that there are real consequences for their criminal conduct. The only reason to carry a loaded handgun in my town is to kill people. So when an individual chooses to take up a gun in the city of Toronto, they are putting all their fellow citizens at risk. They have to know that there is a strong likelihood that they will be caught, and that's my job. But they also have to know that when caught, there are real, serious, and certain consequences for those actions. Quite frankly, the certainty of those consequences is not currently available in our system, and our criminals are not being deterred.

But I can also tell you, from experience, that this year we undertook a significant organized crime investigation in a neighbourhood known as Jamestown, not very far from where we are sitting now. It is a neighbourhood, a relatively small neighbourhood, that had 10 gun-related murders—murders committed with handguns—in 2005. We conducted a major investigation, and in May of this year we apprehended 106 members of the Jamestown Crew—gang members and organized crime members from that community. We kept most of the violent ones in custody. We managed to keep them in custody through the summer.

Last year there were 10 murders in that community; this year there have been none. Last year there were over 45 shootings in that community; this year there were only a handful. The difference in that community has been extraordinary. And it's because the individuals who were preying on that community and committing so much violence have been incapacitated in their ability to terrorize that neighbourhood. Because they are in custody, they haven't been out on those streets to kill people and kill each other. And that neighbourhood is experiencing a significant renaissance.

The other things we are attempting to do in that community—to make it safe, to create new opportunity, to create hope, to restore a community's confidence and its pride—can only take place when the bullets no longer fly around the neighbourhood. So by taking the most violent offenders off the street, and, most importantly, by keeping them off the street, we create an opportunity for the other positive things to happen so that our youth workers, our schools, our faith leaders, our community leaders, the business community, and all of us together can make a real difference in those communities. But it only works when the gunmen are gone.

I am available, sir, to speak to any issues you may have.

● (0950)

The Chair: Thank you, Chief. We appreciate those comments.

I'm going to begin with Ms. Barnes. I know there have been numerous questions about just how effective incarceration is when it comes to violent offenders. I know this will be a topic of much discussion.

Go ahead, Ms. Barnes.

Hon. Sue Barnes: Thank you very much.

I'm very pleased to see that in this city, Chief Blair, you've been able to utilize some of the other pieces that are within your control as a police officer. I think that bodes well for the city of Toronto. I note that about 10% of the city budget—$794 million—is for policing in this city. Those are maybe just slightly out-of-date figures, but that's a substantial part of the city budget. But it seems that if you're bringing down the rates, it is well spent. I commend your officers.

First of all, when you say there's no certainty of consequences, to what do you attribute the fact that there's no certainty of consequences? All these offences are in the Criminal Code right now and they all have maximum penalties. So when you say a statement like that, what do you directly attribute that to?

Chief William Blair: First of all, let me begin even before we get to trial. We have had situations in Toronto where we have apprehended individuals with guns on our streets, loaded guns, and I have to tell you a little bit about doing that.

I've done that before, and my people do it every single day. We seize guns every day off our streets, loaded guns. Just in the past 24 hours we've seized five handguns and a shotgun, in very dangerous circumstances. Those are life and death events for my folks. I think you really have to be there and experience that with your heart pounding and you can barely see.

So when we do that and the individual is apprehended and sent to court, and within sometimes hours, rarely more than days, that same individual is released from custody and is back on the street—and these are actual events—and weeks later, we apprehend that same individual with a gun again and he's released again, and then a few weeks later, a third time, I think that undermines the confidence of my people, and it certainly undermines public confidence, in the determination of the criminal justice system to make our neighbourhoods safe.

People are working very hard and are very dedicated, and what we see is very long delays in bringing these matters to trial. We now, in the city of Toronto, experience up to 13 remands before we can actually conclude one of these criminal matters, and so often these individuals are out in the community. When we are trying to restore a sense of safety in neighbourhoods, when we take the most violent gun offenders and lock them up and they're back days later, people who have cooperated with us and assisted us in our investigation are terrorized by their presence in the neighbourhood.

So there is certainly a perception of a lack of consequences for those very serious offences, and the sentences that people have been receiving for carrying firearms are more reflective of the carrying of a loaded handgun in the city of Toronto as if it were a regulatory problem as opposed to a significant public safety problem.

Hon. Sue Barnes: We're talking about the mandatory minimums; we're not talking about up to remands. But you did bring up one of the problems that we'll probably be addressing later, and that is the impact of Askov in delays. When you have higher mandatory minimums without the discretion, you're probably going to have more trials. We've been told that from the evidence.

But I have only limited time, so one of the things I want to highlight to you is that under this bill as it's currently drafted...I'm going to give you the example a prosecutor gave to me, and I used it last spring and it still hasn't been adequately answered.

An individual commits robbery, for example, at the corner store, while armed with a fully loaded long gun. This individual has a lengthy record, including numerous prior convictions for other firearms-related offences. Under proposed subparagraph 344(1)(a)(i), this individual faces a mandatory minimum of four years. I'm going to contrast that with another individual who commits a robbery but is armed with an unloaded handgun, not a long gun this time. This individual, unlike the other, is a first-time offender with no criminal record, and under proposed paragraph 344(1)(a), this person now faces a mandatory minimum sentence of five years. You could take that robbery and switch it in with sexual assault, kidnapping, hostage taking, or extortion, with the same result. We have a discrepancy of a year.

Do you agree with those discrepancies? We're talking about an unloaded handgun, with a first-time offender getting a mandatory minimum of five years, versus a loaded long gun, with the offender, having a lengthy record, getting four years.

Do you see any sense in this?

● (0955)

Chief William Blair: First of all, I've worked in our holdup squad in the past, and I can't recall anybody committing robberies with an unloaded gun.

That said, I think the real issue is the level of danger that both offences pose, and mandatory minimums should be in fact that. In circumstances that are more aggravated, and certainly in the case that you first describe, I would be strongly of the opinion that a four-year mandatory minimum would be the absolute base that one would start at, but I would expect, with all those aggravating factors that you've outlined, that a judge does and should have the discretion to impose a much more significant sentence for a person responsible for multiple offences who clearly poses a significant public safety risk.

The Chair: Thank you, Ms. Barnes.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Yesterday we heard testimony from the Canadian Centre for Justice Statistics. They told us that in Vancouver and Toronto, the rate of homicides with a firearm was the highest, 0.9 people per 100,000 inhabitants. The clerk could send you a copy of those statistics but I am sure you are quite familiar with them.

I am interested in the effectiveness of legislative measures. There was no substantive study tabled before this committee showing that minimum sentences act as a deterrent. If they did, we would not be in the situation we find ourselves in because, if you recall, Bill C-68 was passed in 1995, and under that bill, 10 offences led to a minimum sentence of four years. But believing in minimum sentences doesn't mean that nothing should be done.

With respect to street gangs, what do you think is currently lacking? Do you think there's something lacking in the Criminal Code, in the way investigations are carried out, or in our ability to catch people in the act?

I was in the House when Bill C-95 was passed, whereby a new offence dealing with gang activity was created. The bill was subsequently amended because the chief of police said that the three "5" system — five offences committed over five years by five individuals — was not workable. The gang activity offence was therefore modified.

Is something lacking in the Criminal Code with respect to street gangs? Should we be creating new offences or adding new rights? What would you suggest?

[*English*]

Chief William Blair: With regard to our street gang problem, I'm gratified you mentioned that this is not a problem limited only to Toronto. As I'm sure you're aware, Montreal has experienced significant problems with street gangs and street gang violence, as have other cities in Canada, including Vancouver, Calgary, Edmonton, Winnipeg, and Halifax. I have spoken and met with the chiefs of all of these jurisdictions. All of them are very concerned, as are their communities, about safety in their communities and particularly the use of firearms.

The proportion of murders committed with a gun has doubled in the past ten years in the city of Toronto. This is a very disturbing trend, particularly in light of what we have also seen taking place with street gangs, a very similar cultural issue, in our counterpart cities in the United States. One of the responses we have mounted effectively in Toronto is the use of section 467.1 of the Criminal Code in identifying and dealing with some of these street gangs. Some of them are in fact criminal enterprises, organized crime groups. We have mounted very significant, complex, and, I will confess, expensive and resource-intensive investigations in apprehending, dismantling, and disrupting those gangs. That section has been very effective.

One of the challenges we face is that when we conduct these investigations—perhaps you have read of this recently—it places tremendous pressure on the other aspects of the criminal justice system. It places tremendous pressure on the capacity of our courts and on the capacity of our own force to provide security for those courts. For example, we've been going through a preliminary hearing for one of our street gangs, a very violent street gang involved in several murders and many violent acts. Our costs for providing court security, the need for specialized facilities for those prosecutions, and the challenge for legal aid and other aspects of the system have been enormous.

But we are attempting to use the tools available to us to provide an effective response so that we get the most violent offenders off the streets.

● (1000)

[*Translation*]

Mr. Réal Ménard: A trial is currently under way in Montreal; we will see how it unfolds.

With respect to sections 467 and 468 of the Criminal Code, do you think that the gang activity offence will enable you to dismantle street gangs? Do those sections reflect reality or, conversely, should the committee devote two or three meetings fully to street gangs?

The RCMP told us that 7,000 individuals are members of street gangs in Canada. Do you think that the gang activity section is appropriate? Do you think any procedural difficulties exist because of the Stinchcombe ruling or because of the rules dealing with disclosure of evidence? What exactly are we talking about?

[*English*]

Chief William Blair: Let me tell you something. First of all, with respect to street gangs in Canada, approximately 7,000 people have been identified as members of gangs. Not all those gangs would fit our definition of "organized crime". Some of them are much more loosely organized. Individuals in those gangs and associated with those gangs may not be involved in organized criminal activity, and therefore there are limitations in using criminal enterprise legislation against such individuals. But what we are also seeing is that some of those individuals are choosing to arm themselves with guns. In so doing, they are placing themselves and others in our communities at great risk.

One of the challenges we face in dealing effectively with these gangs is the intimidation of civilian witnesses, encouraging people to come forward to cooperate and support us in our investigations. When we apprehend an individual with a gun—and as I've indicated, there is no legitimate reason to carry a handgun. If you're not a police or security professional in the city of Toronto, the only reason to carry a loaded handgun in our streets is to kill people. When we apprehend those individuals for those offences who are in possession of those guns, we need to be able to intervene at that point. It is a significant and serious enough trigger that the individual represents an overwhelming threat to public safety, and the criminal justice system has to be able to deal effectively with that individual.

The issue of criminal enterprise, the insidious nature of organized crime, the threat and challenges organized crime represents to all of our communities is one that the...I believe we've used the existing legislation effectively. As I've indicated, it places tremendous burdens on the criminal justice system, but it's a good tool, and we have used it to good effect in the community.

There is another problem, and it is individuals who choose to take up handguns and to carry those guns—

[*Translation*]

Mr. Réal Ménard: Why?

[*English*]

The Chair: Mr. Ménard, thank you.

Mr. Comartin.

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

Thank you, Chief, for being here today.

Chief, it was reported within the last two or three weeks that you released some statistics on the occasion of gun crimes in the city in 2006 showing a dramatic reduction in the number of murders committed with guns, and that the overall rate of murder in Toronto was down appreciably.

I'm wondering, for the purpose of getting this on the record—I don't want to put words in your mouth, but I think you were attributing that to what you talked about today in your opening statement, to the specific efforts the police services put into specific communities in going after specific gangs. Is that fair? Is that the primary—

● (1005)

Chief William Blair: Only partly, sir. I attribute the reduction in violence to a number of things, and I give full credit to our partners in communities, youth workers, the schools, our faith leaders, business leaders, community leaders everywhere, who have really made an effort to create opportunity and hope and some prosperity in marginalized communities in deterring young people from following in the footsteps of others. We've worked hard to take those violent offenders out of the community, but the work doesn't stop at that, and more needs to be done in those communities to make them safer and better places, and more hopeful places, and less likely to attract young people into criminal activity.

We've worked hard, and I'm proud to say the police have mounted a fairly effective response, and others have worked hard as well. It's also important to acknowledge that there's no room for complacency here, and the work is not done. We have had successes in the past and we have seen something of the cyclical nature. It's important to step back a little bit from monthly successes or problems and look more generally at the larger trend, and not just in the city of Toronto.

One of the things that has also taken place in your jurisdiction.... I have spoken to Chief Stannard in Windsor, and he has expressed concern to me that there has been some displacement of my gang problems. We've been well resourced and we've worked very hard on our gangs, and some of our gangsters are moving into other jurisdictions that are less well resourced and are perhaps more vulnerable to criminal activity. So what we're seeing is an increase in gang violence in other cities across Ontario. There is some suggestion that we have displaced it, and there's some merit to that. It's incumbent upon all of us in the criminal justice system to rise together to the challenge of gun violence in our communities, so that we don't displace it, we eliminate it.

Mr. Joe Comartin: I want to come back to the displacement argument in a moment, but just to stay with the specific endeavours the police services have had here and the success with them. This is just straight dollars. Given the monetary cost that entails, can you sustain that effort for the next two or three years?

Chief William Blair: Let me talk about the effort a little bit, if I may, sir.

First of all, I moved about 200 people back into uniform, into communities. That's where I needed them. They're out there enforcing the laws and helping keep neighbourhoods safe. I'll sustain that. That's me deploying some existing resources.

Both the City of Toronto and the Province of Ontario have provided us with funding to hire 250 additional police officers. I've done that and they're out there.

Mr. Joe Comartin: They're in place now?

Chief William Blair: By the end of this month, they will all be in place, but we've been working hard at getting that done all through this year.

Additionally, I was provided with some resources through one-time grant funding from the Province of Ontario. I'm hoping to discuss that at a future date, but, in fairness, we have not had that discussion. That was tremendously important to us as well. It enabled us to do a number of things in anti-gang violence initiatives and anti-violence initiatives, and in particular to assemble some rapid deployment teams.

I have three teams of eighteen officers that we can, through our intelligence and analysis, rapidly deploy in the neighbourhoods where violence is taking place or is likely to take place, and they're very visible. They're all uniformed. They do a lot of compliance work to make sure that those people who are violent and have been released into the community are in fact complying with the conditions of their release. In fact, one arrest in seven in the city of Toronto will be for non-compliance under these conditions. We have to work very hard to make sure that people are complying with those conditions.

I can also tell you that this year in the city of Toronto we will arrest more people than we have ever arrested in the history of the Toronto police. We will lay more charges. We will show-cause more violent offenders. We've increased our work in virtually every area, and we've put a lot more people out there to do the work.

Certain aspects of it are quite sustainable and others will always depend on the largesse of others to help us get it done. Quite frankly, enormous pressure is being brought to bear on those funding sources because a lot of other communities in Ontario are putting their hand up and saying, “We're having the same problem and we need the same help”, and I agree with them. I think they do need the help. That's why I make the statement, “When my partners are stronger, I am stronger”. It's an important statement.

As well, we all need to rise together. And it's not just the police, by the way. There's an impact on crown attorneys, there's an impact on our court space, on court security, prison transportation, and the administration of the courts. There's an impact on our judges, and there's a significant impact as well on the legal aid system. So all aspects of the criminal justice system have to rise together to meet the challenge.

● (1010)

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

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

Thank you, Chief Blair, for being here with us.

That's the theme of what we want to do. It's to be a partner. We know you are doing a great job here in Toronto, but there is a role, obviously, for us as people who draft amendments to the Criminal Code and are caretakers of the Criminal Code. We also have to pull our weight.

I want to have you maybe expand a bit on a few comments that you made. First, you made the point about the continued violence of a number of individuals. When we look at the population of your city, Toronto, we're actually talking about a small number, percentage-wise, of individuals who are creating the problems, the headlines, and the escalation in violence. You also mentioned that there's no one answer, but with some of the work you're doing, the work we can do, and the work of other stakeholders in the community, together we can try to prevent what's going to happen.

Could you comment a bit on where we are dealing with a relatively small number of people? I know it's a lot for your police force because you're dealing with a number of individuals, but when we look at the millions of people who live in Toronto, we're actually dealing with a small percentage who are causing the problem.

How do you feel the escalating offences proposed in the bill—the five-year minimum on a first offence, seven on a second, and ten on a third—fit with targeting repeat offenders? You used an example that I think is pretty telling, in that in one community there had been ten murders one year, and when you finally were able to get those few individuals off the street, the next year there were no murders. That's what we are trying to do with this bill: get the people who are really causing the problem off the street.

Could you comment a bit on maybe the escalating nature of these offences?

Chief William Blair: First of all, Mr. Moore, I concur. I think it's important to maintain a perspective here. This is not youths out of control in our communities. The overwhelming majority of young people in our city are decent, law-abiding young people. They just want to live safely and get ahead.

The activities we're talking about are limited to a relatively small number—perhaps no more than a thousand violent gang members. Even though we've identified significantly more people involved in gangs, they're involved in other criminal activity that the law is adequate to deal with, with respect to drug dealing, theft, and other types of crimes. But the truly violent are a relatively small number. In Jamestown, the community I spoke of earlier, we kept about 45 people in custody this summer and the level of violent crime in that community plummeted by over 50%.

We had a similar experience, by the way, in Scarborough. There were a number of murders in 2003 and early 2004. In fact, the same spike that we experienced in 2005 occurred in that time period as well out in the southeast and northeast parts of Scarborough. Two gangs were responsible, the Galloway Boys and the Malvern Crew. We did very significant investigations targeting both individual groups. The group of the Galloway Boys was twelve individuals whom we apprehended and kept in custody. They've been through preliminary hearing, and I can't speak too publicly about the evidence against them, but the allegations are that they were involved in multiple murders and multiple shootings in that community.

When we took those twelve individuals off the street—this number is extraordinary and I have to share it with you—violent crime in Scarborough, which is a community of over half a million people, dropped 40%. It's not that those individuals were responsible, but I think others took note and were deterred from their behaviours by the real consequences that those twelve and others faced, because we followed that up with a similar investigation in Malvern.

Just taking them off the street isn't the whole job. I want to be very clear on that. We then went into those neighbourhoods in significant numbers, in uniform, to restore a sense of safety and to empower the people who live in those communities to take back their own communities and have the confidence and courage to come forward to provide real opportunities and good role models for the young people in those communities. It made a huge difference in those neighbourhoods.

I actually live in that neighbourhood and I know the difference. Confidence was restored and a sense of safety was restored because the most violent individuals—a handful, but the most violent handful you could possibly imagine—were incarcerated. Once they were out of the community, the world changed for everybody; there was a 40% reduction, and it lasted for several months. A 40% reduction in violent crime in that community was hugely significant to those of us who live there. It improved the quality of life for everyone, because a dozen individuals were no longer able to prey on that community.

● (1015)

Mr. Rob Moore: Do I have a little more time?

The Chair: You have enough for a very quick question, Mr. Moore.

Mr. Rob Moore: That's an amazing stat, I have to say.

The other question I have is on what you mentioned about the deterrent effect when others are facing consequences. I've heard the argument made in committee, in other people's testimony, that there is no deterrent effect when you see another individual facing consequences. Is it your submission that there is a deterrent effect if people in the community see other individuals facing serious consequences for their serious offences?

Chief William Blair: I believe there is. A couple of things happen. When very serious violent criminals are arrested and taken out of the community and kept out of the community, I think young people who might be inclined to follow those role models might look for other role models in their communities, more positive role models—decent, honourable citizens—to follow.

Some individuals who may think that's the way to make your reputation in the community might be deterred, but there's also a very important thing that happens. A community's sense of self and self-confidence and pride is restored when these individuals are removed and when we can create an environment where good things can start to happen. Young people don't have to be ashamed of the high school they go to or be concerned that when they go for a job and tell a potential employer what neighbourhood they come from, they won't be hired because they're deemed to be at-risk youths. In fact, those youths aren't risky at all, but they may come from risky circumstances. When we can reduce the risk of their circumstances, their opportunities increase. That has a very positive effect on communities and neighbourhoods, and it's a responsibility that we have to our citizens to make those neighbourhoods safer places.

That's why I've committed so many uniformed resources. It's not just simply to effect arrests. I don't believe we should measure our success by the number of people we arrest or even how long we keep them in jail. I think the true measure of our success is the absence of crime and an improvement in the quality of life of all of our neighbourhoods.

The Chair: Thank you, Mr. Moore.

Mr. Lee.

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

Chief Blair, thank you for attending today.

Of course, Toronto isn't the only place in the country. There are lots of other cities and places with difficulties with crime. It is notable that the spike in firearm violence that occurred over the last year and a half appears to have conspicuously been reduced to the point where, the last time I checked earlier this month, the number of firearm homicides had dropped to 44% from last year. The woundings dropped 19% or 20% and the shootings were down 20%. So something right is happening under the existing law. Obviously, a big portion of it has to be attributed to the Toronto police.

I will add something to your remarks. I live in 42 Division, just north of where you live, I think. And 42 Division includes Malvern, but not the Galloway region.

The last time I spoke with Superintendent Ellis, he noted that, based on the serious crime index used by the force, 42 Division in north Scarborough had the lowest crime rate in all of the city of Toronto, including Rosedale. So that is a huge difference, which can only be attributed.... It wasn't the weather and it wasn't the diet; it was the police. So I want to give credit to the force and all of the creative ways they have found, using the existing law, to address spikes in crime or community crime.

You mentioned bail as being at least a visual problem. It's perhaps part of the denunciation envelope. In other words, when people see someone who has been charged with a crime come out a couple of days later, pending a trial, maybe they get scared; maybe it doesn't look right. This bill doesn't address bail, but it does address, with some certainty, criminals off the street.

Could you tell me what components of this bill appeal to you in terms of its ability to take people who can be identified as threats off the street?

● (1020)

Chief William Blair: Mr. Lee, let me say, first of all, thank you for your comments, because I believe we have provided an effective policing response. And as I said, I like to give credit to my partners in this. The community partners we've had have been courageous and hard-working and have done a great job as well.

The laws that we have used have not yet been tested in court. They haven't done their job. That part hasn't worked yet. We've worked our tails off in the past several months and none of this has come to trial. We've worked very hard using the existing laws to bring people before the courts, to keep people in custody, and when they get released, we're back on their door. We see them first thing in the morning and last thing at night to make sure they're complying with the conditions on which they were released.

As I've indicated, almost one arrest in seven that we make in the city is because they're not complying with those conditions. Fully 68% of the people we arrested for firearms offences last year were out on bail. So we keep working hard at that.

The part that you say...the effectiveness of these laws. We haven't seen that they're effective yet. Quite frankly, they haven't done anything because we haven't had a trial on any of these matters. We're still before the courts.

We're hoping that we can have an effective response from the criminal justice system at the back end, that sentencing will be effective. So we've worked very hard, and I think on our part of the job we've done our very best and we've had a positive effect. If we keep on arresting them and bringing them to court, and if there are not real consequences for those conducts, then they'll be back on our streets.

Keeping them in custody so far this summer has proven that when these individuals are incapacitated from their ability to be in the community, from carrying guns and shooting each other and shooting innocent people, when we have them in jail and they're incapacitated from that, our streets are safer. It remains to be seen, after we get to trial and they're convicted, whether the criminal justice system is prepared to keep them in custody and continue to keep our communities safe. If it's not, and if they come back out, we'll keep working hard to do our part.

Mr. Derek Lee: These people will be prosecuted under the existing laws and not under this new bill. But what I take from your remarks is that the part of this bill you like is its potential ability to incapacitate the serious repeat firearm offender and keep the person off the street, post-conviction.

Chief William Blair: Mr. Lee, I believe a rational person would be deterred by two things: first of all, the likelihood of being caught; and when caught, suffering with real consequences for their actions. I think both of those things would deter a rational person.

I haven't seen sufficient evidence, and I don't think there has been sufficient study, to say with absolute certainty that everyone will be deterred, but I can tell you that when they're in jail, and when they don't have a gun and they're not walking around our neighbourhoods, nobody is getting shot by that individual.

It has also been my experience that we didn't lock up every bad guy in Malvern, in Galloway, or in Jamestown, but a lot of the other people who might have been predisposed to take up a gun, when all of their colleagues and friends were in custody, I think made different choices. That's my belief, and I think our neighbourhoods were made safer as a result.

The Chair: Thank you, Mr. Lee.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, Chief. I really appreciate the successes you've had and the hard work you're doing.

I'm finding in my area out in Alberta, mostly in the rural area, that the RCMP are the main enforcers, but I do have a lot of conversations with the police officers of Calgary and other towns and cities. One thing that is happening in Alberta, of course, is that we're having a fairly good economic boom, and opportunities for jobs are quite high. The number of resignations from police forces is on the rise because they're taking these better-paying jobs.

When I talked to some of these people, their response was that it wasn't about the money. They said they liked what they were doing as a police officer, but when they dropped people off at the remand centre in the city, because the rural area didn't have a place to keep them, and then drove back to their hometown to do the work and these characters beat them back there, that got very discouraging.

When they stick their necks out, put their lives on the line, day after day, to apprehend and arrest these people, and they beat the officers back to their hometown because of bail or the “soft approach”, for lack of a better term, I think the sentencing factor is an extremely important thing in the minds of police officers who are out there putting their lives on the line. Is this not true?

● (1025)

Chief William Blair: Well, certainly there is some frustration expressed by our people, but I can also tell you, sir, in my experience in Toronto, people are working hard. They're doing dangerous work, but they're doing it well. I think there's a pride that comes with doing your job well, and my people feel that pride.

There is some frustration when we see these individuals back out on the street, and it's one of the reasons we work so hard to ensure that they are complying with the conditions they're released on and so often are bringing them back in before the courts because they're not complying with their conditions.

I had a situation I had to deal with last year where an individual was involved in a gunfight with the police, where he actually fired on the police, and four days later he was released into the custody of his mother. Within a week, we got him again with a gun. My people were looking at me and saying, “How often do we have to do this? This is dangerous. We want to go home to our families and we're being put at risk by the system.”

I think some of those concerns are corrected through the administration of justice, and that's fine, but at the end of the day, with all of this work, I think all communities, not just police officers, but the citizens of our city, certainly have expressed to me—and I've been in every community and every day go out in the city—that they don't want everybody in jail, but they want the dangerous, violent offenders in jail, the people who put everyone at risk, the people who engage in gunfights in which four-year-olds get shot or innocent children get shot down on the street. They want those individuals out of their community. They want to be protected from them, and until we can do that for them, I don't think we can expect people to be courageous enough to step forward and help us in our investigations as often as we would hope they would do it. We have to provide them with some assurance that the whole system will work for them and that our first responsibility is to protect our citizens.

We have to act sometimes. Individuals may have to suffer the consequences of the choices they make, so that, for the greater good, we can provide a safe community for everyone.

Mr. Myron Thompson: A few years back, my colleague Mr. Hanger and I were in the city of Toronto. We did a ride-along for a couple of nights. At that time, there was a significant number of gang wars. It was pointed out to us by the officers we were with.

We also made a trip to the border and saw a number of trucks blow through the lines and boats going across the water. I'd ask, “What's on those boats?” They'd say, “If it's like this, it's probably cigarettes; and if it's like that, it's probably whiskey; and if it's like this, it could be guns.” There's not much policing in the sense of what's going on at the borders. How significant a problem is the smuggling of these items in the city of Toronto?

Chief William Blair: We have interesting discussions about the sources of guns, and we work hard at all sources. Our investigations in 2003 and 2004 indicated an even split, with half being smuggled across the border and half being stolen from legitimate gun owners here in Ontario and elsewhere in Canada.

We've worked very hard to raise public consciousness about the problem with insecure firearms in our communities. I think there has been an improvement. What I think we're seeing now, in our latest work this year, is that close to 80% of the firearms we're seizing have in fact been smuggled across the border. So that's shifting a little bit. I think it is reflective of some good work that has been done here to improve the quality of security of firearms, but it is a challenge.

You raised the issue of the border. I am a member of the Major Cities Chiefs Association, which is an organization of the large police services across North America. I have been at two national forums conducted by the United States, in Washington and in Boston, on the issue of gun violence. The whole issue of gun violence is being described by the chiefs of the large cities in the United States as a gathering storm. What is happening in the urban centres of virtually every jurisdiction in America is a significant increase in violence, in particular gun violence, which is attributed to a great extent to gangs.

We are not the United States. We have different laws and a different society. But the cultural influences that give rise to much of this gang activity impact on our youth as well, so I think there is a great forewarning there. It was indicated today that we saw a bit of spike and then the numbers came down, but a very strong trend is emerging across North America in terms of an increase in gun violence and an increase in gang activity in all communities. We're seeing a serious and worrying increase in youth violence in those cities.

So we have not experienced the same level of violence, but I think there are lessons to be learned there.

Mr. Myron Thompson: On a point of order, Mr. Chair, you've heard me speak several times about the gang activities in prisons. I am wondering if it would be possible for the chief to provide us with the names of gangs. I would like to have that list for a comparison with the gang activities in penitentiaries.

This is kind of for my own personal use, but it might be interesting for other members as well.

The Chair: Chief, is there some information that can be compiled in that regard?

Chief William Blair: We have compiled lists. We have 73 identified gangs in the city of Toronto.

I believe CISC, Criminal Intelligence Service Canada, provided you with information on street gangs operating in Canada. I believe the names of our gangs were listed on that material. If you don't have it, we'll provide it to you, sir.

● (1030)

Mr. Myron Thompson: I would like to get that soon.

The Chair: We will attempt to look for it. If we are unable to find it, we will be in contact.

Mr. Murphy.

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

When I lived in Toronto in the 1980s, my roommate was a member of the Toronto police force. We never got broken into, probably because he was a member of the police force—or because we had no possessions of any real merit, I don't know which. But this goes to my point about police officers, community members, business community leaders, as you mentioned, and teachers, etc., being the fabric that creates public safety, and I am very happy to hear you say this, if that is a model for all of Canada. I also want to congratulate you on your good work.

We have gone a little off topic with respect to a strict examination of Bill C-10, so with the chair's permission and the committee's willingness, I might ask you about what I think is really the rub of the issue here, and that's gun control, for handguns, long guns, big guns, little guns, I don't care which. It may unify us to hear you say that guns of any sort are very dangerous for a community, whether it be Toronto, Moncton, Riverview, Edmonton, Red Deer, or wherever.

I have two questions, very political.

One, do you see any merit in scrapping completely the long gun registry?

Two, perhaps in a blue sky statement, what, other than the provisions in the Criminal Code regarding restricted weapons and so on—the licensing and the regulatory scheme, frankly, that you alluded to in your remarks—would be the perfect gun control scheme that could be enacted by a federal government that would help you in your job and make communities safer?

