



House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 004 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, March 25, 2010

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Chair

Mr. Ed Fast

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• (1010)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is the fourth meeting of the Standing Committee on Justice and Human rights on March 25, 2010. We are continuing our study on organized crime.

For the record, we've travelled across Canada soliciting the thoughts of Canadians. We've already been to Halifax, Montreal, and Vancouver. Today, we want to hear from the good people of Toronto, Ontario. We have a number of witnesses with us in our morning session.

First of all, we have with us the Canadian Civil Liberties Association, represented by Graeme Norton.

Welcome back.

We also have with us the Canadian Council of Criminal Defence Lawyers, represented by William Trudell.

We also welcome you back to our meeting.

We'll wait for Mr. Henry of the Hoodline Youth Organization to come later.

In the meantime, we'll start. I think most of you know what the process is. Each of you has 10 minutes for your presentation and then we'll open the floor to questions from our members. Who would like to start?

Mr. Norton.

Mr. Graeme Norton (Director, Public Safety Project, Canadian Civil Liberties Association): Good morning, Mr. Chair and members of the committee. On behalf on the Canadian Civil Liberties Association, I thank you very much for inviting us here today to share our thoughts with you.

For those of you not familiar with the Canadian Civil Liberties Association, let me say that we're a national, non-profit civil liberties watchdog and advocacy organization that was founded in 1964. Our core mandate is to promote respect for and observance of fundamental civil liberties and human rights and to ensure the protection and full exercise of those rights and liberties in Canada. Our work involves research, advocacy, litigation, and public education. Our membership consists of several thousand paid supporters from many walks of life.

The CCLA recognizes that organized crime can do great harm to society. Such crime can disrupt the social fabric of our communities and cause threats to our economic and personal security. It can lead to proliferation of violence and take a tremendous and tragic toll on those who are affected, both directly and indirectly.

The CCLA does not have an expressed position on organized crime per se. We do, however, believe that any steps taken to address this phenomenon must, like all laws, be necessary and effective and infringe as little as possible upon the rights and freedoms of Canadians.

It is from this perspective that we have considered several of the specific proposals and tools this committee has looked at for combatting organized crime. I'm going to briefly address three of those proposals in my presentation this morning, and hopefully I'll be able to do my best to answer questions you have on any other tools for fighting organized crime that you've looked at in the course of your review.

First, I'd like to address the issue of mandatory minimum sentences, which I know this committee has considered in some detail, both within and beyond the organized crime context. The recent passage of Bill C-2 and Bill C-14 have introduced more mandatory minimum penalties in Canada, some of which have been directly targeted at organized crime offences. Also, the forthcoming reintroduction of what was previously Bill C-15, the government's drug crime legislation, will bring further attention to the mandatory minimum issue in the coming months.

With regard to mandatory minimum jail sentences, it is the CCLA's position that such sentences are not an appropriate tool for fighting crime in Canada. This is our position irrespective of the crime for which the sentence may be imposed, and we base this position on three primary observations.

First, mandatory minimums create the possibility that the court will be forced to impose a predetermined sentence in a case where that sentence is unduly harsh. This could result in an offender receiving an excessive sentence, leading to an injustice in that particular case.

Second, mandatory minimums are not effective. Indeed, the majority of studies that have looked at this issue have found that few people are even aware of mandatory minimum sentences, and that where they do exist, they have not proven to be a successful deterrent to crime.

Third, mandatory minimum sentences can distort the justice system by transferring discretion from judges to police and prosecutors. Where a judge has no choice but to impose a certain sentence, the real determination about the level of punishment an offender receives will be made through decisions that occur before a trial even begins, such as whether to charge at all or whether to proceed summarily or by way of indictment.

Given these realities, the CCLA urges the committee to recommend against the further use of mandatory minimums as a crime-fighting tool for organized crime.

•(1015)

The Chair: Mr. Norton, I'm going to ask you to slow down in your presentation. The interpreters are having trouble following you. We want to make sure that we can get you on the record properly.

Mr. Graeme Norton: I apologize for not being able to speak in both official languages, and will do my best to speak in one at a sufficient pace.

The second issue I want to address is lawful access legislation. Proposals to increase lawful access have been circulating in Canada for close to a decade, and the government has indicated an intention to re-table lawful access legislation in the current session of Parliament. While we take no issue with the notion that law enforcement powers should keep pace with technological realities, we're concerned about the proposed legislation and how it seeks to achieve this objective.

Our overriding concern relates to the reduced legal requirements for the accessing of otherwise private information that have been included in recent lawful access bills. In some cases warrant requirements have been reduced from reasonable grounds to believe, to reasonable grounds to suspect. On others there are no prior judicial authorization requirements at all. These powers apply irrespective of the offence being investigated or the level of urgency attached to that investigation. They make it considerably easier for law enforcement to access private information that can reveal highly personal details about those to whom it relates.

The CCLA is deeply troubled by this downward pressure on privacy protections. Privacy is a critical and increasingly complex right that is at the core of our constitutional democracy. It must be subject to robust protection, and any exception to this rule should be clearly necessary and subject to robust judicial oversight.

In the CCLA's view, the lawful access powers that have been proposed are overly invasive and overly broad. They are not properly tailored to address legitimate concerns that have been raised by law enforcement, and they go far beyond what is necessary to modernize Canada's lawful access regime. As such, the CCLA urges the committee to recommend against implementing this legislation until it has been adjusted to appropriately balance the needs of both law enforcement and personal privacy.

Finally I'd like to address the issue of creating a list of criminal organizations, which I know has been proposed in some of the committee's earlier hearings on organized crime. We're not aware of a specific proposal having been put forward that would set out exactly how such a list would work; however, we do have some concerns about any form that we can envision such a list taking.

From our experience, and generally speaking, lists of this nature have proven to be cumbersome to administer and difficult to maintain. They frequently impose consequences or sanctions on the basis of an executive decision rather than a judicial finding, raising concerns about the opacity of the process that results in a listing decision.

As we have seen with no-fly lists, such endeavours can quickly spiral out of control, creating significant problems for those who might find themselves wrongly included on a particular list. Wrongly affected persons often have great difficulty getting their names off such a list, and until they can do so, they must endure significant interference with their personal liberty.

As such, it is the CCLA's position that it would be inadvisable to create a list of criminal organizations. If, however, the committee suggests that such a list be created, the CCLA would recommend, at a minimum, the following measures be put in place to ensure that its potential negative impact is as limited as possible.

First, we recommend that any organization added to the list should only be included following a judicial finding that it meets the Criminal Code definition of criminal organization.

Second, we recommend that the list should be regularly reviewed to ensure that all of the groups on it continue to meet the definition.

Third, a procedure should be established through which any group that is on the list and feels it should not be can apply to have its name removed. Where such an application is made, the members of the group applying should have access to the evidence upon which the listing determination was made.

Finally, the list should be usable only for the sole purpose that has been advanced for its justification: reducing redundancies in the prosecution of criminal organization offences.

I'll conclude with that and thank you again for the invitation to be here today. I look forward to taking your questions.

Thank you.

The Chair: Thank you.

We'll move on to Mr. Trudell.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Thank you very much, Chair and members of the committee. I appreciate being invited back on behalf of the Canadian Council of Criminal Defence Lawyers, and I welcome you to Toronto for a change.

I want to talk today about a central theme in confronting criminal organizations, changing legislation, and how the criminal justice system deals with these issues, as opposed to specific comments in relation to some of the issues. For instance, on minimum sentences reducing judges' discretion, we are on the record and have talked about it on many other occasions.

I think the key here is collaboration. In reading some of the helpful testimony that you've experienced across the country, I note that a theme seems to run through it. I want to suggest to you that in the last year, collaboration among police, crown, defence, community, and government has really moved to the forefront in terms of looking at issues, better management of the criminal justice system, and better management in the identification of causes of crime and in the involvement of the community.

I want to use the word "collaboration" and suggest that there needs to be collaboration among many different partners in the criminal justice system and outside it. There must be collaboration between governments. There must be collaboration among the federal, provincial, and municipal governments in terms of funding, policing, and sharing information, and in terms of identifying some of the problems in the community, such as, for instance, community involvement, which is very important.

All levels of government have an interest in community involvement, because it is very important. There must be collaboration with the community. We must have the community involved in understanding. I really was impressed by the evidence you received in Halifax from Chief Beazley about the involvement of the police in the community.

We first need collaboration between levels of government. Who is responsible for what and who will fund what? We need collaboration between government sectors. There's no sense in operating in a silo, because criminal justice is not able to solve health problems, those addictions and mental health problems that may be the offshoot of organized crime, especially in regard to the proliferation of drugs in the communities. We need to have mental health, social services, and those other portfolios working together with you in terms of justice issues.

We can't operate as a society in an isolated way. We need collaboration among the various disciplines. There's a good example of that. I think many police officers would tell you that much time is wasted by having four or five police officers escort a chronic offender to a hospital, as opposed to those officers being back on the street. There's the interaction of mental health, social services, and different portfolios, so health is important to consider when we're talking about collaboration.

