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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Wednesday, February 2, 2011**

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**Chair**

**Mr. Ed Fast**



## Standing Committee on Justice and Human Rights

Wednesday, February 2, 2011

• (1530)

[English]

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

This is meeting number 45 of the Standing Committee on Justice and Human Rights. Today is Wednesday, February 2, 2011.

You have before you the agenda for today. We're continuing our review of Bill C-54, An Act to amend the Criminal Code (sexual offences against children).

To assist us with our review, we have with us again our Minister of Justice and Attorney General of Canada, the Honourable Rob Nicholson, and accompanying him are senior officials from the Department of Justice. We have with us Carole Morency, acting general counsel, criminal law policy section, and Donald Piragoff, senior assistant deputy minister, policy sector.

Welcome to all three of you.

Joining them will be Matthias Villetorte, counsel, criminal law policy section, once the minister leaves.

A reminder to all members to provide any proposed amendments to the clerk. We're hoping to move to clause-by-clause during the second half of the next meeting, which is Monday. That might carry over into the following day, which would be Wednesday. In any event, if you could get those amendments to us, it would be very helpful to the clerk and the rest of the members.

[Translation]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** I think we should discuss this at tomorrow's steering committee meeting.

[English]

**Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.):** At the meeting of the steering committee tomorrow?

**The Chair:** Yes, we intend to discuss that at the steering committee tomorrow. We want to make sure everybody has lots of advance notice that we would like to see your proposed amendments, and, as you know, tomorrow we'll be discussing the calendar going forward, exactly how those meetings will play out.

In any event, we have the minister with us.

Minister, you have ten minutes and then we'll open the floor to questions from our members.

[Translation]

**Hon. Rob Nicholson (Minister of Justice):** Thank you very much, Mr. Chairman.

I am very pleased to appear before the committee as you begin your review of Bill C-54, the Protecting Children from Sexual Predators Act.

[English]

Our goal with this bill is twofold. First, it seeks to ensure that all child sexual offences are treated seriously and consistently for sentencing purposes. Second, it proposes reforms that seek to help prevent the commission of sexual offences against children.

This bill's sentencing reforms target mandatory penalties for all sexual offences where the victim is a child. The sexual abuse of any child is a serious offence, and it must be clearly denounced. Our government believes that child sexual offenders must receive sentences that reflect the seriousness of their crimes and the danger they represent to our children.

As members of the committee will know, acts of child sexual abuse can be charged under child-specific offences or under the general sexual offences that apply to both adults and child victims. Though these two groups of offences address similar conduct, they do not impose similar penalties where the victim is a child.

For example, some of the child-specific sexual offences impose mandatory minimums, but none of the general sexual offences impose mandatory penalties. In addition, the variations in sentencing often result in conditional sentences of imprisonment—house arrest, as it's often referred to—for some offences but not for others.

The effect of this varying treatment is that not all child sexual assaults are treated equally seriously by the system. In fact, given that 80% of police-reported incidents of child sexual assault in 2008 were charged under the general sexual assault offence in section 271 of the Criminal Code, this means that the overwhelming majority of child sexual offences do not carry a mandatory minimum penalty. This bill changes that.

There are currently 12 child-specific sexual offences that impose mandatory penalties. Amendments made in 2005 to those offences resulted in mandatory penalties being added to only some of the child-specific sexual offences and to none of the general sexual assault provisions. These changes produced a random and inconsistent approach to mandatory penalties such that they do not all adequately reflect the serious nature of the offences.

In order to fix these inconsistencies and ensure that sexual predators receive sentences that reflect the extreme seriousness of their crimes, this bill proposes to add seven new mandatory penalties to offences that currently do not impose mandatory sentencing. Three of these are child-specific offences: the bestiality provisions, the Internet luring of a child, and the exposure to a child under 16 years of age. The other four are general sexual offences, and the mandatory penalties will apply where the victim is a child under the age of 16, the age of consent.

They are section 155, incest; section 271, sexual assault; section 272, sexual assault with a weapon, threats, or causing bodily harm; and section 273, aggravated sexual assault.

This bill proposes higher mandatory penalties for seven child-specific sexual offences that already carry mandatory penalties. This will ensure that the mandatory penalty is not only commensurate with the offence in question but is also consistent with other mandatory penalty offences.

For example, Bill C-54 would increase the current mandatory penalty for section 151, sexual interference—which carries a maximum penalty of 10 years on indictment—from 45 days mandatory to one year mandatory. In this way, the higher mandatory penalty would be consistent with the new mandatory penalty proposed for section 271, the general sexual assault offence.

Bill C-54 also seeks to prevent the commission of a sexual assault against a child. It does so by proposing the creation of two new offences and by requiring the courts to consider imposing two new specific conditions that would seek to prevent a suspected or convicted child sex offender from engaging in conduct that would facilitate their sexual offending.

● (1535)

The first new offence proposed in this bill would prohibit anyone from providing sexually explicit material to a young person for the purpose of facilitating the commission of a sexual offence against the young person. Child sex offenders often provide such material to their intended victims with a view to lowering their sexual inhibitions; in other words, they do this as part of the grooming process of their victim.

Today, if that material constitutes child pornography, irrespective of the purpose, it is already prohibited. Bill C-54 does not change that. But where the material in question is not child pornography—in other words, where it depicts adults engaged in explicit sexual activity as defined by the new offence—the Criminal Code does not currently catch this unless the material meets the very high threshold definition of obscene material under section 163.

Bill C-54 will change this. It proposes to prohibit providing sexually explicit material to a young person for the purpose of facilitating the commission of a sexual offence against that child.

This new offence would carry a penalty similar to that for the existing obscenity and corrupting morals offence in section 163.

Bill C-54 also proposes to prohibit anyone from using telecommunications such as the Internet to make arrangements with another person to commit a sexual offence against a child. In addition, this bill proposes other needed consequential amendments, including, for example, adding the two proposed offences to subsection 7(4.1) of the Criminal Code, which provides Canadian courts with extraterritorial jurisdiction to enable the prosecution of Canadian child sex tourists. Both of the proposed new offences would carry mandatory sentences of imprisonment.

Lastly, our bill proposes to expand the powers of the court to prohibit a convicted child sex offender under section 161 of the Criminal Code and to prohibit a suspected child sex offender under section 810.1 from engaging in conduct that may facilitate their commission of one or more of the enumerated sexual or abduction offences. First, the list of offences would be expanded to include four prostitution offences where the victim is a child; second, the courts would be specifically directed to consider imposing a condition prohibiting the offender from having any unsupervised access to a young person and from having any unsupervised use of the Internet.

The imposition of these conditions would help to prevent the offender from being placed in a situation where he has access and opportunity to sexually assault a child, and from having unfettered use of the Internet and other technologies that are so instrumental in the commission of child pornography and other child-sexually-exploitive offences.

These are the key elements of this bill. As do all law-abiding Canadians, our government knows that the sexual exploitation of children causes irreparable harm to the youngest and most vulnerable members of our society. Our message in Bill C-54 is strong and clear: to those dangerous sexual predators who abuse children, from now on you will go to jail.

Thank you very much.

● (1540)

**The Chair:** Thank you, Minister.

We'll begin with Mr. Murphy, for seven minutes.

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

Minister, thank you for your overview of this bill.

Curiously, we had witnesses before we had you, and one of the witnesses, Mr. Rushfeldt, was very interesting in terms of his submission. I've spoken to Nathan Cooper as well, from that group, about the definition used in section 163.1 as it relates to child pornography. I'll turn your attention to that.

Although applauding the bill in general, he suggests that the definition should more accurately reflect what is depicted in what is being trafficked or used; that is, to use their words, "child sex abuse materials". The images depicted are abuse. They are rapes; they are attacks. They are the most heinous of crimes, which leads me to this question.

Your spokesperson.... I don't know whether she's a lawyer. I don't know whether she's schooled in these sections of the code. But your spokesperson said that the definition of child pornography found in section 163.1 is among the most comprehensive in the world and leaves no doubt that heinous crimes are illegal.

I'm struck by the evidence of the people who work in this field. I think you have some empathy for them as well. My point is that the images actually are child sex abuse materials, which is a stronger definition than what is defined under section 163.1, child pornography. If the crimes you're seeking to accelerate or increase the penalties upon are very serious crimes, they ought to be accurately reflected.

This is my first question. I wonder, therefore, if you would be open to the idea—maybe not in this bill, maybe it's outside the scope—of amending the definition, or whether you stand by your spokesperson's words in this regard.

As these things tend to go long on answers, Minister, because you're so eloquent in your responses, I'm going to load you with another question.

Why didn't you bring this bill sooner? This isn't the usual case where this is a regurgitation of another bill. I wonder why it took so long. You've made much, frankly, of saying that everybody blocked you all the way, and that Liberals are new to this crime deal, and all that sort of garbage that you say in the other place. But I've been here five years and I don't remember this bill. I really would have liked to have seen this bill.

I've been talking to Nathan Cooper for three or four years, and I speak for myself here, but I haven't blocked you every step of the way. I haven't, minister. So why not sooner? And would you be open to this...? I'm interested in your comments on the definition of child pornography versus child sexual abuse materials.

• (1545)

**Hon. Rob Nicholson:** First of all, in answer to your question about child pornography, no. I would oppose any plans to change that. That is the bill that has been litigated and defined, and considered by the courts of this country. That is the term that is used in all my international discussions with other G-8 justice ministers. This is the term that is used at the United Nations.

The term "child pornography" goes beyond just the depiction of child sexual abuse images. It's broader than that. I can tell you that the definition includes not only images depicting the actual sexual abuse of a real child but also the depiction of such abuse of an

imaginary child, images that do not depict the sexual abuse of a real or imaginary child but that depict a child's sexual organs for a sexual purpose, written or audio material that advocates or counsels unlawful sexual activity with the child, written or audio material.... It's considerable. It's larger. It's part of the lexicon of our legislation in this area. I am not prepared to change that because I believe that would restrict what we are talking about.

