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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): We'll call the meeting to order.

This is meeting number 15 dealing with 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're doing clause-by-clause consideration.

However, before we begin that, there are a couple of committee business items. Tomorrow our regularly scheduled meeting is at 8:30, and the clerk says we have to meet at 7:30 or not at all. So I decided we wouldn't meet.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I'd move for not at all.

The Chair: Because we've put in our hours, and more than our hours, this week, there will not be a meeting tomorrow morning.

Mr. Jack Harris (St. John's East, NDP): I think I can agree, without any sense of guilt or dereliction of duty on behalf of myself and all of our colleagues. I think we've put in our share of time on this committee this week and last.

The Chair: Thank you.

Mr. Harris has indicated he has a....

Mr. Jack Harris: I have a motion for which notice has been given. It reads:

> That, pursuant to Standing Order 81(5), the Committee consider the Supplementary Estimates (B) 2011-12 under JUSTICE, and that the Committee invite the Minister to appear on or before December 1, 2011.

I submit that.

The Chair: I believe there is an error in the French version that has been corrected.

Mr. Jack Harris: I have changed the French version on the one submitted to the clerk to read *le 1er décembre*.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Mr. Chair, what is the last day we can consider supplementary estimates before the expiry? How many days do we have?

Mr. Jack Harris: That may be the last day. That's why it's "on or before". That leaves at least two meetings next week when we can do that.

Mr. Brian Jean: That's what I'm wondering, first of all. And also, of course, we have no idea of the availability of the minister at this time, so we'd have to consult before we could deal with any of this.

Mr. Jack Harris: We left that time available, but ministers traditionally make themselves available for committee estimates.

Mr. Brian Jean: Absolutely.

Mr. Jack Harris: That's been the convention of Parliament.

Mr. Brian Jean: Can I just suggest that, first of all, we find out what the last day is that the minister can come and give evidence, because obviously that's extremely important, and secondly, that the parliamentary secretary have an opportunity to talk to the minister's staff to find out what days he is available? Then we can deal with it on that basis and maybe table this at the next meeting.

● (1535)

Mr. Jack Harris: The minister may be available on Tuesday. We may be dealing with this on Tuesday. I would suspect that to be the case, in fact. I believe December 1 is the last day we can consider these estimates, lest they're deemed reported or something like that.

Mr. Brian Jean: Reported, absolutely.

Mr. Jack Harris: So if we're going to be able to do that, we're not going to meet tomorrow. It's too short a notice for the minister, in any event. That makes it available for either Tuesday or Thursday of next week, which should be adequate.

The Chair: I think Mr. Goguen has a comment.

Mr. Robert Goguen: I've just been advised that these supplementary estimates were in fact presented by court administration and prosecution services, so it wasn't directly from the Department of Justice. So I don't think it would be the minister who would be called to come and appear in this instance.

The Chair: Just a minute. I think we're talking about different things. This is for the supplementary estimates.

Mr. Robert Goguen: This is just what I've been advised. You heard me correctly.

The Chair: Mr. Harris.

Mr. Jack Harris: I don't think it matters who prepared them. It's under the purview of the minister. He can bring officials with him if he wishes, but my understanding of our system is that for the response from the government, the minister is responsible to the House and to the committee for the estimates.

This is brand new to me. It has been my experience in parliaments that the minister comes, and if he wants to bring the person who prepared those particular estimates to deal with the technicalities of it, then that's quite all right. But estimates have traditionally been an open-ended opportunity for questions to be asked of the minister on the department's activities.

The Chair: Mr. Goguen.

Mr. Robert Goguen: We're going to speak to the minister and get a little bit more clarification. I wonder if this could be deferred until such time as we have a clear indication of what....

Mr. Jack Harris: We could suspend for the consideration of it. I'm just a little concerned here because we're not going to have a meeting tomorrow. Our next meeting will be Tuesday. If they want to stand down for five minutes while the minister is conferred with or the minister's office is conferred with, I'd be happy to do that, but we can't do both.

The Chair: Mr. Jean.

Mr. Brian Jean: I was going to mention, I don't know if we received the normal 48 hours' notice. Did we?

The Chair: Yes.

Mr. Brian Jean: When did we receive the notice?

Mr. Jack Harris: Monday night.

The Chair: Monday.

Mr. Robert Goguen: The best that we've determined is that, yes, the minister would be willing to appear, but also there were presentations done by court administration and prosecution services, so officials from both of these arms would have to appear as well.

The Chair: Mr. Harris.

Mr. Jack Harris: As long as it's the minister.... I don't care who he brings with him, as far as I understand.

Mr. Robert Goguen: So we would support it.

The Chair: Okay. The motion is then presented.

(Motion agreed to)

The Chair: Mr. Cotler indicated....

Hon. Irwin Cotler (Mount Royal, Lib.): Yes. Thank you, Mr. Chairman.

As I mentioned to you, I have what might be called, I hope, a friendly precautionary point of order arising from the discussion that took place yesterday, and it was actually during a part of the discussion that I had to be in the House, so before we return to our clause-by-clause review I'd like to reference it.

I believe it arose in part because one of the witnesses innocently, though somewhat maybe incorrectly, contributed to the deliberations leading to an outcome that I think this committee should appreciate in a certain way. I ask the indulgence of all parties because I know that the sequence is out of place with our plan for today, but I'm bringing it up at the outset now so that if there is some merit to what I am saying, members can consult with whomever they wish during the course of the day, during the break, and maybe at the end of our deliberations we can in fact act on it.

The problem, as quickly as I can illustrate this, Mr. Chairman, arose in yesterday's discussion of clause 103 on page 59, wherein the English version says, “sexual exploitation of a person with a disability” and the French says

[*Translation*]

"*personnes en situation d'autorité*"

[*English*]

I know this was discussed yesterday, but the problem we have, Mr. Chairman, is that on page 102 of the bill, which is schedule 2—and we have yet to get there, so I'm doing this by way of anticipation, but it connects—the English refers in the same way to the section of the Criminal Code in section 153. But in referring to the same section of the code in French, it says

● (1540)

[*Translation*]

"*personne qui est en situation d’autorité ou de confiance vis-à-vis d’une personne ayant une déficience*"

[*English*]

In other words, the French is clearly different in the French text later on in this same bill.

I realize, as it was pointed out yesterday, Mr. Chairman, and I sought to follow it carefully, that these are section headings and that they themselves have limited juridical application by virtue of the Interpretation Act, as my Conservative colleague correctly pointed out yesterday.

We cannot have really two different ways of interpretation in English and French in this manner. Either the English is inaccurate or the French is inaccurate, and either it is wrong in one section or both.

I would like the government to look into this and decide which wording it finds acceptable, so at least we may report a version of the bill without an internal inconsistency in the bill.

Mr. Chairman, this is where I must bring up the issue of what was said yesterday during the discussion by one of the witnesses. My colleague from the NDP, Madam Boivin, stressed that it was important to have the English and the French match. Mr. Jean and others pointed out, correctly again, that we can't change the Criminal Code and that is not the legislation before us.

However, the comments from the witness, and again I know that it was meant and stated in an inadvertent contributory manner, implied that we couldn't in our reference to it change the text used to refer back to the section of the Criminal Code in question, in this case section 153, or, in other words, the impression that members may have had—and it would be the kind of impression one could have—was that these margin notes were phrases fixed in the Criminal Code, and that we were stuck with them as they were, and that was because the Criminal Code was not before us.