Chief William Blair: Like my colleagues in the Canadian Association of Chiefs of Police and the Ontario Association of Chiefs of Police, I believe there is value in the gun registry. It provides important information to the police that enables us to do our jobs a little more safely, and it enables us to keep our communities safer.

I spend a lot of time working with my American colleagues on gun control issues, and when I tell them that we have such a registry in this country, they are astounded and quite envious that information is available to law enforcement. But as I have acknowledged previously, the truth is that unfortunately gangsters in my town don't register their handguns. So the problem I'm having with my gangsters killing each other with their handguns is not addressed adequately by a registry. But the registry still has value. Just because it doesn't have value for that problem does not mean it doesn't have value to the police. That's my position on the registry.

This is a vast country, and there are many jurisdictions and circumstances where it's not a problem of public safety for individuals to own firearms. Certainly for the farmer in Saskatchewan or the bear hunter in northern Ontario, I have no concerns about responsible gun ownership, as long as those firearms are lawfully obtained, properly registered, and safely secured. That's not an issue for us. I believe that what will help us keep our community safe are laws that enable us when we apprehend individuals in the criminal possession of a firearm.

In Toronto my problem is overwhelmingly one of handguns, but criminal possession of any firearm or crimes committed with firearms are more dangerous than with other weapons. That's because of the radius of harm that those weapons can bring into a community. In a large urban centre, if somebody pulls out a gun on Yonge Street and blasts away, it is almost inevitable that innocent people will be caught in the crossfire.

We will do the work of apprehending those individuals and taking those guns off the street, but in my ideal scenario, there are real consequences for those actions. Individuals who might be predisposed to getting guns would be deterred from making that choice and endangering everyone else because they will know that they will get caught, and when caught there will be real consequences.

We've done everything we can in Toronto to deal with the first part of that. We've done everything we can to make sure they know they will get caught. We are starting to achieve some success in that regard, but in order for that to be effective, they also have to know that when they are caught there will be certain and serious consequences for their conduct. I don't believe right now that is the perception among our gangsters and people who would endanger others. I think it seriously undermines our efforts to maintain public confidence.

In order for a police service to do their job, we have to maintain two things in our relationship with the public. First is trust that we will do the right things for the right reasons. Second is confidence that we can competently address issues of public safety. Only if we do those things can we maintain a high degree of public confidence. Without them we can't do our jobs.

I believe those in the public trust us and know we're doing our very best, but I do not believe they are fully confident in the entire criminal justice system to deal effectively with these individuals. I think we need to be able to provide them with assurances that there will be real consequences, these guys will be caught, and our communities will be protected from individuals who would take up guns, blast away, and put so many people at risk.

● (1035)

The Chair: Thank you, Mr. Murphy.

Very quickly, Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): First of all, there is now a reverse onus, a change in release today. Some of you spoke about the changes in or challenges with bill breaches. On the 68% figure you mentioned, Bill C-35 hopefully will alleviate that for the work you and your force do.

On the education of the offender, there has been some contention that this won't actually register if you have minimum penalties for those who commit crimes. What is your assessment of the criminal population? Does this deterrence effect work? Is there a level of sophistication among criminals about the potential consequences?

Chief William Blair: I would think there is. I've been dealing with such people all of my adult life, and they're not fools. They make choices, real choices, and I think do so provided with the right information about the consequences of their action. We have to create an impression that we really mean it.

One of the things we did this year.... Let me give you an example of deterrence. Every year we have a Caribana Festival in Toronto. Historically, in the downtown core on that weekend we have experienced significant violence. Last year, in 2005, we put close to 600 police officers in the downtown core, but it was not well publicized. We had 22 violent events that weekend, and one person was killed. The person who was killed was killed within a proximity of about 30 feet of 50 police officers. The guy just took out his gun and shot another guy to death right in front of the police, and he was apprehended within seconds. I'm not sure that individual could ever be deterred. He was mad.

But this year we took a different approach. We publicized very extensively that we would be there in vast numbers, precisely the same numbers as the year before. We put up video cameras in that location and we put up signs everywhere saying there were video cameras in those locations. We weren't sneaking up on anybody; we let them know that the likelihood of getting caught was significantly increased, and that there were a lot of police officers there, and that we would be enforcing the laws vigorously in that location.

We had that event this year. Whereas in 2005 there were 22 violent events, in 2006 there were none.

Mr. Patrick Brown: Chief, there are two new offences listed in this legislation—one, robbery where firearms are stolen, and another, break and entry and then stealing or intending to steal a firearm—and a separate offence of using a firearm or an imitation firearm in the commission of other offences.

Could you offer some opinion to the committee on the merits of creating those new offences?

● (1040)

Chief William Blair: The theft of firearms has had some devastating consequences in my community. In 2003, there was a break and enter at 31 Gilder Drive in Toronto. It was an apartment. A gang broke into that apartment and stole 30 handguns from it.

Nine of those handguns were subsequently used in murders in the city, from a single break and enter. Those guns went into the criminal element, into a certain gang. It tipped the balance of power between gangs, and a war broke out. By the time we were done, there were a dozen killed, and several dozen people had been shot.

So we need to have consequences for individuals who do not store their firearms securely. But I think there have to be greater consequences.... This is not merely a theft; this is a crime that results in death and destruction and incredible consequences and trauma for our neighbourhoods. So I believe there should be serious consequences for those actions.

The Chair: Thank you, Mr. Brown.

I'd like to ask one question before you leave, Chief. You spoke of arresting people with charges of firearms offences against them and their being out on the street. Do the police have power to arrest without warrant for any parole violation, or probation order, or bail restriction?

Chief William Blair: No, sir.

For a parole violation, it really requires intervention of the parole authority. We bring that information to their attention. It sometimes requires us to go back a second time. If we catch somebody in violation of parole conditions, we notify the parole authority, who then may take out a warrant for that individual. Then we go back and find him again. There are some real limitations on what we can do.

We have proven very effective, by the way, in enforcing conditional release conditions: curfews, non-associations, residency requirements. Those things have been very effective tools for us in maintaining some control over offenders in the community. Our ability to control people who are on probation and parole is somewhat more limited. But it requires us to form better partnerships with the parole and probation authorities, and we're trying to do that.

The Chair: But if the police were given that authority, it would be a much more effective tool.

Chief William Blair: I think it could be valuable, yes.

The Chair: Okay. Thank you very much, Chief. Your presence here was very much appreciated.

Also Mr. Clarke, thank you for testifying. I think you gave us quite a riveting statement on the issue of gun violence in the city—and the region, actually. It's very much appreciated. Thank you.

Chief William Blair: I am very grateful for the opportunity to be here today and the opportunity to answer your questions.

I can tell you, on behalf of the members of my service, my communities, my colleagues across the country, that we are grateful for the time all of you are putting into this. It's a very important question for us. It's a very important issue in our communities. It has a huge impact on people's perception of their safety. We are grateful for the thoughtful work that's going on by everyone on this matter.

The Chair: We appreciate it. Thank you.

I would like to call the Hon. Michael Bryant, Attorney General for the Province of Ontario, to the table.

Good morning, Minister.

Generally, Minister, we haven't had too many politicians sitting at our table, and we appreciate your persistence in calling. Your testimony will be valuable for us to hear, from a provincial perspective. The committee agreed to have you present, and we appreciate your effort here.

I would ask you to begin your presentation, if you're prepared, and we'll get to the questions immediately after.

● (1045)

The Hon. Michael Bryant (Attorney General, Ontario Ministry of the Attorney General): Thank you, Chair. I appreciate the opportunity to address the committee.

I'm sure the justice committee is very aware of the role the provincial Attorney General and his or her agents play in our criminal justice system. But just as confirmation, I guess, for those who torture themselves by reading Hansard for a committee, the provincial Attorney General is responsible for prosecuting the Criminal Code. So that's everything from shoplifting to murder.

As you know, federal crown attorneys are responsible for drug crimes, under the Narcotics Act, and other offences. But within the rubric of organized crime—in guns and gang crime—it is the provinces that are responsible for most of the prosecutions involving guns and gangs, unless there specifically end up being drug crime charges.

In the province of Ontario, unlike in the provinces of Quebec and British Columbia, for example, there is a distinction between who lays the charges and who prosecutes the charges. In B.C. and Quebec, the charges are laid by crown attorneys. Here in Ontario, charges are laid by the police, and then the provincial agents of the Attorney General decide whether to prosecute based on whether there is a reasonable prospect of conviction and if it's in the public interest.

In Ontario, there are 900 crown attorneys—900 prosecutors—who address 500,000 charges every year. As such, the Criminal Law Division in the Province of Ontario has a considerable amount of experience, and I will say that they have developed a considerable amount of expertise. They have had the opportunity to work with officials in the federal Department of Justice under different governments and are obviously more than happy to work with the Department of Justice under this government, and have done so.

There's a role for the province and the municipality and the federal government in the fight against gun crime. It is not solely the job of one level of government. I will quickly go through a few things the province is doing, and then if you'll permit me, Chair, I'll spend the bulk of my time talking about the bill—issues around amendments, issues around why have mandatory, and some examples—and then I'll happily take your questions.

The province's approach to guns and gangs—Ontario's approach, the McGuinty government's approach—is that we have to do everything. It is not simply a matter of crackdowns alone or prevention alone or deterrents alone or denunciation alone. It is the whole package. So for the first time in Ontario, we established a guns and gangs task force that involved both police and prosecutors working together, literally, in the same building and on the same floor.

A few months after I had the honour and opportunity of being sworn in, for the first time, a crown prosecutor, a crown attorney for the Province of Ontario, left his offices and moved into the offices of Chief Blair. The purpose of that, and the purpose of having prosecutors and police working together is this. As you heard from Chief Blair, there are thousands and thousands, sometimes over 100,000, wiretaps, often in many different languages. Usually most of the evidence involved in guns and gangs cases involves electronic surveillance. The disclosure requirements established by the Supreme Court of Canada and pursuant to our charter require timely disclosure. The search and seizure powers and the sophistication of some of the gangs, who understand very well what the laws are, has led to Ontario's approach to what we call organized justice.

● (1050)

We want to be one step ahead of organized crime, not just traditional organized crime, but organized crime in the form of the street gangs we see, literally franchised operations with recruitment practices and a level of sophistication with some of them—as Chief Blair said, not all of them, but a level of sophistication—that allows them to do their best, unfortunately, to try to organize themselves around both the federal-provincial division of responsibilities and also around the Criminal Code and the justice system itself. Thus, we have organized justice. We have a crown attorney working with our police officers from day one of an investigation right through to the end. That assists in terms of timely disclosure. That assists in terms of ensuring all aspects of the investigation, and ultimately the evidence will be usable and positive before the courts, etc.

It's expanded. We now have more than 60 prosecutors in the guns and gangs task force. We've established an operations centre that will be operational in January that puts everybody in the same room, all levels, RCMP, provincial policing and municipal policing, as well as enforcement. There's room for federal prosecutors. Obviously, there will be Ontario crown attorneys and the technology and the wiretapping experts. There's no substitute for being able to walk down the hall and talk to your colleagues, instead of having them across town or in some cases across the province.

Third, we entered into an agreement with other provinces, Quebec and Manitoba—Ontario did so simply because of geographic proximity—to have the provinces collaborate on guns and gangs operations. Obviously, these are international and national efforts for some organized crime. The prosecution effort involves work from literally 10 or more police forces, different municipal police forces, several provinces, sometimes several countries. We have collaboration between provinces now. It has existed over the years, but it has never been formal or formalized. There has never been a real push to collaborate to get one step ahead of organized crime and, for example, to share expert evidence. So if an expert is being used in one province for a gun crime, and we know that person is there and is in Manitoba and we know how that went, we may be able to use that expert in the province of Ontario. There's no reason why that can't expand across the country.

Our government fast-tracked an additional 1,000 police officers, and we also established major crimes courts, courts geared toward these relatively new prosecutions that involve dozens and dozens and sometimes over 100 accused. That involves particular security requirements. As you can imagine, that means we have to keep the witnesses apart from the accused. We have to protect victims' rights, thus the special victims unit within the operations centre. As I said, electronic surveillance dominates these trials, and therefore we have to have courts that can accommodate that, thus the establishment of these major crimes courts.

Next, again, I said we have to do everything. We use our provincial legislation, civil legislation, to seize and in some cases forfeit property that's used for unlawful activities. Yesterday we announced the seizure of a crack house in Hamilton, not the first, but the second crack house we've seized in Hamilton using the provincial civil legislation.

Last is prevention. We have to do it all. So the premier established a challenge fund, an up to $45 million challenge fund to prevent, to reach out to communities, to provide opportunities to communities, so people don't have to choose between a gang and doing nothing, but rather have community activities they can turn to.

Enough of telling you what I do for a living; let me get into your bill. Thanks for your indulgence.

Ontario supports Bill C-10. Ontario, at least since the McGuinty government has been in office, has been calling for increased mandatory minimum sentences. I have written to the previous justice minister and the current justice minister, attended federal-provincial-territorial justice ministers meetings, and attempted to forge a consensus among justice ministers. We achieved that in Whitehorse, which I'll speak about in just a moment.

● (1055)

We support mandatory minimum sentences.

[*Translation*]

I am encouraged by the federal government's commitment to move the justice system forward.

[*English*]

We view mandatory minimum sentences as part of a larger package, as I've just discussed in terms of what the province's role is. This is not the only change that Parliament ought to address and of course is addressing.

I don't know what time it is, but I think it may be at this very second that the Prime Minister, the premier, and the mayor are making an announcement on bail reform.

As I say, under the McGuinty government, Ontario has been pursuing the fight for zero tolerance on gun crimes. We are very committed to doing that, to doing all we can to fight gun violence.

In November 2005, at the federal-provincial-territorial justice ministers meeting in Whitehorse, Ontario, we worked with the other justice ministers and with the federal minister to establish a national consensus, which was achieved at that time, that sentences for gun-related offences should carry increased mandatory minimums.

At that meeting, Ontario proposed, among other things, two new offences, which we are pleased form part of the proposed bill that we're here to discuss. The creation of the charges of breaking and entering to steal a firearm and robbery to steal a firearm would, if passed, officially recognize two crimes that unfortunately have become all too common in this world of gun and gang culture.

I said I support the bill. I also understand that committees have work to do, and one of the things committees consider is the specifics in the amendments. So I'd like to speak to that for just a moment.

Ontario is concerned about the application of mandatory minimum sentences, about how they are used. It has been upheld by the Supreme Court of Canada that minimum sentences have an inflationary effect, as Madam Justice Arbour upheld in Morrisey. Namely, I would argue that minimum sentences are the floor, they're not the ceiling, but the bill, prima facie, does not reflect that right now. So I would submit that a statement of principle to the effect that mandatory minimum jail sentences are minimums and not maximums would be helpful in ensuring that the courts do not use a mandatory minimum as the tariff, because if it's used as a tariff, then it will not be a minimum; it will be used as a maximum.

A statement of principle to that effect would be helpful in clarifying that for the courts, and obviously if the Department of Justice or this committee wishes Ontario officials to provide some more specific language around that, we would be happy to assist on that front.

The bill ought to address, in my submission, a number of sentencing issues.

First, the bill could better toughen the prohibition period for possession of firearms and ammunition.

Secondly, we would recommend that the bill provide sentencing judges with the power to increase the period of parole ineligibility for any sentence involving a firearm-related offence.

Thirdly, we would recommend that the bill deal with section 92 of the Criminal Code, the possession of a firearm—knowing its possession is unauthorized—to provide for a mandatory minimum jail sentence for a first offence.

Fourthly, we would recommend that the bill provide a mandatory minimum jail sentence under section 94 for those found guilty of illegally possessing a firearm while in a car.

On those two offences, and I understand that they are not entirely without controversy, the idea is this. If you get into a car and you have a firearm, you need to know that if you get pulled over, you're going to go to jail. I can only imagine the danger posed to police officers pulling over somebody who has a firearm in that car. Not having a mandatory minimum sentence, I would argue, does not (a) send the right message and (b) does not denounce that offence to the extent that it ought to be denounced.

The same argument, I would argue, should be applied to the possession of a firearm, knowing that its possession is unauthorized, to provide for a mandatory minimum jail sentence for a first offence. Again, it's if you are in public and you have a firearm and you know it is unauthorized. We are not talking about the hunter here. We're talking about the person in public with a firearm knowing it's an unauthorized firearm. You need to know, when you decide to walk out of your house or apartment, or wherever you were where you got that gun, that if you get caught, you're going to go to a jail.

● (1100)

I think that's entirely consistent with the principles and the spirit behind this bill. It would be a significant denunciation of those gang members who have weapons on them and who know that they are unauthorized.

I also want to speak to the issue of resources, to reiterate what has been said at the federal-provincial-territorial justice ministers meeting. As you know, we already have increased the number of prosecutors in the province of Ontario, entirely funded by the treasury in the province. We have also appointed more justices to the Ontario Court of Justice than in any other three-year period in the history of the province. There have been more than 60 additions to the Ontario Court of Justice in the last three years—60, six zero. We've done that to enhance the ability of the criminal justice system. We've added 1,000 new police officers as well and have established the provincial operations centre. These are part of a $51 million expansion of the criminal justice system announced last January by the premier, Chief Blair, and the commissioner for the OPP. It is the single largest expansion, in one fell swoop, of the criminal justice system the province has ever seen. So I would submit that we're doing our part in the province of Ontario.

Obviously, accused persons, under this bill, will be facing increased penalties. That's going to have an impact on the justice system; it always has. In the past, the federal government has assisted the provinces in funding federal legislative initiatives, especially when the bill carried the type of anticipated pressure that this one carries. The submission was made by all the provincial and territorial justice ministers to the federal justice ministers at the last federal-provincial-territorial meeting last autumn in Newfoundland. I would argue the precedent of the federal government assisting the provinces with federal legislative initiatives that has applied in the past should apply in this case.

Let me get into mandatory minimum sentences and why. In my respectful submission, the debate over mandatory minimum sentences is a false debate. We have mandatory minimum sentences in Canada. We already have them. And we already have them for gun crimes. The question is, which offences? And where there are mandatory minimum sentences already, what should the increases be?

The purpose is to incapacitate persons who have been convicted of gun crimes, persons who have proven themselves to be dangerous. They have the most dangerous weapon imaginable to the public—a firearm, a gun—and they ought to be incapacitated.

Denunciation is, obviously, another purpose.

Deterrence has been spoken to already by the chief, and I would echo his remarks. Deterrence applies to some; it doesn't apply to others. If deterrence was the sole purpose of the mandatory minimum for murder, you could make the argument that some people are not going to be deterred by the sentence. Of course, it applies to some but not to others. The reason we have the sentence we do for murder is, in part, because of denunciation by Parliament. So it should apply with respect to gun crimes.

I want to give a few examples of—

The Chair: Excuse me, Minister.

● (1105)

The Hon. Michael Bryant: Am I up, Mr. Chair?

The Chair: Actually you are. But during the line of questioning that will follow, you will have an opportunity to provide some of those examples.

I'm going to allow the committee to question now, and if you see fit—

The Hon. Michael Bryant: I know how it works. Thanks, Mr. Chair.

The Chair: Excellent.

Ms. Barnes.

Hon. Sue Barnes: Thank you very much

Welcome to the committee.

I recall that in November of last year the former Minister of Justice came to Toronto. I think you were at that announcement, and you were very supportive of the bill at that time.

Just for those who were not present, breaking and entering with an intent to steal a firearm and robbery with intent to steal a firearm were part of that piece of legislation. Our government certainly was in favour of those bills.

Also, as you said, Minister, there are already 42 mandatory minimums in the Criminal Code, give or take one or two.

I was part of putting some of the evidence surrounding guns. I was part of getting that in during my term in Parliament.

Our police chief, just before he ended his comments, said it was the public's perception of safety. That is where the discussion comes in. The public wants to feel safe. You're talking about 500,000 charges every year in Ontario. If you multiply that by the rest of the country....

What do people read about? They read about the extreme acts of violence in the papers. That skewers their perception of the magnitude of the problem. We know there is a divergence with our criminal justice statistics.

I do want to correct something. The current Minister of Justice, when he was at committee the other day, talked about the Liberals wanting to double the mandatory minimums and misapplied that by saying from four to eight years. What we had in our bill were various other charges, where we were doubling the minimum one year to two years. I don't want that misperception to continue.

There are some mandatory minimums that, with a carefully drafted bill, I think the Liberals would be able to support. The way this thing is drafted has some real problems.

You were present, and you heard about the discrepancy between the long arm and the short gun. Those are ideological differences. There is no evidence to really back those up. We've not been presented with any evidence by the minister, or any documentation. What we're trying to do here is an evidence-based analogy. We are also constrained, quite rightly, by section 718 of the sentencing principles of the Criminal Code. There are six sentencing principles in the code, not just the two that seem to be mentioned all the time.

For the record, we had $50 million for the gun violence and gang prevention funds. It was community-based. There was $1 million just in Toronto, just to top up these violence initiatives. Those were the holistic things we heard the chief talk about and be supportive of. We also know that you were involved in that as part of the government of the day.

I'm going to get to the area that concerns me and that directly affects you. In the prisons, it will be the feds paying for the incarceration, but it does affect you as a provincial Attorney General, as the administrator of the courts of justice. The two areas are really of concern. They have been raised, and are continuing to be raised, even later today.

One is the legal aid problem you're facing. You are already in a $10 million deficit here. When the people come to our committee and talk about this, we hear that only people who are facing incarceration are eligible. Yesterday, I read, as I'm sure others did, about the per person capping in Ontario.

I'll tie that up, Minister, and then leave the rest of the time for the Askov situation. Mandatory minimums at the level we see in these bills are going to have an effect that will start at count one. You will not just see it at the third time, when somebody is facing some really...but all the way through. We're being told that you will have more trials. You have Askov problems already.

It's not just “you”; I'm talking about the administration of justice, not you personally.

I need you to address those, and I want to give you this opportunity to do that. I'd also like you to address the similar problem that you have on the gun registry.

● (1110)

The Hon. Michael Bryant: On legal aid, it used to be the case that legal aid funding was 50-50, federal-provincial. We have moved far away from that, and legal aid funding has become about 75% provincial, and in some cases 80% provincial and 20% federal. This was one of the three priorities that all provincial and territorial justice ministers conveyed to the federal government at the meeting last fall. The McGuinty government has increased legal aid funding by $25 million over the last three years, so we're doing our bit. That's a 10% increase. Legal Aid Ontario is a $350 million operation.

We have said before that we need federal assistance. Certainly with the passage of this bill, that applies even more so. The federal justice minister is a former provincial attorney general who I know must be acutely aware that if you increase the pressure on the system, you're going to increase the need for legal aid. I think everybody knows that's not about being nice and fair; it's about fulfilling constitutional responsibilities. There is a minimum right to counsel. That requires a certain level of legal aid funding that must be fulfilled by governments.

On pressures on the courts in Ontario, the Chief Justice of the Superior Court has said that we have an acute shortage of superior court judges in Ontario. During the period in which I've served as Attorney General, we've appointed more than 60 superior court judges to the Ontario Court of Justice. The Ontario Court of Justice and the Ontario Superior Court are about the same size. You haven't seen the same complement being addressed by the current government, and we support the chief justice's call for additional appointments to the Superior Court.

On funding, I've already said it will put increased pressure on the system. I want to be clear that our cases are moving through the system right now at the appropriate speed. That isn't to say we don't need to do everything we can to ensure we don't have inordinate delays.

Finally, you asked me about the gun registry. The McGuinty government does not support what the federal government is doing on the gun registry. As I said, we need to do everything, from prevention through to mandatory minimum sentences and post-incarceration. As Chief Blair said, there is a very positive contribution made to public safety by the registry. That's what the Canadian Association of Chiefs of Police and the Ontario Association of Chiefs of Police say, and the Province of Ontario and the McGuinty government support that.

It is a tool used in the provincial crown attorney's toolbox. Is it the magic solution? Of course not. Nobody ever said that. But when a provincial prosecutor looks at the evidence and the charges and makes an assessment, in some cases it is one more tool that can be used in the fight against gun crime—which isn't to take anything away from what Chief Blair said.

I should stop there.

The Chair: Thank you, Minister.

Mr. Ménard.

Mr. Réal Ménard: I'm going to speak French.

The Hon. Michael Bryant: Okay, I'm ready.

Mr. Réal Ménard: I know your province is bilingual.

[*Translation*]

Thank you for coming.

Your testimony certainly promotes your government and demonstrates your will to see the bill improved. There were times when balance was somewhat questionable, but that has been improved towards the end.

The role of the legislator is to make decisions based on convincing and conclusive information. Since we began consideration of this bill two weeks ago, scientific studies undertaken in the States as well as in Canada have been tabled. The studies prove that there is no connection in terms of deterrent between mandatory minimum sentences and the rate of reoffending. This is the issue we have to decide on. Obviously, this does not mean that there should never be mandatory minimum sentences, and no one wishes to see individuals who have committed crimes with a firearm free to roam the streets.

Before you took a position on the bill, in the brief presented to Cabinet, did you, in your capacity as attorney General have access to scientific data or to studies that contradicted this idea that mandatory minimum sentences are not a deterrent? Did you have access to scientific studies that you could share with us, or are we talking about impressions, rather than scientific evidence?

I would appreciate it if you could give me a brief answer because I have two other questions to ask you.

● (1115)

[*English*]

The Hon. Michael Bryant: As I said before, there's more than one purpose, but I'd say that the number one purpose is denunciation of the offence. Perhaps I can best answer your question by giving you the example I wanted to give, if that's all right, and it's from the prosecutor's perspective.

For example, an offender committed multiple firearms offences related to the importation of illegal firearms—23 illegal handguns that could cause an enormous amount of harm—from the U.S. into Canada. The MO to avoid detection was to hide the guns in the wheel of a car. They were brought from the United States and destined for distribution in Canada. That means 23 illegal guns were destined for Canada. The accused was participating in a scheme where they exported and trafficked marijuana into the U.S. and then used the proceeds to purchase guns, which they subsequently smuggled into Canada. The provincial crown attorney for Ontario asked for ten years. The sentence handed down by the court was two years less a day, plus two years probation.

Under this bill, not only would the minimum go up, but I would argue that if we get the particular amendment that I spoke to before, it would have an inflationary effect. We base it upon the offences before us, not solely on the wide sociological evidence.

Mr. Réal Ménard: I'm going to ask my second question, *monsieur le ministre*.

[*Translation*]

Minister, do you think that there is a link between poverty and the potential to join a street gang? I was pleased to see that your government created a $95 million fund. I am not attempting to justify the existence of street gangs, but I would like to know if you think there is a connection between poverty, that is, groups that have historically been underprivileged, and the potential to engage in street gangs activity? What do you think about the balance that we have to maintain, as legislators, between repression and poverty alleviation? What are your thoughts on this?

[*English*]

The Hon. Michael Bryant: I agree. We have to have both prevention and the matters that we're discussing in this bill here. Yes. Absolutely. We have to look at everything. It's like the debate around our health care system. Is it just prevention or just treatment? It's everything. We need to prevent, but we also need to address, we need to denounce, and we need to incapacitate.

The Chair: Thank you, Mr. Bryant.

Mr. Comartin.

Mr. Réal Ménard: I would be a young offender.

[*Translation*]

Mr. Joe Comartin: You are not young, Réal, not at all.

[*English*]

Thank you, Mr. Bryant, for being here.

I'm concerned about not only this bill, but the whole pile that is coming from this government, creating new offences and putting additional burdens on the criminal justice system, both at the judicial level and at the level of prosecution and legal aid.

In particular, I'm concerned about what I see in Ontario getting very close to another Askov situation in terms of the length of delay we have and the backlog we have. Has your ministry done an assessment of how close we are to being challenged with the same kind of argument we faced in Askov?

The Hon. Michael Bryant: If you're asking me whether or not what happened under Attorney General Howard Hampton, where thousands and thousands of charges were thrown out at once, is going to happen again in Ontario in the foreseeable future, the answer is absolutely not. If the question is whether it's possible that of the 500,000 charges that are before the courts every year, there may be one that comes up that is subject to an Askov motion for delay, that may be the case.

If you look over the last three years and if you look at the case flow right now, you'll see that matters are moving through the courts. That isn't to say we don't need that assistance from the federal government on the legal aid front. That is not to say we don't need the assistance to deal with the additional pressures that will come from these bills, as I've said already. But I want people to have confidence in the system. We work very closely with the chief justice and we work very closely with all of our partners in the justice system to ensure that matters are moving through the courts at the appropriate time.

● (1120)

Mr. Joe Comartin: For the record, the backlog was created under the Peterson government and was faced by Mr. Hampton in his first few months of office after taking over.

The Hon. Michael Bryant: That was before our time.

Mr. Joe Comartin: I was just thinking you may have had the same thing left over in your lap from the previous Conservative administration.

The Hon. Michael Bryant: I'd agree with that.

Mr. Joe Comartin: With regard to an unintended consequence, I don't know if you've heard from the AG of Saskatchewan. He does have a concern about creating a mandatory minimum on B and E and the theft of a weapon. It's a fairly common crime in the northern part of his province, almost exclusively committed by members of the aboriginal community. The theft occurs oftentimes in cottages and camps, and the weapon is not being used for some other crime but simply for going out and hunting. At least, that's how he has recounted it to me.

It's a problem of recognizing the importance and significance of that new offence for Ontario, particularly for the big cities, and probably for big cities in other provinces. But you end up with this other consequence where that particular sector of our national community is going to end up perhaps more seriously affected—I'm not saying targeted—by it than the gang member here in downtown Toronto.

Do you have any suggestions as to how we might be able to take that into account?

The Hon. Michael Bryant: I'm not sure I can be helpful.

I know the Attorney General of Saskatchewan, and we've spoken about a number of issues. We haven't spoken about that one. I don't know enough about the specifics on that. Obviously, this committee has to consider what applies to all Canadians in all parts of Canada. Is there a minimum level of behaviour that, no matter where you live, no matter the circumstances, ought to be the subject of criminal sanctions and sentence? I would submit that breaking and entering for the purpose of stealing a firearm meets that threshold, but I'll let the Saskatchewan Attorney General speak for himself.

Mr. Joe Comartin: With regard to the bill, has your ministry engaged in an analysis of the risk of a charter challenge for the repeat offender mandatory minimum? Have you done an analysis of that, particularly around the whole issue of proportionality and the courts being pretty reluctant, at least historically, to allow for mandatory minimums at the top end?

The Hon. Michael Bryant: I'll be careful on this one.

