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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is the twenty-fourth meeting of the Standing Committee on Justice and Human Rights. Today is Monday, May 25, 2009.

You have before you the agenda for today. By order of reference, we have before us Bill C-25, An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody). This is our last day for witnesses on this bill, as I understand it.

At the end of this meeting, we'll leave 15 minutes to deal with some committee business regarding clause-by-clause on Bill C-15.

We've divided today's witnesses into two panels. During this first hour we have before us the following organizations and individuals to assist us in our review of this bill. First of all, we have with us Howard Sapers, representing the Office of the Correctional Investigator. We also have with us William Trudell, representing the Canadian Council of Criminal Defence Lawyers; Dyanoosh Youssefi and Matthew MacGarvey, representing the Law Union of Ontario; and Anthony N. Doob, from the University of Toronto.

Thank you to our witnesses for appearing. As you know, our process is that each of you receives 10 minutes to present. You don't have to use all of that. At the end of your presentations, we'll open up the floor to questions. I would just ask you to keep an eye on me, as sometimes we run out of time and I will signal, which means you need to wrap up with your answers.

Who is going to start?

Ms. Youssefi, you have 10 minutes.

Ms. Dyanoosh Youssefi (Lawyer, Steering Committee Member, Law Union of Ontario): Good afternoon, and thank you for this opportunity.

I'm going to start by addressing some of the concerns that were raised by members of Parliament in the House on April 20 with respect to the bill. Specifically, I mean unclogging the court system, lost rehabilitation opportunity, and the public's lack of confidence in sentencing.

There are three primary reasons why this bill is problematic, in our view. First of all, it results in discrimination in sentencing because pretrial custody does not count toward parole eligibility, as you know. I'm sure others will expand on this further. That's the main concern there, that it will result in discrimination in sentencing. Secondly, the bill disregards our sometimes medieval jail conditions and obligations in that respect. Finally, the bill does nothing to unclog the court system.

Sentencing cannot be homogenized. For it to be effective, fair, and just, it has to be individualized. The courts have confirmed and repeated this principle. While you, as our Parliament, have the duty to enact legislation that's in the best interests of Canadians, it is important to know that the courts have, with thorough, thoughtful, and rational analysis, ruled that there can be no mechanical formula for how we count pretrial time towards sentencing. Yet this bill tries to do exactly that. It pre-sets a formula for sentencing so that a robot could do the job. That's not the kind of sentencing that we want, in my respectful opinion. Judicial discretion is vital and must not be tampered with in this manner. Generally, our judges do consider all of the factors that our members of Parliament have raised in the House. The bill does not give judicial discretion, and it is blind to the external factors that should be considered in sentencing but are not under the control of the convicted person.

Lost rehabilitation opportunity has been cited as a reason to keep people in penitentiary longer. In my submission, you cannot punish people for the policy decision of our government to not have rehabilitation and education resources available in provincial jails and in remand centres. In fact, the lack of resources at remand jails is one of the reasons for giving enhanced credit. Yet through this bill, Parliament is saying that this very lack of resources, this governmental policy decision, is the reason to punish people further and keep them in penitentiaries longer. This is not right. I hope you'll be reassured by the fact that judges have given less than two for one credit where rehabilitation and education resources are available at the remand centres. So they do take that into consideration.

Some members of Parliament have argued that the current system clogs up our courts and that this bill will address that problem. I want to be clear that this bill will not unclog the court system. What's more, it may cause further delays. The idea that the system is filled with people who want to stay in remand custody to get generous enhanced credit at the end of their conviction is simply an unsubstantiated myth with no valid evidence. Our delay problems are not caused by hordes of these people, and they will not be resolved by taking these people out of the picture. I ask you to please disabuse yourself of this fallacy. A third- or fourth-hand story does not speak for everyone, and it does not speak the truth.

I have never stood before a court and asked for an adjournment for a client in custody simply to keep them there longer, so I can get greater credit for them at the end of the process. But I have stood before courts on countless occasions for clients who are in custody and asked that we set a trial date, even though the disclosure wasn't complete, so we could move the matter forward. It has been the crown attorneys and the judges and the JPs who have refused to set the trial date for their own reasons, with which I generally disagree. But that is the reality and that is why there are often delays at that stage.

In my opinion, the premise that delays are fundamentally caused by accused people who want to get enhanced credit is wrong, and I respectfully submit that it is irresponsible and offensive to perpetuate this myth. The courts will not be unclogged with this bill.

The public's lack of understanding of the system also does not mean that we must come up with a simpler system that is unfair and ineffective. My colleague, Matthew McGarvey, will address that issue further. I just want to make the point that just because something is hard for the public to understand doesn't mean we have to replace it with something simpler if that something is unfair and ineffective.

● (1535)

In conclusion, I would emphasize that there are considered, rational, just, and thoughtful reasons for enhanced credit. If Parliament enacts this bill, then our representatives are failing in their duty to do what is best for all Canadians. We can't dodge our duty to have a fair and effective system and to explain that system to the public. Our obligation as lawyers—and, I would submit, your obligation as leaders and parliamentarians—is to change the system in a more real, albeit more challenging, manner.

Ultimately the public will pay for the mistake if this bill is enacted. The court system might in fact be more clogged at the end, or more resources might have to be spent on jails, because people will stay in jails longer.

I urge you, our leaders, to please live up to the challenge and to your obligation to improve jail conditions, to address the real causes of crime, and to help move matters faster in courts rather than taking a supposed popular but perhaps misguided stance on this issue.

Thank you very much.

Mr. Matthew MacGarvey (Lawyer, Member, Law Union of Ontario): Mr. Chairman, thank you very much for this opportunity.

In terms of the public perception of the current system, one thing that the Attorney General of Ontario and the current minister I think have both acknowledged is that the mathematical soundness of the two-for-one principle as a general rule is sound. There is no question that the lack of availability of parole and the lack of availability of statutory release means that a person serving pretrial custody is disparately serving a lengthier sentence equivalent than a person who is sentenced. The reason is that if you're serving pretrial custody, you can't apply for early release before your trial date, whereas if you're sentenced, for instance, to a year in custody, you can apply for parole after one third and you can get statutory release after two thirds.

The justice minister has said that he wants to change that system too. Well, until that is done, this will differentially affect people who are held in custody and give them longer sentences. There's no denying that mathematics. I don't think the current attorneys general or minister do deny that. What they say is that the public is dissatisfied with the two-for-one principle, or, in some cases, the three-for-one or four-for-one principles in the cases of remand institutions that are no less than draconian in their treatment of prisoners.

Just in this past couple of weeks, we've had a work slowdown at the Milton detention centre—one of the largest ones in Ontario—which has resulted in people being taken to court at 4 p.m. for a bail review that should have happened at 10 a.m. They get remanded, and they spend more time in pretrial custody. That is not the fault of the prisoner whatsoever. It's a labour relations issue.

What would happen if that occurred under the regime that this bill would implement? Well, that person would not get any credit whatsoever over the one-for-one basis for something that's totally beyond their control—namely, the conditions at the jail and the fact that they weren't brought to court in a timely fashion so that the justice system did not move ahead as it could.

Another disparity that's glaring in the face of this bill, and that has not really been addressed, is that under the current drafting of the statute, if you're detained under subsections 524(4) or (8) of the Criminal Code—that is, because you have a previous outstanding charge—you are disentitled to even the one-and-a-half credit that this bill entertains as a compromise.

That, in my respectful opinion, has the potential in certain cases to be grossly disproportionate for the following reason. Let's say a client of mine may be detained on a second charge. They're out on bail for a first charge and they get accused of something—not convicted of something, but accused of something—on a second occasion. They lose their entitlement to bail under section 524.

Perhaps they were innocent of the first charge in the first place. Perhaps they never should have been denied bail in the first place because the initial charge they were facing had no foundation. Under this regime, they will not be able to get any enhanced credit for the jail time they should not even have had to serve.

The fundamental problem with this bill, in my respectful opinion, is twofold. The first has to do with the example I've just given. We could offer many kinds of examples where disparities and unfairness ensue. It cannot take into account individual circumstances.

The second and I think most important thing is the fact that it takes away the ability of judges to tailor sentencing to the actual circumstances in front of them. Instead, it imposes a system on them that does not reflect fairness to the person in front of them.

I think it's vulnerable, for that very reason, to charter attack. Even if it survived a charter attack, the fact that it could be passed does not mean it should be passed. It simply has the potential to act in a grossly disparate manner to people who, through no circumstances that they've caused, have their trial delayed or are detained on spurious grounds.

Thank you.

● (1540)

The Chair: Thank you.

We'll move on to Mr. Trudell.

You have 10 minutes.

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

I've been asked to go next. It's an honour, again, to appear before you. I'll keep my comments brief.

I'm going to ask you to bear with me for one second about what I believe runs as an undercurrent in this legislation and some of the previous legislation, and that is the role of judicial discretion. In my respectful submission, the most important part of the criminal justice system is not to have a rigid criminal justice system. A rigid criminal justice system is not justice; it's injustice.

As you know, I have been coming here for years, and many of you are tired of seeing me, but there's always been a voice missing here, and that is the voice of the judges. I would like you to consider inviting judges to attend before you in an in camera hearing, perhaps not...I would like to think on this bill, but I understand this bill may have some pretty fast legs.

I don't speak for the judges and I'm not coming with a message from the judges, but in any event, I would respectfully submit to you that you would find perhaps a receptive audience if it was an in camera hearing. Then you would know what the judges' concerns are about public safety. You would know what judges' concerns are about discretion. In a frank and open discussion, you would know judges' concerns about limiting their discretion.

