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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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● (0850)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): We will begin meeting number five of the Standing Committee on Justice and Human Rights, studying Bill C-10, an act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act, and other acts.

We do have a panel here today for the first hour. So that everybody understands clearly, there will be only five minutes allowed for each organization for an opening address, and each side will have five minutes for questions and answers. To be fair to everyone, I will cut you off at five minutes.

I don't know if the panels have decided on how they wish to proceed and who the first presenter will be. If you have decided, please start by identifying yourselves and the organization you represent or if you are an individual.

Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, As an Individual): I am Professor Doob, from the Centre of Criminology, University of Toronto.

For today's presentation I considered simply listing the many instances in which empirical evidence was apparently ignored in developing this bill. Instead, though, the main point I would like to make is that the process the government has chosen for examining Bill C-10 does not allow sufficient opportunity for Parliament to consider adequately ways to improve the bill.

I will give two illustrations. The first is carried over without change from the Penalties for Organized Drug Crime Act from the last Parliament.

To understand proposed subsection 41.(1) of this bill, one has to start with the definition of trafficking in drugs. Trafficking is much more than just selling. To traffic in drugs includes selling, administering, giving drugs, or offering to do any of these things. To be clear, sharing or even offering to share marijuana with a friend is trafficking. This is what the law now says.

To stop organized crime from renting homes and setting up marijuana grow-ops Bill C-10 would impose a nine-month minimum sentence on a student living in a rented apartment who grows a single marijuana plant so she can share marijuana with her boyfriend. If she owned the apartment, she would not face a mandatory minimum prison sentence as long as she grew no more than five plants. If she had six to 200 plants in a dwelling she owned, she'd be facing only a six-month mandatory minimum prison sentence.

Some might argue that no self-respecting prosecutor would prosecute a case in which a conviction for running a marijuana grow-op with one plant would automatically result in a minimum prison sentence of nine months. This argument is specious. If you were to pass this bill without change, you, the Parliament of Canada, would be saying that one or two marijuana plants grown in a rented apartment for sharing with one's friends was serious enough to warrant, automatically, a mandatory minimum prison sentence of nine months.

I find it hard to believe that in a sentencing system based on proportionality Parliament really wants to say this.

The Controlled Drugs and Substances Act states that the one purpose of any sentence in this act is “to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community”. Anyone who looks carefully at many of Bill C-10's mandatory minimum sentencing provisions would have a hard time defending their appropriateness. A law purposefully made incoherent does not deserve respect.

A second example comes from a different part of the bill—the proposed changes to the Youth Criminal Justice Act. I should point out that in my view some of the provisions of that bill might be improvements—but even they need work.

However, proposed subsection 75.(1) of the bill could use some attention and debate. It would allow a judge to order the publication of the name of a youth found guilty of any violent offence. I find no valid purpose or need for this proposal, in part because publishing the name of a young offender is likely to increase the likelihood of future offending.

The provision applies to “violent' offences”, and the bill expands the meaning of “violence” far beyond what it is now, and far beyond what the word normally means.

If—in the face of the absence of evidence that supports the need for this change and in the face of evidence that it will increase crime—you still want to open up the issue of the publication of names of youths who have committed minor offences, then the test of when this can be done should explicitly make reference to the provisions allowing more limited sharing of information about the identity of the offender with specific people, which currently exists in the YCJA. Surely it should be necessary for the Attorney General to demonstrate that the existing opportunity for targeted disclosure would not be sufficient.

But there is one important point that needs to be made. Proposed subsection 75.(4) indicates that for the purposes of an appeal, the provision allowing the publication of the identity of the youth is part of the sentence.

This is a cruel and dishonest joke on the part of the government. The name will be published before the appeal can be filed. Experience in the past eight years has demonstrated that the government is either naive or dishonest in suggesting, as it does here, that this can be appealed.

The Youth Criminal Justice Act allows the publication of names of youths who are given adult sentences. The imposition of an adult sentence can be appealed but the names of those receiving adult sentences are typically published immediately after the sentence has been imposed and before any appeal can be filed. In other words, the safeguard to a youth of an appeal is already eliminated.

The remedy is simple. If you are going to include this provision, then the section must be changed such that the publication cannot take place until all appeals have taken place or the period for filing the appeal has passed.

This bill deals with a number of important issues. There is no need to rush to judgment on these matters. I would urge you to reconsider your course of action and allow a serious examination of each of the separate issues contained in Bill C-10.

Thank you.

The Chair: Thank you.

Ms. O'Sullivan.

Ms. Susan O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Sue O'Sullivan, Federal Ombudsman for Victims of Crime.

[*Translation*]

Good morning, Mr. Chair and members of the committee. Thank you for the opportunity to appear before you today on this important bill.

Bill C-10 is a substantial piece of legislation with many aspects and issues for discussion.

[*English*]

Given our limited time today, and the role of my office in providing a voice to victims of crime, I would like to focus on providing you with points for consideration in relation to part 3 of Bill C-10, specifically with respect to the changes to the Corrections and Conditional Release Act that apply to victims of crime. I will focus solely on those aspects of this bill as they have direct effect on the treatment of victims of crime within the Canadian criminal justice system.

I would like to begin by commending the government for moving forward with the changes proposed on behalf of victims of crime to enhance the CCRA. We have spoken to a number of victims and victim advocates who have fought for these changes for years and who are extremely pleased to see them come to fruition. The proposed amendments to the CCRA are a positive step forward and I'm heartened to see the momentum building for real change for victims of crime in Canada. That being said, there is still much more work to be done and further changes to be made in order to truly address a broader scope of victims' concerns. The office has been pushing for many of these and further changes on behalf of victims since it opened its doors in 2007. In fact, these proposed changes were the subject of the office's second special report, “Toward a Greater Respect for Victims in the Corrections and Conditional Release Act”, which I have provided to all members for reference. I strongly encourage all members to carefully review the report and would be happy to follow up if there are any questions.

From my perspective, there are three main amendments that relate directly to the treatment of victims of crime: providing victims with the right to present a statement at parole hearings; removing an offender's right to cancel a parole hearing within 14 days of the scheduled hearing; and increasing the scope of information provided to victims.

With respect to the right to present a statement at parole hearings, moving to enshrine this right is extremely important. In the current system, the imbalance between offenders' and victims' rights is stark and unjust. Providing victims with more actual legislated rights will help to address this. However, while this is a long-awaited and crucial change for victims, there is a very important element missing. Victims are still are not being granted the right to attend the hearing. If victims are denied attendance, the right to present a statement in person becomes moot. We believe that victims, barring any security threats or concerns, should have the right to attend a parole hearing and that this right must be enshrined in law, as opposed to simply in policy.

With respect to the second change, the emotional toll of preparing to attend a parole hearing for a victim can be huge, let alone the time required for travel, logistics, and more. The ability for an offender to cancel a hearing, even hours prior, permits a lack of consideration for the victim that is simply unacceptable. Providing a period of 14 days' prior notice allows victims some security in knowing that the offender cannot cancel at the last minute and helps to begin to incorporate some element of consideration for the victims' needs. This change was one that our office recommended in its report, and we fully support it.

Finally, with respect to the last point, it is time we acknowledged that victims are not bystanders in the criminal justice process. They deserve to be kept informed and to be able to plan for their own safety. Victims want more information about the offender who harmed them in order to understand what steps they've taken to rehabilitate themselves—or, conversely, what risk they might still pose. The types of information added through this bill are very much in line with the kind of information victims have told our office they want. However, the amendment only goes as far as to make this information available at the discretion of CSC or PBC. We feel that victims should have a right to this information, full stop. In a system where victims have no recourse if they are denied, this type of information should be given in all cases and should not be at the discretion of CSC or PBC. I would also add one more item to this list: that victims also be provided with an updated photo, upon request, of the offender at the time of his or her release.

While I am encouraged to see these changes being made, there is much more work to be done. Victims need more information, they need to be able to participate in a meaningful way in the criminal justice process, and they need to have tangible supports in place to assist them in the aftermath of a crime. There are further tangible, practical changes to the CCRA that would have a direct and meaningful impact on victims. I would encourage members to consider including these as amendments to Bill C-10 moving forward. These are listed in your information package with reference to the specific sections to be amended and include: ensuring that victims have the right to face their offender by providing them with the presumptive right to attend a parole hearing, unless there is justification to believe their presence will be disruptive or will threaten the security of the institution or individuals; providing victims with advance notification regarding all offender transfers between institutions, where possible, not just those transfers where an offender is moved from a maximum to a minimum; providing victims the right to receive up-to-date information about the progress and programming of the offender who harmed them and ensuring they receive it well in advance of having to prepare any victim statement for a parole hearing; providing victims with the choice of attending or observing parole hearing proceedings in person, by video conference, by teleconference, or by reviewing recordings of the proceedings at a later date.

Thank you.

● (0855)

The Chair: Thank you.

Mrs. Rosenfeldt.

Mrs. Sharon Rosenfeldt (President, Victims of Violence): Good morning, ladies and gentlemen. My name is Sharon Rosenfeldt, and I'm president of the organization Victims of Violence. It's a nationally registered organization that has been in existence since 1984—for 27 years.

I've taken out a bit of my presentation because this is five minutes. I'll just begin.

Although I can't speak on behalf of all victims of crime, I can speak on behalf of myself, our organization, and the victims we represent. I can tell you of the strong support that exists across Canada for the government's crime agenda and for the recently announced comprehensive crime legislation, the Safe Streets and Communities Act, specifically as it relates to serious and violent crime.

Opponents of this legislation have stated that because crime rates are going down this new bill does not really have a valid purpose. Why should we get tough on crime when crime is at its lowest point since 1973?

While it is true that overall crime rates are going down, the level of crime severity is not decreasing at such a rate, according to police-reported crime statistics from 2007. This means that while overall crime rates are steadily decreasing, crime rates for serious and violent crimes are not following that trend to the same extent. That is exactly why the Safe Streets and Communities Act is a necessary piece of legislation—this act addresses crimes which are serious and/or violent in nature.

Another issue that has been raised in relation to the content of this bill is that the use of mandatory minimum penalties will result in more trials because accused will not want to plead guilty to a crime for which there is a mandatory minimum penalty. There are concerns that the provinces will not be able to afford the cost of an increased number of trials and they will not want to put money into victim services if cases are being tossed out for lengthy delays.