The Department of Justice has to make an assessment, and the Attorney General of Canada, as you know very well, in essence has to put his stamp of approval that a bill before the House is consistent with the charter. For reasons of solicitor-client privilege, we don't talk about what our constitutional assessment of the bill is. I'll just say that at this stage it really has to stay within the rubric of the federal attorney, and it's something that I understand the committee will speak to and no doubt hear about as well.

The Chair: Thank you, Mr. Comartin.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Bryant, thank you for coming. You have made yourself readily available but I know that your position is very demanding. You are the attorney general of Ontario. Naturally, we also have an attorney general in Quebec. Earlier on, you referred to two or three items you would like to see amended in Bill C-10.

First, could you send a hand written copy to the clerk of the committee of what you explained to us?

You stated that there should be an amendment on mandatory minimum sentences. I am trying to quote you according to the translation of your remarks. You are saying that there should be minimum sentences, not maximum sentences. I hope that I understood the translation correctly. Could you expand on this? You are the first person to point us in that direction. I would like to better understand what you mean by that.

● (1125)

[*English*]

The Hon. Michael Bryant: On the submission of written materials, I have, as I'm sure may of you do, the dreadful habit of walking into a room with written materials and then departing from them from time to time. I will try to provide some written materials on the issue you spoke to me about.

On the matter of mandatory minimums being floors but not ceilings, I gave the committee an example—one I'm not going to repeat here—of a very serious circumstance involving 23 illegal handguns that could kill a lot of people. The Crown sought ten years on that matter. The sentence that was provided was two years. Under the current bill, depending on which charge is applied, assuming that all the circumstances apply, the minimum moves up from two years to three years. But we would submit, if we were before the court, that three years would not be sufficient. Rather, a three-year mandatory minimum is an expression by Parliament that in fact this is a significant sentence that requires at least three years, and that in serious circumstances such as these, the mandatory minimum and the increase of the mandatory minimum ought to have an inflationary effect upon the sentence. That is pursuant to the Supreme Court of Canada decision by Justice Arbour in Morrisey.

[*Translation*]

Mr. Daniel Petit: You mentioned earlier—and I am also referring to what was stated by Mr. Blair, the Chief of Police from the City of Toronto—that we need to send a signal, that Bill C-10 would send a good signal in terms of reducing—that is what everybody wants—crime, because the signal would be clear. One can't just talk about statistics. When I speak to my neighbours and they tell me they are afraid, they are not talking about statistics, they are talking about their fear. Fear cannot be measured.

I would like to hear your opinion on this. Based on what you have read and what you have understood from Bill C-10—and you stated earlier that you support it—do you think that the Bill would send a clear signal to the public because young people would see the types of prison sentences being handed down and, rather than choose crime, would decide to do something other than hang out with crooks?

Can you tell us, based on your experience, in your capacity as a lawyer and an attorney general, if you think Bill C-10 could have a deterrent effect on crime, in your own province as well as in Quebec, given that the Criminal Code applies to both?

[*English*]

The Hon. Michael Bryant: Yes, it will send a signal. It would send a stronger signal if we amended it to include some offences that dealt with, as I say, possession of a firearm in an unauthorized place and possession of a firearm in a motor vehicle. Further, it would be an error, in my respectable submission—take it for what it's worth—to look only at one purpose and only to look at deterrence. Denunciation and incapacitation would be primary reasons for justifying this bill, but I agree with Chief Blair. Not in all cases, but in some cases, it will act as a deterrent.

● (1130)

The Chair: Thank you, sir.

Thank you, Mr. Petit.

Mr. Bagnell.

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

Thank you for being here. What has been really wonderful about your testimony and the police chief's is that you've mentioned a whole array of things that need to be done. Sadly, and unfortunately, as parliamentarians, we're not doing anything new in almost all those areas. On the few things that we have proposed, the evidence that we've had in many weeks of committee meetings indicates that they won't necessarily work.

I need a quick answer to this one. Do you have a rough estimate of what the attorneys general estimate these new provisions will cost the provinces?

The Hon. Michael Bryant: No, I don't have it in front of me, which is not to say the ministry could not put estimates together.

Hon. Larry Bagnell: Could you endeavour to get us something?

The Hon. Michael Bryant: I will look into it. I don't want to commit to getting something to the committee, but I will certainly look into it.

Hon. Larry Bagnell: Thank you.

Although, as the police chief and people mentioned, there are perceptions, we have to make our decisions, as Mr. Ménard said, on facts based on evidence. A lot of the evidence the committee has received is that these things just won't work. George Pataki from New York has backed away from minimum sentences as too expensive and as not working.

As you said, we have minimum sentences already. But we haven't been able to get a witness who can give us any details on how, if at all, they work—not the stats people—and I don't think you've yet given us one evidence-based reason why they would work. One case gone wrong out of 500,000 charges is not enough. I wonder whether your researchers could provide to us or table a document on how these might have been effective.

The Hon. Michael Bryant: I'll say again, I believe that Parliament ought to denounce these offences, which doesn't speak to deterrence. I believe that incapacitating somebody who engages in a gun crime is necessary and important and in the public interest. I think, with respect, common sense dictates that spending time in jail is a deterrent, although, as the chief said, it doesn't apply to everybody.

I'm here to say, on behalf of 900 prosecutors, that there are instances in which the prosecutor is before the court seeking a higher custodial sentence than is currently under the Criminal Code. There are instances where in fact that is not the appropriate custodial sentence, in the independent discretion of that crown attorney. That's not a political judgment; that's his or her expertise, that the sentence ought to be higher.

The courts will interpret the law as they see it, and it doesn't lie in the mouth, I think, of parliamentarians to criticize judges, but rather to make amendments to the laws so that the judges then interpret them. It's from that perspective that crown attorneys have shared with me, in cases such as one that I provided you, that we need an increase in some of these sentences. That's their experience. I think you heard the experience of the chief of police as well.

Hon. Larry Bagnell: I'd like to get one more question in. Thank you, though—although I don't think that provided any more research-based evidence.

I can tell you're a very astute attorney general, so you'd know the law very completely. I'm wondering about your opinion on this.

It is suggested that some of these bills, including this one, offend the principles of sentencing, as was already talked about—proportionality, aboriginal peoples, reducing the discretion of judges. Nothing of these is reducing the maximums; they're all there still. Judges can give the same maximums with all these bills. I just wonder whether you have any views as an attorney general on this question of offending the principles of sentencing and decreasing judicial discretion.

The Hon. Michael Bryant: Well, one person's reduction of discretion is another person's clarification. The purpose of this is for Parliament to say, as it does with other Criminal Code offences, “Here is what Parliament believes ought to be the mandatory minimum.” I would argue an amendment ought to be made so that it would be clarified that it's not the maximum.

As to specific provisions, sexual assault with a firearm moves from four years to five years for the first offence. Is that proportionate? Well, certainly I assume the Department of Justice has said it is consistent with the charter. I would say that moving from four years to five years is proportionate.

So I think, to be fair to the committee, it's going to depend on the offence. It's difficult for me to generalize on every single provision of the bill. There will be debate around some provisions. That's one of the reasons why committee work is tough work, and I thank you for doing it.

● (1135)

The Chair: Mr. Bagnell, thank you.

Mr. Brown.

Mr. Patrick Brown: I think it's great that we have support from the Ontario government for this very important initiative. As I was doing research for this meeting, looking for opinions from the Ontario government, I read a quote. I just want to make sure that this is an aberration from the Ontario government and that it wouldn't reflect your opinions. There was a quote from Monty Kwinter, who is the community safety minister, who said: "I don't think you need tougher laws - with gun-related crimes, the laws are there....” Would that be an aberration? That was in the *Toronto Sun* on August 5.

The Hon. Michael Bryant: I get to go to question period in about three hours, where, as I think the government knows, it's question period and not always answer period. So this is a good dress rehearsal, and I appreciate it, Mr. Brown.

The McGuinty Government of Ontario, which includes Ministers Kwinter and Bryant, support the changes that are embodied in this bill, that we need mandatory minimum sentences increased and that we need new mandatory minimums. That's certainly the position that Minister Kwinter and I have taken in all three federal-provincial-territorial justice minister meetings that we've had.

I'm sure that fully answers your question.

Voices: Oh, oh!

The Chair: Mr. Moore.

Mr. Rob Moore: Thank you for being here today as a witness. We appreciate it.

We heard some testimony that a good number of the firearms that are used in offences in Ontario, specifically Toronto, are smuggled, so we know there's work to be done there. A good number of them are stolen.

Referring to what Mr. Comartin said, this bill does strike a good balance in that the government feels that if someone breaks into someone's cottage in a rural area and steals their hunting rifle, that is also a serious offence. I think this strikes a good balance between Canada's urban and rural realities.

There are two new provisions, robbery where a firearm is stolen and breaking and entering and stealing or intending to steal a firearm. We've heard evidence that this is a problem. Could you talk a bit about that aspect of the bill? To be clear, we've dealt with minimum sentences before. We have minimum sentences in the code. It was raised by Ms. Barnes that in the last election all parties represented here were calling for increased minimum sentences. We've introduced those sentences. They're proportional, we feel. They increase on subsequent offences.

I would like you to comment on those two offences. I'd like to hear how you feel for Ontario. I mean, whether it is rural Saskatchewan or Ontario, the Criminal Code applies everywhere, including Ontario. Breaking into anyone's home and stealing a firearm is I think equally serious whether you're in rural Canada or in urban Canada. I'd like your comment on that, but also on the proportionality that we feel we've built into this bill by increasing sentences on subsequent offences. As Chief Blair testified, there's a certain relatively small number of people who are committing these offences. When you focus on those individuals and you take them off the streets, there is a corresponding decrease in the crime that's committed in that area.

Would you comment on those two things, the incremental aspect and also the new provisions?

● (1140)

The Hon. Michael Bryant: On the matter of Saskatchewan, I guess it's important that I confirm that I don't want to speak to that.

Mr. Rob Moore: You don't have to speak directly about Saskatchewan at all.

The Hon. Michael Bryant: I know how much I'd love it if the Saskatchewan Attorney General spoke to something about Ontario.

Mr. Rob Moore: I will bring that up with him, actually, but individually for Ontario, I'd like your comment on the offence of break and enter into someone's dwelling place and stealing a firearm.

The Hon. Michael Bryant: We proposed these new offences and they received the support of former Justice Minister Cotler and Prime Minister Martin, and they were embodied in Bill C-82 and they're embodied in this bill. The reason why we brought them forward, as you probably have heard, is that there's a mix of sources for the illegal gun trade. It's smuggling, it's breaking and entering, stealing, robbery of domestic guns. Often, the illegal guns begin as legal guns in somebody's home and then they're stolen.

What precisely the statistics are...at one point the Coalition for Gun Control had the numbers out at about 50-50. In any event, whether it's 50-50 or 60-40, the point is that we must choke off the supply of illegal guns into the gun trade. One way of doing that is at the border. Another way of doing that is to ensure that there are sentences in the Criminal Code to match a pattern of behaviour that is increasingly taking place. In Ontario, increasingly our prosecutors were facing facts and evidence that suggested an increasing number of people were having guns enter into the illegal gun trade by way of breaking and enter for the purpose of stealing firearms and by way of robbery involving a firearm.

The Chair: Thank you, Mr. Moore.

Mr. Bryant, in your experience as Attorney General, have you run into any situations where for gun offences there has been conditional sentencing, or house arrest as a sentence?

The Hon. Michael Bryant: I am certainly very aware of the changes to conditional sentences that are before Parliament right now. We've spoken to that before as well, and we've been encouraging changes to the conditional sentencing regime.

The Chair: That didn't quite answer my question, but fair enough.

I am going to bring this session to a close, Minister. We really appreciate your appearing, taking the time out. I think your testimony has been invaluable here. We really appreciate it.

The Hon. Michael Bryant: Mr. Chair, I want to thank members of the committee. I understand the job that the official opposition and opposition parties have to do, because I have done that, and I understand the job that government members have to do, because I'm doing that.

I thank you, Chair, for the way you run your hearings.

The Chair: Very good, sir.

I will call to the table our next two witnesses, Peter Rosenthal and John Muise.

Professor Rosenthal, I see you're with the Department of Mathematics.

● (1145)

Prof. Peter Rosenthal (Professor, Department of Mathematics, University of Toronto, As an Individual): I don't believe that was the reason I was invited.

The Chair: That's very true.

Prof. Peter Rosenthal: I promise you, I won't give you a mathematics lecture.

The Chair: I really appreciate the fact that you're here. I know that you do have something to offer, and we're certainly waiting for that presentation.

The same goes for you as well, Mr. Muise. I am going to ask Mr. Rosenthal to present first, and then perhaps you would follow behind.

I know you're under time restraints, Professor, so we'll certainly accommodate you as best we can. Please begin.

Prof. Peter Rosenthal: Thank you very much. Thank you.

I'm not sure who decided to invite me here, but I know it was not because of anything I did in mathematics. I am also a practising lawyer with Roach, Schwartz and Associates in Toronto, and I'm also an adjunct professor of law at the University of Toronto Faculty of Law. So I do have a more direct interest in these matters than the other title might suggest.

I should like to make some general points you might find useful in considering this bill. One point I should like to start with is that, in general, criminal law should be certain, if possible, and shouldn't be changed very often unless there's good reason to change. But there should be a really good reason, if you're going to change the criminal law, and I don't see the reasons that have motivated this bill as being good.

One of you was asking Attorney General Bryant about the evidence to support the need for this bill, and I would hope you would all continue to ask that question very loudly, because what is the reason for this bill? Well, the bill itself has some “whereases”—and hopefully those would speak to the matter—and the “whereases” indicate that Canadians are entitled to live their lives in peace, freedom, and security. Nobody is going to argue with that.

They also indicate that gun crime is on an increase. That should be a matter of some evidence. That should be looked at. Maybe it's true, but it should be looked at. Different kinds of crimes do rise and fall from time to time.

Then the bill indicates that we want to promote the values of the Charter of Rights and Freedoms. That's nice, but then it says:

> AND WHEREAS these measures include legislation to impose higher minimum penalties on those who commit serious or repeat offences involving firearms;

There seems to me to be a disconnect. You need a couple of other “whereases” if you want to justify that conclusion, such as “Whereas there's been a problem in sentencing with respect to firearms offences....” Is there any evidence of that? Don't judges regard firearms offences as very serious already? Is there any evidence that suggests they don't impose serious enough penalties for that?

And then you would expect some evidence that more serious penalties tend to deter crime, and we know that most of the studies by criminologists are in the opposite direction. People don't think about the penalty as they're committing a crime. They think about the possibility of being caught, and the possibility of being caught does deter crime, but they don't think if it's only six months now, they'll do it, but if you pass this and it's amended to one year, they won't do it. Nobody thinks like that when they're committing crimes, and the studies show that.

So what is happening here? When this bill was introduced in May, the Minister of Justice talked about tackling crime and restoring confidence in the justice system and so on. It seems there are some political issues here, and many people believe it's popular to promote the idea of harsher penalties and so on. There is some question about that. That's even been studied. There's a study that suggests maybe it's not as popular as some of you may think. It seems that politicians in all parties seem to think that.

So I would ask you to look at the reasons here, and look at some evidence, before you change things. There is a problem with mandatory minimum sentences because they do interfere with the discretion to be proportionate. How much they interfere depends on how high the minimum is and the nature of it and so on. But with any mandatory minimum sentence, as the Latimer case showed us all, for example, even with respect to murder, there are possible problems in particular cases. As to how serious, it depends upon the circumstances. But you shouldn't just do it without some good reason to do it. As everyone is aware, we have a Charter of Rights and Freedoms, and that limits the ability of Parliament to impose punishment. It has to be consistent with the charter. Section 12 of the charter prohibits cruel and unusual punishment, and, as you all know, it has been considered with respect to minimum sentences, and sometimes it has been held to be cruel and unusual and sometimes not.

But what the Supreme Court says is...of course, the Supreme Court defers to Parliament, to some large extent. So the only way they will interfere with a law like this, strike it down, is if they hold that it's grossly disproportionate. That's what the cases say, Morrisey and Latimer and so on. If the sentence is grossly disproportionate, then it is cruel and unusual punishment and it should be struck down. Do you want sentences that are just disproportionate, not grossly disproportionate? Why do you want disproportionate sentences? That's what you are introducing if you have minimums. You will, in some cases, at least, be introducing disproportionate sentences. If they're found to be grossly disproportionate, they will be struck down. Who knows how these provisions you have in Bill C-10 will fare in the courts. Nobody, I don't think, can give you any assurance as to what's going to happen. How they fare will depend on particular cases, on the particular facts of those cases, and so on.

● (1150)

One thing you can be sure of is that there's going to be an awful lot of charter litigation about this. There will be an awful lot of it. There will be a lot of time, energy, and money spent.

You know, it is easy to design a hypothetical case where this would be grossly disproportionate. A little while ago you were talking about cottage break-ins. Some kid of otherwise good character, a 19-year-old young man, breaks into a cottage, urged by his friends. They grab a bag and run away, and in the bag is a shotgun. Will that kid have a mandatory minimum sentence of one year? That's going to be grossly disproportionate if it's as good a kid as the one I'm thinking of. Then that kid will, if he has the funds to do it, fight it, and there will be charter cases and so on. But why do it? Why enact it in the first place? Shouldn't a judge in that case be able to say to the kid, “You're going to be given a conditional sentence”? Why not? Do you want to put that kid in jail for a year, really? Do you really want to do that?

As I said, there are a number of studies that show that the severity of punishment doesn't deter crime. We have a distinguished criminologist at the University of Toronto named Anthony Doob, for example. I'm sure that those of you who care about these things know his name. He had such a study in the year 2003, consistent with many other studies.

If you want to deal with the causes of crime, deal with them. And there are things to deal with. There are situations in which many 19- or 20-year-old kids in Toronto, for example, see it as a better future for themselves to join a gang and sell drugs than to try to get a decent job, because they don't see the prospects of decent jobs and they see the prospect of that gang right around the corner.

There could be larger studies about these issues that might really result in reduced crime. In particular, the whole question of drugs is something that should be looked at. I would urge you.... It's not part of this bill, but it is part of this bill in a way, because a large number of firearms offences are in connection with drugs. We all know that in movies in the thirties gangsters were shooting it out with respect to the prohibition of liquor. A lot of the shootouts in Toronto are with respect to gangs fighting over turf for drugs, for selling drugs. I would suggest that if you really want to cut down on some of this crime, look in other directions.

This legislation is going to lead to enormous costs. There's this hearing and its cost. There will be a huge amount of charter litigation emanating from this over the years. There's going to be a problem with guilty pleas. No lawyer is going to plead someone guilty to a charge like this if he's facing a minimum of three years, a minimum of five years. There will be many more trials and many fewer guilty pleas.

Then there's a particular peculiarity about the way the bill is structured that's going to lead to a real mess, too. For consecutive offences, as you know, you get higher penalties in various ways here, right? But “consecutive” is defined in terms of when you're convicted. It's not in terms of when you committed the offence. So if somebody committed two different offences like this, they'll be jockeying as to which one should be tried first, because some of them have more serious penalties as a second offence than others. That's even discussed in the legislative backgrounder here. They give an example.

You should think about it. Do you really want to put that mess into the Criminal Code?

● (1155)

This means, for example, that if an individual illegally imported a firearm and subsequently committed breaking and entering to steal a firearm but was convicted on the break and enter charge first, the second offence would be importation. As a result, the individual would receive a minimum sentence of five years, whereas if he was convicted of the other one first, it would be a minimum sentence of three years. Suppose he commits these offences within a couple of weeks of each other—that happens in real life from time to time—it's creating a real mess with that whole definition. That's just one of a number of issues that are going to play themselves out day to day in the courts if this bill is enacted as it is.

I really think you should go back to the drawing board and have some serious study about all these issues. There's no immediate urgency. You don't have to pass it this week. The only reason to pass it this week, or next week, or this year is for political reasons. If you want to look at this in a serious way, you need some serious study of the consequences of minimum sentences and other possibilities for reducing the use of firearms.

Those would be my submissions to you. They are quite different from any of the positions of any of the political parties, but I hope you all would consider them to whatever extent it may be useful.

The Chair: Thank you, Mr. Rosenthal.

Mr. Muise.

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

My name is John Muise. I'm a retired 30-year veteran of the Toronto Police Service, as I think you know, and I'm here as the director of public safety for the Canadian Centre for Abuse Awareness. We certainly welcome the opportunity and appreciate the invite to speak about Bill C-10.

I would add, too, that our organization is a not-for-profit charitable organization and we do not take government funding.

Previously, our organization toured 10 sites around Ontario and spoke to 150 front-line criminal justice professionals, crime victims, and survivors. They told us a lot of things that they felt were wrong with the criminal justice system, but, in general terms, a recurring theme was with respect to the kinds of sentences handed down in courtrooms, and specifically the lack of proportionality with respect to violent crimes.

We suspect that if we did the same kind of round table discussions in other provinces across the country, the concerns would be identical.

I should also add that I've provided a brief to the committee.

Mr. Ménard, my apologies. I just completed the brief recently. I wish it was ready for translation right away, but I'm a one-man band, so I work to deadline, like many people.

Canadian law has always recognized that persons who repeatedly commit offences merit lengthier custodial sentences. In addition, Parliament has mandated by statute that repeat offenders receive lengthier sentences than first-time offenders. Mandatory minimums are nothing new. These principles are reflected in a number of mandatory minimum sentences for both first time and repeat offenders for a variety of crimes.

Certainly we know also that from a constitutional perspective, the Supreme Court of Canada, in Regina v. Morrisey 2000, has ruled in favour of the current mandatory minimum of four years for a conviction involving a firearm and commented—

• (1200)

The Chair: I'm sorry to interrupt you just for a moment. Just slow down a little, because the interpreters can't quite keep up to your rapid way of presenting.

Mr. John Muise: Sorry.

The Chair: No problem.

Mr. John Muise: The Supreme Court of Canada ruled in favour of the current mandatory minimum of four years for a conviction involving a firearm and commented specifically on the wanton and reckless disregard displayed as a result of the use of a firearm by the offender.

In addition, it is important to note that for those offences where the mandatory minimum sentences increased on the second, third, and subsequent offences, in terms of this bill it is only in relation to the specific offences included in the proposed legislation. So this government bill does not include any other crimes. It is about a continuation of the unlawful possession and use of firearms. In other words, it is about those offenders, particularly repeat offenders, who make the choice to possess, acquire, and use firearms illegally.

If indeed our culture here in Canada is about the proper licensing, storage, and possession of firearms, surely the same strict standards should be brought to bear on those who choose to brandish firearms for a criminal purpose. If you want to safeguard Canadians, we would suggest that you can't have one without the other.

Although we suspect that commentators on the other side of this debate feel otherwise, we would go so far as to say that, if crafted appropriately—and we think this bill is—mandatory minimum sentences of imprisonment are generally consistent with the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Sections 718 and 718.1 of the Criminal Code—you talked about them earlier—set out the principles of sentencing that must be followed by the court. The court is allowed significant latitude when deciding how to balance what are often very disparate principles. Although many judges know intuitively what the balance is, over the years Parliament, from time to time, has weighed in with a variety of sentencing, parole, and post-sentence order amendments in response to concerns expressed by the community about public safety and justice in particular.

It is entirely appropriate for Parliament to provide specific statutory direction ultimately to the court. Most recently, it has done so with respect to mandatory minimum sentences for certain offences committed against children, in Bill C-2, and previously for certain serious firearm offences. The community expresses its revulsion to certain kinds of crimes, usually violent ones, and if parliamentarians are listening, they respond in an appropriate way. We think this enhancement of the current mandatory minimum sentence provisions is precisely that.

What about the impact of mandatory minimum sentences on crime? As the legislative summary from the Library of Parliament that was made available makes clear, the studies to date have mixed results in terms of the impact of mandatory minimum sentences and increased rates of incarceration and the deterrent effect and impact on recidivism rates. Lies, damn lies, and statistics, as they say.

Rather than focus on whether these proposed amendments have a deterrent effect or not—and I would echo Chief Blair and Attorney General Bryant's comments on the deterrent impact—it is our position that targeting the most violent repeat offenders, and that's what people are who use firearms or possess firearms for an unlawful purpose, and locking them up for sustained periods of time will have a direct effect on the crime rate. It is an undeniable reality that a disproportionately small number of offenders are responsible for a disproportionately large number of offences. This axiom applies to repeat offenders who use firearms in the commission of their crimes.

Although they didn't get it entirely correct south of the border—California's “three strikes and you're out” law for felonies, including pizza theft, comes to mind—a precipitous drop greater than the drop in Canada over the same time period in the violent crime rate south of the 49th parallel went hand in hand with a crackdown on violent crime. A variety of studies done by American criminologists, including Marvell and Moody, and Kovandzic, confirm a reduction in homicides and violent crime rates.

• (1205)

It's about incapacitation. How many robberies with a firearm can you do when you are behind bars? If the right offenders are targeted, which we believe this bill does, it works.

Is violent crime on the rise in Canada? When it comes to statistics about the rates of crime, there's no denying that a whole lot of cherry-picking goes on, and it happens on both sides. Even the criminologists, lawyers, law professors, and other academics who are quick to remind you about sticking to the facts and getting it right are sometimes guilty of relying on short-term or year-to-year increases or decreases to make their cases. This is both misleading and inappropriate; some would call it downright dishonest.

I believe the committee clerk has given you a page from *Juristat*. In the middle column, check the violent crime rate. As you all know, it's calculated on the basis of 100,000 population. Dating back to 1962, it shows an increase from 221 per 100,000 in 1962, to 1,084 in 1992, levelling off since then to slightly under 1,000 for the past nine years. I would suggest to you that this is an extraordinary increase by any measure, and the levelling off that has taken place over the last dozen years still has us light years away from those good old days in the sixties.

Although the CCA did not have access to corresponding long-term tables for firearm offences, we are confident that they would mirror or exceed the general violent crime rate. We encourage the committee to obtain the same long-term table from the justice ministry for firearm-related offences. In addition, violent crime as a proportion of the overall crime rate is up over that same time period.

On gun play in Toronto over the past 30 years—I know Chief Blair spoke about much of this—my experience is anecdotal, but I want to share it with you. We suspect the same things that occur in Toronto are occurring in other urban jurisdictions across the country. I had a very unique perspective as a law enforcement officer on the Toronto Police Service, starting in 1976 until I retired this year. In those early years it was exceedingly rare, even in the busiest downtown divisions, that offenders arrested were in possession of illegal handguns or semi-automatic weapons. Even the most organized narcotics and drug traffickers did not carry or possess these kinds of firearms. I know because I worked in the drug squad, made hundreds of buys, and kicked in hundreds of doors from 1982 to 1986. We rarely seized a handgun. Uniformed, plain-clothes, and undercover officers rarely confronted these kinds of weapons.

That changed in the late eighties and coincided with the crack trade—free-based cocaine—and continued into the early 1990s and onwards with the proliferation of American-style street gangs, usually arranged along ethnic lines, that now commit crimes in support of territory and profit. The results are in full view in our housing projects and on our crowded downtown streets. There are drive-by shootings and shots fired because of perceived disrespect—something that, as Chief Blair indicated, was usually handled in the past with a punch in the nose. There are brutal and often random home invasions. No self-respecting crack dealer will leave home without his trusty Glock pistol or 9 mm handgun, and whole communities are marginalized and living in fear.

We have a new vocabulary of violent and brutal crime, and the violent crime statistic that I provided from *Juristat* reflects that reality. It's not Andy of Mayberry and it's not *Leave it to Beaver* any more.

What about the amendments? I think this is the important work the committee is doing.

● (1210)

The Chair: Mr. Muise, how much more time do you need to conclude?

Mr. John Muise: About two minutes.

The Chair: Okay, very good.

Mr. John Muise: Our review of the amendments suggests the following conditions and principles are in play that ensure that these amendments are constitutionally viable. The ability to proceed summarily continues to exist for those offences where this option was already in place. The escalation of the minimum sentence occurs only where the offender has previous convictions for just these firearm-related crimes. We believe the sentence escalation is proportional and appropriate. Where an offender has not committed one of the listed offences for a period of 10 years, the escalating structure of sentencing for repeat offences is no longer applicable. Finally, the same incredibly generous parole laws, including automatic statutory release at the completion of two-thirds of a sentence—except for the tiniest minority of dangerous inmates—is still in place.

Our suggestions for specific changes to the proposed amendments are as follows. As the legislative summary points out, it is unclear why manslaughter and criminal negligence causing death are not treated the same way as the other eight most serious firearm offences. As the summary indicates, this is "particularly so, given that previous convictions for these two offences count for sentencing on the remaining eight". It's our recommendation that those two offences are included in that most serious list for the up to 10 years.

In addition, building on what Ms. Barnes said, we are also unclear why a regular firearm has not been included along with the restricted or prohibited weapon in terms of the five-year sentence. We suggest you amend that same section and just include the regular firearm with restricted and prohibited, making them all five years along with the organized crime one. Just fix it there; it's already at four, so make it five.

Moving to the two new offences, the creation of new offences where other appropriate offences already exist is something that I often view with skepticism. Much like the practice of increasing maximum sentences, they often are measures designed to give the impression of getting tough on crime. More often than not, nothing could be further from the truth.

In the case of these two new offences, like Chief Blair and Mr. Bryant, we support them. We know the end result of these thefts, these break and enters, and these robberies. In light of the fact that they include escalating mandatory minimum sentences, we think those are appropriate additions. For that reason we support their inclusion.

The best way to put all of these in perspective is to take one of these proposed sections and illustrate how it might work in the real world. An offender shoots somebody with a handgun and is convicted of attempted murder because he almost kills him. The minimum mandatory sentence is five years, which he receives. He gets out of jail and commits the same offence again, or one of the other nine most serious of crimes, again committed with a firearm. So he almost kills somebody again. This time the minimum is seven years. He gets out of jail and does the same thing. Remember, it still has to be the same crime or one of the other nine most serious crimes. This time the minimum is 10 years.

Against the backdrop of our excessively generous parole laws and these kinds of offenders, who almost certainly have lengthy criminal records with other convictions, are these sentences really out of whack in terms of the gravity of the offence? We ask you to reflect on that.

Finally, we are encouraged by the comments of the member for Winnipeg Centre, Mr. Patrick Martin, who has seen his community ravaged by gun crime and who recognizes that this public safety legislation will help tackle this growing problem.

In addition, we are heartened by the public policy statements of at least two of the three opposition parties calling for enhanced mandatory minimum sentences in the lead-up to the last election. We trust that those views have not changed since then.

We encourage you to consider the two minor amendments we have recommended with respect to the most serious section. With or without these two amendments, the CCAA supports speedy passage of this legislation, and we look forward to all-party support to get this bill through the House of Commons and the Senate.

