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Chair

Mr. Art Hanger

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● (1100)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the Standing Committee on Justice and Human Rights to order on Monday, February 5, 2007. With respect to the orders of the day, Bill C-277, An Act to amend the Criminal Code (luring a child), is a private member's bill. The member who is bringing it forward is Mr. Ed Fast.

Mr. Fast, you have the floor.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair. Thank you for the opportunity to make this presentation on Bill C-277.

I believe this legislation is another significant step forward in protecting children across Canada against sexual predators. As the sponsor of this bill, I've been encouraged by the widespread support the bill has received. I am here today to explain the contents of the bill, why Canada needs this legislation, and why I believe this committee, subject to one proposed amendment, should approve this bill.

At second reading, I commended the previous Liberal government for introducing section 172.1 of the Criminal Code. That section makes it a crime for a person to communicate with a child by means of a computer for the purpose of facilitating a number of different criminal offences against that child. This was a significant step forward in protecting our children. It criminalized attempts to sexually abuse a child without actually requiring the child to first suffer harm or damage. Actions that demonstrate a clear intent to use the Internet to commit a sexual offence against a child can result in a conviction. This now allows the authorities to intervene before actual harm occurs to a child.

My private member's bill clearly transcends partisanship inasmuch as it represents a further effort to protect the most vulnerable in our society, namely our unsuspecting and innocent children. I especially want to thank those members of the opposition who have publicly lent their support to this bill.

Bill C-277 is quite simple in that it increases the maximum sentence for the offence of Internet luring from five to ten years in prison. Why increase the maximum sentence for this crime? Like most of you, I have children—four beautiful daughters. They, together with my wife, are the most important people in my life. Annette and I have done everything we can to protect them against those who would take away their innocence and cause them lifelong harm. Thankfully, they are all now moving into adulthood as caring and responsible human beings. But there was a time when they were much more vulnerable than they are now.

As technology continues to improve and change, the challenges that all parents of young children face become more and more daunting. It appears that the Internet is becoming the platform of choice for those who want to sexually abuse our children. Sexual predators are no longer hiding behind bushes in schoolyards and trolling for victims. They now lure children from the privacy of their homes and hide their identities and ages behind the anonymity of their computers.

In turn, Canadian children, as perhaps the most Internet-savvy children in the world, are exposed to predators as a result of inadequate supervision at home and as a result of the use of computers at unsupervised locations. As all of you know, the Internet is a powerful tool for both good and evil. Just as it has a vast potential to educate and improve our lives, the Internet is also a powerful force in perpetrating crime and harming people. Our laws have often not kept pace with these realities.

The current maximum sentence for Internet luring in Canada is five years in prison. In that respect, our country lags far behind others such as the United Kingdom, Australia and the United States, which have all acted to impose criminal sanctions against Internet luring. In those jurisdictions the sentences are significantly higher. In the U.K., for example, federal legislation calls for a maximum sentence of 14 years in prison. In Australia, it is 15 years. In the U.S., the federal government enacted legislation that calls for a mandatory minimum sentence of five years in prison with a maximum of 30 years. Individual states have also introduced their own laws against Internet luring, ranging anywhere from one to 30 years. Commonly the maximum sentence in those states is in the 10-year range. Clearly, if the maximum sentence is a reflection of the importance we place on protecting our children, we need to do more.

Just how prevalent is child luring over the Internet? Statistics are relatively hard to come by in Canada due to the short period during which the luring law has been in place. I can tell you that a November 2000 Ipsos-Reid study that surveyed 10,000 Internet users, aged 12 to 24, showed that 20% said they had actually met in person people who they had become acquainted with over the Internet.

● (1105)

An American study that same year revealed that 19% of youths were sexually solicited over the Internet. Some of you may be aware of Cybertip, a program of Child Find Manitoba. It investigates incidents of Internet-related sexual offences. In its first two years of operation, it was inundated with over 1,200 reports that fell under the category of child sexual exploitation. Ten per cent, or some 120 cases of those, involved Internet luring.

NBC's *To Catch A Predator* program has illustrated just how immense this problem has become in the United States. The program, which stages sting operations throughout the U.S., found no shortage of material to use. I can certainly provide members of this committee with a website that details, unfortunately in very graphic detail, the particulars of over 130 of these cases that resulted in convictions. A Leger Marketing survey reports that 14% of children admit to chatting with strangers while on the Internet. I also want to refer members of this committee to a June 2001 report from the American Medical Association reporting that 19% of youth interviewed experienced at least one sexual solicitation over the Internet; of these, 3% said the sexual overture was aggressive in nature.

If time permitted, I could regale you with lurid details of the convictions and sentences for Internet luring since section 172.1 of the Criminal Code became the law in Canada. In the interest of time, I'll simply say that the sentences in Canada for a first-time offender typically range from six months to two years in prison, with some involving conditional sentences, usually for reasons of sex offender treatment programs. It's only a matter of time before the courts will be called upon to sentence repeat offenders under the luring law. What should be of great concern to all of us is the likelihood that the relatively short maximum sentence of five years will handcuff the court's ability to sentence reoffenders.

Let me offer a tragic yet current example. The case of Peter Whitmore, although not a case of luring, mesmerized the nation for several months last year as police hunted down this predator, who had abducted two young boys. Mercifully Mr. Whitmore was caught, but only after allegedly committing numerous sexual offences against those boys. I'd like to refer very briefly to his history.

If you go back in time to 1993, Mr. Whitmore was convicted of abduction and five sexual offences involving four young boys in Toronto. He got a year and four months in custody.

In 1995, he struck again. This time it was an eight-year-old girl and a nine-year-old boy from outside of Toronto. He received five years in jail for those sexual offences.

Less than a month after his release from that imprisonment, Whitmore was found in a downtown Toronto motel with a 13-year-old boy. He was again sentenced to one year in jail for breaching a court order.

In 2002, a Toronto judge sentenced Whitmore to three more years in jail for probation violations, because he had fled British Columbia after being found in the company of a five-year-old boy.

In March 2004 a National Parole Board report notes that clinicians believe Whitmore has 100% probability of recidivism. Fast forward to July 22: Mr. Whitmore resurfaces in Winnipeg, where he is alleged to have offended against a 14-year-old boy. In July 30 of that year, RCMP issue an amber alert for a 10-year-old Saskatchewan boy who they believe has been abducted by Whitmore.

You know the story. The police were finally able to track down Mr. Whitmore. He's been charged with 15 sexual offences against children. That's the background in which we have to consider this offence and this bill.

● (1110)

My real fear is this, members of the committee. Here's a man who's already been sentenced repeatedly for terms of up to five years in prison for previous sexual offences. Even then, a five-year prison sentence did not deter this predator from seeking out young children again. He spent further time in jail for repeated parole violations.

Let's assume that Mr. Whitmore is again released from prison. If he then resorts to Internet luring to satisfy his urges and is charged under the luring law, the maximum sentence he could receive is the current maximum of, yes, five years, a term that has previously failed to deter him from molesting children.

For all of us, this issue is not only repeat offences under section 172.1, but also the ability to properly sentence the Peter Whitmores of this world, where luring is only a culmination of a long history of serious sexual crimes against children and others. I would also suggest to you that increasing the maximum sentence for luring to 10 years more aptly reflects the seriousness of this offence when compared to other arguably lesser offences under the Criminal Code. If we believe that violent offences against the most vulnerable in our society, especially our children, warrant stronger denunciation, that denunciation must be reflected in the sentences we impose. However, comparison of a number of other Criminal Code offences indicates that the five-year maximum sentence for luring does not represent the degree of denunciation that Canadians would expect.

A quick comparison of some offences that carry a maximum sentence of 10 or more years in prison is instructive.

I refer you to sections 151 and 152 of the Criminal Code, interference and touching for a sexual purpose. Exposing a child to bestiality also has a maximum sentence of 10 years or more. For incest, it's similar. For sexual assault, it's similar. Then we move to some offences that may not involve harm to a child or may not even involve harm to any person. Parental abduction, under section 283, means that a parent who takes a child from another parent—in other words, a spouse or former spouse—is subject to a maximum sentence of 10 years for abduction. Yet in that case one could argue that it may not be even harmful to the child for that abduction to have taken place—at least, not physically harmful to that child.

Simply distributing child pornography, under section 163, again carries a maximum term of 10 years. That again is a non-personal injury offence.

Now I'll refer you to two offences that put it into even more stark contrast. Fraud over $5,000 draws a maximum sentence of 10 years in prison. Did you know that the theft of cattle, under subsection 338 (2), which is another non-personal injury offence, draws a maximum sentence of 10 years in prison? Clearly, when viewed in the context of these comparative offences, the luring of our children for sexual purposes cries out for at least similar, if not harsher, treatment. My heart tells me that the protection of our children is worth much more than the theft of cattle or simple fraud involving $5,000 or more.