With respect to that, I'm sure you would be very aware of how difficult it is to get any piece of legislation passed. I had legislation that took about a year and a half that included provisions to protect 14- and 15-year-olds, for the first time since the 1890s, against child sexual abusers. And you would be aware of the fact that there were members of your caucus who were tripping over each other to get in front of a camera to say that there was somehow—

**Mr. Brian Murphy:** They must have tripped over you on the way.

Just talk about this bill. Why so long?

**Hon. Rob Nicholson:** You're asking why now for this bill?

**Mr. Brian Murphy:** Yes, five years.

**Hon. Rob Nicholson:** I'm telling you that it's very difficult to get anything, even protecting 14- and 15-year-olds. We are in the business of protecting children from child sexual abuse. I have another bill requiring Internet service providers.... I'll say get those bills passed, and I promise you that we will continue to make strides in protecting children and continue to protect this country from violent criminals. It's not easy. Let's get this bill passed. Let's get the other bills passed.

I'm sure you and your colleagues talk about this at caucus—all the efforts that are made to slow down these bills or to oppose them, or to challenge them—

**Mr. Brian Murphy:** Can we get back to the bill?

**Hon. Rob Nicholson:** It's a challenge, Mr. Chair, but I'm going to tell you something. I'm proud to be part of a group of individuals who have made this a priority, and we're going to continue to push until this is the law of this country.

**Mr. Brian Murphy:** Make your speeches elsewhere, Minister.

Abuse is actually not in section 163.1. That's why I was asking. But I'll leave that for the technocrats who actually know the stuff.

I want to ask you about Inspector Naylor's comments yesterday. He seemed a very forthright, upright, law enforcement official. He suggested that we could always use more tools. Obviously, he was in favour. This is about the telecommunications aspect of making arrangements to commit a sexual offence, which is a very nice part of this legislation. We were reminded that Bill C-46, I think it was, was a bill that lived until your government killed it through prorogation, which would have given investigative powers. Can you tell me where we are with that, and whether you want to....

If we could all just lower the temperature on the hyperbole, I guess.... There's a *mea culpa* there.

I know that you're laughing, because you always do, Bob, but the point is that we want to get some things done. This is a good bill to get done, and so is Bill C-46. Where is it?

**Hon. Rob Nicholson:** I think you have the wrong number. It's Bill C-51.

**Mr. Brian Murphy:** It's on investigative powers.

**Hon. Rob Nicholson:** Investigative powers for the 21st century.

Certainly I'll pass on to the House leader that you're very anxious to get that bill passed. This would certainly be a beautiful thing.

Yes, I have talked with law enforcement agencies. Updating the Criminal Code with respect to the investigative tools within the Criminal Code is very important to them.

As I've said before, Mr. Chairman, criminals don't just phone each other any more. They've gotten out of the habit of sending telegrams to each other. So the laws of this country have to be updated to reflect the current state of technology. So the bills we have with respect to lawful access and investigative powers are another priority for this government.

Again, I'll pass on to the government House leader how anxious some members of the Liberal Party apparently are to get this passed. I say to hang tough in there, and let's get those bills passed.

• (1550)

**The Chair:** Thank you.

We'll move on to Monsieur Ménard, for seven minutes.

[Translation]

**Mr. Serge Ménard:** Thank you, Mr. Minister. I have the feeling that you care very much about this bill.

During your presentation, I noted the different categories of offences which have been created and the different sentences which will be applied.

Can you tell us how many minimum sentences will be applied under this bill?

[English]

**Hon. Rob Nicholson:** Is it two for the new offences...? Seven have been included, and I believe that there are another nine. There's an increase of seven altogether, Monsieur Ménard, for which there may not already be a mandatory penalty.

[Translation]

**Mr. Serge Ménard:** How many are there for the new offences?

[English]

**Hon. Rob Nicholson:** Yes, there are mandatory penalties with respect to the new ones as well.

[Translation]

**Mr. Serge Ménard:** How many?

[English]

**Hon. Rob Nicholson:** They are the two new offences that have been created under this bill.

[Translation]

**Mr. Serge Ménard:** An association called the Church Council on Justice and Corrections sent the Prime Minister a letter on that subject on December 17.

Have you read the letter which was sent to the Prime Minister?

[English]

**Hon. Rob Nicholson:** I don't have a copy of the letter.

[Translation]

**Mr. Serge Ménard:** Have you read it?

[English]

**Hon. Rob Nicholson:** I did not read it.

[Translation]

**Mr. Serge Ménard:** Pardon?

[English]

**Hon. Rob Nicholson:** I don't have a copy of the letter. It wasn't addressed to me.

[Translation]

**Mr. Serge Ménard:** Did the Prime Minister not think that—

[English]

**Hon. Rob Nicholson:** Perhaps you could ask the question. What's your question?

[Translation]

**Mr. Serge Ménard:** Did the Prime Minister send you this letter?

[English]

**Hon. Rob Nicholson:** Any conversation I have that is between the Prime Minister and me I'm not going to repeat, but if you have a question about it, I'd be glad to answer.

[Translation]

**Mr. Serge Ménard:** I am asking whether you have read this letter.

[English]

**Hon. Rob Nicholson:** Again, my understanding is that the letter was sent to the Prime Minister, and I'm aware of the letter. If you have any questions about it, please ask.

[Translation]

**Mr. Serge Ménard:** That is what I wanted to know. You are aware of the existence of this letter and of its content.

Could you tell us what you think about the content of this letter?

[English]

**Hon. Rob Nicholson:** Well, I'm glad to have input. All of the time I'm glad to have suggestions on any of these. We look forward to getting input from a wide range of individuals. We certainly have that, and if it's your intention to call that group before you here, you're certainly welcome to do that.

[Translation]

**Mr. Serge Ménard:** That is not what I asked. I asked you to tell us what you think about this letter, of which you know the content.

[English]

**Hon. Rob Nicholson:** I appreciate the comments, and my thoughts are completely reflected in the bill that you have before you. The one thing that you and I will agree on, Monsieur Ménard, are your initial comments that this bill means a great deal to me.

[Translation]

**Mr. Serge Ménard:** In the title of the bill, it simply says that this is an act to amend the Criminal Code, to protect children and other vulnerable persons.

When I hear you speak, I realize that you only ever refer to children. However, I believe you would acknowledge that several provisions apply to teenagers and young people.

[English]

**Hon. Rob Nicholson:** Well, that's true.

[Translation]

**Mr. Serge Ménard:** Yet you keep on insisting on the word "children".

Why don't you give this bill a title which better reflects who is covered?

[English]

**Hon. Rob Nicholson:** You're arguing whether 14-year-olds are still children, or 15-year-olds, or 13-year-olds. If you prefer the title "young people" *en anglais*, I don't have a particular problem with that. But what we're doing is zeroing in on children.

As a matter of fact, what law enforcement agencies have been telling me is that the images quite frankly are getting younger all the time on that. There are approximately 750,000 pedophiles online at any particular time. There are millions of images. And they tell me the trend over the last ten years, believe it or not, is to keep getting the images of younger people being exploited, younger children. So that is what we're zeroing in on.

• (1555)

[Translation]

**Mr. Serge Ménard:** When you became Minister of Justice in 2006, I believe, the department had commissioned a study from Mr. Julian Roberts on minimum sentencing in other Commonwealth countries. His report came out in 2006.

Are you aware of this study?

[English]

**Hon. Rob Nicholson:** I'm aware of it, yes.

[Translation]

**Mr. Serge Ménard:** Do you acknowledge what Mr. Roberts concluded, as is reflected in the letter sent by the Church Council on Justice and Corrections? He concluded that imposing minimum sentences in Commonwealth countries has apparently had no effect in terms of reducing the number of offences to which these minimum sentences apply.

[English]

**Hon. Rob Nicholson:** First of all, I didn't come to the Department of Justice in 2006. It was 2007, just a little over four years ago now.

I'm aware of a number of reports. Sometimes I'm told that the Americans have very tough mandatory penalties in this area. There are a number of Commonwealth countries that don't have mandatory sentencing. This is a Canadian approach. I think it will work, Monsieur Ménard.

I hope this gets your support, because we're protecting those vulnerable people in society. I appreciate that there are those, including yourself, who don't like mandatory penalties. But again we have to send out the right message. The problem is getting much worse over the last few years.

This is what law enforcement agencies tell me. They tell me that the number of images, for instance, since 2003 has quadrupled, all of them depicting children being abused and exploited on the Internet. We have to take action on that. The problem hasn't been getting better these last four or five years, and this is exactly what we need.

I want you to have a particular look at those new offences that are in the business of preventing this kind of activity: two people getting together to discuss setting up a child or the person who gives sexually explicit material to a child. These are designed to stop the child sexual exploitation before it reaches its inevitable conclusion.

So intervening ahead of time, in my opinion, is updating the law and is exactly where we have to go. The problem has gotten much worse in the last few years, and we need legislation like this to deal with it.

**The Chair:** Thank you.

Mr. Comartin, seven minutes.

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

Thank you, Mr. Minister, for being here.

I want to go back to Mr. Rushfeldt. When he was here, he indicated that about a year ago his agency submitted a brief to your department and never got a response. He was here with the Canada Family Action Coalition. They had submitted a brief to your department about a year ago and never got a response. It's on the same issue that Mr. Murphy had raised.

Are you prepared to make that brief available to the committee, so that we can see it? When Mr. Rushfeldt was here, we asked him for some other information. We didn't ask him for the brief.

**Hon. Rob Nicholson:** I'll certainly check into that for you and I'll find out why there hasn't been a response to that.

**Mr. Joe Comartin:** Would you also provide a copy of the brief to the committee?

**Hon. Rob Nicholson:** I have no problem with that.

**Mr. Joe Comartin:** Thank you.

With regard to the information he gave us, which was great because of the short time we had with him, he indicated that in spite of the wording that is generally accepted—as you've already indicated, at the UN level—that either New South Wales or Queensland in Australia have actually passed that type of wording that he is proposing, the abuse type of wording, into their law.

I asked him, and he couldn't give us an answer if they had any indication of whether it had been challenged in the courts and if it had been more effective in dealing with it than the current wording of child pornography that we are using in our legislation.