We need collaboration within communities. We need to have people in the communities involved with their police forces, crowns, defence, and judiciary. The public needs to understand. If we look at different types of organized crime, there are the street gangs, and what they are is turf organizations within communities. They're different in some respects from, historically, the Hells Angels. These are turf wars. They're in their communities. Oftentimes we have a problem in this city in terms of certain neighbourhoods. In many of those neighbourhoods, there are single parents, and the gangs are involved in turf wars. We need that community involvement, the collaboration within that.

We need collaboration among the crown, the defence, the judiciary, and the police. One of the most remarkable things that has happened within the last year, through the workings of the national Steering Committee on Justice Efficiencies and Access to the Justice System, and also through the national symposium, which

was prompted by the national association of chiefs of police, is that people have come together to identify some of the problems in combatting crime and running a better system, and we are finding that we have more in common here than we have in relation to different issues.

● (1020)

There has to be collaboration in thinking, in my respectful submission. You've had some fantastically interesting people come before you, so you have a collaborative view about the causes of criminal activity and organized crime. I remember someone talking about piracy—and all the way through. Organized crime is a response to people who don't like the law—or needs.

So I would ask you to take all of the information you're receiving from the learned academics who have testified before you and take a collaborative approach in relation to solving or addressing the issues of organized crime and the criminal justice system.

We need a collaborative approach to education. We don't do a very good job as stakeholders, defence, crown, and police, in making sure we all understand where we're coming from. For example, you have heard on many occasions that there seems to be a problem with disclosure. Disclosure is not the problem; it's getting disclosure, organizing disclosure, and disseminating it. So we need to have a collaborative educational approach for police officers, young lawyers, and crown attorneys on why disclosure is necessary. It's sanctified by the law, so let's deal with it and manage the system better. The only way you do that is through a collaborative approach.

It's not enough, with great respect, to talk about minimum sentences and how we deal with the problem at the end. We're probably never going to solve the historical evolution of criminal activity and organized crime by just making it tougher at the end. To understand and collaboratively work on the problems, the reasons, and how the system deals with them is one of the magical solutions you may get from these expanded hearings.

I really commend you for getting into the communities. I'm sure that some of the things you've heard about—the ideas that the police are offering and moving forward so we don't have a rigid system.... Because a rigid system doesn't solve the cause problem. That's the message I would like to discuss with you today, on behalf of the Canadian Council of Criminal Defence Lawyers. We need a collaborative approach to solving and addressing organized crime, and the use of the criminal justice system to deal with it.

● (1025)

The Chair: Thank you very much.

I notice that Mr. Henry has appeared on behalf of Hoodlinc. You' have 10 minutes to present, and then we'll let our members ask you questions.

Mr. Brian Henry (Executive Director, Hoodline Youth Organization): Thank you once again, and good morning to everyone. I appreciate the opportunity to be here. I think it's very seldom that someone like me gets to speak to a committee like this, so I certainly appreciate the privilege of being here this morning.

As stated before, I am the executive director of Hoodline Youth Organization, which is a grassroots, not-for-profit organization in the east Scarborough area of Toronto. I will speak strictly from a community perspective. I'm not an expert on crime, or organized crime for that matter, but during my work I find myself interacting quite frequently with the criminal justice system, specifically the youth criminal justice system.

There's a perception within our communities, especially in Scarborough, that there are a lot of gangs and organized crime there. I'm here to tell you that there aren't.

While at some level members of the community, especially youth, do end up supporting organized crime in terms of everything from drugs to guns that find their way into the communities, and through our community hubs are then disseminated throughout the larger community, what we do see in our community are mostly young people who are involved in these street-level crimes and supporting organized crime. These are young people who have been disengaged from anything mainstream, who have been marginalized, and, to put it in a nutshell, who are struggling within our communities and commit acts of desperation in getting involved in crime to support their lifestyle and to live.

For many of our young people, getting involved in crime and selling drugs is quite simply a measure that they use to survive. So I'm here to say that there are no gangs or organized crime within our community, even though we supported.... What we have are simply groups of young people who have grown up together, who have from time to time slept in the same bed and eaten from the same plate, who have come to support each other, and who, because opportunities are so few and far between, end up being involved in criminal activity.

For the past seven years, our organization has been engaging our community to try to find solutions to the issues. We've implemented a number of programs that have been very successful, especially in the Malvern area of east Scarborough.

In 2005, when the City of the Toronto and United Way were identifying high needs communities—I think they have been labelled the 13 priority communities, with Malvern, where I reside, being one of them—Malvern was among the worst of those communities in terms of youth crime, youth vandalism, and higher dropout rates among the youth in high school. I'm pleased to say that after four years—going on five years now—we've turned that around, for the most part. Malvern has gone from being the very worst to the best in terms of the priority communities.

The solution for us was active and intense engagements of the youth populations and the communities. It was not only engagement, but also empowering those communities to take responsibility for themselves. We've been able to get into communities and engage the young people to act as mentors and leaders for other young people. We've been able to mobilize local resources, school boards

specifically; local police departments; and local agencies, in order to collaboratively engage and bring resources to these young people, especially in the area of education.

When I started, only four in ten youth from my community would make it to high school graduation; one in ten would make it into a post-secondary school institution. This was an issue that needed to be addressed. We had way too many young people being disengaged from anything mainstream in terms of schooling and being left to their own devices within the community.

We've been able to form partnerships with the Catholic board and creating alternative schools for these young people to go to. And we've had successes. We've been able to create nutrition programs to feed kids and social and cultural programs to engage their imaginations and interests. Collaboratively being delivered by a number of agencies within the Scarborough community, all these programs have had a very significant impact.

• (1030)

I don't want to leave you with the impression today that everything is okay in our community. It simply isn't. But what we don't have is gangs, and I don't want my community to be labelled as gang-riddled, because it implies to folks who are forming policy that it's quite simply a policing issue. While there's a small segment of the community that needs to be incarcerated in order for them to embrace any real change, what it comes down to is a two-tiered approach: one being policing, to create a deterrent to crime, but also understanding that the vast majority of the young people within these at-risk, high-risk communities within Toronto are anywhere from 12 to 21 years of age, in all likelihood coming from a single-parent family.

As a matter of fact, we've stopped referring to families within our neighbourhoods as "families". We refer to them as survival units, because that's essentially what they are, a mother and a number of children trying their utter best to survive in these communities.

While part of the problem is policing and deterrence through incarceration, the bulk of the solution lies in pointing resources toward creating opportunities for young people in the areas of education, employment, and social change.

Thank you.

The Chair: Thank you.

We'll open the floor to questions from our members.

Mr. Murphy, why don't you start?

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

I want to thank the witnesses for coming. I'm very interested in Mr. Henry's statements. I think we should all take a turn at that. I'll save the second round of questioning from our team for that very interesting stuff.

But in the first round, I'd like to ask both Mr. Trudell and Mr. Norton the same questions. I'd summarize it by saying that in their realm of charter protection and civil liberties protections, balanced with society's need to have public safety—which is something that every member of this committee would agree with, the need to have public safety, security—there seem to be some themes coming from these hearings that I think everybody could agree with. Mr. Trudell's comments on collaboration and the working of the forces together—community forces, police forces, prosecutorial, etc.—hits home very much. It's a way to make things more effective.

I think what we're also hearing from law enforcement officials is the need to be more surgical in the tooling up of how to combat needs. It's no longer the idea, as a municipal council might think, of having a policeman walking the beat. It's all marketplace politics. But what we hear is that we need the resources directed to specific problem-oriented policing types of deals, and that's how we can help as a parliament.

In that regard I want to ask about three areas. One is any legislation that might compel telecommunications companies, ISP providers, and device manufacturers to use devices that are susceptible to interception. I take very seriously what you both say about the need to have judicial oversight and protection of privacy rights, but right now there are devices used in organized crime that can't even be intercepted. The judge can make an order, but it's an order that goes into the ether. So I want to know your opinion on whether you think that's safeguarded if there are judicial protections.

The second aspect is forfeiture of the proceeds of crime. Many provinces are doing great work in that, and we learned in Vancouver that if you take the money out of the system, sometimes that's what organized crime is all about. It's very much about taking the money out of the system. In 2005, the Liberal government reversed the onus on the balance of probabilities to show why something shouldn't be forfeited. I wonder how far you think is too far in going after proceeds of crime, before a finding of guilt, pending or during a trial.

The final aspect, if you have time, is that as Bill C-4 rears its head, regarding amendments to the Youth Criminal Justice Act, we're talking about youth being—and I'm in agreement—the pawns in many organized crime activities. Yet they are being used, and some of the provisions are carefully drafted to attack the organized crime units that are using these pawns, by the lifting of publication bans on the names of some of these youths and by doing extrajudicial measures to get at the problem.

I want to know the civil liberties and charter implications of those three areas.

• (1035)

Mr. William Trudell: First let me respond generally to a concern you've heard time and time again, and that is resources. There is no question about it that one of the things the committee has to be concerned about is the demand for resources so that the police in this country can try to keep up or be one step ahead, especially as we move into areas of identity theft and the use of the Internet, which is a new era for us, a new time. It seems to me that in the first instance you have to make sure the police are resourced properly so they can be up to speed on the technology necessary to combat this new type of crime.