As you know, if you go through Hansard, you're going to find words like “accountability of judges”, and even “reining in judges”—and they can't speak. It would be something that I would ask you to consider. Their voice is not heard. They are restricted in terms of speaking publicly, but you have in camera hearings, and I think, with great respect, that it might assist you.

There is the Canadian Association of Provincial Court Judges. There's the Canadian Council of Chief Judges. There's the superior court judges Canadian Judicial Council representation and also the Canadian Superior Court Judges Association. There are four organizations, and I would respectfully submit that a group of those judges probably would be willing to help you with your tasks as to what their role is. That's what we're all here for. We sound like advocates sometimes, but we're all here volunteering our time to help in terms of the impact as we see it in criminal legislation.

The other voice that I suggest you may consider is that of a young association of crown counsel, the Canadian Association of Crown Counsel. It's a national association. It's young in terms of years, but it represents crown counsel across the country. They might be another voice that you may want to access. I know that they would be interested in perhaps getting involved and assisting you if possible.

I would like to suggest to you that one of the most eloquent comments about judicial discretion, two-for-one, and what judges go through is found in the recent decision of Mr. Justice Rutherford in the case of Khawaja. You know that Khawaja was a terrorist case. If I get a minute, I'm going to take you to the words that Mr. Justice Rutherford used. In Khawaja, he did not allow the two-for-one credit, but he spent time looking at the history of it. His decision is erudite, helpful, and balanced, and it sort of gives you some kind of information, I think, about what judges go through.

He said this:

> I don't think that specifying a precise or particular arithmetic formula for giving pre-sentence custody credit in this case is necessary or appropriate. It simply invites the further use and adoption of such formulae, tending to make sentencing appear a mechanical, cookie-cutting process.

Judges have said that. Chief Justice McLachlin said that. It's been said in the Court of Appeal by Mr. Justice Rosenberg.

There are two reasons that there is enhanced credit. One is that you don't get the benefit of rehabilitation and some of the programs, but the other one is the conditions, and we've known this forever. The conditions in remand centres are awful in some cases.

● (1545)

There are people on the council from right across Canada. Let me just share with you what our Yukon representative said. This kind of puts it in perspective. Men in the Yukon receive 1.5 to one and women receive two to one. This is because they are housed together in one jail. Because the majority are men, the men have access to any programming that is offered—very little, the library, the yard access—whereas women are kept separate and usually get one hour out of their dorm in a day. In addition, there is only one halfway house that provides bail beds, and they do not accept women. Therefore, women have less opportunities for bail than men.

So my first point would be that to take away discretion from judges and treat everyone the same would result in an inequality to the female inmates in northern jails. That's one example, and that's what we find right across the country. That's in the Yukon.

In Calgary, our representative said that the Calgary remand centre used to have a small TV in each unit, of what entertainment was provided. These were removed in the mid-1990s, as was the exercise equipment and luxuries such as sufficient staff to allow inmates out of their cells for any significant period. A client who was injured during his arrest is housed in the hospital unit of the remand centre, where he recovers. It is a dorm-type set-up with four beds per cell, and there are, and have been since he has been there, eight inmates per cell, so four of them are sleeping on the floor. In the regular units, doubled bunking is the norm so that one inmate regularly sleeps on the floor in a six-by-eight cell.

This person went on to talk about aboriginal concerns. Phone calls are by collect call, and many of the aboriginal clients' families don't have the capacity on their phone plans to allow collect calls.

You may say, so what? But what we're talking about is different situations right across the country. So when judges take into consideration what they're going to allow for pretrial credit—and sometimes they say no because the onus is on someone to ask for enhanced credit, to show it—from Yukon, to Nunavut, to the Maritimes, to B.C. and right across the country, there are different problems that judges have to address. For us to ignore that, in my respectful submission, and suggest that truth in sentencing is not being served—that's the catchphrase. What we're saying is judges should have the right to look at each particular case and each particular offender. And remember, ladies and gentlemen, with great respect, they are still, whether we like them or not, presumed innocent. Oftentimes, what they are arrested for is not what they end up pleading. They might be pleading to something quite different.

It's my respectful submission that this is a very important and dynamic change that is being made, and I think we have to look at the entire picture.

Let me give you an example. I was thinking about this coming down on the plane. If I represent a police officer and that police officer is denied bail—and there may be all kinds of reasons for it—that police officer is going to be kept in segregation. That police officer's time in custody, prior to his case being heard, is going to be horrible. I would respectfully submit to you that a judge should be able to take into consideration the time that officer has spent in isolation and fear because of his job. That judge should be able to enhance credit. For us to say it mathematically can be only one to one or 1.5 to one makes this rigid.

● (1550)

Ladies and gentlemen, I hope this bill is not just going to be quickly passed, because it's so very important to the criminal justice system.

And the last thing, which I will quickly say to you—and my friend has already said this—is that the people who are going to lose the enhanced credit are the ones who can't get bail or get out, get on the bus, commit the offence—involving drugs or whatever—and be back in. Those are the ones who are going to lose the credit.

Thank you very much, Mr. Chair. I know I've taken too long.

The Chair: Thank you.

We'll move on to Mr. Doob. You have 10 minutes.

Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, As an Individual): Thank you very much.

I've prepared this presentation with Cheryl Webster of the University of Ottawa, who is also here. Thank you for inviting us to give our views on Bill C-25.

For the purpose of discussing this bill, we will make a number of assumptions. First of all, we will assume that an appropriate length of sentence for a particular case can be determined. Hence, we are assuming that the purpose of this bill is not to increase or decrease the amount of punishment certain offenders receive, but rather to ensure that time in pretrial custody should count the same as time after the sentence is imposed. In other words, the purpose here is to ensure that there is no advantage or disadvantage for an offender who stays in prison, at least in terms of days served, to serving those days prior to sentencing rather than after sentencing.

Second, we will assume that whatever other values imprisonment might have, the primary purpose can be considered to be punishment, and that in cases in which an offender is detained prior to trial, some of that punishment would have occurred before conviction.

Thus, we are assuming that the purpose of Bill C-25 is to attempt to ensure that the total amount of punishment an offender who has spent some time in pretrial detention receives is not more than or less than it would have been had the offender not spent any time in pretrial detention.

The challenge faced by Bill C-25 is that offenders do not normally spend every day of a prison sentence actually in prison, as is assumed by the presumptive one-to-one system of credit for time served that's in Bill C-25. For the most part, those who are sent to prison receive fixed sentences, but how those are served varies enormously. For federal prisoners, those serving sentences of two years or more, the Corrections and Conditional Release Act outlines a number of ways in which prisoners can be released before the end of their sentences. In fact, almost all federal prisoners serve a part of their sentences in the community.

The situation of provincial prisoners, those serving sentences of less than two years, is different. These people are the vast majority of all prisoners in Canada. Indeed, 95% of all prison sentences in Canada are less than two years in length. Furthermore, almost all of those who are sent to prison—86%—are sentenced to six months or less in prison. For such short prison sentences, prisoners do not have the right to a parole hearing. They typically serve no more than two-thirds of their stated sentences in prison.

Section 6 of the Prisons and Reformatories Act provides that all provincial and territorial prisoners can be expected to earn remission of typically one-third of their sentences. This means, for example, that a 90-day sentence means that an offender will normally serve not more than 60 days, two-thirds of 90 days, in prison.

If on the other hand the same person had already served 30 days in pretrial detention, in order to make the punishment equivalent, which we assume is the purpose of the bill, we should give credit for the time served based on what this person would have served without any pretrial time. In this case, as you can see in the second scenario in our handout, the exact equivalent credit would be 1.5 days for each day in pre-trial detention. This is simple arithmetic and is based on a simple fact written into our law. Prisoners do not normally serve more than two-thirds of their prison sentences in custody.

Keeping in mind the fact that an offender without any time in pretrial detention will serve 60 days in prison on a 90-day sentence, a one-to-one credit proposal as in Bill C-25 would mean that an offender who has served 30 days in pretrial detention and who deserved a 90-day sentence would be sentenced to 60 days. The offender would then serve two-thirds of that sentence, or 40 days in prison. In total, then, the offender would serve 30 days pretrial and 40 days after a conviction, for a total of 70 days, rather than the 60 days that would occur for an offender who had served no time in pretrial detention. That's outlined in scenario one, which is in the handout we've prepared for you.

In other words, the bill would automatically defeat its presumed purpose of ensuring that offenders who spend time in pretrial detention serve the same time in prison as those who deserve the same sentences but who were not detained prior to being sentenced. Said differently, the bill has it wrong. Bill C-25 would enshrine in legislation a logical or arithmetic error.

● (1555)

The easiest examples in our handout to understand are scenarios one and three. In each of these examples, we have suggested that we should think of offenders who deserve a sentence of 90 days, which is in column B of that handout. The offender in scenario one served no time in pretrial detention and will, because of the Prisons and Reformatories Act, serve 60 days in custody, which is shown in columns F and G. The offender in scenario three, however, deserves a sentence of 90 days, but has already served 60 days in pretrial detention. Giving credit on a 1.5-to-one basis, then, makes the number of days that this offender spends in prison, 60 days, exactly the same as the offender in the first scenario.

Said differently, for most provincial prisoners—86% of all offenders in Canada who are given prison sentences—a pretrial credit system of 1.5 to one would result in equivalent treatment, in terms of time served, to those who have not served time in pretrial detention.

The complexity of what a prison sentence means in Canada is shown more clearly when one looks at penitentiary sentences, those sentenced to two years or more in scenarios four through nine on the handout. You will remember that we have a parole system in Canada. During the middle third of a sentence, an offender in penitentiary can apply for parole. As such, many federal prisoners are released sometime between the one-third and the two-thirds point in their sentences. Like provincial prisoners, almost everyone else is released at the two-thirds point in their sentence.