Mr. Chairman, herein lies the problem. Subsequent references to section 153 in the Criminal Code itself, in French, all of which use the same English as we have, use a different French than we do, namely the words as I said,

[*Translation*]

"*exploitation d'une personne handicapée à des fins sexuelles*"

[*English*]

It is a different French from the one we have. As such, Mr. Chairman, the witness may have been incorrect in implying to the committee that such phrases are set in stone, that they are frozen in the Criminal Code, and that therefore Madam Boivin was incorrect to suggest that we change the French to accommodate the reference in English to section 153.1 of the Criminal Code. Indeed, if Madam Boivin succeeded in changing the reference in French from

[*Translation*]

"*personnes en situation d'autorité*" to "*exploitation d'une personne handicapée à des fins sexuelles*",

[*English*]

the bill would in fact be more consistent with what is now in the Criminal Code already, and such a change would not only be completely permissible but I would say desirable.

Mr. Chairman, let me be frank. I doubt that even if Madam Boivin had put forth her amendment it would have succeeded in the manner in which we are proceeding on the votes, but the government may want to consider this as we near the end of our study.

I looked at this last night. I looked at both the English and the French, and I was asking myself why there is such a large difference between the margin notes for section 153.1 in English and in French. I want to suggest to you, Mr. Chairman, and to the committee that the reason is that in English one casts it in the language of the victim and in French one casts it in the language of the accused. This need not be problematic in and of itself.

While I think generally the Department of Justice might move to reform and consolidate the Criminal Code and remove such seeming discrepancies, we should ask ourselves today whether we can make a decision on how to eliminate this inconsistency with respect to the two English references in our bill and with respect to the two references in French in our bill, and of course between the then discrepancy between the English and the French.

In conclusion, Mr. Chairman, I don't think there needs to be disagreement on this point. When we break later for dinner, for example, I'd be happy to informally discuss this. I know it's difficult to understand all that I've now said because it may involve some sort of technical appreciation and referencing and going back and forth.

The only point I would like to make is that it would seem to me that it would make sense to align the two English references to section 153.1, which speaks of "sexual exploitation of person with disability", with the French use,

● (1545)

[*Translation*]

"*exploitation d'une personne handicapée à des fins sexuelles*",

[*English*]

which reflects the language found in at least three different places elsewhere in the Criminal Code. It's not as if it's frozen in the Criminal Code, as we now have read it in section 153.1, and it can't be changed because the other references in the Criminal Code change the language in a way that allows the making of a uniform application of both.

I would say it's within our scope to make this change, and I'd like us to at least have consistency between the two references to the same section in French and in English, and to have the committee be aware that we do have the authority to select this wording, and that when we report it out we could have a consistency between the English and the French, Mr. Chairman.

The Chair: Thank you, Mr. Cotler.

Mr. Goguen.

Mr. Robert Goguen: Mr. Cotler brings up some valid points, and certainly we'll take them under advisement, but we don't propose to deal with them at this stage of the proceedings. Certainly we have dealt with that earlier, and it's not to say something may not come of it. We'll examine it certainly in detail, but we have to pass the remainder of the clauses that have not yet been reviewed, and there are a number of them that may be somewhat lengthy.

Hon. Irwin Cotler: Mr. Chairman, I agree. I'm not saying that we should deal with it now. My whole point was just that we should be aware of it now so that we might think about it during the day, because there are some things that I raise that may not be as clear as they could be when one has a chance to look at it and discuss it, and over dinner sometime I'd be open to any type of further sharing of this.

Mr. Robert Goguen: Mr. Cotler's points are well taken. Thank you.

Mr. Jack Harris: I have no problem with it, other than obviously that we didn't have the full information last day, but we think the focus today is on the remainder of the bill.

The Chair: Ms. Kane.

Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): If it's helpful to the committee to know this, we did follow up with respect to that issue of yesterday. We spoke to our legislative drafters. I can provide you with a little bit of information now that might be of assistance. But as Mr. Goguen says, we will follow up on this and ensure that when the opportunity arises, the proper versions can be changed, if that's possible.

I would like to reiterate, though, that legislation is drafted in English and in French separately; one is not a translation of the other. This provision in clause 103, referring to the sexual exploitation of persons with disabilities, was enacted in 1998. The marginal notes that were included in the French and the English versions, as noted by Madame Boivin yesterday and Mr. Cotler today, basically take differing perspectives. One describes it from the perspective of the victim and the other from that of the offender.

That is the way the marginal note appears in the Criminal Code now and has since 1998. That is the way that Parliament enacted it then. The marginal note does not provide part of the interpretation for the provision; it's the offence, and the offence is indicating the exact same elements in English and in French. They're not a direct translation of each other but contain the exact same provisions.

We are not able to change the reference in this bill as it refers to that in the Criminal Code, because that is what the Criminal Code says in the marginal note. If we had an ability to change the marginal note in the Criminal Code in another statute, our drafters have indicated that we would have to be amending that provision; we can't simply amend the marginal note. We would also have to go through and determine where else that provision had been referred to with the same marginal note in brackets in both languages. We would have to do a more thorough examination of where that provision appeared.

The other thing I would note is that to our knowledge, the fact that it's characterized one way in the French version and another in the English in the marginal note has not caused any problems of interpretation. None has been brought to our attention.

Concerning Mr. Cotler's point with respect to how that same provision is referred to in the schedule, relating to what was previously Bill 23-B, in our view it probably could be corrected, because that is not the way the Criminal Code refers to that provision. For internal consistency, it may well be possible that the French version could line up with the other French version as noted in clause 103, for the sake of internal consistency.

I realize this doesn't address your primary concern about the two languages taking a different perspective in the marginal notes, but it would address the internal inconsistency.

● (1550)

The Chair: Thank you, Madam Kane.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): I will be brief, because I just want to correct one thing Mr. Cotler said earlier.

In fact, we were not discussing the substance and we did not propose one option rather than another to the committee. We simply pointed out the error that seemed to us to be obvious, this inconsistency between the language versions, but we did not choose an option. We did not suggest one solution rather than another. What we did was try to see whether we could not immediately correct something that seemed to present a problem and see which side to come down on.

I also did a little research last night and confirmed that this had not actually had any consequences. In fact, it was the first time someone had noticed it. I do note that you are going to take the action that may be required in the necessary context.

[*English*]

Ms. Catherine Kane: Sure.

[*Translation*]

Ms. Françoise Boivin: This may come up another day, some other time in another amendment proposal, to correct the form. It does not create a problem of substance.

[*English*]

The Chair: Thank you.

We will resume our study of clause-by-clause.

We're at clause 206, and I believe the NDP—

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): It's clause 205.

The Chair: I'm sorry.

We're at clause 205.

Mr. Harris.

(On clause 205)

Mr. Jack Harris: Clause 205 is the introductory clause to the Immigration and Refugee Protection Act. The purpose of the act being amended is "to protect public health and safety and to maintain the security of Canadian society".

We don't have any major objection to this particular amendment, but we do have a problem with the amendments to that act and we will deal with them as we go through. I'll just say at the outset that we're concerned that the Immigration and Refugee Protection Act changes were initially designed, or at least the government's intention was announced that the purpose of this was to protect applicants for work permits in Canada from potential exploitation.