I suggest to you a further argument in favour of increasing the maximum sentence for luring. By increasing the maximum sentence to 10 years, we provide the courts with the tools to remove from society for longer periods of time the most serious of habitual sexual offenders—the Peter Whitmores of our country, if you will. Common sense dictates that someone who repeatedly shows a clear intention to commit crimes against our children will not commit those crimes as long as he is incarcerated.

I would also suggest that an increased sentence for luring is justified by the unique nature of sexual offences against children. Many of those who prey on children are habitual offenders and often cannot or refuse to be treated. In other words, some of these offenders will remain a risk to their communities for the rest of their lives. A maximum sentence that delivers an enhanced opportunity for the courts to remove these habitual offenders from our communities clearly serves the interests of our children.

● (1115)

Members of the committee, I took great interest in the comments made by a number of opposition members during the debate at second reading. One criticism of the bill that I found to be most helpful was the implied suggestion from the Liberal member from Mississauga that the maximum sentence for the summary conviction offence of luring was too low and should be increased. In the spirit of those comments, I am prepared to submit for your consideration an amendment to the bill that does exactly that—namely, increases the maximum sentence upon summary conviction from six to 18 months in prison.

I believe that has been circulated, Mr. Chair.

The Chair: I don't have a copy of it in front of me, but I understand it's out and about.

Mr. Ed Fast: Perhaps the parliamentary secretary has that. Mr. Moore, do you have that amendment?

Perhaps I can just read it into the written record. It's an amendment to section 172.1—

The Chair: Excuse me, Mr. Fast. We're going to need a copy of that amendment in both languages. I know it's quite short, but we should have a copy for the committee members.

Mr. Myron Thompson (Wild Rose, CPC): I don't have a copy of it, just the wording of it.

The Chair: The wording is fine, if we can make some copies of that.

Mr. Myron Thompson: It's my private piece of paper.

The Chair: Mr. Pritchard, my assistant, will take it and make sure it's done right.

Mr. Fast, go ahead, please.

Mr. Ed Fast: In any event, Mr. Chair, thank you.

Just to read into the record what I believe the amendment will entail, it's an amendment to paragraph 172(2)(b), which would read as follows:

> an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

The net effect of that amendment is simply to increase the maximum sentence under the summary conviction offence from six to 18 months.

Members will also note that as a result of Bill C-9 being previously amended by this committee, judges will still have available to them the use of conditional sentences in appropriate cases of luring convictions. Presumably this will simplify your consideration of the luring bill.

Colleagues, my private member's bill does not pretend to be a sweeping criminal justice reform. It simply addresses an apparent anomaly in the sentencing provisions of section 172.1 of the Criminal Code. I fully expect, however, that it represents a significant and tangible improvement in the sanctions available against those who repeatedly violate or attempt to violate the innocence of our precious children.

It's our job as members of this House to ensure that we do everything within our lawful power to provide our justice system with the legal tools to keep sexual predators away from our children. It's very simple: we have a job to do; let's do it well.

Parents also have a job to do. Government can only do so much. We must continue to encourage parents to listen to and understand their children, inform themselves about parental controls on their child's computer, keep their child's computer in a public place, stay involved, remain vigilant, and understand that the Internet is not as safe as many may have assumed.

Let me summarize. Bill C-277 achieves the following. First, it condemns in the strongest terms the sexual exploitation of our children. Second, it brings the maximum sentence for luring into line with other sexual offences in the Criminal Code, which commonly provide for 10-year maximum sentences or more. Third, it elevates the seriousness of the luring offence to a level at least equal to that which involves no physical harm to persons—for example, fraud over $5,000, theft of cattle, and in some cases, of course, parental abduction. Fourth, it improves the tools that judges have available to remove from society habitual offenders who represent an ongoing and sometimes permanent danger to our children. Fifth, the bill provides a more flexible tool to sentence offenders for whom luring is just the culmination of a long history of sex-related crimes.

The message of Bill C-277 is very clear. Children are precious, they're vulnerable, and they're worthy of the highest protection. They deserve nothing less.

Thank you, Mr. Chair.

● (1120)

The Chair: Thank you, Mr. Fast.

I do have one question regarding some clarification on the change for the summary conviction side. You're seeking to increase the summary conviction punishment to 18 months from the usual six months, and under summary conviction it's a fine plus six months or both. It is a fine and/or six months. Is the fine still remaining, or are you seeking only a penalty of incarceration?

Mr. Ed Fast: Mr. Chair, I would defer to the parliamentary secretary or perhaps justice department officials. I would assume we are also including the usual fine as part of that, but I certainly would welcome any suggestions in that regard.

The Chair: Thank you.

Mr. Lee.

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

Congratulations to the member on moving his bill forward, stickhandling it through the House and to committee. As the member knows, I didn't immediately buy into support for this bill when I spoke in the House some weeks ago. It doesn't mean I don't support firm provisions in the Criminal Code for dealing with children.

Perhaps there are a lot of Criminal Code offences for which one might rhetorically engage in a discussion and actually get people feeling that we might as well just make every sentence a maximum of life imprisonment and let the judges decide what the real penalty should be, because we're just dealing with maximum penalties in this case.

In his remarks, he has made ample reference to some real-life scenarios, other Criminal Code sections. Would the member concede that the luring offence in the code is simply a communicating offence in the sense that—not that any offence is simple—it doesn't involve any of the other criminal actions that the code already criminalizes, such as kidnapping, abduction, sexual touching, sexual assault in all its forms, and all other assaults and any other number of criminal actions that might follow a communicating offence? Does he concede that what this particular section of the Criminal Code that he's trying to amend does is criminalize the communication for the purposes of what I would call a sexual seduction?

● (1125)

Mr. Ed Fast: Yes.

Mr. Derek Lee: Does he concede that there are other criminal acts that could follow the communicating?

Mr. Ed Fast: Yes, I would.

Mr. Derek Lee: Okay, if that's the case, he then concedes that for a communicating offence he would like to have a maximum sentence available of 10 years. That's essentially it.

Mr. Ed Fast: Yes, because as you will admit as well, Mr. Lee, the communication offence is actually related to a number of offences set out in the Criminal Code. There are different subsections to section 172.1 referencing different age groups—14, 16, and I believe 18 years. For the most part, those offences relate to communicating for the purpose of committing an offence, in most cases a sexual offence.

I suppose my response to you would be this. We have to treat offences against children somewhat differently since, unlike adults, children don't have the same level of maturity as we have to be able to identify risk, to be able to remove themselves from or protect themselves against risk. They will often not have the ability to discern between what is safe and what isn't. When you couple that with the fact that, more and more, we have children who are in home environments that don't provide the necessary supervision or monitoring that would protect these children, I would suggest to you that the maximum sentence we make available to judges in sentencing predators needs to reflect that.

I would hope our argument would not be that we will only impose a maximum sentence of 10 years or more when a child is actually harmed. If indeed the communicating with a child clearly indicates an intent to harm a child, I believe that a maximum sentence of 10 years is appropriate in those circumstances.

Mr. Derek Lee: I'm not making a case to defend an individual who's out there on the Internet, but if the individual is communicating with an 18-year-old there's nothing illegal about it. If a person is communicating with a 17-year-old on the Internet there is something illegal about it. You're saying it is appropriate and a good thing to do to change the sentence from a five-year maximum to a ten-year maximum because that would make a difference. You wouldn't be doing this if it didn't make a difference, I'm sure.

Mr. Ed Fast: That's correct.

Mr. Derek Lee: You wouldn't be doing it just for a political reason; you'd be doing it because you felt it would make a difference presumably in deterrence. Is there any other purpose you seek here?

Mr. Ed Fast: I think I enunciated a number of them, and deterrence is one of those. But another one is providing our courts with the ability, with the tools, to remove from society those who represent a clear danger to the most vulnerable, namely our children.

Mr. Derek Lee: This is just the communicating.

Mr. Ed Fast: I understand that.

● (1130)

Mr. Derek Lee: For anything beyond communicating, there's a whole truckload of offences society is ready to bring down. That's fine, I think you've made a clear presentation here. If I could just say, Mr. Chairman, I don't have any problem at all with adjusting the maximum penalty on a summary conviction upward, as has been suggested here. It may be a minor tweak. It may signal an increased sensitivity in Parliament to the risks inherent in the new Internet world. I signal my support of that and I'll wait to hear other colleagues comments in this round here.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Mr. Ménard.

