House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 023 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Wednesday, May 13, 2009

Chair

Mr. Ed Fast

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● (1535)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 23 of the Standing Committee on Justice and Human Rights. Today is Wednesday, May 13, 2009. Before we do anything else, I want to congratulate one of our colleagues, Réal Ménard, on his 47th birthday today. Congratulations.

Some hon. members: Hear, hear!

The Chair: Okay members, you have before you the agenda for today. By order of reference, we still have before us Bill C-15, an Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts. This is our last day for witnesses, as agreed.

I regret to have to advise you that two of our witnesses will not be appearing. We were advised that Judge Craig is a member of the Human Rights Tribunal, and it was felt this would make it inappropriate for him to comment on federal policy at this time. Also, our clerk had set up a video conference for Professor Julian Roberts, but unfortunately that has run into technical difficulties. We tried to shift it to another studio, and that didn't work out either. Unfortunately, we won't be able to hear from him. I am asking the clerk to ensure Professor Roberts provides us with a written submission, so we have that for the record.

We still have before us a number of organizations and individuals to assist us in our review of Bill C-15. First of all, we have Cathy Sabiston, Jane Hazel, and Colleen Ryan of the Department of Health. Welcome here. We also have Chuck Doucette from the Drug Prevention Network of Canada. He is appearing by video conference. Welcome here. Then we have Greg Yost from the Department of Justice; he's back before our committee to address one small item regarding the actual bill. Then finally, representing the Canadian Bar Association, we have Gaylene Schellenberg and Sarah Inness. Welcome here.

I think you've been apprised of the routine we have here. You'll have 10 minutes to present as an organization, and then we'll open the floor to questions.

Why don't we start with the representatives from the Department of Health, whoever is going to go.

Ms. Cathy Sabiston (Director General, Controlled Substances and Tobacco Directorate, Department of Health): Thank you, Mr. Chairman, and thank you to the members of the Standing Committee on Justice and Human Rights for allowing me this opportunity to speak to you about Canada's national anti-drug strategy. This strategy represents Canada's approach to reducing the supply of and demand for illicit drugs and addressing crimes associated with illegal drugs. I am delighted to be here.

I understand that during your recent deliberations on Bill C-15, a bill to impose mandatory minimum sentences for serious drug crimes, you were keen to learn more about the federal government's broader national anti-drug strategy. After all, Bill C-15 is not an isolated piece of legislation; it is only one element of the government's much larger strategy that partners Public Safety Canada and Justice Canada together with Health Canada to build safer and healthier communities.

Launched in 2007, the Government of Canada's national anti-drug strategy sets out three priorities: preventing illicit drug use among youth, treating people with drug dependencies, and fighting the illicit production and distribution of drugs with the help of legislation like Bill C-15. There are three corresponding action plans: the prevention action plan, the treatment action plan, and the enforcement action plan, which detail the steps the government is taking to achieve its goals.

Health Canada is an integral partner in the implementation of the strategy. Specifically, Health Canada has overall responsibility for the implementation of the prevention and treatment action plans, and it contributes to the enforcement action plan.

It is about the involvement of Health Canada in the delivery of this strategy that I'm here to talk to you today. This involvement focuses on helping youth make smart choices about drug use and supporting innovative approaches to treating and rehabilitating Canadians with illicit drug addiction who pose a threat to themselves and their communities.

[*Translation*]

Allow me to begin with the Prevention Action Plan. As its name suggests, the Prevention Action Plan aims to dissuade people from ever using drugs. In other words, it aims to eliminate the problem before it arises. Research indicates that the later in life a person tries drugs, the less likely he or she will suffer from substance abuse. In turn his or her community is less likely to suffer from the negative consequences of drug use too. The key is early intervention.

[*English*]

Obviously a number of jurisdictions have roles to play in the area of prevention, but for its part, the Government of Canada has invested $30 million over five years in a targeted mass media campaign that raises awareness among youth between the ages of 13 and 15 about the dangers of illicit drugs. The first of its kind since 1993, the campaign began with a message to parents: reinforce your influence over your teenagers and talk to your sons and daughters about illicit drugs. Early indications are that the campaign is reaching its target and the messages are resonating. In fact, the parent component of the campaign drove over 2,900 calls to our information centre and over 280,000 visits to our website. Also, more than 123,000 copies of the parent booklet have been ordered, with thousands more downloaded from the website.

A post-campaign survey confirmed that parents within our target audience took action because of the campaign. Adults sought out the information booklet and spoke to their kids about the dangers of drugs. It will take time, however, before we can expect meaningful results in terms of reduction in drug use among young teenagers. That is why, in addition to the overall prevention envelope of the national anti-drug strategy funding, Health Canada has also committed nearly $40 million to support health promotion and drug use prevention projects. Through the drug strategy community initiative funds, Health Canada will help reduce illicit drug use among teens by supporting community-based initiatives that help identify and respond to the unique needs of local youth.

Health Canada is also investing another $10 million to support the Canadian Centre on Substance Abuse's national youth prevention strategy, an initiative that mobilizes prevention effort, informs drug prevention policy and practices, and builds relationships between not-for-profit organizations, the private sector, and all levels of government.

● (1540)

[*Translation*]

Unfortunately, prevention comes too late for those who have already experimented with drugs and whose social, physical and mental health suffer as a result. For this reason, the Government of Canada has also made significant investments to implement the second critical component of the National Anti-Drug Strategy: the Treatment Action Plan.

[*English*]

Under the plan, the Government of Canada has allocated $100 million in new funding over five years to help ensure Canadians who suffer from substance abuse can access the treatment services they need. A significant portion of this funding will bolster Health Canada's existing investments in the drug treatment funding program, an initiative that supports provincial and territorial governments in the delivery of quality drug treatment services. Under this initiative, Health Canada is committing over $111 million to provinces and territories to strengthen their ability to deliver treatment services and adopt national best practices, apply new research findings to clinical practice, and better measure and evaluate the effectiveness of their drug treatment systems.

In addition to this national investment, the Government of Canada is dedicating funds to address the needs of especially vulnerable populations: residents of Vancouver's downtown east side and members of first nation and Inuit communities. As many of you know, Vancouver's downtown east side is home to an incredibly vulnerable population, individuals who suffer from addiction to heroin, cocaine, crack, crystal meth, and other drugs. These people need help to regain their health and hope for the future. In response, Health Canada is dedicating an additional $10 million to establish an assertive community treatment team that will work around the clock in Vancouver's downtown east side to provide psychiatric, medical, nursing, therapeutic, and rehabilitation services. This funding has also created 20 new treatment beds for female drug users who are engaged in the sex trade, women who need a safe, stable environment in which to overcome their addiction. Another $2 million is allocated to improve addiction services for aboriginal people living in this neighbourhood.

[*Translation*]

The Government of Canada's Treatment Action Plan also focuses on first nation and Inuit communities. Drug and alcohol abuse remains a problem. This government is taking a number of steps to help communities deal with these serious issues.

[*English*]

Every year Health Canada provides $59 million through the national native alcohol and drug abuse program to support 54 treatment centres as well as drug and alcohol prevention services in over 500 first nations communities across Canada. Under the treatment action plan, Health Canada is investing an additional $30.5 million over five years to increase access to and improve the quality of addiction services for first nation and Inuit youth and families in Canada.

Mr. Chairman, the third and final component of the national anti-drug strategy is the enforcement action plan, which represents an overall government investment of approximately $102 million in new funding over five years. Under the enforcement plan, Health Canada is enhancing Canada's capacity to ensure compliance with the precursor control regulations and to reduce and prevent the diversion of precursor chemicals by increasing the number of inspectors and investigators. In addition, the drug analysis service of Health Canada receives funding to provide accurate and timely analysis of suspected illegal drugs seized by Canadian law enforcement officers to support enforcement and prosecution efforts and prevent exhibit backlogs.

While the prevention and treatment action plans diminish demand for illicit drugs, the enforcement action plan, under the purview of Public Safety Canada and the Department of Justice, approaches Canada's drug problem from another angle. The enforcement action plan restricts the supply of illicit drugs. It aims to curtail the production and stop the distribution of illicit drugs.

Mr. Chairman, as many appreciate, Bill C-15 represents one component in the Government of Canada's comprehensive and balanced approach to curbing the illicit drug problem in Canada.

In closing, the national anti-drug strategy provides an approach that is tough on the producers and distributors of illicit drugs, but is also compassionate with those who have an addiction and prevents young people from engaging in drug consumption.

[*Translation*]

Thank you.

I would be pleased to answer any questions you may have, with the help of my colleagues.

[*English*]

The Chair: Thank you.

Now we'll move to Vancouver, actually, by video conference.

Mr. Chuck Doucette, you have ten minutes to present.

Mr. Chuck Doucette (Vice-President, Drug Prevention Network of Canada): First of all, thank you for hearing me and for making this facility available, as I was not able to travel to Ottawa to speak to you in person. I am representing the Drug Prevention Network of Canada. I am currently the vice-president of that organization and a member of the International Task Force on Strategic Drug Policy.

The Drug Prevention Network of Canada was formed in 2005 to serve the Canadian population on a national level. We are dedicated to working with like-minded organizations and individuals to advance abstinence-based drug and alcohol treatment and recovery programs to promote a healthy lifestyle free of drugs. We are equally dedicated to opposing the legalization of drugs in Canada. We are very involved with the new national youth substance abuse prevention program. I co-chair the national advisory committee on that.

The International Task Force is a network of professionals and community leaders from across the globe who support and promote effective drug demand reduction principles and strive to advance communication and cooperation among non-government organizations who are working to stem illicit drug use and promote sound drug policy around the world. Both of these organizations believe in the need for a comprehensive drug policy that includes prevention, treatment, and enforcement.