I'm wondering if your department has looked into what the experience has been in Australia.

•(1600)

**Hon. Rob Nicholson:** Ms. Morency looks into everything—

**Mr. Joe Comartin:** I was actually going to address that question to her, because I figured she probably would know the answer, more so than you.

**Hon. Rob Nicholson:** Thank you very much for that compliment.

The input that I have received, and this has been consistent over the last few years.... I go back in this area to 1993, when we passed the first bill regarding the downloading of child pornography. I remember the briefings I received 18 years ago on this that the words "child pornography" captured a wide range of activity exploitive of children. I haven't changed my opinion on that.

With respect to the meetings that I've had with G-8 justice ministers, the term "child pornography" is in wide use.

I'm interested that you raise this. One of the things we are doing is trying, as much as possible, to facilitate the transfer of information between different countries. I like the idea that we use the same term because among each other we can encourage each other to get information as to people who are involved with this business. So among the reasons why I wouldn't want to change it is the fact that I don't want to further complicate that by starting to change the definitions that Canada has. The term "child pornography" works for the reasons I have said, and my recommendation to this government is to continue with that.

**Mr. Joe Comartin:** And with regard to you not analyzing the situation in Australia as to whether it's been useful there?

**Hon. Rob Nicholson:** Perhaps I'll ask Ms. Morency.

For the most part, they use the term. But you've indicated that a couple of Australian states have changed the term, and she might be able to give you more background on that.

**Mr. Joe Comartin:** They've actually included it in their statutes, Mr. Minister.

**Ms. Carole Morency (Acting General Counsel, Criminal Law Policy Section, Department of Justice):** My understanding is that his reference was to something in Australia. In what I looked at between Monday and today, I think his reference was to the

Commonwealth criminal code on Internet offences. It's a criminal law that applies to all of Australia, although criminal law is a state power.

In that statute of federal law they do use both "child pornography" and "child abuse material". I'm not sure if that was what he was referring to because he didn't, as I understood from Monday, table any documents, but for different purposes. That law does in fact still use child pornography in a broad sense, as our definition does as well. They use "child abuse material" to refer to, in my understanding, a different form of material, which depicts children under 18 as victims of torture, cruelty, or physical abuse. There is quite a difference in approach.

Again, I say that with caution, because I'm not sure that's exactly what he was referring to, but that's what I'm aware of.

**Mr. Joe Comartin:** Perhaps, Ms. Morency, I should ask one more question. Was the brief that they submitted considered when this bill was drafted? I'm asking within the people who actually drafted the bill. Did they consider the brief?

**Hon. Rob Nicholson:** I can just tell you in general. They obviously look at other like jurisdictions of other Commonwealth jurisdictions and other countries with respect to this, and again, the term is consistent with what we've always used in this country.

**Mr. Joe Comartin:** Those are all the questions I have.

**The Chair:** Thank you.

We'll move to Mr. Dechert for seven minutes.

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

Minister, thank you for being here today and thank you for introducing this legislation. I can tell you that I've been getting an incredible number of e-mails and telephone calls from my constituency, from victims, victims groups, and the general public telling me how important they think this legislation is. As a member of Parliament, I think there's nothing more important that we can do than to protect children. So I want to thank you for bringing this forward.

I was amused and rather pleasantly surprised to hear my opposition colleague Mr. Murphy talk about the timing and his concern about moving quickly with legislation. You know, as we review all the criminal legislation that our government's been putting forward, he and his opposition coalition colleagues are consistently slowing things down. They like to debate the short titles of bills. They want them to be very precise, and they're willing to spend hours debating the short titles of bills. They like to move commas back and forth, from paragraph to paragraph, and spend a lot of time doing that.

•(1605)

**Mr. Brian Murphy:** Point of order.

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** Chair, you've previously correctly steered people towards questions and discussion regarding the bill that is before us, not diatribes on previous bills.

**Mr. Bob Dechert:** I'm actually, Mr. Chair—

**Mr. Brian Murphy:** Does he have the floor or do I?

**The Chair:** You have the floor right now.

**Mr. Brian Murphy:** I think in the interest of moving forward with this bill—I'm sorry everybody's hurt by the fact that this bill's only coming here five years after you were elected, but if we all want to work together on this bill let's discuss this bill.

He's talking about all kinds of other bills, and I believe that's out of order.

**The Chair:** Well, I'm going to rule it's not out of order at this point in time. I'm prepared to allow him to continue.

Mr. Murphy, as you may recall, I also allowed you some leeway in terms of addressing—

[*Translation*]

**Mr. Serge Ménard:** I would have liked to say something before you made a ruling.

[*English*]

**Mr. Brian Murphy:** I talked about this bill.

**The Chair:** All right, Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard:** I would have liked to have said something before you made your ruling.

I think he is perfectly right. If you stopped using the titles as propaganda tools, we would support the bill. However, these titles are simply and systematically propaganda tools.

[*English*]

**The Chair:** Thank you.

We'll go back to Mr. Dechert.

You have the floor.

**Mr. Bob Dechert:** Mr. Chair, if I can beg the indulgence of my colleagues opposite, they'll hear directly how it's relevant to the legislation we're reviewing today.

When we last met, Minister, we examined a number of witnesses who represented victims, and in one case an actual victim herself who told us her brave story and told us why this legislation is so important. I asked her about the timing of this bill.

We've been going through, during the last several months or weeks in this country, endless speculation about the possibility of a spring election triggered by certainly not the government but other parties in the House of Commons, and there seems to be a concern on the other side that perhaps there should be an election soon. That election, if it were to happen.... And I can tell you that people in Mississauga are telling me please, don't have an election, stick to the work; stay focused on the economy and protecting our families and our communities. So I asked them what they think about the possibility of a spring election derailing this bill and what comment they have on the timing.

Ms. Campbell, who was herself a victim and represents victims of child sex abuse, said:

I agree, and just while we've been sitting here talking today, how many children have been tortured, raped? High, high. So it's urgent. I really encourage you to hopefully.... Please use us any way we can support you to get the public awareness out. We would do that.

Both she and Mr. Rushfeldt implored us to move quickly.

I wonder if you could just tell us what you think of how we should deal with this legislation and the threat of derailing it with any kind of an unwanted election.

**Hon. Rob Nicholson:** Thank you very much for that, Mr. Dechert. Thank you for your contribution to the criminal justice agenda of this country. It's certainly very much appreciated.

Obviously, anything that derails any of these bills or slows them down doesn't have my support. I was candid with people. There were people, for instance, over the Christmas break asking me why the bill getting rid of the faint hope clause wasn't finally the law of this country. I had to tell them. I said, among the other things that Liberals didn't like, they didn't like the title, if you can imagine. But I said this is what we're dealing with.

I think most people who follow this understand the challenges we have. I guess my point on this, on all of these pieces of legislation to better protect children, is that it is a worthwhile objective of everybody, regardless of whether this is a minority Parliament. I know, people have said to me, this is a minority Parliament. Again, I always say that's no excuse not to stand up for victims or law-abiding Canadians of this country.

So I'm asking your committee to do everything you can to expedite these things.

This is better for Canada; Canada is a better country when we have laws on the books that better protect the children of this country. The two new offences that I'm talking about, in which you get two adults talking about setting up a child.... Canada is a better place if there are laws on the books against this kind of activity.

This bill stands on its own, as the others have. They're reasonable. Victims want this type of legislation. So thank you. Anything you can do within this committee to get this thing through and get it into the House and not have it derailed for any reason certainly would have my support and, I think, the support of the people of this country.

• (1610)

**Mr. Bob Dechert:** Thank you.

When we last met, Minister, we talked as well to the same representatives of victims groups about the mandatory minimum penalties that are in the bill. Specifically, we're often criticized by the opposition and others about the high costs of mandatory minimum penalties: there will be more people in prison. Some of these sexual predators will be off the street; they're going to spend more time behind bars. That's going to cost more money. We need more jail cells perhaps, more prison guards to keep them there off the streets, to keep them away from our children.

I asked them whether they thought, if that were true—assuming it were true that the costs of incarcerating people would go up—that it was money well spent. I can tell you that both Mr. Rushfeldt of the Canada Family Action organization and Ms. Ellen Campbell representing victims of child abuse said yes, it would be money very well spent, in their opinion.

Could you talk about that and about what you think the value of it is to the people of Canada, especially with respect to mandatory minimum penalties in this legislation, keeping child sex predators away from our children?

**Hon. Rob Nicholson:** Well, again, there are so many different aspects to this. First and foremost, of course, is removing some individual who is in a position to sexually abuse and exploit young people. That's the first benefit, quite frankly, of sentencing an individual and getting them out of the milieu in which they are exploiting other people.

It also sends the right message out, in my opinion. One of the amendments we are making is to make sure, among other things, that house arrest, or conditional sentencing—you heard me refer to that in my opening remarks—is not available, because it actually hurts people's confidence in the criminal justice system. People who are in the business of sexually abusing children or assaulting people, if they get a conditional sentence.... Nobody, I think, wants that kind of message to be sent out there.

The bill covers a wide range of sexual offences, and there's a consistency with it. I'm sure that in your examination of this, not just with me but with the departmental officials and the other witnesses, that will come through loud and clear. This sends out a consistent message that this type of behaviour will not be tolerated.

**The Chair:** Thank you.

We'll go to Mr. Lee for five minutes.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** I just have to respond to Mr. Dechert, who seemed to suggest that opposition parties call elections. He seems confused about it. As I understand it, one hundred percent of the time it's the Prime Minister who goes down to Rideau Hall and asks for the dissolution of the House for purposes of an election. There must be a new constitution out there.

Anyway, Minister, thanks for being here today. I would have thought with all of your words about the importance of this and other legislation you would have been able to give us more than an hour, but I've got my five minutes, and I know you have to hustle back to your office to work on some more bills' short titles.

I'm going to ask you about one aspect of this. It is rather technical. It has to do with the potential for entrapment. It has nothing to do with the core purposes of the bill, which I'm sure all the members agree with.