As an aside, it's very important when I use the word “collaboration” that police forces collaborate. In one of the reports I read there were three paragraphs indicating that different police organizations or units are looking for funding. So there has to be that amalgamated approach to resourcing and making sure the police get the resources they need.

However, you can't take these three examples you have suggested and then try to find a solution that covers all the possibilities. I don't want to use the word “inappropriately”, but we don't want a rigid response to what we think may be perceived problems.

Let's talk about compelling telecommunications companies to make it easier. I would respectfully submit that there has to be some movement in that area, but how do you do it? The balance, who is the gatekeeper, is really important. So there is no question about it that in this area of throwaway phones, etc., there is a new type of criminal conduct that's not provincial, not federal, but international. Probably that's something that really needs to be looked at. How do we best get the providers to pay attention to this problem, as a community, which they are, right? So I think there's room to look at this.

In relation to forfeiture, in my respectful submission it depends on what you're talking about here. There are different forms of what I'll call organized crime. My friend, Mr. Henry, so articulately talked about there being no organized crime in these communities. And there are a number of people who gather together to find a sort of culture or identification. There is another type of organized crime that we probably started talking about 15 years ago, and that is the bikers, the organized crime organizations that are motivated by money. That's what it is; it's a business they stepped into because the government regulates it. In my respectful submission, that's a different sort of group we may want to target.

But forfeiture raises all kinds of issues of privacy rights. Whose interests are being attacked here? So you have to have a stakeholder, you have to have a balance here. And I have great concern about a general response to forfeiture before a finding of guilt, because often it's the person who is the innocent third party who suffers.

These are good ideas, these are interesting ideas, but they have to be looked at in a global sense. And make sure that whoever is targeted, there is a balance in terms of the presumption of innocence and whose property it is, because the people who are affected by immediate forfeiture and by some of these responses are not the people we're targeting. It's the flow; it's the people who are, in effect, in some respects, victimized in the community.

What was the third one, Mr. Murphy?

• (1040)

Mr. Brian Murphy: The Youth Criminal Justice Act.

The Chair: Actually—

Mr. William Trudell: I'm out of time.

Mr. Brian Murphy: Next round.

The Chair: You're out of time, but you can get in the next round, exactly.

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

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): There are people here from two organizations that have long understood not only that minimum sentences have no deterrent effect, but more than that, that they sometimes compel judges to do what they consider to be injustices. To justify minimum sentences, we are often given the example of cases for which the sentence was apparently grossly inadequate.

I know that minimum sentences result in a lot of plea bargaining and that as a result these things are not public. However, judges sometimes say their hands are tied by the minimum sentence even when they consider it unjust.

Do you keep a record of these cases, at the Canadian Civil Liberties Association and the Canadian Council of Criminal Defence Lawyers? If not, would you be able to do that in future?

• (1045)

[*English*]

Mr. Graeme Norton: I can respond to that. We haven't done a comprehensive study of looking at mandatory minimum sentences writ large. We've done examinations in particular contexts when looking at particular bills. In the case of Bill C-15, we made a submission before this committee last spring, almost a year ago.

We've looked at some cases that recently came through the courts, cases where people did not receive the sentences they would otherwise have received. There were cases where judges did not give the sentences that they now be forced to give. There were also cases where they gave sentences that were significantly more than they would be forced to impose as a result of the legislation.

My understanding of the academic work on the issue is that there has been a large amount of academic and social science work done on mandatory minimum sentences. I'm not sure what a new comprehensive study would add to that. I think the work has been quite conclusive over the past many years. I understand that some of the points I mentioned in my presentation are some of the points that arose out of the large body of social science work.

Mr. William Trudell: Mr. Ménard, on behalf of the CCCDL, as you know, we have representatives across the country and in the north. It's early to measure the impact of new legislation demanding mandatory minimums. We've decided that we will try to gather information to see what the impact will be and to see whether or not the negative aspects outweigh the positive aspects. We are unable to measure it yet because it's early.

I think it however goes without saying that we select judges with great fanfare. We select judges who are experienced. We applaud their appointments. We then restrict their ability to do the job. That's wrong. The evidence in this country that judges are not taking offences seriously is anecdotal.

I think the mandatory minimums may be a political statement. Are they going to change behaviour? Are they going to do anything other than warehouse people? Are they going to make the criminal justice system run more smoothly? They absolutely will not. Do they frustrate judges? Of course, they do. It's actually not fair, with great respect.

[*Translation*]

Mr. Serge Ménard: I was interested to read the study by Julian Roberts, commissioned by the Department of Justice in 2005, on minimum sentences in the Commonwealth countries. You may be familiar with it. I noted that these sentences are applied in all of the Commonwealth countries. In general, about 65% of people support them, but for the specific cases presented to them, they would not apply those sentences.

I am going to move on to my second question. If we decide to make a list, judicially, of criminal organizations, who will be able to declare themselves the defendant in that kind of judicial proceeding, in your opinion?

[*English*]

Mr. Graeme Norton: Sir, could you just clarify that question?

[*Translation*]

Mr. Serge Ménard: If we establish a judicial procedure for determining, for example, whether a criminal organization will appear in the list of criminal organizations, who will be able to declare themselves the defendant, in your opinion? If we later prosecute someone for being a member of a criminal organization, will evidence not then be submitted that was obtained in the absence of that person, who will not have been able to challenge it?

• (1050)

[*English*]

Mr. Graeme Norton: Yes, potentially. I think there are numerous problems that could be associated with the listing idea. I certainly understand why some people have suggested it, if it's creating redundancies and they're having to go through the same work over and over again. I can see why that would be troubling and problematic.

[*Translation*]

Mr. Serge Ménard: I don't have a lot of time. I will come back to that.

In the study I read, I noted that in nearly all the Commonwealth countries, except Canada, they used what is called in English a "saving clause" when the judge considered the minimum sentence unjust. That provision allows the judge not to apply the sentence, but the judge must explain, orally or in writing, so it is included in the record, the reasons why they are not applying the minimum sentence in this particular case.

If we had to apply minimum sentences, do you think we should proceed as the other Commonwealth countries do?

[English]

Mr. William Trudell: We actually proposed something like that at a previous hearing. I think there's no question about it. That gives a balance, sends the message out, but it allows a judge to exercise his or her discretion and explain why in the particular circumstances of that case, of that person, of that group, the minimum sentence that otherwise would have been applied is not going to be applied. Reviewable on appeal, of course...but it strikes a remarkably creative balance and it takes rigidity out of a situation that's not rigid.

There's nothing you hear here from the various witnesses that has all the answers. There's nothing rigid, so we have to be able to give parliamentarians the opportunity to say, "Wait a minute, maybe we should change the law in this regard." You have to give judges an opportunity to say, "Okay, I got the message, but I'm now being asked to look at the protection of society, protection of the community, which may include the protection of this young person's family or the people who are affected by the minimum sentence."

Let me just say one other thing so that you know this. A minimum sentence in Toronto is very different from a minimum sentence in Pond Inlet, because the community is totally disrupted and that person from Pond Inlet doesn't go to a jail locally. That person gets shipped way out of their community. So the collaborative impact of what happens is lost.

So I think, Monsieur Ménard, that's a fine balance, if I could use that phrase.

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Henry and Mr. Trudell, I think this is the first time we've heard this outside of Ottawa—in the other communities we've visited so far and had hearings in—that the street gangs, as we've been calling them, aren't organized crime.

Certainly, other communities are seeing them as another level of organized crime, with the traditional, stereotypical Mafia, Cosa Nostra, model historically being the first one in most of our communities in the 20th century, then the bikers in the latter part of the 20th century, and now the street gangs seeming to follow. There are ways of identifying them, or they self-identify. They wear colours in a lot of cases. They certainly appear to take over territories. In some cases these territories may have been controlled in the past by the bikers, although that's not to suggest they're not still being used by the bikers or the old-style gangs and organized crime.

I'm trying to figure out why they're not considered organized crime in the way we've looked at it in the justice committee and in most police forces. I recognize certain small groups wouldn't fit that pattern. But if you think of the Crips or some of the street gangs in Toronto and in Vancouver, they would seem to fit most, if not all, of the criteria of what an organized crime group is.

• (1055)

Mr. William Trudell: Can I say, Mr. Comartin, that this is a difficult area because we're into labelling. One group gets together in a community to reflect cultural differences, as opposed to another group, having no father figure, who get together to have a sense of

identity. Oftentimes at bail hearings for some of these young people, there's never a man who comes forward as a surety; it's the mother.

Some groups gather together out of a sense of identity, and it makes me think of *West Side Story*, but sometimes it's guns instead of knives. That's a different group, and the reasons for their involvement in that group may be actually addressed by what Mr. Henry is doing. We can't put an organized crime label on it and say, this is how we fix it.

There might be a group within a community who is a little more organized, with more sophisticated colours, and into more of a business operation—ownership, controlling the distribution of drugs, etc. That's a different phenomenon, but if it's in the community, we have to address it differently.