I retired from the Royal Canadian Mounted Police in 2007, after serving for more than 35 years. For over 30 of those years, I worked in various sections within the drug enforcement branch, all in the Vancouver area. My experience includes working undercover, long-term conspiracy investigations, drug intelligence, and drug prevention. The last 12 years were spent in charge of the drug awareness program in British Columbia. As such, I was involved in many discussions about the impact of drug abuse on society and the strategies to reduce both the demand and supply of drugs. I have represented the RCMP on a number of committees over the years at the community, provincial, and national levels.

I do not profess to be an expert on the effectiveness of mandatory minimum sentences on reducing drug abuse. However, I can tell you what I have learned from my experience. Things have changed from when I first started in drug enforcement in 1977. Over those 30 years, I saw the sentences for drug offences getting progressively weaker. At the same time, I saw the problems related to drug abuse getting progressively larger. I also saw the drug scene in downtown Vancouver increase as the enforcement efforts in that area decreased. From my perspective, I do not see how anyone could possibly examine the past 30 years and make a case that weaker sentences lead to less damaging social consequences. My experience is that the more lenient we got, the more problems we got. I also believe that other countries have experienced the same thing, and I would like to make a comparison.

I have travelled to the Netherlands, Germany, and to Sweden to observe the drug situations in those countries. It seems to me we should be looking at Sweden as the model for successful drug policy. The problems related to drug abuse are lower in Sweden than they are in the Netherlands, Germany, or Canada. Yet we have been encouraged by some to follow the policies of the Netherlands and Germany rather than those of Sweden.

In Sweden, after a period of less restrictive drug policy and increased drug use, they achieved their success in lowering drug use by getting more restrictive with their policy. At the same time, they increased their efforts in prevention and treatment. The key to their success was their effort to strike a balance between prevention and treatment while maintaining a strong policy of enforcement. In Sweden, when they arrest someone for a drug offence, they introduce that person to a drug treatment worker before he or she is released. Although not common, if it is deemed necessary for the health of the person, that person can be forced into drug treatment. Getting those addicted to drugs into treatment is essential in order to reduce the related problems in our society.

● (1545)

This can be done in a number of ways. One way is through the drug treatment courts. While it is important to put drug traffickers in prison for an appropriate amount of time, it is also important to get those addicted to drugs into treatment. While I have not done any studies to determine the effectiveness of the drug courts, I have spoken to addicts who have graduated from the drug treatment courts. Their opinion of why they were successful in reaching abstinence through the drug court system, when they had failed before, was because of the continuous monitoring by their caseworker. The caseworker follows them to pick them up and put them back on track when they have fallen off. This does not happen through the regular health care system. I believe that the drug court system is a good way to get drug addicts who break the law into treatment.

We only have to make sure we have enough drug treatment courts available wherever needed, and that there are enough treatment facilities available to handle the need. It is very important, and I would caution that there be enough treatment also available for those addicts who are not in the drug court system, as we would not want to create a situation where people are tempted to commit an offence simply to get treatment.

In Canada we have been influenced by the international harm reduction movement, which would have us believe that the drug laws cause more harm than the drugs do. This influence seems to have reached the judges, who have become progressively more lenient with their sentences. One gets the impression they are more concerned about the individual drug user than they are to the harm caused to society or to specific family members.

Drug-endangered children are a real concern that we are only starting to address in this country. While taking an addicted parent away from a child may seem tragic, one has to compare this to the harm caused by leaving a child in a situation where they are being neglected or harmed by the environment of the severe drug abuse.

I agree that an addicted person needs treatment. However, that treatment may have to come along with a prison sentence when appropriate. While I agree that putting an addict into prison without treatment is a mistake, it is also a mistake not to have a meaningful sentence for those who make their living from contributing to the misery of others.

This is especially true when dealing with members of organized criminal gangs. These gang members, who are not addicted to drugs, are very aware of the risks and consequences involved in trafficking in the different places throughout the country, just as they know the sentences are lower in Canada than they are in the United States. They also know the sentences are weaker in Vancouver than elsewhere in Canada.

One of the main reasons that so many gangs got involved in cannabis grow operations in the Vancouver area is because of the weaker sentences here compared to sentences for trafficking elsewhere, and for trafficking in cocaine and/or heroin. The risk-to-wealth ratio is much better. The small fines they were receiving were simply considered to be the cost of doing business.

It is also not hard for leaders to convince people to help maintain or watch the crops if the risk of going to prison is low. Although recent laws have helped to make it easier to take back some of the profits they are making, we still need a stronger deterrent. We need them to fear the chance of going to prison for a long time. This bill makes sure that message is loud and clear.

The same has to be said for the use of weapons during the commission of a crime. Regardless of the original intention of the offender, once a weapon is presented, the chance of serious injury or loss of life from that action is huge. Those offenders who resort to use of weapons are clearly more of a threat to society and should pay a proportionately higher consequence for their actions. The best way to lower that risk to society is to remove the offender. The longer the offender is removed from society, the longer society is free from that threat.

When we see the vast majority of offences committed by a small number of offenders, it stands to reason that the longer sentences should result in less crime. Regardless of why the sentences have gotten weaker, the fact is that they have. In my opinion, we need to change that trend. I believe this bill has the potential to do that and therefore support it.

Thank you.

● (1550)

The Chair: Thank you, Mr. Doucette.

We'll move on to Mr. Greg Yost, representing the Department of Justice. I don't know if you're going to need the full 10 minutes.

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): I really have no opening statement. It was my understanding there were some technical questions about how the bill worked, and particularly whether a person who traffics in one joint to a friend is subject to the minimums. The answer to that, quite shortly, is no, because that particular section, which is the amendment to the new paragraph 5(3)(a) begins with, “subject to paragraph (a.1),” and (a.1) goes on to state: “if the subject matter of the offence is a substance included in Schedule II”—obviously cannabis—“in an amount that is not more than the amount set out for that substance in Schedule VII,”—which is three kilograms—“is guilty of an indictable offence and liable to imprisonment for a term of not more than five years less a day”.

There is no mention of a minimum penalty there whatsoever. So the person who is giving less than three kilograms is not subject to the mandatory minimums.

I understand that was a question that had arisen.

● (1555)

The Chair: We'll leave it open for the members to ask you specific questions once we get that far.

Finally, we have Sarah Inness and Gaylene Schellenberg. I assume Ms. Schellenberg is making a presentation.

You have ten minutes.

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you. Good afternoon.

I'm Gaylene Schellenberg, a lawyer with the legislation and law reform directorate of the Canadian Bar Association. Thank you for the invitation to present the views of the CBA on Bill C-15 to you today.

The CBA is a national association of over 38,000 lawyers, law students, notaries, and academics from across the country. An important aspect of the CBA's mandate is seeking improvements in the law and the administration of justice. It's from that perspective that we appear before you today.

With me is Sarah Inness, a member of the executive of the CBA's national criminal justice section. The section represents a balance of crown and defence lawyers from every part of the country, and Ms. Inness is a criminal defence lawyer from Winnipeg.

I'll turn it over to her to present the highlights of our submission to you.

Ms. Sarah Inness (Branch Sector Chair, National Criminal Justice Section, Canadian Bar Association): Thank you very much, Mr. Chair and members of the committee, for the opportunity to present to you today the CBA's national criminal justice section submission on Bill C-15.

We acknowledge that this committee has heard numerous presentations already on this bill from different groups with their own particular areas of expertise. We believe we bring a unique perspective to this committee, one focused on the impact this bill would have on the administration of justice.

The members of our organization work in the justice system, including the criminal courts, on a daily basis. We have provided to you our written submission in advance, and I wish today to highlight our primary concerns with respect to this bill for you.

At the outset, I wish to state that the CBA opposes the use of mandatory minimum sentences on the basis that they do not advance the goals of deterrence; they do not target the most serious of offenders, who are already sentenced stiffly; they catch less culpable offenders, subjecting them to lengthy terms of imprisonment; they have a disproportionate impact on those minority groups who are already disadvantaged; and they subvert important aspects of the sentencing regime, including the principles of proportionality and the individualization of the sentencing process.

We point out that several factors contained within Bill C-15 that trigger mandatory minimum sentences are already listed as aggravating factors in the CDSA and the Criminal Code, which must be considered by the sentencing judge. Some of the factors triggering a mandatory minimum sentence already constitute separate criminal offences; for example, the offence of uttering threats, the criminal organization offence, or firearms offences. Some of these offences already carry with them mandatory consecutive prison sentences—for example, in the case of the criminal organization offence—and already carry mandatory minimum sentences, as for example for possession of a prohibited or restricted firearm with ammunition. The bill is silent on how these overlapping provisions ought to operate.

There appears also in this bill to be some ambiguity or confusion with respect to the reading of proposed subsection 10(5) in subclause 5(2), which indicates that mandatory minimum sentences will not be triggered when an offender successfully completes a “drug treatment court program”. The legislation as it's proposed by this bill allows for individuals to participate in “a treatment program”; however, it indicates that the mandatory minimum sentence would apply if an individual is successful in completing “a treatment program” but would not if an individual has successfully completed a “drug treatment court program”. There appears to be some confusion with respect to the distinction of the two, because both are required to be court-supervised.

We are concerned about the fact that Bill C-15 would require a mandatory minimum sentence even when the circumstances of the offence and the degrees of responsibility vary significantly. The penalties set out in the bill are also based upon arbitrary factors that do not meaningfully distinguish between levels of culpability. We offer the following examples.

For example, a young adult occasional user of marijuana who is growing ten plants for his own use and to share with some friends attracts an MMS of six months. We would say that this sentence violates the principle of proportionality and the importance of rehabilitation.