Thank you.

The Chair: Thanks very much to both of you for your presentations.

I'm going to go to questions now, starting with Mr. Murphy.

● (1215)

Mr. Brian Murphy: Thank you, Mr. Chair.

I'm very impressed with the evidence today from everyone. I know everyone feels very strongly about their submissions.

In balancing it all, however, it seems to me some of the most compelling evidence came from the chief of police who used the example of Jamestown—I'm not from here, so I don't know where that would be—and how basically he forced the service to crack down on a problem with the tools they had, which led me to believe the existing laws, policies, and deployment of resources appeared to work in that case. He sort of unravelled that ball of yarn by saying we've made the charges, but we don't know if they're going to stick. To me, that is a bit anecdotal, despite the fact that he said the crime rate is down in specific instances. It remains to be seen, with all due respect to the chief.

I was also struck with this call for evidence-based conclusions, and Mr. Rosenthal made the point—I could hoist him by his own petard and ask where he gets the statement that people don't think of the penalty just when they get caught. But I don't want to waste my time with that, because I'm sure he has the studies to back it up and will give us those. I do thank you for coaching me towards this evidence-based thing.

The thrust to my question is—because, Mr. Muise, you made a number of comments—am I right that your evidence comes from your 30 years of experience at the Toronto Police Service, the front-line discussions you recently had with 150 people who are part of the criminal justice system, including victims, and the various studies you referred to? You gave a lot of anecdotal evidence. You gave a lot of opinionated, heartfelt evidence.

Can you tell me about this 150 people round table thing you had?

Mr. John Muise: Sure. Thank you.

Mr. Brian Murphy: Is there a sheet that says these were the participants, or that sort of—?

Mr. John Muise: Yes.

I don't want to overwhelm the committee, and I want to stick to Bill C-10. Let me start by saying my evidence is informed by 30 years as a police officer. It's informed by the round tables that were done as part of our “Martin's Hope” report.

I'm going to give you a copy of the report, because I have a couple of copies, in which the names of the 150 front-line criminal justice professionals, crime victims, and survivors—except for some of the victims' first names because they didn't want to be identified—are included in the back of the report.

In fairness to me, I might add that it was also informed by some evidence-based information. *Juristat* didn't pop out of my fertile imagination. I think it's as factual as it gets, and it's over the course of 40 years. I challenge anybody to suggest that this is not the proper way to look at the evidence.

Mr. Brian Murphy: It's there, and I want to get onto another question.

As you said, violent crime is on the decrease. More importantly, you said that if gun control is important, those who do things with guns should be dealt with importantly or heavily.

Mr. John Muise: Correct.

Mr. Brian Murphy: Those weren't your words, but I'm paraphrasing.

Mr. John Muise: Yes.

Mr. Brian Murphy: You heard the chief, and perhaps the Attorney General mentioned it too, that in the toolbox they have the long gun registry, which they don't feel should be scrapped. I'll ask you to agree with that, if you would, but more importantly, guns.

You made it clear when you were first on the force in the 1980s—and, incidentally, when I lived here, it was obviously a very pure place—that there wasn't as much gun involvement. Now it's very prevalent. It seems to me that the theme here is guns, guns, guns. What are they going to do about gun control? I asked the chief this, and he moved on to.... We don't think this is the worst bill that ever came down the road, but it's certainly not a cure for the gun epidemic, by any stretch. Nobody says it is.

On a blue sky day, what's the gun control cure?

Mr. John Muise: Let me start by saying that like the chief and Minister Bryant, I agree that when dealing with any crime, including gun crime, there's a range of responses across the continuum. Clearly, one of them is legislation, and that's what we're talking about today. Obviously I support this legislation. I supported Bill C-9, the conditional sentencing legislation, as it was previously written, and I'm not happy with the result.

But having said that, I also support proper and lawful storage. I like the fact that people have safes in their homes where they keep their guns. We recognize legal gun ownership. I like the emphasis on those things.

Do I support either registration or licensing, or some form of a way of telling us, as a community, and particularly as police officers? Absolutely. I was a police officer for 30 years, and access to that information is good. I leave that to Parliament to sort out what that looks like, whether it's a registration system or a licensing system. As long as that information is accessible to the police, I would support that.

Because you've asked the question and I feel I need to answer in its totality, do I support spending $1 billion on a system that doesn't return $1 billion in terms of public safety, no. If there is something Parliament can come up with that is more cost efficient and still allows for some sort of registration or licensing, I would support that. Ultimately I do support some form of that.

I hope that answers your questions.

● (1220)

The Chair: Thank you.

Sorry, Mr. Murphy, your time is up.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you very much.

[*English*]

I'm going to speak in French.

[*Translation*]

I was glad to hear from professor Rosenthal, who I did not know previously. Your testimony has brought two things to mind. The first is that the Supreme Court allowed mandatory minimum sentences across the board, except in the Smith decision. The Canadian Charter of Rights and Freedoms came into effect in 1982, the decision in Smith was handed down in 1987 at which point, in order for a sentence to be overturned under section 12 of the Charter of Rights and Freedoms, two criteria must be met. First, the sentence must violate the principle of human dignity, and second, it must be grossly disproportionate. When defining a grossly disproportionate sentence the following factors are taken into consideration: the effect of the sentence, the offender's character and the circumstances in which the crime was committed.

Court challenges are not really what scares me. I don't think the sentences will be overturned because in Morrissey, Gold, Latimer and many other decisions, the court has very much deferred to parliamentarians. The problem is that I do not believe mandatory minimum sentences are effective. The government has not managed to table a single study proving a link between deterrents and a repeat offence.

Let's think about this logically. In 1995, a bill was adopted. The legislation set out 10 mandatory minimum sentences for offences committed with a firearm. Since then, either offences committed with firearms have increased, or they have decreased. Which ever the case may be, this has something to do with the legislation enacted in 1995. The Canadian Centre for Justice Statistics told us yesterday that, generally speaking, the number of crimes committed with a firearm has not increased in Canada. Moreover, this assertion is back up by the statistics.

If you look at the statistics on violent crimes, it is clear that, both absolutely and relatively speaking, they have dropped in number, with the exception of two places in Canada, where the number of crimes with a firearm has increased: Toronto and Vancouver. Should this be of concern? Yes, it should, and that is why, earlier, I tried to find out from the chief of police and the solicitor general what they think can be done to address very specific situations. It would be fabulous if we could tell ourselves, as legislators, that a quick fix solution exists, namely an increase in mandatory minimum sentences. But that is not the solution. At any rate, it is not clear, on the basis of the scientific data, that that is the solution.

What we do need to look at, is how we intend to work, for example, in dealing with street gangs. Clearly, the whole street gang phenomenon is a matter for concern. It is also a matter of concern in Montreal. But why do young people join street gangs? It may have something to do with poverty, desperation, and also the fact that some young people are quite simply a lost cause. Nor are we naive.

I would like to hear what you have to say on this issue. Mr. Rosenthal,I would be very happy for you to react, but I think this is particularly an issue for John. Do you have any statistics which would suggest that mandatory minimum sentencing is a deterrent? Any answer must be based on somewhat empirical research; and must not be based on an impression or one's intuition. You can't pass legislation that way, otherwise we would be reinstating the death penalty. The death penalty is the best way to eradicate offenders. So, when you say mandatory minimum sentencing is the best way of controlling offenders, it is a spurious argument.

● (1225)

[*English*]

Mr. John Muise: Thank you, Mr. Ménard.

I'm not here asking to bring capital punishment back. You did make one point about the crime rate being down. I think categorically that's absolutely not true. I think violent crime is way up, and again—let me finish—I would encourage the committee to get the data that speaks specifically to firearms offences, which is similar to this data, the data over 40 years that shows the rise in the rate of violent crime. I think you'll find the same thing with firearms.

In addition, to repeat what I said in my presentation, the studies.... Interestingly enough, the Library of Parliament and Statistics Canada don't seem to have much time for the studies south of the border, but criminologists south of the border.... And I agree about the deterrent effect; I agree with Mr. Bryant and I agree with Chief Blair that there's a deterrent effect on some and not on others. This is about incapacitation, and what the studies tell us, in my estimation, is that where you identify, particularly if you get it right, that small number of offenders who commit a disproportionate number of serious crimes—and I would suggest that the people who put firearms in their hands, by and large, are those people—and incapacitate them for as long a period as possible, the end result will be a reduction in the crime rate. I think that's what happened in the main south of the border in terms of the precipitous drop in violent crime.

Mr. Réal Ménard: Mr. Rosenthal wishes to speak briefly, not me.

The Chair: I will permit Mr. Rosenthal to speak, yes.

Thank you.

Prof. Peter Rosenthal: Thank you.

I should like to take up something that Mr. Ménard has indicated. He pointed out that in Toronto and Vancouver there were increases in gun crimes and in the other areas there were decreases. That alone should prove that the mandatory minimums had nothing to do with it. There are other factors at play here, and if you deal with mandatory minimums as if that's the solution, then you don't look for the true solutions, which involve looking at what's really going on.

The Chair: Thank you, Mr. Rosenthal.

Mr. Comartin.

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

The Chair: Okay.

Mr. Thompson.

Mr. Myron Thompson: I thank you both for being here today.

Mr. Muise, there is occasionally some reference in terms of the victims from some of the witnesses who come forward. I hear so many witnesses come before the committee...you'd swear that when it comes to crime, there's only one person involved and that's the criminal. I really get sick and tired of this nonsense about, “Well, we have to make sure there's not cruel and unusual punishment when it comes to the criminal. We have to be careful how we treat these birds because that could be, under the Charter of Rights and Freedoms, cruel and unusual.”

Yet, Mr. Muise, I remember an 18-year-old boy who was in grade 12 attacking a 15-year-old girl in the school I was in. He sexually assaulted her—seriously. The courts, in their wisdom, decided it would be better if this 18-year-old continued his schooling and got his education, and they gave him a conditional sentence. I think it was extremely cruel and unusual punishment for that 15-year-old girl to allow that 18-year-old boy back into that school.

An apple dumpling gang, as we called them in the rural area, robbed the Bank of Montreal. A 17-year-old and two 19-year-olds decided it would be a good idea to get their hands on some guns. They got some handguns somewhere. In my hometown of 2,500 people, they held up the Bank of Montreal. It was very well planned, by the way. They had two girlfriends who set a big fire on the edges of town to get our small police force to attend to this, along with the fire department.

There were four tellers and a couple of people who dealt with credit and so on—six to seven people, including the manager—who were absolutely terrorized for at least 15 minutes before these young people, who were shaking like a leaf because it was the first time they had ever done such a thing, managed to get out of there with quite a bit of money. They had stockings over their heads; they were really playing the role.

Can you imagine, Mr. Muise, what the view of the public in that small town was when about six weeks later these three guys were walking around the streets of that community? There was no thought about the cruel and unusual punishment for the victims of these kinds of people. There was no thought at all.

I would gather from some of the witnesses I've heard that it would be wise to let the 18-year-old finish his school and that we shouldn't punish these young people too hard when it's the first time. I really get tired of that.

So, thank you, Mr. Muise, for referring to the victims of crime as often as you do.

I was surprised to hear even a mention of consecutive sentences. I've been trying to look for consecutive sentencing in this country for a long time. It seems to me if you murder 11 people, maybe you ought to get 11 life sentences to be served consecutively, not concurrently.

One day I went into court, and do you know what? I saw two people get a consecutive sentence and it almost shocked me. Twice they had smuggled grain across the border to the United States and twice they were sentenced, and it was consecutive: “We'll teach those farmers to sell their own products twice. Serve it consecutively.”

You see, the whole attitude out there on these kinds of events.... I know they are small in number, but it has brought on a huge public outcry. More and more, when these events take place, like on Boxing Day in Toronto, there is an increase, there's a public outcry. And there's not one of us here who didn't get elected with the intent to come here to try to fix it. It's every one of us. It doesn't matter.

An hon. member: That's right.

Mr. Myron Thompson: In reference to the campaigning during the election, you only need to look at Bill C-9 to see if there has been any change in attitude, and I think you will concur that there certainly has been.

I appreciate you. I just want to say how much I appreciate people who speak out strongly for victims. That is no reflection on what the witness of the other party.... I'm not reflecting on it in that sense. I know the gentleman is probably close to my age and has been around this country for a long time and has a lot of heartfelt thoughts for victims of crime. I'm sure he does, especially if he has grandchildren, etc. We all want to protect them.

● (1230)

I want to thank Mr. Muise for addressing this thing from the point of view that there's a public outcry to start protecting victims in this country, and I applaud you. And, yes, I'll charge expenses for that speech.

Thank you.

The Chair: Thank you, Mr. Thompson.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you, Mr. Chair, and thank you both for coming. It's fascinating.

Mr. Muise, my colleague would like to know how your organization is funded.

Mr. John Muise: As I indicated in the introduction, generous individuals and corporations kick in. Much of our time is spent raising money, and that's how we're funded. It's as simple as that.

The only time we've ever accepted government funding is for a project, a one-off project, but no, we do not accept government funding.

If all you folks said you would pitch in and give us money to keep our operation up and running, we'd respectfully turn it down. We'd be grateful for the offer and we'd appreciate it, but we would turn it down.

That's how we're funded. And I'd be happy to speak to you afterwards if you want more information, if you know anybody who would like to give us a donation. Staying above water is always an issue for us.

● (1235)

Hon. Larry Bagnell: Is there a list of your funders? Is it public?

Mr. John Muise: I don't have a list. but certainly I could provide that information, I suspect. I don't know. It's something I would have to speak to the executive director about, but we certainly talk about our funders all the time publicly, so I could probably name several of them right now, if you'd like.

Hon. Larry Bagnell: No, that's good. I have a main question I'd like to get to, actually.

In our work over here, we're really trying to speak for the victims and people who are not yet victims, to make sure the perpetrators haven't reoffended again. The vast majority of evidence is that there's not a deterrent function, but the one element that I think Mr. Muise brought up, and certainly the chief of police and the Attorney General, that might be a rationale—not necessarily data, but it might be a rationale—is incapacitation. I'd like to talk to Mr. Rosenthal about this.

The evidence also shows that people who are incarcerated as opposed to the various other options—a longer incarceration quite often makes them less safe when they come out of prison. In that all of these people will be coming out, this is going to be short-term gain for long-term pain, and society will actually be less safe because of this type of extra incarceration and lack of other more productive alternatives for judges. Could you comment on that?

Prof. Peter Rosenthal: Yes, the question of incapacitation is raised, as it was a while ago here, that if someone is in custody, he's not going to be committing crimes, at least outside the prison. He might do it in prison, but he won't be committing crimes outside. Well, how much effect is this bill going to have on that?

Mr. Muise talked about the worst offenders. Aren't the worst ones already getting much more than the minimum sentences anyway? So how much effect will there be? Yes, there may be one or two people who will spend a couple more months in custody than they otherwise would, who are among the worst offenders and are therefore going to be incapacitated when maybe they would have done something, but that will be an infinitesimal fraction of the effect of this bill.

Hon. Larry Bagnell: I agree with you on that, but over and above that, the person who will be at large in society for a lot longer than they'll be in prison for those extra years will be more dangerous to society in total.

Prof. Peter Rosenthal: Absolutely. I want to agree with you on that aspect, too, but I wanted to make the other point about incapacitation. Even per se is a very, very minuscule matter and shouldn't really be considered. Certainly, the evidence is that the longer you spend in prison, the more you learn about how to be a criminal, to some large extent, and the people who are kept in longer come out worse, unfortunately.

Now, if you want to talk about solving crime, why don't you talk about those issues? There are some real problems there that could be tackled by Parliament, if you didn't do window-dressing kinds of things like this that don't really solve the problems. That would be my submission to you.

Hon. Larry Bagnell: So even if we have significant incarceration and stop a lot of crime for a couple of years, they'll be coming out into the public and be far more dangerous. For instance, the stats we got on discretionary sentences say that it could be 47 days in jail for an average offence, where it would be 700 days in treatment through the others. So you'd have all that time to work on the person, to rehabilitate. Obviously, jails haven't worked for centuries. We know that. People are going to reoffend. So for a longer portion of their life, they will be more dangerous to society.

Prof. Peter Rosenthal: Absolutely. I completely agree with you and would urge that you look at those kinds of questions as to how you can really rehabilitate people.

The Chair: Thank you, Mr. Bagnell.

Mr. Brown.

Mr. Patrick Brown: Thank you, Mr. Chair.

I have two questions I'll be seeking your feedback on—first Mr. Muise and then the professor.

There was a report that this committee looked at, which was circulated by the clerk, in terms of the effects of gun changes. It specifically made reference to Pennsylvania and Detroit.

In Detroit, where minimum sentences were imposed, there were 10 fewer homicides per month. Additionally, in Pennsylvania, there were 6.8 fewer per month. So when I look at things logically, that obviously weighs pretty heavily. It would be interesting if that trend would continue after these were imposed. We want to get your feedback on whether you anticipate similar results, Mr. Muise.

Another comment I'd like to get some feedback and some thoughts on is a suggestion that was made that there's no evidence that judges have made any bad decisions. I think that's what the professor mentioned. I'd just note that the Attorney General, when he was here, made reference to a case where the Crown asked for 10 years when someone had 23 handguns and the judge gave a decision of two years. Is that something you've heard as well, Mr. Muise? Is what the Liberal Attorney General was speaking about in his passionate support for Bill C-10 an aberration?

● (1240)

The Chair: Excuse me, Mr. Brown—

Prof. Peter Rosenthal: As I informed the committee, I have to leave at 12:45 for another matter downtown. I wonder if perhaps I could try to answer your question for me first, before he does, if you want, or else I'll just have to say goodbye now.

The Chair: I would encourage Mr. Brown to accept that, because I know the professor does have to leave.

Prof. Peter Rosenthal: Actually, I would like to comment on what you asked him, if that's okay with you.

Mr. Patrick Brown: Could I have limited answers, so that you can both answer? I want to hear both answers.

Prof. Peter Rosenthal: Yes, thank you.

First off, when you look at Pennsylvania and things like that, it's ups and downs. Because it happened coincidentally that they passed a minimum law and then it was down the next year doesn't prove that was the reason. Just as it was pointed out, in Canada we have ups and downs in the same time period with the same minimums—up in Toronto and down in Montreal. So just the fact that one follows the other doesn't prove anything, and that's why these things are very hard to prove.

Secondly, Mr. Bryant mentioned one case, yes. Are you going to pass a bill based on one case or 10 cases? Why don't you do some serious studying? There are facts out there that can be studied. You could have researchers do those studies and then consider whether there really are any significant number of cases that justify this. That would be my response, sir.

With my apologizes, then, as I informed your clerk earlier, I have to go downtown. Thank you very much for allowing me to state my views to you.

The Chair: We appreciate very much, Professor, you taking the time to come here and present to the committee. I know you're designated as a professor of mathematics, but it looks like you're a man of many talents. We heard your information, and we'll certainly process it along with the rest.

Prof. Peter Rosenthal: Thank you very much, sir.

The Chair: Mr. Muise, I think you wanted to reply to Mr. Brown.

Mr. John Muise: That would be great. Thank you.

Again, I would turn you back to the studies south of the border with respect to the impact of incapacitation over the long term, rather than deterrence. How does that relate to what happens here in Canada? There's a whole pile of legislative pillars that need to fall into place before we seek the equivalent precipitous drops. We're not there in this country. This is a wonderful step, the mandatory minimum sentencing bill, but we need to do this. We need to do a wholesale review and altering of our parole laws and our statutory release laws, and we need to look at the regimen around our long-term offenders, our dangerous offenders, our high-risk offenders out on section 810 orders. There's a whole pile of things. But if we do all those, including the mandatory minimum sentence on the guns, what we will see is that the violent crime rate will drop.

In addition, I am familiar with the case that Minister Bryant commented on, but there are dozens and dozens of those cases in the naked city. Did I bring a laundry list of those cases? No. But the kinds of people who have committed violent crimes who are out on conditional sentences, the kinds of situations where the Crown quite appropriately, in my estimation, asked for 10 years, and the person gets two years, time served, and out the door.... I think there's a lot of that going on, and it happens on a daily basis across this country.

It's certainly why, to build on something Mr. Thompson said, two friends of mine.... One was the subject of a home invasion. And no, he didn't have a grow op; he was just an average guy staying at home who had people break into his house with guns and threaten to kill him because they wanted to do a home invasion. He happened to be out of the country. Another friend of mine, who I'm trying to convince to testify, was shot by a crack dealer. And no, he wasn't buying crack. I'm hoping to convince both of these gentlemen to come to Ottawa to testify. If I'm able to get them to come, I trust that the committee will want to the hear the voices of those victims, because I've certainly heard them over 30 years as a police officer, six of which I spent at the Office for Victims of Crime. In fact, I provided advice to a series of attorneys general, and Mr. Bryant was one of those.

I think that voice is incredibly important. I think we need to return the proportionality. I don't think, using the evidence-based approach that I've taken in terms of incapacitation—I've actually mentioned studies and provided charts and talked about these issues from that perspective—that that's incompatible with a vigorous charter and the rights of an accused to a fair and vigorous defence. I would never suggest that we need to give up those rights on behalf of the accused in exchange for greater public safety and enhanced justice.

● (1245)

The Chair: Thank you, Mr. Muise.

I will be bringing this session to a close.

Mr. Bagnell.

Hon. Larry Bagnell: Mr. Muise, you referred to some studies. Could you give them to the clerk for us?

Mr. John Muise: I don't have them.

Hon. Larry Bagnell: Could you mail them to the clerk?

Mr. John Muise: Yes, sure. Some are included in the brief I provided, and I'll get the references for some of the other ones that are similar that I didn't include in my brief. I'll pass those on in the next day or two.

The Chair: Thank you, Mr. Muise.

Mr. Thompson, you have a point of order.

Mr. Myron Thompson: Mr. Muise also mentioned a couple of victims that he would like to have testify before this committee. I always remember hearing from victims, and I think it would be a really good idea. I wonder if we could get their names and possibly invite them.

The Chair: The subcommittee, in fact, did address that issue, and there will be a discussion with the steering committee as to who will be appearing. I know Ms. Barnes also had two individuals who would like to appear. That's still in the process, Mr. Thompson.

Mr. Myron Thompson: I'd suggest we get the names of these people, if we don't know them.

The Chair: I believe we know the names already.

Mr. John Muise: You know one of them. The other one I'm trying to convince.

The Chair: Thank you, Mr. Muise, for your testimony here. I believe we've had some additional information to be added to our deliberations. We appreciate your attendance. We hear another side to this issue, and I think it's important that we get it.

Mr. John Muise: Thank you for the good work that all of you do. I wish you all the best in your deliberations.

The Chair: Thank you.

The meeting is now suspended for one half-hour.

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(Pause)

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● (1325)

The Chair: I call this meeting to order.

I'd like to thank the presenters for being with us this afternoon. From the Nathanson Centre for the Study of Organized Crime and Corruption, we have Margaret Beare, who I understand is a former director. From the Canadian Council of Criminal Defence Lawyers, we have Mr. Trudell and Mr. Andy Rady.

I believe both of you have testified on more than one occasion before the committee, have you not? I know Mr. Rady has for sure.

I would ask for our testimony to begin. Ms. Beare, if you could begin, you have the floor.

Ms. Margaret Beare (Former Director, Nathanson Centre for the Study of Organized Crime and Corruption, As an Individual): Thank you very much for the opportunity to be here. I understand I have about ten minutes, but it probably won't take quite that long.

Most of the general criticisms regarding this legislation have already been outlined, probably this morning as well as in the legislative summaries. It's somewhat disheartening to realize that the problems have in fact been so thoroughly acknowledged, yet the proposal is for the legislation to proceed regardless. Research findings over a significant period of time, in various countries and distinct jurisdictions, are apparently treated as irrelevant to some extent. I would therefore like to make six points that I think are important in thinking about this legislation.

First of all, contrary to Justice Minister Toews' comment that academics who were critical of the bill did so without knowing what was in it, I do realize that this legislation is not similar in very many ways to the three strikes model that occurs within the United States. In fact, this legislation is limited to certain firearm-related offences, and that's to the good. But it does still have the arbitrary aspect of putting its weight behind the concept of the “sequence of convictions” notion of punishment, with the unsubstantiated claim that somehow this legislation and this kind of supposed get tough approach will contribute to making streets and communities safer.

Keeping to the popular baseball analogy, the minister is correct. It does not follow the typical three strikes. In looking over the summary on minimum imprisonment under Bill C-10, it offers us a two-strike model for certain offences, rather than three. There is an unfortunate occurrence in baseball when the second strike results in a foul ball caught by some overly eager opponent. Of course, there are quite a number of examples where the second strike can add the weighted sentence. Trafficking in or possession for the purposes is three years for the first, and the second offence is five. Altering a firearm is again three and five. It becomes a second-strike situation.

It claims to promote deterrence, yet contradicts the principle of specific deterrence, in that there does not appear to be in the legislation a guarantee that the sequence of convictions will be spaced so as to give the offender the benefit from any learning, rehabilitation, or actual specific deterrence following the first conviction. Lawyers speak of the Coke principle, whereby the second offence, with the punishment that's due to that second offence, must not have been committed nearly simultaneously to the first conviction and therefore the first sentence.

If we believe at all in deterrence and rehabilitation, then fairness and justice require that the convicted person should have an opportunity to learn before harsher penalties are applied. An example given in the parliamentary summary presents us with the example of a person who commits two firearm-related criminal acts. The point is made that regardless of the order in which they were committed, the order that matters is the order of conviction. This issue is particularly troubling with the sections pertaining to criminal organizations, where the punishment can in fact turn out to be crushing, and perhaps especially crushing for a young offender or a young individual who is not being treated as an adult. The first offence brings five years, the second offence brings seven, and third offence ten, when in fact the criminal acts could have been committed nearly simultaneously.

Thirdly, this legislation has the potential to turn the process of prosecution into a game, with the potential for the justice system to “time” convictions based on having the longer sentence saved for the second offence. As is described again in the summary, a person commits two offences, possibly simultaneously or very close in time. The example given was illegal importing of a firearm and B and E to steal a firearm. A decision can be made to proceed quickly with the B and E, so that the second offence has the longer prison sentence, five years versus three years. I realize that lawyers are used to playing games in order to avoid mandatory second offence legislation with drinking and driving or gaming legislation. The games will continue, but in a changed format, this time to the detriment of any serious attempt at rehabilitation.

● (1330)

Of course, from my involvement with the Nathanson Centre, I am particularly concerned about the linking of this bill with criminal organization legislation. The application of criminal organization legislation is broad and vague, and now it's linked to this new legislation. Yes, while it has withstood some challenges, the new offence of “participation”, particularly that offence within a criminal organization, is extremely broad. The crown, as you know, does not have to prove that the participation actually enhanced the ability of the criminal organization to commit the act. The crown does not have to prove that the criminal organization actually even committed the indictable act. The crown doesn't have to prove that the accused was even aware of the specific act that he or she might have been facilitating, and the crown doesn't have to prove that the accused knew the identity of any of the persons who constituted the criminal organization.

Now, if we take this “participation in criminal organizations” category of criminal and apply it to this legislation, again remembering what the crown does not have to prove, a person can be charged and convicted of participating in a criminal organization where a restricted or prohibited firearm is used in connection with the criminal organization, and the result can be that the individual then earns, if it's a first offence, five years, if it's a second, seven, and if it's a third, ten.

What is of particular significance to me is that what seems to be happening is that we pass legislation to address specific, high-profile incidents, usually where there are political consequences, and they're treated as if they're to address a particular problem. But then they become normalized in our justice system. Hells Angels spawned the criminal organization legislation—the so-called anti-gang legislation—and now street gangs are being treated as criminal organizations. The question then becomes, who's next?

The first point is the notion of bang-for-buck, which I thought was an appropriate consideration, given the anti-firearm legislation. We already know that the mega-trials are swamping the justice system. The only way the justice system is surviving under their weight is due to plea bargaining and the dropping of charges. Yesterday's newspaper told us what we already know: the gang mega-trials have swamped legal aid. We're told that a single person earning $16,000 may not qualify for legal aid. And with this legislation, there will be an enthusiasm for more mega-trials, hideously long trials, attempting to show that the operation was in fact a criminal organization. And there will be suspects without adequate defence facing these extensive mandatory charges.

The impact on plea bargaining may in fact be mixed, which again hardly qualifies as equal justice. There may be less plea bargaining. Therefore, there will be more demand for trials, more legal aid needed, and more prisons. Or there may be more plea bargaining with the crown dropping or not laying the second charge, with some sort of agreement being made for consideration of above-the-mandatory minimum for the first sentence. However you figure it, it's not going to be the uniformity that I suppose underpins the thinking behind this legislation.

Finally, what is the answer? The legislation only discusses mandatory minimums, which serve only to limit the discretion of judges and result in the kind of finagling I'm talking about. The ceiling still applies, and the judges can still, and do, give adequately harsh sentences. No one anywhere, except possibly in the United States, thinks that prisons are the answer to the crime problem. Again, in the background information on this, it acknowledges the need to build prisons.

What I would argue we need to do is pay more attention to research being carried out in Toronto and elsewhere. The focus should be on resources and working with the communities where gun violence is prevalent.

● (1335)

Resources should focus on taking seriously what guns actually mean to the mainly men who use them. Money that is seemingly being designated for prison-building and the corporate entities that profit from that exercise should be turned back toward the communities. There should be a focus on funding policing, which has already claimed significant successes in helping make our communities safer and more secure, which has happened without this kind of legislation in place.

Thank you very much.

The Chair: Thank you.

Given that Mr. Trudell and Mr. Rady are both in the same organization, is one or the other going to present, or had you both planned to present, keeping in mind that we've got only an hour?

● (1340)

Mr. Andy Rady (Ontario Representative on the Board, Canadian Council of Criminal Defence Lawyers): We've kept that in mind. I think we're both going to make brief speeches.

The Chair: Very good.

Bill.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Thank you very much, sir.

Members of the committee, the Canadian Council of Criminal Defence Lawyers is very grateful for this invitation. We have been here on many occasions throughout the years, and I wanted to say, on behalf of our organization, that we feel that this committee, the justice and human rights committee, is probably the most important parliamentary committee working today in Ottawa. We don't just say that because we're criminal defence lawyers. We say that because you have enormous work that has been presented to you.

Our position is this: The government has sought to introduce a number of pieces of legislation, and they may be right, but there has been a lack of consultation. Historically, when bills are introduced, there is a considerable thorough lengthy consultation process that occurs with members of academia, with the police—not only local police forces but the RCMP—and with all the stakeholders, including and sometimes most especially victims. That has not occurred, in our respectful submission, in the case of this bill and of some of the other legislation that we have already been here on and that we anticipate you'll invite us back on.