Thirdly, it's the classic that we talked about.

You say, they walk like a duck, they sound like a duck, they must be ducks, but they may not be. I think that organized crime, in terms of identification theft right now that's starting internationally, is a very different breed of cat than the group of six or seven kids in a community who maybe come from another country and culturally gather. They might gather because there is no place to go, or there's no hope, or there are no services. So when we are trying to decide how to combat organized crime, one solution doesn't fit all. That's one of the reasons why a list will be revisited. Somebody's going to say, we were wrong to have this list; we just didn't have all the data.

It's easy to say that the group is organized and they look like they're organized. Maybe some are just trying to look like they're organized, you know? That's the problem we're all facing, I think.

Mr. Brian Henry: From my perspective, when I think of organized crime I'm thinking more along the lines of some of the biker groups that are out there.

You were just talking about heads, subordinates, and as Mr. Trudell said, their single motivation is making money from crime. What we have in our communities is nothing so organized. Again, there is the exception where there are older groups of young adults who have become organized to some level and are working collaboratively to bring in money through crime. Certainly that is a policing issue. But I would say the vast majority, 95% to 98% of what we see in our community, are just young people who are out of school and who come together sometimes just to eat or be able to sleep. While individuals within these groups of young people end up committing crime, they are not reporting to anyone. They are not taking the money they make and bringing it to anyone inside the community. They are not sharing resources in that respect. So nothing I see in the community leads me to believe that we have a gang issue or organized crime issues within our community.

For a lot of these young people, when they do end up in trouble with the criminal justice system, there's no one there to post bail for them; they can't afford the \$500 it costs to get a lawyer to defend them at their bail hearing. It's contingent on people like me to show up at the jail if they're in detention to maybe put \$50 in their canteen for them to have something to eat. These young folks have no supports around them that would lead one to believe.... I've come across situations where one of the members of the biker gangs gets arrested, and they have other members there to get a lawyer to go and bail them out. With the young people I deal with in our communities, for the most part—as Mr. Trudell said—it's their mother who is organizing all of this, if she's even able to show up for them.

So, again, I don't believe organized crime to be a major issue within most of the neighbourhoods here in Toronto.

• (1100)

Mr. William Trudell: Can I just respond too, Mr. Comartin? I was thinking about this. If we take the police, we ask them to respond to two levels of what we'll call organized crime: the bikers and the community. In one area the police would be trying to infiltrate, and in the other, the community, they would be trying to engage. I'm not talking about the group that has gone on, and there are some people who are bad. But I think the approach that we would take with increased police presence is if I am a police officer and I want to combat organized crime, I'm going to try to infiltrate that business and make arrests. If I am a police officer trying to stop people in communities from getting involved in criminal activity, whatever it is, I will probably want to engage in the community, not just infiltrate but engage. One we can maybe solve, and the other we just have to deal with and keep fighting, I think.

The Chair: Thank you.

We'll move on to Mr. Norlock.

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

Thanks to the witnesses for coming this morning. As usual we are learning a lot, and we continue to do so. Thank you for that.

Mr. Trudell, I was expecting sort of the same thing: that whatever we're doing in government is wrong, it won't pass the charter test, you're against it, and stay with the status quo. I'm glad you went off into a different area, because it's an area that I think is very important.

I agree with some of the things you mentioned, such as collaboration, the need for police forces to collaborate, the need for the folks in the justice envelope—judges, lawyers, crown attorneys, and police officers—to continue their discussion. I think that's what you mean by collaboration.

You went further and talked about collaboration among all the different levels within the community. Thank you for that, because I think that's the way we get things done—from the ground up, as it were—instead of having the so-called experts come to give us the philosophical reasons why we shouldn't do something. In the end it's the people who live it every day—that's why I believe Mr. Henry is here—who have the best information and sometimes the best solutions.

I wonder, Mr. Trudell, if you and perhaps Mr. Henry would comment on whether these things are happening. I'm almost positive they are. I listen to CFRB, so I know some of the things that are occurring in the Scarborough area. And things are improving, by the way.

Mr. Trudell, picking up on your theme, we very recently had the Minister of Justice come to a round table in Northumberland County on public safety and justice issues. We heard from a mix of all the police departments in the area, the victims groups, the police services board, the community policing committee, and representatives of youth—youth groups. The theme was almost identical right across the board.

You say we need to find out what they're thinking. When it came to proceeds of crime, the local police said we needed the proceeds of crime that occur in our community to come back to the police in that community, perhaps through the municipal government, so they can use them for a broad range of crime prevention programs and victims' assistance groups. So I wonder if you'd comment on whether you think that's appropriate, and whether Mr. Henry thinks that's appropriate.

They also talked about the need for more investment in youth anti-crime and anti-drug strategies. At the same time, they said that for those who are repeat offenders there needs to be more accounting. So we went from restorative justice that is happening in that community, which I think really works.... As we know, it started in New Zealand with the Maori Indians and worked its way up into our justice system. It works very well, in my view. But for the worst of the worst—the people who are captured under Bill C-4—that doesn't deal with first or even second offences. That piece of legislation deals with somebody who's been through the system so many times and continues with serious offences, usually bodily injury offences. So we're not dealing with that group.

When it comes to collaboration, as I left the policing background.... As a result of the Bernardo series of murders, we learned the reason why there was a successful conclusion to the investigation. Police forces were previously operating in silos and weren't sharing information, so the joint force operations that currently occur.... I would suggest, Mr. Trudell, that collaboration is occurring even more and better all the time, even internationally.

So I've hit on an eclectic mix of things. I wonder if you can make some short comments on it, and leave sufficient time for Mr. Henry to discuss how his community deals with the police.

• (1105)

Is there a community policing group there that collaborates with the police to look at these socio-economic as well as social justice...?

Mr. William Trudell: In relation to proceeds that are properly seized by the court, with all the balances that need to be put in place, I think that's probably a wise use for them—put them back into the community and make it known. No question about it. It should be something we promote. And that might be something you want to address.

There are bad people. I've met them. I probably have defended a couple. But at the end of the day, some have to be separated. They have to be incarcerated, and they have to be incarcerated for a lengthy period of time. If they're repeat offenders who don't care, as opposed to repeat chronic offenders who have something that's not addressed, then they should be dealt with harshly. And I believe they are.

I'm not going to stand up and submit to a court that someone who doesn't care, who commits violent offences, should be treated like a first offender. That's not my job. It's not fair. I'm a member of the community. So no question about it. And I really want to say to you that I think the really bad ones are few and far between. But there are some out there, and the courts are equipped to deal with them.

I'm not sure if you asked this question, but I'm going to throw it back anyway. There is a movement—as you did in Northumberland—to involve people in the community. The police are really at the forefront of this now. Everyone is being engaged, not only the police and the community, but also the defence and the judges are moving into the community to explain how the—

Mr. Rick Norlock: I'll just throw this in. We did have two members of the bar there from Northumberland.

Mr. William Trudell: Yes, I'm sure. And that is being proposed from the national symposium, which has really got off the ground by the Canadian Association of Chiefs of Police.

Let me just say one other thing that we haven't talked about but is really important. The public sometimes gets frustrated, not so much by what seems to be the result but by not understanding the system. What we should be doing collaboratively—and we are—is trying to run a better criminal justice system.

In terms of organized criminal cases, the emergence of the mega cases, these are all being addressed. And the way they're being addressed is by collaborative approaches on the front end. We ask police officers to be lawyers, to decide what evidence should be brought forward. Crowns, now, are moving toward helping police on the front end. So you have a better product as it gets into the system.

• (1110)

The Chair: Thank you.

I will move back to Mr. Murphy for another question. You have five minutes.

Mr. Brian Murphy: Thank you.

A voice: Is it possible for Mr. Henry to...?

The Chair: When you ask five-minute questions and you're expecting comprehensive answers from more than one witness, we have a problem.

So Mr. Henry, in the second go-around, someone can ask you the question again. You'll get more chances, I assure you.

Mr. Brian Henry: That's fine.

[*Translation*]

Mr. Brian Murphy: I agree, because we have the time.

[*English*]

I'm not giving up two minutes of my time.

The Chair: Others want to ask questions, so someone else can ask him that question. He'll get a chance to respond, I assure you.

Mr. Murphy, you do your five minutes.

Mr. Brian Murphy: Okay. And the time starts now. Good.

There wasn't enough time for Mr. Norton on civil liberties and charter protection issues to answer the specific questions around getting the ISP device manufacturers to at least allow us to have the means with judicial discretion. I want you to answer that.

I'd also like you to answer the way Mr. Trudell did on the issue of forfeiture. These are things all parties are looking at very seriously, tools to up-tool or up-resource the police officers.

And finally, the civil rights issues regarding youth, because YCJA amendments are coming.... We know they're coming because we agree with a lot of what Mr. Justice Nunn said in his report. Some of the measures in the new bill may or may not infringe on civil liberties. We'd like to have your opinion on that.