There are a few issues with these arguments. First, the backlog that would incur from a higher number of trials is necessary to ensure that offenders are tried for the crimes they have committed, not lesser ones that do not truly reflect the crimes they have allegedly committed. This would do much to increase victim satisfaction with the criminal justice system.

Secondly, as an example, there will be an increase to a total of 16 offences related to child exploitation in which mandatory minimum penalties would apply. The opportunity for an offender to plead guilty to an offence that doesn't carry a mandatory minimum penalty would in fact be greatly reduced.

I fail to see how one can argue over the introduction of mandatory minimum penalities in the case of sexual crimes against children. One has to only consider the case of a man convicted of sodomizing and molesting his stepdaughter for more than two years, who received only a 23-month sentence because the judge said that he spared her virginity. Is this justice?

In theory, the total number of offences in which these new penalties would apply is not great, as they only apply to serious and/or violent offences related to crimes against children, organized crime, and violent acts committed by youths—crimes which make up only a small percentage of all the crimes committed. For example, one in five police-reported crimes are considered violent, and three in ten instances of victimization that were reported in the 2009 General Social Survey, GSS, were of a violent nature. These may represent only a small percentage of crimes; however, they represent the most grave and serious offences and, as such, should be sentenced accordingly.

I understand the bill will require that more people be put in prison for longer periods of time, and that as a result money will need to be spent to expand prison facilities—money that some have argued can be better spent elsewhere. However, this is a necessary cost for the protection of society and the detention of serious repeat and/or violent offenders.

It is worrisome that so many people have focused on the cost of crime, particularly as it relates to offenders and prisons, without considering the cost that crime has on victims. The cost of violent and serious crime not only consists of taxpayers' dollars but the loss of human life, of family, loss of law and order, and loss of faith in the criminal justice system.

In 2008 the Department of Justice released a report that estimated the tangible cost of crime, including police, court, corrections, and health care, was approximately $31.4 billion, while the intangible costs—the pain and suffering and loss of life costs—were over double that, at $68.2 billion.

When I hear opposition about the cost of the government's crime legislation, it upsets me greatly. As the mother of a murdered child, this is an issue that has directly affected me. If the criminal justice system had worked in the manner the federal government is now implementing, the way it was supposed to 30 years ago, my son Daryn would not have died.

● (0900)

I believe that we should have a stronger voice and an accountable justice system in Canada and not worry about the cost. How do you put a price tag on our pain as victims or on our children's lives?

The Chair: Thank you, Mrs. Rosenfeldt.

Mr. Eric Gottardi (Vice-Chair, National Criminal Justice Section, Canadian Bar Association): Thank you for the invitation to appear before you on Bill C-10.

I speak on behalf of the Canadian Bar Association, which, as many of you know, is a national association of over 37,000 lawyers, notaries, law students, and academics. Our mandate includes seeking improvements in the law and in the administration of justice. Our national criminal justice section represents a balance of crown prosecutors and defence lawyers from across Canada, and the positions we will present to you today represent our consensus on Bill C-10.

I practise criminal law in Vancouver as both a defence lawyer and a crown prosecutor. With me today is Professor Michael Jackson, a member of the section's committee on imprisonment and release, and one of Canada's most prominent experts on prison law.

I am afraid I must begin by expressing our disappointment that we have been given a mere five minutes to address such a complicated and important piece of legislation. This is entirely insufficient to provide meaningful feedback on these proposals that represent a significant shift in Canada's criminal justice and penal policy.

We also object to the process of lumping these profound changes into one bill, as many of them have received no previous committee review and will get little attention in the midst of nine important proposals. It is, in our respectful view, undemocratic.

In addition to our concerns about process, we believe that the substance of this legislation will ultimately be self-defeating and counter-productive if the goal is to enhance public safety.

The bill takes a flawed approach to dealing with offenders at all stages of their interaction with the criminal justice system, from arrest, through to trial, to their placement in and treatment by correctional institutions, and to their inevitable reintegration back into society. It represents a profound shift in orientation from a system that prioritizes public safety through individualized sentencing, rehabilitation, and reintegration, to one that puts punishment and vengeance first.

The measures contained in Bill C-10 will see more Canadian youth incarcerated while waiting for their trials. They will see more matters go to trial due to the harsh and unavoidable jail sentences associated with many offences, and they will see fewer reformed or rehabilitated offenders leave our correctional institutions and try to reintegrate into society.

● (0905)

Mr. Michael Jackson (Member, Committee on Imprisonment and Release, National Criminal Justice Section, Canadian Bar Association): Members of the committee, I've appeared before this committee on the CCRA for almost 30 years. I appeared in 1992, when legislation was introduced.

The CCRA is the legislative architecture of imprisonment for those serving from two years to life imprisonment in Canada. It was self-consciously based upon the principles of the Charter of Rights and Freedoms and the rule of law. It involved the most extensive consultation with not just the Canadian Bar Association, but with many others involved in the criminal justice process.

Central to the CCRA was the principle enshrined in the charter that justifiable limits must be demonstrably made in accordance with principles of proportionality and rationality, and not be arbitrary. One of those principles is that state authority must be exercised in the least restrictive manner consistent with public safety, staff safety, and offenders. That principle is enshrined in the CCRA.

In 2000 a committee of this House reviewed the CCRA, as required under its provisions after the first five years of operation. Like the original consultation process, it was extensive. It travelled across the country and heard submissions. It had extensive hearings and made recommendations.

The process this committee is engaged upon has none of those hallmarks of extensive consultation, deliberation, and accountability. In lieu of this, the government and the Correctional Service of Canada places before you "A Roadmap to Strengthening Public Safety", a document prepared in 2007, hastily convened, and even more expeditiously executed.

This road map ignores 150 years of correctional history. It pays no attention to previous recommendations or royal commissions. In its 200 pages there is not a single reference to the Charter of Rights and Freedoms, or to decisions of the Supreme Court. It is legally illiterate, and yet it is the brainchild of the amendments that you have before you and upon which you are asked to hear.

I want to very quickly deal with just two of the many provisions we have commented on in our submission. The legislation, the amendments—

The Chair: Mr. Jackson, I'm sorry, your time is up.

Mr. Harris.

● (0910)

Mr. Jack Harris (St. John's East, NDP): It's difficult to start without commenting on the process, which doesn't allow the completion of this presentation, but we do have a full brief, sir, and I want to read it.

I'd like to first ask a question of Professor Doob. We all want to see safer communities; that's in the title of the bill. But I'm rather disturbed by what I hear when I see evidence such as that if you incarcerate more young people who are convicted of a crime, which we already do more than any other industrialized country, statistics show that you actually increase the likelihood of further criminal involvement for those youth. If you try youth as adults, the American Justice Department and even the Centres for Disease Control and Prevention in Atlanta find that doing so will make them more likely, not less likely, to reoffend.

How is this legislation, which ends up incarcerating more young people, going to help us make safer communities and decrease the likelihood of crime and victims if we are taking this approach?

Would you like to comment on that, Professor Doob?

Dr. Anthony Doob: The legislation won't make us safer. That's absolutely clear. What the legislation may do is increase youth crime. In part, we know that we have to incarcerate some youth. What we've learned since 2003 is that we can afford to reduce the number of people we incarcerate and we have no evidence of any increase in youth crime. What research shows is that by putting more youth or in fact adults into prison, especially for the first time, it's going to increase the likelihood that they reoffend. That is absolutely clear.

The question would be, how do we come to the right balance? The Youth Criminal Justice Act has been very effective in coming to that right balance in many ways. In certain ways it hasn't. We've been incarcerating large numbers of kids before they've been found guilty, and that has not decreased under the Youth Criminal Justice Act. In this bill we're creating additional crime.

Mr. Jack Harris: Thank you.

Perhaps, Professor Jackson, you can deal with this question.

There was a story last night on television interviewing officials in Texas who indicated that the result of increased spending in Texas on prisons in fact had the opposite effect to reducing crime. In fact, it said if your goal is saving taxpayer dollars and making the community safer, it's the absolute wrong direction to go in. They were talking about drug offenders, and said that the more you did that the more you increased the level of crime in the community. Texas, for example, among other states, is going in a different direction totally.

Would you like to comment on that?

Mr. Michael Jackson: Yes, I would.

The evidence is overwhelming, not just in Texas, but in every jurisdiction where it's been studied, that putting more people in prison for longer periods of time has no salutary effect upon public safety and only a negative effect on offender reintegration. One of the reasons why the least restrictive measures principle is so important is exactly because of what Texas has learned. Imprisonment is extremely costly. The state, in expending valuable taxpayer resources, should use the least restrictive measures when it comes to the most costly form of corrections, incarceration. That's why the fact that the act eviscerates all language in the act to the least restrictive measures is so shocking. On what possible basis would the commissioner justify initiatives that cannot meet the least restrictive measures consistent with public safety and public accountability, including our money?

The Chair: Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

I'd like to bring a bit of clarity to what Professor Doob was stating regarding the potential prosecution for one plant in a rented dwelling. Kudos to you for attention to detail. That's clearly a drafting error that will be corrected by the minister. This happened when the bill was amended some years ago by the NDP. The section wasn't properly changed to reflect that there should be more than five plants. It's clearly the minister's intent to rectify this mistake. It's a drafting error.

Professor, you'd recognize that in any one prosecution there are enormous costs, so the likelihood of prosecution and getting a conviction for trafficking for one plant would be highly unlikely, and that's certainly not a direction the government intends to take. Thank you for the clarification, but the mistake will be clarified and corrected. Thank you.

My question would be to Sue O'Sullivan. Thank you, Sue, for your important work as the federal ombudsman for victims of crime. We recognize that you have a responsibility to the victims and to the government. We respect the job that you do. We know it's a tough one in balancing the interests.

In your recent report, "Toward a Greater Respect for Victims in the Corrections and Conditional Release Act", you recommended to strengthen Canada's corrections and conditional release system. Do you agree that conditional sentencing is inappropriate for those convicted of a serious crime—for example, murder, the sexual exploitation of children, and drug trafficking?

● (0915)

Ms. Susan O'Sullivan: On the issue of sentencing, for many victims the issue of sentencing is an extremely important issue and for others it's not.