A person making a small amount of cannabis resin for use and to share with friends would be subject to an MMS of one year and to 18 months if he did so in a house that he was renting. The legislation apparently fails to address a situation in which the third party owner of the property is aware of and complicit in the use of the property for the offence.

Bill C-15 also imposes escalating levels of incarceration depending upon the number of plants an individual grows for trafficking. For instance, this bill would require an MMS of six months for 200 plants, yet twelve months for 201 plants. It is contrary to common sense and well-established sentencing principles for a person to receive double the length of a sentence for a difference of one plant.

We believe the impact upon the administration of justice of this bill, if it is passed, will be significant. Fewer people will plead guilty, preferring to contest the charges rather than be subject to an automatic mandatory minimum sentence upon pleading guilty. This will increase the length of time it takes for cases to be heard in the courts, increase the number of trials, and inevitably increase the strain on court resources. Given the significant prison terms proposed within Bill C-15, the crown should be required to prove beyond a reasonable doubt the aggravating factors triggering an MMS as well as the *mens rea* component of those aggravating factors; for example, the requisite degree of awareness of the number of plants, or the fact that the offence was being committed at or near a school or at a place usually frequented by those under the age of 18.

● (1600)

We point out the lack of a definition with respect to “in or near a school”, or places “usually frequented” by those under 18. We make the point that the crown ought to be required to prove not only the *mens rea* of the offence itself but also that with respect to the aggravating factor that would trigger a mandatory minimum sentence.

Bill C-15 does not adequately allow for a fair and just sentencing of those with addictions, including the need for treatment and rehabilitation. Those who sell even small amounts to support an addiction would be captured by a mandatory minimum sentence. While the bill allows for exemptions to MMS in the case of participation in drug treatment courts, we propose that participation in drug treatment courts should not be restricted as under proposed subsection 10(5) in subclause 5(2) of Bill C-15; it should be available for all offenders for whom rehabilitative considerations are appropriate. We wish to note that drug treatment courts are not available in all jurisdictions in Canada, and there are limits with respect to the entry into drug treatment courts depending upon the capacity of each individual court.

Bill C-15 removes judicial discretion. The CBA section believes that Canada's judges have a critical role to play in the operation of the criminal justice system. The judicial discretion that is removed by Bill C-15 plays an important role in crafting a sentence that balances all of the goals of sentencing and tailors individual sentences to individualized cases. Judges are well equipped to consider the circumstances of the offence and of the offender, having regard to the needs of the community where the crime occurred.

In my experience as a defence lawyer, often what happens is that the crown attorney will submit to the judge by way of facts and statements all of the aggravating factors. The defence counsel will do the same with respect to mitigating factors and won't call upon the crown to necessarily go to the strict standard of proof of those aggravating factors. The sentencing judge is then in the best-placed position to weigh all of those factors and principles and come to the appropriate sentence. Prosecutors bring to the judge's attention the facts that warrant lengthy prison terms, and in our experience, repeat offenders and serious traffickers already receive lengthy sentences, even in excess of those proposed in Bill C-15.

The discretion vested with sentencing judges ensures meaningful distinctions made in the sentencing process, taking into account varying degrees of culpability. Judges are able to impose sentences that emphasize rehabilitation, where there's a real prospect of it, and to impose lengthy periods of incarceration for those who need to be deterred. There's appellate review available for sentences that are demonstrably unfit or in which an error of law has been committed.

Bill C-15 conflicts with well-established sentencing principles. The Criminal Code sets out the purposes and principles of sentencing that are to guide the sentencing process. The codified principles already in place require a judge to weigh all of the competing considerations. Incarceration is a sanction of last resort, particularly for aboriginal offenders, who are already overrepresented in penal facilities. Section 718 of the Criminal Code requires that incarceration only be imposed when necessary. Sentences must be imposed that are proportionate to the offence and the degree of responsibility of the offender.

We know that the goals of deterrence and denunciation are already given great weight in sentencing hearings for CDSA offences. Judges have guidance from section 718 of the Criminal Code and from the CDSA in determining the venue and the length of the sentence. Judicial discretion exercised in the delicate balancing of existing sentencing principles is the best mechanism to ensure that individuals are treated fairly and justly within our system of justice.

In summary, we believe that the current legislative tools available already meet the goals of public safety and fair, proportionate, and accountable sentencing of offenders who commit drug offences.

Thank you very much.

● (1605)

The Chair: Thank you.

Now we'll start with questions.

Mr. Murphy, you have seven minutes.

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

And thank you, witnesses. There were some very interesting comments made about drug treatment courts, Mr. Doucette. And I know, Mr. Yost, that we're probably going to get into splitting hairs on the implications of this law. I'll leave that to my friends here.

I want to spend my time with CBA. I've been a member of CBA since 1984. I'm not beating up on you. I know that we have Law Day.

To me it's an issue of public education and awareness, because it seems to me, after coming back from out west—we had hearings out west—that a lot of this seems to have sprung from a lack of understanding of how the legal system works. That may be partially our fault as lawyers and our not explaining to the public that lawyers speak for their interests and don't always represent the whole of the community of lawyers.

Frankly, this attack on judicial discretion may be a symptom of a lack of respect for the judiciary. We certainly saw out west, in some quarters, a lack of respect for the system. You hear terms thrown around like “some defence lawyer”. We don't at these committees say things like “some cop” or “some judge”—we do sometimes, but....

People who aren't lawyers might say that the CBA section consists of defence lawyers, prosecutors, and legal academics. I've been saying for some time that we don't hear a lot of prosecutors. We know it's the Canadian Defence Lawyers association. They're the defence guys. But we have hardly ever called, in three and a half years, the prosecutors association, if they have one. They're supposed to be represented out of your tent.

Ms. Inness, you're a defence lawyer. You very capably presented the position of the defence bar.

Ms. Schellenberg, the CBA is a large tent. In an adversarial system, you can't represent all points of view, but consistently the CBA, when doing briefs, tends—in my opinion—to sort of represent the defence bar of the section. If that were made clear, maybe everyone would understand that this is really the position of the CBA defence lawyer subsection.

Maybe I could have your comments on that.

Ms. Gaylene Schellenberg: The broad strokes of the CBA's policy directions and principles are set by the CBA's national council, which is the equivalent of our parliament. When the CBA considers a response to a specific criminal law initiative, we refer it to the 1,200 or so members of our criminal justice section, which comprises, pretty much equally, crown and defence lawyers from every part of the country. The positions are debated, and there are sometimes differences of opinion, but generally they are able to come to a compromise position.

Generally, we do present. There have been a few bills on which we have been silent because an agreement wasn't possible. But the position we put forward is one that the crowns and the defence lawyers within the section have supported.

Mr. Brian Murphy: The other point I want to make, I think, is that it seems to me that the CBA slices and dices the legal aspect of any legislation, and it's not, in a sense, your file to talk about the societal or legislative aims of legislation. So when you're presented with a piece of legislation, you're going to look at it and see where the legalities are. That I understand. But very rarely are you going to get into aspects of policy, such as whether there should be more people in jail. Am I right about that?

Ms. Gaylene Schellenberg: No, our mandate includes improvement in the law and the administration of justice, which does allow some scope for consideration of the broader policy implications rather than just the technical analysis of the bill. So I think we take those considerations into account.

Mr. Brian Murphy: I'm sure it's not as broad as the average caucus meeting of the Conservative Party.

Voices: Oh, oh!

Mr. Brian Murphy: "Broad" would be a compliment.

How much time do I have? I probably took some time off by making that comment.

The last aspect was respect, or accountability. Let's call it judicial accountability. There was some talk about Darryl Plecas, who was a witness here, and the statistics, particularly in British Columbia, of very small sentences being given to repeat offenders, and talk about who keeps these judges accountable.

There is a Canadian Judicial Council. The CBA is supposed to represent respect for the system as well, or the aspect of respect for the system. Can you tell us how you think the two work together to keep judges accountable, if at all, I guess?

● (1610)

Ms. Sarah Inness: As I stated in my submission, of course we hear anecdotally about different cases, and each case is subject to its own individual sentencing process, which is why we support the important role of judicial discretion.

If in any given particular case there is an opinion that the sentence that was imposed is not in accordance with the principles and purposes of sentencing, then there is an appellate court review process where that sentence that's imposed can be reviewed. Within the common law, in cases that have applied the sentencing principles in CDSA offences, deterrence and denunciation is a principle that judges give great weight to, so there's an appellate court review of that process if there's a belief that those principles weren't given sufficient weight in any given case.

Mr. Brian Murphy: In short, you would see the MMS system in general as an attack on judicial discretion, which is working just fine.

Ms. Sarah Inness: We would say it does eliminate judicial discretion, which is working just fine.

Mr. Brian Murphy: Okay. Thank you.

The Chair: Thank you.

We'll move on to Monsieur Ménard. You have seven minutes.

[*Translation*]

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

I also thank all of my colleagues for their kind wishes. I will begin with a question for Mr. Yost, from the Department of Justice.

Mr. Yost, you know how much I love interacting with you. It is a pleasure I hope never to be deprived of again.

Ultimately, my question is simple. Obviously, we have concerns as far as the definition of the word "traffic" is concerned. In order to do away with any ambiguity, I would like to know at what point the trafficking of marijuana, for example, will be subject to mandatory minimum sentences under this legislation, in its current form.

Mr. Greg Yost: They will start to apply at three kilograms. This is found in schedule VII.

Mr. Réal Ménard: I know that you are particularly abstemious, as am I, but how many "pot" plants would that correspond to, in your opinion?