Mr. Graeme Norton: In terms of the first question on lawful access legislation, I think what you're hitting on is the idea of having ISPs built into their infrastructure, the ability to capture and retain certain information.

Mr. Brian Murphy: Also, device manufacturers.

Mr. Graeme Norton: Yes, there could also be device manufacturers.

That's not necessarily something we oppose. If there's information that's disappearing into the ether and there's a legitimate interest in that information, there may be a valid purpose for building that type of capacity into the infrastructure. It could hold that information, at least as long as required, to conduct legitimate law enforcement investigation.

There are provisions in the previous Bill C-47, I believe, that would require companies to have that capacity. In Bill C-46 I believe there was legislation that would create a preservation order power that would allow that information to be preserved until law enforcement could go to a judge and determine whether or not they should appropriately have access to it.

We don't have a problem with the preservation aspect, as long as it's for a short period of time. After that it will be destroyed once the decision has been made whether or not there needs to be access by law enforcement. If there does and there's an appropriate test met to meet that standard, then that's fine. If it doesn't, then the information can be destroyed as it otherwise would have been. It doesn't need to be retained for six or seven years.

Mr. Brian Murphy: You probably have two minutes for the two other issues, especially the user issues.

Mr. Graeme Norton: In brief, that's my assessment of that one.

On the civil forfeiture issue, this is something we've had a problem with for quite some time. It is, as you've mentioned, the lower standard of proof, the balance of probabilities. We were involved in the Chatterjee case, which went up to the Supreme Court of Canada, where they did endorse the Ontario legislation and found it to be constitutional. But in our view, the standard of balance of probabilities is too low for what is effectively something comparable to a criminal sanction to be taken against a person.

When you're dealing with potentially taking enormous sums of money from somebody or enormous sums of property, in our view there needs to be something higher demonstrated than simply a balance of probabilities case that those are in fact the proceeds of crime.

Number three, since I am proceeding very quickly here, is Bill C-4. We have another chance to thoroughly vet and review the provisions of Bill C-4. Our general position is that youth are less culpable for their crimes than adults—that's a rule that courts have generally accepted—and they need to be treated differently in the justice system.

In terms of how Bill C-4 does or doesn't do that, I'm not in a position to comment completely. I know it has raised the issue of greater reporting of names and that type of thing. I'm not sure exactly what that would advance, but I'd want to take a closer look at the legislation and see exactly what's being proposed.

• (1115)

Mr. Brian Murphy: Mr. Trudell, on the specific provisions of Bill C-4 about the removal of the ban on publication for certain young offenders or youths, what's your opinion?

Mr. William Trudell: As long as the judge makes the decision, I can live with it.

Mr. Brian Murphy: Have you looked at it?

Mr. William Trudell: Not in detail.

Mr. Brian Murphy: Because there seem to be an awful lot of judicial discretionary protections. I feel like they're in the fourth year of a university degree; they're learning to leave judicial discretion alone. Generally, if judicial discretion is involved, you're a little more comfortable. Is that correct?

Mr. William Trudell: Much more comfortable.

Mr. Brian Murphy: Good. Thanks.

The Chair: Thank you.

Madame Guay.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Thank you. I suggest that you put your earphones on.

I am not going to speak to you as a lawyer, because I think there are enough of them around the table. I am going to speak to you as an MP who has worked with organizations in my riding for years, for 16 years now.

In particular, I work with the neighbourhood police. I live outside the urban areas, and in my opinion this police service does an extraordinary job. They manage to get close to young people and they even know them by their first names and trust them. That trust becomes mutual. The neighbourhood police are then able to do preventive work with the young people.

In my opinion, we cannot neglect prevention. We absolutely have to work on prevention with young people, otherwise we won't succeed. When young people get older and join street gangs or criminal groups, it is often because they are left to their own devices, they no longer have families and they admire the people who make a lot of money and commit crimes. These young people are not necessarily responsible. Of course I am not talking about the older ones and repeat offenders.

I would like to ask you a few questions. Are there organizations in Toronto that do prevention and that work with that objective? There are in Quebec. Do you hear much about home invasions here? Where I live, that crime is fairly widespread and there is a lot of talk about it. Seniors are wary of young people and think they too are a criminal group, a group organized against seniors.

How does it work, exactly? What more could be done? Do you think that Bill C-4 is a solution? If not, can something else be done to help our community move forward in this regard?

I will give you the floor. Mr. Henry, I'll let you speak first.

[*English*]

Mr. Brian Henry: Thank you.

I wish I was familiar with Bill C-4, but I'm not. That being said, I completely agree that there are concrete steps that can be taken with young people to ensure prevention, to ensure that they don't get to the next stage, which is organized crime. If you don't intervene when they're a young person, that's eventually where they'll evolve to.

I'm happy to say that there are a number of concrete steps we can take within the community that would lead to prevention. One of the things we've been able to do very successfully within the Malvern and Scarborough communities is to empower the neighbourhoods themselves. That old cliché, "it takes a village to raise a child", is very, very true, especially within the context of the communities. As I mentioned before, there are so many fathers missing and so many single parents who are not able to cope.

Another thing you touched on was the organizations that are doing critical work. There's Tropicana, Hoodlinc Youth Organization, of course, and there's Operation Springboard. There are a number of organizations within the GTA that are doing critical work in terms of prevention.

The Safe Schools Act in Ontario has been referred to on a number of occasions as the gang recruitment act. We see young people coming through the system who are different from what teachers and school administrative staff are used to dealing with. They need different learning strategies. As these learning strategies are not available to school administration staff and to schools, these young people end up in the community disengaged from school.

We need to create alternative school models that specifically address the needs of young people coming out of at-risk, high-risk, communities. In terms of successes, we currently have a ROSE program—real opportunity for success in education—which is an alternative school model that's done in collaboration with the Toronto Catholic District School Board. We see major successes from this model. I'd say 9 out of every 10 kids who come through there are able to graduate from high school. As a matter of fact, the only time we lose young people in this school is to prison or death.

From my standpoint, there are a number of things that an individual or organization can do, on a daily basis, that can lead to the betterment of a young person's life and the prevention of them getting mixed up in the criminal justice system. These are simple things. You need to act like a parent, play a parental role, where you ensure that young people get a meal in the morning. I've seen young people in my neighbourhood who have gone entire school days without having a meal to eat. That's the simple act of providing a meal for them in the morning.

Providing structure has helped a lot of young people within my community who don't feel they can accomplish anything. The history of failure that they've gone through in their lives persists today. The can-do attitude is simply not there. They don't believe they can do anything positive.

You, as an individual or an organization, can get out there, help them get their driver's licence, get enrolled in school, help them if they have a case before the criminal justice system, help them get a lawyer to negotiate that legal process. It's the simple things. Ensure that there's a homework club and that they go to the homework club; ensure that there are recreational and social activities after school. Keep them off the streets, and keep them engaged in a positive way.

• (1120)

[Translation]

Ms. Monique Guay: That is part of prevention, you are quite right.

I would like to hear from Mr. Trudell and Mr. Norton.

[English]

The Chair: Actually, you are well over the five minutes. We're at six and a half minutes. Sorry.

We'll move on to Mr. Rathgeber.

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

Thank you to all the witnesses for your thoughts and insights.

Mr. Norton, from the Canadian Civil Liberties Association, if I heard you correctly—and I want to make sure I did—you indicated

that your organization is against minimum mandatory sentences regardless of the offence. Did I hear that correctly?

Mr. Graeme Norton: Yes.

Mr. Brent Rathgeber: So am I to assume from this that you're opposed to a mandatory life sentence for first-degree murder?

Mr. Graeme Norton: Perhaps I can clarify this. Some of the sentiments I would express are similar to those that Mr. Trudell suggested earlier. We don't take issue, necessarily, with Parliament setting guidelines for things. What we do take issue with is absolutism and Parliament doing that. And we do take issue with any situation where there is mandatory minimum sentencing, including 25 years to life for first-degree murder. It's the mandatory, absolutist nature. That may be a very appropriate sentence in 99.9% of possible, imaginable cases, but we do take issue with the notion of absolutism.

We would prefer a system where there's always an opportunity for a judge to diverge from a recommended sentence and, in an unexpected set of circumstances, give a sentence that may be less than the mandatory minimum.

I realize that it's a bit of a technical point, and it's made a lot better in the context of drug crimes and murder and that type of thing, but that is our position across the board.

Mr. Brent Rathgeber: Okay.

I listened with some curiosity to your comments regarding lawful access. I think we'll be hearing from police officers this afternoon, and we certainly will when we go to my city of Edmonton on Monday. Of course, they've been lobbying for the types of things that you're concerned about.

You made a very salient point on your concern about changing the threshold from “reasonable grounds to believe” to “reasonable grounds to suspect”. Without getting into a metaphysical argument, I'm not sure I understand the practical distinction.

I understand that “believe” is a higher standard of perceived knowledge than “suspect”, but I'd like to hear your views, either of you. You're a lawyer, Mr. Norton, and Mr. Trudell, you're a practising criminal lawyer of some experience.