What we want to focus on is addressing the opportunity this bill provides to allow this committee to even introduce amendments that will further enhance victims' rights under this legislation. Under the CCRA in its simplest form, victims are only allowed to have what the legislation allows CSC and the parole board to give them. There's a unique opportunity here for this committee to actually go further, to add some of the amendments that I highlighted today and that are encompassed in the reports, to even further address victims' rights and the treatment of victims within the criminal justice system.

Thank you.

Mr. Robert Goguen: Let's look at things from the victims' perspective. Many of the victims feel that their rights are being overlooked to the benefit of the accused and that the accused have greater rights. Do you feel that Bill C-10 properly addresses the concerns of victims? Do you have any specific measures that you support in this bill in that regard?

Ms. Susan O'Sullivan: Yes. First of all, this bill, as I highlighted in my testimony, addresses part 3 of the recommendations that are in our report, but I think there's much more work to be done. As I mentioned, I think we have a unique opportunity here to make committee amendments that would even further provide more information for victims. It is about more information about the offender, and it is about meaningful involvement in the process, and that they have some tangible supports in place. Under the CCRA, victims can only have what the legislation allows the organizations to give. Those are examples.

So the amendments that we've highlighted really are practical, and it's what we've heard from victims. An example might be the attending of parole hearings. As you can imagine, and Sharon has been to many, when you are there, the emotion and the impact and the reliving of what has happened to your loved one—you may not capture all that's in there. I think most Canadians would feel that if you wanted to attend the next day and to listen to the audiotape that was done, you would expect that you would be able to. In fact, you can't.

It really is about the practical: providing information to victims that they deserve to have. For example, a victim would want to know the kind of program, and if in fact the offender has gone through it. Have they made any efforts to address the issues? Or, conversely, if they have not, is the victim's safety considered upon the offender's release and, as we're well aware, whether offenders will come back into the community? Victims have to be considered in that. They have to be treated with respect and with dignity in the process.

Mr. Robert Goguen: Thank you.

The Chair: Mr. Cotler.

Hon. Irwin Cotler (Mount Royal, Lib.): I have a question for Professor Doob and, if time permits, one for Professor Jackson.

In your opening remarks you mentioned that you considered listing the many instances of empirical evidence being apparently ignored in the development of this legislation. Could you give us some examples of that empirical evidence that this committee should be considering and that has been ignored?

Dr. Anthony Doob: Well, the most obvious is clearly, in various parts throughout the bill, the idea that mandatory minimum sentences are going to keep us safe. The evidence that harsher sentences generally and mandatory minimum sentences will keep us safe is clearly absent. The evidence would suggest that it is going to have no positive impact.

The second example is that in various ways the bill implies that incarceration is preferable to systems that attempt to reintegrate prisoners into society and that it ignores the fact that most prisoners are going to be back in our midst at the end of their sentences; this comes out in the Transfer of Offenders Act, in changes to the CCRA, and so on. It ignores the fact that one of the best things that can be done with people who are in prison is to have controlled re-entry into the community.

The third example I would give has to do with the preference in general for incarceration rather than punishment within the community. The bill in its broad form in a number of instances clearly moves toward a system wherein the presumption is in favour of imprisonment and the assumption is that prison will create safe communities and safe streets. This clearly is wrong.

● (0920)

Hon. Irwin Cotler: I have a quick question for Professor Jackson. Because you had to conclude almost in mid-sentence, I'd like to invite you to complete your thought at that moment.

Mr. Michael Jackson: Perhaps I can do it, Mr. Cotler, with reference to the question you put to Mr. Doob about what empirical evidence is ignored in these amendments.

One of the themes of the amendments is to toughen up, in the name of accountability, prison conditions to counteract what is perversely and inappropriately referred to as a “Club Fed” atmosphere in federal prisons. I spent 40 years working in federal prisons. They are not Club Feds, and I challenge anyone who would say otherwise.

One of the examples of toughening up the conditions is the way in which the amendments state that they will modernize the regime of segregation. Segregation is the regime under which Ashley Smith died two years ago. It's the harshest, most draconian form of imprisonment known within the borders of Canada. It has been the subject of comment of many parliamentary committee reports.

Indeed, the five-year review of this committee recommended that administrative segregation, which can be indefinite, should never be imposed except through the order of an independent adjudicator, not a CSC official. Due to CSC recalcitrance, that recommendation has not been implemented. It has been repeated by the human rights committee, by the correctional investigator, in academic writings. Every body that has looked at this dispassionately has come up with this recommendation.

It is not in the amendments, and yet this is meant to be the modernization of the regime.

What is in the amendments is that if a prisoner is sentenced, as a punishment, to segregation, one of the sanctions that would now be allowed is to cut off any visits with the outside world—friends or families. CSC's own empirical evidence demonstrates that one of the most important elements of prisoner reintegration, one of the most important elements of ensuring that prisoners are not violent and are compliant with the correctional regime, is having contact with their loved ones.

Why would you do that? Why would you add that condition of confinement to an already rigorous regime? How does it contribute to public safety? How does adding the pains of imprisonment to an already hardened group of people make them better people, so that when they come back into our society they can be our neighbours and not our predators?

The Chair: The time is up.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): I want to address a comment that was made by Mr. Gottardi, who said that there has been little previous review and that this is undemocratic.

Mr. Gottardi, were you aware that former Bill C-4, Bill C-5, Bill C-16, Bill C-39, Bill C-23B, Bill C-54, Bill S-7, Bill S-10, and Bill C-56, which are the primary components of this legislation, had 49 days of debate in the House of Commons, 200 speakers, 45 committee meetings, and 123 hours of committee study with 295 witnesses who appeared?

Can you square that circle for me, to say how there has been very little study of this legislation?

● (0925)

Mr. Eric Gottardi: Yes, I am aware that some of these bills have been considered before, in the House and by committee. But there are significant component parts of the bill that have had no opportunity for consultation.

The bill that my colleague Professor Jackson has focused on has had little or no analysis, and it represents a fundamental sea change in policy for Canada in terms of how we as Canadians are going to deal with our offenders and of how they are treated inside our corrective institutions and of how they are better prepared to be released back into our communities.

I also recognize that bills such as Bill C-4, dealing with youth criminal justice, have had extensive consultation. Yet many of the recommendations for amendments we have not seen implemented in Bill C-10.

And the amendments that were made were added in and not specifically drawn to our attention. We had to sift through these bills to find out what had changed, only to discover that the bail regime in the Youth Criminal Justice Act is set to be completely overhauled with no reference to the bail regime that is currently in the Criminal Code. We're going to see more and more at risk youth detained before their trials.

We also see changes in the Youth Criminal Justice Act amendments that will remove the high standard of "beyond reasonable doubt" that was put in place to ensure that young offenders are not subjected, improperly and contrary to the constitutional imperatives found by the Supreme Court of Canada, to an adult sentence and to publication of their names, with the stigmatization and labelization that happens thereby.

We had to sift through to find those changes so that we could come to try to make comment to this committee. We have tried to do this in our 100-page written material, which I commend to all of you and hope you will take the time to review carefully.

Mr. Kyle Seeback: Sharon, I want to thank you for coming today. I know it must be exceptionally difficult to come and to have to speak about things especially reflecting on your own personal appearance.

I want to ask you whether you think that the measures in Bill C-10, notably the ones establishing rights of victims to make a statement at parole hearings and allowing for notification of transfers, will help provide victims some degree of closure or some degree of satisfaction in the process.

Mrs. Sharon Rosenfeldt: Yes, I do.

In response to what you just talked about, I must comment that there is no such thing as closure; however, there is satisfaction. Victims just have to learn a different way to live and to cope, but there is no such thing as closure.

I would also like to say that it has been most confusing. There has been so much controversy in relation to this bill and how it affects victims of crime. I must say that, over and above Part III in relation to changes to the CCRA, there are many victims of crime who definitely are concerned about the sentencing. Victims are throughout every part of this bill, because it is talking about the serious and violent offenders.

I can only mention, in my own particular case, my saying that had we had the legislation that is going to be forthcoming, hopefully in this bill, in relation to my own son—there had been numerous charges of sexual assault, rape, buggery against the man who murdered my son—

The Chair: I'm sorry; we'll have to end it there. Maybe somebody else can carry on.

Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

First, I would like to thank the witnesses for being here this morning. Their presence is very useful to us.

This is the first time I have studied Bill C-10 and its various components. As with my colleague Jack Harris, I find it is unfortunate to have to cut you off halfway through a sentence. I would love to ask you so many questions.

Ms. Rosenfeldt and Ms. O'Sullivan, I appreciate the work you do. I believe that taking care of victims is a very important component in the criminal justice system. We would not want anyone to think that the people sitting on this side of the room do not care about victims.

We are trying to find the best system possible, one which strikes a balance, that is, which respects victims' rights, which also protects people—as indicated in the title of this bill—and makes sure that people who commit crimes have a chance to redeem themselves and become part of society again, if at all possible, as good citizens. It is not always easy to strike a balance in this type of situation. Nothing is black and white.

I would now like to address Professor Doob. One of my basic fears concerning this bill relates to minimum mandatory sentences. Professor, I am familiar enough with the system to realize that, sometimes, we want to avoid a certain result which everybody thinks is completely unthinkable, since it does not apply to the case they are involved with. When I studied criminal law, we were taught that every case was unique. But here, the opposite seems to be true, namely that a sentence is handed down regardless of the offence that was committed.

I would like to know what you think about this. Is discretion being passed from judges to crown prosecutors, who will have to decide under which section an indictment will be laid against a person, given that they already see what sentence will be handed down regardless of the circumstances? These indictments might therefore not be completely justified. So is this not a transfer of discretion, which now lies with the judge, to crown prosecutors? What is your view on this matter?

I now have a question for the representatives of the Canadian Bar, whom I would like to congratulate. Last evening, I read your brief from start to finish, and I would encourage my colleagues to do the same. It is complete. You have done an extremely in-depth analysis. I would like you to talk about the problem with the provision dealing with pardons.

Even in the case of a summary conviction offence, a person would have to wait even longer before applying for a pardon. I don't know whether this is the right way to reach the objective. This would prevent people from finding work again and becoming good citizens again. How are we going to make our streets safer if we make it more difficult for people who might not necessarily have committed a serious offence, to reintegrate society?