Mr. Greg Yost: When we were carrying out our study on the decriminalization of marijuana—which you may recall—the Americans were of the opinion that one plant equalled 100 grams. As a result, according to the American system, it would be approximately 30 plants. I had done some research on the Internet. I read there that a single plant could grow to up to 375 grams over a two- to three-month period, if everything went well.

Mr. Réal Ménard: So if I understand correctly, the mandatory minimum sentence would apply in cases of 30 plants or more.

Mr. Greg Yost: No. The plants are another story altogether. When we talk about plants, we are talking about production. The mandatory minimums apply fully, even in the case of a single plant, if it is for the purpose of trafficking.

Mr. Réal Ménard: That is the question I put to you. We must be clear. You would agree that for a young person in possession of one plant for his or her personal use, the bill allows for the enforcement mechanism of minimum sentences to be triggered.

Mr. Greg Yost: You're talking about a single plant for their own use?

Mr. Réal Ménard: Yes, and if he is trafficking.

Mr. Greg Yost: If there's trafficking, yes, but the intent to traffic must be proven.

Mr. Réal Ménard: Indeed, but if I was watching a hockey game with my colleague, Marc Lemay, and I passed him a "joint", it would be considered trafficking. I want to clear Mr. Lemay's name right away; he is a teetotaler and devoid of any vice. Having said that, you can see that we have reason for concern.

Furthermore, we are talking about places frequented by youth, but this is not defined in the bill. Imagine, for example, that we are talking about two young people sitting side by side across from the University of Ottawa Law School, which is not the most liberal, I agree.

Am I correct in assuming that this situation could ultimately result in a two-year prison sentence?

● (1615)

Mr. Greg Yost: There is trafficking. Are we discussing three kilograms of marijuana?

Mr. Réal Ménard: I am still talking about "pot" and sentencing. Let us say that after an exam, a youth offers a "joint" to one of his colleagues.

Mr. Greg Yost: In the case of marijuana, he would have to offer him three kilograms to trigger the process for minimum sentences. If he gave him one plant, it would be different. Whether it was grown for the purposes of trafficking would then have to be established.

Mr. Réal Ménard: You are trafficking from the moment you give some marijuana to someone else.

Mr. Greg Yost: He would be found guilty of trafficking and not of production of marijuana.

Mr. Réal Ménard: But he could be subject to the two-year minimum sentence.

Mr. Greg Yost: Not if we are talking about less than three kilograms.

Mr. Réal Ménard: And if it is three kilograms?

Mr. Greg Yost: Then yes, certainly.

Mr. Réal Ménard: All right. We are talking about three kilograms. We agree that equals 30 plants.

Mr. Greg Yost: No, we do not agree on that, Mr. Ménard. Plants are another story. People do not really traffic in plants. They grow them. In the case of the trafficking of marijuana, we are talking about joints, as we say in English.

Mr. Réal Ménard: Before it becomes a "joint", which will be passed around, it is cultivated. We do not find marijuana in cereal boxes when we get up in the morning.

My next question is to the Department of Health.

Ms. Line Beauchesne, a professor at the University of Ottawa, who specializes in drug issues, emphasized that out of the total budgets available to the Department of Health and other departments, there was only an amount equivalent to 10% of the National Anti-Drug Strategy's budget that was earmarked for prevention. Could you confirm that figure?

[*English*]

Ms. Cathy Sabiston: I don't know percentage-wise, to be frank. I know raw numbers, so maybe I can go over those and we can figure them out together. For prevention, overall the government announced $232 million over five years for the national anti-drug strategy, of which $30 million is going to the prevention action plan, which we can give more details on, if you would so like. The math for percentages is close.

[*Translation*]

Mr. Réal Ménard: All the same, that is quite close to 10%. If we consider that it truly is a prevention strategy, one could say that the efforts made to fight the demand for drugs is disproportionate compared to what is proposed as real assistance, in terms of treatment and prevention.

I do not want to cause you trouble, but could we not agree with each other that the National Anti-Drug Strategy is unbalanced, as far as prevention goals are concerned?

[*English*]

Ms. Cathy Sabiston: When you add in the treatment aspect, it's $30 million plus another $85.5 million. So again, I don't have my calculator here—I'm a generalist, not a mathematician—but in any event, you put those two amounts together and it's about $116 million or so.

[*Translation*]

Mr. Réal Ménard: If we are talking about treatment, that means that we have passed the prevention stage.

[*English*]

Ms. Cathy Sabiston: You did say prevention and treatment, so I was responding in that regard.

[*Translation*]

Mr. Réal Ménard: I thought that you would be generous on my birthday, but I see that you are very strict.

[*English*]

The Chair: I thought you wanted less work on your birthday. We could have shortened the time.

[*Translation*]

Mr. Réal Ménard: No, no.

[*English*]

The Chair: I'm just teasing you. It is your birthday.

We'll move on to Ms. Leslie. You have seven minutes. By the way, welcome, officially.

Ms. Megan Leslie (Halifax, NDP): Thank you.

Actually, my questions follow along the lines of those of Monsieur Ménard, so I'll follow up for him.

Thank you all for appearing, first of all. I have learned a lot from your testimony.

Going along the lines of those questions, there's $332 million for the entire national anti-drug strategy. I see, though, there's a prevention action plan, a treatment action plan, an enforcement action plan, but there's no harm reduction action plan. So there isn't one. When was harm reduction removed from the mandate of Health Canada?

● (1620)

Ms. Cathy Sabiston: It was 2007.

Ms. Megan Leslie: So does it then stand to reason that if you take the $30 million for prevention and the $85 million for treatment, the full remaining is for enforcement?

Ms. Cathy Sabiston: Numbers are dastardly little things. What I'm referring to are the Health Canada moneys only out of the $232 million. So it's $30 million for our prevention, $85.5 for the treatment action plan that Health Canada manages, and then we do have a small budget also that we contribute to the enforcement activities around drug analysis and inspections of precursor chemicals, and that's $24.4 million. So that represents about $140 million out of the total $232 million that the government announced for the national anti-drug strategy. So those are just Health Canada's numbers.

Ms. Megan Leslie: Thank you.

My next question is actually for the CBA. I noticed that you end your submission by saying about the bill, “we urge that it not be passed into law”. I have a quick question for you. Do you think we should abandon it entirely or do you think it can be saved through amendments?

Ms. Sarah Inness: We submit that the existing legislation that's already in place, section 718 of the Criminal Code, the aggravating factors set out there as well as the Controlled Drugs and Substances Act and the important role of judicial discretion, already achieve the goals that have been identified with respect to this legislation.

Ms. Megan Leslie: Do you think the drug treatment courts as they're set out in this bill do anything to achieve the goals?

Ms. Sarah Inness: With respect to the drug treatment courts, the bill prevents entry into the drug treatment courts if any of the aggravating factors are met. Our submission on that point is that entry into the drug treatment courts shouldn't be precluded by those particular factors and that they should be left to each of the individual drug treatment courts for consideration. They have their own factors that they consider.

We also have identified our concern about the fact that there aren't drug treatment courts available in all jurisdictions, particularly in rural areas even within the provinces where they're available right now. Also, there's what appears to be some ambiguity in respect of proposed subsection 10(5), because proposed subsection 10(5) provides that for people who successfully participate in and complete a drug treatment program, the mandatory minimum sentence wouldn't apply, but if they successfully participate in and complete a treatment program, as defined in section 720 of the code, which is required to have court supervision, a mandatory minimum sentence would apply. So it would seem that when there are two different individuals who presumably have been successfully rehabilitated, one is going to be subject to a mandatory minimum sentence and the other would not be.

Ms. Megan Leslie: Thank you.

I noted on page 3 of your submission you talked about the fact that fewer accused would likely plead guilty and the impact that could have on the court system. I'm thinking about section 7 of the charter and the principle of fundamental justice, that folks have the right to have a trial within a reasonable amount of time. I'm wondering if you have thoughts about whether or not the unintended consequence of this bill could be such a buildup at the court level that in fact more people will have their cases dismissed.

Ms. Sarah Inness: We could identify two points in the criminal justice process where there may be a result of increasing delays because of this legislation. The first would be the fewer number of people who we would anticipate pleading guilty by virtue of the automatic mandatory minimum sentence being triggered. More people might say, “I'll contest my trial; there are some issues with respect to defences, and I'd rather run the risk of having a trial rather than pleading guilty knowing I'm automatically going to go to jail.” So the increased number of trials could create a strain on the resources.

The second difficulty with the strain on the resources would come into play at the sentencing stage, where in my experience oftentimes I won't hold all crown attorneys to the strict proof of aggravating factors by calling evidence. I would say they could read in those aggravating factors, and I would talk about my mitigating factors, and we would let the judge decide.

It may be the case where more counsel now are going to put the crown to the strict proof of proving all of those aggravating factors because they trigger a mandatory minimum sentencing, again increasing the length and complexity of sentencing hearings.

● (1625)

Ms. Megan Leslie: Thank you.

You talked about how the CBA has consistently opposed the use of mandatory minimum sentences. We want to have policy that's based on evidence, right? In your submission you talked about the Department of Justice actually coming up with this report *A Framework for Sentencing, Corrections and Conditional Release: Directions for Reform*, and you use a quote there. The quote is:

> The evidence shows that long periods served in prison increase the chance that the offender will offend again.... In the end, public security is diminished, rather than increased, if we “throw away the key”.

I'm was hoping you could elaborate a little bit on that.

Ms. Sarah Inness: What we know about offenders who go into penal institutions is that in terms of the resources available for rehabilitation, there may be less depending on the penal institution, depending on how far the person might be from their family in terms of where they're incarcerated. And it interrupts what might otherwise be a rehabilitative process in the person's life with respect to employment. In the end, it increases the likelihood of re-involvement, as we state in our submission.