[*Translation*]

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

I would like to begin by congratulating our colleague for his initiative. I know that when a member tables a bill in the House of Commons, no matter what one thinks of it, that person always does so with conviction. It is important that time be set aside in the House for members who are not government ministers. I have always told my party that there should be two hours a day set aside for private members' business. I think that there is an imbalance between the time given to the government and the time given to members. I am convinced that you have acted based on your convictions and I would like to congratulate you for that.

However, I must admit that we have some reservations. Of course, not as far as your objectives are concerned. Indeed, if your premise is that Parliament should always try to implement the most effective deterrent measures to protect children, I believe that all parties, including the government and opposition parties, would support that objective.

My question is as follows. You would like to increase the maximum sentence to 10 years. I exclude from this issue the debate surrounding the study of Bill C-9, because that bill, as you know, was amended significantly. You drafted a bill which targets people who lure children. In your opinion, what is the scope of this offence? Judges will have to consider what luring children is exactly. How would you define that? What exactly does "luring children" mean to you?

I will come back later on to the other offences which follow, because that is basically what you're asking us to vote on: luring children over the Internet. You then referred to other offences of a sexual nature, but these do not necessarily fall under section 172.1 of the Criminal Code. You want to increase the offence to 10 years' imprisonment. So, in your view, what exactly does "luring children" mean?

[*English*]

Mr. Ed Fast: I think Mr. Lee used an appropriate synonym. It involves the communication for the purpose of committing a number of sexual offences, and actually there's an abduction offence included there as well, if you look at the Criminal Code.

Luring is an attempt to communicate with children by means of a computer, typically the Internet, in order to establish a relationship with that child, usually a relationship of trust. These children typically find themselves in situations where they may be looking for friendship. They may be looking for someone to trust. They may be in home situations that are not necessarily as supportive as they should be. So the predators use this technology to gain the trust of that child to start communicating through sexual banter, and typically photographs may be sent over the Internet. Then eventually an attempt is made to lure that child out of the home for a rendezvous where the predator would obviously sexually abuse or exploit that child.

That's my understanding of what would typically happen in a luring offence.

[*Translation*]

Mr. Réal Ménard: The three of us understand—that is, those who have asked questions until now—that luring a child means deliberately trying to gain the trust of a child on false pretences to ultimately commit a second offence. Consider section 172.1. It is clear that the second offence, the one which we expect will follow and which we are concerned about—of course we wish to be very vigilant—will not have happened yet. We agree on what luring a child means under the Criminal Code.

Have you researched how various courts have applied section 172.1? Could you point to various studies which have been done on the subject? If not, I can ask this question of the officials who will appear before the committee later on and who most certainly have studied this matter.

● (1135)

[*English*]

Mr. Ed Fast: Yes—

[*Translation*]

Mr. Réal Ménard: I'm wondering about something else. I find 10 years too long. I don't know how a sentence this long would help you reach your objectives. But now I am ready to hear what you have to tell us.

[*English*]

Mr. Ed Fast: Well, I could certainly regale you with numerous cases that have now been dealt with in the courts. Almost all of them, except for a very few, are first-time offences, which makes sense since this is a very recent legislative initiative.

In terms of whether those cases or those sentences are having an impact, it's very difficult to say, because we don't have a long history on this offence. It's been in place only since 2002.

I do know that the sentences typically range from six months to two years, and I would say that there's a significant degree of consistency in the sentencing. At times, for example, if there's a two-year sentence.... We have at least one instance where that was a conditional sentence because the offender was already in the middle of a treatment program in the community rather than within the prison system.

What we want to do is provide the judges with the tools to be able to express society's denunciation more effectively. We also want to provide them with the tools to remove these individuals from society.

I went back and reviewed the comments that members of the opposition as well as government members made at second reading. I noted, at least from your party, Mr. Ménard, that the chief objection to this bill was the fact that Bill C-9 would have been triggered. And as you know, Bill C-9 is no longer in play.

[*Translation*]

Mr. Réal Ménard: You're trying to gain my support, you rascal. I understand that you have taken a strategic approach, which is understandable, but I know that Bill C-9 was defeated. I'm just wondering how effective the measure would be, but I understand your point. Go ahead.

[*English*]

Mr. Ed Fast: Thank you.

[*Translation*]

Mr. Réal Ménard: If I were you, I would do the same thing.

[*English*]

Mr. Ed Fast: I make that point because I believe one of the strong arguments that have been made in favour of leaving discretion to impose conditional sentences with the judges was that we need to leave enough room at the bottom end of the sentencing structure to be able to take into account all of the different circumstances that present themselves in court. I would argue that the same reasoning should apply to the maximum sentence at the upper end of sentencing. There needs to be—

The Chair: Monsieur Ménard, thank you.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I still have concerns—I expressed them last week for the committee—that Bill C-277 in fact could potentially invoke the provisions of Bill C-9, which now, of course, have been radically altered.

Are you a lawyer by background?

Mr. Ed Fast: Yes, I am.

Mr. Joe Comartin: My concern is that we'd have a judge view Internet luring as a serious personal injury, which would invoke the section—if he or she made that determination—and then it would prevent the use of conditional sentences. I'm a believer that in the proper set of circumstances, conditional sentences, and the treatment that oftentimes goes with those sentences, is one of the significant ways we can deal with the first-time offender in particular.

I wonder if you've looked at this section from that vantage point. I haven't had an opportunity to review cases to see. But knowing the creativity of both our crown and defence lawyers in the country, I can see a crown at some point asking the court to make a determination that luring is a serious personal injury offence, in the sense of the psychological impact it has on a young person, and prevent the judge from using the conditional sentence.

I just wondered if you'd done any research on that aspect of it.

Mr. Ed Fast: I was aware of your concerns, Mr. Comartin. I've had discussions with the parliamentary secretary, and I understand he's consulted with Justice staff, and they have advised him that they believe it's a very remote possibility. Yes, the likelihood is remote that that interpretation would be imposed on this particular amendment, or on section 172.1, if the maximum sentence was increased.

I'm not concerned that it's a serious issue. I understand your concern about allowing for conditional sentences, especially for cases where individuals are in treatment and that treatment is in the community rather than within the prison system.

● (1140)

Mr. Joe Comartin: I'll hold my other questions, Mr. Chair, until the staff comes forward.

The Chair: Thank you, Mr. Comartin.

Mr. Thompson.

Mr. Myron Thompson: Thank you.

Thank you, Mr. Fast. I really appreciate your efforts in bringing forward a much-needed bill. I support your efforts fully, and once every member gets a copy of the proposed amendment from your suggestion, I will be moving that some time later in the meeting.

The Chair: Do you want to do it while you have the floor?

Mr. Myron Thompson: I want to ask a couple of questions, and then I'll do it before my seven minutes is up.

The Chair: All right. Go ahead with your questions.

Mr. Myron Thompson: I see it's being distributed now. It's very short and it shouldn't take too long to look at.

I get a little nervous when I'm in a house full of lawyers—

An hon. member: For good reason.

Mr. Myron Thompson: For good reason, because I know what the purpose of this bill is, and when some lawyers begin talking about it being a communication factor or something, suddenly I get nervous. Are they making light of this whole situation when they get into those kinds of conversations? Basically you're going after a person because of a conversation, and I think we all understand the purpose of this luring activity. I think we all understand that it has a purpose of no good.

Mr. Fast, you may be aware that I've been trying for 13 years to get some fast, hard action against child pornography, and every time we seem to be moving in that direction through legislation.... I've had private member's bills, but I'm one of those unfortunate guys who never gets his name drawn.

Then some judge makes a decision that there could be some artistic merit, so it gets watered down a little. And then they come out a little later and they throw in the words “public good” or “useful purpose”, because they're so afraid that whatever legislation they present won't meet the charter test. Yet the purpose of getting rid of child pornography has nothing to do with the charter, as far as I'm concerned. It has everything to do with protecting children against this evil deed. And luring is an evil deed.

I'm not so sure that luring an 18-year-old should be legal. What's the purpose of luring except that usually it's no good? If you're luring an 18, or 19, or 20-year-old, I think the same purpose is probably in the back of their minds, these people who have no better way of so-called communicating than that method. Common sense tells me that this activity itself is not a good practice, and that it leads to no good. But I'm quite certain that if you brought in legislation that made it so you couldn't do it with 18- or 19-year-olds, then there would be something that would say it wouldn't meet the charter test because of certain rights.

That's how I feel about this whole picture of trying to do the right thing, and you get little comments that worry me, not that I disagree that Mr. Lee has a point to make. I understand the point, but is that really a concern of mine? Not a bit. Is that the concern of the public? No. Is that the concern of parents? No. They want action to protect their kids. They don't care about the little communicating difficulties or whatever.