Those are my two questions.

● (0930)

[*English*]

Dr. Anthony Doob: Let's start with the issue of the mandatory minimum sentences. It seems to me that even though the government is admitting they made a mistake, or carried over a mistake from the previous bill without correcting it, and are now saying that the mandatory minimum sentence of nine months only applies to people who have six marijuana plants, organized crime, grow-ops with six marijuana plants, the difficulty is that it clearly ends up with a disproportionate sentence. No matter how we look at that, if you look at the range of sentences that are available in Canada, very few people are going to say that my hypothetical student with six plants or one plant—it doesn't really matter—is now deserving of nine months. So what will happen or can happen is that deals can be made.

Another way to deal with the problem of sentencing would be to have reasonable sentences without mandatory minimums, and some form of guidelines. Canada rejected the idea of sentencing guidelines more than 25 years ago, but that doesn't mean that the proposal for guidelines that was made in the 1980s is the only one.

Other jurisdictions have looked to ways in which they can structure sentences in a way that makes sentences more coherent and more fair when you look at sentences across the board, so that they have a sentencing system based on proportionality. Mandatory minimum penalties almost certainly violate or force the violation of the principle of proportionality. As you implied by your question, they also give over the power to sentence to the prosecutor, so that the prosecutor can in effect extort agreements to plead guilty by saying that certain elements won't be proved—in this case, for example, that it's a rented apartment.

● (0935)

The Chair: Sorry.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): May I defer to Mr. Rathgeber?

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

Thank you to all the witnesses for your attendance here this morning and for your interesting and conflicting views.

Following up, Professor Doob, on the question asked by Ms. Boivin, you seem very concerned that individuals who, in your view, ought not to receive minimum mandatory sentences might, under this legislation—and you've cited several examples, including the roommates who share two or three marijuana plants.

Are your fears not alleviated by the addition of section 8, which requires the prosecutor to serve notice on the accused in order to seek a mandatory minimum sentence?

Dr. Anthony Doob: The simple answer is no. The prosecutor has to demonstrate, has to give notice of these things before a plea. We've had exactly the same thing in proving the second impaired driving. We've had that for years, for decades. No, that doesn't.

Mr. Brent Rathgeber: But if the prosecutor doesn't serve the notice or withdraws the notice, the minimum mandatory sentences do not apply. The act is quite clear on that, sir.

Dr. Anthony Doob: Yes, and what we're doing then is we're turning the sentencing function over to the prosecutors rather than leaving it with the judges. It seems to me that what we really want is honesty and transparency in sentencing so that the facts of the case are the facts of the case.

Mr. Brent Rathgeber: But at the very least you'll agree with me that in the appropriate circumstance the minimum mandatory sentences need not apply. I agree with you the discretion is with the crown.

Dr. Anthony Doob: Well, of course the prosecutor has the power not to demonstrate that certain conditions hold, but the point of a mandatory minimum sentence is that Parliament in the year 2011 is saying that some small number of marijuana plants, for example, is deserving of a six- or nine-month minimum sentence. That's what Parliament's intent is. If Parliament didn't have that intent, Parliament presumably would not impose a mandatory minimum penalty. Other kinds of guidance are possible to Parliament, including the guidance of, for example, a presumptive sentence. There are other things that are possible.

Mr. Brent Rathgeber: Well, we'll leave it there.

You are aware that possession without more does not constitute a minimum mandatory sentence.

Dr. Anthony Doob: Excuse me?

Mr. Brent Rathgeber: Possession has to be for the purposes, you are aware of that?

Dr. Anthony Doob: Possession for the purpose of trafficking, but I would suggest to you—

Mr. Brent Rathgeber: We'll have to leave it there. I just wanted to clarify.

Dr. Anthony Doob: I would suggest that most use of marijuana includes trafficking as it's defined by the act.

Mr. Brent Rathgeber: Thank you.

Professor Jackson, similar to my friend Mr. Harris, I too watched CBC last night, and I think it was an interesting piece, but the piece was primarily about the success of drug treatment courts in the state of Texas. And you will agree with me that drug treatment courts do currently operate in Canada, right here in Ottawa and certainly in my city of Edmonton and elsewhere.

Mr. Michael Jackson: That's right.

Mr. Brent Rathgeber: And you'll further agree that this act actually expands the use of drug treatment courts, allows a sentence to be delayed pending completion of a drug treatment court, and in fact allows a court to not impose a minimum mandatory sentence when the offender has successfully completed drug treatment. Are you aware of all of that?

Mr. Michael Jackson: I'm aware of that.

Mr. Brent Rathgeber: Thank you. Those are my questions.

The Chair: You still have a minute and a half left.

Mr. Woodworth.

Mr. Stephen Woodworth: I'll just kick in one, then, to Mr. Gottardi, who I assume has read the act and knows that in the criminal youth justice section the wording that is proposed on the question of denunciation and deterrence is "to deter the young person from committing offences". Do you remember reading that, Mr. Gottardi?

Mr. Eric Gottardi: I do.

Mr. Stephen Woodworth: All right. And would you agree with me that when we say "to deter the young person", we are talking about specific deterrence, not general deterrence?

Mr. Eric Gottardi: It could be read that way, yes.

Mr. Stephen Woodworth: Would you read it otherwise?

Mr. Eric Gottardi: It will be interpreted by the judges imposing a sentence.

Mr. Stephen Woodworth: Well, I'm asking you. When we say "to deter the young person", would you not take that to mean specific deterrence of that young person, not young persons generally.

Mr. Eric Gottardi: Yes, it could be read that way.

Mr. Stephen Woodworth: But how do you read it, sir?

Mr. Eric Gottardi: Well, it doesn't matter which way you read it.

Mr. Stephen Woodworth: Well, it does, sir, because in your statement you've included a whole paragraph about general deterrence relating to that provision, and I suggest to you that it's very misleading to people who aren't lawyers. Lawyers know that if we're talking about general deterrence, we don't say "the young person", we say "young persons". Don't you think it's a little misleading to be talking in your proposal about general deterrence on that section?

● (0940)

The Chair: Time's up, Mr. Woodworth.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Good morning.

My question is for the members of the Canadian Bar.

My colleague, Ms. Boivin, asked you a question about pardons, but you did not get the chance to reply. I will now give you that opportunity.

[*English*]

Mr. Michael Jackson: We have included a submission on the changes to the Criminal Records Act.

Perhaps what is most disturbing in terms of the provisions.... Many members of this committee have children and grandchildren, as do I. One effect of the amendments will be when someone is convicted of a summary offence. It could be that a person gets a little drunk on a stag night or at a university celebration and punches someone and is convicted of common assault. It could be that it's a conviction on a drug offence. There's an entire raft of things that young people may commit in the immaturity of young adulthood, which they live to regret and they live to overcome. They go to university. They seek employment.

At the moment, we have provisions for a pardon after three years. It's in fact more than three years, because the backlog actually takes about a year and a half. It's already close to five years before young people, who have in fact demonstrated the ability to put this behind them and are ready to take their rightful positions as responsible and accountable members of society, are back in the workplace without criminal records. I don't know why, but this act extends it from three years to five years.

There is no demonstration that the pardon process has in fact been flawed. Ninety-six percent of them have never been revoked. I again ask: Why as legislators would you want to put impediments on the reintegration of people who have in fact started out afresh and demonstrated that they are accountable for their actions?

There is no rational or legitimate correctional reintegration purpose. As in so many of the provisions of this bill, the only purpose is to increase the intensity of punishment and have more people in prison for longer periods of time under more repressive and harsher conditions. When they do get out or finish their sentences, it makes it even more difficult for them to reintegrate.

It seems to be the theme of this legislation. It is contrary to what is happening in many parts of the world, where we've learned the lessons of repression and harsh sentencing regimes. Texas, of all places, is rolling back what we're implementing.

[*Translation*]

Mr. Pierre Jacob: Thank you.

My next question is for Mr. Gottardi.

You said in your preamble that Bill C-10 would not strengthen public safety, that more people would end up in jail, and that there would be less rehabilitation and social reintegration. Can you tell us why?

[*English*]

Mr. Eric Gottardi: Very briefly, I think my colleague, Professor Jackson, talked about the changes to the CCRA that will have an impact and the changes to the pardon act that would create further roadblocks to reintegration into communities.

The simple answer is that many of the restrictive sentencing measures that are being put in place—such as the increased use of mandatory minimum sentences and the restrictions on conditional sentences, which assist offenders to continue doing positive things in life, continue working, and continue having interactions with friends and family while under strict conditions and monitored by the state—assist and enhance public safety. Restricting those sentencing measures has the opposite effect.

In terms of the resource issue, the increased use of mandatory minimum penalties is going to put enormous pressure on the criminal justice system. Crown prosecutors are going to have many more cases to deal with. They'll have greater discretion in the sense that they'll have to do acrobatics and gymnastics to potentially come up with other charges that could be laid that don't have the mandatory minimum sentence in order to avoid unjust results.

● (0945)

The Chair: The time is up for this round.

We're back to the government side. Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you very much, Mr. Chair.

Thank you, witnesses, for attending today.

Mr. Gottardi, I belive you have been in front of me before. As I mentioned, I was a member of the CBA for many years. I practised criminal law in Fort McMurray, which obviously has been a very busy place for over a decade, so I have some ability to know.... I've done literally hundreds and hundreds of trials, and frankly, I don't agree with your analysis, with respect. I have seen many success stories after people have been incarcerated, and I believe that re-education, retraining, and pride in one's life could certainly turn those people about.

I have to say that as a defence attorney I always envied British Columbia, because of the size of penalties that were received by, for instance, drug dealers, where many times I saw cases that had 30 days or 60 days for cocaine trafficking. In Alberta, you would receive 18 months or two years for the same quantity and the same circumstances. I looked at B.C. as quite an anomaly in Canada.

But I would have to say that there are startling statistics in relation to the number of people who reoffend and continue to reoffend. I have seen many people with three or four pages of records, which would be somewhere in the neighborhood of 40 or 50 prior offences.

So I frankly don't agree that people who go to jail for minimum mandatory times cannot have a success story, and certainly I believe they keep people safe.