Ms. Megan Leslie: So re-involvement and bogging up the court system, so far.

The Chair: A quick question, very quick, and a very quick answer.

Ms. Megan Leslie: Quick question: do you have any thoughts on constitutionality when you take into consideration section 718.1 on proportionality and section 12 about cruel and unusual punishment? Do you have any thoughts about constitutionality?

Ms. Sarah Inness: Well, any piece of legislation, obviously, would be subject to potential arguments on whether or not it's cruel and unusual punishment, but we've identified the primary legislative difficulties we have with respect to its implication. Any legislation has to comply with section 12. That would be a determination for the court to make.

The Chair: Thank you.

Mr. Yost, I think you indicated you wanted to respond to one item regarding drug treatment schemes.

Mr. Greg Yost: As I understand it, my capacity is to make technical remarks here as to how things work. Perhaps this will help assist the committee. This is the point raised by the Canadian Bar Association with respect to being allowed into a treatment program. The drug treatment program, if you read the section, lists six of the seven aggravating factors. If you have any one of those—in a school, criminal organizations—you're not allowed in. The only one that allows you in is if you've had a previous conviction for a serious drug offence. It's very tailored for the person who's doing the trafficking and continuing to traffic, probably to support their own habit.

The second one is wide open to any kind of treatment program. It could be anger management, who knows? Presumably it's a drug treatment program in these circumstances. The theory, at least, is that the person in the second one—perhaps he has one of those other factors that was involved, the criminal organization or whatever—will still face the mandatory minimum, but presumably if he completes the course, the judge will drop the sentence somewhat to show he's made some progress. That's the theory of how the two work together.

The Chair: Okay, thank you.

We'll go to Mr. Rathgeber. You have seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you very much, Mr. Chair.

Thank you to all the witnesses for your attendance here today and for your expertise on this very important bill.

I am troubled by the Canadian Bar Association's opposition to mandatory minimum sentences. I think we resolved the issue when Mr. Ménard was asking questions regarding its applicability. Specifically, in the situation Ms. Inness cited with respect to a grower who had a single plant and was sharing it with his friends, that person would be subject to the mandatory minimum sentences.

Are you or is your association, which you represent, opposed to mandatory minimum sentences generally or just for what you regard as small amounts of a specific controlled substance, cannabis, marijuana?

Ms. Sarah Inness: Thank you.

Our association is opposed and has taken a position in opposition to mandatory minimum sentences consistently. With respect to our submission on the other aspects of the bill that set out mandatory minimum sentences for more serious offences—for instance, cocaine offences—our argument is that judges take into account the nature of the substance, the seriousness of the offence itself, and are already, in the exercise of their judicial discretion, imposing stiff and harsh penalties where appropriate.

Mr. Brent Rathgeber: Okay, but you don't oppose mandatory minimum sentences outside the sphere of controlled drugs and substances, for very serious, violent crimes, I'm assuming.

● (1630)

Ms. Sarah Inness: Our organization has consistently opposed the use of mandatory minimum sentences because of the elimination of judicial discretion. For serious, violent offences, the judges would be guided by the purposes and principles of sentencing set out in section 718 and the aggravating factors there, and for some offences perhaps by already the triggering of mandatory consecutive terms—for instance, criminal organization offences—that would guide judges in the sentencing of those offences.

Mr. Brent Rathgeber: Right, but for example, first degree murder carries a mandatory life sentence with no eligibility for parole for 25 years; second degree carries a mandatory life sentence with no eligibility for parole for 10 years. Is it the position of the Canadian Bar Association that those mandatory minimum sentences are inappropriate?

Ms. Sarah Inness: I'm not here today on behalf of the Canadian Bar Association to advocate for the elimination of those sentences that are set out in respect to murder. I'm simply here addressing Bill C-15 and some of the issues that arise with respect to the mandatory minimum sentences that are triggered by the CDSA amendments.

Mr. Brent Rathgeber: Okay, but you stand by your statement that the Bar Association opposes mandatory minimum sentences generally.

Ms. Sarah Inness: Yes.

Mr. Brent Rathgeber: You stated to Mr. Murphy that you're opposed to mandatory minimum sentences because they interfere with judicial discretion. Then you said judicial discretion, in your position, was working well with respect to controlled drugs and substances. I don't know if you've had the opportunity to peruse the Statistics Canada report that came out today, *Trends in police-reported drug offences in Canada.* Probably you haven't; it just came out today. I will quote from it for your benefit, and I encourage you to study it in some detail, because it might fly somewhat in the face of your position that judicial discretion is working well with respect to controlled drugs and substances.

It tracks all the drugs—cannabis, cocaine, heroin, and others—and then the totals on an annual basis from 1997 to 2007. It shows some alarming trends. In 2007, the last year that stats are available for, drug offences were at their highest point in 30 years. They've been increasing steadily since 1993. Cannabis is up. Thankfully heroin is down. Cocaine is up exponentially. There were 897 police incidents in 1997, and 22,819 incidents in 2007, a growth rate of several hundred times. Many of these police-reported offences have been or are allegedly being committed by youth.

I'm curious as to the statistical study.... Is it just anecdotal, or is it merely an opinion that the system is working well?

Ms. Sarah Inness: With respect, I can't comment on the particular statistics that you've provided.

We are represented in our organization by prosecutors and defence counsel and people across the country who work within the criminal courts on a daily basis. Jurisprudence from the highest courts in the country has identified deterrence and denunciation as significantly important sentencing principles for serious drug trafficking offences—those individuals who are trafficking for profit, those individuals who are trafficking in serious substances and at significant levels, particularly for profit. Typically, courts have indicated that incarceration ought to be imposed in those types of offences, but bear in mind that in every individual situation there is the availability of the prosecutors to bring to the court's attention the aggravating factors, and sentencing is very much a tailored, individualized process.

The Chair: You have another minute.

Mr. Brent Rathgeber: Thank you. I just wanted to ask a simple question to the representatives from Health Canada.

Thank you very much for your presentation. It has been different from many of our other presentations.

You talk about your strategy and the amount of financial investment over the years, but I don't see a position with respect to Bill C-15. I'm going to put you on the spot and ask if you think Bill C-15 helps in promoting prevention, treatment—given the emphasis on the drug treatment courts—and of course, enforcement with respect to the minimum mandatory sentences that some of your fellow witnesses are advocating.

● (1635)

The Chair: Mr. Rathgeber, I think it would be unfair to ask them that question. They're here representing Health Canada.

Mr. Brent Rathgeber: Okay. I'll withdraw the question, and that's my time.

The Chair: Thank you.

We'll move on now to Mr. Dosanjh, for five minutes.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

I want to ask Mr. Doucette a question. If I remember correctly, Mr. Doucette, you support the drug courts and you support the mandatory minimums in this bill. If this is an unfair question, tell me and I won't push.

Is this the ideal bill that you would have brought forth from your perspective? If not, then what are the things that you would like to have seen in the bill?

Mr. Chuck Doucette: That is a good question. My only concern would be to make sure that we are getting enough people into treatment through the drug court system.

I certainly am not qualified to examine the way the law is written and that sort of thing to know what's going to happen once it finally gets into action, so I can't give a qualified answer in that respect. All I can say is that it's important that it be massaged, if necessary, to make sure that we aren't leaving people out of treatment whom we could be getting into treatment. That doesn't mean they shouldn't also pay a price for any offences they've committed. Those mitigating factors always have to be examined as well. But certainly when somebody is committing a crime only because of their addiction, then treatment should be a primary factor.

That is an area that I would look at. That's all.

Hon. Ujjal Dosanjh: Thank you.

To Health Canada, based on what you just heard, one of the concerns I share with Mr. Doucette is that there may not be, one, enough money and, two, enough drug courts around to deal with the consequences of this legislation. Has there been any analysis done by Health Canada?Treatment is your dominion. Has any analysis been done as to what the expansion and the need for treatment would be as a result of this legislation? What moneys have been set aside or projected as needing to be set aside in the next couple of years to come to deal with that expansion of need for treatment?

Ms. Cathy Sabiston: Thank you for the question.

As I mentioned, for our prevention activities under the national anti-drug strategy, we've targeted that $30 million for a campaign. We also have moneys within the department for the drug strategy community initiative fund, which does look at innovative prevention and treatment activities for youth and others. We do target vulnerable populations, particularly first nations.

In respect of this bill, no, we haven't done additional analysis. We would be waiting for the outcome of this.

Hon. Ujjal Dosanjh: Has there been any analysis done in terms of what kind of impact it's going to have in terms of costs or the need in the various provinces? Remember, they bear the brunt of the need for treatment.

Ms. Cathy Sabiston: I'm going to ask my colleague Colleen Ryan to respond.

Mrs. Colleen Ryan (Director, Office of Demand Reduction, Department of Health): I think it is fair to say that, in collaboration with the provinces and territories at this stage, we haven't done a detailed analysis to come to terms with the real or potential implications of the proposed act. What we have done, though, is establish a process where we're readily engaged with the provinces and territories around the design and delivery of treatment programs and services. Part of that engagement obviously will include...as the bill itself, depending on its outcome, unrolls, we will be in constant consultation with them about what it means, what the implications are as it starts to roll itself out, if put forward. So I think that's an important point.

I think it's also important for us to recognize, again, that federally we're only mandated, obviously, to provide treatment to first nations on-reserve and then certainly to offenders within federal correctional institutions.

● (1640)

Hon. Ujjal Dosanjh: Let me address the next question before I run out of time.

The Chair: You have 15 seconds.

Hon. Ujjal Dosanjh: I understand there's a review of the drug courts that are currently in existence under way within Health Canada. How far has it gone? When is it going to be completed and released?