Think of six prisoners, each of whom deserves a 30-month sentence. Given the possibility of release as early as the one-third point—but almost definitely at the two-thirds point of the sentence—this 30-month sentence is likely to mean that a prisoner will serve somewhere between 10 and 20 months in prison. As with provincial prisoners, we continue to assume that offenders who spend some time in pretrial detention should neither be punished less nor more than an equivalent offender who has served no time in pretrial detention.

What credit should be given, then, for offenders who have spent a substantial time—for example, 10 months—in pretrial detention, to ensure that they do not spend less or more time in prison just because they have spent some time in pretrial detention prior to being sentenced? Imagine the case in scenario six in our handout, in which a person is paroled halfway into the parole eligibility period of the sentence without any pretrial detention. This person would serve 15 months in prison on a 30-month sentence. If we had an equivalent offender who had served some time in pretrial detention, we would have to give credit on a two-to-one basis to ensure that this offender was neither advantaged nor disadvantaged by having spent some time in pretrial detention, rather than serving all of his or her time after conviction.

Unlike provincial prisoners, who can earn remission that usually results in release at the two-thirds point in their sentences, federal prisoners no longer earn remission, but are released statutorily at the two-thirds point in their sentences. That's with the exception of a tiny minority. For the offender who is not paroled and is released on statutory release at the two-thirds point in their sentence, we see in scenario five that 1.5 days' credit for each day in pretrial detention would be appropriate.

Given that almost all federal, provincial, and territorial prisoners are released at the two-thirds point in their sentences, or earlier, it is clear that if Bill C-25 was made into law, it would simply contradict other provisions in federal legislation. In short, with all due respect to those who drafted this bill, it would appear that the drafters and supporters of this bill have not taken into account the complexities of our current sentencing and conditional release laws. As a result, they have crafted a bill that further complicates sentencing.

There are various other approaches that might be considered if you were interested in fixing what is in fact a complex problem. The complexities of this problem might be seen by you as a reminder that there is a need for a serious discussion in Canada about sentencing. The issues concerning sentencing are much more complex than simply whether sentences are too harsh, too lenient, or just right.

The issue raised by C-25 is only one small part of that debate. This is not the time, however, to create additional inconsistencies in our sentencing system by creating a seriously flawed set of provisions. Like many of you, and like many Canadians, I would like to see a system that gives appropriate credit, but no more than appropriate, for time spent in pretrial detention.

● (1600)

Clause 1 of this bill indicates that it can be referred to as the “Truth in Sentencing Act”. As we all know, saying that one is telling the truth does not make it so. The substance of this bill clearly contradicts its own title.

I would urge you to set this bill aside and examine thoughtfully the issues this bill raises concerning sentencing, pretrial detention, and conditional release.

Thank you very much.

● (1605)

The Chair: Thank you.

We'll move on to Mr. Sapers.

You have 10 minutes.

Mr. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator): Thank you, Mr. Chairman.

Members, thank you very much for your invitation to appear before this committee and for the opportunity to provide the views of my office on the impact of Bill C-25, the Truth in Sentencing Act, on federal corrections.

Let me begin by first telling you a little bit about the mandate of my office and then making it clear why I agreed to be here today.

Last year the Office of the Correctional Investigator celebrated its 35th anniversary. The office was established in 1973 to strengthen the accountability and oversight of federal corrections. The office was given a legislative mandate in November of 1992 with the enactment of the Corrections and Conditional Release Act.

My office investigates and resolves individual federal offender complaints. As well, it has a responsibility to review and make recommendations on the Correctional Service of Canada's policies and procedures associated with these individual complaints. In this way, systemic areas of concern can be identified and appropriately addressed.

My office has 24 staff and receives between 5,000 and 7,000 offender inquiries and complaints each year. Last year our investigative staff spent approximately 300 days inside federal penitentiaries, conducted interviews with more than 2,000 offenders, and met with many individuals in those penitentiaries, from wardens down to their staff, their health care workers, their front-line workers, and inmate committee representatives, including native brotherhoods and sisterhoods.

As the ombudsman for federal corrections, my mandate expresses important elements of the criminal justice system in Canada. The office reflects Canadian values of respect for the law and for human rights, and the public's expectation that correctional staff and senior managers are accountable for the administration of law and policy on the public's behalf. It's with this mandate firmly in mind that I offer my thoughts on the impact that Bill C-25 may have on federal corrections.

I believe it's within my role to comment on the proposed reforms with respect to how an increase in the federal inmate population may affect the safety and security of that population as well as the individual inmate's ability to receive programs and services that will assist their safe and timely reintegration into the community.

It's my belief that Bill C-25 will likely lead to a significant increase in the offender population managed by the Correctional Service of Canada. My office is concerned with the impact that a rapid influx of new admissions to federal custody will have on an already burdened correctional system.

In my 2007-08 annual report, I noted that prison overcrowding has negative impacts on the system's ability to provide humane, safe, and secure custody. It is well documented that overcrowding in prison can increase levels of tension and violence and can jeopardize the safety of staff, inmates, and visitors.

As witnessed in the early 1990s, when correctional populations dramatically increased, the timely and comprehensive access to offender programs, treatment, and meaningful employment opportunities measurably diminished. This resulted in delays of safe reintegration into the community and increased both overcrowding and cost pressures.

It bears noting that the pervasive effects of prison crowding reach far beyond the provision of a comfortable living environment for federal inmates. It stretches the system beyond its capacity to move offenders through their correctional plans in a timely fashion. It has negative impacts on the protection of society itself, as offenders are incarcerated for a greater portion of their sentence, only to be released into the community ill-prepared and then supervised for shorter periods of time.

As it stands now, offenders have to contend with long waiting lists for programs; cancelled programs because of insufficient funding or lack of trained facilitators; delayed conditional release, because the lack of capacity to provide programs means offenders cannot complete their correctional plans; and more time served behind walls without correctional benefit. This situation is becoming critical. More and more offenders are released later in their sentences too often not having received the necessary programs and treatment to increase their chance of success once in a community.

I asked my staff last week to gather a few numbers to illustrate some of these challenges that are faced by the correctional service every day. Here's a sample of their responses.

At Drumheller Institution, 84 offenders are currently on a waiting list, waiting for core programming.

At Saskatchewan Penitentiary, five of the fourteen funded program officer positions are vacant. Of the six health care and psychology positions, two are vacant, including the position of chief psychologist.

● (1610)

Eighty-three aboriginal offenders are on a waiting list for aboriginal core programming, which would include the family violence program, the “In Search of Your Warrior” program, and the aboriginal substance abuse program.

At Warkworth Institution here in Ontario, 103 sex offenders are on a current waiting list for the national sex offender maintenance program.

These are but a few examples of the current barriers that prevent offenders from accessing programs and services that will assist them in their chances of early release and safe reintegration into the community.

In terms of accommodation, in the last five years, the rate of double-bunking—that means the housing of two offenders in a cell designed for one—in federal corrections has significantly increased, by about 50%, and now directly affects almost 10% of the total federal inmate population. According to its own policy, the Correctional Service of Canada identifies single accommodation as “the most desirable and correctionally appropriate method of housing offenders”.

Of note, this policy reflects international human rights standards. For example, rule 9 of the “Standard Minimum Rules for the Treatment of Prisoners”, which Canada endorsed in 1977, specifically requires that “each prisoner shall occupy by night a cell or room by himself”.

The most recent available data, from February 15, 2009, indicates that nationally a total of 1,313 offenders were double-bunked in 657 cells. Any significant influx of new admissions without additional resources for accommodation, programs, health care, improved sanitation, hygiene, and control for communicable and infectious diseases, as well as a reasonable timeframe to put into place these initiatives, will exacerbate an already difficult situation.

My office is also concerned about the differential impacts that the proposals for pre-sentence custody will have on an already vulnerable and growing correctional population in Canada, specifically, aboriginal people and the mentally ill. As data from 2001 to 2007 indicates, the number of aboriginal adults admitted to remand custody increased by 23%, compared to a 14% increase in the total remand population.

Research suggests that aboriginal people in pre-sentence custody are more likely to be denied bail and more likely to be held in higher security conditions and serve longer periods of time in remand. Because of their disadvantaged socio-economic position, these same disparities in aboriginal pre-trial detention are patterns repeated at the federal level, where aboriginal offenders now account for 20% of the inmate population—that's one in every five admissions to sentence custody in federal penitentiaries in Canada.

It is my office's contention that these trends in pretrial custody need to be carefully understood and evaluated, as proposed changes will have a significant effect on the rate, cost, and distribution of incarceration in this country. It is my opinion that the federal correctional system currently does not have the capacity to easily absorb this impact.

Thank you.

The Chair: Thank you.

Thanks to all of you.

We'll open the floor to questions and go first to Mr. Murphy. We're going to go with a seven-minute round. Just so everybody knows, when the second panel starts, we'll continue from where we left off. At the end we usually have some time, and we'll do one more round, which will include one person from every party. We've done that in the past and I think it's worked well.

Mr. Murphy, you have seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair, and thank you, witnesses. I want to particularly single out Mr. Trudell, who should get the frequent flyer witness award here in justice for the years I've been here.

Mr. Sapers, I want to thank you for the work you've done with respect to Ashley Smith. It's certainly something that touches us on this side, in particular since she was from my riding in Moncton.