On that note, I also noticed the Supreme Court of Canada suggested in R. v. Morrisey that it can't be disputed that the need for general deterrence is necessary, and indeed that a mandatory minimum sentence to shape behaviour is and can be utilized successfully. I would suggest that lawyers are somewhat.... If there are 10 lawyers in this room, you're going to receive 30 opinions. I think it's no different in this particular case.

Just to clear the record in relation to that, Mr. Doob, I wanted to talk a little bit to you. I noticed that you have a PhD from Stanford and an AB from Harvard. I apologize for my ignorance, but what is an AB?

Dr. Anthony Doob: It's the Latin version of a bachelor's degree, I believe.

Mr. Brian Jean: A bachelor's degree of what, sir?

Dr. Anthony Doob: It is a bachelor of arts.

Mr. Brian Jean: Okay. So you have a bachelor of arts and a PhD, one from Harvard and one from Stanford.

I noticed that your expertise is in relation to the youth justice system process and operation of the criminal courts. That's the majority of your research and expertise.

Dr. Anthony Doob: Yes.

Mr. Brian Jean: Where did you practise law?

Dr. Anthony Doob: I'm not a lawyer.

Mr. Brian Jean: Okay.

Have you ever spent time on a parole board?

Dr. Anthony Doob: No.

Mr. Brian Jean: Have you ever spent time with victims in victim outreach programs or things of that nature?

Dr. Anthony Doob: I've not worked in such a capacity, no.

Mr. Brian Jean: Okay.

Have you ever been a victim of a violent crime?

Dr. Anthony Doob: I think probably we all have, yes.

Mr. Brian Jean: What kind of violent crime, sir?

Dr. Anthony Doob: Well, I was a kid once, right? I think most of us have been victims and have been in fights.

Mr. Brian Jean: I understand. So your expertise is based upon research of psychology. Would that be fair to say?

Dr. Anthony Doob: I'm a criminologist.

Mr. Brian Jean: Okay, but psychology is your expertise by degree?

Dr. Anthony Doob: I received a PhD in social psychology.

Mr. Brian Jean: Yes.

I noticed one of your publications, entitled "Mandatory Minimum Sentences: Law and Policy". I did have an opportunity to read it, and it was an interesting read, for sure. I noticed that you referred to many things within the footnotes, in particular, in 1952, a royal commission on the revision of the Criminal Code, a 1952 Senate official report of debates, a 1987 Canadian Sentencing Commission, and it goes on. In fact, in your footnote 28—and I quote—it states:

> "'Three Strikes and You're Out': The Impact of California's New Mandatory Sentencing Law on Serious Crime Rates" (1997)".... In one of the ten California locations the decrease in index crime coincided with the implementation of the three-strikes law. There seems to be no reasonable explanation for the difference between this county (Anaheim) and the other ten.

You then go on further to say—and I think it must be a joke—"There was no suggestion that it was related to the fact that Disneyland is located in Anaheim."

I went through the footnotes and could not find anything to support your position on this particular paper. I was wondering if there was something more than the footnotes that I may be directed to in regard to your expertise in this particular matter and "The Political Attractiveness of Mandatory Minimum Sentences", in which, in conclusion, you indicated that "it is clear that the policy process must take into account the various functions"—

● (0950)

The Chair: Mr. Jean, you're out of time.

Mr. Brian Jean: Thank you.

● (0955)

The Chair: That will end this session. We had one hour set aside.

I want to thank the panel.

Mr. Harris, I didn't set the rules. The committee set the rules and we're following them.

We'll take a two-minute adjournment so we can get a new panel set up.

● _____ (Pause) _____

●

The Chair: We'll call the second session to order.

Just so the panel members are very clear, and I think the clerk has made it clear, there's an opportunity for a five-minute opening. Each side gets five minutes at a time here. We are very tight for time, so I will let you know when you're at five minutes and we'll end there.

If you wish to start, Mr. Oscapella....

Mr. Eugene Oscapella (Part-time Professor, Department of Criminology, University of Ottawa, As an Individual): Thank you, Mr. Chair.

I'm here to speak about the parts of Bill C-10 introducing mandatory minimum penalties for many drug offences, and generally ramping up the so-called war on drugs. I have worked in the criminal justice and drug policy fields for more than three decades. I didn't think it possible that Canada could enact drug laws that were worse than those in place over that period, but the current government has proved me wrong. Bill C-10 is worse, much worse.

Let's not forget what we're talking about here. It's about locking our fellow human beings, many of them non-violent, in cages. This is the 21st century. Surely there are better ways to resolve many societal problems than by locking our fellow citizens in cages.

If Conrad Black and I were to meet, probably we'd not agree on many things, but he spent some time in Florida prisons and he learned something. He said he saw at close range the failure of the U. S. war on drugs: absurd sentences; a trillion dollars has been spent; a million easily replaceable small fry are in prison; and the targeted substances are more available and of better quality than ever, while producing countries such as Colombia and Mexico are in a state of civil war.

Beyond our current drug laws, Bill C-10 is sure to be ineffectual. Not only are the provisions sure to be ineffectual, they are certain to be counterproductive. The Harper government says these laws will help solve the problem of drugs in our society. In fact, they will do the opposite: they will make the drug problem far worse than it would be if alternative regulatory and health-based measures were applied to the drug problem. The amendments brought by Bill C-10 will foster more crime, more violence, and more dysfunction, rather than less.

This government has ample evidence of the futility of its intended approach from experiences in Canada, the United States, and around the world. If you don't want to believe me, let's listen to the late Milton Friedman, Nobel Prize-winning and conservative economist. In 1989 he addressed a letter pleading for the end of the U.S. war on drugs to William Bennett, who was then the head of the U.S. drug policy in the U.S. White House. He said:

> In Oliver Cromwell's eloquent words, "I beseech you, in the bowels of Christ, think it possible you may be mistaken" about the course you and President Bush urge us to adopt to fight drugs. The path you propose of more police, more jails, use of the military in foreign countries, harsh penalties for drug users, and a whole panoply of repressive measures can only make a bad situation worse....
>
> Drugs are a tragedy for addicts. But criminalizing their use converts that tragedy into a disaster for society....

If you don't want to listen to Milton Friedman, perhaps you might want to pay attention to the 2002 report of the Senate Special Committee on Illegal Drugs, chaired by Conservative Senator Pierre Claude Nolin. The report was unanimously adopted by the members of the committee. What did it say? It said:

> ...the main social costs of cannabis are a result of public policy choices, primarily its continued criminalization. [...] It is time to recognize what is patently obvious: our policies have been ineffective, because they are poor policies. [...] The prohibition of cannabis does not bring about the desired reduction in cannabis consumption or problematic use.

If the government doesn't want to listen to its own Conservative senator and his committee, perhaps you might want to pay attention to the United Nations Office on Drugs and Crime, which said the following in 2009:

> Global drug control efforts have had a dramatic unintended consequence: a criminal black market of staggering proportions. Organized crime is a threat to security. Criminal organizations have the power to destabilize society and governments. The illicit drug business is worth billions of dollars a year, part of which is used to corrupt government officials and to poison economies.

By the way, the reason this is happening, Mr. Chairman, is because of drug prohibition. The use of the criminal law to prohibit drugs is creating a fantastically lucrative black market.

If you don't want to pay attention to the 2009 statement of the United Nations Office on Drugs and Crime, you might look at the 2011 report of the Global Commission on Drug Policy. Its honorary chair was George Shultz, the former U.S. Secretary of State. Its members included Kofi Annan, former UN Secretary General; Louise Arbour, former Supreme Court of Canada Justice and the former UN High Commissioner for Human Rights; Paul Volcker, the former chair of the U.S. Federal Reserve; Sir Richard Branson; and four former presidents of Switzerland, Colombia, Brazil, and Mexico. Former U.S. President Jimmy Carter has endorsed the report.

● (1000)

What did the report say? It said:

> The global war on drugs has failed with devastating consequences for individuals and societies around the world. End the criminalization, marginalization and stigmatization of people who use drugs but who do no harm to others. Challenge rather than reinforce common misconceptions about drug markets.

The Chair: Your time is up, sorry.

We'll hear from Mr. Head.

Mr. Don Head (Commissioner, Correctional Service of Canada): Good morning, Mr. Chair and members of the committee. I am pleased to have the opportunity to appear before you today to discuss proposed Bill C-10 and its anticipated effects on the Correctional Service of Canada.

As you are aware, Bill C-10 comprises a number of bills that were introduced in the previous session of Parliament. As I expect the greatest impact on my organization's operations will come from the elements of Bill C-10 related to former Bill C-39, I will focus my remarks on this area. However, I will respond to any questions committee members may have regarding other elements of Bill C-10.

In 2007 the external CSC review panel released its final report, “A Road Map to Strengthening Public Safety”. This report contained 109 recommendations on how CSC could transform its operations and administration to better manage a complex and diverse offender population, thereby producing enhanced public safety results for Canadians.

Over the past four years, CSC has been using this report as the basis of our transformation agenda. Bill C-10 would advance this agenda further, with key components related to information sharing with victims, offender accountability, offender discipline, and electronic monitoring, among others.

The proposed legislation aims to strengthen principles of the Corrections and Conditional Release Act to emphasize offender accountability and responsibility.

If Bill C-10 is passed, the Corrections and Conditional Release Act would now place a greater emphasis on offenders to follow and adhere to their correctional plans, which form the foundation of all programming, education, employment skills development, and decisions related to transfer and conditional release.

As well, Mr. Chair, Bill C-10 will give me, as the Commissioner of the Correctional Service of Canada, the opportunity to establish an incentive-based approach to dealing with offenders who have the capacity to follow their correctional plans but choose not to do so during their terms of incarceration. In addition, the bill places additional emphasis on the role and the rights of victims throughout the correctional process. It expands the definition of victims and the types of information that can be shared with them.

Finally, I'd like to note that Bill C-10 would enshrine in legislation CSC's authority to impose electronic monitoring under certain circumstances. These could include monitoring an offender's compliance with the terms of release, such as restricted access to a person or place.

Mr. Chair, as you're aware, last week the ministers of public safety and justice tabled a document indicating that the federal cost of Bill C-10 will be $78.6 million over five years. CSC has estimated that we will require approximately $34 million in new funding to manage the impacts of the proposed legislation. This figure comprises operational costs associated with the projected increase in our offender population arising from mandatory minimum sentences for sexual offences against children and for serious drug crimes.