What's happening here is that, with great respect, the government is downloading on this committee, and this committee is being asked to study bills, to call in persons, and do the work that normally would have been done in the normal course of events. I don't know whether that's because there's a legislative agenda. I don't know whether that's as a result of a minority government. But the bottom line is that it means that you are so important because the results of the decisions you make here will be with us a lot longer than any members in this committee, any testimony of persons who come before you, the Prime Minister, the Minister of Justice. You're talking about changing legislation that will live for a long time.

So we say to you—and I don't mean to be trite—you need the courage, whatever party you're from, to say you're not satisfied that you know whether this bill is going to change things, and to not react to political statements, because you're changing the laws of the democratic process. So if you are not satisfied—and I don't know how you could be satisfied yet—that you've heard enough on the background, that you've looked at the costs, that you've consulted widely, you cannot pass this bill, in our respectful submission.

It is very important, with great respect, that politics be put aside. We know that this bill may have become a catalyst as a result of a terrible shooting that occurred on Boxing Day two years ago. All parties may have supported something at that point in time, but all parties did not support the lack of consultation, and that's what needs to be done here. We ask you to continue to do it.

Mandatory minimum sentences accomplish one thing. They remove the offender and put him in jail. Yes, perhaps that offender cannot offend again for the period of time that he or she is incarcerated. That's presuming, of course, that the offender would offend. That's something the courts will look at in deciding what the sentences are, because we know that if you put that offender away—you've heard it before this morning and probably from other people—there's no money for the treatment that this person is going to need. Separation is not the basis of criminal justice, and that's all that mandatory minimums accomplish. There are lots of ways you can send a message out to respond to what may be perceived as a problem in big cities or elsewhere.

I want to say something else before I finish with this. The guns and gangs response, the big city problem, is not the same as the problem in the Northwest Territories. It is not the same as the problem in northern Saskatchewan. It is not the same as the problems in Manitoba. So when you impose minimum sentences, it affects everyone.

● (1345)

James Mahon, who is our representative from Yellowknife, sent this to me and asked me pass it on to you:

> Another effect that must be considered is the disproportionate effect that custody may have on different demographic groups. This consideration was addressed in the Supreme Court of Canada's decision in Gladue. This concern is even more apparent in northern aboriginal communities. A penitentiary term of custody in the Northwest Territories means incarceration in a federal facility in southern Canada. There is almost no possibility for any contact from family if an offender is "sent south". Many families simply do not have the means to visit incarcerated persons in southern Canada. Base airfare from Yellowknife and Edmonton, in the range of $1,000 or more, makes a visit impossible, particularly for those of limited means or those that live in remote areas. In southern Canada, distances are shorter, and prisoners do not the face the complete severance of contact with family.
>
> I note that our Territorial facilities provide culturally relevant programming to our Aboriginal offenders. This rehabilitative tool would be lost in most southern facilities. Except for the capital of Yellowknife all of the communities are small, most under 1,000 persons, with large portions of those populations being Aboriginal. To house these persons in southern penitentiaries without the ability to address their personal circumstances completely turns away from any contemplation of rehabilitation and puts the focus of our criminal justice system back on punishment.

We have had the same comments from Manitoba, New Brunswick, Saskatchewan, and Alberta, in terms of this bill and the effect it has across the country.

I want to end by saying that we do not support this bill. We feel that if you took the time to seriously study it, being very careful, you would not pass it.

You are the legislators. If you, in your wisdom, decide that this bill has to be passed, we can help you with due process. We don't pretend to know whether this bill should be passed. That's your job.

If you decide to proceed, then the Canadian Council of Criminal Defence Lawyers suggests that there be an exception provision. In the principles of sentencing enshrined in section 718, one of the sections, 718.3(2), says the following:

> Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

We ask you to consider the following amendment:

> Notwithstanding any minimum punishment prescribed, save and except for the offence of treason or murder, the Court before sentencing the accused shall consider whether the minimum punishment is necessary having regard to the public interest, the particular needs of the community and the interests of the accused in all of the circumstances.

If you feel this bill has to pass, and you put in this exception provision, you respect the judges. First of all, you see the message, that there should be minimum penalties, but you respect the judges to do their job. You have respected the public interest. You have respected the particular needs of the community to reflect Gladue, our aboriginal Canadians, and of course the individual interests of the accused.

That exception provision covers a lot of the criticism that you will face. It recognizes regional disparity. It's not just a big city crime bill. It gives the judges the message, but it allows them to do their jobs. It reflects the particular community.

Thank you very much.

The Chair: Thank you, Mr. Trudell.

I just want to let the witnesses know that we have two hours, not one, as I previously stated.

Mr. Rady, please, the floor is yours.

● (1350)

Mr. Andy Rady: I was going to speak much more quickly, but I'll speak slowly so that people understand.

I'm a provincial director, as well, of the Criminal Lawyers' Association. This is an association of just over 1,000 criminal lawyers from the province of Ontario. I'm the representative of the Criminal Lawyers' Association to the Canadian Council of Criminal Defence Lawyers, and as such I'm a director of the CCCDL. The Criminal Lawyers' Association of Ontario has also submitted its own brief to this committee and I commend it to you.

I've been practising criminal defence law for 25 years in the city of London, and I have appeared at all levels of court throughout Ontario. My perspective here today is that of someone who has the knowledge of criminal law as practised in this province. I've represented persons charged—sometimes acquitted, sometimes convicted—with crimes involving guns, and any insights I have come from that point of view.

I obviously adopt what Mr. Trudell has said, but in my own capacity here I've looked at the legislation and there are a few points I'd like to make and a few questions I'd like to ask. That's what criminal defence lawyers tend to do: they ask questions. My first question is, why? Why this legislation? What is it hoping to accomplish?

Well, at first blush, what it's hoping to accomplish is to get tough on serious crime. That is the phrase we've heard many times over the past little while. But does it do that? Let's look at this in a deeper way.

Why has gun crime increased, if it in fact has? Why is gun crime a problem that needs to be addressed? Will this legislation answer the question as to why? I submit to you that it does not.

I represent people who are charged with gun crime, and I look across at them, sometimes through the bars of a jail cell, sometimes across my desk, and I always ask myself, why did this person commit this crime, if in fact they're guilty? Why are they charged with this crime? What is going on here? That is the root problem that we have to get to before we have the kind of safety that is sought as a result of this legislation.

There are various levels of criminality, even with gun crime, and there is a root cause to that. That is not being addressed. Until it is, I'm going to submit to you that all this is going to do with the passage of Bill C-10 is to in some way instill a sense of false security over people. We have to understand why crime is being committed.

Let's look back 30 years in this country. We did not have, apparently, the level of gun crime then that we do now. We had the same Criminal Code and we had a Criminal Code that had no mandatory minimums. In the mid-1990s, the Liberal government passed some mandatory minimums of four years for robbery and one year for possession of certain firearms. We still have the problem. The question again is, why?

The reason, perhaps, is that we have to study, we have to consider, what we can really do not just to punish crime but to stop it from its root level. We have to understand the issues of poverty, of education, of social welfare. Those are much broader issues than perhaps what this committee can do, and they are much more expensive issues from the point of view of a parliament. They are expensive issues because they cost a lot of money to implement. Social justice programs, anti-poverty programs, increased education, understanding how our children are socialized into accepting the fact that gun violence may be acceptable is what we really need to do in order to stop this.

A number of years ago it was socially acceptable to smoke in this country. We still have smokers, but the way smoking was cured was not by any punishment but because it was made socially unacceptable to do that.

Impaired driving has decreased. The punishments have increased, but if you look around, one of the reasons, of course, is that it has become socially unacceptable to be that person who gets behind the wheel and might harm someone.

So we have to ask ourselves—and I don't have the answers—why is it attractive to use guns? It's not because the Criminal Code is soft. My clients don't commit these kinds of offences because they think they're not going to be punished. They don't consider that. They consider being caught.... You've probably heard this from other persons who've made submissions before this committee and elsewhere, but it is the fear of being caught that perhaps is the greatest deterrent, not the actual punishment itself.

So what I'm saying is, to just impose mandatory minimums and arbitrarily believe that maybe if we make it five years, seven years, and ten years, that will work, I submit to you that there's really no evidence of that.

● (1355)

Even if you do pass the legislation on that basis, you're still not getting to the problem of why, as in why this horrible incident happened in Toronto on Boxing Day. It didn't happen because someone said, “Oh, we're soft on crime, so I might as well go and shoot up the streets.” I think it would be extremely naive for anyone to believe that was the cause of it, or to think that the corollary of that, imposing a stiffer penalty, if one isn't considering the consequences of crime, will have an effect. We have to understand why those young men may or may not have been there, what was going through their minds, and why that was acceptable. Why is it that gun violence is tolerated? What is the root cause of that? That is the greater issue that requires the kind of consultation and study we are talking about today.

Two things I'll point out in support of my position. One, you're all familiar with New York City, of course. A number of years ago, I don't think any of us here would have considered venturing into Times Square in the evening. Now Times Square is perhaps one of the safest places in the United States. Why? It isn't because mandatory minimum punishments were imposed. It's because the police presence in Times Square was expanded greatly. There are police officers every 100 feet, and they have a police precinct there.

So it's the fear of being caught and it's the presence of the police that deters crime in that instance. I point that out because it reiterates the fact that it is the detection of crime that is important.

One item in the bill that I would point out specifically as one that may be problematic to you is proposed section 230, dealing with murder. This bill creates the new offence of breaking and entering to steal a firearm. It now says that culpable homicide is murder where a person causes a death during the course of certain offences, and that is one of them. It also includes the offence of robbery under section 343 of the Criminal Code.

I think it's incumbent upon the committee to realize that some years ago, the Supreme Court of Canada struck out robbery, in a case called Vaillancourt, as being available for this constructive murder section. Consequently, I believe and would submit to you that including this section concerning break and entering to steal a firearm would likely meet the same fate. What does that say? It says that, similar to what Mr. Trudell said, had there been, before this, the kind of consultation that we are suggesting, it would have been a very simple matter for someone to have pointed out that the section is probably unconstitutional on its face with respect to those two sections, one already being struck down.

Frankly, it's sloppy in terms of the way the matter has been drafted. That didn't have to be in there from the beginning. This goes back to our position that if we consult about these matters ahead of time....

We are criminal defence lawyers. We defend people who are charged with crimes. But we're also citizens of this country. We also have families and homes and properties. We have a stake in having a safe Canada. We are here to assist. Our message for you today is that we're still prepared to do that, but Bill C-10 is not going to get you the result you want in terms of safe streets.

You have to consult more. You have to look at the root causes of crime. That's what has to be dealt with.

The Chair: Thank you, Mr. Rady.

I can see that there's quite an appeal on the part of the witnesses before the committee now.

In all fairness, too, Mr. Rady, I know you have asked some significant questions, and we've had some significant testimony, not just from criminal defence lawyers but also from the police—all professional people, all serving in their capacity as part of the criminal justice system. Really, their contributions are quite significant as well, but they take the opposite tack to you are calling us to accept.

At the same time, we're going to throw all this together and make an evaluation. I think that's the responsibility of this committee. It may not quite fall into where you're at right now, but it may not fall into where the police are at right now too.

The debate has been a good one thus far, I dare say, and we've listened to some pretty compelling statements from many.

● (1400)

Mr. William Trudell: Mr. Chair, could I just respond to that very quickly?

We would urge you to consult with police forces throughout your consultative hearings, but I would urge you to consult with police who are not just in the city of Toronto, or big cities, but in the Northwest Territories, with the RCMP, for instance.

The Chair: Yes, in rural areas. Understood.

Mr. William Trudell: Exactly.

The Chair: We have them on our list too, believe me.

Ms. Barnes.

Hon. Sue Barnes: To the that point, the RCMP representative the other day, actually in a response to my question, seemed to indicate that he thought judicial discretion to listen to extenuating circumstances.... In fact he didn't sound so keen on this piece of legislation, but we sometimes have selective hearing in some parties around the table here.

We are going to have two hours here, so I'm going to ask some questions I normally wouldn't.

I'm going to start with Ms. Beare. Could you just tell us something about your centre by way of background, what it does and what type of work it does?

Ms. Margaret Beare: Yes. The Nathanson Centre gets its name from the man who actually gave the endowment. It's located at Osgoode Hall Law School. I am not a lawyer; I'm a criminologist.

The notion behind the Nathanson Centre was the idea that in Canada there should be a community of academics looking at organized crime and corruption. Right now I'm on sabbatical and there's a new director, and in fact the title of the centre has been broadened so that in fact most accurately it is the Nathanson Centre on Transnational Human Rights, Crime and Security. It includes a broader range of topics than just organized crime. It was founded in 1996, and I was the director for those ten years, right up until June of this year. It is the idea of trying to get empirical research looking at not only the substantive issues of organized crime itself, but to really look critically at what we're trying to do in terms of things like this topic right here, legislation where the rhetoric supports all of the positive things it's going to do, and yet when you actually look at the activity itself, there is very often a disjunction.

Hon. Sue Barnes: Thank you very much.

Mr. Rady, you weren't here earlier, but in my speech, which I think somebody showed to you, I gave the example a prosecutor gave to me of the difference in sentencing under proposed section 344(1)(a)(i), and that's the difference between the fully loaded long gun, with a person with a criminal record getting a mandatory minimum sentence of four years, and then somebody with a handgun—and it could even be an unloaded handgun or it could be a loaded one too—with no criminal record getting a mandatory minimum sentence of five years. Just for your own review, those were in robbery, sexual assault, kidnapping, hostage taking, or extortion.

Do you have any comment? Am I reading the section the right way?

Mr. Andy Rady: I believe you are reading the section the right way. Some parts of Bill C-10 refer to firearms and others refer to restricted and controlled weapons. There it refers to restricted and controlled weapons, not firearms per se, so that does in fact mean that if a person robs a corner store using a .30-.30 rifle, which he might have a licence for, he would get a four-year minimum, but if he went in with a handgun he would get a five-year minimum sentence. I would think from the point of view of the victim looking down the business end of that weapon, they wouldn't distinguish between what kind of a firearm it was, but Bill C-10 does seem to distinguish between those.

Hon. Sue Barnes: I also in my speech pointed out the constitutionality of section 230 before.

Mr. Trudell or Ms. Beare, what about the evidence-based material that you can look to, whether it's from our jurisdiction or other jurisdictions, preferably around the Commonwealth but even in the United States, on the efficacy of mandatory minimums?

● (1405)

Ms. Margaret Beare: The research tends to support the idea that people work around it, that the mitigating circumstances are too important to be ignored, and therefore charges are either not laid at all, or dropped or whatever, in those situations where the person would be facing a mandatory minimum where it is deemed to be inappropriate. Of course, there is all sorts of evidence that also indicates the inappropriateness or the disproportionality in other circumstances where an adjustment is not made and the person does in fact get inflicted with a mandatory minimum. It just does not seem from research, surveys, or whatever to add up to fair justice.

Mr. William Trudell: I was struck by looking at the government's backgrounder paper and this bill. From my reading of it, I was shocked the bill was introduced, because it seemed to suggest that the evidence in this country, the evidence and experience in other countries, does not support mandatory minimums. I don't know why it would be put in the backgrounder, and then you move ahead with the bill. There it is, it's out there to be gathered.

I understand that even in some other countries where there are mandatory minimums, there are exception clauses, so judges can do the jobs we ask them to do, and that is to use their discretion to reflect the protection and needs of the individual community. This is one of our concerns. People with the expertise and knowledge and background of Ms. Beare, to people with the knowledge and background of Tony Doob, etc., this is out there. We were shocked that's the type of consultation process that doesn't take place, because it all seems to point to it doesn't work. And if you come to the conclusion that it just doesn't work, whether you're part of the Conservative government or not, it's like the government saying we're going to pass this bill and you've got a mandatory minimum time to consult it. You would say no, that the job of parliamentarians was to gather the information.

From our review, we see all kinds of material out there that will help you, and it may suggest that this bill and these types of provisions don't do what optically some suggest they do.

The Chair: Ms. Barnes, in reference to your question, you asked for evidence-based information on the efficacy of mandatory minimums.

Ms. Beare, you have some of that available for the committee, do you?

Ms. Margaret Beare: I can certainly round it up. But again, just in terms of emphasizing what Mr. Trudel said, what was so amazing about that background document is that it documents it all and it's got the references in the back of it. I expected the preamble of the bill would be sugar-coated instead of discounting the critique, which in fact it isn't. It lays it all out and it's got all the references.

The Chair: Maybe the references are a matter of interpretation.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you.

The most conclusive study on mandatory minimum sentences was conducted for the Solicitor General of Canada, by Mr. Crutcher and Mr. Tabor. These studies are very clear: mandatory minimum sentences do not act as deterrent, nor do they have an incidence when it comes to reoffending. There is no doubt about this. There is a whole host of studies demonstrating that they do not work.

This bill is ideologically based and attempts to give a false sense of security. This is why, unfortunately for some, the opposition parties are likely to do what they have to do by voting against this bill at committee stage. If you'd like, Mr. Petit, I'd be willing to bet you a large beer.

Now let's come back to organized crime and Bill C-95, which has become Bill C-24. I'd really like you to take your time and tell us... First, your appraisal of the mega trials is interesting. In my opinion, an offence under sections 466 and 467 of the Criminal Code should have been established. Indeed, during the 1990s, the Department of Justice thought it could break up organized crime networks by relying on the conspiracy provisions. I remember having discussed this with senior officials who were convinced networks could be pulled apart simply by virtue of the conspiracy provisions.

I didn't agree; I really thought the notion of a gang needed to be defined, because the existing definition wasn't always functional. Initially, a gang was five people who committed five offences over five years. Then, a parliamentary committee suggested three. Warrants for wiretapping were extended. The whole process was enhanced. This meant that the major organized crime networks were able to be broken up, not as a result of mandatory minimum sentences, but rather, because law enforcement was given the tools it needed to gather evidence, including wiretapping, which is the best way to dismantle organized crime. As a result of the decision in Stinchcombe, it became possible to bring people before the courts. This decision made complete disclosure of the evidence mandatory. Initially, people weren't happy about this. Eventually, people learned to deal with it.

Having said this, Ms. Beare, I would like you to say more about your fears concerning gangsterism and its effects on Bill C-10, which you referred to at the start of your presentation.

I'll then have a short question for the Canadian Council of Criminal Defence Lawyers.

● (1410)

[*English*]

Ms. Margaret Beare: In terms of the linking of the criminal organizations legislation to this bill, my particular concern has to do with the new offence created with Bill C-10, the participation one. Again because of the breadth, all the conditions that the crown does not in fact have to prove, and the fact that it is highlighted in the legislation as being so worthy of the enhanced sentences.... I'm jumping again, from five, to seven, to ten years.

We know that at their August meeting the CACP wanted to see it put in the Criminal Code that once the group is identified as a criminal organization, they won't have to repeatedly document it.

They're trying to make Hells Angels a criminal organization by definition. Every time somebody comes up who is related in any way.... Again it's the breadth of that participation that I find so alarming. You can participate without knowing who makes up the organization. You can facilitate without the offence itself ever having taken place. Again you apply that to....

Hells Angels is a perfect organization to get that powerful legislation passed. I often joke with the police that they couldn't ask for a better group of criminals: they wear jackets, they have clubhouses, and they have Harley-Davidsons. They are perfect for thinking about group membership, and therefore sort of criminalizing that kind of organization. Then you apply that to a street gang situation, and you have problems. You try to extend it further, and you go against the grain.

Other countries have finally started to realize that organized crime's structure is often largely a fraudulent one, in the sense that the structure that's perceived by the police, the media, or whatever is sort of a core of that. You have lawyers, you have all.... In fact, today the take-down in Montreal...you know, talking about organized crime corrupting officials. They're probably part and parcel of the whole organized crime scenario.

My only point is that we make groups out of people who are hardly groups, and we can roll into that group.... I would fear anybody and everybody who in any way comes in contact with these so-called criminal organizations. It's the vagueness and the breadth that I'm worried about.

[*Translation*]

Mr. Réal Ménard: Turning to the Canadian Council of Criminal Defence Lawyers, gentlemen, we will read your brief with interest, but please remind us what amendment you wish to make to subsection 718.3(2). Could you reread it slowly?

I want to understand this now; I have an urgent need to grasp this notion. My intellectual curiosity must be satisfied forthwith.

● (1415)

[*English*]

Mr. William Trudell: You may perceive that some of the legislation that's being introduced is directly or indirectly an attack on the principles of sentencing, because the principles of sentencing, as set out in section 718, really talk about using jail as a last resort. The particular section I referred to is subsection 718.3(2), and it says this:

> Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

So that clearly addresses the issue of discretion and addresses what the minimum punishment is that you have to have so that it's a minimum punishment.

Our suggestion is that this be amended to include: “Notwithstanding any minimum punishment prescribed, save and except for the offence of treason or murder, the Court before sentencing the accused shall consider whether the minimum punishment is necessary having regard to the public interest,”—that's number one—“the particular needs of the community and the interests of the accused in all of the circumstances.”

So we say that if that exception provision is put in there, then you've accomplished everything that some may suggest you need to accomplish: sending a message out, respecting the courts doing their job and applying the discretion, reflecting the interests of the community, and also the particular community, for instance, if it is an aboriginal community.

I would like to say something in response to the question my colleague Ms. Beare was talking about, and that's the whole phenomenon of street gangs. I know that the chief was here today and Attorney General Bryant was here today. The prosecution of the street gangs in Toronto has been overwhelmingly successful. It's incredible, and the credit goes to the police and to the Attorney General in bringing these prosecutions forward. What happened was they made a concerted effort, they put the manpower out there, they put special teams there to give advice to the police in the beginning. They ran it like a business. It has nothing to do with minimum sentences, nothing whatsoever.

You remember what happened in Montreal; you read the papers. The concerted efforts of law enforcement, with guidance from the crown's offices, brought down a major alleged organization. They didn't have any of those minimum sentences. And when judges eventually get those people before them, if they are found to have committed offences that call for jail, they're going.

Three days ago, here in Ontario, Mr. Justice Archibald gave a 21-month sentence for someone in a car with a gun—more than anybody asked for. Judges are imposing these sentences, and there's no question that if you have a gun in the city of Toronto, or you access a gun, or you're in a room with a gun, then the system looks at that and the judges look at that from day one very seriously: they need minimum sentences.

So law enforcement is doing the job. What we're afraid of is that this bill simply reflects a political statement. We're sorry, quite frankly, that the Attorney General was here today, from this province, supporting this bill. I understand what he was saying. He was here to talk about things that are going on in downtown Toronto and an announcement today that Premier McGuinty.... It's all politics.

The Chair: Thank you, Mr. Trudell.

Mr. Comartin.

● (1420)

Mr. Joe Comartin: Thank you, Mr. Chair, and thank you to the witnesses for being here.

Mr. Rady, with regard to the Vaillancourt case and section 230, have you communicated directly to the Department of Justice this concern and pointed out what almost certainly is going to get struck down?

Mr. Andy Rady: No, I haven't. Frankly, I would have thought that if someone is drafting legislation of this magnitude, they probably would have considered that, but I apologize for not having done that. We certainly can do that.

Mr. Joe Comartin: They'll get it now, so it's okay.

To both Mr. Trudell and Mr. Rady—and we're going to get some more of this later today from Legal Aid Ontario—in terms of the decision to cap the amount of money they're going to pay out for mega-trials, the lengthy trials, I have two questions.

First, as defence lawyers, what do you see happening when the $75,000 runs out? And second, maybe flowing from that, for those lengthy trials—the ones that run on for two, three, four months, and some longer—what kinds of fees are usually charged to the legal aid plan? I guess a third question, tying in to that, is what is the judge going to do? Is he going to allow counsel to walk away from the trial; is he going to order him to stay; is he going to order the government to pay the fees anyway? Could you give us a sense of what you see happening?

Mr. Andy Rady: It may be early yet, because it's still being considered, but one of the considerations there is that you'll see applications to the court—the defence calls them “Rowbotham” or “Fisher” applications—where the judge can order the attorney general of the province to pay for counsel under those circumstances. I think you'll see from the defence bar an increase of those, should they believe that they cannot adequately provide a defence within the parameters of the new cap. In tuning that up....

I think I'll leave it at that.

Mr. William Trudell: Perhaps I could speak to that.

One of the problems in the entire criminal justice system right now is that in adding this kind of a minimum sentence to certain provisions, it becomes more complex and more serious. And the mega-trials are not a feature that we were used to 15 or 20 years ago. They're a new feature, and the criminal justice system really has to figure out how to run it like a business.

I think the Steering Committee on Justice Efficiencies and Access to the Justice System has looked at the mega-cases and has looked at the front-end system, and more thought and organization has to be put into the management of these cases before they get into the system, as opposed to having them in the system before all of a sudden the brakes go on. So all the stakeholders have to go back to point one and look at the ramifications of big cases.

Sometimes defence lawyers are criticized for taking too long, but that's another topic. Look at what happened yesterday in Montreal. How many people were arrested—about 70 or something? That is an amazing tax upon the system. And quite frankly, I'm sure there were gun charges. The system gets jolted when that kind of investigation takes place and charges result.

The criminal justice system is under remarkable strain right now and is one of the reasons why we urge you to really look at whether or not you need to change this law, because it will add a strain to the system. What you see in the bill is discretion in crown counsel to go by summary conviction to avoid the minimum sentence. Have crown counsel in the room, not the attorney general. Ask his lawyers whether they want this discretion.

My respectful submission is that it's wrong, and they don't want it. So the police and the crowns are going to determine, really, what happens at the end of the day. That's not what our system is all about. The crown never loses and the crown never wins; they are ministers of justice. So before we sort of jerk the system by introducing new legislation that looks like it's a reflection of what the public needs or what the public wants, we have to really look at how it fits into the overall picture.

With respect, I really sympathize with victims who are caught up in this. But we have to be honest with victims. We have to really tell them that these are not quick fixes. And if you have 50 victims who say “I want stiffer sentences, I want retribution”, you can find 25 other victims who will say “I want restorative justice”. That's what Canada has been moving toward.

It's complex and it's layered and the issues are not simple. That's why I come back to what I said. It wasn't to praise you. You have a tough job now, because what you do with the onslaught of legislation is going to affect my kids and your kids for a long time.

● (1425)

The Chair: Thank you, Mr. Trudell.

Mr. Comartin, you have a little time left.

Mr. Joe Comartin: In terms of the council, have you tried to do any kind of analysis...? And I know it's hard to do in isolation, with just this one bill, with all the other ones that are coming. But assuming this bill and at least a few of the other ones were to get through the House, have you tried to do any assessment—and I'm trying to get you to quantify it—of just how much pressure is going to be put on the justice system right across the country? Is it 5%, is it 10%—are we going to have that much more time spent in the courts?

Mr. William Trudell: It's very different in Toronto from what it would be in New Brunswick. It's very different in New Brunswick from what it is in Quebec. It's very different in Quebec from what it is in Manitoba. And that's because the system is not funded the same. Legal aid in Toronto, for instance, is much better in some respects than legal aid in other provinces.

Some provinces will say the legal aid system in the province of Ontario is wonderful, it's a Cadillac. Some other places would say we don't have anything like that. Well, of course, for Toronto, the cost of doing business here is greater, but the system is being remarkably strained by legislation that we're rolling against, and we're trying to figure out how this affects us.

I would hate to be a judge—and it won't happen, so nobody has to worry. How is a judge going to do their job with managing the court on the limited resources that they have, with the strain on legal aid and the rise in the unrepresented accused, and then the possibility of mandatory sentences? At the end of the day, they'll want to throw up their hands, I'm sure.

They can't speak for themselves, but it must be an incredible strain on the judges. Let's be honest. Basically we're saying to them, “You're not doing your job.” And they are doing their jobs. They're doing their jobs every day. There are all kinds of anecdotal stories, but we have a great criminal justice system, and it works. But it is being strained by new legislation that doesn't look at the domino effect of it.

So Mr. Comartin, that's why the people who are on the council—and we have representatives, as you know, from right across the country—look at this and say, “Wait a minute. We don't have a problem in Yellowknife. There's no gang problem here. There's no shooting here. How do I react to this dislocation of families and stuff?”

When a bill is passed, it's not passed for Toronto or Vancouver; it's passed for every part of the country. And the criminal justice system is straining. We don't want to have persons rushed through trials because we can't afford to do it properly.

I don't know whether that helps.

The Chair: Thank you, Mr. Trudell and Mr. Comartin.

Mr. Rady.

Ms. Margaret Beare: Could I just make a quick comment related to that as well in support of what was said?

We still talk about our system as being bifurcated in the sense of the separation between the police and the lawyers, and the lawyers and the judges. Every time there's a wrongly accused case, it's emphasized again how important it is that those different sections of the criminal justice system operate separately.

I spoke at two judge training sessions within the last number of weeks, one in the Toronto region and one in the Kingston region, and the judges are absolutely beside themselves. What has happened as the result of new legislation and the mega-trials thing is what strikes me as an amazing number of pretrial meetings that now have to take place between the judges and the crown to sort out what kinds of charges, what kind of this, what kind of that, and there's a much greater involvement of the police at those meetings.

Those meetings are in fact informal, invisible. Yet we still talk about our system as having sort of distinct.... The comment was made that there's not a win or lose, you're just presenting the information. Well, the kinds of cases that are now coming up and the legislation that's having to be dealt with really have, I would argue, those three different sections basically all working in cahoots—to use a negative term, which I don't really mean.

● (1430)

The Chair: Thank you, Ms. Beare.

Mr. Moore.

Mr. Rob Moore: Thanks, Mr. Chair.

I thank you all for being here.

Just to be clear on something, Ms. Beare, if the judges are bothered by anything you mentioned, it's not in relation to anything this Parliament has done to date, because none of our criminal law initiatives are even in place. I wouldn't want people to be led to believe this has something to do with the work this committee has been doing and the number of bills we're working on. This is something that also has to be addressed in the system—the backlog, the workload, and that type of thing—but it's certainly not a result of anything that has been done by this Parliament.

Ms. Margaret Beare: Fair enough.

Mr. Rob Moore: The question was asked, why this? Of course, in any discussion that we have around a bill, there are other things discussed, such as police resources—and we had the chief of police here today. Questions are asked about what the root cause is. We've heard all of that. But the why is a recognition, in a non-partisan way or even a non-ideological way, that there is a problem, that the status quo is not working, and that we as federal legislators have to pull our weight when it comes to the entire system. I've certainly heard evidence today about any work the provinces are putting into this and the good work the police are doing. But we heard also of frustration with the federal level not pulling its weight.