Just to cut to the chase, this bill attempts to sort of communicate to the public that one means one, and I understand the witnesses' statements that it's a complicated system. I want to applaud what Mr. Trudell said about perhaps having unheard voices in the future. It came up last week when I asked the Canadian Bar Association two things. It seems that the Canadian Bar Association comes here and purports to represent all lawyers of both sides in an adversarial system. That's what they said. But generally we don't hear from prosecutors through the Canadian Bar Association. It's generally the voice of the defence attorneys, and there's no problem with that; it's just that we have missed the voice of prosecuting attorneys, and I take what you say very seriously, Mr. Trudell.

In addition, it's long been my view that judges have not had a voice here. Comments have been made that they're caught by the appeal system if they make a mistake, or that if there's aberrant behaviour, they're caught by the disciplinary system that exists. But I think we should have judges in to explain to us the job they do and how seriously they take it, and to partially—at least within this small committee, if it's in camera—restore confidence, which has clearly been lacking in some of the statements that have been made by our judiciary. I think those are excellent comments to the point at hand here, Bill C-25.

It seems to me—and I throw this open for a general discussion—that we're talking about a credit system that is put in place to take into account poor conditions in the detention centres. Some of the points made were that there is overcrowding, lack of programming, and lack of access to parole. So credit is given because of poor conditions. The system, once you're inside federal institutions, takes into account good behaviour. I think if we look at the sentencing principle, there always has to be a mix of deterrence, denunciation, and rehabilitation. We admit that—I think—section 718 says that's what we should be doing when we look at any time served.

On what I'll call the provincial side, we were giving credit because of bad conditions, lack of resources, and lack of training. On the federal side, we were giving credit or looking at the parole system as a way to reward good behaviour. There's a dichotomy that doesn't work, and it all comes down to, it seems to me, the deplorable state of the detention centres, the lack of resources, the lack of space.

If we want one to mean one, everything you've said talks about how horrible it is to serve dead time before sentencing. That's a function of conditions and lack of programming and lack of access to parole. So is it not down to an issue of resources to provinces for detention centres, for provincial institutions?

● (1615)

Dr. Anthony Doob: No, I don't think it is at all. Certainly, that's one of the considerations that is presently taken into account, and it seems to me it would make sense. But my starting point would be that a day of a sentence does not mean a day served in prison. A person who gets a 30-day sentence will not spend 30 days, regardless of the conditions in which the prison might be.

So if you're trying to equate this, the difficulty is that 99.8%—I'm not making up that figure, that's a calculated figure—of prisoners serve no more than two-thirds of their sentence. So for 99.8% of prisoners, the arithmetic is just wrong. That's all there is to it, because they're not going to serve a day for every day of their sentence. They're going to serve two-thirds of a day for every day of sentence.

Mr. Brian Murphy: Why?

Dr. Anthony Doob: It's because there are two federal laws that state that this is the case: the law that governs the way in which a federal sentence is served and the law that governs the way in which a provincial sentence is served. Those are the laws that deal with these matters, that people at the moment serve typically no more than two-thirds of their sentences. So that is the law. If you want to re-address that law, that is what I was suggesting. Sentencing is a complex matter, and this bill just throws one bit of ill-thought-out procedure into an already complex system.

Mr. William Trudell: Mr. Murphy, could I just respond to the more general question? We cannot ignore the conditions in our remand centres. We're not even talking about the penitentiaries. The international human rights code states that presumed-innocent individuals incarcerated by the state, awaiting trial, must be incarcerated in conditions that are above the standards of the regular prisons. We in this room all know that the conditions of overloading, double- and triple-bunking, and non-existent services are there. We cannot ignore this. To take away judges' discretion to seriously consider it and to put a number in doesn't reflect the bigger picture.

To just reflect what you're hearing here, this bill needs to be looked at because there's a bigger picture. You mentioned some things, including a dichotomy in the system. Maybe there is a dichotomy in the system, but you have to look at it and decide what the issue is and see whether we can do something about it.

There is this anecdotal stuff about people wanting to stay in custody to get credit for two for one. I'm sure we could produce a couple, but you don't change the law on the basis of that couple. Most people want to get out and want to get their sentences over with.

That's especially true in relation to some of the institutions. I don't know whether you've ever heard from health officials. The health concerns in some of these institutions, the remand centres, are extraordinarily critical. We ask our correctional staff to manage this; it's impossible to do. The bigger picture is what we're all talking about in our own way.

Was that seven minutes?

● (1620)

The Chair: Actually, it was seven and a half minutes. We're going to move on to the next questioner.

Go ahead, Monsieur Ménard.

[*Translation*]

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

I would like to welcome the witnesses.

I am a bit surprised by the presentations we have heard this afternoon, in that someone who has not read the bill and who is listening to the testimony may think that sentence credits have been completely eliminated. But that is not what we are talking about. What we are talking about is bringing sentence credit proportions down to fairer levels, namely, one for one and, in certain cases where it is explicitly indicated or reasons are provided, up to 1.5.

Obviously, we have all read the Supreme Court rulings that explain why we need to take into account time spent in custody, for reasons that everyone knows and that you have also presented to us. But it seemed like the system was sometimes out of whack. For example, I have seen mob bosses receive sentence credits that I considered excessive. It has become a practice, as it were; it is not done on a discretionary basis. When we look at court judgments, we see that it has become a relatively common practice.

I have two questions, one for Mr. Sapers and one for the gentleman seated next to him. I will start with Mr. Sapers. What proportion of individuals in pre-trial custody are in federal penitentiaries? Clearly, we cannot disregard that, but, as lawmakers, we cannot not correct abuses, and there definitely seem to be some. I am keeping in mind the figures you presented. You are concerned. What do you suggest we do to rectify the situation?

Then, I would like to hear from your neighbour, who seemed to be talking about a lack of fairness in terms of bail. I want to come back to that point.

Let us start with you, Mr. Sapers.

[*English*]

Mr. Howard Sapers: I'll take a shot at answering your question, but I also note that you will be hearing from the Commissioner of Corrections later in the proceedings. He may have more accurate figures on the number of those admitted to federal corrections who had previously spent time remanded in custody awaiting trial or sentence. I don't have those statistics.

Our analysis shows there will be an increase in both admissions to federal penitentiaries and the amount of time served if the present trends and patterns continue, particularly as they relate to some sub-populations. The two that I mentioned were aboriginal offenders and mentally ill offenders. Federal penitentiaries, particularly at the medium-security level where the majority of offenders spend their sentences, are very burdened in both accommodation capacity and program capacity. Any increase in the number of admissions will further that burden, and we don't think that is conducive to good corrections. We also think it's contrary to the legislative mandate of Correctional Service Canada in the Corrections and Conditional Release Act.

● (1625)

Mr. Matthew MacGarvey: Thank you.

One of the issues that hasn't really been discussed is why people are denied bail. It was alluded to in my friend's presentation when he talked about the disproportionate number of aboriginal offenders. I would call them people who are detained who are alleged to have committed crimes who are aboriginals, for instance.

The significant factors that affect eligibility for bail include such things as wealth, employment, and roots in the community. This means that the denial of bail disparately, without any doubt, affects people who are marginalized and new to the community. This bill disproportionately affects their eligibility for credit on a sentence. For instance, a marginalized, unemployed, recent immigrant will have great difficulty getting bail. As the mathematics of Mr. Doob point out, that person will serve the equivalent of a longer sentence simply because they will be serving it before trial when they're not eligible for any form of statutory release whatsoever. That's one example of disparity or unfairness.

You gave the example of a Mafioso who seems to get a light sentence because he served so much time in pretrial custody. As it stands now, judges are only told that they may, under the Criminal Code, give credit for time in pretrial custody. The degree to which they give that credit is a matter of judicial discretion, and as Mr. Trudell so eloquently points out, the parameters of that discretion are limitless because the facts that can affect the fairness of the situation or the equities of the situation are limitless. The bill brings a structure to something that by its very nature ought not be so rigidly structured. That's why it is guaranteed to have a disparate effect on certain marginalized populations, for instance.

The Chair: Thank you.

We'll move on to Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Professor Doob, I'm sorry that Mr. Ménard stepped away from the table, because he doesn't seem to understand—I'm not sure if other committee members are having the same problem—that on the one-to-one, if people are in pretrial custody they are going to be discriminated against, as opposed to those people who have not spent time in pretrial custody.

Is that a valid statement?

Dr. Anthony Doob: If you were going to do the simple arithmetic on this bill, it's not high-tech mathematics. Your starting point for all offenders would be 1.5 to one, because almost nobody wouldn't deserve 1.5 to one. Then one would do an imponderable and guess when a federal offender would be released.

Second—not an imponderable—is dealing with the issue of conditions that many of the other witnesses have talked about. I'm not suggesting that conditions are irrelevant, but I'm suggesting that the starting point for thinking about the kind of credit given should be 1.5 to one, given two other laws that govern how sentences are served. Then it should go up from there to accomplish what I think is supposed to be the goal, which is an equivalent sentence, whether it's served prior to being found guilty or after the person is found guilty.

Mr. Joe Comartin: Thank you.

Thank you all for being here.

Mr. Matthew MacGarvey: Could I add one brief comment to that?

I would simply like to point out that both the Attorney General for Ontario and the current minister agree with those mathematical calculations. That is not in question, in my view.

Mr. Joe Comartin: Mr. Sapers, we had the justice minister sit just about where Mr. Doob is and assure us, because of assurances he got from the Minister of Public Safety, that there was no problem in the federal system taking the additional prisoners who were going to come in.

First, I want to ask you.... I assume from the latter part of your paper and what you gave us verbally today that you would not agree, in fact, that the federal system is available for a significant upsurge in new prison inmates. And then secondly, is it possible to determine how many additional prisoners will go into the federal system if this law is adopted?

So the first question is whether you agree with the minister. Secondly, can we figure out how many are actually going to go into the system?