I wish we would get the courage to say that we are going to start bringing down the hammer on these people, because luring has an intent, and that intent is to harm someone, whether it be an adult or a kid, but particularly kids.

I'm wondering how you feel about my unlawyerly opinion.

Mr. Ed Fast: Mr. Thompson, the way I would respond is in this manner. At this table, yes, you're right, there are a number of lawyers; however, lawyers aren't generally without some compassion and understanding for the needs of children and the need to protect children.

As you know, at law there are a number of things that need to be in place before we convict people. The whole notion of *actus reus* and *mens rea*, which is the act itself and then the whole notion of intention, is a critical part of our justice system. We have to recognize that, because it's what's gives us a system of justice that balances the rights of those who have been victimized against those of persons who have been charged but not yet convicted.

However, I would say this. Especially when it comes to children, we need to be especially vigilant in ensuring that we have tools in place to protect them, because they don't have the same ability as you or I have to defend themselves against predators. As I mentioned earlier, they don't have the same ability to discern what's safe and what isn't. They don't have those critical thinking skills yet. They're easily impressed. They're impressionable young children.

I believe that when we're dealing with children and an attempt to sexually or otherwise hurt them, we need to impose sentences that truly are deterrent, and also provide the courts with the ability to remove habitual offenders—the ones who would repeat their offences no matter what you do with them—from society.

I have sympathy for your frustration with the way in which the justice system sometimes, perhaps, fails to address the needs of victims, especially children.

● (1145)

Mr. Myron Thompson: Thank you.

I certainly understand that many people such as you and Mr. Lee and others have compassion for the cause you're trying to put forward. I realize that. But I guess it is the frustration, after 13 years of working on child pornography and really getting somewhere in dealing with the problem after the fact, that it doesn't look as though we're ever going to be able to get rid of the problem because of the system. The system is supposed to work mostly, I think, for victims, and it doesn't seem to.

I appreciate your efforts on this bill.

Mr. Chairman, after listening to Mr. Fast's suggestion to amend the legislation—the amendment, I understand, has now been distributed among the people—I would at this time like to move that a paragraph (b) be added to section 172 following paragraph (a), as follows:

> (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Given the importance of the bill, Mr. Chairman, and the need to seriously address this phenomenon of child luring, I wonder if a member of the party opposite would be willing to second that motion.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I second it.

The Chair: The motion is on the floor and is seconded by Mr. Murphy.

There is one problem with the amendment, Mr. Thompson and Mr. Murphy. There has been some discussion with the legal counsel. The problem, as it relates to the parent act under that rule, is that paragraph 172(2)(a), which this motion purports to address, is not covered or dealt with by Bill C-277, which deals only with paragraph 172.1(2)(a). So unfortunately it's an inadmissible amendment.

Mr. Myron Thompson: The system won't allow it, I'll bet you.

The Chair: That's basically it, yes. We're talking about two different sections or subsections here.

Mr. Myron Thompson: That's basically it. Obviously we are going to have some support from this committee to get this type of change. Just exactly what would be the process?

I think Mr. Fast understands why it's so frustrating.

The Chair: If there's a desire to challenge my ruling on it, the committee can certainly overrule my ruling, if that's the desire of the whole committee.

● (1150)

Mr. Réal Ménard: And you will resign?

Some hon. members: Oh, oh!

Mr. Réal Ménard: I just want to know.

The Chair: Your secret desires and thoughts are now out on the table, Mr. Ménard.

Mr. Myron Thompson: I'd like to see this amendment added, because it's a very important bill.

The Chair: Is it the consensus of the committee that this amendment be accepted as presented?

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I understand what Mr. Thompson and all of our colleagues are saying, but what I am interested in is the precedent this would create. You might remember that some of our colleagues here at the table have in the past tabled amendments to bills which were beyond the scope of those bills. You end up with problems when a committee supports an amendment the scope of which exceeds that of the bill. If we establish a precedent which works in favour of regular members of Parliament, which we are, whereby amendments exceed the scope of a bill, I expect this precedent to be used on other bills. I just want to make sure that things are clear.

[*English*]

The Chair: It's the authority of the committee, if the committee as a whole agrees with this particular amendment and wishes to overrule what I have stated is the issue, that's its choice, now and at any other time.

Mr. Lee.

Mr. Derek Lee: This is a small point of order, but the committee may or may not collectively want to see this amendment, and might be prepared to overrule the chair, but the fact is that the rule still exists. Once the bill was reported back to the House it would still be just as vulnerable. There's no provision for overruling the Chair of the House, the Speaker.

I think what I'm suggesting is that if we were to overrule the chair, if some were to move the motion and the chair ruled it out of the order, then the chair's overruled by the committee and it went to the House, the whole act might be seen just as a political statement and it might be moot because of the view of the Speaker. The rule is really quite clear, and I think the staff have pointed that out.

The Chair: That's very true. The issue could stumble forward and then be brought before the House and the Speaker.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I was just going to say I think Mr. Thompson was asking for a legal way of changing this, not this illegal way of overriding the chair.

Would we have to go back to the House? Can you amend it at third reading?

The Chair: The issue is that this committee can unanimously agree to include this provision; there's no guarantee what might happen on the floor of the House. One person might stand and object, and then it goes before the Speaker.

I believe Ms. Jennings is on the list first.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): If I understand the procedures and rules which apply to committees, you are right to say that this committee could study and vote on a motion which would reverse your decision on whether the amendment is in order or not. However, as Mr. Lee mentioned, the House of Commons could then reverse the committee's decision.

My question is in line with the one asked by Mr. Ménard. If the House of Commons did not reverse the committee's decision, it would create a legal precedent which could lead committee members, without the input of their committee colleagues, to table amendments which exceed the scope of the bill currently under study by a committee. In that case, the committee chair would then be forced to decide whether an amendment was in order, even if it exceeded the scope of a bill.

● (1155)

[*English*]

The Chair: I don't think it would be the first decision made by a chair to be overruled by a committee.

Hon. Marlene Jennings: My point is that should a member of this committee table a motion challenging the chair's ruling that this amendment is out of order because it's beyond the scope of the bill we're studying, and should the committee adopt that motion, thereby allowing this amendment, and should the committee then actually adopt the amendment itself, if it goes to the House and the House in its wisdom determines that it will allow that amendment to stand, would that create jurisprudence that would then provide that any time a member brings before committee an amendment that is beyond the scope of the actual bill being studied, the amendment would automatically be admissible?

The Chair: I'm just advised that we don't have jurisprudence in the House; we make laws, so there would be no precedent.

Go ahead, Mr. Petit.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): No, it's okay.

[*Translation*]

My question has been answered.

[*English*]

The Chair: Go ahead, Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I have two points.

First, there is no legal precedent, but there are precedents contained in Marleau and Montpetit. In this period of your life, you seem to be more progressive than conservative, which gives me great pleasure.

However, it is clear that if we adopt an amendment which exceeds the scope of the bill, we would create a precedent which might be referred to at other meetings. It would not bind the Speaker of the House of Commons, who would certainly reverse your decision because he would not want such a precedent.

Mr. Chairman, the issue is, rather, should we discuss this now or wait until we go into clause-by-clause and continue our meeting with the official from the Department of Justice? In theory, we cannot entertain an amendment, because we are still not at the clause-by-clause study stage.

[*English*]

The Chair: That's a good point, Mr. Ménard. We are not quite at that point. We can certainly continue our discussion; clause-by-clause study will actually yield further opportunity for amendment, and we'll most likely have a discussion at that point.

If it's satisfactory to the committee, we'll re-engage this conversation on the amendment when we reach clause-by-clause consideration.

We have one hour, but it appears that the time has run out for Mr. Fast. Members of the justice department will be standing now on the floor for their comments.

Let's see who is next on the list. Mr. Thompson is finished; Mr. Bagnell is next in line. Go ahead.

Mr. Fast, please, you have two minutes left. We're going to give you that opportunity to sum up.

Mr. Bagnell has a question.

Hon. Larry Bagnell: I have a short question.

You said you could regale us with cases. I'm wondering about the number of times this has come to court. You briefly mentioned this. With reference to the number of times the judge actually gave the maximum, did he give the allowable maximum of five years a high percentage of the time? If he didn't, if he never gave it, then how would they ever go to 10 years?

Second, were there any judgments in which the judge said he wished he had the ability to give a longer sentence but was constrained to five years?

● (1200)

Mr. Ed Fast: Are you referring to the luring bylaw?

Hon. Larry Bagnell: I mean the one you're proposing to change here.