In addition to the costs associated with housing more offenders, on the operational side we will see an ongoing reliance on double-bunking. This is having a particular impact in our women-offender institutions and in those in the prairies and Ontario regions where we are facing population pressures. I should note that there are also financial implications for the Correctional Service of Canada related to the enhanced provision for sharing information with victims and to the implementation of electronic monitoring. However, we will be absorbing these costs internally.

Mr. Chair, the Correctional Service of Canada has transformed its operations over the past few years to respond to a complex and diverse offender population and to significant changes in the criminal justice system. We're continuously monitoring the impact of these changes on our organization and on our offender population. We are making adjustments as needed.

I am confident that CSC, as a modern, adaptable, world-class correctional system, will implement the provisions of Bill C-10. It will create safer communities for all Canadians while it addresses the needs of victims and provides the most appropriate opportunities for offenders.

Thank you, Mr. Chair. I welcome any questions the committee may have.

● (1005)

The Chair: Thank you, Mr. Head.

We'll go to Ms. Latimer.

Ms. Catherine Latimer (Executive Director, John Howard Society of Canada): Thank you very much for the opportunity to be here.

The position of the John Howard Society of Canada is that Bill C-10 will not make streets or communities safer, despite the huge outlay of taxpayers' money. It will instead make communities less safe while eroding rights and principles of justice.

Given the time constraints, I will reaffirm comments the John Howard Societies have made on previous components of the bill that were before committee and focus my remarks on the new provisions and the cumulative impacts of the bill.

The merging of ideologically inconsistent bills into a single omnibus bill provides a philosophically incoherent response to serious social issues. Some of these problems include the following. Adult criminal justice principles are inappropriately applied in the youth justice system. Sentencing principles are incongruously applied to correctional management and parole decisions, resulting in a re-punishing of the offender rather than a scrupulous execution of the court-imposed sentence. Discretion is improperly limited for sentencing judges, preventing proportionate sentences, and augmented for ministers, crown attorneys, and officials dealing with numerous matters. Personal accountability and state paternalism are blended such that a 15-year-old is deemed too young to consent to sexual activity and yet is held criminally liable if he lacks the maturity of judgment to detect the absence of consent in another.

There are two specific provisions that have not been before the committee in terms of the youth justice amendments, both of which I think warrant some serious consideration because of their charter implications. The introduction of the criterion of the public's confidence in the administration of justice as grounds for the detention of youth prior to trial may violate rights to reasonable bail. And the removal of the “beyond a reasonable doubt” standard for young persons to receive an adult sentence is contrary to the Supreme Court decision in R. v. D.B. and thus may violate section 7 charter rights.

With respect to Bill C-39, which has not been before committee and therefore has not undergone a serious analysis, I endorse the comments that were made by Professor Jackson. We thoroughly endorse the response to the corrections road map made by Michael Jackson and Graham Stewart, called "A Flawed Compass”, and believe that the concerted and deliberate law reform process that led to the Corrections and Conditional Release Act some 20 years ago, and which is emulated and praised around the world, needs to have some serious consideration and attention before decisions and changes are made.

The reason this bill will not make communities safer....

Given the evidence that increased penalties do not deter crime and the omission of crime prevention programs from this bill, the only way it could achieve its policy objectives of making communities safer is through successful rehabilitation and community reintegration. But Bill C-10 actually impedes supervised and supported reintegration by limiting the transfer of Canadians back to Canada until after they've completed their sentences and are thus deported, limiting pardons, and reducing access to conditional sentences.

This bill will also exacerbate the current crisis of crowding in provincial, territorial, and federal custody by massively increasing the numbers in custody through, one, the imposition of mandatory minimum sentences; two, restrictions on community-based sentences; and three, further restrictions on release for those who are in custody. It is urgent to reduce rather than increase prison overcrowding in order to ensure the safety of inmates and corrections staff, as well as for effective corrections and rehabilitation.

If nothing is done and the courts find, as they already have in the United States, that our current levels of crowding amount to cruel and unusual punishment, offenders will be released or not sent to custody, and there is no guarantee it will be the less risky offenders who remain in the community. If this occurs, the ultimate impact of the bill will certainly be to make the streets and communities less safe.

We are heartened by Minister Toews' response to the committee that the National Parole Board could safeguard against overcrowding, and we look forward to the amendments to Bill C-10 that would achieve this objective, although further measures would be needed to address the crisis in provincial prisons.

In conclusion, we recommend that the bill not be passed in its present form, since the evidence shows it will not achieve its stated purpose. If the bill is passed, then given the current crisis of prison crowding in Canada, we urge that the bill not be proclaimed in force until provinces, territories, and the federal government can assure Parliament that the expected increase in offenders can be accommodated without exceeding 100% capacity of the prisons.

● (1010)

We hope the Minister of Justice will seriously consider his statutory obligation to ensure that all legislative proposals are charter-compliant before approving a bill that so seriously threatens to create a degree of prison overcrowding that would be cruel and unusual under section 12 of the charter.

Thank you very much.

The Chair: Thank you.

Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

Thank you to the presenters for their useful information and views.

Professor Oscapella, I would like to ask you a question concerning your discussion on the drug situation. It's interesting that your presentation comes on the heels of an article in yesterday's *Globe and Mail* by Neil Reynolds, not a noted liberal, on issues of certain types. He talks about the war on drugs. He says it cannot be won and that it has in fact led to increases in crimes and violence throughout the world. He talked about the U.S. and Mexico in particular and the number of deaths approaching 40,000 in the last five years. He says that if the United States legalized drugs, the savings would be $44 billion in law enforcement and another $42 billion in tax revenues.

These are interesting numbers.

I understand that some countries have attempted to take a different approach towards drugs in order to reduce crime and harm to society. Would you care to comment on what has happened in Portugal, which I understand has undertaken a program of changes in its approach to the use of drugs and the criminalization of drugs, particularly marijuana?

Mr. Eugene Oscapella: Yes, certainly, Mr. Harris. Thank you for the question.

Portugal about ten years ago introduced a system of essentially a drug-dissuasion committee. Instead of being criminally charged for possessing small quantities of a drug or selling small quantities of drugs, people who were apprehended would be required to appear before a committee of three people and they would discuss the person's drug-use habits. Essentially, it's a non-criminal way of dealing with potentially problematic drug use. Let's remember that most drug use is not problematic in terms of its effects on society.

What they found was that actually drug use rates went down. That doesn't necessarily mean that the policies caused the drug use rates to go down, but that they did not explode upwards, as some people might have suggested. In fact, the program has been quite successful. *The Economist* magazine, as a matter of fact, did an article on it not too long ago. It sort of praised it as an alternative to the current prohibitionist war-on-drugs model, which, as you pointed out, has been a colossal failure primarily because of the black market in drugs that it creates, which makes it extremely profitable for insurgent criminal and terrorist groups that benefit from the drug trade.

Mr. Jack Harris: Has that been done by changing all of the criminal law, or has it been done by introducing a new approach to handling it? Is it a diversion program?

Mr. Eugene Oscapella: I believe it's been done by changing the law. One of the problems is that the international treaties are sometimes cited as an impediment to doing that. I'm not so sure they are the impediment. The Netherlands, for example, has had a long-standing policy of non-prosecution for possession of small quantities of drugs. So even though the laws remained in place, they used the policy of non-prosecution. We could do the same thing here in Canada. That would be one way to ameliorate the harshness of this law.

Mr. Jack Harris: Thank you.

Of course, one of the relationships, one of the issues we're talking about here is that it appears that the American rate of incarceration, for example, is in some measure tied to the war on drugs. Some 25% of inmates in the U.S. are incarcerated on drug-related crimes. Have you seen any numbers in terms of Canada and what level of our prison population is related to drug cases or drug possession or trafficking or other related matters?

Mr. Eugene Oscapella: I think Mr. Head would be in a better position to answer what percentage of people who are in there have a drug crime or drug offence as their principal offence. It will vary. As you pointed out, one quarter of all the prisoners in the United States—which incidentally incarcerates one quarter of all the human beings who are imprisoned on earth—are in prison for drug-related crimes, most of them non-violent. But again, Mr. Head might be in a better position to answer that question than I am with regard to the specific recent statistics.

● (1015)

Mr. Jack Harris: I understand the arguments in relation to how drugs are dealt with by society. Is there a way into this? Most people present it as an all-or-nothing issue, you know, that drugs are bad and we have to tackle that because it's our obligation as a state to protect people from this.

The Chair: Unfortunately, Mr. Harris, your time is up.

We now go to Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much, Mr. Chair.

I'd very much like to begin by welcoming the witnesses and thanking them for their contribution.

Whether or not we always agree on everything, we're all here with the same intention of providing good public policy for Canadians, according to our principles.

I want to begin, Mr. Chair, by reassuring those Canadians who have been listening that the whole notion of a war on drugs is not anything that our government has declared. It's not anything the minister has ever said, to my knowledge. It's certainly not what's in Bill C-10. And all this talk about war on drugs is really a diversion, and a misleading diversion, about what actually is in Bill C-10. Whatever our policy is on the prohibition of drug trafficking, it isn't established in Bill C-10.

I'd like to ask Mr. Head a little bit.... You are the Commissioner of the Correctional Service of Canada, and I'm assuming that people watching can understand that this means you're the head man in the corrections system. Is that correct?

Mr. Don Head: That's right, sir.

Mr. Stephen Woodworth: And I'm imagining that you didn't get to that position without some significant experience in the corrections system. Is that right?

Mr. Don Head: That's right, sir.

Mr. Stephen Woodworth: How many years have you been involved in corrections?

Mr. Don Head: Thirty-four years.

Mr. Stephen Woodworth: For 34 years. And during those 34 years, have you seen pretty much everything there is to see about our corrections system?

Mr. Don Head: The odd day there is something that surprises me, but I've seen a lot, yes.

Mr. Stephen Woodworth: Would it surprise you to be told that we currently have a crisis of crowding in our corrections system, which amounts to cruel and unusual punishment? Have you observed that, by any chance?