Mrs. Colleen Ryan: The drug treatment courts funding program is under the auspices of the Department of Justice, so they would be best positioned to tell you how that's functioning.

The Chair: Mr. Yost, do you know?

Mr. Greg Yost: No, I don't. That's another branch.

The Chair: We'll now move on to Monsieur Lemay.

You have five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Yost, I have a question to ask you. Schedule VII, which deals with the three kilos, does apply to sections 5 and 60 of the act, does it not?

Mr. Greg Yost: It applies to sections 5 and 60.

Mr. Marc Lemay: It applies to sections 5 and 60. We agree on that.

Mr. Greg Yost: It also applies to section 4, because we are discussing possession of an amount less than... But it does not affect the bill before us.

Mr. Marc Lemay: Let's stick to the bill.

There is no schedule that applies to section 7 of the act concerning production, therefore someone who is cultivating. I have been doing some research for the last little while, but there is no schedule that applies to that.

Mr. Greg Yost: That is true.

Mr. Marc Lemay: I have a few years of legal experience. When I read section 3 of the current bill, it refers to subsection 7(2), therefore to production.

Do you follow me?

Mr. Greg Yost: For the moment, yes.

Mr. Marc Lemay: The intent is to amend paragraphs 7(2)(a) and (b). Paragraph 7(2)(b), it says the following:

> (b) if the subject matter of the offence is cannabis (marijuana) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of
>
> (i) imprisonment for a term of six months if the number of plants produced is less than 201

The French translation: an 18-year old is trafficking one or two pot plants and gives them to his friend. He will have to serve a minimum sentence of six months.

Mr. Greg Yost: What is he charged with?

Mr. Marc Lemay: He is charged with production pursuant to subsection 7(2) of the act.

Mr. Greg Yost: All right.

Mr. Marc Lemay: He gets a six-month sentence.

Mr. Greg Yost: I must admit I had not thought of that scenario.

Mr. Marc Lemay: You have four days. It is a critical point.

Mr. Greg Yost: I will see Paul Saint-Denis in Iqaluit tonight.

Mr. Marc Lemay: You have a week and a half because next week, we will not be working. You work hard. Apparently we will be on vacation.

Mr. Greg Yost: All right. I could therefore wait for his return on Tuesday. You will get your answer.

Mr. Marc Lemay: This is extremely important, because according to my interpretation, it is at least six months.

Mr. Greg Yost: I now understand your perspective. There will be a response. I cannot give it to you immediately. Trafficking of a single plant is not a scenario I would have thought of. I always think of trafficking what has already been grown.

Mr. Marc Lemay: You are right, because the department wants to attack the big producers, and I absolutely agree. However, this targets youth. So we agree that this applies. It must be verified.

My next question is for the Canadian Bar or one of the other panelists. Perhaps you could answer, Mr. Yost. Have you found any study—and I only want one—demonstrating that minimum prison sentences are good, correct and that they help with rehabilitation? Can someone answer that question? I would greatly appreciate it. If you have such a study, I want to know about it and would like to have a copy.

● (1645)

Mr. Greg Yost: For my part, I will ask the question of our research section, because it's not my area.

Mr. Marc Lemay: All right.

What about the Bar Association?

[*English*]

Ms. Sarah Inness: We're not aware of any.

[*Translation*]

Mr. Marc Lemay: And the Department of Health?

[*English*]

Ms. Cathy Sabiston: It's not our expertise either.

[*Translation*]

Mr. Marc Lemay: Mr. Doucette, do you have any such study?

[*English*]

Mr. Chuck Doucette: I'm sorry, I'm not aware of any study like that either.

The Chair: Thank you.

We'll move on to Mr. Norlock. You have five minutes.

Just before we do, I'll ask Mr. Yost if he could provide a response to that one specific question by, say, May 25?

Mr. Greg Yost: Okay, you'll have it before then, I'm sure.

The Chair: All right.

And just as a reminder to Mr. Lemay, most of us will actually be working during the break. I don't know about you.

[*Translation*]

Mr. Marc Lemay: Yes. Everyone will be working!

[*English*]

The Chair: We'll not be on holidays. Just for clarity, most of us are not going to be on holidays.

[*Translation*]

Mr. Marc Lemay: Perhaps on Monday, you will be honouring the Queen, but we will rather be celebrating the Patriots.

[*English*]

The Chair: All right.

Mr. Norlock, for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much.

Thank you to the witnesses.

I know that being a police officer isn't quite like being a lawyer, but I have many years of law within me, albeit from a different perspective.

One of the things I noticed when Madam Schellenberg began is that she said the Bar Association "is seeking improvements in the law". I checked with my confrere here, who has been the government representative on the justice committee, I believe, since 2007, and he said that your bar association has never come here to discuss any of our legislation on a positive note. Other than for some procedural issues, is there a philosophical reason for that, or do you just deal with the specific legislation at hand?

Ms. Gaylene Schellenberg: Well, it's untrue. We have supported several criminal law bills. I forget the exact number, but—

Mr. Rick Norlock: Would they have been procedural or actual new legislation?

Ms. Gaylene Schellenberg: The one that was on child pornography, we expressed support for that bill. That's just one that comes to mind.

Mr. Rick Norlock: Okay. Was there a mandatory minimum there?

Ms. Gaylene Schellenberg: I don't believe so.

Mr. Rick Norlock: Thank you for that.

One of the things I do, and have a responsibility to do as a politician, is to go out and talk to my constituents with regard to the situation in politics, and in this particular situation, of course, the preponderance of drugs and the worry on the part of average Canadians. I think about my position here and what kind of legislation we can bring in, not just legislation but everything from treatment to...you name it.

And then I think about when I see the bar associations and representatives of the legal lobby come here, because that's what you're part of. The manufacturers' associations come to see me; they're part of a lobby group—I'm brought back to my beginnings as a police officer—and they explain how our law began. Our system is based on British common law, and in the most simplistic terms, the laws should be made and administered in such a way that the average person not only can understand them and live by them but can appreciate them. And I have to say that most of the people I come in contact with find it one of the worst offences ever when it comes to their children. In other words, peddling drugs in the school or peddling drugs to their children, at any age....

You can address this and tell me how wrong I am—but I don't think they want a court system and a system of laws that doesn't take that into account in what they perceive to be a serious way.

And I don't consider that to be judge-bashing. Is it judge-bashing when someone appeals a case? When a lawyer or the crown appeals a case, it's not judge-bashing. We just respectfully—and no one has more respect for the laws and judicial orders than I do.... Judges have no power except their orders. That's their power. So I respect that and will always respect it, to my dying day.

But after 30 years and two stints as a court officer observing our courts in action, I can tell you there has been a gradual reduction in the severity of sentencing. And a plethora of studies would indicate that. Perhaps it's a change in our society, and perhaps we're being more successful.

The latest Statistics Canada reports indicate.... Now, I know the counter-argument to that is that drug crimes are going up because the cops are charging more people. Maybe that's not wrong. Maybe we shouldn't.

So I will try to use the analogies. We had a whole phalanx of folks come in here the other day telling us that we should legalize every single drug—crack cocaine, you name it—because the system we have now just doesn't work. And one lady started talking about B.C., which was similar to Ontario, where we had liquor stores and you went in and the liquor was kept in cabinets and you'd mark down what kind of.... And I had this picture in my head of someone saying they were going to buy some cocaine. Did they want the extra heavy duty kind, the light...? The average person, listening to that, would fall over.

I understand we live in a society where we have differences of opinion, but I'm coming to the bar association and I'm very worried because—despite what some people think, I have the highest respect for the judiciary—if the judiciary and the law are becoming so complicated and the arguments become so—

● (1650)

The Chair: Mr. Norlock, you're already at six minutes, so you're over time. You will not get an answer to your question.

Mr. Rick Norlock: Oh, I'm sorry. Maybe you can answer it in the next question. We have to translate that to the folks out on the street; they're not understanding.

The Chair: Thank you.

We're going to move to Mr. Dosanjh for another question. Five minutes.

Hon. Ujjal Dosanjh: I have maybe more of a comment than a question. In my previous life I was a lawyer, an attorney general, and many other things. I actually do believe there's an element of judge-bashing. I'll tell you why.

It is one thing for the legislators to change laws to mandate certain sentences. It is one thing for prosecutors and attorneys general to order to appeal or appeal sentences. It is another when some elected politicians from time to time across the country stand up and say that judges are out of touch. That is judge-bashing. There is a line to be drawn, because judges do their best based on their wisdom and experience, and I in fact believe, as a former attorney general and as a lawyer, that more and more what's happening is that nobody is coming to the defence of the judges.

Judges will tell you, if you ask them, “Go and change the law; tell us what you want us to do.” But don't say judges are out of touch, because those people also do their best. I'm telling you, other than the lawyers and the Canadian Bar Association and the law societies across the country, very few people ever come to the aid of the judge. The kind of system we have in this country, which is evolved on the law, is that judges are not supposed to descend into the political arena. Therefore, we should actually cease and desist from saying phrases like “judges are out of touch”. Say “the sentences need to be reviewed”, or “the law needs to be changed”. There is a fine line between the two. That causes me concern, because if we want judges to descend into the arena, then we will end up having elected judges, and that's a whole different debate.

Thank you.

The Chair: Monsieur Petit, you have five minutes

[*Translation*]

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

My question is for Mr. Doucette. Earlier on, you talked about countries that you have studied and you said that we should perhaps follow what they did in terms of treatment. You mentioned that although they do have very strict legislation, there had to also be treatment.

Could you tell us exactly what you were talking about at that point? You mentioned Norway or Sweden; I do not remember which.