Mr. Ed Fast: I hope I haven't misled you. The five years I referred to were the five years that Mr. Whitmore was sentenced to for a non-luring sexual offence. He'd been sentenced a number of times before and obviously hadn't learned his lesson—

Hon. Larry Bagnell: No, no, I'm not thinking about a particular case. What I'm referring to is the sentence that you're trying to change from five years to 10. In the cases that have already come up, the cases in which the judges had the option of five years, did the judges use the five-year sentence very often? Did they ever complain in their judgments that it wasn't enough and they wanted more time?

Mr. Ed Fast: The range of sentencing at present, with the short history that the offences had in the Criminal Code, is between six months and two years of imprisonment, in some cases with conditional sentences and in some not. So we don't have a long enough history where we can say the courts have been trying to impose higher sentences but have been constrained. We haven't had any repeat offences. We've had only one situation, as far as I know, where there was a luring offence coupled with a number of other sexual offences, such as sexual interference. In that case, the individual received a total of three and a half years. But again, we haven't had a Peter Whitmore charged with a luring offence yet. And if someone like that were to come forward after having served many years in prison and still indicate recidivism, at that point we would need some tool available, especially since it's not only our children who are at risk, it's mentally disabled children.

We have some cases here. There's one case, Regina v. Deck, that involved a 13-year-old girl. Not only was she a minor, but she had some mental disabilities, which this predator, again, exploited for his own ends.

The Chair: Thank you, Mr. Bagnell, the time is now up. I appreciate it.

Mr. Fast, thank you.

Mr. Thompson, on a point of order.

Mr. Myron Thompson: I'm just wondering if it's required that I withdraw the motion from this meeting and reintroduce it at clause-by-clause. The most elemental duty we have is to protect society. This is so frustrating. We have little nitty-gritty things that keep coming up and we can't move forward with stuff that ought to be moved forward with. I'm cheesed right off about that. And I don't know why. Somebody is going to have to explain it to me.

The Chair: Mr. Thompson, we're not going to withdraw the motion at this point. We'll resume discussion on that as we do clause-by-clause.

Thank you, Mr. Fast.

I'd like to call Carole Morency, senior counsel, criminal law policy section, to the table.

Go ahead, please, Ms. Morency.

Mrs. Carole Morency (Senior Counsel, Criminal Law Policy Section, Department of Justice): Good morning.

As the committee has heard already, the Internet luring of children offence in section 172.1 was proclaimed into force on July 23, 2002. It was enacted as part of former Bill C-15A, which included Criminal Code reforms to better protect children from sexual exploitation, particularly vis-à-vis the use of new technologies such as the Internet.

This offence prohibits the use of a computer system, such as the Internet, to communicate with a young person for the purpose of facilitating the commission of one of the enumerated child sexual or abduction offences.

[*Translation*]

In the past, luring children over the Internet had become a new concern which was not properly addressed by the Criminal Code. Although the law completely forbade sexual physical contact as a result of Internet communication, the law did not really address action taken before that happened, action that facilitated this type of contact—Internet communication—to prevent a sexual offence or a kidnapping offence from being committed.

● (1205)

[*English*]

So, for example, this conduct could have been charged as an attempt to commit a child sexual offence, but as the law on attempts requires that the conduct amount to more than a mere preparation, it was difficult to have sufficient evidence to found a reasonable belief that an offence had been committed before the prohibited physical sexual contact actually occurred.

The Department of Justice, together with our provincial and territorial counterparts, continues to monitor the implementation of section 172.1. Given the fact that the offence only came into effect in mid-2002, there really is not much hard statistical data relating to its use. What I can bring to the committee's attention is a summary of some of the relevant reported case law.

Nonetheless, we are seeing reported cases and we can confirm that section 172.1 is being used successfully to address Internet luring of children. Charges are being laid and convictions secured, including as a result of guilty pleas and with sentences of imprisonment. So we believe that section 172.1 is having a positive impact in safeguarding children and youth against such online sexual exploitation. And, of course, recognizing that Canada continues to be one of the world's most plugged-in countries, we know that the importance of section 172.1 in this regard will not diminish.

For example, three years ago Statistics Canada reported that 71%, or almost three-quarters, of 15-year-olds use the Internet at least a few times each week, with 60% saying that they used it to communicate electronically through, for example, e-mail and chat rooms.

Parents who participated in the Canadian component of the 2004 World Internet Project survey that was reported in October 2005 estimated that youth in their households spent, on average, 8.9 hours per week on the Internet. Last summer, in August 2006, the United States National Center for Missing & Exploited Children released a report on the 2005 Youth Internet Safety Survey, a survey of 1,500 representative national samples of youth Internet users aged 10 to 17 years. It found that, of the youth who were targeted for sexual solicitations and approaches on the Internet, 70% were girls and 30% were boys, and 81% of those targeted were 14 years old or older. Overall, 90% of the sexual solicitation on the Internet happened to teenagers. They found none involving 10-year-olds, and 3% involved 11-year-olds.

So clearly efforts that serve to strengthen our responses to this type of sexual exploitation will better protect youth. Bill C-277's proposal to increase the maximum penalty on indictment for this offence will do this. As well, Bill C-22, which is now before this committee and which proposes to increase the age of consent to sexual activity from 14 to 16 years, will also better protect youth against Internet luring, specifically 14- and 15-year-olds, who the recent research shows are most at risk for this type of exploitation.

With that, I'll end my introductory remarks. I would be pleased to answer any questions the committee may have for me.

The Chair: Thank you.

Mr. Lee, please.

Mr. Derek Lee: I have two very quick questions, Mr. Chairman, and Mr. Bagnell will probably want to take the rest of my time.

The first one is on this particular offence. Although this may not relate to the penalty provisions, if you had two 16-years-olds attempting to seduce one another on the Internet, I take it to be the case that those actions would be criminalized by this provision. You can say yes or no to that.

Secondly, do the same type of criminal prohibitions exist for this type of communicating or attempt at seduction, or however one would phrase it, by other means? By word of mouth? By telephone? By fax machine? Maybe it's tough to figure out where the phone becomes a computer these days because telephones can receive and send pictures.

Could you clarify both of those questions for me?

And, then, Mr. Chairman, to the extent that there's more time, Mr. Bagnell could take my time. Thank you.

● (1210)

The Chair: Thank you, Mr. Lee.

Ms. Morency.

Mrs. Carole Morency: Anyone who commits the luring offence could be charged. If it's a young offender, and they meet the specified circumstances of the offence, they could be charged. In fact, the research I referred to from the United States showed that of the youth who were targeted through sexual solicitation, one in four were targeted by peers—contemporaries, those of the same age. It's a possibility. I'm not aware of a case that's been reported in which a young person has been charged in Canada.

On the second point, you're correct: section 172.1 applies to the use of a computer system for the purpose of communicating with a child for that purpose, but that computer system has a definition in the Criminal Code, and it would not include a telephone. The substantive offence of section 152, for example, an invitation to sexual touching, would apply in a situation where a person invites another person to engage in prohibited sexual conduct. A case could be made using that in the old-fashioned way, as in the way offenders, before there were new technologies, used to lure a young person into their home or away from their parents' control for those purposes.

Mr. Derek Lee: For the sake of symmetry, what's the penalty provision attached to invitation to sexual touching?

Mrs. Carole Morency: The maximum on a summary conviction is 18 months. It was increased last year by former Bill C-2. On indictment, it's 10 years, and there's a mandatory minimum penalty.

Mr. Derek Lee: Thank you.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Mr. Lee and Mr. Comartin mentioned the effect of Bill C-9. Now that we've drastically changed it, in your opinion, would this crime be caught by the new Bill C-9?

My last question is on this ability to lock up people who are always going to offend. Having reoffenders with no chance of being cured is obviously a frustration. Can you explain how the system works for people like Clifford Olson? What are the options for keeping someone in jail past their sentence, other than what is in this particular bill?

Mrs. Carole Morency: On the first question about the impact of Bill C-9—conditional sentencing reform as passed by the House on this offence—it was noted in the question to the previous witness that under Bill C-9 now...Bill C-277 would increase the maximum on indictment to ten years if passed. It would then be possible to make the argument that a conditional sentence should not be available in a luring charge if the court were persuaded that the facts of the case before them met the threshold definition of a serious personal injury offence, which is defined in section 752 of the Criminal Code. Under the circumstances, the facts of the case would have to show beyond a reasonable doubt that it met that threshold. As was indicated, based on the types of cases we've seen that have proceeded under the Internet luring offence to this point in time, and as reported, and given the facts and the considerations that the courts have looked at, our view is that it would be difficult to see that kind of threshold being met in these cases.