● (1630)

Mr. Howard Sapers: My observations are based on the analysis of the intake, admission, and discharge in federal corrections, and I've looked at it both in terms of snapshots, a daily count, as well as trends. This is certainly not a new or novel conclusion on my part and the part of my office that the Correctional Service of Canada at present is extremely challenged in meeting its mandate of providing safe and secure custody and timely reintegration. They don't have the capacity to do that at present. So adding one or two or a thousand more offenders is just going to make that burden all the more challenging.

There are difficulties in terms of straight accommodation. The service has bricks-and-mortar needs. There are problems in terms of human resources, the recruiting and retention of professionals. The Correctional Service, I'm sure, will speak to these issues and make their own points, and the committee can then draw its own conclusions.

My conclusions are that, at present, the service is extremely burdened. When we took a look at the potential impact, we were asked, as an office, to provide some assessment of what the workload impact may be. It is my opinion that shortly following the enactment of the proposed changes, perhaps within a year, you'd begin to see an increase in admissions to the federal penitentiaries, and then cumulatively, over time, perhaps going out three or five years, we're talking about several hundreds of new admissions, which—

Mr. Joe Comartin: Sorry, can you quantify that in terms of a percentage?

Mr. Howard Sapers: Well, the daily count on May 10 was 13,353 in custody, about 500 of whom were women. If you take a look at that daily count and at trends in terms of admission and discharge, which have been relatively stable, then it's easy to see how, if you're double-bunked right now in 650 or 660 cells and you don't add new capacity, and most of that space crunch is at medium security, which is also where most of your program wait list is, adding even just a handful of offenders is going to make it all the more challenging in terms of managing the population.

If we had more time, we could get into the intricacies of managing those populations, because you have disassociation populations, mentally ill offenders, aboriginal offenders, offenders with gang affiliations who you have to keep separate. It becomes all the more complex.

Mr. Joe Comartin: Okay.

I want to ask Mr. Trudell, Ms. Youssefi, and Mr. McGarvey for a comment.

If this bill goes through, and it looks as if it probably will, given that it has three parties in support as it's presently constituted, what do you expect the judiciary is going to do?

Mr. William Trudell: I'm hoping you'll ask them.

I think a judge's job is going to become very much more difficult. How do they balance everything they see in front of them? And I think it adds a tremendous strain on the judges who have to make the final decision.

Mr. Joe Comartin: Let me pose a couple of hypotheticals.

Are they going to find it against the charter? Are we going to have charter challenges coming? And two, as an alternative to that, are they simply going to take it into their own hands and shorten the sentences—in effect, take into account the pretrial custodial time but not say it?

Mr. William Trudell: I think there will be charter challenges, absolutely.

Secondly, if I were a judge—and it would never happen—I would certainly take it into my hands to try to figure out what was fair and balanced, taking into consideration the protection of the public and the need for security, and the principles of sentencing. There's no question about it. And I think judges, when they're there, have to make the decision. They're not thanked for it, but they'll do what they think is right.

● (1635)

The Chair: Unfortunately, you're out of time. You can get the other answers on your second go-around.

We'll move on to Mr. Rathgeber for seven minutes.

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

I'd certainly like to thank all the witnesses for their attendance and for their expertise. I'd especially like to welcome Mr. Sapers.

Mr. Chair, you might be interested to know that Mr. Sapers and I are both former members of the Alberta legislature.

Welcome, all.

My first question is to Ms. Youssefi. You indicated that in your practise of criminal law you had never deliberately delayed the procedure in order for one of your clients to take advantage of the two-for-one credit, and I accept that without qualification. I'm curious to know whether a client of yours has ever fired you on the day of trial or so close to the day of trial that it was impossible for him or her to obtain and retain new counsel, therefore, perhaps, taking advantage of the two-for-one credit without your assistance.

Ms. Dyanoosh Youssefi: Thank you, Mr. Rathgeber. I could simply answer that by saying no, it has never happened to me. And I can say that in my experience, I have never heard any other defence counsel tell me of that happening to them. I repeat that in general, people want to get out. They don't want to stay in. They don't want to stay in a situation where they are sleeping on a floor, where there might be human excrement right next to their head because the toilet is overflowing. While there might be one or two stories out there of people who have tried to do what they can to stay in longer—and I have not heard of those stories personally—they do not speak for the majority of people who are in custody.

Mr. Brent Rathgeber: Just so we're clear, an in-custody client has never fired you on the day of trial?

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Excuse me. I don't think that's an appropriate question.

The Chair: I would suggest that's for the witness to determine.

Hon. Marlene Jennings: Well, I would suggest that the witness may decline to answer such an inappropriate question.

The Chair: That's her call.

Ms. Dyanoosh Youssefi: I don't mind answering it, because it happens. I've had clients who have tried to, but it certainly hasn't been for that reason.

Mr. Brent Rathgeber: I don't say that with any disparity, Ms. Jennings. I was a practising lawyer. Lawyers get fired all the time for a variety of reasons.

Hon. Marlene Jennings: So how many times were you fired?

Mr. Brent Rathgeber: Well, I'm not answering questions.

Ms. Dyanoosh Youssefi: Just so that nobody is misled, I haven't been practising for the past four and a half years because I've been home taking care of my kids. I'm talking about the experience I had before that.

Mr. Brent Rathgeber: Okay.

Mr. McGarvey, you talked about the disparity—and that's a legitimate concern—regarding the potential elimination of the two-for-one. You compared it to the eligibility for parole and statutory relief. If your real concern is the elimination of the disparity, ought you not to be advocating for tightening up the parole eligibility and for elimination of the statutory release?

Mr. Matthew MacGarvey: Well, I suppose if the House decides that letting people who have served a full sentence out without any progressive release is called for, that's up to the House. We have known for probably almost a century now that progressive release is the only way that really serves the public. From my perspective, that would be absolutely foolhardy and is guaranteed to cause reoffending to dramatically increase.

Let me go back to what you were asking my friend. I would say that it does happen sometimes that people manipulate the system, fire the lawyer on the day of. Judges see through it. The case law, if you read it, has judges seeing through it and saying, “I'm not giving you two for one because you fired your lawyer on your day of trial”, or “I'm not giving you two for one because you didn't diligently try to advance the case forward.”

However, let's get to the other issue that the Attorney General for Ontario and the minister have identified, which is that this is caused by pretrial delay, ultimately, and this bill does nothing to address that problem. If you eliminate delay in getting to trial, you eliminate this perceived problem that is generating this legislation in the first place. Frankly, in Ontario, according to the Attorney General, delay has almost doubled the average time for cases since 1992. His goal is to reduce it by 30%. In my view, it's hopeless. So far there's been no noticeable reduction in the delay. Until and unless that happens, what you're doing, in effect, is punishing the people who have no control over the length of time it takes them to get to trial.

Judges do have the ability to bring the hammer down on people who manipulate the system. They have it now. You don't need this bill to give them that tool, because the current Criminal Code says it's in their discretion.

● (1640)

Mr. Brent Rathgeber: But you'll agree with me that the judges also would have the discretion in this bill, if it should become law, to give a 1.5 credit if the delays are entirely outside the control of the offender.

Mr. Matthew MacGarvey: Not if they have been detained because they had a second and perhaps spurious outstanding charge. That's an important factor to take into account. This bill has the potential to have a grossly disparate and unfair effect on those kinds of people. People who may be entirely innocent of one charge but who are detained on a second charge may get hammered at one for one through no fault of their own.

I don't think you can simply ignore that and ask me to agree with you that this can give you 1.5 to one. Yes, it can. The reality is that some of those people who get 1.5 to one might have been eligible for parole at one-third, or for the halfway house early release program at one-sixth in the federal system. So 1.5 just doesn't cut it, frankly, and if you read Professor Doob's calculations carefully, you'll see exactly why 1.5 for one is really the norm for people who do nothing towards rehabilitation.

Mr. Brent Rathgeber: Thank you.

Briefly, Mr. Trudell, you indicated that your opposition to this bill is largely premised on the conditions in remand. How do you reconcile those concerns with Mr. Sapers' testimony that the federal penitentiary system is already burdened and arguably may not be all that dissimilar to what offenders face in pretrial custody?

Mr. William Trudell: First of all, that's not what I said. I said that my concern about the bill is that it interferes with judicial discretion, and I cited Mr. Justice Rutherford in the Khawaja decision. That's my concern.

Second, I don't understand what you're suggesting. Are you suggesting that the situation in the federal penitentiaries is so bad that we should ignore it?

Mr. Brent Rathgeber: No. What I'm suggesting is that it may be an arguable point that the prison system generally has some problems with respect to the size of the populations, but I'm not.... My question is, is it your position that, comparatively, the remand system is so much poorer than what Mr. Sapers has described as an already burdened system, that those who are in that system ought to be given two-for-one credit?

The Chair: Mr. Rathgeber, unfortunately, Mr. Trudell will not be able to answer that because—

Mr. William Trudell: Well, I guess the answer is yes—

The Chair: Very, very briefly.

Mr. William Trudell: Okay. The remand centres are warehouses. People are four, five, and six in cells for a lot less.... This is not anecdotal. The evidence is there. The remand centres are a disgrace in this country.

The Chair: All right. Thank you.

Unfortunately, we're out of time and we have another panel to go to, so thanks to all of you for attending.

Mr. William Trudell: Sir, could I just say something very quickly? I apologize. I just want to raise with Mr. Murphy about the Canadian Bar Association that the—

The Chair: Mr. Trudell, we're going to suspend, but you could pass that on to him directly, and you can share it with these individuals who you want to stay. All right?

Mr. William Trudell: Thank you.

The Chair: We'll suspend for five minutes.