In clause 15 of the bill, and that's really proposed new section 172.2 of the Criminal Code, there are some new provisions that do three things. They add a presumption dealing with what the accused believed about the age of the underage person, a presumption. Then proposed subsection (4) removes a component of the *mens rea* defence when it says it doesn't matter what you thought you knew unless you took reasonable steps. It doesn't matter what you knew.

Then the next proposed subsection of the bill takes away a further defence to say it doesn't matter whether there really wasn't a victim at all and it doesn't even matter whether there was a real person at all. In other words, there could be a totally artificially constructed scenario for purposes of entrapment.

I have no illusions. The police will be going after some bad guy, in all likelihood. They don't waste time on innocent guys. But let's say there is a bad policeman out there, and he decides he's going to entrap somebody. Let's just say. We all know there aren't very many bad policemen out there, but let's say there was one, and he or she decided to entrap. This sequence of proposed subsections sets up, by statute, an entrapment. It's not like you use an entrapment to investigate a real offence. It is actually setting up statutorily an entrapment scenario removing defence, imposing a presumption, and then saying it doesn't matter whether it was a fake person or a real person. Whether or not there was a real person, you're still guilty, not of committing an actual criminal offence, but facilitating, setting up, inviting.

To me, we are setting up in our Criminal Code an artificially constructed entrapment mechanism, where the person accused may have statutorily removed from him or her certain defences.

Now, the court can say it still can't accept this person as guilty as charged, but I don't like the look of this.

Have you walked through this? Have your officials walked through this? I understand why we want to get tough laws, but the procedures have to be constitutionally fair, and I'm nervous about this one.

• (1615)

**Hon. Rob Nicholson:** Well, I can give you assurances that it is constitutional, Mr. Lee. I mean, one of the things—

**Mr. Derek Lee:** Your previous assurances to me in the House have not always been one hundred percent. You don't have—

**Hon. Rob Nicholson:** I think we've made some pretty good arguments, sir.

**Mr. Derek Lee:** You don't have a one thousand batting average here, but that's okay. You're responding in good faith.

**Hon. Rob Nicholson:** Again, we're completely confident that all the provisions of this bill are constitutional.

You said we're setting up a situation where people are discussing the potential or the possible sexual exploitation of a child. Part of what we want to do is to prevent this kind of activity to begin with. That's what we're trying to do. I say that specifically with respect to the new offences we have in here. We want to stop these individuals beforehand. And I know the point you're going to make is that if the person commits the offence, then the elements are there. We're trying to back this up.

Now, with respect to your concerns about entrapment, the entrapment provisions of the Criminal Code will continue to apply, and they will apply to all the provisions of this act. So you would know perhaps the elements of an entrapment where the police go beyond just the discussion, and those provisions would continue to provide a defence for someone. But for those individuals who are in the business of agreeing to exploit a child, we're going to stop them in their tracks right there. If that's what they're agreeing to do, that will be an offence in this country.

Now, for that individual who says "I was entrapped" or "I was fooled" or "I was induced", those sorts of arguments can be made, because the entrapment section will still apply. But for those individuals who are agreeing to set up some child, just because it's a police officer that they're in that discussion with, they will not be able to claim a defence against that. The entrapment will be there, but we're making it a crime to agree to start the exploitation of a child.

**The Chair:** Thank you.

Monsieur Lemay, you have five minutes.

[Translation]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Thank you, Mr. Chairman.

Mr. Minister, I did some quick math. Do you know how many justice bills died on the order paper when you decided to prorogue the House of Commons? Do you know that number?

[English]

**Hon. Rob Nicholson:** Yes, Mr. Lemay. I'm sure that some of the Liberals won't like your discussing bills—

[Translation]

**Mr. Marc Lemay:** No, no.

•(1620)

[English]

**Hon. Rob Nicholson:** —other than this one, but you're quite correct. I was very frustrated, particularly with what was happening in the Senate. I mentioned the bill protecting 14- and 15-year-olds. I'm sure the Liberals will tell you about their caucus members who were fighting us even on that one.

[Translation]

**Mr. Marc Lemay:** There is no problem.

[English]

**Hon. Rob Nicholson:** Yes, it was very difficult, and I was one of the ones who applauded over a year ago—

[Translation]

**Mr. Marc Lemay:** Fine, all right.

[English]

**Hon. Rob Nicholson:** —when we appointed those new senators. And I'll tell you what: things are working much better in the Senate these days.

[Translation]

**Mr. Marc Lemay:** Mr. Chairman—

[English]

**Hon. Rob Nicholson:** I'll tell you, I'm very pleased about that.

[Translation]

**Mr. Marc Lemay:** Mr. Chairman, could you please tell the minister that if he wants to speak to the representatives of the Liberal Party, he not do so during the time I have for questions? Therefore, can I get back the 44 seconds which I lost? Thank you, Mr. Chairman.

[English]

**Hon. Rob Nicholson:** But to be fair, the problems with proroguing, when we did the proroguing—

[Translation]

**Mr. Marc Lemay:** Mr. Chairman—

[English]

**Hon. Rob Nicholson:** —were the problems we were having with the Liberal-dominated Senate.

[Translation]

**Mr. Marc Lemay:** Mr. Chairman, once again—

[English]

**Hon. Rob Nicholson:** I don't want to be blaming you, Monsieur Lemay—

[Translation]

**Mr. Marc Lemay:** No, but—

[English]

**Hon. Rob Nicholson:** —for something you're not to blame for. Good heavens, I wouldn't do that.

[Translation]

**Mr. Marc Lemay:** Thank you.

Mr. Chairman—

[English]

**The Chair:** Order, order.

Could I have just one moment of your time?

I think now is the time for us to dial down the rhetoric and get back to the bill that's at hand. So I ask all of us now to sort of treat each other a little bit more civilly, and let's get to the nuts and bolts of the bill itself.

Monsieur Lemay, continue.

[Translation]

**Mr. Marc Lemay:** I have not done anything, Mr. Chairman. The Liberal Party and the minister are arguing. Can I have my minute? I will be specific.

[English]

**The Chair:** Monsieur Lemay, I wasn't just referring to you. I was referring to all of us here. I think we need to tone down the rhetoric a little bit so we can get something done.

You've got the floor again.

[Translation]

**Mr. Marc Lemay:** Mr. Minister, I carefully read Bill C-54. Someone from Quebec City might soon come into my riding and say the opposite, but this is a good bill, apart from some provisions which would impose minimum prison sentences for offences which already exist.

Is the purpose of these minimum prison sentences to prevent the courts from imposing conditional sentences, yes or no?

[English]

**Hon. Rob Nicholson:** Among other things, we don't want to have conditional sentences or house arrest in these areas. But I'm pleased to hear you say that this is a good bill.

[Translation]

**Mr. Marc Lemay:** No.

[English]

**Hon. Rob Nicholson:** I know you had some problems with the mandatory sentencing, but....

[Translation]

**Mr. Marc Lemay:** So you agree with me.

[English]

**Hon. Rob Nicholson:** We'll see.

[Translation]

**Mr. Marc Lemay:** No. Not so fast! That was a double-edged compliment.

I would suggest that you split the bill.

[English]

**Hon. Rob Nicholson:** My goodness.

[Translation]

**Mr. Marc Lemay:** Hold on. You want us to—

[English]

**Hon. Rob Nicholson:** I'm so sorry, and this is such great legislation.

[Translation]

**Mr. Marc Lemay:** No. This is what I am suggesting. Listen to your officials. You want us to catch sexual predators who operate on the Internet. I agree with that. And if you agree with me, we will quickly pass section 13, which would create section 171.1 in the Criminal Code.

Could we just do that and discuss the rest later?

[English]

**Hon. Rob Nicholson:** Look, Monsieur Lemay, you're almost there. I'm glad you've read this. You've read it carefully. The preventative measures we have brought forward, you're onside with those. I'd say, keep on going. You're just about there.

Look at those other provisions. They send the right message: conditional sentencing, house arrest for people who sexually exploit other people, this is not good. Toughening up the sentencing, these are all steps in the right direction.

I appreciate that you like the new provisions we are introducing into the Criminal Code. I say, keep going. Sit down with your officials and you'll see that all of this makes sense. This is all great legislation—

[Translation]

**Mr. Marc Lemay:** No.

•(1625)

[English]

**The Chair:** —and this country will be a better place for it.

[Translation]

**Mr. Marc Lemay:** Mr. Minister, I will tell you why we object to minimum prison sentences in some cases, including in cases of sexual assault. You do not leave any discretion to the courts when they must make a ruling. Mr. Minister, please understand—you must understand—that every single case is unique.

However, there are some things in your bill which are important. You want to crack down on Internet pornography and Internet predators. We support this; we have no problems with that. As for the rest, I note that minimum prison sentences will all be carried out in provincial prisons, which means in part in Quebec. Consequently, Quebec will have to pay to house all of these inmates, because these minimum sentences are 90 days in length, and so on.

Have you discussed this bill with the provinces?

[English]

**Hon. Rob Nicholson:** Going back to your initial part, this gives discretion with the judges, and it's perfectly in line with our role as parliamentarians. On every bill that I've been associated with over the last 25 years, we've had maximum sentences.

Monsieur Lemay, I remember one bill I was the parliamentary secretary for. I had one of my own colleagues tell me that we had a maximum of five years, and that we should let the judge decide, because maybe the judge would want to give this guy six or seven years. I say our role as parliamentarians is to give those guidelines to the judiciary with respect to maximum sentences. In this case, we're giving that guideline with respect to minimum sentences.

You could say that the mandatory penalty is one year. The judge has the discretion; he can look at that individual and decide that one year doesn't cut it and four or five years is what this guy needs. With changes that we've already passed, getting rid of the two-for-one credit means the time you get will be the time you actually serve. So we've made that change and I think we've been consistent.

**The Chair:** Thank you.

We'll move on to Monsieur Petit.

[Translation]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Do I have five minutes?

**The Chair:** Yes.

•(1630)

**Mr. Daniel Petit:** Thank you, Mr. Chairman.

Mr. Minister, I would like to thank you and the officials who are with you, for being here this afternoon.