In practical, everyday consideration, what is the difference, when search warrants are applied for, between “grounds to believe” and “grounds to suspect”?

• (1125)

Mr. Graeme Norton: From the cases I've looked at, there's not a tremendous amount of jurisprudence on the issue, so you might not be the only one who's still trying to figure it out.

You're correct that suspicion is certainly a lower standard than belief. As for how that standard differs, it's not a perfect scientific exercise. There was a comment in a recent Supreme Court of Canada case, I think, from Justice Binnie, in one of the drug dog cases—I think it was Kang-Brown—where he fleshes it out a bit, and suspicion is something less than a belief.

Mr. Brent Rathgeber: Sorry, what's the name of the case?

Mr. Graeme Norton: I think it's Kang-Brown. There were two companion cases that dealt with drug dog sniff searches. One was A. M. and one was Kang-Brown.

It's in one of those cases; there is a brief paragraph on the distinction between the two. Belief is a higher standard. It requires more in terms of evidence and understanding of what has happened. Suspicion is less. It's somewhat as articulated, as suspicion versus a belief, but it's not a scientifically different standard.

Mr. Brent Rathgeber: Mr. Trudell, I'm assuming that you've argued against the inadmissibility of warrants. Maybe you could help me out with my metaphysical search between belief and suspicion.

Mr. William Trudell: It's reliability of the information. If you tell me something, then I can go and say that I believe because you told me, as I have first-hand knowledge. If you're telling me something as a result of a meeting that occurred with you and some other people, that is a little less reliable, because it may be based on third-party information, etc. If I am an affiant and I have personal involvement in the events that I'm swearing to, I have information and belief. If I don't and I am relying on an informant, for instance, it may be different.

Mr. Brent Rathgeber: Would hearsay—relying on an informant—constitute suspicion?

Mr. William Trudell: It may in certain circumstances.

Mr. Brent Rathgeber: Okay.

How am I doing for time?

The Chair: You have half a minute.

Mr. Brent Rathgeber: Very quickly, on your opposition to listing of criminal organizations, does the Civil Liberties Association maintain the same objection to listing terrorist organizations?

Mr. Graeme Norton: We've seen some bad experiences with lists in general. The listing of terrorist organizations seems to be a little more contained than the listing of criminal organizations might be. Some of the evidence this committee has heard from past witnesses talks about 900 criminal organizations in Canada. If you look at the definition of a criminal organization, I can certainly envision more than 900 groups ending up on that list.

We do generally take issue with lists. We don't think it's a great way to deal with things, to set out in advance who's on that list and who isn't. This is something that maybe should be made out in evidence when the issue of needing to have somebody on a list arises in the first place.

Mr. Brent Rathgeber: Thank you all very much.

The Chair: Thank you.

We'll move on to Mr. Murphy again. You have four minutes.

Mr. Brian Murphy: Thank you.

I want to get back to this issue of youth, the Nunn commission, Theresa McEvoy, particular circumstances, all... And maybe as the éminence grise, Mr. Trudell, you could reinforce for us why children, youths, are to be treated in a separate system. It seems to me that the first go at YCJA reform was to move basically the Youth Criminal Justice Act into the Criminal Code, or actually make it the same

because they were putting in principles in section 718 that made it like grown-up....

In this new law, however, the crafting is so that I think there are a number of ways in which judicial discretion will determine, as it does now, whether certain crimes and certain individuals will be treated as adults, either at trial or after. So we need to hear evidence, I think, as it pertains to youth.

I haven't got to you, Mr. Henry, but you could perhaps relate to this too. Some individuals grow up quickly and get matured by circumstances, and they ought to be treated perhaps differently.

I'd like both of you to comment on that, because we're going to struggle with this.

Mr. William Trudell: I hope that when you are dealing with Bill C-4 and other proposed legislation that deals with youth justice, you take up a suggestion that I made some time ago that you hear from judges in camera who deal with these issues, because they're the best ones who can tell you about what they're dealing with, in front of you.

Generically, they can't vote for you until they're a certain age. They can't drive a motor vehicle until they're a certain age. There are rules built into society, and we make a decision, arbitrarily, that under a certain age is a child. They do not have the same level of development, maturity, or discipline. Some of them have more discipline than some people my age, I suppose. We have to recognize that these people are children, and there's nothing wrong with saying they're children, because do you know what? If you had a 20-year-old child and they were going off someplace and you didn't know where they were going, you'd want to know, because you don't think they're equipped yet to deal with...and make decisions.

We treat them differently because they are different. They have different rights. They don't have as many rights as adults do. The bottom line is that what they don't have is the life experience to make the proper decisions. Most kids are into immediate gratification. The Internet is beamed at them; there is Facebook, if they can afford it—all of the things we throw at them. If there's nobody there to say, "Wait a minute, what are you watching on television, do you understand this"....

Kids—and we've chosen the age of 18—don't have the discipline to stop and say, "I'm going to look at this two years from now." We talked about this before. Kids who are in a motor vehicle getting ready to rev at a stop sign are not thinking about a mandatory minimum. That's not what they're thinking about. They're not thinking that far. They don't have the discipline. They're looking for immediate gratification, which is part of youth, and what we talked about once before is that sometimes you can see some of the measures that are proposed as immediate gratification, from a legislative point of view. They're making a statement.

The best people who can deal with and help you make a decision about youth are the judges who deal with them every day, and I really urge you to get some of these judges in camera to help you with what works and what doesn't. You're going to hear some judges say, "There are some bad kids who come in front of us", but you're also going to hear judges tell you stories that are going to make your blood curdle at some of the situations these kids find themselves in that they have no power over.

• (1130)

Mr. Brian Murphy: Mr. Henry.

• (1135)

Mr. Brian Henry: I'll just use one of my own personal examples. You mentioned that some people grow up faster through circumstances. As a young person, I found myself engaged with the Young Offenders Act and the criminal justice system. Coming through high school I was always considered smart. I was captain of my football team, on the yearbook committee, and did all this kind of stuff, but I had a problem with beating folks up. It wasn't until I found myself incarcerated and in trouble that I was forced to take a look at my life and ask the pertinent question, "How the hell did I end up here?"

I went all the way back to Guyana, to where I was born, before I came to this country, and all acts of violence that I witnessed against women around me, against kids around me, with no protection from officers or any legal organization, domestic violence within my own home between my mother and my father while my father was there.

Then I came to Canada and it all kind of carried over. There was certainly a beating from my mom from time to time. It just seemed that, my entire life, I was raised by violence. Everything that ever happened to me was violent, and I carried all those scars, emotional and physical. I came to the realization that what I had was a learned behaviour and that my outcome could not have been different given the structures that raised me throughout my life.

I see that today with a lot of the kids we face in the community. On one hand, you want to say that some of them deserve adult charges, because it comes with a stiffer sentence. You get them out of the community for a longer period of time and you don't have to deal with it any more. But I think there needs to be an understanding that what these young people are facing today has been festering over many, many years, and their emotional and physical development has not been up to par with a kid who hasn't gone through this kind of stuff.

Age as a number is a very inadequate measuring stick to determine someone's emotional and mental maturity, and that was the case with me. A lot of this was learned, and at the end of the day, it needs to be addressed and unlearned with these young people. I think that's a smarter way to go, and it's more sustainable in the long term.

Mr. William Trudell: Mr. Murphy, can I just say very quickly one thing about—

The Chair: Mr. Trudell, we're already two minutes over. You'll get another chance.

Just for clarification, this is a four-minute round, so there will be time for a question from Mr. Woodworth, from Mr. Dechert, and from Monsieur Petit.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you, Mr. Chair, and thank you to the witnesses for being here today.

I'll begin by saying, Mr. Trudell, I do agree with your emphasis on collaboration, and I know our government also agrees with it, because our government recently gave \$3.2 million in my riding of Kitchener Centre to our Waterloo Region community safety and crime prevention council to develop a youth gang prevention strategy. That organization is well known across Canada as a model for community collaboration.

Mr. Norton, because of the time constraints, I'm afraid I'm going to have to come right to the point with you. I strongly disagree with the suggestion that there should be a blanket rejection of mandatory minimum sentences, and I will tell you why. It's because deterrence is not all there is about sentencing, and Canadians and Canadian communities deserve a sentencing system that shows proportionality between the sentence and the gravity of the offence. For example, if we're talking about an offence such as human trafficking or child trafficking, Canadians need to know that the sentences are proportionate to the gravity of the offence, regardless of other considerations, and proportionate to the victims.

In what was formerly Bill C-15, we have a very focused, targeted, moderate use of mandatory minimum sentences for trafficking in drugs, where, for example, the drugs are sold to youth or take place near a school, or production of drugs where there's a hazard to children. It's very focused.

I happen to have with me a document entitled, *What Makes a City Great?* It sets out Mayor David Miller's vision of Toronto, saying, "In David Miller's vision of Toronto, there's no place for gangs or guns."

He also talks about concrete achievements that he's obtained, and one of them is a more aggressive approach to gun and gang violence. And he says:

Thanks to the hard work of the Toronto Police in the last year, several major gangs have been shut down and their leaders jailed.