Our view is that the way to protect foreign workers from exploitation is to ensure the laws within Canada that should be protecting workers ought to be robust and enforceable. The perceived wrong was really about a political response to something that happened in Toronto back in 2006, with the potential for issuing work permits to strippers—or exotic dancers, I think is the term that's used for certain people entering into Canada for that purpose—and the potential abuse of the law. The reality, of course, was that there were apparently only four permits given in the year this was raised as a political issue. So this seems to us to be a political response.

The real objection to the changes comes in the broad nature of the instructions that are essentially non-transparent and give untrammelled discretion to the minister to issue instructions in relation to this matter with respect to work permits—not only instructions that may be given by the minister, but instructions that would not necessarily be public.

They won't be in regulations. They wouldn't be gazetted. They wouldn't be made public. And it could happen by the minister's own issuance of same. The instructions still offer the opinion of the officer as to what the minister's instructions are, as opposed to an evidence-based decision.

In our amendments we are also proposing some independent evaluation of those, as we have done in other sections of the act. I understand there may be some rulings about that, but we will be able to nevertheless demonstrate that what we seek is to improve this legislation. If it cannot be improved by adding some independent adjudication or clarity with respect to what instructions we're talking about here, we would therefore be opposed to them.

Having said that, Mr. Chair, we will support clause 205. I don't know if my colleagues want to say anything else.

● (1555)

The Chair: Thank you, Mr. Harris.

I'm not sure you're right on the reason for the bill, but I think you're wrong on the date. I think it was somewhere in 2004 or 2005.

Having heard the intervention, shall....

Mr. Cotler, I'm sorry.

Hon. Irwin Cotler: I have a small point, Mr. Chairman.

Maybe I shouldn't be staying up at night reading these things, but this clause starts the section by modification to the Immigration and Refugee Act, and in particular the clause specifies the objectives of the act, which includes in (h) to protect the health and safety of Canadians and to maintain the security of Canadian society.

The change adds the word "public" before "health", and I have no problem with that, but it removes the words "of Canadians". So now it reads "to protect public health and safety"—removes the words "of Canadians"—"and to maintain the security of Canadian society".

Now it may be that the words "of Canadians" didn't mean anything initially and therefore their removal doesn't mean anything now, but I was struck by the fact that they were removed. I am going to ask the witnesses if they could assist us in why they might have been removed, and maybe there's no consequence to the fact that they were.

[*Translation*]

Mr. Philippe Massé (Director, Temporary Resident Policy and Program, Department of Citizenship and Immigration): Good afternoon.

[*English*]

The intent of the removal of "of Canadians" was to make the objective not specific to Canadians but to any person who would be present in Canada. So it's to actually make it more general, to include both Canadians and any foreign person who would be here temporarily.

Hon. Irwin Cotler: Mr. Chairman, I have no problem with that. I thought that's what it might have intended, but I think we should know, because that does change the scope of the act just by removing those two words.

That's all.

The Chair: Thank you, Mr. Cotler.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Actually, I was going to attempt to answer Mr. Cotler's question. The officials have done that, and I agree that it does broaden the protection offered by the act.

The Chair: Thank you.

(Clause 205 agreed to)

(On clause 206)

The Chair: Mr. Harris, I believe you have an amendment, NDP-56.

Mr. Jack Harris: Yes. Amendment NDP-56 amends clause 206 on page 101, by replacing lines 8 to 10 with the following:

> the refusal is justified on the evidence and by the public policy considerations that are specified in the instructions given by the Minister.

The Chair: Now, do you want to move the other two motions? If you do, I have some comments.

Mr. Jack Harris: They are on the same clause, I guess, so perhaps I should do that, so that we can speak to all three of them, as we did yesterday when we were doing this.

NDP-57 adds after line 13 on page 101 the following:

> A foreign national who is refused authorization to work in Canada in accordance with this section shall, on application, be given a hearing, conducted by an independent adjudicator appointed by the Minister, to determine the merits of the refusal and, if the adjudicator is satisfied that the refusal is not justified, he or she may authorize the foreign national to work or study in Canada if the conditions referred to in subsection (1.1) are met.

NDP-58 replaces line 19 with the following:

> Before instructions are given by the Minister in accordance with subsection (1.2), the Minister shall submit, for approval, any proposed instructions to the Standing Committee on Citizenship and Immigration of the House of Commons or, in the event that there is not a Standing Committee on Citizenship and Immigration, the appropriate committee of the House. The instructions, once approved, shall be published in

And the follow-up is the *Canada Gazette*.

● (1600)

The Chair: Thank you, Mr. Harris. I do have a ruling for you on NDP-57. Part 5 of Bill C-10 amends the Immigration and Refugee Protection Act to allow officers to refuse to authorize foreign nationals to work in Canada in some cases. This amendment seeks to amend the bill so that the minister would appoint an independent adjudicator who would conduct a hearing to determine the merits of a refusal.

The *House of Commons Procedure and Practice*, second edition, states at pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the appointment of an independent adjudicator would entail expenses not currently provided for and would require a royal recommendation. Therefore, I rule the amendment inadmissible. That's on NDP-57.

On NDP-58, part 5 of Bill C-10 amends the Immigration and Refugee Protection Act to allow the Minister of Citizenship and Immigration to give instructions regarding considerations taken into account by officers when refusing to authorize foreign nationals to work in Canada.

This amendment proposes to seek parliamentary approval for the instructions. As the *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, seeking approval of the instructions by a committee of the House is a new concept beyond the scope of Bill C-10. It is therefore inadmissible.

Mr. Harris, do you wish to speak to NDP-56?

Mr. Jack Harris: Yes, I do, Chair.

I'll be speaking for about five minutes, and my colleague will speak after that. I'm going to put my stopwatch on and try to keep track of the time, although I know we're being a little bit flexible.

I will point out that these amendments to the Refugee Protection Act were first introduced in 2007. That is the year I was referring to earlier. You may be correct that the incidents we talked about happened earlier, in 2005. In 2006 the Honourable Diane Finley, who was then Minister of Citizenship and Immigration, announced the amendments to the act to help prevent, as she said, vulnerable foreign workers, including strippers, from being exploited or abused.

From the background information I have there were actually only four individuals in 2006 who were given permits to enter Canada as exotic dancers. So I don't know how big a problem we're trying to identify here to deal with. If it's specific to that, the wording itself is extremely broad, if we consider that as being the stated purpose of the legislation.

We have a concern here that the government has used this as an opportunity to significantly broaden the powers of the minister, as well as the immigration officials who have to make determinations. The Canadian Bar Association, for example, stated that the undefined scope of the legislation and the potential applicability to any work permit or any situation is a matter of concern. The conflict between the public statement focus on exotic dancers and trafficked persons and the unrestrained language of the legislation is an obvious incongruity that begs explanation.

A whole series of questions are outlined in the brief of the Canadian Bar Association as concerns that the minister is being given an opportunity to give very broad instructions that will not be seen by anyone before they are put into effect. They do get published eventually in the *Canada Gazette*, but they're not subject to any parliamentary scrutiny beforehand. Hence there's our suggestion in another amendment, which was ruled out of order, that this be given the appropriate parliamentary oversight.

As I said at the outset in talking about clause 205, if the purpose is to protect people from being exploited in Canada, the laws of Canada should protect them. We want to see greater protection for workers. People who come to Canada to work in general are often in vulnerable industries. Exotic dancers are obviously the clear exception to this, but there are many industries, whether it be the textile industry.... Sometimes it's a situation where a family might have them come to work and they don't necessarily have language skills. There is an awful lot of opportunity for vulnerable workers to be exploited within Canada.