I would like to draw your attention to the issues which have just been discussed. We are talking about mandatory minimum sentences. I would like to point out that I am from Quebec. We have discussed this issue with other members from Quebec. We do not all agree with the members of the Bloc Québécois. We have realized that mandatory minimum sentences are important. Indeed, we took into account situations like the one of the woman who told us about the fact that she had been sexually assaulted. We also considered the situation of children, as is defined in the Criminal Code.

I admire our bill and I admire your consistency since you became Minister of Justice. We are often criticized for having a law and order approach. I would like to thank you for something. Who will this bill protect? The children of members of the Liberal Party, the children of members of the Bloc Québécois, the children of members of the NDP, and the children of members of the Conservatives. This affects everyone. We are not here for the government, we are here to protect our children. We are not here to engage in partisanship. For that, Mr. Justice Minister, I thank you.

Further, in my riding as elsewhere, many people have called in to open-line shows. This keeps on happening in Quebec. People complain that lightweight sentences are handed down. People are sick and tired of sexual predators taking advantage of a “turnstile system”. They go in one day and they come out the next. They are in and out very, very fast. What is happening today is unbelievable. As we speak, there are lawyers, doctors, journalists, actors and parents who are predators. All of these cases are before the courts.

I would ask you whether you believe—and I would like you to consider this very carefully—that mandatory minimum sentences will be imposed. I believe this would help people trust the system of justice. We have lost confidence in our justice system. You said that people can choose to trust in our justice system, but we seem to have lost that trust.

So do you believe that mandatory minimum sentences will help people regain this trust?

[English]

**Hon. Rob Nicholson:** I think they help people have confidence in the criminal justice system. But I'm aware of and I appreciate the fact that there are people who disagree with this. I think part of our job as parliamentarians is to put before Canadians the different opinions there are on this.

We are very clear, with respect to this in this bill, that if you are in the business of sexually exploiting and molesting children, you're going to jail. Now, as you hear, there are those right here in Parliament who disagree with that, or they disagree with the mandatory jail sentences for that, but I think that is part of the discussion we have with the people of your province and other provinces to point out the differences between the approaches of different political parties.

We've been very consistent, as you know. We've made our justice legislation a priority all the way through. We've been consistent on that. We want to modernize the Criminal Code. We want to, as you say, increase people's confidence in the criminal justice system. And

this is one more step in making sure that the rights of victims are understood and protected within our criminal justice system.

Monsieur Petit, thank you again, you and all your colleagues here, for all your support of these. These are very, very important, and I wish you every success, as I do all the members of the committee, in getting this bill through as quickly as possible.

Thank you, Mr. Chair.

[Translation]

**Mr. Daniel Petit:** Thank you.

[English]

**The Chair:** Thank you, Mr. Minister. You were scheduled to stay for an hour. The hour is up, so we'll allow you to leave.

We'll have Mr. Matthias Villettorte join us, and we'll continue our questioning.

Mr. Lee, you're next.

**Mr. Derek Lee:** I'll just wait for officials to...

**The Chair:** Mr. Lee, we'll just take a recess of two minutes.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
•

**The Chair:** We'll reconvene.

Before we move on with our discussion on Bill C-54, we do have an operating budget request for the study of this bill. It was circulated earlier in our meeting. The total is about \$15,000. If you could review that and...

**Mr. Derek Lee:** I'll move it now, Mr. Chair.

**The Chair:** All right. Thank you, Mr. Lee.

**Mr. Brian Murphy:** Mr. Chair, may I ask something just briefly on that?

**The Chair:** Yes.

**Mr. Brian Murphy:** Has this been spent, or...?

**The Chair:** No.

**Mr. Brian Murphy:** We had a panel first, isn't that right? Is this on this bill?

**The Chair:** No, this hasn't been spent. This is on this bill.

**Mr. Brian Murphy:** Right, but we have witnesses.

**The Chair:** It's for the cost of witnesses—

**Mr. Brian Murphy:** But we have had witnesses.

**The Chair:** Yes, we have.

**Mr. Brian Murphy:** And none of this is bad, if you know what I'm saying?

**The Chair:** Well, they haven't submitted expenses for reimbursement yet.

**Mr. Brian Murphy:** My question is... It's not huge. We're approving a budget. But it would seem to me that if we've had witnesses already—some of them seem to be from away—the expense has already been incurred. It has perhaps not been submitted, Mr. Fast. But how much of it—

**The Chair:** It would have been incurred. But of course the witnesses need to submit the expenses, and then they're reimbursed; you understand that. I don't think we have an actual figure for what that would be. Until those expenses are submitted, we won't know what they are. We would probably have a rough idea, but I don't believe the clerk wants to guess.

**Mr. Brian Murphy:** We could talk about it tomorrow.

**The Chair:** Yes, we'll discuss it tomorrow. Thank you.

We have a motion to approve this budget.

Mr. Comartin.

**Mr. Joe Comartin:** I'm concerned, Mr. Chair. I have witnesses I want called who are coming from both coasts. This budget as passed will not be sufficient to cover them. I believe the understanding is that this will only be for the witnesses who have already testified.

**The Chair:** No. The ones who are coming on Monday are also covered under this budget.

**Mr. Joe Comartin:** I have others who aren't yet on the list, since I didn't have any idea that we were moving on this as quickly as you want to. I'm just advising the committee that I will be seeking those witnesses, and obviously their expenses will need to be covered.

I quite frankly think that what we should do is put this off until we have our meeting tomorrow.

**The Chair:** Mr. Comartin, the request for witnesses was sent out by e-mail, I believe, on December 7 or 8. That was over a month and a half ago. I believe the clerk also followed up with a phone call.

I see this as being a recurring problem at this committee: the requests go out; no one acts on them until we're essentially considering the bill and are close to doing clause-by-clause; then suddenly we have suggestions that more witnesses are required.

We have added more witnesses. But surely, with a month and a half's notice, we could have placed those into our calendar and also reflected them in our budget.

I've spoken to the clerk. The clerk has advised that if there are further costs for witnesses, a supplementary or an amended budget would be presented to committee, and we could pass that as well.

What I'm asking for right now is based on the witnesses we've already heard and the witnesses already scheduled. We have a budget here. Could we get that approved, knowing full well that a supplementary budget could be approved later, as well?

• (1635)

**Mr. Joe Comartin:** On that understanding, I have no problem. I'll support the motion.

**The Chair:** All right. We have a motion on the table.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** Thank you, Madam Clerk.

Now we'll go back to our witnesses. We welcome to the table Matthias Villette.

Mr. Lee, you have five minutes.

**Mr. Derek Lee:** Thank you very much.

Firstly, the minister referred to the entrapment sections of the Criminal Code. I presume that had to do with entrapment defences, either case law or in the code. May I ask that you either refer to them now and put them on the record, or, if you want to advise me later, that's okay too. I would just like to have a chance to walk through those and compare them with the scenarios under this section.

**Ms. Carole Morency:** The defence of entrapment is available at common law. So it's not in the Criminal Code.

But to assist you with this, section 172.1—the existing “luring a child” offence on which both new offences are modelled—engages similar types of practices to those you heard about from the witness from the OPP on Monday.

If the committee is interested, I can refer you to two cases. In one case under Internet luring the entrapment defence was successful, and in the other case the entrapment defence was unsuccessful. So it is available, it is argued, and it is argued specifically in this context.

**Mr. Derek Lee:** Okay. I'll think about that.

Now let's go on to other issues.

I notice that in this legislation the government has put forward a bill that changes the term “Internet” to “telecommunication”. That's an advertent change. I think I'm correct in this. We're moving from the currently used term “Internet”—doing these things on the Internet, using the Internet. We have taken out the word “Internet” and have inserted the term “telecommunication”. Is that correct?

**Ms. Carole Morency:** The amendment that you see in clause 15 replaces the word that is currently... For example, currently section 172.1—luring a child—talks about someone who, using “a computer system within the meaning of subsection 342.1(2) communicates with”. This is replacing the language there and in the new offences with “telecommunication”, because this is the language that's also being proposed more broadly in what is currently Bill C-51, which was previously Bill C-46, the Investigative Powers for the 21st Century Act. So it's a consistency to broaden the capture of the types of communications that are at play.

Bill C-54 still uses the terminology “Internet”, as you'll see in the offence. We use language for definition of the Internet here that is consistent with Bill C-30, I believe it is—the Copyright Act, which also has that language.

So the intention here is not... The bill still does use “Internet”, but the use of “telecommunications” would be consistent here with its use in Bills C-51 and C-52.

**Mr. Derek Lee:** I'm interested in this just because we're passing legislation and I want to know what is comprehended by the term we're using. We're criminalizing certain conduct, and it's conduct involving the use of telecommunications.

I understand what you've said. You're saying the change in terminology is for the purpose of imposing consistency between different statutes and the Criminal Code.

Can I ask whether the term “telecommunications”, the word now used in the bill, is defined already in the Criminal Code?

**Ms. Carole Morency:** I believe the term is originating in what is now Bill C-51.

**Mr. Derek Lee:** Oh, okay.

**Ms. Carole Morency:** You'll see the reference to "telecommunications" there, because the offence you're talking about, which is now found in clause 15, was originally in the predecessor to Bill C-51; it was in Bill C-46. So for consistency purposes, this is using the same language.

The intention here, though, in replacing "computer system" with "telecommunication" is to use the term that is the broadest term to capture all kinds of technology that will fit under it. It's not just a computer system, for example, on your desktop; it may be your iPhone that has a computer system, a telecommunication system.

• (1640)

**Mr. Derek Lee:** I understand that, but that's a significant change. We're going from a "computer system" and are now legislating all telecommunications devices; it would be everything. So I'm interested in that definition. And I'll have to go and read that definition, because obviously we've already passed the definition of "means of telecommunication" in the other statute.

I will leave that. The answer is already in the other bill—is that right?

**Ms. Carole Morency:** I might also add that my colleague has just reminded me that the Interpretation Act also has a definition of telecommunications. So concerning the intention here, you're correct. It is to—

**Mr. Derek Lee:** We have just criminalized.... Before, what was criminalized was what you would send around on your computer. Now we've also criminalized what would happen on your telephone.