Mr. Don Head: I wouldn't say that the latter part of your sentence is something I've seen. Are there issues related to double-bunking? Yes. I know at the provincial and territorial levels there are some issues, but I wouldn't describe the conditions as cruel and unusual punishment. I've been to many different places around the world, sir, and I can tell you that Canada is still a leader when it comes to how we treat offenders.

Mr. Stephen Woodworth: So you know what cruel and unusual punishment in corrections would be, and that's not what we have. Is that your evidence?

Mr. Don Head: I wouldn't buy into that statement.

Mr. Stephen Woodworth: All right. And do you think you're in a crisis?

Mr. Don Head: I think we're at a point in our history where there are some challenges, challenges in terms of growth and in terms of specific subsets of the population, but I wouldn't be declaring a crisis.

Mr. Stephen Woodworth: All right. Well, I'm going to rely on your 34 years of expertise in accepting that evidence from you today.

I'd like to ask you about the issue of capital costs that might be associated with Bill C-10. Have you attempted to determine whether or not there will be additional capital costs to your budget as a result of Bill C-10?

Mr. Don Head: Yes, and in terms of the numbers we've looked at, the overall amount for capital costs would equate to about one additional living unit or two additional living units within the correctional system.

Mr. Stephen Woodworth: Are you able to put a price on that, or give me an approximate dollar figure?

Mr. Don Head: It would be around $25 million.

Mr. Stephen Woodworth: That would be $25 million?

Mr. Don Head: Yes.

Mr. Stephen Woodworth: And that would be a one-time capital addition to deal with the effects of Bill C-10?

Mr. Don Head: That's right, yes.

Mr. Stephen Woodworth: And I notice that in your submission you've referred to $34 million to manage impacts, and you mention that as operational costs. So would that be in addition to the $25 million you've just mentioned?

Mr. Don Head: All the costs are rolled up there, so our annual operating costs, for example, for the piece relating to sex offences and Bill C-10 are around $6.4 million each to manage the operating costs.

● (1020)

Mr. Stephen Woodworth: My question specifically was whether or not the $25 million capital costs that you told me about a moment ago are in any way amortized into that $34 million.

Mr. Don Head: Yes, they are.

Mr. Stephen Woodworth: They are, so that does take account of both capital and operational costs?

Mr. Don Head: Yes, it does.

Mr. Stephen Woodworth: And is that $34 million per annum?

Mr. Don Head: No, that's over a five-year period.

Mr. Stephen Woodworth: Over five years. All right.

So when the minister told us that the total cost would be $78.6 million, can you help me understand, if your cost is $34 million over five years, what other money the minister was talking about?

The Chair: Sorry, your time is up.

Mr. Cotler.

Hon. Irwin Cotler: I wanted to go to the issue of overcrowding.

Ms. Latimer, you mentioned that the present legislation would exacerbate that problem. Arguments have been made that before the bill was tabled, there were serious problems of overcrowding—for example, 200% in British Columbia, where a threshold of 137%, as the U.S. Supreme Court said, is a threshold regarding cruel and unusual punishment.

Is it possible that the discrepancy between what you have been saying and what Mr. Head has said is due to the fact that you're dealing with provincial as well as federal systems?

Ms. Catherine Latimer: I think there's something to be said for that. You're quite right, we first saw a benchmark by the Supreme Court of the United States in May indicating in the case of Brown v. Plata that 137.5% of overcapacity violated cruel and unusual standards there.

In our provincial systems many are reporting capacity problems at 200%, double the number of inmates being placed in facilities based over what their initial intention was. The correctional investigator of Saskatchewan has pointed out that they are closely approaching 200%. The unions have raised this as a serious concern in many jurisdictions, including British Columbia, where it's 175% to 200% of custodial capacity now, and in Ontario. So many people have raised this as a significant concern.

I don't want to speak for Commissioner Head, but good corrections policy really takes place at about 90% to 95% of occupation of capacity of the prisons, because that allows you to manage the inmates, move people, facilitate programs, and have better corrections applications.

So even at the levels of crowding that the federal government is starting to experience, we're starting to see some problems with Mr. Head being able to deliver the continuing good services that the Correctional Service of Canada has been known for. Women's prisons were particularly poorly hit by the more recent expansion of inmates, and that's before we get into this omnibus bill.

Hon. Irwin Cotler: Just as a follow-up, a minister of justice in any government is constantly obliged to ensure that legislation complies with the charter. If there's a serious risk of overcrowding, that raises a question of charter compliance. Does the Minister of Justice have to take into account the fall-off in the legislation for what might happen in provincial prisons as well as in federal prisons?

Ms. Catherine Latimer: It would be my sense that if the legislation violated rights through the administration of this legislation in the provinces and the charter problems were arising in the provinces, the Minister of Justice would need to take that into account when looking at his certification. Yes, I would think so.

Hon. Irwin Cotler: Commissioner Head, were your remarks related to a situation within federal jurisdiction on matters of overcrowding, and not within provincial jurisdiction?

Mr. Don Head: That's right, sir.

The Chair: You still have a minute and a half.

Hon. Irwin Cotler: Okay. I would like to pursue this further then and ask Ms. Latimer, on issues of charter compliance, can you very quickly identify some of the concerns this legislation may raise?

Ms. Catherine Latimer: I think there are concerns about vagueness in some of the definitions. For example, the definition of violence in young people is not clear enough. There's no definition of bestiality, which can attract mandatory minimum penalties. There are section 7 problems associated with the dropping of the beyond-a-reasonable-doubt standard, and there are section 11 problems in connection with pre-trial detention issues.

● (1025)

The Chair: Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

To Mr. Head, we've talked about overcrowding, and I've heard you use the term “double-bunking”. Can I get some clarity on that? I trust it's not two inmates in one bed.

Mr. Don Head: No, sir, there's a different term for that.

This is two inmates in a cell that's equipped with two beds.

Mr. Robert Goguen: All right, thank you for that clarity.

Professor Oscapella, as a little bit of your background, I understand you're the founding member of the Canadian Foundation for Drug Policy.

Mr. Eugene Oscapella: Yes.

Mr. Robert Goguen: How many years have you been working at that, sir?

Mr. Eugene Oscapella: We founded it in 1993.

Mr. Robert Goguen: In 1993. So the 20th anniversary is two years away.

Mr. Eugene Oscapella: Yes, it's coming shortly.

Mr. Robert Goguen: As I understand it, the primary goal is to work towards legalization of drugs.

Mr. Eugene Oscapella: No. Its primary goal is to examine Canadian drug laws and policies to see where they're deficient, and if they're deficient to recommend alternatives.

First of all, legalization is a very dangerous term to use, because it means many different things to many people. To some people, legalization means the total absence of control, which is in effect what we have now with the criminal law in many ways.

There are many alternatives to the current criminal justice system. You can have a medicalized system, a regulatory system, a health-based system. The objective of the organization is not to promote legalization. It's to promote effective and humane drug policies. That's quite clearly stated in the objectives of our organization.

Mr. Robert Goguen: But am I to understand you're working towards the decriminalization of possession of marijuana as one of your objectives?

Mr. Eugene Oscapella: I personally believe there is no value in maintaining the application of the criminal law to the simple possession, production, or distribution of cannabis and that it could be very effectively regulated based on the alcohol model, only without advertising and without excessive commercialization, on a health-based approach. Now, whatever you want to call it—you can call it legalization—it's a more effective means of regulating and controlling cannabis than the current system. Those are my personal views.

Mr. Robert Goguen: That's something your foundation has been working towards for the last 18 years?

Mr. Eugene Oscapella: No. Our foundation has been a public education vehicle. That's most of what we do. Occasionally I appear before parliamentary committees, but essentially our work is.... If you go to our website you'll see we report on this bill, for example. It's listed there, and the backgrounder documents are there for all to see.

We believe that public education is essential to developing better drug policies.

Mr. Robert Goguen: In your statement you recognize that the drug trade was a major source of moneys for organized crime, I take it?

Mr. Eugene Oscapella: The RCMP for many years in many of its reports has been saying that the principal source of income for most criminal groups in Canada is the drug trade. What they don't say—what they omit to say—is the very obvious: the reason the drug trade is so lucrative is because of drug prohibition, meaning the application of the criminal law to drugs creates a fantastically lucrative black market.

That is why the drug trade in Canada, if you believe the RCMP, is the principal source of financing for criminal organizations. It's also one of the principal sources of funding for terrorist and insurgent groups around the world.

Mr. Robert Goguen: But you don't dispute that it's a major source of revenue for organized crime, despite the reason it's there?

Mr. Eugene Oscapella: No. I'm telling you what the RCMP is telling me. I'm not in a position to go ahead and investigate the revenues of organized crime myself, obviously. I'm relying on reports of the RCMP over probably a period of decades now where they have made such statements.

The U.S. Presidential Commission on Organized Crime that was set up under President Reagan also concluded that the major source of income for criminal organizations in the United States was the illegal drug trade. Again, the important point to realize is that it's only a major source of income because of prohibition. In other words, our drug laws actually create the problem.

Mr. Robert Goguen: So the solution would be to legalize the drug trade and completely wipe out organized crime's financing?

Mr. Eugene Oscapella: No, you're not going to wipe out organized crime's finances. Look at Colombia. In Colombia there are two main vehicles for the left-wing guerrillas and the right-wing paramilitaries to get income. One is the drug trade or taxing the drug trade and the other is kidnappings. Kidnapping is much more labour-intensive and much more difficult to do than the drug trade.

It will not end the power of organized crime. We will still have organized crime in this country. But we are giving organized crime fantastic resources through this black market that we've created through drug prohibition. It's very simple economics.

That's why a kilo of heroin costs about $900—these are UN figures from the 1990s—to produce in Pakistan, but by the time it is cut and sold at retail in the United States it's worth almost $300,000. That is purely the product of prohibition.

Mr. Robert Goguen: Thank you.

● (1030)

The Chair: Ms. Borg.

[*Translation*]

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Thank you.

My questions are for Ms. Latimer.

With regard to the questions asked last week, the minister basically denied that a prisoner getting three two-year sentences was capable of straightening out. I would like to hear your comments on that.

I would also like to know, with regard to a former criminal getting out of prison who would like to lead a lawful life but cannot get a pardon due to changes made to the act, what kinds of obstacles this would mean for him.