It says:

Mayor David Miller's vision of Toronto in 2010 is to make our safe city even safer. To punish criminals and deter people from crime, Mayor Miller will: ... Advocate no bail for anyone who commits a crime while in possession of a gun, whether the gun is used in the crime or not. Mayor Miller will press the federal government to enact this strong approach to guns, so that these criminals—and their guns—are not back on the streets on bail days later...

I would like to know whether your organization agrees with these comments from David Miller. Is your organization in sync with Mayor David Miller's vision of Toronto?

• (1140)

Mr. Graeme Norton: To be honest, this is the first time I've heard that particular comment from our mayor.

I will respond to some of the things you said before getting to that comment, on the mandatory minimum issue. I don't disagree with much of what you've said. Sentences should be proportional to the crimes, and the community needs to see that people are receiving sentences that are just, under the circumstances. In our view, mandatory minimums aren't necessary for that to happen.

You made specific reference to Bill C-15 and some of the aggravating factors that were in that legislation. There are some examples of sentences in that bill that are probably very consistent with what they should be. There are probably some as well—specifically there was one example about growing for trafficking purposes as little as five plants of marijuana. There might be people doing that who we don't want to send to jail for six months—

Mr. Stephen Woodworth: Since I've just read them to you, do you agree with the things that Mayor David Miller said?

Mr. Graeme Norton: I certainly agree that there should not be guns on the streets of Toronto. I certainly agree with measures being taken to suppress that type of activity. The specific suggestion I think you're referring to is the idea.... Could you say it again, actually? It was no bail for people who have been—

Mr. Stephen Woodworth: It was someone

...who commits a crime while in possession of a gun, whether the gun is used in the crime or not. Mayor Miller will press the federal government to enact this strong approach to guns, so that these criminals—and their guns—are not back on the streets on bail days later....

Mr. Graeme Norton: To be honest, it doesn't sound like a completely unreasonable suggestion. The objection I can see to that is the absolutism, again. An absolutism in legislation is always a problem for us. If an approach of that nature is taken, if there can be something created where there will be an opportunity for judges to perhaps diverge from that if the circumstances would demand it, that would be something we would see as being helpful, but—

Mr. Stephen Woodworth: Do I have another minute? I'm out of time?

The Chair: Thank you.

Mr. Dechert, you have four minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

And thank you, gentlemen, for being here this morning.

I want to address my first question to Mr. Norton as well. I was interested to hear your comments.

I don't know if you recall, but a couple of years ago in the GTA, or within the last two years, a major international Mafia organization crime boss was arrested in the Toronto area. I believe he has been extradited to Italy or is under extradition proceedings to stand trial in Italy for organized crime activities. He said—and you can check the record—that at the time he ran his international criminal organization from Canada because Canada had one of the most lenient criminal justice systems in the world in terms of both penalties and prospects of conviction.

Given that comment from an international crime boss, how do you reconcile your direct statement that there is no deterrent effect to

mandatory minimum sentences? Doesn't his statement completely contradict your point of view on that?

Mr. Graeme Norton: First, I'm not sure when we started relying on the statements of crime bosses as the word of gold—

Mr. Bob Dechert: But he chose Canada as a place to carry on his international operations, most of which were outside of Canada, on the basis of comparative law, if you can believe it or not, comparative laws between Canada, the United States, and Europe. Where would he carry on his international operations? He chose Canada. It was a good place to do business.

Mr. Graeme Norton: This may have been the perception of this particular crime figure. I'm not sure if that comports with the perception of academics and social scientists who have studied the issue. I don't think that—

Mr. Bob Dechert: This guy has direct experience. Don't you think that's pretty interesting?

Mr. Graeme Norton: Maybe he knew something the social scientists didn't, but—

Mr. Bob Dechert: He knew what the chances of getting convicted were.

Mr. Graeme Norton: But maybe he was wrong as well, because he was ultimately captured and he was ultimately extradited...it sounds—I'm not familiar with the exact case, but from what you've told me—

Mr. Bob Dechert: Certainly the comment I heard from him suggested that had Canada had a more strict criminal justice system, he might have chosen some other place to carry on his operations. We want people to come to Canada for a lot of reasons, maybe not that one.

Mr. Graeme Norton: I want to be clear that we're not suggesting this committee should recommend that we take a hands-off, nothing to be worried about, approach to organized crime. We acknowledge it's a significant issue and steps need to be taken. They need to be the right steps.

I think some of the ideas that have been suggested here in terms of collaboration between communities and the police service can be very helpful. I think when you're dealing with very entrenched criminal organizations there can be very specific ways to get at them, and it may require a very specific policing task force, but I don't think talking about the comment from one individual is necessarily indicative of the approach that needs to be taken.

● (1145)

Mr. Bob Dechert: I thought it was an interesting comment. Thank you for that. I have a question for Mr. Henry.

Mr. Henry, I want to thank you for your organization and the programs you operate. I'd love to hear more specifics about that. You mentioned drugs, and it's a way for people to earn a living where they maybe don't feel they have other opportunities. In my region of Mississauga and Peel Region there are many marijuana grow ops that actually exist in communities where people live. The Peel police have told me these operations are generally well financed by international organizations. Commonly, they have someone purchase a \$400,000 home on behalf of the organization and equip it with tens of thousands of dollars worth of equipment, run several crops of marijuana through there, generate \$1 million or more in profit, and then leave the house and move on to another one.

My question to you is, where do the drugs come from that the young people may sell in Scarborough and other places? How do we penalize and target the people who supply the drugs? My region of Peel has about 1.3 million people; it's very fast-growing and diverse. It also includes the Toronto airport, which is a major entry point for a lot of these drugs. Should we not be focusing on those international organizations? Are they international organizations, in your view? How do we stop them from supplying the drugs to the people in Scarborough and other places?

Mr. Brian Henry: I'd like to say first off that it also applies to the guns. The dissemination of firearms in my neighbourhood and community is a major problem also.

Mr. Bob Dechert: They come from outside of Canada.

Mr. Brian Henry: Absolutely. For the most part, so do the drugs. It's quite simple, especially when you consider that it's the young people within the neighbourhoods who are responsible for disseminating the stuff out there, whether it be drugs or guns. Police quite frequently make rightful arrests within my neighbourhood and community for drugs and guns. I think those are the two main things that young people are arrested for.

I think there needs to be a greater emphasis placed on intelligence gathering when the police officers do make these arrests. It would be helpful if we could return to some level of community policing, where the police officers within our community—who for the most part are excellent, who are young people themselves and are people you would want to hang out with and talk to, and they have a fairly good sense of humour and can be pretty funny people—would be able to come into the community, especially in the summer months, and form relationships with the young people and members of that community, but specifically the young people.

Again, there is desperation in these neighbourhoods. There is a perception there that money can be made through drugs and guns.

Mr. Bob Dechert: How do we target the international organizations that supply the drugs to them?

Mr. Brian Henry: I think you just follow the chain. If you are able to have a relationship with a young person—

Mr. Bob Dechert: Should we have tougher penalties for those kinds of criminals?

The Chair: We're already over time, so answer quickly, please.

Mr. Brian Henry: The young people who are arrested have information as to where they get their product from. You just follow the chain. But I think it's critical that whoever the arresting officer is

doesn't appear to be hawkish or doesn't appear to be looking to just sink that young person, that that young person does feel at some level that the officer or the agency has their best interests at heart. I think they will be willing to turn over information to that officer—just as they are willing to turn over information to me—and then it's just up to the police department to follow the chain to see where that comes from. I think you have to start at the grassroots level and work your way up in terms of making that arrest.

Mr. Bob Dechert: When we find those people, the international drug suppliers, should we put them in jail for a long time?

Mr. Brian Henry: The longest time, yes, sir.

Mr. Bob Dechert: Thank you.

The Chair: Thank you.

Mr. Petit, for four minutes.

[*Translation*]

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

I have a question for you, Mr. Trudell. We see each other regularly in committee. I particularly appreciate what you said about cooperation and collaboration among the various groups. When we study organized crime, very often I have to listen to the witnesses or refer to statistics to see exactly whether these laws we are going to pass or we intend to introduce are going to have the intended effects or are going to make the public safer.

I have obtained some information. I would like to ask you a question about an odd thing, relating to Statistics Canada. When an accused is convicted of fraud, Statistics Canada counts it as a crime. If a person commits fraud and has 9,200 victims, as happened in Quebec, without naming names, Statistics Canada counts it as a single offence. There are 9,200 victims, but there is one offence. That means that if, over a year, 10 people committed frauds and each of them had one victim, there would be 10 cases recorded. If, over the next year, eight people committed frauds and a ninth had 9,200 victims, Statistics Canada would say there had been a drop in the number of frauds.

Second, there is the question of organized crime. The most serious question is murder. Most of the time, when the body is found, one case is counted. If a murderer commits two murders, that will be two cases. In all cases of people who have disappeared, 41% of those people are found and 59% are not found. There are cases of murders by the underworld, the Mafia, etc.