**Ms. Carole Morency:** It's "computer system" as defined by the Criminal Code, which is more than just a desktop.

**Mr. Derek Lee:** Okay, but it was "computer system". Now we've gone to "telecommunication", which I'm assuming is everything—everything that communicates.

**Ms. Carole Morency:** It is, broadly.

**Mr. Derek Lee:** Even the old telegraph is probably telecommunications. One of the Morse code things is probably telecommunication.

So we brought in the technological base that we've imposed the criminal restriction on. That's okay. I will go and read that. I don't have any need at this point to propose an amendment.

**The Chair:** Thank you.

**Mr. Derek Lee:** Well, I have another question.

**The Chair:** I know, but—

**Mr. Derek Lee:** Well, I'll have to come to it later.

**The Chair:** We'll come to it later, yes; that's fine.

**Mr. Derek Lee:** Okay.

**The Chair:** We're going to the government side now. Who's asking questions on the government side?

Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** At first I was going to be critical of my friend Mr. Lee, because I thought he had sat on the review of regulations committee for too many years, but he does raise a good point, because, having been a court officer.... One of the things that of course defence counsel always raises is the definition of words. I thank him for bringing this up. But I hope—and this question will be to the witnesses here—that it's not in a way to reduce or diminish the kind of the electronic apparatus.

The intent, I believe, and I'm hoping that our witnesses can verify this, is that as more and more information or communication devices such as telephones become mobile computers able to do many more things—not only transmit pictures, but sequences of minutes of actual things happening....

Would I, as the minister said, be correct, Madam Morency, to say that what you're attempting to do here by using that term is to capture not only present but possibly various future types of communication devices?

**Ms. Carole Morency:** The intention is to catch, yes, exactly what's available now and what is possible in the future in terms of identifying the nature of the communications that will be at play rather than just what specifically presents today.

You're talking about the conceptual. I'm trying to find for you right now the reference in Bill C-51, the definition. But yes, it is to apply today and to what might come tomorrow.

**Mr. Rick Norlock:** The bad people will find the flaws, because they tend not to be stupid. And if we don't try to at least keep up with it, as the minister has said.... But from my past experience, and going by the evidence Inspector Scott Naylor gave us yesterday, or the other day when he was a witness before us, related to those new devices....

In addition, I think the previous question regarding entrapment was answered by you adequately, because I know that recent jurisprudence has allowed some and has disallowed others. So our judiciary is very careful to make sure that it is within the bounds of what they interpret the act is intending to do.

My question to you is whether you thought of this when you were drafting this legislation. You were aware that policemen act as five- and six-year-olds in order to go out and mine the fields out there to find out who's trying to lure five- and six-year-olds into viewing explicit pornography or sexual assault and to lure them to actual meetings at malls and other places.

Would I be correct in saying that your intent, with regard to entrapment, was to cover that investigative technique?

• (1645)

**Ms. Carole Morency:** Certainly, and it's as the minister said: the intention was to get at this predatory conduct before an actual contact sexual offence is committed. And yes, of course, there is an awareness of investigatory practices used by police currently under existing Criminal Code offences as well as those we would envision for this proposed new offence. So yes, this was contemplated.

As I mentioned earlier, I can leave the committee with a couple of cases that show exactly, in the context of luring a child over the Internet, where the defence was successful in one and unsuccessful in another. It was unsuccessful, I might add, with an accused who was a police officer, who obviously was not acting in the course of his duties.

I guess the point, as Inspector Naylor said, is that it is a common practice. We are aware of it.

Obviously police are trained in terms of what the lines are in terms of how far they go with the conduct. But typically they do go on. If you read any of the reported cases, the description will indicate, for example, that a police officer was undercover in a chat room known by the name of the chat room and frequented by like-minded child sex offenders and the like, and he or she engaged in that way.

Again, the common law is very clear on the difference between entrapment and a legitimate investigative practice.

**The Chair:** Thank you.

Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** No thank you.

**The Chair:** Mr. Lee, you had some more questions, I believe.

**Mr. Derek Lee:** Thank you very much.

This is another rather technical question. It relates to the sentencing provisions for someone convicted of the crimes here in this bill, or the revised description of the crimes.

It's in subclause 26(2) of the bill, and it relates to section 810 of the Criminal Code, which is the longest numerical description of a Criminal Code section I've ever seen—section 810.1(3.02)(a.1). This has to do with the ability of a judge to prohibit a defendant from using the Internet or other digital network. I understand the Internet part, but when the bill refers to “other digital network”, I want to offer a scenario that for me creates a lack of clarity and might be problematic.

Because we just refer to any other digital network.... We're all aware of how many digital networks there are out there. They're all over the place: they're in hearing aids; they're in elevators, subway systems, automobile sensors, heart monitors. Digital systems are everywhere. If in setting out the penalties or the sentencing restrictions we are not specific, what if a judge simply says they'll use the words of the Criminal Code and you're prohibited from using the Internet or any other digital system, that's in his or her order?

That, I suggest, is problematic, because it lacks specificity about any of these other digital systems. Therefore, our failure to itemize the digital systems may handicap our judges in itemizing the restrictions in the sentence. If the sentencing restriction isn't specific enough, it will fail at some point. I guarantee, judicially, on challenge, it will fail.

Have I missed something here, or have we just painted over, in our zeal to impose more sentencing flexibility, something here? Could you comment on that?

**Ms. Carole Morency:** I'll do my best. I'm not the technical expert on the cyber aspects of criminal law. If the committee requests, if I

may, I can obtain other assistance for you from one of my colleagues.

Let me tell you, in terms of the use of the word “Internet”, certainly in developing Bill C-54 we looked at what is the language being used now, whether in legislation or in practice by courts. If we look at reported court sentencing decisions, they frequently do use the language “the Internet”. Sometimes—mostly—you see it with a capital I, sometimes with a small i, and it's sometimes specified to include other specific modalities of telecommunications. The intention with the language used in Bill C-54.... And we mistakenly referred to Bill C-30 before, but it's Bill C-32, the Copyright Modernization Act, which also uses “the Internet or digital network”.

My understanding, from my cyber colleagues, the experts in this area, is that “internet”, small i, and “Internet”, capital I, actually have different meanings. It has a different meaning for those who are most expert in this area. My understanding, as I say, is that in the early days, when we started to talk about the Internet, capital I, it was intended to deal with not just what we consider to be the World Wide Web type of network, but broader digital networks, because there are others that could fall within that.

The intention with Bill C-54, for the purposes here, was to ensure that the courts are provided with direction to consider in all cases whether or not to make an order, and to make an order that is appropriate in the circumstances of that case. The language used in Bill C-54 refers to the Internet or other digital networks in the broad sense, so it would include, and is intended to include, e-mail, computer systems, other networks of communication, or an iPhone, for example, where telecommunication is being done through a computer system. The intention is to catch that, because those are the tools that offenders are using to either access children or facilitate their offending conduct.

The intention here was to use language that is consistent with other federal legislation. When we look at other federal legislation, “the Internet” is used in a few different ways. It's still relatively new compared to some of the other concepts that are reflected in law. Sometimes it's used to refer to a website. Sometimes it's used to refer to a modality for communication. The intention is to catch it all.

● (1650)

**The Chair:** Thank you.

We're out of time.

**Mr. Derek Lee:** I just want to—

**The Chair:** We're right out of time. You'll get another chance.

**Mr. Derek Lee:** Could I just leave it with her? It's just my comment that without any redefinition this would appear to cover off somebody using a GPS device.

I'll just leave that there as a suggestion.

**The Chair:** All right.

**Mr. Derek Lee:** I'm not looking for an answer.

**The Chair:** All right.

We'll go to Monsieur Ménard for five minutes.

[*Translation*]

**Mr. Serge Ménard:** Thank you very much.

Perhaps I can make a suggestion which relates to the concerns raised by Mr. Lee, which I share. Indeed, after having listened to him, I understand very well, but perhaps if we added “and other electronic tools as described by the judge”, there would be precise instructions to follow. I imagine that when direction is given, it could refer to a certain number of things. It could refer to the Internet, it could refer to access to this or access to that, and so on, but you do not think of heart monitors or that type of instrument.

There is something else I want to ask right now. Several of the minimum sentence increases affect minimum sentences which were created in 2005, particularly as relates to sections 3, 4, 5, 9, 11 and 12 of Bill C-54. They were introduced for the first time in 2005 and came into effect on November 1, 2005.

To your knowledge, has the Department of Justice, or anyone else, ever undertaken a study to determine how the imposition of minimum sentences in 2005 affected outcomes?

**Ms. Carole Morency:** I would like to respond in English.

[*English*]

I understand the committee will be receiving a presentation by colleagues at the Canadian Centre for Justice Statistics. They may be able to provide you with more specifics. In 2005, 11 new mandatory minimum penalties were enacted in child-specific offences. Based on data between 2005 and 2006-07, we looked at convictions, sentences imposed, the length of the sentences, and other forms of sentencing that may have been used since 2005. We also looked at the case law to see what changes may have been introduced by sentencing courts.

I can tell the committee that the sentencing courts have shifted their thinking. They appreciate that the objective of the 2005 amendments was to make denunciation and deterrence a primary sentencing consideration in cases involving violence against children.

In addition, we saw that the mandatory minimum penalties have begun to have an impact. In the offences prior to the MMPs, where we could have seen a conditional sentence imposed and afterwards no availability of a conditional sentence, we could see a decline in the percentage of cases where a conditional sentence wasn't imposed. We could see an increase, a slight increase, in custodial sentences, and we could see an increase in fines and other dispositions. It's a slight increase over that time.

When you look at specific offences, such as sexual assault, the general sexual assault defence, which, in the 2008 data, was charged in about 80% of cases involving child victims, there was no mandatory minimum penalty. So you don't have that equal treatment.

•(1655)

[*Translation*]

**Mr. Marc Lemay:** Please slow down, Madam.

[*English*]

**Ms. Carole Morency:** This became apparent when we looked at the case law.

When we looked at the length of the sentence imposed, we saw that there were more sentences coming in at the low end of the spectrum. In other words, they were closer to the mandatory minimum penalty level.