I say “non-ideological” because certainly all ideologies are represented at this table, but there's basically almost unanimous support for getting tougher, if you will. Raising the mandatory minimum sentences for serious gun crimes was talked about during the last election campaign and so on. All parties said we need to get tougher on gun crimes, that we need to do more, that we need to increase mandatory minimum sentences. I don't see that as coming from any particular ideological persuasion.

I would like you to expand a little, Mr. Rady, on the fear of getting caught. It's part of the reason why we brought in this legislation, and I would argue that it is well thought out. There was consultation. We do acknowledge that, as with anything we would have done, there's a potential for charter challenges to legislation in all criminal cases. Of course there will be challenges. But the Minister of Justice and the department feel the legislation is sound, and it will be your job to challenge the legislation when and if it passes.

Yes, there's the fear of getting caught, but the sentiment that has been expressed to us by victims' groups, by police, and by attorneys general provincially is that we have a catch-and-release type of system right now. Too often, people are getting caught and are then being released.

I heard powerful testimony today on the deterrent effect, and also on the real impact on crime in a community. It was pointed out today that it's not everybody who is committing these crimes. It's a small minority, a fraction of society in Toronto and elsewhere, who are committing these serious crimes. When those people are taken off the street, the violence goes down. The chief of police was here. He gave an illustration of a community where those individuals were targeted by police. In that time when they were incarcerated, the violence went down. The killings went down and violent crime went down.

I'd like your comments on that, because you say your clients are afraid of getting caught. But we all know your job is to make sure that once they're caught, they get back out. It's part of that revolving door, if you were. We want to make sure that once someone's caught, there's a consequence and it means they're off the street.

● (1435)

Mr. Andy Rady: I would say this: I think there are a number of myths, and one of the myths is that the status quo is not working. It's not working because some people are saying it's not working. I think there's a myth of a revolving door. I don't have the statistics here, but I know that there have been some published recently in the province of Ontario.

In the province of Ontario now, we have more people on remand in our provincial jails than we do serving time in provincial jail for the first time in the history of this province. That would tend to suggest that we are detaining more people after bail hearings than we are releasing. What we hear about are a couple of cases in which a person gets released on bail, if they are notorious cases that may offend sensibilities. We don't hear about the persons who are detained in custody pending trial for minor matters, knowing that the sentence that they will get would probably far exceed the amount of time it's going to take to have that come to trial. That's not being discussed.

If we're going to talk about these things, I think we have to look at them in the broad spectrum. There are some myths about the revolving door. As I said to you at the outset, I've been practising for 25 years. Getting bail for my clients 25 years ago was a much easier task than it is now. I have many more clients—and I'm not talking just about having more clients—who are actually in custody awaiting trial than on the outside awaiting trial.

One of the announcements this morning was about changing the reverse onus for gun crime. Whether you want to accept it or not, most of the justices of the peace in this province who deal with releasing people on gun crime—and there are exceptions—already consider it to be somewhat reverse onus. Crowns do not consent to the release of people who are charged with gun crime. They have a directive on that. Justices of the peace tend to remand those people in custody, but the problem is—and these myths develop—we hear about a couple of cases in which someone gets out or there's some sentence that seems to be outlandish, in that it's not tough enough, and we react to that. We don't tend to react to the success stories, and that is a concern.

Mr. Rob Moore: I'd like to make a point on that, then. Oftentimes it is an individual case that captures people's attention, and sometimes it takes that happening to capture people's attention. But if there's a situation where that's preventable.... We've heard testimony about people who are arrested, have a firearm on them, are given bail, are back on the street, and are arrested again with a firearm. That's a problem. It's a problem in Toronto, and it's a problem elsewhere.

I think we all recognize around this table that whatever we do here, whatever we do with this bill, the Criminal Code is going to apply across the country, as far as the provisions dealing with break and enter to steal a firearm go. I'm of the opinion that whether you break into someone's apartment in Toronto and steal a firearm or break into their cabin in rural New Brunswick and steal their firearm, it's still a serious offence. It should be treated differently from how breaking in and stealing someone's guitar is treated. Stealing a firearm puts that legally owned firearm onto the street, and potentially into use to commit a criminal offence.

We realize that this is going to apply to everyone. That's why I think there is a balance to it.

There have been other suggestions that we should have had an across-the-board increase in mandatory minimums. What this bill specifically does is target gang violence and handgun violence. It does have an escalating factor. Through some of the testimony we heard here today, people asked why there should be a greater sentence for the second offence, and greater still for the third. What happens if someone commits three offences at once? Ms. Barnes used the example of someone holding up a store with an unloaded handgun. Chief Blair said that in all of his experience, he's never heard of anyone holding up a store with an unloaded gun.

We can always point to some absurd circumstance or the exception, but generally we feel that those who show a pattern of recidivism have to be treated more seriously. Do you agree with that? If someone shows that they continually reoffend, and even after they've served their time they're back out and offend again, shouldn't they be treated more seriously?

Mr. Andy Rady: And they are. That's another one of the myths, that judges tend to be soft on crime or incapable of meting out a stiff punishment. Maybe I'm not a very good lawyer, but my clients who are recidivists get whacked the second time around. By whacked, I mean they get hit a lot harder. It's double the sentence the first time, and sometimes more than that.

We heard a case today about the crown asking for ten years and the defence asking for two or something, and the fellow got two years, and that's not acceptable. There was a case in London yesterday where the defence asked for four months and the crown asked for six and the judge gave him nine months. No one's saying anything about that. That's a judge who obviously exceeded what even the crown wanted. With all due respect to the police, because I have represented people who have held up stores with unloaded firearms, there's a bit of a myth out there about what judges are doing and what they're not doing.

Mr. Trudell gave you the example yesterday of Justice Archibald, who meted out a 21-month sentence for the possession of a gun. I would think most defence lawyers—those who have been practising for a while, at least in Ontario—would say the tariff has gone up greatly. And judges are not soft on crime; they are very serious about crime. The issue here really isn't being tough or serious, it's being smart on crime and dealing with it in a way that's truly going to prevent it. That's what we're talking about.

● (1440)

The Chair: Thank you, Mr. Rady.

Mr. Bagnell.

Hon. Larry Bagnell: Ms. Beare, I don't want to spend much time on you, because you thoroughly trashed the bill in more esoteric ways than even the other witnesses. When you talked about putting more police in the street, I'm sure the government would agree with you, that's good. But you didn't mention this is going to incur more trials and is going to take police off the streets, because they're going to be in the courtroom, and it would make the streets more dangerous.

I have one quick question for you, and I hope you can give a yes or no answer. It's on organized crime and gangs. I know the technical problem you have with the bill, but I assume in general you don't mind that we're giving a more serious penalty to an identical crime that occurs in an organized crime or a gang environment.

Ms. Margaret Beare: The problem with a yes or no answer for that is the problem with the concept of organized crime. I was interested, just a moment ago we were talking about the notion of pattern of criminality. Our definition of organized crime is, as someone said, three people involved in something. We've even done away with the notion of pattern of offences. In Canada, we've always looked toward RICO, the American “racketeer influenced and corrupt organizations” legislation. That at least had kept the idea that to be a RICO offence, it had to have a pattern of offences. So we did away with it. It was too hard to prove a pattern in order to call somebody an organized criminal. So that was done away with. And now it's almost as if we're coming in the back door and saying we can call you a criminal organization without there being a pattern, but as soon as you've got the second offence, we can wham you with the consequences of that second offence.

We started in Canada by not even using the term “organized crime”, enterprise crime, and we restricted it to some 24 or 25 offences. Now literally it is a concept that applies to everything that's at all serious. So yes, given that definition, it applies to street gangs.

Hon. Larry Bagnell: Mr. Trudell, you were talking about the lack of consultation. Having been a bureaucrat, I know how that normal process works. It is astonishing it isn't in here, and the backgrounder didn't even support the bill. So I'm going to ask you, based on that, would you—

The Chair: Mr. Moore, a point of order?

Mr. Rob Moore: Mr. Bagnell just said the backgrounder does not support the bill. What backgrounder are you referring to?

Hon. Larry Bagnell: I was quoting the witness.

Mr. Rob Moore: What backgrounder are you referring to?

Ms. Margaret Beare: The backgrounder to the bill. The legislative summary that was prepared was what I was referring to.

Mr. Rob Moore: I'd like to know what you're referring to.

Mr. William Trudell: I was referring to the legislative summary, “Legislative History of Bill C-10”, which is an 18-page document. It was sent to me by the Department of Justice along with Bill C-10.

● (1445)

Mr. Rob Moore: Okay, thank you. Is it from the Department of Justice or the Library of Parliament?

The Chair: It's the library commentary.

Ms. Margaret Beare: I have an extra copy here if somebody wants it.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I hope the point of order doesn't come off my time.

The Chair: Don't worry about that, Mr. Bagnell.

Hon. Larry Bagnell: Are you surprised then that without the consultation on two of these bills, when I asked the minister, and the justice department officials were here, they didn't even have recommendations from the justice department officials to proceed with bills like this?

Mr. William Trudell: Let me just speak to my experience. I've been practising for about 35 years now. Formerly I was vice-president of the Criminal Lawyers' Association. I've been chair of the Canadian Council of Criminal Defence Lawyers now for more than ten years—my wife says too long. There were major consultations on bills, and they gathered everyone in the room, not just defence lawyers but crown counsel, victims organizations, and academics. That did not happen here. If you compared one set of legislation that had that with another set of legislation that didn't have that, it speaks for itself.

We are disappointed. Maybe there's a political agenda, but that's not our concern. You're being asked to make the decision.

Hon. Larry Bagnell: Okay. I just want to get at some other points, but that is a very serious charge in process.

The point you made about aboriginal people in Yellowknife is tremendous. I want to reiterate that it's even worse in Nunavut, where people are further detached and further detached language-wise.

In that respect, would this bill increase the already disproportionate number of aboriginal people in prisons, and would it be a violation of the aboriginal principles of sentencing in clauses 17 and 18, looking at aboriginal situations?

Mr. William Trudell: We believe that some of the legislation we've seen is a direct or indirect attack on the principles of sentence. Our exception provision reflects the spirit of that, because it talks about the particular needs of the community.

Just to respond specifically on Nunavut, Sue Cooper is our representative in Nunavut, and she has passed on the concerns about what this will do to the aboriginal community.

The Chair: Thank you, Mr. Bagnell.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: My question is for Mr. Trudell and Mr. Rady, or for Ms. Beare. I will begin by making a brief preamble to help you understand where I am coming from.

First, you compared Ontario's legal aid system to a Cadillac, and I can confirm this. It's absolutely true, if I compare Ontario with the situation I am familiar with in Quebec. That's a problem. In Quebec, we have fixed mandates, whereas here, lawyers earn an hourly rate in what is called a certificate system. Further, more guilty pleas are entered in Quebec. There are fewer here in Ontario because lawyers are paid differently. Perhaps that explains the deficit. In any case, that's their problem.

Ms. Beare, I would like to hear you address an issue which intrigues me. You completely reject Bill C-10. However, I want to explain something to you. As is the case with Mr. Trudell, I have been working in the field for 33 years. In fact, I am still a lawyer, and I still have a lawyer's office. I therefore still work in this profession.

Just imagine: some of our citizens, after having killed a moose outside of the official hunting season, and after receiving a $1,500 fine which they are unable to pay, might spend up to three months in jail. Furthermore, if they do not pay their federal income taxes, and the fine becomes due, since they are being prosecuted and cannot afford to pay the fine, they are jailed because they have not paid their taxes.

But today, the only thing we are trying to achieve is to protect individuals by simply amending the Criminal Code. So I would like to know what bothers you so much to the point where you reject the bill.

Here is my second question. We also represent many women who have been beaten by their spouses. Are we to say to women that we try to adopt a bill to protect them or, at least, to mitigate the problem? If you tell me today that you will reject this bill, what will I say to women's groups which I met throughout the summer and who told me that we must become more forceful if we are to address this problem, which exists in Quebec's system?

I would like to hear you respond to these two questions.

● (1450)

[*English*]

Ms. Margaret Beare: There are two parts. First of all, I've never expressed a problem and I don't particularly have a problem with the ceiling of these sentences. Also, in terms of getting tougher, the kinds of sentences a judge has been giving and can continue to give can in fact be significant. My objection to the legislation is the mandatory minimum, which I find problematic.

I find it a problem for you to bring in the issue of spousal assault. Clearly that is serious, and the government has responded over the years with zero tolerance, and serious sentences have been given to individuals who inflict violence on their spouses. I see that to be quite a separate issue from this debate over firearms.

Mr. William Trudell: Let me respond on behalf of the CCCDL. The reason we reject the bill outright as our opening premise is that the bill optically seems to be addressing a problem, but in reality it is not.

The most troubling part of this bill is this. We have judges in this country who are working hard. We ask them to use their discretion as the final arbiter in deciding whether someone should go to jail or not. If a judge decides someone should go to jail for five years or ten years, the judge can send them there, but if the judge decides that the disruption to that person and the community merits some other disposition, we have to trust them to impose that sentence, and if it's not right, it can be appealed.

We reject this bill because, with great respect to something Mr. Moore said, we don't live in a catch and release society. This is anecdotal. The chief can come in this morning and talk about anecdotal cases. When you want to change something, you use a catalyst, a bad case. But that's not how we change the law. That's why we reject this, because it hasn't been studied properly. It's being used.

Lastly, in relation to your question, sir, about what you say to these victims of violence, we deal with this every day; it breaks our heart, whether we're defence counsel or whatever we are. But this is not going to change domestic violence, and I'm sure you'll probably hear, before this is over, about the number of women who may be caught by this type of legislation.

If this were going to be the end of domestic violence, if we could magically find it, well, yes. But that's not what this bill is going to do. You're going to say to these people—what? We have a bill, and if we introduce this bill and get mandatory minimums, then we're going to solve domestic violence?

With great respect, you can't say that, and you would be letting them down if you did.

The Chair: Thank you, Mr. Petit.

Mr. Lee.

Mr. Derek Lee: Thank you.

Just as a comment, I've been struck by the number of times individuals—witnesses, the Minister of Justice, others around the table—have used judicial interim release scenarios following a serious crime as a reason why we should have mandatory minimums. It doesn't compute, and it came up just earlier.

I'm going to leave three questions—no more rhetoric, I promise.

We're forced to look at so many of these things through a rear-view mirror. It's tougher to look ahead. I'll ask this to Mr. Trudell. Just as there are, from time to time, exceptional cases where a sentence is either too light or too long, as seen through the rear-view mirror, would this bill, in your view, create similar types of flotsam and jetsam and disproportionate sentencing? Once we have a chance to look through the rear-view mirror and see the application of a mandatory minimum, how likely is it, do you think, that we would see a whole lot more disproportionate inappropriate sentencing as a result of the application of the mandatory minimums?

Secondly, and I'll ask this to Mr. Rady, do you think a prosecutor would have the same view as you, a defence counsel? Do you think, if we had a prosecutor here as a witness, the prosecutors would have the same view as the Ontario attorney general or the chief of police? Or just what do you think?

And thirdly, to Mr. Trudell or Ms. Beare, do you think the seven- and ten-year minimums that are imported by this new legislation might encounter heavy water in terms of a charter challenge, through the rear-view mirror of previous charter challenges and the Supreme Court decisions?

● (1455)

Mr. William Trudell: In response to your first question, Mr. Lee, I can't tell you, but I am so afraid that that's exactly what we will see. We will see aboriginals and we will see judges struggling to try to do something other than what is commanded of them. We will see aboriginals in custody and the disruption of their communities. We will see, unfortunately, more persons from lower socio-economic classes, persons of colour, persons who come from different cultures, caught, especially when we see the increase in the unrepresented accused.

I believe when we come back here, another year from now or another two years from now or another three years from now, we'll be saying it didn't change anything but too many people suffered as a result of the lack of care. I'm very, very concerned about it, not in Toronto so much, but in some of the smaller communities throughout the country.

That's the information I'm getting from our representatives right across the country.

Mr. Andy Rady: With respect to the prosecutors, it is difficult to say. I would suggest that there are probably many prosecutors who would agree with the bill. Similarly, I would say there are many prosecutors who would disagree with the bill. It's not an uncommon incident, where we have already some of the mandatory minimums and it's an exceptional case and the prosecutor will say "Look, I agree that this sentence does not mandate a year because of the background circumstances as to why this person may have had this gun, but my hands are tied", and they have to get the year. Their hands are tied as well because even though they can proceed in some of these offences either by summary procedure or by indictment, they're directed to go by indictment.

Frankly, if the attorney general has now spoken today and indicated his position, I would think that from the prosecutors—they're not defence lawyers, who really don't answer to anyone—if the big boss is saying he's in favour of it, you are going to have to be careful to see what they're going to say on the record.

Ms. Margaret Beare: I'll let them respond in terms of the charter challenge, but I guess I want to say I don't think we need to go to Nunavut to see again the disproportionality that will take place. I don't think we can deny racial profiling and in order to be guilty of a second offence you have to be.... Having been convicted of the first one, who gets stopped? Who gets searched? Who gets actually charged? I think again there's enough evidence that in downtown Toronto that is not an equally distributed characteristic.

Mr. William Trudell: Mr. Lee, can I only say that we had a seven-year minimum sentence for importing a long time ago? We realized it didn't work. In the 1950s there was a minimum sentence for car theft. That was the major charge that was going to upset the socio-economic balance in our country; take an auto without consent kind of found its way through...it was still theft but there wasn't any minimum.

But quite frankly, something has happened in previous consultations, and I can tell you without mentioning specifics that there was not a minister of justice who said in a meeting, "I'm sorry, I'm hearing one story from the crowns, I'm hearing one story from the defence, I'm hearing another story from this person. What I'm going to do is put you all in the same room and then I can hear it all."

Take away the anecdotal stories, so when you get crown counsel in a room, not on the record, and when they are as concerned as all of us about how the criminal justice system works, because they do it every day, you will get answers that you would not get on the record. That's the type of consultation that needs to take place.

● (1500)

The Chair: Thank you, Mr. Trudell and Mr. Lee.

Now, Mr. Brown.

Mr. Patrick Brown: Thank you.

I have three questions to try to fit into my five minutes, so if I can get you to be concise, I can get a broad spectrum of answers.

One of the criticisms I've heard of this legislation is that it removes discretion from judges. Is that a fair assessment, from a criminal lawyer's perspective?

Mr. Andy Rady: Yes.

Mr. Patrick Brown: Does that mean we should try to avoid in our legislation inhibiting a judge's independent discretion?

Mr. Andy Rady: Generally speaking, yes.

Mr. Patrick Brown: Okay. In that case, to remain logically consistent, would it be the position of the criminal lawyers that the existing maximums in the code are unfair for inhibiting a judge's discretion?

Mr. Andy Rady: That's a good question. I could say this to you. With the exception...actually it's a minimum with murder. Many of the maximums have never been approached because there haven't been many cases in which that has occurred. The discretion probably hasn't been fettered, just by the way the cases have come up over time. But there have been ways around that, believe it or not, with consecutive sentences. They do get imposed. If one has multiple offences, that's how judges can sometimes get past that maximum if they see fit in that case. But the maximums now are generally set so high that we don't really come close to them, with some exceptions.

Mr. Patrick Brown: If I could give an example, section 86 of the code, which deals with careless use or improper storage of a firearm, allows for a maximum of two years for the first offence. On that obviously high figure of two years, would it be the position of your organization that it would be inappropriate to inhibit the judge's discretion? Do you suggest it's wrong to inhibit their discretion all at the lower end, or should it be both?

Mr. Andy Rady: Again, I repeat my comment. Careless storage of a firearm probably takes in someone who didn't put their trigger lock on right, and they might be a legitimate hunter living in rural Saskatchewan. That's usually the kind of case involved for careless storage. Those aren't people who tend to be the “criminal types”, so it doesn't usually get to that point in that particular offence. The other alternative would be to allow life sentences for everything, but that's unrealistic as well.

One of the reasons why we have maximums at one end is that, as you know, by the charter, if the maximum punishment is less than five years, we don't have a right to a jury trial. A number of years ago, a number of the maximum sentences were decreased, and that has decreased the number of jury trials. The suggestion has been that this was done in order to take some burden off our courts in terms of the length of proceedings, because so many of the proceedings were going into the provincial courts in any event. We have far fewer jury trials now as a result of this lowering of the maximum punishment for so many offences. So there are different reasons for it.

Mr. Patrick Brown: How about the existing minimum penalties within the Criminal Code? Do either of your organizations support the existing minimum times? I'm trying to get an idea of what type of balance you believe is appropriate. Are no minimum penalties appropriate, or are the existing ones appropriate?

Mr. William Trudell: In our exception provision that we suggested to you, we left treason and murder as the only ones. What we did was go out on a limb and say that you don't need minimum sentences. You can have a judge decide in the particular circumstances whether or not the minimum sentence should be imposed. If you reject that because you're not looking at the reconstruction of the Criminal Code and refer to firearms, that's fine. But we would respectfully submit to you that we don't know of the evidence that says minimum sentences solve the issue. Education on culture might solve the issues. We've put that in there.

Quite frankly, to be absolutely honest with you, I would rather say to a court that this offence and this offender are not the same as that offence and that offender, because the circumstances are different. In my respectful submission, judges need to be able to judge. They need to be able to make the decision. We don't think minimum sentences that take away the discretion of the judges solve the problems.

I really believe we have to recognize across the country that a judge has to sentence someone. My respectful submission to you is that the judges reflect the climate we live in. The periods of incarceration are going up for serious offences. The evidence that they aren't, I would respectfully submit, is anecdotal.

And just to answer your question about higher provisions or higher ceilings, what about corrections? Where is the money going to come from for building the jails? I'm sure you're going to hear from the people at corrections about the domino impact of filling up jails, if that's what going to happen. The jails are overstretched. I understand that the minister said we're going to need millions of dollars to build more jails, but that's just not addressing the issue. You can build the structures, but then you have to man them and you have to put the programs in, because in this country, we know we believe that people will eventually be released from jail.

● (1505)

Mr. Patrick Brown: I can appreciate that. I guess where I find a bit of frustration with this advice we're getting is that you started your comments by saying that you don't want to inhibit a judge's discretion—that was the first thing you stated—but at the same time, you would not support inhibiting their discretion at the top end. How do you explain those opposite points of view?

Mr. William Trudell: No, it's not an opposite point of view. If you feel that the sentence for careless storage, the ceiling for careless storage—and careless storage—

Mr. Patrick Brown: How about life? How about 25 years for Paul Bernardo? Did we inhibit a judge's discretion by not saying he could have done more? Because we can't say that we're against inhibiting judge's discretion on the one hand and say we're for it on the top end. It's contradictory.

Mr. William Trudell: That's not what I was saying.

Mr. Patrick Brown: Well, then explain yourself.

The Chair: Let Mr. Trudell speak, Mr. Brown.

Mr. William Trudell: I believe, as a citizen and as a defence counsel, that the last thing we should do is send someone to jail, but if that person is a danger to society, they should go to jail. Then you decide how long they should go to jail. And if they are a repeat offender, if they are a dangerous offender, our Criminal Code is equipped to keep them in jail for a long time. Judges can make recommendations to parole. It's there.

So if you want to raise the ceiling for, say, careless storage, to 10 years, if someone gets charged with careless storage, it's simply what Mr. Rady talked about. It's not that he's part of organized crime; he didn't store his gun properly. But if he is part of something else, he will not just be charged with careless storage, he'll be charged with weapons dangerous, he'll be charged with other offences. So the facts will determine the seriousness of the offence and the penalty range.

But if you think that some provisions of the Criminal Code don't have high enough ceilings,and you think the way to solve the problem is to raise the ceilings, fine. You're the legislator. But allow the judge, who will have all the circumstances, to make the decision about what's fair. Crown counsel can make their pitch, and if someone decides that that wasn't right, they can appeal it.

The Chair: Thank you very much, Mr. Trudell and Mr. Brown.

Mr. Thompson.

Mr. Myron Thompson: Thank you for being here.

I'm speaking mostly to Mr. Rady, and anybody else can join in.

Right off the bat, I want to remind Mr. Rady that it's true that the extra police in New York created quite a reduction in crime, but behind that was the broken windows theory. There was a decision made by the authorities and legislators that if you break a window, you go to jail; if you put graffiti on the wall, you'll be picked up and go to jail. That required more policing, the two worked pretty well hand-in-hand, and it's a very safe place to be. We forget about the fact that there was a decision made in regard to what to do.

Regarding root causes, I'll tell you that we've had lots of discussions and we hear an awful lot about this. When I was first elected in 1993, I sat down with Allan Rock, and we hit it off pretty good for quite a while. We used to talk a lot about root causes.

Yes, I agree that the root causes need to be addressed. We used to make our lists. I was sitting here today after you made your presentation about root causes, and you talked about poverty. Then I remembered my grandfather telling me that the Roaring Twenties was an awful era for crime, and yet the Dirty Thirties really tamed down. If it was poverty, there was a whole lot less crime than during the Roaring Twenties. Whether that has any bearing on the conversation, I don't know.

Then we talked about Hollywood and violence in film and the WWF—my God, have you watched that ultimate fighting on TV lately? It's violent. In all of these things, maybe there's a cause.

We know that drugs exist. I've been told over and over again that the population in the penitentiaries would go way down had it not been for alcohol. Yet we've had decisions that our bars should be open seven days a week instead of only six, and that they should stay open until three or four in the morning instead of closing at eleven or twelve in the evening. All of these decisions are root causes.

Child pornography is rampant out there. It poisons a sick brain even further. It causes them to act out their fantasies, and drastic things happen. It's a root cause.

Yet every time you try to do something about it, you get different decisions in courts that affect that effort, such as the John Sharpe decision. It had quite an impact, and I honestly believe that we tried hard with the Liberals to do something about child pornography. That decision made it practically impossible to move on this.

Can you imagine what you are going to do about alcohol? Bring back prohibition? That doesn't work, we've been told one hundred million times. Always another root cause that's hard to deal with.

When you go through all the root causes...I can't for the life of me figure out one cause that justifies any human being picking up a gun to endanger, threaten, or hurt the life of a citizen in this country. I cannot find one root cause. Yet we put an emphasis on how we have to do deal with root causes.

Mr. Trudell mentioned that things are decided for political reasons, and I would suggest a lot of these are. All of us stood on the platform in January and we said we've got to do something about crime and these guns; we have to do this, and we're going to do so. Lo and behold, we've been elected, and we're here now trying to do something about it. Because I can't find any root or justified cause to pick up a gun and hurt people, we have to create some legislation to deal with those who choose to do so.

Thus comes Bill C-10—I have not heard any other solution that makes any more sense to me—because now we have legislation dealing with what I know is a root cause, which is the criminal. Lo and behold, criminals are really a big part of the root cause of crime.

Let's deal with them, which we have to do as legislators.

● (1510)

But to talk about it in terms of, “We'll have to deal with root causes”, my goodness, I could give you a whole list. We tried to do that. It doesn't work. We've tried to protect the victims when it comes to pornography, when it comes to the rights of expression, and when it comes to the freedom of being able to run a bar and put on TV what you want to and listen to hard rock music whenever you want. We know that's been a cause.

I think we're really barking up the wrong tree about that, because I just can't find anything that justifies picking up a gun and hurting people.

Mr. Andy Rady: Neither can I, and neither can most right thinking people in this country. The fact is, some people do that, and the question is, why do they do that? They are not doing it because the Criminal Code is too soft or we're not punishing them enough. Maybe we don't even know the answers at first blush.

It is not a question that alcohol is the root cause. Why is the person becoming an alcoholic? Why is the person becoming a drug user? These are deep, difficult questions that cannot be answered easily or quickly. All I am saying is that if we really want to get to why this kind of crime is occurring, we have to think about that.

You lived, obviously, in this country 30 years ago when we didn't have these problems. We have them now. What has changed? Have we looked at what has changed? Has our law gotten softer? The Criminal Code has been the same for the last 30 years. It's actually gotten tougher in a number of provisions, but what has changed in our society?

One of the criticisms we hear about is that young people don't have the same manners any more. They don't say “excuse me”. They bump into you. They use foul language in the streets. Why is that? What is it in our teaching of how we're supposed to behave in our society that has changed? Why are some of these behaviours acceptable? All I am saying is the answer isn't simply in having mandatory minimum punishment and that's going to solve the issue. It is not. That is all I'm saying. It's a deeper-rooted issue.

● (1515)

Mr. Myron Thompson: But of course all I'm saying is we have to deal with this gun problem. It's a serious problem. We have to deal with it and we have to deal with it fairly quickly, and that's the word we gave to the public who gave us the mandate to do something about it. That's our mission. That's what we have to do.

We could talk all year. I've been around this country and south of the border for 70 years, and boy, I've seen a lot of changes, but I think it's time to quit making excuses versus getting to the root causes. I think we tend to make excuses too often.

We've lowered the legal age of drinking. Who made that decision? You talked about a few years ago when it was 21. There were a lot fewer problems when it was 21, but somebody made the decision to lower it to 18.

The Chair: Thank you, Mr. Thompson.

Ms. Barnes.

Hon. Sue Barnes: Thank you, and for the record, the example I used, Mr. Rady, with paragraph 341(1)(a), that it would have been just as valid had it been a loaded handgun in those sets of offences, may be an education for those who might have been misled into thinking we were only talking about unloaded. I just showed unloaded to show the discrepancy in the legislation, and maybe that's a result of non-consultation and hastily drafted legislation, because I just couldn't believe it.

When I raised this in the spring in the first debate, there were Conservatives sitting in the House who were yelling at me that it wasn't true. But it is true, and it's there and it's a problem, one of the many problems in this bill.

Mr. Trudell, you've given us a last-ditch potential amendment there. First of all, I thank you for your efforts and your organization. The only thing I would caution all of us is that when a bill comes to us after second reading, like this, where it's been agreed to in principle by the House, it's often very difficult to go into another section or like principle and get that amendment through the legal counsel. But just for interest and for potential situations, I will put it through and see if that does meet the requirements, though I am concerned that it may not. Having said that, I certainly very much appreciate the thought and consideration that went into doing it.

I do want to talk about Askov. I asked the Attorney General here. On the Askov situation, tie that into a situation of when you get an increasing system of escalating sanctions, one, two, three. When does the behaviour of a defence attorney or a crown attorney change with respect to representation for the accused when you get that type of escalation in sentencing principles? Do any of you have information on that, and how will it impact, from an Askov perception, in your opinion...? You're the closest in the courtroom.