The solution is not to prevent workers from coming. They may be necessary workers in Canada. If the working conditions themselves are potentially exploitive or bad, the answer is that there has to be better protection for workers by having strong Canadian laws to ensure that workplaces are not unsafe; that workers are not able to be exploited; and that the enforcement is sufficient to ensure that people cannot and will not be exploited if they come to Canada to work.

● (1605)

So we don't believe in the broad nature of this. We don't think the minister ought to be given this broad power to issue instructions that then become a separate code under which the opinion of the immigration officer is given effect.

My colleague Madam Boivin would like to use the remainder of the time.

The Chair: I believe there are about three minutes left.

[*Translation*]

Ms. Françoise Boivin: That is fine, Mr. Chair.

[*English*]

The Chair: You used up two of them in your opening.

[*Translation*]

Ms. Françoise Boivin: That is fine, since in any event Mr. Harris has addressed the main elements of the objections that prompted us to propose this amendment.

Once again, I want to clarify something. Sometimes, people think we introduce a few amendments just for the joy of introducing them. But when we look at what the amendment adds and combine it with the section as proposed by the government, it gives the following text: "Despite subsection (1.1), the officer shall refuse to authorize the foreign national to work in Canada if the refusal is justified on the evidence and by the public policy considerations that are specified in the instructions given by the Minister."

The only thing we are adding is from the standpoint of natural justice and with that objective. I think that in Canada's characteristics, questions of natural justice are still important. We are simply adding the worlds "on the evidence and by the public policy considerations", this is the only addition to this clause we are proposing. It seems self-evident to me. When a decision is to be made in a situation like this, in addition to public policy, the evidence has to be included in the instructions given by the Minister. Therefore, in terms of the evidence needed under clause 206, there has to be...

Once again, this is not something cosmic, it does not completely change the system, it will not shake Canada to its foundations. If we are really going to protect exploited people, we want a hearing to be held. It has to be based on the evidence that would be presented to the officer who is to make the decision. That is self-evident.

I am also sorry that we could not be talking about an independent adjudicator. It seems that this would change the effect of the bill. For an officer to make a decision that is then reassessed by an officer in the same department seems to me to be a somewhat redundant and not particularly transparent situation.

So in other words, I bow to the decision by the committee chair, who I would also note is doing a good job. It is not easy to do what we are doing here and it is less easy still for the committee chair.

This is not a huge amendment. It is being presented simply to provide clarification. It is covered by the completely reasonable principles that apply to administrative law and fairness.

● (1610)

[*English*]

The Chair: Thank you, Madam Boivin.

(Amendment negatived)

(Clause 206 agreed to)

The Chair: On clause 207, I do not see any amendments.

Mr. Harris.

Mr. Jack Harris: Clause 207 relates once again to the instructions.

The Chair: I believe we will suspend now that the bells are ringing. We will come back to clause 207 as soon as the vote is finished.

● (1610)

(Pause)

● (1700)

The Chair: We'll resume the committee meeting now at clause 207.

Mr. Harris, the chair had recognized you.

(On clause 207)

Mr. Jack Harris: Thank you, Mr. Chairman.

We are now dealing with clause 207, which also talks about the issue of instructions, so I'll speak to that more broadly. We do have, as I indicated, a great number of problems with that. The instructions, as to what's going to happen here and the scheme that's established using these instructions...it makes it very difficult for the public to examine it and to understand what's going on.

The Canadian Bar Association said they wrote the ministry looking for an example of the proposed instructions, or the kind of criteria that would be used to instruct officers. They received no example in response, and they were very concerned about that.

Again, they said what I said earlier. The focus should be on ensuring that working conditions for newcomers in Canada are appropriate, safe, and non-exploitative, and ensuring that the criminal laws are strictly enforced against those who exploit vulnerable people.

We're talking here about the exploitation of women, perhaps in keeping with some of the other concerns about women being exploited for sexual purposes. But again, there were expert witnesses, people who provided testimony on previous occasions. For example, at the Citizenship and Immigration Committee on January 30, 2008, Professor Leslie Ann Jeffrey of the University of New Brunswick stated as follows:

> It is very problematic that Canada would choose to address the issue of potential exploitation of migrant labourers by attempting to stop their legal migration rather than addressing the conditions of work. Trafficking most often occurs in precarious forms of labour that are unprotected by labour laws, government oversight, and union organization.

The fact that they're working in vulnerable sectors is what gives rise to the concern here, and the response.... Instead of depriving these migrant workers of an opportunity to work in Canada—they may be in vulnerable sectors, but they're also sectors where it's very difficult to get Canadian workers. That's why they're given work permits in the first place, because these workers are necessary to the economy or to the enterprise that is looking for them, and because they wouldn't qualify if Canadian workers could be found to fill those jobs. It is an opportunity for migrant workers to have the chance to enter Canada for work purposes—and we're talking about legal migration. In order to fix the problems, the focus should be on fixing the labour laws themselves.

There was another concern raised by Ms. Janet Dench, who was the executive director of the Canadian Council for Refugees and also testified on the previous iteration of this, Bill C-17. On January 30, 2008, at the same meeting of the Citizenship and Immigration Committee, and she said:

> Not only does [this legislation] fail to protect the rights of trafficked persons already here in Canada, but furthermore its approach is condescending and moralistic. It empowers visa officers to decide which women should be kept out of Canada for their own good.

Once again, the concern here was raised by the Canadian Council for Refugees, which, through another witness on the same day, said that the main objective of anti-trafficking legislation must be to protect the human rights of trafficked persons, and that the bill doesn't do that.

There's a whole series of aspects of this bill that we are trying to improve upon by making amendments, some of which have unfortunately been ruled out of order. But the point is that we don't believe that this bill adequately addresses those concerns.

It fails to provide an opportunity for parliamentary oversight of the instructions in order to be able to determine through parliamentary debate—committee or otherwise—what the effect of those instructions could be, and frankly, it fails to be concerned that the application of this particular provision is actually aimed at the objectives that were proposed, and not used for some other reason, as raised in the concerns of the Canadian Bar Association—the unfocused and awfully broad statement of whatever instructions under public policy that the minister might choose to give.

● (1705)

Those are my comments, Mr. Chair.

The Chair: Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin: Similarly, I was struck by what appears in the brief from the Canadian Bar Association. The Bar Association is clear on this point. You will also note that this is not the first time the government has addressed the subject. The brief says:

> The government's Press Release and Backgrounder dated May 16, 2007 ("Canada's New Government Introduces Amendments to Deny Work Permits to Foreign Strippers"), indicates that the intention of the Bill is to prevent entry of "strippers" (exotic dancers) and other "vulnerable" applicants, including "low skilled labourers as well as potential victims of human trafficking." "The instructions would be based on clear public policy objectives and evidence that outlines the risk of exploitation [foreign worker applicants] face."

As the Canadian Bar Association so aptly puts it:

> Despite the government's stated purpose for introducing the Bill, neither exotic dancers, nor victims of human trafficking, nor low skilled workers are mentioned in its terms. The Bill authorizes an officer to refuse an otherwise valid work permit to *any worker*, in *any* occupation or industry, subject only to (as yet, undisclosed) Minister's instructions.
>
> Foreign worker applicants do not exist in a vacuum. For every applicant there is a corresponding employer in Canada who has offered employment and who will be affected by refusal of the work permit. In most cases the employer has applied to Human Resources and Social Development Canada (HRSDC) for a Labour Market Opinion (LMO).