That said, I would like to take a moment to explain how the courts have dealt with the luring offence in terms of conditional sentences to this point. Of particular importance is the Ontario Court of Appeal's 2005 decision on the Folino case, which is a case that gets cited in many other cases right now as setting the bar. When is a conditional sentence appropriate in a child luring offence? In that case, the Court of Appeal held very clearly that in most cases involving the offence of child luring, the sentencing goals of denunciation and deterrence will require a sentence of institutional incarceration. Indeed, it will only be in the rarest of cases that a conditional sentence will be appropriate in a case involving this type of offence. It's been cited by other courts. Of 19 reported cases that I reread to prepare for today, there were only two that resulted in a conditional sentence. One was the case I just described—the Folino case.

More recently, the Ontario Court of Appeal, in the Jarvis case from August 2006, reiterated its point about the importance of deterrence and denunciation in these cases and, moreover, went on to say that the conduct prohibited by section 172.1 is serious, as is the secondary offence. If the person took the next step and committed one of the enumerated sexual offences, the court said, then for one of those offences now—in this case it was the invitation to sexual touching—you couldn't have a conditional sentence because of the presence of a mandatory minimum penalty as a result of Bill C-2 from the former Parliament.

Based on our review of the case law to this point in time, and as it's been reported, conditional sentences are—as I say, two cases out of nineteen—very exceptional and very much a reflection of the facts and circumstances in those cases.

● (1215)

The Chair: Thank you, Mr. Bagnell.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, can you tell us whether we will go into clause-by-clause before 1:00 p.m.? We are anxious to finish the clause-by-clause study today.

What I am wondering about is how the evidence will be administered. At the beginning of your presentation, you explained how hard it was for the courts to establish proof of communication. Can you tell us a little more about this? We have become more sensitive to this issue as we listened to the sponsor of the bill speak to it.

Mrs. Carole Morency: Usually, evidence is established on the basis of emails sent by the accused to the child. These emails not only contain very explicit discussions of a sexual nature—

Mr. Réal Ménard: Propositions too?

Mrs. Carole Morency: Yes, but not always. Usually, there is an evolution in the emails: the accused wishes to meet with the victim. As I said at the beginning, the objective here is to prevent the offence of sexual physical contact from happening. In the case of luring, the offence is committed even before there is physical contact. So you don't need proof that there was physical contact, but only proof that communication took place in order to sexually exploit the child.

Mr. Réal Ménard: Fine. So would the department recommend that the committee support the bill?

Mrs. Carole Morency: The issue is still before the courts. I will continue in English.

[*English*]

Courts will always look at the maximum sentence that is imposed. In some of the cases dealing with the luring offence, it has been said that the maximum is reserved for the most egregious, the most serious offences. Based on five being the top, a judge will say, I put this case being at whatever, and they define a spectrum. Typically when the maximum is increased from five to ten years, you would expect to see a similar increase in that consideration. So Parliament in its wisdom enacts a higher maximum penalty. It sends a message to the courts to treat these offences more seriously. So for what might have attracted a two-year sentence previously with a five-year maximum, the argument would be that it should attract the mid-range of a ten-year maximum.

[*Translation*]

Mr. Réal Ménard: Don't you find that a bit excessive?

Mrs. Carole Morency: The objective of the former Bill C-15 was to make prevention easier. At the time, there were no provisions in the Criminal Code dealing with simply attempting to do something, because it was too difficult.

Mr. Réal Ménard: Don't you find a 10-year sentence excessive compared to other provisions in the Criminal Code?

[*English*]

Mrs. Carole Morency: At the time, the five years was seen as comparable to a sentence for an attempt to commit the sexual offence. An attempt will attract half of the maximum. What we are seeing is that more cases are proceeding, that the Internet use is not diminishing, and that the risks are higher. So there is a very strong argument to be made to say yes, we're having some success with the Internet luring offence to this point. A higher maximum penality underscores that we need to do more.

● (1220)

[*Translation*]

Mr. Réal Ménard: So the department would not object to the committee supporting this bill.

[*English*]

Mrs. Carole Morency: No, and in particular following the reforms that were enacted as part of the former Bill C-2, raising the sexual exploitation offence from five to ten years at the maximum, it is consistent.

[*Translation*]

Mr. Réal Ménard: Fine.

Mr. Chairman, you know me: I like logic.

[*English*]

The Chair: I would have to suggest, Mr. Ménard, that you ask the parents of children who have been subjected to luring. They might have a different opinion from that of the department. Whether the department likes it or not, what we're trying to do is focus on them.

Mr. Comartin.

Mr. Joe Comartin: Thank you. Mr. Chair.

Thank you, Ms. Morency, for being here.

You threw some numbers of cases out. Did you look in *Juristat* to see how many times it's been used either annually or in total since its inception?

Mrs. Carole Morency: Unfortunately, it is almost four years since we had this before us. It's not enough time to get statistics through the Canadian Centre for Justice Statistics, so the numbers not are really helpful in explaining how many cases.

There are a handful of statistics from 2003-04, which are the most recent years available, that aren't very helpful. As I said, what I try to do is this. With our provincial counterparts, we're aware of about 70 charges that have been laid in Canada to this point in time. But that's not reliable, in the sense that it relies on some media accounts and some cases that have not been reported.

To prepare for today, I reread reported cases, so that I would have a sense of where we're at. Of the 19 cases, ranging from 2003 to 2006, there were 16 where the accused pled guilty, which was very high. There was one case where it wasn't clear. In seven out of 17 cases, the accused was charged as a result of luring someone he believed to be under the age of 14, but who in fact was an undercover police officer. In two cases, I couldn't detect if that was the case.

As you heard, concerning the sentences, two cases have already involved a conditional sentence order. One case had a suspended sentence, and 15 of the 19 resulted in imprisonment, ranging from six months to two years less a day. There was one acquittal, and that case is under appeal.

The majority cases occurred in Ontario, then Alberta, and there was one case in each of British Columbia, Nova Scotia, and Manitoba.

Mr. Joe Comartin: Is what you just told us based on the reported decisions that you looked at? Or are there *Juristat* figures as well?

Mrs. Carole Morency: No, these are just cases that you can find when you do a case law review in Quicklaw.

Mr. Joe Comartin: Do you have the numbers here of how many decisions—not the reported decisions—were identified by *Juristat*?

Mrs. Carole Morency: It was six for 2003-04, but as I said, when I tried to get that, it wasn't available in a useful format. This gives us a better sense of what the sentencing outcome has been in those cases.

Mr. Joe Comartin: In those cases, were they combined with other charges?

Mrs. Carole Morency: Yes, there are some offences where the offender was charged with other sexual contact offences.

Mr. Joe Comartin: Did they tend to do the sentences based on consecutive or concurrent?

Mrs. Carole Morency: It was on concurrent.

Mr. Joe Comartin: Did the other offences generally have a higher penalty?

Mrs. Carole Morency: Typically, but it would depend on the nature of the offence and at what point in the process they were caught.

Sometimes you'll find that in these types of cases, the accused will ask for pictures. When they go and check, they'll find child pornography, so child pornography charges are common. Some of the sexual assault contact offences may be found as well.

Mr. Joe Comartin: Then they will end up with a mandatory minimum for being in possession of child pornography, right?

Mrs. Carole Morency: That is post the enactment of Bill C-2.

Mr. Joe Comartin: Coming to the significant concern I have on this section, and we've already addressed it, is there any way we can reserve conditional sentences where appropriate, within the amendment that's being presented?

Mrs. Carole Morency: I'm not sure if I'm in a position to comment on that type of amendment. As I've already indicated, it is fair to say that on our assessment of how a serious personal injury offence might be interpreted, it would be difficult to imagine this.

But if you look at what I've described concerning how the courts already deal with these cases, conditional sentences are exceptional. In the two situations where CSOs were granted, the court did so as an exception rather than as a matter of routine process or practice.

● (1225)

Mr. Joe Comartin: Police always have trouble hearing a court of appeal say that it's going to be only in the rarest cases, but this is the one we have in front of us. The message that goes down to the lower court is that it can be used, and rarity becomes more the norm than the exception.

Mrs. Carole Morency: In that case, the mitigating factors and aggravating circumstances were quite significant. The accused had been in pre-sentence custody, suffered a number of assaults, and was expecting that this would happen again with the period of imprisonment. The accused was engaged in a period of outside treatment and from the very beginning—there was no prior criminal record—took responsibility for his actions. In that case, the court provided a fairly good listing of the factors to be considered.