Mr. William Trudell: Let me respond by saying this. Let's just say, for example, that you, as a member of this committee, felt that a bill was wrong; some people suggested you were going to take too much time in fighting this bill, but as a principle, you passionately believed the bill was wrong. You would take the necessary time to defend it.

If we represent accused persons who are facing a mandatory minimum, and we passionately believe that the sentence is wrong, then it is our obligation, as it would be yours, to fight it, and to represent them as best we can. It maybe means more time, but that's our job. That's what you want us to do.

If there are provisions that are not subjectively reflective and don't take into consideration all the circumstances of an offender and an offence, then it's our job to make sure they are contested, so at the end of the day the judges can make the decision after receiving all the help they need. That means more time, more court time, more work, less pleas, and a strain on the system.

● (1520)

The Chair: Thank you, Ms. Barnes.

I'd like to thank the witnesses for appearing.

I know this has been a rather interesting day for our committee. We've heard a variety of comments and commentary.

For the assurance of Mr. Trudel, you have advised us that we have a very important job to do here. We believe that indeed we do, and we take it seriously.

I think everyone in this room is going to aim for the greater good and set aside certain positions that we might have personally. I believe that's even what this bill is aimed at. It may not be perfect; no one is saying it is. It may be subject to some alteration. It may not necessarily be favourable to each and every person in this room, but we will work at it—guaranteed.

We appreciate your advice, Mr. Trudel. You did inform us at the outset that we should be serious about what we're doing and contemplate everything. We are in fact doing that very thing.

Mr. William Trudell: We are grateful for being invited. When we are invited, we always come. We always try to assist.

We have a great deal of respect for the work you do. We wouldn't want to be in your position, I don't think.

The Chair: Thank you very much for appearing. We appreciate it.

The meeting is suspended for approximately two minutes.

Everyone can grab a quick coffee.

●

(Pause)

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● (1530)

The Chair: Colleagues, I'd like to call the meeting to order.

This afternoon I'd like to welcome Ms. Fiona Sampson, director of litigation for the Women's Legal Education and Action Fund; and Mr. George Biggar, vice-president, policy, planning, and external relations, Legal Aid Ontario. Thank you for being with us this afternoon.

Missing, of course, right at the moment, and stuck in traffic, is Mr. Jonathan Rudin, Aboriginal Legal Services of Toronto. We will include him when he steps in the door.

In any event, we will begin our presentations with either Ms. Sampson or Mr. Biggar. Who would like to begin?

Mr. Biggar.

Mr. George Biggar (Vice-President, Policy, Planning and External Relations, Legal Aid Ontario): I'm happy to defer to Ms. Sampson.

The Chair: Ms. Sampson.

Ms. Fiona Sampson (Director of litigation, Women's Legal Education and Action Fund): Okay, thank you.

Hello. *Bonjour.*

My name is Fiona Sampson. I am the director of litigation at LEAF, the Women's Legal Education and Action Fund.

I'm here today to talk to you, I understand, for ten short minutes. I have three important points that I want to make, so I'm going to get right into it.

I want to start by telling you a little bit about LEAF and then move into a summary of the three main reasons why LEAF is opposed to the passing of Bill C-10.

LEAF, the Women's Legal Education and Action Fund, is a national non-profit organization that's dedicated to the advancement of women's equality rights in Canada. Primarily, we do that through using section 15 of the charter and the equality guarantees that are included in section 15 of the charter.

Fundamental to our mandate is the understanding, endorsed by the Supreme Court of Canada, that section 15 obligates the federal government both to protect the guaranteed rights against discrimination and to equality found in section 15 and to promote those rights.

Moving to the three main reasons why LEAF is opposed to the introduction and passing of Bill C-10, which are actually outlined in submissions we have forwarded to the justice committee, and I understand they probably aren't before you because they haven't been translated yet, but they are something for you to look forward to—they are coming your way—the first reason LEAF is opposed to Bill C-10 is that Bill C-10 does not reduce violence against women. If the point of Bill C-10 is to reduce violence, it doesn't achieve that with respect to women.

Women experience violence because of their unequal social, economic, and political status in Canada, a status that results in their objectification, their disempowerment, their devaluation, all of which results in the status of second-class citizens, which leaves us vulnerable to violence. That's the cause of violence against women. Bill C-10 and mandatory minimum sentences relating to firearms do nothing to reduce that source of violence against women.

Certainly LEAF supports the reduction of violence and the reduction of crime, but what happens with Bill C-10 and with mandatory minimum sentences attached to firearms is that they come too late to be of any real help to women. They're imposed after the fact. They do nothing to prevent violence, and they come at a time when women have already experienced the violence, so they're really of no value.

Definitely women and LEAF recognize the violence that's associated with guns, and we oppose it. There is an intrinsic link between gun violence and masculinity and violence against women, and that's apparent when you just look at the statistics: 85% of guns in Canada are owned by men and 30% of gun victims in Canada are women. That's something that concerns and distresses LEAF, and LEAF supports gun control to address that concern, and we support measures that get guns off the streets. But having mandatory minimum sentences attached to firearms doesn't address that problem.

Our second main point relating to our opposition to Bill C-10 primarily relates to the disadvantage that's associated with Bill C-10 and that we predict will be felt because of the implementation of Bill C-10.

Bill C-10 is a classic example of the failure of the federal government, were it to pass, to actually protect and promote equality rights, the obligation the Supreme Court has found the federal government has under section 15 of the charter.

What really happens with something like Bill C-10 and the imposition of mandatory minimum sentences attached to firearms is that it targets already disadvantaged groups. If I can draw your attention to.... Well, you don't have the submissions yet, but you will soon. The Report of the Commission on Systemic Racism in the Ontario Criminal Justice System found that black people are already overrepresented among prisoners with weapons possession charges, so we know that with the targeting of firearms crimes by attaching mandatory minimums to those crimes in particular, they will affect black persons disproportionately.

● (1535)

They will also affect aboriginal people disproportionately. We already know that aboriginal people are disproportionately represented in the criminal justice system and in prisons, so they will be further disadvantaged if Bill C-10 is passed, particularly the section of Bill C-10 that relates to the attachment of mandatory minimums to persons who have committed previous offences. If you go to LEAF's submission, footnote 18, we have a whole list of primary and secondary sources available to you to support that. So the evidence is there.

Sometimes proponents of mandatory minimum sentences understand it to be a form of equality, and on one level it can be understood to be a form of equality. It's what we call formal equality; it applies equally to all persons. Another example of formal equality can be seen in a situation where you have a building, and the building has been designed so it's only accessible by stairs. The architects of that design might say that it's equally accessible to everybody, that anyone can get in, that nobody is prevented. There's no sign that says certain groups are excluded. But if you're in a wheelchair, you're essentially excluded. So it looks like it's available to everybody, but in effect it's not.

With mandatory minimum sentences, it's a similar theory you can apply. It looks as if it's applicable to everybody, and it looks as if it's fair, but actually, in effect, what happens is that because it's targeting individuals who are already predisposed to disadvantage, who are already over-criminalized, it results in further disadvantage and, LEAF would argue, discrimination. So that's a problem.

The other reason it can be understood to be inequitable rather than equitable is the pre-existing racism that we know informs and characterizes the criminal justice system in Canada. Every level of court, royal commission, justice inquiry, independent research, and academic research—we have it all—provides evidence that the criminal justice system in Canada is characterized by racism, and that gets perpetuated by mandatory minimum sentences attached to firearms. So that's another problem, and that's another reason why LEAF is opposed to the introduction of Bill C-10.

Really, the problem with Bill C-10 is that it does nothing to promote or protect equality. It only perpetuates disadvantage and inequality, and it really targets and individualizes the problem, rather than addressing the social causes of the problem.

This is the third point that LEAF would like to make in terms of our opposition to Bill C-10. Really, what LEAF identifies as much more preferable to the punitive measures attached to Bill C-10 are preventative measures and looking at the social causes of violence and crime and firearm crimes, in particular. In particular, what we would support are measures that provide for community development and increased education, increased employment opportunities, and improved community development—programs that would promote opportunities for people who are already disadvantaged.

They're definitely long-term solutions. They're definitely not quick fixes, and they're not easy sells. They don't win votes the same way a quick fix like mandatory minimum sentences attached to firearms might sell votes. But they're really much more effective, they're much more long term, and they actually promote and protect equality for disadvantaged persons. So that's why LEAF supports that approach rather than the approach of punitive measures attached through mandatory minimum sentences.

In closing, I'd just like to read a quote by Helene Dumont. It's from her article in the 2001 *Osgoode Hall Law Journal*, and it really captures LEAF's position on Bill C-10. This is on the cover of our submission, so you'll get a chance to enjoy it for yourself. Helene Dumont writes:

> How can our criminal laws better reflect the public's concern for safety, while promoting their desire for a democratic society based on peace, liberty, tolerance and justice? To accomplish this goal, legislators and the Canadian public as a whole, should try to apply more reason than fear in developing criminal law-infrastructure for safety. They must recognize the symbolic and political power of criminal laws, and determine the effectiveness of each punitive measure in terms of securing personal and public safety. Finally, legislators must always choose the solutions that will result in a peaceful, free, tolerant, and just society.

So subject to any questions you might have, those are our submissions.

● (1540)

The Chair: Thank you, Ms. Sampson.

I'd like to welcome Jonathan Rudin, who's with Aboriginal Legal Services of Toronto. I see you made it through traffic.

Mr. Jonathan Rudin (Program Director, Aboriginal Legal Services of Toronto): I apologize.

The Chair: It's not a problem. That's understood.

I'd like to turn now to Mr. George Biggar for his presentation.

Mr. George Biggar: Thank you very much, Mr. Chairman and members.

Thank you for inviting me once again. As I expressed to Madame Diotte, I am very grateful that you have come halfway, to the Toronto airport, as last time I had to go the whole way to Ottawa.

Of course, we at LAO don't take a formal position on the merits or otherwise of the proposed legislation. I'm here to respond to the committee's two questions from Mr. MacKay, as I understood them. First is to talk about the anticipated effects on legal aid costs if this bill were passed and implemented. Second is to offer some brief high-level remarks about LAO's general financial situation. The timing is opportune, as we have been in the press this week.

I have been here most of the day, and I heard Chief Blair and the Attorney General this morning. I want to start by recommending to you two of the comments they made this morning.

Chief Blair spoke at length about the guns and gangs prosecutions, the other projects, and the effects they're having in the city of Toronto. He stressed that these prosecutions are having an impact on every part of the justice system. He mentioned that they're imposing tremendous strain on Legal Aid Ontario, and I want to confirm the truth of that statement.

Secondly, when the minister was speaking he supported this bill and said on two occasions that we have to do everything. Legal Aid Ontario supports that statement. We believe that doing everything includes ensuring the defence of these charges, which of course is the statutory right and charter right of the poor accused person facing these charges. I want to support the minister's statement that the defence of these charges is adequately funded.

What we find at Legal Aid is that all justice initiatives create new pressures for more police officers, more jail sentences, longer jail sentences, more wiretap investigations, and more mandatory minimum sentences, which all drive up costs for Legal Aid Ontario, and indeed for all legal aid plans in the country.

When this legislation was first introduced, we in Legal Aid Ontario, working with officials in the Ministry of the Attorney General, tried to calculate what the likely effects on our costs would be. Our best estimate is that this bill will increase costs at Legal Aid Ontario in the range of about $382,000 per year. This is based on hard data and professional analysis. The consensus of Legal Aid and ministry officials is that increased penalties, and especially mandatory minimum penalties, will lead to more trials.

In 2005-06, there were 2,346 firearms charges brought before the courts of Ontario, and particularly before the Ontario Court of Justice—the provincial court that is the level at which all criminal proceedings start. Interestingly, these firearms charges already have a very high trial rate, in that only 17% of accused persons facing these charges actually plead guilty to them. That means in 2005-06 there were approximately 400 pleas of guilty. It's our consensus view that about three-quarters of these cases will likely go to trial as a result of facing mandatory minimum penalties. Additionally, between 2004-05 and 2005-06, we observed that firearms charges increased by about 19% in the Ontario court system.

● (1545)

So in these calculations we assumed there'd be a further 19% increase in 2006-07, which would mean that if the legislation were in effect, there would be 356 extra charges going to trial per year in Ontario. That means 178 new trials, because, on average, in the court system each individual faces two charges, so you take the number of charges and divide it by half to produce the number of individuals who will be going to trial.

For these kinds of offences, approximately 94% of the accused receive a legal aid certificate. For these 178 persons facing these charges, 167 of them are likely to be on legal aid. Looking at our cost data and court data, on average we expect that there will be four days of trial per each case at four hours per day, plus seven hours of preparation time, and therefore a total of 25 extra hours per case.

In total, it's 25 hours times 167 trials times $83.10 per hour, the middle Legal Aid rate, for a total estimated cost of $346,900. In these calculations it's normal to add a factor for administration. Legal Aid Ontario's administration factor is 10%. That produces a total of a little under $382,000. We hope the Minister of Justice will keep that figure in mind when it comes time to renew the federal-provincial criminal legal aid cost-sharing agreement, because that kind of number will be repeated across the country.

The other topic I was asked to comment on was the financial pressures facing Legal Aid Ontario. I know from speaking to colleagues across the country that all legal aid plans are facing financial pressures, but particularly Legal Aid Ontario feels very severe pressure at the present time.

In the short term, you may have been aware of press releases to the effect that as of the end of the first six months of the year, Legal Aid Ontario is $10 million over budget in the certificate program. That is the program that includes criminal coverage. I can tell you that our analysis of that indicates that it is caused significantly by the pressures of the guns and gangs and project prosecutions that you have been hearing about this morning. In fact, we anticipate that without action the cost to Legal Aid could be as much $10 million higher than budgeted for, for the big-case part of our certificate program.

Our budget for that program for this year is about $19 million. At the moment, it looks as if we will be spending $25 million, and if we had taken no action in relation to these charges, we expect we could well be spending as much as $29 million or $30 million this year. In itself, it's a $10 million pressure in this year. That's the short term.

On the longer term, we face ongoing criminal pressures from criminal and family caseloads. Our demand is driven by the number of people coming into the court system. The levels of criminal court activity are rising generally throughout the province.

New court criminal proceedings have risen from 540,000 new charges in 2003-04 to 580,000 in 2005-06, and the increase continues this year, one of the main reasons being the hiring of 1,000 new police officers throughout the province. This means that criminal certificates have risen from under 61,000 two years ago to 65,500 in the same timeframe last year, and that pressure continues intensely.

We operate within a limited budget. We have a targeted number of certificates that we are permitted to issue each year. The increases and the pressures in criminal law are constraining our ability to meet demands in other areas of certificate law, in particular family law.

● (1550)

Family court proceedings are increasing and have risen, for example, by 6% between 2004-05 and 2005-06. This puts increased pressure on the certificate program. In order to manage this, our family law refusal rates—the percentage of people applying for legal aid for family matters—are now at 35% of applicants.

In addition, we face variable revenue levels, and next year we anticipate a reduction in revenue from the law foundation as a result of changes in interest rates and economic activity. We expect there will be a decrease in the realm of $8 million to $10 million.

In recent years, LAO has not had an increase in its core funding. We have absorbed $44 million in inflation and salary increase costs within the same core funding. However, as the Attorney General said this morning, LAO has received an increase of $25 million in its budget in the last four years, but this is in fact funding tied to specific increases in the duty counsel program to fund the creation of the criminal law staff offices and to fund the tariff increases that were passed in 2002 and 2003.

LAO has no reserves or savings left, so we are facing quite a steep precipice immediately driven by guns and gangs and other project cases. This bill will add to the financial pressures we face, and we hope that Parliament will recognize that and approve increased funding for the federal-provincial criminal cost-sharing agreements.

So just to repeat, we face short-term pressures, long-term demand pressures, no increase in core funding, and variable revenues. It's a difficult situation.

Thank you.

● (1555)

The Chair: Thank you, Mr. Biggar.

Mr. Rudin, I know you have some comments in reference to the aboriginal legal services.

Mr. Jonathan Rudin: Thank you.

Again, I apologize for my lateness. I also apologize on behalf of Marisha Roman, our vice-president, who was with me last month in Ottawa. She very much wanted to be here today as well, but she came down with the flu this morning, had to leave work, and was not able to make it.

We are very pleased to be appearing here again before the Standing Committee on Justice and Human Rights. Since our last appearance before you was just a month ago, we'll dispense with the background information on our organization, as we trust it's relatively fresh in your mind. We first want to thank the members of the committee for its consideration of our submissions regarding Bill C-9.

We're here today to discuss Bill C-10, a bill that amends the Criminal Code. Prior to commenting specifically on these amendments, we feel it's important to address what is, for us, the disturbing trend of the increasing reliance on minimum sentences in the Criminal Code.

This trend did not begin with the current government. Bill C-2, passed in the last Parliament, added minimum sentences to 11 sexual offences. In some cases, the minimum sentences were as low as 14 days. It appears that often the only explanation for the imposition of a minimum sentence is to prevent judges from considering a conditional sentence. Minimum sentences of 14 to 90 days cannot seriously be justified for their ability to deter crime or to lead to a change in behaviour of offenders while incarcerated.

In our discussion before the justice committee last month, we spoke about the ability that judges have to craft conditional sentences that can address the root causes of offending behaviour without sacrificing community safety. In fact, a well-crafted conditional sentence will lead to increased community safety. Unfortunately, increased reliance on minimum sentences means there is less room for conditional sentences.

We would like to raise four specific concerns with respect to Bill C-10 and make one suggested amendment. Our concerns are: one, we believe the manner in which the bill deals with hybrid offences is unconstitutional; two, too many minimum sentences start with penitentiary terms; three, there is no reason to believe that minimum sentences deter crime; and four, the bill will increase aboriginal overrepresentation in prison. Our suggested amendment is that the bill allow for a judge to avoid the imposition of a minimum sentence in exceptional circumstances.

We will start with our concerns.

At our last appearance before the committee, we noted that one of the problems with Bill C-9 was that it gave the Crown the ability to decide whether an offender could receive a conditional sentence, based on whether the Crown proceeded summarily or by indictment. This problem is even more acute in Bill C-10. A number of offences in Bill C-10 are hybrid offences. There are no minimums if the Crown proceeds summarily. There are minimums if the Crown proceeds by indictment. In some cases, these minimums start at three years' imprisonment.

For example, a first-time offender charged with unauthorized possession of a prohibited or restricted weapon that is loaded or near ammunition will, if the Crown proceeds summarily, have all sentencing options available. On the other hand, if the Crown, in its sole discretion, chooses to prosecute by indictment, the minimum sentence is three years' imprisonment.

Such an arrangement places a great deal of unchecked power in the hands of the Crown. It also raises very serious concerns that the section violates the protection against cruel and unusual punishment found in the Charter of Rights and Freedoms. We will participate in any constitutional challenge against these provisions of Bill C-10.

Secondly, we are concerned by the increased number of minimum sentences that start at three years' imprisonment. While there are some individuals who, for public safety, must be sentenced to penitentiary time, this bill casts the net too wide. Members of this committee should be under no illusion that a three-year sentence will lead to positive change in the lives of offenders. Information we have received from Correctional Service Canada in Ontario indicates that individuals sentenced to two- to three-year sentences will receive no substantive programming at all in penitentiary prior to their release.

This bill will result in some individuals with little or no prior involvement with the criminal justice system going directly to the penitentiary. Being incarcerated with the most dangerous offenders in Canada will give these people the opportunity to learn new skills, but not, unfortunately, the skills we would want them to learn.

● (1600)

We have to be realistic about what happens to people when they go to penitentiary. In most cases, they come out worse than when they went in.

Third, at the heart of this bill is the belief that minimum sentences deter people from crime. Since much of this bill is concerned with increasing the minimum sentences for offences where minimum sentences already exist, the assumption must be that higher minimum sentences deter people even more. The fundamental problem with this theory is that there is no evidence to support it. Studies by the eminent British criminologists Andrew Ashworth and Andrew von Hirsch both concluded that deterrence in the criminal justice system comes from the probability of detection rather than consideration of potential punishment.

The penalty for first degree murder is life imprisonment without parole for 25 years, yet despite this most severe mandatory minimum sentence, gun violence and gun death were quite prominent last year. If a 25-year mandatory minimum did not deter the most serious of gun crimes, why should we expect that shorter minimums would accomplish the task?

Our final concern with the bill relates to aboriginal over-representation. It must always be kept in mind that reliance on deterrence as a theory for punishment has a significant impact on aboriginal people. As we noted last month, despite making up only 3% of the Canadian population, aboriginal people comprise 22% of those in Canadian prisons. Aboriginal people know better than anyone else that doing the crime means doing the time, yet rates of aboriginal over-incarceration continue to rise. In large part, this is because much of aboriginal offending is not calculated organized crime, but rather an unthinking response to immediate pressures. Addictions, interpersonal violence, a sense of hopelessness, and the legacy of government practices such as residential school and mass adoptions all play a large role in explaining why aboriginal people commit crime. This does not excuse the behaviour, but we need to understand that the threat of minimum sentences will do nothing to address the root causes of aboriginal offending. It will merely lead to more aboriginal people being sent to jail for longer and longer periods of time.

Why should Canadians care that our jails are becoming increasingly the preserve of aboriginal people? After all, if aboriginal people commit crimes, why should they be exempt from jail, the most serious sanction the criminal justice system provides?

To answer these questions it's helpful to return again to the decision of the Supreme Court of Canada in Gladue. When discussing aboriginal overrepresentation, the court said:

> These findings cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic overrepresentation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem.

Aboriginal overrepresentation speaks to the failure of the criminal justice system to address the root causes of aboriginal offending. The result of paragraph 718.2(e) and the Gladue decision has not been that aboriginal people have stopped going to jail.

Both paragraph 718.2(e) and Gladue speak of the need for restraint in the use of incarceration for everyone. In fact, it has been non-aboriginal people who have been the primary beneficiaries of these initiatives. A study by Julian Roberts and Ron Melchers showed that from 1997 to 2001 the rate of aboriginal incarceration rose by 3% while the rate of non-aboriginal incarceration decreased by 27%. Similar results have been found in examining the impact of sentencing changes in the Youth Criminal Justice Act. Despite specific admonitions in legislation, the judges need to look for alternatives for aboriginal offenders. It is non-aboriginal people who are seeing the greatest decline in incarceration rates.

Please rest assured that we are not urging that more non-aboriginal people be jailed, but it is vital that you be aware that the impact of moves to make the criminal justice system more punitive will fall disproportionately on aboriginal people.

● (1605)

Jail has proven itself to be singularly incapable of resolving the social problems that are at the root of aboriginal offending. More jail will be similarly ineffective.

These concerns lead to our proposed amendments to the legislation. We suggest that the bill give judges an option to not impose a minimum sentence in exceptional circumstances. Such a provision will go a long way to meeting objections that the law is unconstitutional and would allow judges to consider other sentencing provisions, such as contained in paragraph 718.2(e) of the code, in situations where to impose a minimum sentence would be clearly unjust in the circumstances.

For almost 20 years, royal commissions, judicial inquiries, parliamentary committees, and decisions at all levels of courts in Canada have urged that the problems of aboriginal overrepresentation be addressed. For every small step forward, we confront great obstacles pushing us back. Sadly, Bill C-10 is another example of a serious step back.

We urge this committee to move away from increasing reliance on minimum sentences. If we are serious about wanting to make our communities safer, we need to do more than lock people up. We need to ensure that there are programs in place in the community to address the root causes of criminal behaviour. We need to have programs in place in correctional facilities to do the same.

Thank you very much.

The Chair: Thank you, Mr. Rudin.

I will turn to questions now. Mr. Bagnell.

Hon. Larry Bagnell: Thank you, and thank you all for coming today.

I have a huge aboriginal population, so, Mr. Rudin, your presentation is probably, for me, the most important of all our witnesses. I agree with almost everything you said, so I'll not necessarily ask you all the questions.

I would like to ask Fiona this. There were a couple of things I was quite surprised at and there was something I totally didn't understand when you talked about discrimination. I want to see if I got this right. Did you say that because a person has offended, when they come out they are more likely to offend again, and therefore because they are going to have a higher sentence as a reoffender, under Bill C-10 they would be discriminated against as a person in our society?

Ms. Fiona Sampson: No, not so much at all.

● (1610)

Hon. Larry Bagnell: What was your discrimination point?

Ms. Fiona Sampson: The discrimination we would predict would be experienced through Bill C-10 is the fact that the effect of Bill C-10 will be felt by people who are already disadvantaged. It would be felt by people who are already over-criminalized, which includes the group of racialized persons, aboriginal persons, and also disabled persons.

Hon. Larry Bagnell: Okay. I have a lot of questions. That is good. I got that point.

Some native women in very remote native communities have said to me—as much as all you have said is right—it is really bad for them, especially if it is sexual assault or something like that, when the offender is put back in the same tiny community where they are hundreds of miles from anywhere else. It is very hard on them and it is not sustainable.

Could both you and Mr. Rudin comment on that?

This would certainly be the effect of Bill C-9, but also Bill C-10. Obviously, the offender could easily be back next door to the person he offended, more quickly without these laws.

Ms. Fiona Sampson: I think this goes to the last point I was attempting to make, which was the low support for preventative measures. Incapacitation, incarceration, is a short-term measure and may provide some immediate short-term relief in terms of removal of the offender from the community. In terms of a long-term answer, it doesn't provide any kind of resolution to the long-term problem, whereas investment in the community, in education, and in employment opportunities and all that would do that.

Hon. Larry Bagnell: Great.

Mr. Biggar, I think it is right, but something astonished me. Did you say that of 178 cases that ultimately would go to court, 167 of those 178 would need legal aid?

Mr. George Biggar: Yes, for this particular category of offence.

Hon. Larry Bagnell: To me, that is absolutely astonishing. It means that poor people are either discriminated against in getting caught, or they are discriminated against in getting charged, or they are creating almost all the crimes. Is that true?

Mr. George Biggar: I'm trying to stick to data that I'm aware of, rather than subjective impressions, but it is certainly our experience in Legal Aid that the criminal population is by and large quite poor. I don't have hard data for that.

Hon. Larry Bagnell: Well, 167 out of 178 is hard data, and it's astonishing.

Mr. George Biggar: The overall coverage rate of adults with certificates in the criminal justice system is more like 25%, in the sense that we issue, for example, 65,000 criminal certificates a year in Ontario, but there are between about 250,000 and 300,000 accused persons entering the criminal justice system in Ontario per year. So our overall average coverage rate is about 25%, but for these types of serious offences, the coverage rate is very high.

One of the reasons for that—I have one more sentence, if I may—is that a very high percentage of these people are detained in custody pending their trial, and people who make application from custody are almost always successful. They have no assets, they have no jobs, so they are financially eligible, and they are very highly likely to face incarceration if convicted of the crime.

Hon. Larry Bagnell: Mr. Rudin, are you a lawyer?

Mr. Jonathan Rudin: Yes, I am.

Hon. Larry Bagnell: As both you and the head of the RCMP said, if a person goes to jail, they are more likely to be hardened criminals and learn their trade even more. I would assume this would even be exacerbated for someone from Nunavut or the far north or the wilderness who had never seen a criminal before and who went into these hardened penitentiaries down south. They would learn a lot more things that—

Mr. Jonathan Rudin: Yes, that's very true, and as well, sadly, one of the results of aboriginal overrepresentation, particularly in the western provinces, is that many of the jails out west are essentially run by members of some aboriginal gangs, so someone who goes into a jail and is not affiliated is going to be affiliated by the time they come out, if they want to survive.

Hon. Larry Bagnell: Would another exacerbating effect on them be the fact that it would be such a dislocation? Some of the northern communities are hundreds of miles away and have no support system. They're not used to being cramped up. There's no social support. It's totally foreign to them. Wouldn't that, once again, give them an even worse chance for rehabilitation?

Mr. Jonathan Rudin: That makes it much more difficult, and of course, as you're aware, the correctional ombudsman reported just last month as well on discrimination against aboriginal people generally within the prison system.

● (1615)

Hon. Larry Bagnell: As for the principles of sentencing, as you know, there's a clause for aboriginal people that takes that into account. Do you think this is an affront to that philosophy and that a legal battle could perhaps be undertaken? When you remove the discretion to make that choice, to look at the circumstances of aboriginal people, then you're going against that clause, that sensitivity we put in the Criminal Code to look at the circumstances of aboriginal people.

Mr. Jonathan Rudin: That certainly could arise. Mr. Hangar asked me a similar question last time. The situation now is that paragraph 718(2)(e) is simply part of the overall provisions of sentencing, so mandatory sentences override the opportunity of a judge to do anything other than sentence the person for a period of time. So with a mandatory minimum, all the judge can do is say that if you're an aboriginal offender, maybe you'll get four years and not six, but they can't move outside of the minimum that's mandated by the Criminal Code.

It is possible that we might launch a challenge to that, but currently the way the judges interpret this is that they have no discretion to go below the mandatory minimums. That's exactly one of the reasons why we're urging an exemption in the legislation to allow for consideration in exceptional circumstances that would allow for those sorts of issues to be addressed by the judge.

The Chair: Thank you, Mr. Bagnell.

Mr. Ménard.

Mr. Réal Ménard: I'm going to speak in French.

[*Translation*]

Mr. Rudin, a similar amendment was proposed to us a little earlier by the Canadian Council of Criminal Defence Lawyers. You said that the native population, which represents 3 % of the Canadian population, represents 22 % of prison inmates.

I read the Gladue ruling for a course I took on sentencing, and I am in complete agreement with you. However, your brief is rather vague on the issue. It says that in certain circumstances, judges should have the choice not to impose minimum sentences. Have you thought of a more specific wording? Are you referring to cases which strictly involve members of first nations?

I would like to better understand your position.

[*English*]

Mr. Jonathan Rudin: No, we're not suggesting that it specifically deal only with aboriginal people. That could be one of the exceptional circumstances, but there may be other exceptional circumstances. We would see the amendment written more broadly to allow any exceptional circumstances for any offender to be considered.

[*Translation*]

Mr. Réal Ménard: Of course, if minimum mandatory sentences were not consistently applied, people would say that they are not true mandatory minimum sentences. Whatever the case may be, few studies point to any deterrent effect these types of sentences might have. So deterrence is not really an argument which would convince us of the effectiveness of mandatory minimum sentences.

My question is for Mr. Bigger from Legal Aid Ontario. So what you are basically saying is that mandatory minimum sentences might lead to more trials and that it might affect the provinces, yours in particular, which is, incidentally, the wealthiest in Canada, at least in terms of per capita revenue.