● (1655)

[*English*]

Mr. Chuck Doucette: Yes, it was Sweden. It would be very good for someone to do a study and present to your group. Of all countries, they are the only one that I'm aware of that experienced drug abuse increasing because they had very lax, very lenient policy. They became more restrictive in their policy, increased prevention efforts, increased treatment. They saw drug use go down. Then they relaxed, thinking that they had won over the situation, and started to get more lenient again, and they saw the drug use go back up again when they became more lenient. So then they became more restrictive again and saw it go back down again.

It's the only country I'm aware of where you actually saw a direct correlation between how restrictive the policy was and the problems that were a result of it. They twice proved that by being more restrictive they could reduce the problems.

[*Translation*]

Mr. Daniel Petit: Have you visited the country? Do you have any documentation? How did you discover that when their laws were less restrictive drug use increased, whereas it decreased when they became more restrictive? What did you base those comments on? Were you basing your remarks on your own experience, or did you meet with attorneys or someone from the Department of Justice over there? How did you get this information?

[*English*]

Mr. Chuck Doucette: I have been there twice, for international conferences on both occasions, and I met with senior police officials there, who discussed the policy with me. They have published an account, a history if you will, that is available over the Internet and other areas. I have written copies at my home, but it is easily obtained through the Internet. The United Nations highlighted them recently in one of their publications. The United Nations also agreed that it was a model example of strategic drug policy.

[*Translation*]

Mr. Daniel Petit: How much time do I have left, Mr. Chairman?

The Chair: You have two minutes.

Mr. Daniel Petit: Mr. Doucette, you come from British Columbia; that is how you identified yourself earlier on. We know that there are problems not only in British Columbia, but in my province as well.

Have you looked at studies that show that if the possession of small quantities of cocaine, heroin, marijuana or methamphetamine were legalized—not all together—and if we sold rather small amounts through the government, as we do for alcohol, their use would decrease? How did Sweden manage to solve their problem? Does the state sell drugs or is it still organized crime that maintains control?

[*English*]

Mr. Chuck Doucette: Drugs are not legally available, like that, in any country that I'm aware of.

I have quite a lot of experience debating this issue. The first thing I ask is why current drug traffickers would stop selling the drug just because it had become legally available through some kind of a store, like a liquor store. They are all profiting right now. They are all selling higher potencies than what the government would probably release through a liquor store, so they would not stop selling just because there was another legal option. Unless there's some unwritten rule that I don't know about that they have all agreed to, it would not happen. You would just have more options—the legal and the illicit.

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, and my thanks to the witnesses.

With respect to this StatsCan report that has been referred to at this committee meeting, we've heard people say that it won't work to have a tougher approach on criminal justice, on drugs, trafficking, grow ops, and meth labs. Of course, we've also heard the opposite. We've heard from people who think that's exactly the approach we should take. Mr. Doucette made a good point that should not be lost on those who would have us take the easy, lenient approach. He reminded us that even though cigarettes are sold at convenience stores, we still have trafficking in illegal cigarettes and more potent cigarettes. To think that going even softer on drugs would somehow eliminate the illicit drug trade is absolutely ludicrous.

What the Statistics Canada report shows me is that the soft-on-crime, revolving-door justice system, which punishes the proprietors of meth labs and grow ops with a slap on the wrist, clearly does not work. The approach that has been taken in the past is a failure. It doesn't work. We need to have improvements in the system, and that's exactly what this bill is about. Some of the debate has concentrated on possession, someone passing a joint to a friend and that type of thing. But the actual crux of the legislation is to have better sentencing for those who are operating grow ops and meth labs.

Mr. Yost, can you talk about the aspects of the bill that address meth labs and grow ops? How will the legislation help to crack down on those who are producing these illegal substances, and how will this help us to achieve our overall goal of disrupting the criminal enterprise? That is what this bill is about—disrupting the criminal enterprise and making sure that people who are preying on innocent Canadians are taken off the streets.

● (1700)

Mr. Greg Yost: The first thing, obviously, with respect to methamphetamine is the rescheduling to schedule I from schedule III, which greatly increases the penalties. That's in clause 6. The aggravating factors do aim at the commerce—I guess that's the best way to put it. I use that term because it's what they are currently, in many ways, but now it kicks into minimum terms of imprisonment. We're talking about the benefit of a criminal organization using a weapon, threatening to use violence.

Then we have others that affect more the social problem and trying to keep youth away from this thing. There are the ones about being near a school, as well, and of course using a person under 18 years of age to do that. Those are triggering factors, and they address what we understand from the people in the field to be serious issues with respect to the way drug dealers are carrying out their business, if I can put it that way.

I would point out again that there have been some references to eliminating judicial discretion. That is not done, of course. What we're doing is establishing a minimum. The judge still has discretion and presumably will within the somewhat narrower range. You know, the two years to life, for example, will decide just how serious this person's past record is, how violent the activity was, and if there's more than one aggravating factor. Presumably that person will get more than the strict minimum. So that's basically how this bill approaches it.

Mr. Rob Moore: Thank you on that, Mr. Yost.

I have to agree. Obviously, broad discretion is still there on behalf of judges. The Criminal Code has always had guidance from Parliament, from the federal level, where it's our job to maintain the Criminal Code. We certainly have in place maximum sentences that provide guidance for judges. I don't hear people advocating that we take those away. I think it's important that we also provide guidance when it comes to minimum sentences on these serious offences.

I do have a quick question for Mr. Yost.

● (1705)

The Chair: Mr. Moore, you're already over time.

Mr. Rob Moore: Am I already over? Oh, I'm sorry.

The Chair: The next person would actually be Mr. Storseth. If he wants to cede his time to you, that would be acceptable.

Mr. Brian Storseth (Westlock—St. Paul, CPC): All right, Mr. Chair.

The Chair: Mr. Moore, continue.

Mr. Rob Moore: One thing that hasn't been discussed as much as I think it should have been in our deliberations on Bill C-15 is the so-called date rape drugs and the impact they've had in different centres from coast to coast to coast. I'm wondering if you could comment a bit on that. Obviously we recognize that this is something that has to be taken with the utmost seriousness. We recognize that it's a problem. Can you explain the changes regarding date rape drugs and the act of moving them to a different schedule?

Mr. Greg Yost: Again, it's an issue of moving them from schedule III, where the maximums are much lower, to schedule I, where the maximums are higher. It will be like dealing in cocaine, etc. Again, I don't have the experience in the field and I don't know why there wasn't much discussion of that in front of your committee, but my understanding and the reason it has been put in here is that it's considered a serious problem. I understand western ministers of justice and, I believe, all ministers of justice asked for the rescheduling of those to address the current problem. They are in use.

Mr. Rob Moore: Thank you.

The Chair: Mr. Moore, you didn't want to continue? You still have some time. You have two and a half minutes.

Mr. Rob Moore: Two and a half minutes, okay.

Mr. Doucette, if you could, please comment a bit on that as well, the inclusion of the date rape drugs in a higher schedule for purposes of sentencing. We've heard testimony that there's certainly no legitimate purpose for some of the precursors that go into these drugs. If you could, comment a bit on that.

Mr. Chuck Doucette: I am not an expert in that area, so I can only tell from the community perspective that I'm very much in contact with. Certainly the idea of using anything, including alcohol, which is the most common date rape drug, for that purpose should carry a very severe sentence, in my opinion, and certainly the drugs that they manufacture are for that purpose. Yes, there is absolutely no legitimate need for the precursors. There are obviously legitimate uses for some of the drugs that can be used—because they can use prescription drugs. So if they're buying prescription drugs, that's a different matter. But if they're manufacturing them themselves, having those chemicals and doing that, then yes, that's a very clear case of where sentences should be tougher.

In your discussion, you talk about the judges. The difference is that the judges aren't accountable to the people in their community. You members of Parliament are. The only way the public has access, to let people know that we would like stronger sentences, is through committees like this, where we get to talk to our members of Parliament who we elected for that purpose. That then has to be transferred down to the judges, because they don't ask us, and they're not accountable to us.

Mr. Rob Moore: Yes, we've certainly been hearing that loud and clear, and that's one of the reasons we've introduced this legislation.

Now you're cutting me off again.

The Chair: Thank you, Mr. Moore. We're going to go to a round of three minutes each. We have some time left, so Mr. Murphy, you have three minutes.

Mr. Brian Murphy: I am a little perplexed when I hear the parliamentary secretary say that one of the reasons they brought this legislation in is to fill a void that exists with respect to judicial accountability, which is a question I asked an hour ago. We'll get to what you said earlier, because it's in the blues.

But the thing is, what is the level of judicial accountability? I'll ask the Canadian Bar Association people. You talked about appeals. There is a Canadian Judicial Council as well that regulates bad behaviour, I guess. Is it true that the judiciary should be independent, and that if there's a problem with sentencing or the laws as set out, it is Parliament's job to set the rules for judges to follow? And finally, do you feel there's an image or a reality that judges are not following the laws as written by the Parliament of Canada? There's an image problem here—because that side is right when they say we hear it—but we hear it from uninformed sources with respect to following the law.

If the law isn't followed, there's an appeal process. If a judge is crazy, he is dealt with by the Canadian Judicial Council—or is that a broken system? Give me your opinion, please.

● (1710)

Ms. Sarah Inness: My response to that is that judges do take guidance from Parliament through, obviously, the legislation that it enacts, but the current legislation that's already in place, both in the Criminal Code and within the CDSA, sets out the aggravating factors that are identified in Bill C-15. Those judges have those aggravating factors brought to their attention, and those factors are factored into the ultimate sentence that is delivered. The judges—

Mr. Brian Murphy: With all due respect, my question was quite general.