Mr. Joe Comartin: I just want to pursue your saying you don't see a way out. I'm looking at a sort of notwithstanding clause—notwithstanding 1(a), conditional sentences could still be used in the appropriate circumstances.

Mrs. Carole Morency: I think I'm in a difficult position in terms of trying to comment on that in the case of Bill C-9. It may be an issue, for example, that gets considered in the other place, in its review of Bill C-9.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

Good afternoon, Ms. Morency.

I would now like to indirectly thank Mr. Fast, the sponsor of this excellent bill, which I hope will receive everyone's support.

I have a technical question for you. The objective of the amendment is to increase the length of sentences. It also addresses communication carried out with a criminal intent. But the Crown must first prove that there is criminal intent. If so, an indictment will obviously follow, as the case may be.

I was wondering whether you are familiar with computers. I suppose so. I have four children who are all over 18. We had a dozen computers at home. Let me assure you that these machines were on day and night. When people chat online, they can do so in small, confidential chat rooms where they can play sex games.

In the example I'm giving you, there is no contact. Section 151 of the Criminal Code refers to direct or indirect contact with the body of an individual or with an inanimate object. However, you are talking about communication with criminal intent.

Let me give you an example. In Quebec City, a journalist had 1,000 pictures of young men and boys on his computer. This man was a pedophile. But when we talk about increasing sentences to 10 years, does that take into account the fact that a computer is the extension of an individual? People go on to these chat rooms for sexual contact, and communicate with a criminal intent. Are those cases covered? I was wondering about that when I read section 151.

Mrs. Carole Morency: If I may, I will respond in English.

[*English*]

The offence of luring requires the Crown to prove beyond a reasonable doubt that the accused communicated for the purpose of committing one of the enumerated offences. The example you give involves offences under section 151, which specifies that there be touching. Typically, in these luring cases, charges relate to section 152, which is an invitation to sexual touching, so the accused, through their communications, typically asks the young person to answer some very sexually explicit questions, to touch themselves, etc., and that type of thing. The offence is committed—looking at the luring offence right now—even if there's no touching, because the communication is “for the purpose of”. That's where the criminal intent is.

When you have situations of pop-ups or things like that, again the question would be whether there is intent when an accused is turning off or trying to get out of these things that come up on the Internet. If they involve, for example, child pornography, accessing child pornography is an offence, but the Crown would still have to prove that the accused intended to access that. So if it's a pop-up and they're trying to get out, it's a different situation. But when you look at the cases that have been reported, it's clear that the communications form the basis for these charges. They are typically back and forth, and it is fairly explicit that the accused is describing exactly what he wants to do to the young person, and vice versa, and then often there is a rendezvous to meet. The criminal intent is in the communications for the purpose of, and it's typically relating to the section 152 charge. There is one case that involved the child abduction offence, in which the child was actually abducted as a result.

● (1230)

[*Translation*]

Mr. Daniel Petit: Do I have time for another question?

[*English*]

The Chair: Go ahead, Mr. Petit.

[*Translation*]

Mr. Daniel Petit: That generally answers my question. But I want to make sure that I understood. In my area, it turns out that a man had over 1,000 pictures of young boys on his computer. This man had also been in chat rooms with other people, but these people were not necessarily the boys whose pictures he had. That's why I was wondering if you were familiar with computers.

I know what I'm talking about because I had to look into the matter at a certain point. In this case, I am not referring to regular chats where anyone can come online, I'm talking about private chat rooms. Generally speaking, people who are online don't know they are there. For instance, as an adult, I can enter a private chat room, proposition someone, talk about intimate things and undertake a sexual relationship online with a 12-year-old child. What exactly does communication with a criminal intent mean? Do you understand what I'm getting at?

Mrs. Carole Morency: I think you are referring to chat rooms. Indeed, the type of communication referred to in rulings concerning the luring of children often involve chat room discussions.

Mr. Daniel Petit: Please feel free to speak in English if that's easier for you. Are you sure that those cases are covered.

Mrs. Carole Morency: Yes.

Mr. Daniel Petit: Thank you.

[*English*]

The Chair: Thank you, Mr. Petit.

Ms. Jennings.

Hon. Marlene Jennings: Thank you very much for the information you're providing the committee.

I'd like to start off by asking you if you can give us the information that you have on the 19 reported cases, whether it's the actual reference where we can go to get it, or if you already have it in print type, whether you can get it to the committee members through the chair. Thank you.

I want to come back to section 152 of the Criminal Code, which is on invitation to sexual touching. My understanding, from what you've told us, is that prior to the sexual luring via the Internet provision—because that's what it intended to capture—which came into force in 2002, those cases would have been tried under section 152. Is that correct?

Mrs. Carole Morency: Yes, or the abduction provision or one of the others.

Hon. Marlene Jennings: Right.

Mrs. Carole Morency: They were having to try to show that it was an attempt to commit one of those offences.

Hon. Marlene Jennings: Right, that was the difficulty of actually successfully prosecuting Internet luring for sexual purposes or sexual exploitation under the then and still existing provisions. That's why the previous government brought forth section 172.1, etc. What you're telling us is that under the new provision it's been used quite successfully, if I understand correctly.

My question, then, is this. Given an invitation to sexual touching under section 152, which does not require that there was actual sexual touching, but means that there were actions and words that were carried out to attempt to invite a young person to engage in sexual touching, if the summary conviction there is a maximum of 18 months and the indictable is a maximum of 10 years, when we brought in the new offence of luring via the Internet, why did the government at that time not harmonize the actual sentencing provisions?

● (1235)

Mrs. Carole Morency: I will draw your attention to one point of clarification. When the luring offence was brought in, the difficulty was in trying to have enough evidence before the actual contact offence was committed. That was the difficulty with arguing section 152 as an attempt, because you had to show more than mere preparation. That was one of the things the new offence tried to get at.

In terms of harmonization, what section 172.1 did when it was enacted was set a maximum penalty of five years on indictment. It was basically seen as half of the substantive offences, seen as an attempt. If it's more akin to an attempt of an offence, an attempt typically attracts a penalty that's half of the maximum of the actual offence, so that was the rationale behind it at the time.

If you looked at the listed offences, sections 151 and 152 had a maximum on indictment of 10 years. Section 153 had a maximum of five years. It was only increased to 10 in the last Parliament. The abduction offence, section 280, has a maximum of five years on indictment.

You can see there was a bit of a range there, but as I say, the parliamentary record would show that the comparison was really to an attempt provision. It was to enable the system to deal with that front-end part of the process before the actual contact offence.

Hon. Marlene Jennings: Then my understanding would be that the argument would still exist, because you're still talking about the pre-preparation or preparation before you actually get to an attempt, and the attempt would be under section 152.

Mrs. Carole Morency: Yes and no. On the one hand, yes, because some of the offences are still going to have a maximum of five years, but the sexual exploitation in section 153 has now been increased to 10 years on indictment.

I think as well that case law has evolved. Our experience and understanding of the types of risks that young people face as a result of this have improved. We have a better understanding, so if the concern is that you want the criminal justice system to send a strong message to deter and denounce that type of conduct, a 10-year maximum will do that more effectively than a five-year. Reforms enacted in the previous Parliament increased the maximum penalties on summary conviction for all of those enumerated child sexual offences and for section 153. Again, it's consistent with Parliament's action to this point to support stronger measures in denouncing this kind of conduct.

Hon. Marlene Jennings: If I may just complete my sentence, I'm asking the question because we are trying to find out why there was this difference. You're explaining that since the creation of this new offence of luring, there has been an increase in maximum sentencing to the other provisions that are in the same section. Therefore, to increase the maximum here would not be out of line with what has taken place subsequent to the creation of this particular offence.

Mrs. Carole Morency: That's correct.

Hon. Marlene Jennings: Thank you.

The Chair: Thank you, Ms. Jennings.

Mr. Bagnell is next. Upon the conclusion of Mr. Bagnell's questions, we'll move to further discussion on the amendment and then to clause-by-clause study.

Go ahead, Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

I have two questions. One is the one I asked before, but you didn't get a chance to answer it.

My interest is broader than just this bill. There are perpetual offenders, and there are people like Clifford Olson. I'm not a lawyer; I just want to understand the ability we have in the criminal justice system to keep people in longer than their sentence—people about whom a 100% probability of recidivism has been suggested, or people who will continue to be a danger to society.

● (1240)

Mrs. Carole Morency: This is not my area of expertise, but I can try to help you a bit in terms of the sentencing options.

Basically, the committee will know that Bill C-27 proposes some reforms to the dangerous offender provisions. That's one provision, or regime or framework, that exists within the Criminal Code right now to deal with serious violent repeat offenders, and there is, as well, a long-term offender regime. So an offender may not quite meet the dangerous offender designation, but may still be found by the court to pose a serious risk of reoffending to the community and can be found a long-term offender and can be subject to a community supervision order, and conditions that go with that, up to 10 years.