What would you like to say to the federal government as far as the financial implications of Bill C-10 are concerned, if it was adopted? Of course, that's not a given. The more testimonies we hear, the more we should worry. Minority governments have many virtues, including the virtue of allowing the opposition to work harder to improve the government. It goes without saying that for us, the work is never ending, and we end our days completely exhausted because the task is so huge.

So what type of financial support should the federal government provide if Bill C-10 was passed?

[*English*]

Mr. George Biggar: As I said at the outset, every change to the justice system is an increased pressure on all of the system, and that includes legal aid. Some of these changes we can estimate better than others. For example, we've done estimates on the likely cost of legal aid due to increasing the number of police officers on the street by 1,000, as the government has done. We did an estimate on the cost effects of Bill C-9, the bill that deals with alternatives to incarceration, and we have done the estimate I presented this afternoon in relation to the cost of Bill C-10. What we in general are seeking from the federal government, since criminal law is a federal responsibility and that is in fact recognized by the federal government through the federal-provincial contribution agreement, is that the government, through the budget process, increase the funding available to the legal aid plans across the country in order that they may effectively respond to the increased—

● (1620)

[*Translation*]

Mr. Réal Ménard: Don't you have a specific amount in mind? Do you have a ball park figure?

[*English*]

Mr. George Biggar: No, today I did not bring a specific number. No, I don't have a specific number today.

[*Translation*]

Mr. Réal Ménard: That all right sir.

Do I have time to ask Ms. Sampson a final question?

[*English*]

The Chair: I'm sorry?

Mr. Réal Ménard: Do I have any time to ask another question?

The Chair: You do, indeed.

[*Translation*]

Mr. Réal Ménard: Ms. Sampson, you are right to remind us that throughout history, women have been the victims of discrimination within the legal system. You are not the first person to tell us that the burden would probably be even heavier for women.

What can you tell us about the concrete implications Bill C-10 would have?

You said earlier that 70% of firearms owners were men, but that women were victims in 30% of cases. You have no reason to believe that Bill C-10 will improve protection for women: on the contrary, it will reinforce their victimization.

Did I clearly understand what you said?

[*English*]

Ms. Fiona Sampson: I think you're right to understand that it does nothing to decrease women's vulnerability and it does nothing to increase their equality. It's actually 85% of men who own guns and 30% of women who are the victims of gun violence. Those numbers are a real concern to us, but mandatory minimum sentences on firearms like those proposed through Bill C-10 just do nothing to address that inequality and the oppression that women experience through the connection between violence and guns and masculinity.

In terms of concrete examples of women's disadvantages associated with Bill C-10, women aren't just white, able-bodied, non-racialized women; women are members of other communities. It is primarily men who are gun offenders, and when those men are targeted by these provisions, it disadvantages the whole community, so it disadvantages the women in those communities as well.

The Chair: Thank you, Mr. Ménard.

Mr. Comartin.

Mr. Joe Comartin: Thank you, witnesses, for being here.

My question is for Mr. Rudin and Ms. Sampson.

I can't remember the factual situation of Gladue, if that was an equality, section 15.... So this may be a somewhat redundant question. Is it possible and is it being contemplated that at some stage the aboriginal community or advocates for women would actually launch a challenge under the charter because of the systemic discrimination that's within the system, because of the results you get with this kind of legislation? Both with regard to this legislation and perhaps a bit more generally, is that kind of litigation either going on now or is it being contemplated?

Mr. Jonathan Rudin: In the cases we have recently been appearing before the Supreme Court on—just a couple of weeks ago, a case about negligent investigation by the police, and earlier about the Youth Criminal Justice Act—we used section 15, but we urged the court to use that as a lens of equality for analysing a specific challenge to a particular piece of legislation. It's not a direct section 15 challenge; it's an aid to interpretation more than anything else.

I think the difficulty with launching a section 15 challenge head on is that you have to find an individual who you can show is being discriminated against, in addition to the fact that they've also committed a criminal offence. So that is one of the things that creates a challenge. It's why, for example, on a challenge to Bill C-10, to the provisions that I spoke about, we would bring in the issue of aboriginal representation in section 15, in the context of a cruel and unusual punishment application.

Given the way section 15 litigation is going these days, that's probably where we'd go.

● (1625)

Mr. Joe Comartin: Ms. Sampson, do you have anything to add?

Ms. Fiona Sampson: From LEAF's perspective, we would say that Bill C-10 is vulnerable to a section 15 challenge because of its discriminatory effect and the discriminatory impact.

It would be a challenge in terms of the court's most recent interpretation of section 15 to make a successful argument, so we think it's definitely vulnerable to a challenge.

Mr. Joe Comartin: What kind of evidence would you have to put in, then?

Ms. Fiona Sampson: We would, as Jonathan mentioned, have to have a claimant. LEAF doesn't ordinarily initiate litigation but we intervene in support of equality claimants. On the kind of evidence that we would need, actually a lot of it is included in our brief that I keep teasing you with, which you will see soon.

Mr. Joe Comartin: We will read it.

Ms. Fiona Sampson: Okay. Thank you. I keep pitching it, hoping you will.

We have a lot of the evidence in there in terms of the way in which Bill C-10 targets these already disadvantaged groups and how it perpetuates the disadvantage experienced by these vulnerable groups. That meets the fundamental criteria of section 15.

Mr. Joe Comartin: You can't do it on a collective basis, though. You have to have an individual.

Mr. Jonathan Rudin: You have to have an applicant. Someone has to be charged with an offence and you then have to isolate the section 15 issue. I agree that finding that applicant is not necessarily a challenge, but then you would have to place it within the context of the specific offence.

Launching a section 15 challenge on its own may be difficult. Certainly, we have contemplated and thought about the fact that not enough resources have been put into the criminal justice system to adequately deal with aboriginal overrepresentation. That is perhaps a ground for a section 15 challenge. It seems to us, given what the Supreme Court of Canada said in Gladue—the fact that things have not changed, the fact that things have got worse—this is an indictment of the way the system operates, and that is a possible avenue for litigation.

Mr. Joe Comartin: They're likely to throw that back at you and say, based on the autism decision, in particular, if the resources aren't there, that's a political decision or governmental decision and we're not going to intervene.

Mr. Jonathan Rudin: I would make the distinction in that the criminal justice system is within the purview of the federal and provincial governments. For example, there is a recent decision of the Ontario Court of Appeal, a case called Kakekagamick, in which the Court of Appeal specifically mentions the fact that the courts in Ontario are not receiving the information they need in order to sentence aboriginal people properly. So I think it's on those sorts of bases that a challenge might be launched.

Mr. Joe Comartin: That's all, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

Mr. Rob Moore: My thanks to the witnesses for being here today.

We've had a full day and lots of testimony, so there's lots to think about. I really want to focus on what this bill does, not what it doesn't do.

We heard testimony today from the police, from attorneys general, from other concerned groups, from you, and from defence lawyers. In the criminal justice system, of course, there are all the other aspects. We've heard from Mr. Biggar that there's cost, and we know that. The Minister of Justice had an extension on the current legal aid funding. That's something that's raised, of course, by the provinces and something that's an aspect of our criminal justice system. And Ms. Sampson mentioned that this bill does nothing when it comes to decreased vulnerability, promoting equity, ending oppression, and those kinds of things.

Let's talk about what the bill does. This bill is about making sure that people who use a firearm in a case of attempted murder, discharging a firearm with intent, sexual and aggravated sexual assault, kidnapping, hostage taking, robbery, and extortion serve a certain amount of time in prison. It doesn't change the maximum amount to which they can be sentenced, but it sends a message from Parliament that in the past, some individuals have not received an appropriate sentence. We want to give our direction on what we can do as the chief lawmakers in the country, on what we feel is appropriate.

Of course, there are all different kinds of circumstances. We've heard the examples of rural areas versus urban ones and so on. But just to focus on what the bill does, we've heard some testimony that some people don't believe there should be any mandatory minimums whatsoever. There already are mandatory minimums for certain gun crimes. Is it the submission of anyone here that there's no case where there should ever be a mandatory minimum?

I know you're not going to comment directly, Mr. Biggar, and I understand where you're coming from. You have funding limitations and you need to make a pitch. The only comment I would make on that—and I'll get your response and then go back to the first question—is that of course this costs money. There's going to be money saved in some areas because of this, and there's going to be money spent. But when the discussion turns only to money, I think we lose sight of the fact that we're trying to protect lives. We heard testimony today that when you take off the street the small number of people who are committing serious crimes, lives can be saved and the gun violence goes down. The chief of police from Toronto gave that testimony today.

So I'd just like your comment, Mr. Biggar, on the idea that there is more to this story than cost.

To the others, do you feel there should ever be minimum sentences in any circumstance?

● (1630)

Mr. George Biggar: If I could just respond for one second, as a citizen, one has an opinion, but I'm not here as a citizen. I'm here as a representative of Legal Aid Ontario, so I fully understand. As I said, I've been here all day, so I understand the nature of the debate about the bill. All I'm trying to say is that this bill, along with all the other initiatives that the provincial and federal governments are bringing to bear on the problem, are driving up costs throughout the system. All levels of legislature need to be aware of that and be conscious that all parts of the justice system need to be funded.

I can now give a bit of an answer to Monsieur Ménard, although I see I've lost him. It's come back to me that the request of the provinces in relation to criminal legal aid has been a return to the historic original funding levels, meaning a full, fifty-fifty sharing in the criminal legal aid expenditures. That's what the demand is for.

Thank you.

Mr. Rob Moore: And to the others, is there ever an appropriate case where Parliament should send a message that a certain offence should require a certain amount of time out of circulation, as it were?

Mr. Jonathan Rudin: I wouldn't say that there is never a case, but I would make two comments. First, we've drastically increased the number of mandatory minimums from the long time ago when I was in law school when there was first-degree murder and second-degree murder, and now we're adding and adding and adding. I don't know that it's necessarily helping in any sense anywhere.

One of the reasons for that is a term that you used, and I think it's an important one. You said that passing these bills sends a message. One of the questions is, who is the message being sent to and who do you think is receiving it? In some cases, I think the message that is being sent, the intention for the message, is not so much to those people who may be potential offenders, but it's a message being sent to the broader Canadian public that we as a government, whoever the government is, is getting tough on this particular crime. But does the message actually get through to individuals who are committing crime? That's where the data seems to suggest it doesn't.

I don't think people who commit the range of sexual offences that just had minimum sentences in the last Parliament know that they've been increased. In fact, a lot of lawyers don't know they've been increased.

If you increase the minimum sentence to two to four years, one to three, is there going to be a lot of discussion on the street saying, I guess we shouldn't do that now, the sentence has gone up two years? If the thought is that those messages are going to reach the potential lawbreakers and change their minds, I don't think that's likely to happen.

● (1635)

Ms. Fiona Sampson: You asked what Bill C-10 does. From LEAF's perspective, what Bill C-10 does is discriminate. That's what we see is the effect of Bill C-10.

I understand that the goal is to reduce violent crime, and that's a laudable goal, but we would argue that these mandatory minimum sentences don't achieve that end for the reasons I have already outlined.

In terms of deterrent effect, I think all the evidence we have supports the proposition that there is little evidence to support that mandatory minimum sentences have any deterrent effect. I think maybe it's helpful to think about deterrence in a couple of different ways to distinguish between certainty of conviction and severity of punishment, and that maybe helps to clarify why mandatory minimum sentences and the severity of punishment, as we understand it, doesn't have any effect in terms of preventing or diminishing crime.

Mr. Rob Moore: I think we have seen that there is other evidence we have before us that says when we target very specific crimes in a specific way, we can reduce the number of homicides, for example. We heard from Chief Blair today who said that there's a small number of people who are causing the problem, and when you take some of those people out of circulation you can lower the crime.

I do have to ask, Mr. Rudin, because you said in exceptional circumstances.... Of course, there are people who have made suggestions. We appreciate your suggestion on an amendment. Do you have any idea what those exceptional circumstances are? The concern that I think people have had in the past is that when you open the door a crack, eventually everyone is going through. What would be the exceptional circumstances?

Mr. Jonathan Rudin: I can't give you a list right now. I suppose I put some faith in courts of appeal—in the trial judge and in the courts of appeal.

Certainly we see regularly in Ontario many offences that do not have mandatory minimums, yet judges routinely hand out prison sentences, often sometimes penitentiary sentences, because the Court of Appeal has said this is what you would normally do. The Court of Appeal then sets out the sorts of situations that seem to be exceptional.

An exceptional circumstance is one that I think would shock the conscience of people that a particular individual is going to jail. I can't necessarily give you an example here. It's one of those things, though, that I think a judge would recognize, and that sort of finding would be subject to appeal by the Court of Appeal.

So I don't think it's likely to result in a widespread disavowal of the use of mandatory minimums. I think what it would mean is that it would be an exemption that would be possible in limited circumstances.

Mr. Rob Moore: Thank you.

The Chair: Thank you, Mr. Moore.

Mr. Lee.

Mr. Derek Lee: Thank you.

I have a question for each of our witnesses, the first one to Mr. Rudin. It's a bit of a lob, but I'm sure he'll deal with it well.

Looking at the Gladue decision and looking at the sociological circumstances involving aboriginal offenders, Bill C-10 is starting to look like some kind of a scholarship program to a boarding school or crime college, if it goes into effect. I'll just put it that way and I'll leave that with you. You can think about it.

Then to Mr. Biggar, I had always understood the court's view that the charter section providing for a right to counsel—certainly it wasn't a right to legal aid, but a right to counsel. I always thought it was the right to be able to go and get yourself counsel, as opposed to the right to actually have the counsel there. Could you update us on the status of that? I think you'll be pretty familiar with it. If that right to counsel has evolved into close to having a right to have legal aid, then this is always going to be a cost component of federal legislation, especially where it involves potential incarceration.

To Ms. Sampson, you've described what I would call “adverse effect” discrimination against women, imported by this proposed legislation. There was another component that was mentioned to me, and it involves a woman—unfortunately, there are probably a lot of them out there who are repeatedly subjected to intimidation by a spouse or someone in that circumstance—in a circumstance where she might pick up his gun and say, “Not anymore”. Then, in the event the court would find that the use, of course, of that force was excessive, she—the hypothetical “she”—could end up much worse off than he. Perhaps you could comment on that.

We'll go to Mr. Rudin.

● (1640)

Mr. Jonathan Rudin: It's interesting, the comment you made about jails and boarding schools. Actually, in the late 1980s, the Canadian Bar Association issued a report called *Locking Up Natives in Canada*. One of the things they found in that report, looking at Saskatchewan, was that—and all these figures have gotten much worse—aboriginal youth in Saskatchewan are more likely to go to jail than to graduate from high school. The point was made in that report that jails were becoming our contemporary residential schools. That is certainly true today, as we see 22% of inmates in Canada being aboriginals. Those numbers are up. Every year, those numbers go up.

When Gladue was decided, it was at about 19%. So this is a problem that we recognize, and if only looking at a problem made it go away, in this case looking at it and examining it seems to make it get worse. I don't think that's actually true, but people are prepared to look and to ring their hands but not actually do much about it.

I think you're right. The concern is that as we criminalize more and more people, and that's where they think they're going to end up and that's where they end up, they come out and just go right back in.

Mr. Derek Lee: Better at it than when they went in.

Mr. Jonathan Rudin: As I mentioned, they've picked up a lot of new skills, but they're not skills we would want anyone necessarily to have learned.

Mr. Derek Lee: Mr. Biggar.

Mr. George Biggar: You're right that the charter does contain a specific right to counsel, but the right to publicly funded counsel is really a matter of judge-made law. I think it's under the charter right to full answer and defence, but I haven't read the case in many years. It's a fairly old decision. It's known as Regina v. Rowbotham, a case in Ontario involving one of Ontario's most famous drug traffickers, actually, Rosie Rowbotham. There were a bunch of them charged. This was very a long trial. It was a conspiracy charge, and there were a couple that couldn't afford their own counsel but were not considered eligible for legal aid under the financial eligibility criteria. The court improvised a remedy, which was to order a stay of proceedings unless the Crown provided for a publicly funded defence counsel.

Rowbotham applications are frequently brought in courts across the country, and orders are frequently made.

Mr. Derek Lee: Thank you.

Ms. Sampson.

Ms. Fiona Sampson: I think the scenario you described is very real. It does in fact happen. Absolutely.

This is why LEAF takes the position that getting guns out of circulation and taking preventative measures, such as endorsing gun control, are really much more effective in terms of promoting women's equality than measures, such as Bill C-10, that actually don't promote women's equality and the equality of other disadvantaged persons.

Mr. Derek Lee: Thank you.

The Chair: Thank you, Mr. Lee.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

I will make a short preamble. I will then ask a question of Mr. Biggar and perhaps also of Mr. Rudin and Ms. Sampson.

First, I categorically reject this statement that the Criminal Code is bias and racist. I would like to know how you can justify saying this. I have been a member of Parliament for barely nine months, but I will defend my friends on the outside, namely those within the Liberal Party, the Bloc Québécois and the NDP. They have worked for 10 or 15 years on the Criminal Code, and I do not think that they helped create racist or bias provisions.

My first question is for Mr. Biggar.

Legal Aid Ontario benefits from truly exceptional conditions. Indeed, for your work you are paid on an hourly rate basis, whereas in Quebec, the system is based on mandates. You probably know that there was a megatrial at the Gouin Legal Centre near Montreal. Of the 36 accused members of the Hells Angels, 19 asked for legal aid. The work was paid so badly that the lawyers had to make a special request for compensation, something which never would have happened in Ontario, since you are paid an hourly rate and things are fairly comfortable there.

You say that it might increase cost, but when charges are laid, they are often laid against someone who is already in jail, and the services of a lawyer are provided at the hearing. The Legal Aid System in Quebec works the same way. When the evidence is disclosed, you have the right to see it, and if you see that there is no case to be made, you can refuse to continue to execute the mandate. I do not know how it works in Ontario, but it seems that things proceed with much more ease over there than in Quebec.

My second question is for Mr. Rudin, whom I will great once again, since we have already met twice.

You say that Native People are overrepresentated in Canada prisons, among other places in Saskatchewan.

In Montréal, every street gang is made up of Haitians. Sooner or later, they will be arrested, which will result in there being more blacks in jail. In fact, this is already the case. And just because Haitians make up street gangs, does that mean our legal system is racist? I am trying to draw your attention on that point. Blacks living in Montreal are good people. Some of them are even special. However, today, they are the ones who make up street gangs. I am not saying that this will be the case 24 years from now. In Europe, in certain prisons, there are black wings because they are only filled with blacks.

I am trying to draw a parallel between something you said earlier concerning native overrepresentation in our prisons. The Capital of Nunavut has a population of 3,800 citizens. Let's imagine that a person up there acts like a white, and threatens his wife with a firearm in the course of the dispute. The RCMP takes him away, and so on. He will be kept in the municipal jail, but if he is found guilty, he will have to serve his sentence in a federal prison. That will be 3,000 kilometres from where he lives. So, believe me, I understand your point.

But would you change my mind if there was a federal prison in Nunavut, located directly beside this individual's place of residence? Is it a question of distance? We were told two or three times that sending inmates 3,000 kilometres away did not make sense. As you said, there are prison gangs, and if you want to survive, you have to be a member of those gangs.

I talked about the overrepresentation of blacks in Montreal, which is the large city, and about your own problem with overrepresentation. Does this imply that the bill might not work, might be racist, bias or something else? I want to know what you think about this because we will have to take a position.

● (1645)

● (1650)

[*English*]

The Vice-Chair (Mr. Derek Lee): Monsieur Biggar.

Mr. George Biggar: I think your question, sir, has to do with comparing the relative ease of obtaining legal aid in Quebec and Ontario. I have had the privilege of serving on a federal committee with provincial representatives from Quebec, and I have visited the legal aid plan in Montreal and studied their operations. That was about 15 years ago, however.

As you know, the administration of justice is a provincial responsibility under the Constitution Act. Every province has a legal aid plan that is particular to that province. They're all slightly different. Quebec has an admirable legal aid plan in that it has very broad coverage, very wide coverage. Many more civil matters historically have been covered in Quebec than in Ontario, for example. The corollary was that for many years Ontario had a slightly more generous financial eligibility set of criteria than did Quebec, although I am aware that the financial eligibility criteria in Quebec have recently been increased. I think Quebec's are very close to Ontario's now.

My sense is that legal aid plans have been moving closer together in other ways. I think there are some great strengths in the legal aid plan in Quebec. I think in some ways it's better than Ontario's, but in some ways Ontario's is better than Quebec's. They are both relatively big, strong, and powerful plans among the plans of the country.

The Vice-Chair (Mr. Derek Lee): Ms. Sampson.

Ms. Fiona Sampson: Monsieur Petit, you asked us about evidence relating to the discriminatory impact of the Criminal Code. In our brief, in footnotes 19 to 23, we actually provide a page of references supporting this position.

What I haven't mentioned today is the evidence we have from the United States and Australia, where mandatory minimum sentences are already in effect. They definitively have a discriminatory impact in those countries. They have been condemned by international human rights bodies. Most recently, the Committee on the Elimination of Racial Discrimination condemned Australia for the discriminatory impact of this mandatory minimum sentence legislation.

I think another point that highlights the discriminatory application of mandatory minimums is the fact that mandatory minimums are only applied to crimes that target already disadvantaged persons. You don't see mandatory minimum sentences applied to white collar crimes. It just doesn't happen. This is just another example of really what is adverse-effect discrimination. It's not direct discrimination, as the laws don't discriminate on their face; it's just the impact. Pursuant to Supreme Court of Canada jurisprudence, intent—direct discrimination, with the intention to discriminate—is not necessary to establish discrimination.

The Vice-Chair (Mr. Derek Lee): Mr. Rudin.

Mr. Jonathan Rudin: Thank you.

You raise an important question, one that is difficult to answer in a short period of time. I will do my best.

When you look at prisons and you see, in our case, disproportionate numbers of aboriginal people, that can mean that aboriginal people are perhaps committing more crimes than non-aboriginal people. It also might mean that police are focusing their attention more on aboriginal communities than on non-aboriginal communities. That's certainly the case in a number of jurisdictions, in a number of locations in Canada. It's not that, perhaps, aboriginal people aren't committing crimes. Non-aboriginal people are committing crimes as well, yet those crimes are not being investigated to the same extent.

The other issue, with regard to overrepresentation, relates to the type of sentences people get. For example, I looked recently at the Youth Criminal Justice Act in Ontario. When I looked at people who were charged, dividing aboriginal and non-aboriginal people, non-aboriginal people charged with the same offence as aboriginal people tended to get the non-jail option and aboriginal people tended to get the jail option. So those are some of the issues that arise when we look at overrepresentation.

It's interesting that in Gladue, the Supreme Court of Canada called aboriginal overrepresentation a crisis in the Canadian criminal justice system. The crisis wasn't that aboriginal people were necessarily doing everything wrong. Obviously, people were committing crimes, but the overrepresentation suggests that there's a crisis because the system is unable to find a response other than jail for aboriginal people who are committing crimes. Because jail has such deleterious effects on people—and as you noted, in some cases people are sent thousands of kilometres away—we have to look at that. What's happening is that our reliance on jail as a first option—increasingly a first option—for aboriginal people is making what is a bad situation even worse.

As for your question about a federal prison in Nunavut, I would simply defer to the people of Nunavut to see whether that's something they want in terms of whether they would like the option of having federal funds in justice spent on building a penitentiary or on community programs. My suspicion, having been to Nunavut a number of years ago, is that they would rather their focus not be on the creation of a penitentiary.

● (1655)

The Vice-Chair (Mr. Derek Lee): Thank you.

Go ahead, Ms. Barnes.

Hon. Sue Barnes: Thank you very much.

It's interesting that about 25 U.S. states now have repealed or turned back from the mandatory minimum laws—and you'd think we would have learned from that—because of distortion and costs and high rates of incarceration.

I like the fact that, Ms. Sampson, you brought out the Australian situation of disempowered groups being affected and the studies saying that.

I know that I've looked up a 1998 national law journal, which says that in the States, mandatory minimum sentences are felt most harshly by African Americans, and in that part of the study it even differentiated that African American women are eight times more likely than European American women of being charged and convicted and sentenced under the mandatory minimum laws. Is that the same study you're referring to?

Ms. Fiona Sampson: That's right. We included that reference.

Hon. Sue Barnes: Okay. Just for Mr. Petit's information, the overrepresentation of blacks is a Canadian problem, according to systemic racism and racial profiling studies by Tanovich and Wortley and the Cole-Gittens report and other reports in this country. We do know, if we've read our background material to prepare for this.

Just out of curiosity, you're seeing inequality as the root of a lot of evil. I'll just have your comment about equality and the Status of Women and how you think that could be relevant here—the mandate of the Status of Women. Maybe I'll let you.... I know your answer on that one. I thought it was interesting.

The brief we haven't seen from you, I would be interested in. We saw from Mr. Rudin that he would go on cruel and unusual punishment—section 12. You would go on section 15—equality. Were there any other aspects of constitutionality, other than just the harshness of the sentence, usually of the third sentence? Are there any other constitutional issues that you pointed out in your brief that we haven't had the benefit of seeing yet?

Ms. Fiona Sampson: Typically, we would use section 15 also to complement cruel and unusual punishment. The violation of the right to be free from cruel and unusual punishment becomes more acute. And that violation is highlighted when you understand it through the perspective of the section 15 lens.

Mr. Comartin was referencing possible section 1 defences to a section 15 claim or any charter breach. And in the Auton decision of the Supreme Court of Canada, you raised some concerns about section 1 considerations in that case. The Supreme Court of Canada decision in NAPE, the Newfoundland and Labrador Association of Public and Private Employees, is for me the most recent and most interesting Supreme Court declaration on the application of section 1.

In terms of any cost, I'm not sure what the defence would be in terms of mandatory minimum sentence, because mandatory minimums increase costs. But if the federal government were to argue that those cost-saving measures somehow decreased costs, those arguments with the Supreme Court can always be made in situations of acute fiscal crisis.

● (1700)

Hon. Sue Barnes: Ms. Sampson, the minister didn't come to us with this bill saying it was decreasing costs. I heard that for the first time today.

But I did have a question for Mr. Rudin. The heart of this is taking away judicial discretion, and when we start talking about what's relevant on mandatory and whether it's this timeframe or that, I would like your comment on what happens to the individual before the court when you take away judicial discretion.

I also want to have your comment on what happens when you give it to prosecutors, because that's not in the open courtroom as much as the prosecutorial discretion. Is that why you've turned it to your constitutional challenge area? Because that was a unique perspective, and I wanted to hear a bit more about it.

Mr. Jonathan Rudin: Our concern with regard to the hybrid offences is that it essentially turns the Crown into the judge. If there's a plea or if the person has been convicted, the Crown will determine what defence will be based on, whether the Crown decides to proceed summarily or by indictment. The problem with that is that crowns make those decisions for all sorts of reasons. Often for the right reasons perhaps, but also sometimes for wrong reasons. Normally, without a minimum sentence, it really doesn't matter whether the Crown chooses to go summarily or by indictment because ultimately the judge gets to decide what the sentence will be. The Crown can argue for a higher sentence by indictment, but all options are available to the judge. But this particular legislation would remove that. So the Crowns in some cases, if they want to be sympathetic or give a break to an accused person, will proceed summarily. If they don't want that to happen, they'll proceed by indictment. Of course, the consequences would be quite severe if they proceeded by indictment because it would be a minimum three-year sentence.

As you said, the general difficulty with removing discretion from judges means that consideration of paragraph 718.2(e) in Gladue is removed. It's a very different consideration for a judge: do I want to give this person a minimum sentence of four years, which is the minimum in minimum sentence, or six years? Then it could still apply. But that's not nearly as significant a discussion as to whether the person should be incarcerated at all and whether a conditional sentence might be a better fit.

Hon. Sue Barnes: It's interesting. First of all, I enjoyed your report, and it's important you're here. It's important you're here on every bill, in my opinion.

Sometimes I wish we could have some representatives from the justice system from the north. The problem is that the people I would most like to have here are the ones funded by the justice department themselves, and they're their aboriginal court workers. I've met with them up in Nunavut, in B.C., all over the place. So I think their voice would be a little constrained in this setting, but I know they do a lot of good work.

I was just wondering if you have interaction with some of them from those areas.

Mr. Jonathan Rudin: It's interesting you ask that question because two weeks ago I was in Ottawa for a meeting of all the aboriginal court work programs in Canada, and one of the things we discussed was the need to try to bring that voice forward. Because we have been to this committee before, I said we'd be happy to go again and bring the voice of the court workers as well. When I came back from that meeting, I discovered the invitation to come to this meeting. So I didn't have a chance to contact all my court worker colleagues. But that's certainly something we will be doing, because we think it's important to bring a national perspective, and as many different perspectives as we can.

So if this is a standing invitation to come to your committee hearings, we're certainly happy to take it up because we think it's very important. But we will endeavour, and we do think it's important, to try to get the voices of the aboriginal court workers across.

Hon. Sue Barnes: I think a lot of people, especially newer people to this committee, are not aware of some of the really good programs, such as the Cree courts, that are out there working. They don't even know what an aboriginal courtroom worker is.

I think when we're doing something as drastic as this, that impacts most of that population, in my opinion, you have to have this understanding. If you don't, I don't know how you can work on this bill and go home and sleep at night. You have to have that understanding, because it's a whole different ballgame.

I stood up on the last bill, talking about the Gladue court system on some of those decisions we made around drugs, specifically because of this population being impacted.

● (1705)

Mr. Jonathan Rudin: You raise, I think, an important point from our perspective. This is not related to the committee specifically. Within the Department of Justice itself, it does not appear that these considerations get attention when these bills are drafted, and that is a concern. While the Department of Justice has an aboriginal justice directorate and an aboriginal justice strategy, those individuals do not appear to be involved—in fact, I know they're not involved—in these sorts of discussions, and I think that's unfortunate. It's more than unfortunate; it's tragic.

What happens is that these sorts of issues can then only be raised, if they're raised at all, at much later stages. It would be so much better if some of those considerations arose right at the beginning, when people started to think about what a bill is actually going to do. It would be good if the department internally looked at the questions in that way as well.

Hon. Sue Barnes: Thank you very much.

The Vice-Chair (Mr. Derek Lee): Well, that's great. I think we are ready to wrap up.

On behalf of the chair, I want to thank the witnesses. And I thank the committee staff for arranging this day of hearings in Toronto.

Seeing no further business, we will stand adjourned until Monday, November 27, in the afternoon.

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

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

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