The Canadian Bar Association's concerns are clear and I agree with them.

I think this clause may seem fine on paper. However, it leaves so many vague and nebulous points that it will be extremely difficult to be sure that the objects of this bill will be achieved.

Those were the comments I had at this stage.

[*English*]

The Chair: Thank you, Ms. Boivin.

(Clause 207 agreed to on division)

(On clause 208—*Order in council*)

● (1710)

The Chair: Mr. Cotler, you have an amendment here. If you'll introduce it, I will give you a ruling on it.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

My amendment is really of a perspective, precautionary character. It basically seeks to recommend the following:

> 209. Before the coming into force of this Act, the Minister of Justice must
>
> (a) conduct a review of the Act to ensure it is not inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and to recommend that any provisions that may be at risk of breaching the *Charter* be amended or repealed, as the case may be; and
>
> (b) initiate discussions with the provincial and territorial governments to
>
> (i) address the issue of prison overcrowding, and

I might add, parenthetically, Mr. Chairman, that yesterday the Commissioner of Corrections raised the issue of prison overcrowding and double-bunking as a potential constitutional concern.

> (ii) ensure that the implementation of the Act is conducted in the most cost-effective and cooperative manner possible.

And the final part of this amendment, Mr. Chairman, recommends that a crime reduction board be

> established...with a mandate to
>
> (a) promote cost-effective ways to reduce crime, prevent victimization, enhance community safety and strengthen services for and rights of victims of crime;
>
> (b) gather, analyze and disseminate information about cost-effective ways to prevent crime and improve services for victims of crime;
>
> (c) develop national standards of practice and provide training in the area of crime prevention and of services for and rights of victims of crime; and
>
> (d) collaborate with the provincial and territorial governments to provide funding to local governments and community organizations in the area of crime prevention and of services for and rights of victims of crime.

Mr. Chairman, this is really in accordance with the overall objectives and purposes of the act that relate to matters of crime prevention, services to victims of crime, reduction of crime, and the like, and it borrows from a recommendation of one of our witnesses, Professor Irvin Waller, that such a board be established.

And in the matter of asking the minister to revisit the legislation to see if it comports with the Canadian Charter of Rights and Freedoms, as a former minister I understand that the minister did this initially. I'm just saying that in light of witness testimony, I made that recommendation.

The Chair: I have a ruling for you with respect to your motion, sir.

The amendment attempts to introduce the concept of a crime reduction board that would review the act. As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of a crime reduction board is a new concept that is beyond the scope of Bill C-10. Furthermore, the amendment would entail expenses not already provided for and would require royal recommendation. Therefore, the amendment is inadmissible.

But you're welcome to debate the amendment.

Hon. Irwin Cotler: I appreciate what you've said, Mr. Chairman. I anticipated that you might indeed say that, so I wanted to put this recommendation on the record.

I'd like the government to consider it because they're the ones who have the spending power and they can authorize such an initiative. As I said, this came from the witness testimony of Professor Irvin Waller and others.

I think it dovetails with the overall objectives and purposes of Bill C-10. I believe it would serve the objectives and the interests of Bill C-10 regarding crime prevention, services to victims of crime, federal-provincial cooperation, and a more effective and cost-efficient mode of proceeding. At the end of the day, this would be a positive initiative the government might seek to initiate, since I realize in terms of my initiatives I'm limited in doing so.

The Chair: Thank you, Mr. Cotler.

Is there any further discussion?

Mr. Harris.

Mr. Jack Harris: This is clause 209 we're now debating, is it?

The Chair: Clause 208.

Mr. Jack Harris: Oh, there is no clause 209. The proposed amendment to clause 208 is to add new clauses 209 and 210.

The Chair: Yes.

Mr. Jack Harris: Okay. Well, I'll refer to clause 208 and use that as an opportunity. It talks about the coming into force of this particular part, which is really about immigration and refugee protection. There is an opportunity, of course, to refer to the coming into force of this part of the act, and the act itself is something that concerns us and concerns me.

I'm glad to hear that Mr. Cotler has discussed the possibility of a crime reduction board of Canada, as proposed by Professor Waller. We do know, of course, that it would require the government to take action on that.

But you know, in the context of this whole legislation and what we have before our committee, and the concerns often expressed by the government about victims, it strikes me that a government concerned about that would look seriously at, and would want to implement, a crime reduction board, because the whole purpose of a crime reduction board is to prevent the creation of new victims by the reduction of crime in our country.

So in fact the provisions, and the idea of these provisions, are to promote cost-effective ways to reduce crime; prevent victimization; provide services for victims and for the rights of victims; and to gather, analyze, and disseminate information so that decisions being made in the future would be made based on evidence and not simply relying on concerns that might be raised, which may be popular in some quarters, saying, we're going to be tough on crime.

But the evidence will show—and we'll be having an opportunity to debate that shortly—and almost all the evidence shows, that the methods proposed by this legislation aren't actually effective in doing that. So a crime reduction board for Canada would provide a mechanism—and to do it through analysis, research, and cooperation with provinces and territories—to find effective ways of doing that.

Because of our concerns about the changes being made to part 5 of the Immigration and Refugee Protection Act and the amendments proposed, we will be voting against that and would not wish to see that part 5 be implemented.

● (1715)

The Chair: Thank you, Mr. Harris.

(Clause 208 agreed to)

The Chair: Now we revert back to a few clauses that we had left to deal with tonight, beginning with clause 39. The NDP have a number of amendments and the Liberal party has one.

Mr. Harris, please begin.

(On clause 39)

Mr. Jack Harris: We're now, of course, not limited by time here, so we'll be able to be a little bit more expansive in expressing our concerns, not only about the specific clause or amendment, but about the aspects of the bill in general.

The first amendment proposes that Bill C-10, in clause 39, be amended by replacing line 3 on page 22 with the following:

> in Schedule I, is guilty of an indictable

First of all, I should say that these amendments deal with provisions of the Controlled Drugs and Substances Act, and on page 22, clause 39 replaces paragraph 5(3)(a) of the Controlled Drugs and Substances Act with a new paragraph.

We are seeking to change the first part of that, which is

> (a) subject to paragraph (a.1), if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an...offence and liable to imprisonment for life

Then we go on to talk about mandatory minimum sentences.

The first amendment relates to the deletion of schedule II, so that the paragraph would deal with substances included in schedule I but would leave out schedule II. The reason for that is that schedule II relates to cannabis and its derivatives, and we feel that by including all of these in the one section, we are treating drugs that are less serious and less harmful and less subject to the concerns that are raised often in society, in terms of addictions and harm to society and harm to individuals, along with the other more serious drugs or narcotics that are contained in schedule I. That's actually a concern in a lot of the provisions, because when we read down through the entirety of clause 39, there are significant penalties for possession and for what's called trafficking, and the definition thereof, along with all of the consequences in terms of mandatory minimum sentences.

It may make more sense to perhaps put all these amendments on the table, Mr. Chair. Is that a possibility for one section?

● (1720)

The Chair: Well, if you wish to move amendment NDP-5, I'll give you a ruling on that.

Mr. Jack Harris: Okay, well, let's take them as one.