I am very pleased when you appear, because you tell us about what is happening on the ground, which I am not really familiar with. I am trying to find out whether organized crime activities have increased or not and whether we should pass new laws, but when I look at what I am given, I'm working in a vacuum.

I'm asking Mr. Henry now. In the case of young offenders, in Quebec, as in Ontario, a lot of judges do not have all the relevant information, because a lot of young people are diverted. They have reports. Nothing appears outside the judicial system. I don't want to know the names, but I want to know what crimes are committed, to know whether certain laws have to be amended. I am somewhat in the dark, as you can see.

Mr. Trudell, I would like to know whether you have observed the same thing I have. When I look at the statistics, there are a lot of things missing that could help me. I like it when you come and testify, because you work on the ground.

• (1150)

[*English*]

Mr. William Trudell: And yet when I read some of the testimony previously, and as I've appeared here over the years, the statistics are only as good as the information and the statisticians. So we're never going to solve this problem unless we're all on the same song sheet regarding the questions we want to find out.

For instance, take your fraud example, where it's a global fraud but there are ten victims. To reflect that there are many victims of one particular offence, you have to frame your statistical question in that regard.

So statisticians who are looking for information often—and I'm not being critical—don't know what the question is. Where are these statistics going to end up? Are they going to end up in the House of Commons to try to interpret a bigger picture, or are they in response to a narrow question?

So I think before we can rely on statistics, we have to almost give a mandate to the person we want to get the information to tell them what we want to know. I often feel that statistics are rolled out to suggest that crime is increasing when the evidence may very well be that crime is decreasing—some crimes. What crimes are we talking about?

I think we need to have specific information so that the statistics are reliable. I'm not sure—and I don't think you are satisfied—that the statistics you're getting give you the answer. That's because of what the question is and what the mandate is of the statistician. They may be looking for information on one thing and we're using it for another.

The Chair: Thank you.

I'm just going to make a comment and ask one question, and then I propose that we give each one of our three witnesses three minutes to wrap up for themselves, maybe share something that you wanted to get out on the table but haven't been able to. Is that fair? All right.

Just one comment. My fear is that when we're talking about mandatory minimum sentences, we're spending all of our time talking about deterrents and not the prophylactic effect of mandatory minimum penalties.

I would commend to the two of you gentlemen the work that's being done by the criminology department at the University of the Fraser Valley. I don't know if you know John Martin. Certainly you would be familiar with Darryl Plecas. Their work seems to indicate that we do have a problem with the most prolific offenders.

Mr. Trudell, the comment you made was that courts are equipped to deal with repeat offenders. Their research seems to contradict that. So they are strong proponents of mandatory minimum sentences, but only in a very focused way against the most prolific and recidivist offenders that we have to deal with in our system.

Mr. Henry, I really enjoyed your testimony, because I think you're dealing with the challenges that most of us face in our communities. You're dealing with ground-level crime, which isn't necessarily part of organized crime, although our study has expanded to the point where it's encompassing those kinds of challenges as well.

You referred to single-parent families as survival units. Of those survival units, how many of them are headed by mothers?

• (1155)

Mr. Brian Henry: Next to all—I'm only aware of one single-parent unit in the Scarborough community that's headed by a man.

The Chair: I was afraid you were going to say that. My fear again is that if we don't focus on that and the men who are shirking their responsibilities, all the other solutions we're talking about will be band-aid solutions.

I know you don't have a whole lot of time, but how do we get those fathers to assume the responsibility they should have assumed for their children?

Mr. Brian Henry: There's a perception that they're mostly young couples and these young men are not taking their responsibilities as fathers.

There was a time not too long ago that as a young father I felt I was a burden to my family. Employment wasn't available to me, and educational opportunities were not available to me. I felt that being in the house would use up resources—food, heat, water—and that my presence within the home would be a burden to my family. That's one reason why young men aren't there.

Another reason why young men aren't there again is simply the cycle. They didn't grow up with a father in the home. They don't have an understanding of what it takes to be a man or to be a responsible man. I think that's something again that needs to be tackled at an early age and addressed as that person grows up, in order for them to see the relevance of it and the relevance of a father figure within the home.

The Chair: Thank you.

I'll give you each three minutes to wrap up.

Mr. Graeme Norton: I would like to conclude by saying, as I mentioned in response to Mr. Dechert's questions, we certainly don't ignore or not acknowledge the problem of organized crime. You have a very difficult task ahead of you here. Somebody is saying, "Fix organized crime. How do we do that?" That's not a very easy question to answer.

I'm not sure, and our organization is not sure, that ramping up the law is the way to do that. If you create new laws that are aimed at targeting organized crime but do more than that, you're going to divert system resources away from organized crime to people who are maybe less serious criminals. There may be places to tweak the law. There may be places where the law can be adjusted—maybe toughened up in certain places, maybe not toughened up in certain places. That's your task, and it's a very big task to figure out where exactly those places are.

But I think an over-response from the criminal justice system would not necessarily be the right answer. I think you need a collaborative approach, as has been suggested here, that involves communities working with police and members of communities to find ways to prevent members of communities from getting involved in criminal activities and organized crime.

The analogy can be drawn to changes in the medical system where there is a new approach to preventative medicine. Rather than waiting until somebody is sick to deal with the problem, deal with the problem before somebody gets sick. I think dealing with the criminal justice system can be compared to dealing with things in the hospital when somebody is already in triage and you're trying to figure out what to do with them. It might be better to focus police resources and community resources on preventing people from getting there in the first place.

Once they're there, it may be time to focus more targeted police resources on the most serious criminals, rather than focusing on drug crime. Let's see who the real kingpins are and try to get to those people, rather than addressing a situation more broadly that may require a more narrow response. So I would close with saying that.

Thank you again for inviting us to be here. I wish you the best of luck with your ongoing review.

The Chair: Thank you.

Mr. Henry.

• (1200)

Mr. Brian Henry: Thank you.

The summer of 2005 was labelled as "the summer of the gun", here in the city of Toronto, and I think in response to that, there has been a mobilization of a lot of resources behind prevention and bringing programs into our community.

Since then, a number of years have passed and a lot of the resources that were offered then in terms of preventive measures within our community are now drying up. As a grassroots organization working in the Scarborough area of Toronto, I think our major focus and the challenges we face moving forward are the sustainability of the work that has started.

I think people are starting to become complacent again. We've seen so many changes within our community that people are starting to forget exactly what brought us to this point. As a result, we're reverting to a lot of the conditions that created the mess we're in, in terms of our neighbourhoods today. I would hope to see, even at the federal and provincial levels, greater attention paid to the work that started in the last few years in our community, in terms of working to prevent youth crime and youth violence, and resources geared toward these organizations for us to work to sustain it.

Thank you.

The Chair: Thank you.

Mr. Trudell.

Mr. William Trudell: Thank you, Mr. Chair.

Members of the committee, it's always an honour to come here. I must tell you that I feel particularly honoured to be with Mr. Henry today. This is what he speaks to, as a role model, and what's needed in these communities is a role model. I would almost want to capture him and take him with you on all your future meetings. It's re-energizing.

I want to put my defence counsel hat back on, because I didn't talk to you about disclosure. Disclosure has been kicked around a little bit, I think, in terms of some of the evidence I've seen.

Disclosure is not the problem. Disclosure must be disclosed. It is the law. We should not get hung up on what is relevant, what is not relevant. The job needs to be done on the front end so that we organize it properly. The problems occur between police and crown. Who's responsible? Who's going to pay for it? So we need to have a collaborative approach, which is now being done, in terms of organizing disclosure and making sure it's done properly. Crowns can decide what is not relevant to their case and make it available for the police to look at.

So disclosure is not the problem. People who say disclosure is causing all kinds of problems are wrong. No one agrees with that. I don't think the police agree with that. It is whose responsibility, how do we as people in the system make sure it is organized and advanced on the front end.

As Mr. Justice LeSage and now Mr. Justice Code said in their report, this is a problem we need to address, as opposed to saying it's a problem we need to curtail. It's like a doctor performing an operation. You get the X-rays. That's what disclosure is. Once you've got the X-rays, you know where to go, whether it's to plead guilty, or whatever.

But please do not accept anecdotal criticism that disclosure is a problem. Disclosure is not a problem; it's the way we organize it and disseminate it on the front end that's historically been a problem. I believe the police, crown, and defence counsel are all working on this.

And the last issue, from a defence counsel's point of view, is that judges have to be able to make rulings prior to trials. So a judge has to be a judge of a court of competent jurisdiction, to give a charter remedy. We have to think about changing the Criminal Code so that a judge can make rulings on disclosure, perhaps even on charter issues, before you get to trial. This is something that's being discussed, and I urge you to discuss it as you go forward.

We should not wait till a trial to have a judge make decisions. We should have a judge who's capable of making disclosure rulings, even charter rulings, prior to the trial. The system will run a lot more smoothly, and people will pay attention a lot earlier.

Thank you very much, sir.

The Chair: Thank you.

Thank you to all of you for attending. It's all very worthwhile testimony, and it will certainly form part of the report that we issue eventually.

So I will adjourn, but, members, we will reconvene at two o'clock.

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