The other thing I would note for the committee's attention is that since that time we've also had a few fairly important decisions that have contributed to what we're seeing today. The Supreme Court of Canada, for example, in *R. v. L.M.* from 2008, has clearly said that a maximum sentence is possible in the appropriate circumstances, and the court has noted the impact of the Internet.

[*Translation*]

**Mr. Serge Ménard:** I apologize for interrupting, but we have so little time. I ask a 10-second question and the answer goes on for—

[*English*]

**The Chair:** Monsieur Ménard, we're out of time.

[*Translation*]

**Mr. Serge Ménard:** That is the point. You said that yes, there is an effect—

[*English*]

**The Chair:** Mr. Ménard—

[*Translation*]

**Mr. Serge Ménard:** —on the number of cases—

[*English*]

**The Chair:** —it's now Mr. Comartin's turn.

[*Translation*]

**Mr. Serge Ménard:** I would like to know whether this has an effect on the number of offences which are committed—

[*English*]

**The Chair:** Mr. Ménard—

[*Translation*]

**Mr. Serge Ménard:** —and not on the number of cases being prosecuted.

[*English*]

**The Chair:** Thank you.

Mr. Comartin, you have five minutes.

**Mr. Joe Comartin:** Thank you.

You've offered, I think twice, to give us those cases on entrapment. Could you give them to the committee, and could you give us that decision on *L.M.* as well?

I'm a bit concerned. The wording that's in clause 13, which will be 171.1(5)(a)(ii), it's near the bottom of page 5: "the dominant characteristic of which is the depiction, for a sexual purpose..." You're defining sexually explicit material reusing the term "sexual". What I'm concerned about is does that exact wording appear any place else in the code?

**Ms. Carole Morency:** You have it in section 162, very close in the voyeurism offence. The change there is just for grammatical reasons. You have similar language in the child pornography offence in section 163.1.

**Mr. Joe Comartin:** My concern is that we hear of the picture taken of the woman nursing so her breasts are exposed, the baby in the bathtub, and the fear of a parent or custodian, caregiver, whoever, being charged under this type of section. Have we had any of that type of abuse under those two sections?

**Ms. Carole Morency:** Not that I'm aware of. In fact, a Supreme Court of Canada decision in the Sharpe case, the child pornography case in 2001, interpreted all of the components of the child pornography offence, including for sexual purpose and explicit sexual activity, which again the courts would be informed by when they look at this and similar language in the voyeurism offence. So the Supreme Court in the Sharpe case—basically, its interpretation acts objectively viewed that all at the extreme end of the spectrum of sexual activity—

• (1700)

**The Chair:** Ms. Morency, if I could, I'll ask you to slow down, because the interpreters are having some trouble keeping up with you.

**Ms. Carole Morency:** The Supreme Court continued to say that depictions of nudity or intimate sexual activity, but not casual sexual contact.... But it has to be for a sexual purpose. The example that was provided would not fit within that interpretation.

**Mr. Joe Comartin:** Let's say you have a young child running around on a beach somewhere in the nude, and you have a predator taking a picture at that point, so not a custodian, not a caregiver. The Sharpe case would exclude that picture that showed up on the Internet subsequently; it would exclude that.

**Ms. Carole Morency:** I think the case law is clear in saying that on its own, by itself, it likely may not fit within the definition of child pornography, but found together, in the context of other materials that may point out the sexual purpose behind that photo, if that was the case, that could be an issue that could be argued.

That issue has arisen in the context of child pornography. The innocent baby being bathed in the bathtub in a picture, is that caught? It's very clear that that would not be. Is it possible that it could be? Again, as I say, in the contextual approach, in terms of all of the factors looking at it, it's very remote that it would be caught.

**Mr. Joe Comartin:** And as far as you know, it has not been up to this point?

**Ms. Carole Morency:** My understanding is it has not succeeded. There have been some cases, early on, after the enactment of the child pornography offence, and it has not succeeded. I'm not aware of a case under the voyeurism offence where there's been an issue with that. So in the context of Bill C-54's proposal, there is every reason to believe that a court interpreting the new offence would be

very much directed and guided by the Supreme Court's decision in Sharpe and other case law under the voyeurism offence.

**Mr. Joe Comartin:** That's all, Mr. Chair. Thank you.

**The Chair:** Thank you, Mr. Comartin.

We'll move now to Mr. Norlock for five minutes.

**Mr. Rick Norlock:** Thank you.

Derek, with all due respect, the digital devices.... Once again, I know we have lawyers here, and I'm not a lawyer, but I have sat for many hours watching many different cases, from sexual assaults to minor thefts, and I know about interpretation. But I recall, time and time again....

My question to Ms. Morency would be pursuant to her experience with regard to jurisprudence when it comes to interpretation and the actual judge looking at the law, or the appeal court, even better still, looking at the law, because I think.... My fear is that if we go down Mr. Lee's path, we become overly proscriptive, and by virtue of that, I think the courts would realize that a heart monitor, a pacemaker, a hearing aid cannot or would not be used in the transmission of sexually explicit pictures or sounds.

So I really get concerned about that. Honestly, I really don't mean to be insulting or anything else. I'm just so worried that we get into the minutiae, we lose sight of things. And I think courts have already looked at these issues. You mentioned voyeurism and some of the case law surrounding it. So I wonder if you could comment on being overly proscriptive vis-à-vis the effectiveness of the law. What is your experience or the case law that you've viewed with regard to judges being able to interpret or if a policeman became overzealous and laid a charge against someone who was on probation or who was on recognizance for being engaged in child pornography and he happened to have a hearing aid, so the court is going to zap his hearing aid?

That's number one. Could you comment on that? You might take a few moments for that.

• (1705)

**Ms. Carole Morency:** My short answer is I would agree with the premise of the question that the hearing aid wouldn't be transmitting, communicating, providing access to the World Wide Web or other.... I suppose there are some medical devices like a heart halter that might be transmitting data to a recipient computer, but it's not providing access to the Internet or other digital networks in the sense that it would provide the offender with the ability to access or communicate with a child or access illicit material such as child pornography. But I certainly appreciate the concerns expressed here. I will undertake to go back and see if I can provide a more fulsome answer that would allay the concerns you had identified.

As to the other part of your question, my understanding from reading a lot of case law is I have not seen a sentencing court express concern on how to identify what they want to prohibit a convicted person from accessing. Typically what they do, the way it's reflected in judgments, is a sentencing report is provided to the court and submissions are made by the crown and the defence to provide or restrict access to whatever devices or under what terms of supervision. The intention with Bill C-54 was to leave that flexibility in the hands of the court to craft an appropriate sentence to address the concerns in that case.

**Mr. Rick Norlock:** Thank you. Those are all my questions.

**The Chair:** All right.

Ms. Morency, I'll just ask you to deliver a more fulsome report to us, to the clerk, and she'll distribute it to the members of the committee.

We'll move on to Mr. Murphy for five minutes.

**Mr. Brian Murphy:** I have one specific and one general question.

The specific one is this. We had evidence from witnesses the other day, and I was struck by a comment but didn't know how to process it, that in Florida there's a 25-year minimum sentence for a child molestation conviction. The minister said you know everything, Ms. Morency; I wonder whether you could comment on the world view of the severity of offences in this realm.

My second question is more general. The minister didn't bite on Mr. Rushfeldt's comments and my question regarding changing the definition, but if you look at the code, and we all say the code needs a good look-at now and then, between sections 150 and 182—these are the sections on “Sexual Offences, Public Morals and Disorderly Conduct”—the way I'd read it, in terms of condemnation, is in descending order of severity or annoyance to the public.

It's interesting that when I say “sexual offences”—and this bill is actually titled in part “sexual offences against children”—you would expect it to be under that first term of the code section, but it's actually under the public morals section.

For instance, if we all think about the realm of offences, between section 150 and section 162 you have “Sexual Interference”, “Invitation to Sexual Touching”, “Sexual Exploitation”, “Incest”, “Bestiality”, “Voyeurism”, and then we're on to section 163, which is “Offences Tending to Corrupt Public Morals”, which starts with obscene materials—comic books and all that sort of thing—and then goes on to child pornography.

I think my answer is that this has evolved, and that child pornography wasn't as condemned by the community when the code was written and amended as it is now. It strikes me that if there's any order to the code—not for today, perhaps—in ordering the severity of offences and putting them in the right section.... There are some people who want to move offences against animals, as sentient beings, from the property section to other sections of the code.

So in the modern Criminal Code that we may get some day, should these sections—pornography, and especially this part of the child pornography section—be moved higher up in our order of condemned offences?

●(1710)

**Ms. Carole Morency:** In terms of your first question, the minister was very generous in his remarks. I really don't know everything.

I do know and can tell you that when you do look at the mandatory minimum penalties that may be imposed for different offences in other countries, you will see differences. In the United States, it's not a secret that there are definitely higher mandatory minimum penalties and higher maximum penalties for many offences.

Let's take one offence—child pornography, for example, because I believe the comments by the witness were to do with that. If we look at the United Kingdom's approach to child pornography, their maximum penalty generally is ten years, with no mandatory minimum penalty. In France you have a range of maximum penalties as well, but no minimum penalties. In Australia, you have a range of penalties as well. Ten years is the common mark for many of them, but there are no minimum penalties. If you look at the United States, at the federal level, where they can deal with interstate criminal law powers, it's true that they have some offences that provide for—for example, in pornography using the mails—a mandatory minimum penalty of five years and a maximum of twenty years.

So there is a different approach for all the countries. The approach that you see reflected in the bill, as the minister has said, reflects the Canadian context and the intention to bring some consistency across the board to all of the offences in which a child is a victim.

I believe the second part was really more of a commentary, rather than asking me to comment on a reordering of the code.

Was there a question that you...?

**Mr. Brian Murphy:** Do you agree with me?

**Ms. Carole Morency:** Well, I think there's no question that the Criminal Code has not had a consolidated reform in quite a number of years, and as you amend it, you do lose some of the coherence between sections.

**The Chair:** Thank you.

Monsieur Lemay, you have five minutes.