Amendment NDP-4 is moved. Now I'll move amendment NDP-5.

The Chair: Okay.

Mr. Jack Harris: Amendment NDP-5 deals with lines 5 to 36 on page 22. It's a whole section having to do with minimum punishment of imprisonment for a term of one year for certain offences. We seek to replace that with the following:

> and the court shall consider the following factors, in addition to those set out in section 10:

—this refers to aggravating factors—

> (i) whether the person committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1 (1) of the *Criminal Code*,
>
> (ii) whether the person committed the offence in or near a school or on or near school grounds, or
>
> (iii) whether the person committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds;

So it seeks to make the qualifications for mandatory minimums... that the court would take into consideration as aggravating factors, instead of subject to the mandatory minimums.

The Chair: I'll give you the ruling from the chair.

Clause 39 of Bill C-10 amends the Controlled Drugs and Substances Act to provide for minimum penalties for drug offences related to trafficking. This amendment proposes to allow the court to consider certain factors while imposing a sentence, instead of imposing a minimum punishment provided for in the clause. As the *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, changing the intent of the clause is contrary to the principle of Bill C-10 and is therefore inadmissible.

Mr. Jack Harris: Thank you for your ruling, sir. I think having put the amendment, we wish to make our intention clear as to how we would approach these matters.

Amendment NDP-6 reads that Bill C-10, in clause 39, be amended by deleting lines 18 to 22 on page 22. This deals with previous offences within the previous 10 years.

Is that in order?

The Chair: That's fine, but if that one is adopted, then your NDP-7....

Mr. Jack Harris: Okay. I'll read NDP-7 anyway, and I think that will become a function of the votes later on.

The Chair: That's fine.

Mr. Jack Harris: If that one passes, we'll be happy.

NDP-7 was an alternative. We would change line 22 with the following: “previous two years, or”. That takes us to our first seven —those seven amendments.

The next one would be L-16, which I won't read, but we also have provisions to change in the event of a failure of our previous amendments. The amendments that relate to a school are, we think, far too broad and vague, and we would seek to reduce those. But I think I will wait until we debate Mr. Cotler's amendment L-16 before we get to ours. So I'll just leave those there for now.

I want to talk about why we made these changes, and about mandatory minimum sentences in general, because the first section here deals with mandatory minimum sentences of one year, and of two years in the case of certain offences, and five years less a day in other sentences. So the principle of mandatory minimum sentences can be discussed in relation to this particular section, and other sections as well.

I think one of the functions of the compromise agreement we made last Thursday was to allow for no restrictions on debate of mandatory minimum sentences, and these particular sections of the bill contain quite a few of them. We're very concerned about this move being made by government. We don't understand the rationale for it, or whatever rationale has been offered is not supported by any evidence that we've seen. In fact, the vast majority of what we heard about mandatory minimum sentences from the witnesses was pretty clearly opposed to the value of mandatory minimum sentences.

We did hear from the Canadian Bar Association on this. They only had a brief five minutes to make their presentation, and they didn't focus exclusively on this. But I do want to focus on this aspect of it because I think their comments deserve significant consideration by this committee. We had the Canadian Bar Association testify before us, and I think it's worth putting on the record that the Canadian Bar Association consists of lawyers across the country—I guess Canada outside of Quebec, because there's a separate organization in Québec called the Barreau du Québec, which also appeared before our committee and had a brief. I'll make some references to that as well.

I know my colleague, Madam Boivin, who is very familiar with the Barreau and their concerns and their views, and with the operations of the Quebec justice system and the Quebec bar, would no doubt wish to talk about this as well.

But if I may focus, first of all, on the Canadian Bar Association, when they come before committees of this House, they don't come as representatives of one section of the bar or the other. In other words, they're not just defence counsel and they're not just prosecutors; they represent the association as a whole. They do have a criminal justice section, and the criminal justice section is composed of those lawyers who have practised in the criminal bar. They represent prosecutors, they represent defence counsel, and they work very diligently to present a balanced view of the law to committees such as ours.

In my experience as a member—a former member, I guess now, probably a lapsed member at this point of the Canadian Bar Association, but a member for many years—of the Canadian Bar Association, and also having seen their briefs and attended some of their conventions, they're very determined to put forth a very balanced view of the law, particularly when it comes to criminal law, because they do represent both sides of the street, as it were, acting both in the interest of the rule of law and in the interest of justice. So when they speak, they speak with a voice that I think ought to be listened to.

● (1725)

They stated their comments about their concerns. In this case, they were reiterating their concerns about the amendments to the Controlled Drugs and Substances Act contained in Bill C-10. They said that public safety concerns could be better met with existing legislative tools, and that current law was adequate to meet the public safety concerns. They don't believe the bill would be effective. They believe it would be costly, would add to strains on the administration of justice, could create unjust and disproportionate sentences, and would ultimately not achieve its intended goal of greater public safety.

That's a fairly broad statement that leads one to ask why we are bringing in this legislation if the major group knowledgeable about the laws in Canada—those who appear in the courts daily representing the crown and accused persons—are saying that the tools are already there; that these changes are ineffective, costly, and would put strains on the administration of justice; and that they would create unjust sentences. That's a fairly strong condemnation of legislation that's before us now.

I spoke today about the thousands of people who are concerned about this bill. I have received in excess of 15,000 letters from Canadians across the country concerned about Bill C-10, and a lot of the concern has to do with the greater level of incarceration that will result from the mandatory minimum sentences, many of which are contained in the Controlled Drugs and Substances Act provisions. We have comments from the Canadian Bar Association to the effect that these mandatory minimums do not advance the goals of deterrence, particularly in cases of drug offences.

Some people think that by increasing sentences you're actually going to deter criminals from committing crimes. The CBA opposes the use of mandatory minimums in this situation because they don't believe it advances the goal of deterrence. They say that international social science research makes this clear.

They cite the government in the Department of Justice's 1990 book, *Directions for Reform*, which says that the "evidence shows that long periods served in prison increase the chance that the offender will offend again.... In the end, public security is diminished rather than increased if we 'throw away the key'".

That's a justice department book. Granted, it's somewhat dated, but that's been the consistent message of evidence and research throughout the years since.

The second problem is that mandatory minimums do not target the most egregious or dangerous offenders, who will, because of the nature of these criminals, already be subject to stiff sentences because they're committing more serious crimes. Often the less culpable offenders are caught by the mandatory sentences and subject to extremely lengthy terms of imprisonment.

This is particularly true in the drug situation, where we're picking up first-time offenders engaged in drug trafficking. They are the small potatoes. They're the ones who get hit with the mandatory minimum sentences. They're not the big players. You end up filling up the prisons, driving up the market price of drugs, and allowing the bigger players—organized crime, the criminal gangs—to take control over this situation. You end up filling the prisons with these other people.

● (1730)

The other thing they say is that mandatory minimums:

> have a disproportionate impact on those minority groups who already suffer from poverty and deprivation. In Canada, this will affect aboriginal communities, a population already grossly over represented in penitentiaries.

Aboriginal people represent more than one in five admissions to Correctional Services, as of 2004-05, and it's going to disproportionately affect them, according to the submission of the Canadian Bar Association.

The other important objection that's been put forward is that the legislative changes to the Controlled Drugs and Substances Act will:

> subvert important aspects of Canada's sentencing regime, including principles of proportionality and individualization, and reliance on judges to impose a just sentence after hearing all facts.