● (Pause)

● (1645)

The Chair: I call the meeting to order.

On the second panel we have Mr. Paul Alexander, representing himself. Then we have Mr. Don Head, representing the Correctional Service of Canada. We also have Mr. Andras Schreck, representing the Criminal Lawyers' Association of Ontario.

I thank all three of you for appearing.

You saw the routine. Each one of you will have time to present. I'm going to ask if you could perhaps shorten your presentations so we can leave time for more questions. That's where we get a lot of the productive work done. I'll leave it up to you. Certainly you don't have more than ten minutes, but I would prefer seven minutes. I'll leave it up to you. Then we'll go to questions.

Mr. Alexander, would you like to start?

● (1650)

Mr. Paul Alexander (Barrister, Rosen and Company, As an Individual): Thank you.

First I'd like to thank the committee for asking me to appear here. I appreciate the opportunity to make my views known.

Second, what I will say about this bill is this. At its best, it is misguided; at its worst, it is cynical and cruel. And I choose those words carefully.

This is a piece of legislation designed to solve a problem that, to my knowledge, does not exist anywhere other than in the popular imagination. In fact, to the extent the problem exists, as we heard from the earlier panel, the judiciary already has the tools to solve it, and there's case law showing that the judiciary does solve it. There is no need for a piece of legislation that limits judicial discretion and eliminates the ability of judges to afford what they perceive to be a just and fair sentence under the circumstances. All the legislation will do is increase unfairness in the system without solving any of the problems it purports to solve.

The reason is that Bill C-25 leaves untouched the two root causes of enhanced credit in the first place. The first is that pretrial detention does not count towards parole eligibility, because a sentence under the Criminal Code is deemed to start on the day the sentence is ordered and not on the day the person first goes into custody. That's the first reason enhanced credit is ordered. The second root cause of enhanced credit, as we've heard, is that conditions in pre-trial detention are so poor as to fall below the minimum standards established by the United Nations in the 1950s. We have been failing consistently since then to live up to the minimum standards of 50 years ago. As a consequence, enhanced credit is necessary to bring some fairness back into the system.

Bill C-25 will not reduce delay in the criminal justice system. There is no reason to believe that inmates intentionally delay trials to take advantage of enhanced credit. By my calculations, simple math dictates the opposite. Let's take, for example, a person who is sentenced at the end of a trial to three years in the penitentiary. Assume that this person has done no pretrial custody; there's no enhanced credit on the table. The sentence starts running the day of sentencing, and the person is eligible for parole after one-third of it. That means that he or she is able to be released, assuming all goes well with the parole hearing, after one year of the three-year sentence. That's the total time spent in custody, and it is spent in a penitentiary where there are facilities available to rehabilitate, train, and educate this person so that he or she will be less likely to reoffend on the outside. I'll also note that people will have beds to themselves and won't be sleeping with their heads next to the toilet, as so many inmates do in remand centres. So that's a person sentenced with no pretrial custody. Assuming the person is paroled at the earliest opportunity, he or she spends one year.

Let's assume instead that this person spent a year on remand before being sentenced. Applying the two-for-one credit, that takes two years off the sentence, and the person is now sentenced to serve a further year. Because the parole eligibility doesn't start counting until the day of sentencing, the earliest the person can get out is after one-third of this further year, meaning he or she is going to do another four months. Someone who has done pretrial custody and has enhanced credit is now going to do a minimum of 16 months compared to a minimum of 12 months for a person who has no enhanced credit—no two-for-one. The simple math means that there is no point in dragging out your pretrial custody, because ultimately, you'll spend longer in jail, and you will spend much of that time under far worse circumstances. So I always tell my clients, and John Rosen, whom I work for, always tells his clients, to speed up the trial and get out of there as quickly as possible, because if you're convicted in the end, you don't want to have to do all this dead time beforehand. What you want to do is get your trial over with so that if you're convicted, you can start working on your parole as early as possible.

In other words, the math doesn't make sense. It doesn't provide any justification or any incentive for dragging out your trial. Eliminating enhanced credit for people who are doing remand time won't take away any incentive they have to drag things out.

Furthermore, the Court of Appeal for Ontario, in a case called Thornton, held that where there is evidence that someone has been intentionally dragging out the trial to obtain enhanced credit, or even has been less than diligent in bringing the matter forward, the person doesn't get two for one. You only get it if circumstances beyond your control cause you to do more remand time than you otherwise would have liked.

● (1655)

Again, there is no reason for Bill C-25 to make enhanced credit unavailable. The courts already make it unavailable when it's being abused. All Bill C-25 will do is make it unavailable for people who are stuck on remand through no fault of their own. The only effect of it will be to punish people who are not abusing the system.

This bill is unfair. It will punish those who are unable to make bail even when they do nothing to contribute to pretrial delays. Because the impoverished are less likely to make bail, that means Bill C-25 will disproportionately affect the poor.

Furthermore, by making pretrial delays more onerous, Bill C-25 may result in more charges being stayed for unconstitutional delay. Paragraph 11(b) of the charter provides for charges to be stayed and cases to be thrown out when there is a lengthy and unduly prejudicial delay that affects the rights of the accused in getting to trial. The more onerous that delay is, the more likely a court is to look at that delay and say your rights have been unduly prejudiced and your charges are going to be stayed. Bill C-25 makes pretrial delay harsher by eliminating the ability of a judge to give credit for that delay where that credit is due. Therefore, that delay, which is more harsh, may result in more charges getting thrown out, which is the opposite of what this bill seeks to achieve.

There are other unconstitutional concerns about it. By subjecting accused persons to lengthy delays under conditions that fall below the minimum standards set by the United Nations, and then preventing judges from adequately crediting prisoners for their time served under these conditions, sentences governed by Bill C-25 may amount to cruel and unusual punishment, contrary to section 12 of the charter. It's an argument that we can expect to come up if this bill goes through.

It may also amount to an unconstitutional denial of liberty and security of the person, contrary to section 7 of the charter. That's another argument we can expect to see.

If we're worried about delays in courtrooms, another cause for worry is that a fair amount of time is going to be taken up litigating this subject.

Furthermore, there is reason to believe that Bill C-25 will be expensive to implement. By lengthening sentences, Canadians are going to be spending more money housing inmates for longer periods. This will also contribute to overcrowding in detention centres, in correctional centres, and in penitentiaries.

It doesn't appear that the government has studied the associated costs, nor is it clear whether the facilities even have room to accommodate these extra prisoners. What we may be doing is blindly dumping more people into spaces that can't hold them. At the minimum, it will be expensive. At worst, it may be impossible under current conditions.

There is no reason to believe that the lengthier sentences that will come as a result of Bill C-25 will protect Canadians. Research suggests that longer sentences do nothing to deter crime.

I've provided Ms. Burke, the clerk, with a brief memorandum that summarizes my submissions here. I've cited studies in there.

There is research suggesting that a lengthier sentence will not have any deterrent effect. On the contrary, one recent study suggests that inmates who serve longer sentences are in fact more likely to reoffend when they are released.

In sum, Bill C-25 will prevent judges from remedying the problem of onerous pretrial custody, but it won't affect the problem of onerous pretrial custody itself. In other words, this is an attack on the cure, not on the disease.

If Parliament is concerned about enhanced custody and believes it is being handed out too often, the thing to do is to attack the root causes of enhanced custody. Parliament could start by amending subsection 719(1) of the Criminal Code to allow sentences to begin on the date of arrest, at least for those who are spending pretrial time in custody. If that were to happen, parole calculations would begin from the date a person goes into prison, not the date they're sentenced. The time they spend pre-sentencing no longer will be dead time. That eliminates one of the key reasons for enhanced custody. It's an easy change to make. It costs nothing.

The other thing that could be done is that Parliament could work with the provinces to improve conditions in pretrial detention facilities. They should have rehabilitative programs in place so that inmates in detention facilities, instead of being warehoused for six months, a year, or two years awaiting trial, stuck in an overcrowded high-security facility without access to any programs, could spend that time being educated, being given treatment, being given counselling—all the things that would contribute to their contributing to society when they get out.

Those two simple steps would eliminate the rationale for enhanced credit and would cure the problem without attacking the remedy.

Thank you.

● (1700)

The Chair: Thank you, Mr. Alexander.

We'll move on to Mr. Head.

Mr. Don Head (Commissioner, Correctional Service Canada): Thank you, Mr. Chairman.

Mr. Chairman, committee members, I'm pleased to be here this afternoon to answer any questions you may have about the impact of Bill C-25 on the operations of the Correctional Service of Canada.

I'd like to provide you with some background about my history working within the criminal justice system. I was appointed commissioner of the Correctional Service of Canada in June of last year. Prior to that, I had held the position of senior deputy commissioner since 2002.

I also have several years' experience working for the provincial and territorial correctional systems, first in the Yukon and then as the assistant deputy minister responsible for probation and correctional services for the Department of Corrections and Public Safety in Saskatchewan. My work as the assistant deputy minister in Saskatchewan provides me with an understanding of the pressures related to the remand issue from a provincial, territorial, and federal perspective.

I'm also aware that the remand issue has been the subject of discussion at many of the federal-provincial-territorial heads of corrections meetings of which, as the commissioner of the Correctional Service, I am co-chair.

With respect to the impact of Bill C-25 on the Correctional Service of Canada, it is important to note that while additional offenders would now receive a federal sentence and come to CSC, the majority of offenders impacted would be those who would have already received a federal sentence; however, they would now receive a longer sentence and therefore stay longer within our system.

CSC will face accommodation challenges as a result of this legislation. The additional influx of offenders from this legislative amendment will require the Correctional Service of Canada, in the short term, to implement temporary accommodation measures such as the use of double-bunking and additional temporary structures to house offenders.