[*Translation*]

**Mr. Marc Lemay:** Thank you, Mr. Chairman.

I have a couple of questions. I find it really hard to understand the bill. The more we are talking here, the more confused I become. There is the matter of Internet pornography, which is to be addressed under section 171. This is not really clear to me and I have trouble understanding, but I would like to see some figures.

Can you send us the figures, covering the time between 2005 and now, regarding the number of mandatory minimum sentences imposed for offences which, in your opinion, would receive longer minimum sentences today?

[English]

**Ms. Carole Morency:** I don't believe I have the figures in the sense that you mean. I have not seen the presentation that my colleagues at Canadian Centre for Justice Statistics will provide. I'm hoping they will provide the data that shows the baseline that I've referred to.

I'm certainly able to provide you with those high-level numbers that I mentioned in my earlier response, but I suspect that the fuller presentation will provide you with greater detail. Perhaps I could undertake to provide you, if I can, with information that still remains outstanding after that. I'd be happy to provide that; it's just that they have the access to the data.

[Translation]

**Mr. Marc Lemay:** Regarding the purpose of the new section 171.1 and the provisions which follow regarding activities carried out on the Internet, I have no trouble understanding that the government does not want to punish people who surf the Web—that is, people who visit a site like [www.pornographie.org](http://www.pornographie.org)—but to punish those who use, transmit, produce and upload onto the Internet pornographic content. This is how I interpret the new section 171 in the Criminal Code.

Is that a clear reading? The point is not to punish people who surf the Web, but people who use the Web to distribute, transmit, deliver, and so on, content. Is that correct?

• (1715)

[English]

**Ms. Carole Morency:** In fact it's even more fundamental. The offence that's proposed in clause 13 of Bill C-54—it may occur through the Internet, but it does not have to. The intention here is to....

First of all, you'll see that the definition of sexually explicit material excludes child pornography. So we're not talking about someone providing child pornography to a young person. What this offence addresses is any person who takes sexually explicit material and provides it to a young person for the specific purpose of facilitating their commission of a sexual offence against that child.

How can that happen? It could happen, as you mentioned, that an offender is on the Internet and sends such an image to a young person. It could easily, and very often, happen in an in-person direct contact situation—the old-fashioned way, right? We know from research, and forensic psychiatrists who've appeared before this committee before have said, that child sex offenders often use these materials to lower the inhibitions of young people, to show them that this conduct occurs, that other kids may be doing it, or in this case other adults are doing it, to normalize it, to make it easier for them to then sexually assault the child.

So the proposed new offence in clause 13 addresses that conduct, whether it happens in person or through the Internet or other means.

[Translation]

**Mr. Marc Lemay:** Does this type of provision already exist in other countries? Would the enforcement of these provisions be something completely new throughout the world, or does this already exist? If so, can you tell us what effect it has had elsewhere?

[English]

**Ms. Carole Morency:** I can indicate to the committee that variations of this may exist in other countries. In the United States, at the federal law level they have an offence of using the mails to provide child pornography—for example, material to a young person. I believe there might be something similar or a variation of it in the United Kingdom's Sexual Offences Act.

But the approach taken here in Bill C-54 is unique in the sense that it reflects the Canadian law, with similar concepts and similar approaches. As the committee heard on Monday from Inspector Naylor, it's an issue that police have long spoken about that they would find very useful as another offence.

So we know it exists; we know that other countries have approached it perhaps somewhat in similar ways, but not exactly like this.

**The Chair:** All right; thank you.

We're going to go to Mr. Dechert.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

Thank you, Ms. Morency and Mr. Villettorte, for being here today.

You have probably heard people talk about mandatory minimum sentences and how they would add to the cost of our prison system and our correctional services system. Of course, that's a policy issue that we as MPs are dealing with.

You may have heard that when we last met the committee heard from Mr. Brian Rushfeldt of the Canada Family Action organization. I asked him what he thought of the increased cost of incarcerating people as a result of these mandatory minimum penalties in this bill and how he would react to them. He said:

I think it's money well spent, because if we can prevent one more child from being abused, we have made that investment worth while.

I'm not going to ask you to comment on that, because that's a policy issue, and those of us who are elected here are the ones who should be dealing with those kinds of policy issues. All of my colleagues on the government side believe this is money well spent.

Here is the question I wanted to ask you. You mentioned something earlier about U.S. mandatory minimum penalties that are comparable to the offences we are talking about here. I wonder whether you could tell us what you know about those U.S. mandatory minimum penalties and how they compare to the penalties we're proposing in this legislation.

• (1720)

**Ms. Carole Morency:** When we look at how our laws compare with those of others, I would suggest that the comparison needs to look at not just what the mandatory minimum is, but at the nature of the offence and what the maximum penalty is that's imposed in the other law as well, because the approach presented in Bill C-54 seeks to bring a consistency across the board for the offences that we have here in Canada.

As you asked, if you look at, for example, the United States, criminal law is a state power. If you look at the state law on child pornography or other forms of child sexual exploitation, you will find a range of penalties, both minimum and maximum, and a difference of approach. I'm not in a position to go through all of that at this time.

But as I mentioned before, at the federal level they have federal criminal laws that address child pornography offences. For example, there is a five-year minimum penalty and a maximum of twenty years for a first offence of distributing child pornography through the mails. It has to be through the mails to apply at the federal level, to catch the interstate commerce threshold. Then, there's a minimum penalty of 15 years and a maximum penalty of 40 years for a repeat offence of possessing or knowingly accessing child pornography that has been mailed, as an example.

But as I mentioned as well, if you look at other countries and their approaches, there is a range. Canada's, with the mandatory minimums proposed in Bill C-54, are as I say consistent with the mandatory minimum penalties that exist right now in the Criminal Code. One of the proposals, to add a five-year minimum penalty for the offences that carry a fourteen-year maximum penalty—for example, incest in section 155—would be comparable to the offence we have now in the Criminal Code in subsection 212(2.1), the aggravated prostitution of a young person using violence.

The approach Bill C-54 takes is to bring all of that together so that you have coherence.

**Mr. Bob Dechert:** In your view, are we being tougher on child sex predators with this bill than the average in North American or European jurisdictions, or are we in the same ballpark? Or are we being softer on these kinds of criminals?

**Ms. Carole Morency:** As I said, the reference is to the comparable child pornography in Australia, the United Kingdom, and France: no mandatory minimum penalties, but the maximum is around ten years, on average. That's close to what we have here, but in Canada you would have mandatory minimum penalties as well.

And then at the other end you would have differences in both minimums and maximums in the United States, and that's long-standing.

**Mr. Bob Dechert:** Thank you very much.

**The Chair:** Next we will go to the Liberals.

Do you have any further questions? No?

Okay, then we'll go to Monsieur Ménard.

[Translation]

**Mr. Serge Ménard:** I am very sorry, Ms. Morency, but I want to be sure that you understand my three questions, and so I will ask them one after the other. Perhaps you can respond in the time you will be given, and that way, it will not take away any of mine.

First, regarding the minimum sentences which were imposed in 2005, I would like to know whether the effect of these sentences on the crime rate has been evaluated. I understand that, of course, there was an effect on the number of cases which were prosecuted, but I would like to know whether there was a definite effect on the crime

rate. If studies have been done on this issue, I would like you to provide them to us.

Second, you may have heard of the study carried out by Julian V. Roberts, which was undertaken by the Research and Statistics Division of the Department of Justice, and which was entitled "Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models". Could you please send enough copies so that each member of the committee has one?

Third, the study concluded that the majority of Commonwealth countries have a saving clause, which allows a judge, who feels that a minimum sentence would be completely unfair in a given case, who believes that the mandatory imposition of such a sentence would result in unfairness, to not do so and to provide the reasons for this, either in writing or verbally. Could you provide us with models of such clauses which exist in other Commonwealth countries?

• (1725)

[English]

**The Chair:** Ms. Morency, you can direct that information to the clerk.

**Ms. Carole Morency:** If I might, I'll briefly respond on the first question. Did we undertake an assessment of any decrease in charging convictions of child sex offences since the 2005 amendments? We did look at the outcome, we did look at the number of cases. I don't have data or a study to provide to you. I think perhaps the Canadian Centre for Justice Statistics may in their presentation be able to partially respond to that.

What I do have and can refer the committee to right now is the *Juristat* that the Canadian Centre for Justice Statistics produced on child and youth victims of police-reported violent crime, 2008, and I'd certainly be happy to provide that to the clerk.

One thing I would note as a caution is it's often difficult to make a direct causal relationship between changes in the number of incidents reported and specific law reform measures, because we don't know if sometimes it's an increase in reporting or an increase in incidence or a decrease. But that's a caution that exists.

Secondly, as to the Julian Roberts study, we may not have original copies, but we may have the photocopies that we can provide to the committee.

On the exception clause, in terms of when courts in other countries may have an ability to not impose a mandatory minimum penalty in exceptional cases, we'll undertake to do our best to pull some of that together for the committee.

**The Chair:** Thank you.

Mr. Comartin, until the bells ring you have the rest of the time.

**Mr. Joe Comartin:** I have just one question. It's an amplification of Mr. Ménard's.

Did you do any analysis of the impact of mandatory minimums? I'm looking here at a comparative study in the jurisdictions in the United States where they have them—and they are as substantial as they are—versus England, Australia, and New Zealand, the countries that are closest to Canada. Was there any type of analysis done on that?

**Ms. Carole Morency:** No. There is a bit of work that this committee will know. Reference has been made to it on mandatory minimums generally. More specifically, it's under way in terms of firearms and the impacts they've had there. But I'm not in a position to be able to provide the committee with that information in the context of child sex offences, beyond our own looking at the numbers and the ones you will probably hear about on Monday.

**Mr. Joe Comartin:** As a supplement to that, in advance of this legislation being drafted, are you aware of whether there has been any of that kind of comparative study done specifically on child sexual abuse?

**Ms. Carole Morency:** I have researched extensively in the area, and if it exists I'm not aware of it. It's possible.

**Mr. Joe Comartin:** Thank you.

**The Chair:** I want to thank all of our witnesses for appearing.

The meeting is adjourned.

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