What we have then, according to the Canadian Bar Association, is a "complicated system of different escalating" mandatory minimums, depending on a whole series of complicated factors. They believe that because of this, the complexity of the existing sentencing principles would "increase the court time required for sentencing hearings" and "[f]ewer accused would be likely to plead guilty", because there's no incentive to do so.

Often, of course, guilty pleas are related to negotiations about how an offender is treated. If there's no advantage to a guilty plea, such as a potential reduction in sentence by a sentencing judge, because that's considered a mitigating factor for sentencing.... If you plead guilty, the judge takes that into consideration. You're saving the court's time by admitting your guilt and all of the other things that go with a guilty plea. That provides an incentive to plead guilty.

As a practitioner of criminal law, I know, and as anybody who's done it knows, many cases are resolved by avoiding a trial through a guilty plea, as happened a couple of weeks ago in the case of the Conservative Party of Canada and the Elections Act. The guilty plea avoided a trial in that case.

That's not an uncommon thing at all. In fact, the operation of our courts and the administration of justice throughout Canada depend on the prosecutor and the crown counsel developing an understanding as to what an appropriate sentence would be. It has to go before a court, for example, for approval, but it does provide an incentive to have matters go to the courts. If every matter that went to the court had to go to trial, the cost of the administration of justice would be through the roof.

The Canadian bar says, of course:

> Fewer accused would likely plead guilty, adding to current strains on court resources.

They believe:

> that the Bill would often conflict with existing common law and statutory principles of sentencing, such that sentences could be excessive, harsh and unfair in some cases.

I think that's a legitimate and serious concern and a reason why this type of sentence should be avoided, if at all possible. There's no indication that they would do any good in relation to deterrence, in this particular case, or in the reduction in crime.

Many of the factors listed as requiring or leading to a mandatory minimum sentence in clause 39 and in others are already aggravating factors that would be considered on sentencing. They're already required to be considered by the court in accordance with section 718 of the Criminal Code, which talks about sentencing principles. In terms of an individual sentence and the role of the judge, they're already required to be taken into consideration.

● (1735)

Many of these provisions are overlapping. In some instances, the bar association said the combined operation of the provisions will result in a sentence that's unfit or offends section 12 of the Charter, and a sentencing judge would have no discretion to address those problems because of the mandatory minimum requirements.

These mandatory minimums would be required to be applied even though the circumstances of the offence and the degrees of responsibility vary quite significantly. In these provisions in clauses 39, 40, and 41, we have arbitrary factors that don't relate to the degree of responsibility or the circumstances of the offences, and they don't meaningfully distinguish between the levels of culpability.

Clearly, if we're talking about the general notion of the punishment fitting the crime, I think everybody in the country, except people with a perverted sense of justice, would say yes, the punishment should fit the crime. Well, how do you achieve that? Well, we achieve it for the most part in our justice system by hiring and appointing competent judges to use their knowledge, ability, and experience to apply the circumstances of the offence and the circumstances of the offender, to take into consideration the factors that are laid out in the Criminal Code as to what would be aggravating factors, to consider the mitigating factors that might relate to an individual, and come up with an appropriate sentence.

Here we have what the Canadian Bar Association calls arbitrary factors. For example, when we're talking about the production of marijuana, the mandatory minimum sentences are geared to the number of plants that are produced. If they're less than 201 and for the purposes of trafficking, the minimum mandatory sentence would be six months, but if less than 201 for the purposes of trafficking and any of the aggravating factors, it would be nine months. If more than 200, but less than 500, the mandatory minimum would be one year. If there are any aggravating offences, it would be 18 months.

So there are all sorts of anomalies here that say, well, the number of plants makes the difference. If it's over 500, it would be two years and, if there are any aggravating factors, it would be three years. Then they come out by saying:

> In our view, it is contrary to common sense for someone responsible for a 200-plant grow operation to receive [six months] while someone responsible for 201... [would] be subject to twice that sentence.

This is the arbitrary nature of it.

How can these mandatory minimums that we're setting out here as some kind of a complicated code actually be fair? Is someone who has 201 plants more culpable or blameworthy than someone with 200? How does that make a difference in terms of a cut-off? It can only be considered arbitrary. The actual factors that have to do with culpability and what's aggravating or not would certainly be of the nature.... Other factors that would be taken into consideration with respect to the individual, whether the individual was someone engaged in a commercial operation for profit, whether he or she was someone who was growing it for medical purposes even though they didn't have a permit, what the factors were involved with the individual, whether it was a commercial operation that had been going on for years—all of these are factors that could make it more serious or less serious.

The concern is that we're removing judicial discretion to determine an appropriate sentence. We will talk, perhaps, about judicial discretion a little later, but I want to set out what the Canadian Bar Association talked about. These are lawyers who have practised for many years in criminal justice, and they're saying that what this legislation does is remove discretion from sentencing judges to effectively determine which sentence can best balance all fundamental objectives of sentencing.

● (1740)

There are a number of objectives of sentencing—not just one, and not just deterrence. There is individual deterrence; general deterrence; the protection of society; rehabilitation; and whether or not there are aggravating factors, for example, if someone is a repeat offender, etc. All of these things are taken into consideration by a sentencing judge.

If you prohibit judges from exercising discretion to determine an appropriate sentence for an offender, it's contrary to the spirit and letter of a large body of jurisprudence that recognizes the unique position of sentencing judges in assessing and determining the most appropriate sentence in individual cases.

That says a lot, because it says that this legislation is departing from the experience we've had in our criminal justice system based on precedent—experience, principle, and the body of jurisprudence, which is case after case. If there are aggravating factors that relate to the offender or the offence, the crown prosecutor is there. His or her job is to make sure the judge is aware of all of those things that would lead a judge to consider a higher sentence if it were appropriate in the circumstances.

The defence counsel's role is to make sure the judge is aware of all the mitigating factors that ought to be taken into consideration or are urged to be taken into consideration. The Canadian bar says there is a good reason for conferring discretion on the judge who is charged with imposing a fit sentence. He has heard the particular circumstances of the offence and the offender and is best able to craft a sentence that will balance all the goals of sentencing. If the evidence demonstrates that the offender should be subject to a lengthy prison sentence, the crown will have brought that fact to the judge's attention.

The judge is also best equipped to assess what will address the needs and circumstances of the particular community where a crime occurred. If there's a particular place in the country where a certain crime is rampant and control of that crime by a stiff sentence is appropriate, you will see a judge impose a stiff sentence and say in his or her sentencing determination that it is a matter of community and public concern to a huge extent in this community, and deterrence is more important as a result than many of the other factors, because we need to send a message to likeminded persons that this is offensive to society.

That's the kind of role a judge plays in a community, by crafting a sentence that's related to the individual and the community.

The Canadian bar says that in their experience, repeat offenders and serious drug traffickers already receive significantly elevated sentences, even above the proposed mandatory minimum sentences. This bill would remove the discretion that the sentencing judge requires to be fair, to deter criminals, and to rehabilitate offenders if there is a real prospect of doing so.

The other aspect of this is that our justice system has the checks and balances of an appeal process. Where a sentence imposed at trial is demonstrably unfit or an error of law has occurred, an appellate judge can adjust the sentence accordingly, taking into account the principles of sentencing.