Ms. Sarah Inness: But with respect to any review that states that the judge didn't appropriately sentence the person or didn't sentence the person in accordance with the sentencing principles, the appeal mechanisms in place and the other mechanisms that you referred to are available ways through which that discretion can be reviewed. Judges are held accountable.

Mr. Brian Murphy: Is there something we should be doing to highlight the fact that judges are accountable to the appellate courts and to the CJC, or should we be saying they're not accountable enough? Because you hear it. You hear it on video. You hear it in B. C. You hear it from elected members of Parliament who make legislation. That's what you hear. There's no basis for it. The other side is not being told. Is there enough being done?

The Chair: Go ahead and answer.

Ms. Sarah Inness: Our response is that judges are being held accountable, and judges do take into account the needs and circumstances of particular communities in delivering their decisions. In that sense, they are accountable back to the communities, to follow up on the question that was posed earlier.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: My question is for Mr. Yost.

I would like you to summarize the bill for me, to the best of your ability—and I know that you have good knowledge of it, regarding minimum sentences.

When we talk for example about trafficking, cultivation of marijuana, could you remind us of when it starts, in the most minimal scenario, just so that we have a common level of understanding?

Following that, you will come back to us with a written response to the question my colleague, Mr. Marc Lemay, asked you.

Mr. Greg Yost: For the substances listed in schedule I, that is cocaine and others, it is immediately in effect when we are talking about trafficking. It is not like marijuana, for which there is a caveat under paragraph a.1). In that case, three kilograms is the trigger point when we are talking about joints.

There is no minimum as far as importing or exporting for the purposes of trafficking is concerned.

Mr. Réal Ménard: You seem to be saying that there is no minimum sentence for simple possession of marijuana.

Mr. Greg Yost: We are not dealing with the rules that deal with simple possession. They come under section 4, and there are no minimum sentences.

Mr. Réal Ménard: What is the situation for trafficking?

Mr. Greg Yost: For trafficking, under section 5, that is where we start to see minimum sentences, if we can establish the seven circumstances mentioned in the legislation. It would be one or two years, if that can be established. However, as far as marijuana is concerned, it must be more than what is in schedule VII.

But I still must answer the question as to what would happen in the case of someone trafficking a single plant. If I understood your question correctly, we are talking about a young person who has three or four marijuana plants and gives one to a friend? You would like to have the answer to that question, but I cannot provide it immediately.

Mr. Réal Ménard: There are certain things I would like to understand about trafficking, that being giving away a single joint. As of what quantity would mandatory minimum sentences be imposed for marijuana?

Mr. Greg Yost: It would be from three kilograms.

Mr. Réal Ménard: You mentioned three kilograms. We agreed earlier on that that was equal to 30 plants.

● (1715)

Mr. Greg Yost: Thirty plants could perhaps, in the long term, produce three kilograms.

Mr. Réal Ménard: If two students were sitting across from the University of Ottawa campus and one passed a joint to the other, you say that he could be accused of simple possession, but that under this bill, there would be no minimum sentence that would apply.

Mr. Greg Yost: He could be accused of trafficking because he is doing so by giving the joint to someone else. He could be charged with trafficking, but he would not be subject to a minimum sentence because the joint does not contain three kilograms of marijuana. Certain factors must be established that do not seem to exist in this case. It does not involve organized crime, the use of a weapon, or anything of that nature.

[*English*]

The Chair: *Merci*.

Go ahead, Ms. Leslie. You have three minutes.

Ms. Megan Leslie: Mr. Chair, before my time starts, could I ask a point of clarification?

The Chair: Sure.

Ms. Megan Leslie: Mr. Rathgeber, I was wondering about the numbers you gave us. What were they? Were they reported incidents of activity? It's just so I'll be clear.

The Chair: Perhaps Mr. Rathgeber can give that to you after the meeting.

Ms. Megan Leslie: It's relevant to my question.

The Chair: All right, as long as it doesn't take too long.

Mr. Brent Rathgeber: Today, Statistics Canada released *Trends in police-reported drug offences in Canada*.

Ms. Megan Leslie: It was drug offences. Okay. That's all I needed. Thank you very much.

Mr. Doucette, you are with the Drug Prevention Network of Canada. How many organizations are members of your network?

Mr. Chuck Doucette: I'm sorry, I don't have that number at my fingertips, so I can't tell you that.

Ms. Megan Leslie: Can you name some of the organizations that are members?

Mr. Chuck Doucette: The Alcohol-Drug Education Service of British Columbia, the.... No.

Ms. Megan Leslie: Do you know how many individual members there are to the network?

Mr. Chuck Doucette: I know that the board has approximately 12 people on it. I don't know other members, other than that.

Ms. Megan Leslie: Thank you.

This question is to the CBA. It relates to the drug offences numbers that we were given. In your submission you quoted the Canada Safety Council, which found that: "There's little demonstrable correlation between the severity of sentences imposed and the volume of offences recorded...the greatest impact on patterns of offending is publicizing apprehension rates, or increasing the prospect of being caught."

Would you agree with me that the increase in drug offences, as recorded by StatsCan, could easily be because of a lack of prevention, treatment, or apprehension, versus punishment?

In whatever little time we have left, could you elaborate on your ideas of the disproportionate impact on minority groups that this bill would have?

Ms. Sarah Inness: Paragraph 718.2(e) of the Criminal Code identifies particularly specialized sentencing considerations with respect to aboriginal offenders. Often aboriginal offenders are removed from communities and main centres and are living on reserves in rural areas, far from particular places where drug treatment courts are available. Judges are required to take into account the particular background and circumstances that we're aware of with respect to, for example, aboriginal offenders. According to this bill and the application for mandatory minimum sentences, those who are most disadvantaged—addicts and those types of offenders—would receive disproportionate sentences, whereas according to the sentencing regime in place right now, judges could take into account and balance all those factors.

The Chair: Thank you.

We'll go over to the government side. I'll take the liberty of asking a question, if I might.

I'm still intrigued by the judicial discretion discussion that's happening here. Mr. Dosanjh, of course, suggested that he has been asked by judges who tell him—and I think I'm quoting it correctly—"Tell us what you want us to do." Well, when we tell judges what we want them to do, that's removing an element of discretion from them, so I have some difficulty using that as an excuse for not enacting mandatory minimum sentences.

On judicial discretion, Ms. Inness, you mentioned—and I hope I'm not misquoting you—judicial discretion is working very well. Do you have studies to show that? How did you come to that conclusion? I think that would be helpful for the committee to know.

● (1720)

Ms. Sarah Inness: Yes. When one examines the case law and the sentences that are imposed for particular types of offences, particularly large amounts of cocaine, trafficking in the more serious drugs, offences where criminal organizations are involved, courts are mandated and directed by Parliament to consider denunciation and deterrence as significant factors. That's the guidance I'm speaking about when I talk about judicial discretion and the guidance that Parliament gives to judges, to take into account those sentencing principles and harshly punish those offenders who are committing those types of offences.

There was a reference earlier about a slap on the wrist to those who are operating grow operations or setting up methamphetamine labs. Offenders who are operating criminal organizations or committing offences at those types of serious levels are being sentenced to lengthy periods of incarceration.

The Chair: Actually, what I was asking was this: is there a more objective review you've done of sentencing practices that would lead you to believe judges are exercising their discretion the way they should be?

Ms. Sarah Inness: I can't point you to a particular study per se. I can only indicate that based upon our experience and the experience that we bring to bear with the representatives across the country, who comprise our organization, and as Ms. Schellenberg indicated, the input that goes into the submission that we made, that is our submission.

The Chair: There's a remarkable disjunct between your position and the position of the legal profession and what's happening out in the public. I believe the most recent survey in British Columbia showed 74% of British Columbians were dissatisfied with the sentences being handed out by the courts. I would never suggest we use that as the ultimate standard, but it does show that there is some kind of disconnect between the position that you would be taking on behalf of the bar, of which I have been a member for 24 years, going back.

The other question is on your categorical opposition to mandatory minimum penalties. It surprised me, because I had understood the CBA had a more nuanced approach to it. It's the first time I've heard the CBA actually say, “We oppose mandatory minimum sentences”. We have them in the Criminal Code now for murder offences, etc. Is that something you can confirm again for the record here, or is it something you may want to take back to the CBA to find out if in fact that is the formal position of the CBA?

Ms. Sarah Inness: I would say we have opposed the imposition of mandatory minimum sentences in the past, and we are opposed to the imposition of mandatory minimum sentences as set out in this particular bill. I wouldn't want to say categorically.... I'm not in a position to say categorically, in every single case, we have always taken that position, but in terms of the particular mandatory minimum sentences that are proposed in this bill, for the concerns that we've identified, we're in opposition.

Leaving an example of some disproportionality that can result when mandatory minimum sentences—for instance, those that are already in place in the law, particularly with respect to the imposition of mandatory minimum sentences in driving impaired cases—the analogy between the impact of that sometimes is disproportionate on disadvantaged groups, as is what could happen with respect to this legislation. For individuals who are in remote communities and may not have the same benefit of access to intermittent sentences, where they can still maintain jobs and things of that nature, there is some disproportionality that can result from the already existing mandatory minimum sentences.

The Chair: It would be helpful to get some kind of follow-up response to this. It has been raised numerous times today, and it does concern me. So perhaps you could do that.

Ms. Sarah Inness: I can.

The Chair: Certainly you could direct a response to the clerk.

This has been very helpful. To all of you, I say thank you.

Mr. Yost, thank you for appearing. We had really asked you to simply address one small aspect of the bill, and you were asked questions beyond that. So I appreciate your doing that. You certainly handled yourself well.

We're adjourned.

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

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

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