In the long term, CSC will have to look to construct more permanent accommodation, including the construction of new units or institutions to manage the population growth across the country.

Notwithstanding the impact of this bill, the Correctional Service of Canada is committed to continuing to fulfill its mandate to manage the sentences of federal offenders and to ensure public safety results for all Canadians.

I'm happy to answer any specific questions you may have about the impact or how the Correctional Service of Canada will respond to this bill.

The Chair: Thank you, Mr. Head, and thank you for your brevity.

Mr. Schreck, you've got 10 minutes maximum.

Mr. Andras Schreck (Director, Criminal Lawyers' Association of Ontario): Thank you, Mr. Chairman,

I'm here on behalf of the Criminal Lawyers' Association of Ontario, which thanks you for the opportunity to be here. The Criminal Lawyers' Association of Ontario represents about 1,000 lawyers in the province of Ontario who practise criminal defence work. It was founded in 1971. Our members are the people who work day in and day out in the system, and we are the people who represent the accused persons who will be directly affected by this bill.

I'll begin by saying that the COA wants to see improved efficiency in the justice system and wants to see delays reduced as much as anybody else. We agree wholeheartedly that there has to be transparency in the system. That said, we have grave concerns about this bill, and I'd like to divide those concerns into four general areas.

First of all, the problem the bill is designed to address, which is numerous accuseds clogging up the system by causing delay in order to rack up pretrial custody, simply doesn't exist. I have no idea where this idea comes from. As far as I'm aware, there's absolutely no empirical evidence in support of it. I can tell you, as a criminal defence lawyer who represents these people, who takes instructions from these people, it simply isn't true. There may be one or two people out there who have that attitude, but for the most part, the conditions in pretrial detention, commonly referred to by people who live there as “the bucket”, are so dismal that people can't wait to get out of there. If you're actually dealing with these people, the notion that they're going to sit there and delay the time they have to spend there on purpose is, quite frankly, laughable.

The concern belies a complete lack of appreciation of just how truly dismal the conditions in pretrial custody are. I'm not going to go through them all. I think you've heard them from other witnesses as well. I think it's fair to say that even if there's going to be double-bunking and increased pressure in the federal system as a result of this bill, it's not going to be anything near what you're seeing in the provincial remand institutions. Anybody who's interested should just go and take a tour of the Don Jail, or another one of those, just to see exactly what kinds of conditions people here are living in. The reality is, people want out of there as quickly as possible. They'd rather go to the penitentiary than spend more time in the bucket.

It's a well-known fact that denying bail results in guilty pleas. One of the concerns about denying bail too readily is that it will result in people pleading guilty who otherwise wouldn't, who otherwise would have a trial. Of course, the reason they plead guilty rather than wait for their trial is they have to get out of there; they want to get out of there.

As well, it's a well-established principle of sentencing that an early guilty plea is a significant mitigating factor, so any advantage that somebody may perceive they're going to get by delaying things is going to lose the effect of the significant mitigating factor of an early guilty plea in any event.

Most importantly, our members take some exception to the suggestion that we routinely engineer delays in order to somehow benefit our clients by having them spend more time in pretrial custody. First of all, for the reasons stated, it does not benefit our clients. More importantly, we're officers of the court; we have an obligation to the court to keep the system running efficiently insofar as it's within our power to do so, which is not very much. There's no evidence that criminal defence lawyers fail to discharge these obligations in a professional manner.

In any event, as you've heard already, the law is clear that an accused who does cause delay is not going to get enhanced credit in any event. Put simply, this bill is really a solution in search of a problem. It's important to remember that the common law guideline of two for one is not automatic. It's open to the crown in any given case where the crown sees fit to argue that this should be less credit, and if the crown has evidence available to justify that, the judge will not give the two-for-one credit and will give whatever credit is appropriate in the circumstances.

The reality is, there's no need for an accused, even an accused who wants to cause delay, to do anything to cause delay in the system. The system is quite capable of causing delay on its own, thank you very much. The delays in the system, and there are many, are caused by a variety of reasons. It's a multifaceted problem. They're caused by a shortage of prosecutors and judges; they're caused by an underfunded legal aid system that makes it difficult for accuseds to find competent lawyers, and a host of other problems.

● (1705)

The suggestion that eliminating judicial discretion in giving credit for pretrial custody will have any significant effect on the delays in the system is, with respect, completely and wholly unrealistic.

The second concern—I think you've heard this, and I'll be brief about this—is that it's simply unfair to prevent a trial judge from considering the effect of harsh pretrial conditions. I think there has been reference made to the United Nations standard minimum rules on the treatment of prisoners. Canada endorsed those rules over 30 years ago, in 1975, and with respect to many, there's not even a semblance of an effort to live up to those guidelines. We don't keep untried prisoners separate from convicted prisoners, they're not allowed to wear their own clothes, they don't get regular exercise, and they certainly don't sleep singly in a cell, as the minimum rules require.

The current approach allows a trial judge to take all of these factors into account. It's true that judges will often do so without hearing evidence on the conditions affecting the particular accused. But these conditions are notorious and well known to the judges who are functioning in the communities where they are imposing sentences. To hear evidence in each and every case would be unrealistic. Last year, for example, I spoke to the director of security at one of the detention centres in Toronto. He told me that even as it is, he's subpoenaed to testify in court at least three times a week about the conditions in his institution. One can imagine that if we're going to be hearing evidence about these things in each and every case, it's simply going to be a huge burden on the people who are working in these institutions.

It's always open to the crown to lead evidence to show that the conditions really aren't that bad. I've never heard of a crown doing this, and it's not hard to imagine why not.

The third concern is, as you've heard, that the bill fails to take into account parole eligibility or earned remission. Mr. Alexander, I think, pointed out the math in terms of why there is no benefit, even when you get a two-for-one delay. You can see how there's a huge disadvantage if there's only a one-for-one delay. Consider two offenders who each get a six-year sentence one year after being arrested. The first gets bail, the second doesn't. The first one is eligible for parole after two years. The second will get one year off, so he'll get a five-year sentence. He'll be eligible for parole one year and eight months after he's sentenced, but two years and eight months after he's actually taken into custody. So he ends up serving an extra eight months more than the first prisoner, simply because he was denied bail.

It's our submission that it's simply unfair. You can say it's his fault because he has a record or because he breached his bail, but the reality is that if he breached his bail, he'll be charged with failure to comply and he'll be punished for it. It is a criminal offence. If he has a prior record, that's taken into account anyway when a judge arrives at an appropriate sentence. A prior record is a well-known aggravating factor.

My quick and admittedly far from exhaustive survey of other common law jurisdictions has revealed no other jurisdiction—at least that I'm aware of—that has any law resembling this bill. In the U.K. and some parts of Australia, time spent in pretrial custody is deemed to be time served on a sentence, which is more or less what we do for the offence of murder in this country. At least then it's considered in determining parole eligibility.

The fourth concern is that the bill eliminates all discretion for accused who are detained prior to trial because of their record or because of a breach. The fact that there's a record or the fact that there's a breach may cause the fact of the delay, but it certainly doesn't cause the length of the delay, or have anything to do with the conditions in which the inmate ends up serving time during that delay. To eliminate all discretion in such cases is bound to result in an injustice in some cases. The current common law rules lessen that prejudice by giving a judge discretion. If you're going to increase the prejudice, I think as Mr. Alexander pointed out, you're going to see that being raised during paragraph 11(b) applications to stay proceedings because of unreasonable delay.

The fifth concern simply is this: there has been a lot of discussion that we need this bill because the public doesn't understand why we have two-for-one sentencing or two-for-one enhanced credit. Surely the solution is to educate the public, not to change the law to comport with beliefs that are based on a misunderstanding.

● (1710)

I see I'm out of time. Thank you very much.

The Chair: Thank you, all three of you, for that input.

We're going to start with Ms. Jennings, for five minutes.

Hon. Marlene Jennings: Thank you, Chair.

Commissioner Head, on the back page of your speaking notes you state that:

> With respect to the impact of C-25 on the Correctional Service of Canada, it is important to note that while additional offenders would now receive a federal sentence and come to CSC, the majority of offenders impacted [by Bill C-25] would be those that would have already received a federal sentence. However, they would now receive a longer sentence and therefore stay longer in our system.

Further down that page you talk about accommodation challenges. Mr. Sapers already testified that close to 10% of the current inmate population is already double-bunked.

I just saw a two-hour documentary on the prison system last night that came out of the United States on how they're double- and triple-bunked there and have been for 10 years and more, the rate of violence, the increase of violence within the correctional services there, and the increased rate of recidivism as a result of not having access to any kind of treatment, any kind of core programming, etc. We're being told by the ombudsman that already CSC is facing accommodation challenges, human resources challenges, and programming challenges, and now you're telling us that the impact of Bill C-25 will be to increase those challenges.

How much more money has the federal government allotted to CSC in order to create those permanent accommodations, in order to fill those vacant staffing positions, the medical health officers, within CSC in order to provide the core programming, the treatment programming, the substance abuse programming? How much more money have you received from this government in order to meet the challenges that you already have now and the increased challenges that Bill C-25 will represent to CSC?

● (1715)

Mr. Don Head: I'll address the double-bunking issue first. The statistic that Mr. Sapers shared with you is the approved level of double-bunking. That doesn't mean that every single day of the year we're double-bunking 10% of the offender population.

Hon. Marlene Jennings: I'm going to stop you right there. According to your own directive, single accommodation is what is supposed to be the norm. So if there's any double-bunking, even if it's two people in one cell across Canada, that goes against your own directive. Is that right?