The courts also have an option under sentencing. At the time of sentencing an accused who's been found guilty of committing one of the child sexual offences that are enumerated in section 161 of the Criminal Code, the court can impose a prohibition against that accused that can last up to a lifetime to stay away from designated areas where children are known to be found, and not to seek or obtain paid or volunteer employment where children will be. So there's that other component to try to prevent a known sex offender from having an opportunity to reoffend.

In addition to that, there is also recognizance in the Criminal Code, section 810.1, dealing with persons about whom it's feared they may commit a sexual offence against a child—they haven't committed an offence yet, but there's that fear. There's a process to bring it before the court and have, basically, a restraining order that can last up to a year. Bill C-27 would deal with that and increase it for up to two years.

Those are the main ones that I can bring to the committee's attention. If you have an interest in much more specifics, I would volunteer one of my colleagues.

Hon. Larry Bagnell: I'm very supportive of this bill, but my second question is just following up on what Mr. Lee was asking you about, and that's 16-year-olds. I want to make sure we don't have this regime wrong, where young people could be caught inappropriately. For instance, if two 15-year-olds fell in love and ran off, would one therefore be eligible to be charged for abduction, taking away from the parents without their permission, and, if it was done on the Internet, then be eligible to be prosecuted under this crime?

Mrs. Carole Morency: I think you have to look at how the luring offence works in terms of what's legal for young people to engage in with other peers. The age of consent to sexual activity is currently 14. Peers can engage in sexual activity, and they could engage in a similar kind of consensual type of dialogue, but in the luring case that's not the type of conduct we're dealing with. So if you had a young person who met the criteria of the offence and was engaging in those communications for the purpose of basically sexually assaulting the other person, then yes, that person could be charged as a young offender.

Hon. Larry Bagnell: Thank you.

The Chair: Thank you, Mr. Bagnell.

Thank you very much, Ms. Morency. We appreciate that in-depth information.

Mr. Derek Lee: Could I make one more? It's just to clarify. It's a 10-second question.

The Chair: Yes, go ahead, Mr. Lee.

Mr. Derek Lee: If two persons, both being minors, were communicating, and one was under 14—let's say you have a 15-year-old and a 13-year-old—it would, by definition, be criminal to induce the 13-year-old into a sexual act. So the communicating or invitation to sexual touching would trigger a criminal offence under the Young Offenders Act by the 15-year-old just because the person who was receiving the invitation was incapable of giving consent.

Mrs. Carole Morency: No. Again, the luring offence not only piggybacks on the sentences that are provided in the enumerated offences, but it also is superimposed on the existing age of consent regime. So in your example that you give me, a 12- or 13-year-old can consent to engage in sexual activity with a peer, and it's a lawful situation, provided that the other person is less than two years older, there's no relationship of trust, authority, dependency, and it's not otherwise exploitive of the young person. So currently again, if it's a consensual thing and they fall within that regime, then it should fall outside of the luring offence.

● (1245)

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

The Chair: Thank you, Mr. Lee.

Now, committee members, let's go back to the discussion on the amendment. I think we have enough time to briefly go over some points that might clarify my previous comment.

Yes, Mr. Comartin.

Mr. Joe Comartin: I think there's a consensus that will move to override your finding that it's out of order. I am assuming there's going to be unanimous consent.

Mr. Réal Ménard: No.

Mr. Joe Comartin: No? I spoke too soon.

[*Translation*]

Mr. Réal Ménard: That's not so, Mr. Chairman, for the following reason. We will support this provision of the bill which is before us, but as far as procedure is concerned, you are making a literal interpretation. You are right in this case, and we will maintain our decision. We will support the bill as it was worded by the sponsor, but we are clearly aware of the fact that you cannot amend a provision which is not contained in the bill. We do not want to start playing with the rules of procedure.

[*English*]

Mr. Joe Comartin: Mr. Chair, I did have the floor before I was interrupted.

The Chair: Yes, Mr. Comartin, that's my error. Please continue.

Mr. Joe Comartin: I appreciate Mr. Ménard's giving us his position, because I didn't understand it. But I will move the motion that we override your finding that it is out of order. I really like doing this, and I might even win this one. But I think we should. I'm cognizant of what's going to happen when it goes back to the House. But of course that can be taken care of...which we probably are not going to get, based on the position that Mr. Ménard has now taken. But if we all spoke to our House leaders about unanimous consent to the amendment, I'm sure the Speaker will not rule it out of order.

So I would move my motion that the amendment with regards to the summary conviction section be allowed to proceed and we override your ruling in that regard.

The Chair: Before we entertain your motion, Mr. Comartin, I think there was some confusion on my part in bringing the parent rule into play here. The confusion arose out of the fact that the amendment referred to a different section in the code and not the same section as we were actually dealing with when it comes to punishment.

The amendment as noted is incorrect. The amendment should have reflected paragraph 172.1(2)(b), which also falls into the same section as the bill itself, which is paragraph 172.1(2)(a). So the parent rule would not actually apply to this particular....

I'm sorry to disappoint you again, Mr. Comartin. I know you wanted to catch me on something.

Some hon. members: Oh, oh!

The Chair: But you actually did. There may be some question about scope, but it's minor in nature.

Hon. Marlene Jennings: So section 172...?

The Chair: The amendment should actually be paragraph 172.1 (2)(b).

[*Translation*]

Mr. Réal Ménard: Do we have the amendment in French?

[*English*]

The Chair: No, but the amendment would be presented orally by Mr. Thompson, which I believe he did already. So there is no interpretation of that, other than through the interpreter.

Mr. Lee.

Mr. Derek Lee: On that basis, Mr. Chairman, Mr. Thompson should withdraw the previous motion as being out of order and propose a new motion with proper section numbers. Then you can deal with it.

The Chair: Do you have the correct section numbers there, Mr. Thompson?

Mr. Myron Thompson: Paragraph 172.1(2)(b), is that correct?

[*Translation*]

Mr. Réal Ménard: Is it in order?

● (1250)

[*English*]

The Chair: That is in order.

Would you withdraw your previous motion and submit anew?

Mr. Myron Thompson: I withdraw the previous motion and the submit the following motion. I move that paragraph 172.1(2)(b) read as follows:

> (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

The Chair: Okay, that's the motion, seconded by Mr. Murphy.

(Motion agreed to)

The Chair: Now we're going to clause-by-clause.

(Clause 1 as amended agreed to)

The Chair: Shall the title, as amended, carry?

Mr. Joe Comartin: Mr. Chair, I wanted to get something on the record with regard to the proposal.

The Chair: You want to speak to clause 1, Mr. Comartin?

Mr. Joe Comartin: Thank you.

I just want to make these three points and get them on the record.

One—as I always get this on the record—the government continues to bring forward a number of different bills when a great deal of these could be consolidated into one omnibus bill. This section that we're dealing with...and I applaud Mr. Fast for bringing it forward, because it does address an issue. But the points he made with regard to some of the other sections that are inconsistent to the point of being absurd, and the penalties they have as compared to this type of crime, are very well taken. It seems to me it behooves the government to take a look at an overall review of the Criminal Code and do a major reform and restructuring of it to get rid of those absurdities.

The second point, as I raised in my questions, is that I am concerned about its potential impact on conditional sentences. So I'm just putting on the record that this is not the intent of this committee. We are very cognizant of what we did in Bill C-9, and the introduction of this increased penalty does not take this section of the code out of the ambit of the conditional sentencing regime we have.

Finally, Mr. Chair, I'm just going to put this on the record in case we start to see it coming. I'm concerned that we're going to see a series of either private members' bills or perhaps other bills from the government along the lines of trying to get around the provisions of Bill C-9 as passed by the House. I'll just put on the record that I hope we won't see that happening, but I have to say cynically that I'm expecting it to come.

Those are the points I want to make. Thank you.

I am going to support the amendment.

The Chair: Thank you, Mr. Comartin. Your cynical comments have been noted.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, the Bloc Québécois will also support the bill at the committee stage, but I also want to be clear that we believe that minimum mandatory sentences are not effective. We are not dealing with a minimum mandatory sentence in this case, but a maximum sentence.

So at this stage, we will support the bill, first because we are quite aware that the sponsor of this bill has good and noble intentions, but also because we were reassured by what the senior official said, namely that judges will have the latitude they need. Further, this bill is in line with provisions which have already been adopted.

[*English*]

The Chair: Thank you, Monsieur Ménard.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

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