[*English*]

Ms. Catherine Latimer: I'm glad you raised that question. Some of my colleagues who are here will be addressing this more specifically later, but it is our view that to preclude a person who has paid their debt to society—they've completed their sentence, they've participated in a crime-free period—to deny them relief from discrimination because they have a criminal record, deny them the opportunity to get employment, to travel, and to do a variety of other things, really does hinder their possibility of continuing to lead crime-free lives.

You need to restore people who have done their time back into the community. You can't be continually punishing someone for something they have done for which they have already paid their debt to society. We think it's a very damaging policy.

[*Translation*]

Ms. Charmaine Borg: This legislation does not set out any increase with regard to the programs in which prisoners may participate. In talking to experts, I understand that there is already a long wait-list of prisoners who want access to these programs.

If someone truly wants to be rehabilitated when they get out of prison, but they cannot do so because there are no scheduled increases to these programs even if the prison population is increasing, in your opinion, what impact will this situation have?

[*English*]

Ms. Catherine Latimer: I believe that you are probably hearing from the same people I'm hearing from, who believe that there should be more access to programs within the custodial facilities. We strongly support additional resources being given to CSC to continue and to expand the programs and to make them more available, particularly those dealing with mental health, drug addictions, and skill sets—employment opportunities and a variety of things such as that.

There is no doubt that the more inmates packed into a facility, the less access you're going to have to the programs. Crowding has a profound effect on a variety of things, including access to family visits and access to programming. It is very detrimental to the good efforts that CSC and other correctional facilities can be making to rehabilitate and reintegrate, if they're struggling with dealing with more inmates than the facility was intended to house.

[*Translation*]

Ms. Charmaine Borg: Do you believe that it would be fair to say that the same applies to pardons?

[*English*]

Ms. Catherine Latimer: Do you mean, to say the same thing with respect to pardons, that there are problems of access to pardons?

Yes, I think—

[*Translation*]

Ms. Charmaine Borg: There is also the fact that the three-year period will be eliminated.

[*English*]

Ms. Catherine Latimer: I think there are problems with access to pardons now. As Mr. Jackson pointed out, many of the people who would be entitled to a pardon, based on their statutory entitlement, are waiting for two or three years for these pardons to be processed.

I also think the change in pardon fees will create a wealth-based access to a pardon. Once somebody has a pardon, under the Canadian Human Rights Act and provincial statutes they are relieved from discrimination for having a criminal record. So you're denying people who might well be entitled on the merits to get access to these human rights protections, because of the delays and because of the fee structure they're going to introduce.

So there are lots of problems with access to pardons, yes.

The Chair: We're back to Mr. Seeback.

● (1035)

Mr. Kyle Seeback: Thank you, Mr. Chair.

Ms. Latimer, I want to go back to a couple of the comments you made in your opening statement: one, that this legislation is going to make our streets less safe; two, that increased penalties do not deter crime; and three, that this will massively increase the prison population.

One of the things that we continuously hear from people who come to this committee to advocate on behalf of criminals is that our communities are made less safe because the principle of deterrence doesn't work. But what you constantly fail to identify is that there are two types of deterrence. There is general deterrence, which means a penalty will cause a person to say "I perhaps should not commit this crime", but there is also specific deterrence, which means that this person is in jail and therefore will not victimize other people in Canadian society.

Would you not agree with me that when somebody is in prison, they are therefore specifically deterred from further victimizing people in Canadian society?

Ms. Catherine Latimer: We generally refer to that as incapacitation: you're actually removing someone from society who is dangerous, and therefore they're posing less of a risk. I don't think it has much, actually, to do with deterrence.

Deterrence would kick in if the person, because of experiencing the penalty, decided not to offend in the future because of having learned accountability and having chosen not to reoffend in the future. There is some element of that, but it is certainly augmented if the person is given the benefit of rehabilitative programming and is encouraged to address some of the underlying conditions, such as drug addiction and others, that may be informing the criminal conduct.

Mr. Kyle Seeback: That's just semantics, "incapacitated" versus "specific deterrence". When a person is incapacitated, they are specifically deterred from committing crimes against Canadians; de facto, does that not mean that Canadians are safer because that violent criminal is not walking among us and therefore able to commit further violent crimes?

Ms. Catherine Latimer: I don't want to argue the semantics, but the evidence is that if you take two similarly situated offenders and put one in custody and give the other a community-based sentence—to hold both of them fairly accountable for their offences—the one who is given the community-based sentence does much better at not reoffending at the end of the day than the one who is given the custodial sentence.

You're really putting an emphasis on short-term measures as opposed to longer-term protection of society. We at the John Howard Society are very interested in the longer-term protection of society, not just the short-term protection of society.

Mr. Kyle Seeback: With respect to massively increasing the inmate population, this committee heard in the previous session the same type of hyperbole with regard to elimination of two-for-one and three-for-one sentencing. We were told that this is going to massively increase the prison population. I don't know whether that was the testimony that you gave or not, but we heard it.

Well, we heard from the Minister of Public Safety a few weeks ago. He explained—and maybe Mr. Head can correct me, if my figures are wrong—that the prison population only went from 14,200 to 14,600.

So if you're making these same statements again, what is the evidentiary, empirical basis for making that statement? Or is this just a case of saying, we are going to say the same things we said the last time?

Ms. Catherine Latimer: That's a very interesting point.

What we had been advised—I defer of course to Commissioner Head—is that the federal population base since about March 2010 has gone up by 800 to 1,000 inmates. That's two full penitentiaries worth of inmates being compressed into the existing infrastructure.

That is modest compared with the impact it's having in the provinces in increasing their prison populations. So I invite you to ask the corrections authorities from the provinces to come and give testimony as to the impact of these measures on their facilities and what they anticipate the likely outcome will be with this omnibus bill.

Mr. Kyle Seeback: If I have any time left, I'll share it with Mr. Woodworth.

The Chair: Sure. Go ahead.

Mr. Stephen Woodworth: I want to go back to Mr. Head to see whether he has an answer to my question about the additional money the minister was talking about, over and above $34 million.

Do you know what other department or what other spending the minister was talking about?

Mr. Don Head: To be honest, I'd have to defer to the Minister of Justice on that.

Mr. Stephen Woodworth: I had another question—

The Chair: Your time is up.

Ms. Boivin.

● (1040)

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair. My questions are for Commissioner Head.

I have been hearing the figures since I began sitting on this committee and religiously reading the documentation provided, and I heard the minister's speech, to which you refer in the report you have tabled and in your comments.

The cost of Bill C-10 for the federal government will be $78.6 million. You estimate your needs at $34 million in new funding to manage the consequences of this bill. I am also looking at some reports according to which the costs for Correctional Services Canada have increased from $1.6 billion in 2005-2006 to $2.98 billion in 2010-2011, which equals an 86% increase. This figure is even expected to double. I am trying to reconcile all these figures.

How can you tell us today that Bill C-10 will cost you $34 million? You are talking about consequences. What consequences are you referring to? What have you seen, since 2005, in terms of increased costs for services?

[*English*]

Mr. Don Head: In terms of the larger figures you refer to, the most significant increase in our budget has come as a result of the tackling violent crime bill and the bill regarding the two-for-one sentencing. That's where we saw the largest increase in our budget, both on an operating cost level and a construction level. We have about 37 living unit construction projects under way across the country.

Relating to Bill C-10, as you know, there are a number of bills in there. There are two sub-bills, I guess we'll call them, that have direct impacts on CSC: one is in relation to the sexual offending piece, and the other is in relation to what was previously referred to as Bill S-10, the drug piece. When I refer to the $38 million, it's in relation to the implementation of those two subsections of Bill C-10.

The cost for us is the anticipated increase of the offender population for the sex offending piece, which we're estimating at its peak would probably be around 164 more inmates, on an ongoing basis, per year.

With regard to the costs associated with Bill S-10, because we provide community supervision for provincial offenders where there is no provincial parole board, a significant amount of that cost is for individuals who may get parole and we have to do the case preparation and the supervision of them. Those are our costs with that piece.

As for the rest of it—the previous question from a member was about the difference between the $38 million and the other $70 million—that's not related to the Correctional Service of Canada. As I said, I'd have to defer to the Department of Justice for the breakdown of those costs.

Ms. Françoise Boivin: Am I to understand that your $30 million is not included in that $70 million the minister was talking about—or is it?

Mr. Don Head: It is. Just so I'm clear, that $38 million is part of that $70 million.

Ms. Françoise Boivin: Okay, excellent.

[*Translation*]

Do you see a potential consequence? For example, I talked to some correctional officers who were greatly concerned. They anticipate an increase in the number of offenders in the system and they feel this is a problem for them.

We often talk, and rightly so, about victims. We talk, rightly so, about punishing offenders. That said, we are forgetting about those who work inside those walls, those for whom you are responsible and who fall under your jurisdiction, and those are the officers responsible for these inmates.

Are you considering making some changes if the prison population increases? We know that, with regard to women's prisons, there are enormous difficulties. Have you made provisions for such measures? Have you already considered the problem this would mean for your services?

● (1045)

[*English*]

Mr. Don Head: That's a very good question. This is something I engage with our six unions about on a regular basis. The strategy has multiple facets to it, including looking at training and equipment for staff from a safety perspective.

The biggest piece for us, and it's one that's been mentioned, is ensuring we have the right programs—the interventions, education programs, and employment skills opportunities for offenders so we engage them and keep them busy. If we keep the offenders busy, the issues around safety are diminished.

One of the key things for me in terms of implementing Bill C-10 , or any other bills that come forward, is making sure we have the appropriate interventions and programs in place to give offenders opportunities. If they're engaged and busy, safety is not a concern.

The Chair: Sorry, your time is up.

I would like to thank the panel for being here today.

Hon. Irwin Cotler: Mr. Chairman, I have a point of privilege I would like to raise.

The Chair: Then we'll excuse the panel.

Hon. Irwin Cotler: I'd like it to be in the presence of the panel, because it's an important point and it relates to the panel.

This is our first meeting of this committee. I think we have an obligation, regardless of what party we represent, to treat witnesses with respect. We should not characterize any witness as being an advocate for crime or criminals. That's prejudicial to the witness and to their testimony.

I hope we will refrain from such characterizations in the future.

The Chair: Thank you.

The meeting is adjourned.

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