Mr. Don Head: Yes, but at the same time we have to address the pressures of inmates that are admitted to us. We absolutely do not control the number of inmates that flow to us from the courts. So we have to use the available cells that are there, plus take whatever measures or steps to address any increases that occur during the year, and there are different increases across the country. They're regional.

Hon. Marlene Jennings: And the extra money?

Mr. Don Head: Yes, I'll get to that.

Hon. Marlene Jennings: He's going to cut you off.

Mr. Don Head: I'll get to that.

So it's not just that we're at 10% double-bunking population levels.

In terms of the money piece, over the last several years we've received an infusion of money for various issues. One we received, and it has been ongoing into our base now, is $2 million for what is called integrity funding, which addresses—

Hon. Marlene Jennings: How much is that?

Mr. Don Head: It's $2 million.

Hon. Marlene Jennings: That's $2 million out of a total budget of....?

Mr. Don Head: I haven't finished. There are a whole bunch of other things I'll list. So our total budget is $2.3 billion, of which the vast majority is staff salaries. We receive $2 million for issues related to literacy and for ethnocultural programming, and to address some issues around categories of offenders, such as long-term supervision orders.

We've also received, as a result of this year's budget, 2009, a reinvestment that will start off at $14 million this year and ramp up over the next three years to $48 million for additional programs, specifically in the areas of violence prevention programming, community maintenance programming, and aboriginal programming, the pathways programs for aboriginal offenders. So we've received...[*Technical difficulty—Editor*]

Hon. Marlene Jennings: [*Technical difficulty—Editor*]...accommodation.

The Chair: Thank you.

We'll go to Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I will stay on the same track as Ms. Jennings.

Mr. Head, amounts of money are allocated to you when someone has been convicted and sentenced. Can we agree on that?

Mr. Don Head: Yes.

Mr. Marc Lemay: Your role starts when a person enters a penitentiary. Do we agree?

Mr. Don Head: Yes, that is correct.

Mr. Marc Lemay: Bill C-25 has nothing to do with that whatsoever. Bill C-25 does not affect you; it affects the provinces because they are the ones with the chicken coops full of detainees in pre-sentencing custody. There are two lawyers here. Do the provincial budgets.... I am talking about Ontario because you, Mr. Schreck, are from Ontario. Have you seen any improvements? Do detainees in pre-sentencing custody receive any services?

[*English*]

Mr. Andras Schreck: No.

[*Translation*]

Mr. Marc Lemay: So detainees in pre-sentencing custody are two, three and four to a cell. It is clear that that is the current situation. Nothing is going to get better, and there are no plans to make things better. You have not seen any of that.

● (1720)

[*English*]

Mr. Andras Schreck: No, I haven't seen any improvement. There's ebb and flow; things get worse, then things are not as bad. But there certainly hasn't been any improvement.

Labour disputes are frequent, especially in Ontario, in terms of the union that represents the correctional officers. Whenever that happens, there are slowdowns, and there's a direct effect on the conditions of the prisoners. That seems to be a fairly regular occurrence.

[*Translation*]

Mr. Marc Lemay: Do you have a ruling on that matter? If you have one, I would love to see it. Has anyone thought to approach the Canadian Human Rights Commission for a decision?

Mr. Head, I am not sure that this applies to you necessarily, but has the Ontario Bar Association, or perhaps Mr. Alexander, thought to go before the Canadian Human Rights Commission? Have there been any decisions on the fact that, from a legal standpoint, these people should have individual cells and should be receiving services while they await sentencing?

[*English*]

Mr. Andras Schreck: I'm not aware of any decisions by the Canadian Human Rights Tribunal on that issue.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I cannot ask each of the previous witnesses separately because my colleague used his time carefully to ask questions, but if anyone listening in the room has those decisions —and I would like you to check with the Ontario Bar Association whether there were any such decisions—I would really like copies so they can be submitted for the committee's future consideration.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Monsieur Lemay.

We'll move on to Mr. Norlock.

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

Mr. Chair, just for the edification of some of the witnesses, because there was some suggestion at the first part of this meeting that perhaps provinces weren't in favour of this change in legislation, I have a couple of quotes here. The first is from the justice minister of the Province of Nova Scotia, as reported in *The Chronicle Herald*, March 28, 2009:

> It's going to help because in some cases there's incentive to keep people in remand, to delay the process by some of the defence counsel so that people are in remand, and in some cases, it's not just two for one, it can be two and a half and sometimes three or more. That's not appropriate and that's why we agree with the Government of Canada.

The next quote is from the Minister of Justice of Alberta, Alison Redford, who said:

> What this will do is allow us to correctly move these cases more effectively through the courts.

And then there was this comment from Dr. Matt Logan, an expert on sexual offences, which was given to this committee:

> I took two years out of my career and went to jail as a psychologist for CSC, and I'll tell you that the two-for-one is a scam. The people who are pulling the two-for-ones are clogging the court system and just backing it up even further. So I was extremely gratified to see the two-for-one disappear.

I have other comments, but they're from police officers, and oftentimes they don't really count that much.

But the biggest comments I receive are from the people in my riding, the average person in the street who doesn't have an association, who doesn't have what I call “high-priced help”. They just don't understand why these things are happening.

Here's what they don't understand, and this comes from the *Niagara Falls Review*. The case isn't completed, so I'll refrain from making any significant remarks, except to quote from the newspaper article from seven months ago.

It has to do with a gentleman who is accused of a criminal organizational charge. There are lots of facts in here—according to the newspaper, of course. This gentleman, who is a single father and has two children, has been in custody since his arrest two years ago. He remains a member of the Hells Angels, but he told the court he's hoping to retire. He's charged with significant offences, some of which he's pled not guilty to, some of which he has pled guilty to. But I understand that the court has decided that for those charges he is being convicted of, the judge will credit him with four years and four months of pretrial custody. And of course this is seven months old, so he was two years in custody.

These are the kinds of news reports, Mr. Alexander, that people phone people like me with to say we have to do something about it. Then we come to committee, and we have the defence counsel telling us that whatever we're going to do is going to make the situation worse. But in the eyes of the public, the situation's not good now anyway.

Of course, in my riding, as Mr. Head would know, I have Canada's largest federal penitentiary, the medium-security penitentiary. People hear only about the bad things that go on there, but Mr. Head knows that a lot of good things are happening there; for example, there is a newly constructed first nations separate dwelling—I think it's a pathways program. The people who were there tell me that they expect to have a lot of success because the Correctional Service of Canada is doing a good job. With a couple of exceptions, people who have taken some of the courses in that federal penitentiary, especially the sandblasting course, never come back.

So despite the fact that there are some programming needs, and a lot of programing that we'd like, what we do have is working because we have some professionals.

The men and women who worked in that correctional facility before we took government hadn't had their contract renewed in five years. How do you expect men and women to go to work every day and function properly...and they do, by the way, because they are professional. But you have to properly deal with them.

● (1725)

Mr. Alexander, my question—and hopefully we can be a little bit succinct—is this. Are the justice minister of Nova Scotia and the justice minister of the Province of Alberta and Dr. Matt Logan wrong?

Mr. Paul Alexander: The simple answer is yes, but I have a more nuanced answer for you, sir.

The Chair: Can you be really brief, because we are out of time?

Mr. Paul Alexander: Yes.

You mentioned that the programs at the Correctional Service of Canada facility in your riding are good and they reduce recidivism. That's exactly the point that I, as a defence counsel, am making. That's a federal penitentiary where you go after you're sentenced. There are programs there, and to the extent that those programs exist, they work.

The problem is that where you spend time before you are sentenced, a provincial remand facility, is best described as a hellhole. They call it the bucket. There are no programs there. It's harder time and that's why you're entitled to more credit.

The Chair: Thank you.

Mr. Norlock, we're done. Thank you.

I want to thank all of our witnesses for appearing. Unfortunately, our time was too short. We would have loved to have had more questions. We thank you in any event.

Before you leave, committee members, let me raise a couple of points. First, a motion was tabled with the committee by the government. At this time the government isn't proceeding with it. It has to do with limiting debate. We're having ongoing discussions on Bill C-15, and we're working with the NDP and the Bloc to see if we can get it all wrapped up on Wednesday when we do clause-by-clause.

Second, we have a Czech delegation that has requested a meeting with us. The proposal is that on June 1, this coming Monday, we would meet with them between 5:30 and 6:30 after we've finished our committee business. We would order in supper.

What's your wish? We haven't committed to doing it, but they have requested to discuss justice issues with us.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Do they want to meet with us to discuss how the justice system works in general or organized crime in particular?

[*English*]

The Chair: There are a number of specific issues they want to address.

I believe the Liberals are okay with meeting afterwards.

Mr. Comartin, are you okay with meeting them after our meeting?

Mr. Joe Comartin: Yes.

The Chair: The issues they want to deal with are institutional protection against discrimination; protection of minorities; the position of Canadian authorities toward an institution of positive discrimination, whatever that is; right to assembly; legal limitations and/or ban, e.g. gatherings of extremist groups; and the Canadian system of promotion and cooperation of the governments and NGOs, with a particular focus on the field of human rights.

These are issues they want to discuss with us. I'm proposing we give them one hour of our time. Is that all right?

● (1730)

[*Translation*]

Mr. Réal Ménard: What is on the agenda for Monday, June 1? Is it sex trafficking? Unfortunately, I will probably not be here, but....

[*English*]

The Chair: The first hour will be on Bill C-25. The second hour will be Joy Smith on Bill C-268.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Does that mean we'll be here to tell them how we function, or can we ask them how they function? I'm interested in asking them about how they treat the Roma.

The Chair: It will be a two-way discussion.

I think we have agreement on that.

We are adjourned.

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