This legislation would not only limit a judge in devising an appropriate sentence; it would also limit the scope of an appeals court where a clearly unfit sentence has been imposed. The bar association said that in their view the formulaic approach in Bill C-15 would lead to real injustice in certain situations, and judges will be unable to fulfill their role as judges to address that consideration.

That is a compelling argument as to the role of the judges and minimum sentences, and how they fundamentally change our approach to criminal justice in Canada.

● (1745)

The Criminal Code is an important document here. It's not simply a matter of.... The Criminal Code of Canada doesn't just have offences and penalties; it outlines the principles of the criminal law and also the principles of sentencing, which require a judge. At the time of sentencing it requires a judge to consider and weigh all competing considerations. Well, they're not going to be able to do that because that weighing process is going to be constrained by what this bill provides.

The approach accords with a balanced and measured sentencing regime, and, as the CBA puts forth, with common sense. The emphasis on deterrence over all other sentencing principles is misplaced, according to them. They quote a recent study by the Canada Safety Council, in 2005, by Professors David Paciocco and Julian Roberts, as follows:

> There are few, if any, who would deny a general deterrence affect of the criminal law, but recent studies confirm what has been long believed by most criminologists that there is little demonstrable correlation between the severity of sentences imposed and the volume of offences recorded. The greatest impact on patterns of offending is publicizing apprehension rates or increasing the prospect of being caught.

That's pretty interesting because that accords with many of the things the NDP has been saying about the need for enforcement in Canada by greater policing assistance to communities. If you intend to deter crime, what works better than increasing prison sentences and the costs that go with that are offenders knowing that the likelihood of being apprehended is high; in other words, the chances of being caught are great. That will be a far more effective deterrent, and the greatest impact on the patterns of offending is based on that.

The section of the code that I refer to, section 718, requires as well that the particular situation of aboriginal offenders, for example, be considered at sentencing. If a less restrictive sanction would adequately protect society or where the special circumstances of aboriginal offenders should be recognized, increased sentences and minimum mandatory sentences would conflict with that principle. The Supreme Court of Canada has also recognized that incarceration should generally be used as a penal sanction of last resort and that it may be less appropriate or useful in the case of aboriginal offenders.

Well, that principle is thrown out the window in the case of aboriginal offenders, and as stated earlier by the Canadian Bar Association in their brief, the mandatory minimum offences will disproportionately affect aboriginal people.

The other thing they point out in their brief is that in the case of aboriginal people, penitentiary terms are generally served far from communities and families, going against efforts to promote eventual reintegration or rehabilitation of offenders. These are other important sentencing principles. They point out that local judges would have no option but to sentence an offender from Nunavut, for example, to a minimum mandatory sentence in Ontario, where offenders from the territory are routinely sent.

We're seeing the effect of these mandatory minimums being disproportionate in the cases of aboriginal people. This is contrary to the principles of sentencing, contrary to fairness, contrary to what the Supreme Court of Canada has said, and contrary to the ability to rehabilitate and reintegrate aboriginal offenders.

● (1750)

An offender from Nunavut could be in Ontario, far away from his family, far away from being able to have visits that would keep him in touch with his community and family, and lead to the rehabilitative function, which is an important part of a sentence. These are important reasons why mandatory minimums are inappropriate in these drug provisions in subclause 39(1).

Do we have bells again?

● (1755)

The Chair: Bells are ringing, yes.

Mr. Jack Harris: Unfortunately, I was near the end of what the Canadian Bar Association had to offer, but I'll complete that when we come back.

The Chair: We will suspend until after the vote.

You might want to mark it, Mr. Harris—

Mr. Jack Harris: Yes.

The Chair: —so you don't have to go back.

Mr. Jack Harris: I wouldn't want to repeat myself. And we have other colleagues who have something to say.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): It's too late for that.

The Chair: The meeting is suspended until after the vote.

● (1755)

_____ (Pause) _____

● (1920)

The Chair: I call the meeting back to order now that the votes are completed.

Mr. Harris, you had the floor.

Mr. Jack Harris: Thank you, Chair.

I'll just continue for a brief while on this intervention.

I just want to assure everyone that the purpose of my lengthy speech is not to initiate what might be considered a filibuster, but it is to put, as completely as possible, the arguments on the issue of mandatory minimum sentences in as thorough a way possible.

We have a number of individual amendments that will specifically deal with aspects of it. I will be limiting myself, for the most part, to explaining our amendments and why they are there, and having the vote. It's not intended to prolong, but rather to be efficient in ensuring that the bulk of the arguments are presented in a holistic way.

I have emphasized the Canadian Bar Association brief. We've had a lot of other representations about the concerns on mandatory minimum sentences, but it has a very thorough analysis of this, and it comes, of course, from a very highly regarded group of lawyers—both defence and crown prosecutors from across the country, who are part of the Canadian Bar Association criminal justice section.

Because they contain both, they can't be accused of bias on the part of one side of the law or the other. They are concerned about the rule of law. They're concerned about the way our justice system works, and they're concerned that the principles contained in our sentencing laws and the current reliance on precedent, judges, and the individualization of sentencing is extremely important. They also point out things like the following:

> The *Criminal Code* contains a statutory acknowledgement of the principal of restraint, stating that the purpose of sentencing is to separate offenders from society only where necessary.

And that the Criminal Code states:

> ...proportionality is the fundamental principle of sentencing, and that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". Proportionality reflects the delicate balance that must be achieved in fashioning such a just sentence.

This is something we'll talk about a little later when we get to the drug courts; they also point out that, "In the area of drug offences, the public is often best protected through harm reduction strategies that encourage rehabilitation."

They comment that participation in the Drug Treatment Court shouldn't be as restricted as it is in the proposals that are currently in the amendments to the act. In their view, "it should be available to all offenders for whom rehabilitative considerations are appropriate."

These are important considerations, and I will say I have two other pieces concerning this. One is the representation to the Standing Committee on Public Safety and National Security in March of this year from the former U.S. congressman, Mr. Asa Hutchinson, who was also—and I'm reading from the Hansard of the Standing Committee on Public Safety and National Security for March 3, 2011. Mr. Hutchinson was introduced as a former U.S. congressman who appeared before the committee having represented the State of Arkansas. But he said that he also served in the George W. Bush administration as head of the U.S. Drug Enforcement Administration, or the DEA. He was then undersecretary at the Department of Homeland Security, with a long career in law enforcement:

> ...leading large agencies, as well as being a trial prosecutor as a former U.S. attorney in the 1980s during the administration of Ronald Reagan, which was really the beginning of our "get tough on crime and drugs" in the United States.

He was before the public safety committee to talk about how he had signed onto what they called in the U.S. the "right on crime" initiative, led by a group of conservatives in the United States who supported a re-evaluation of their nation's incarceration policies. He said, "So I'm only here to tell you a little bit about the American experience" and to provide some insights into what they did in the United States.

● (1925)

He said that what motivated him to sign to this "right on crime" initiative was two principles. One was fairness and one was the long-time conservative principle of cost to the taxpayers.

These were motivating forces in his getting involved in that.

And he talked about the incarceration rate in the United States, which has 5% of the world's population but 23% of the world's reported prisoners, with staggering costs of incarceration. The conservative leaders supported the rehabilitation both at the federal and the state level, and they proposed reforms to the mandatory minimum sentences, to drug sentences. And they initiated reforms that were expected to save about $2 billion in prison costs over five years, most of it going into community treatment for the mentally ill and low-level drug addicts and their treatment. Crime had dropped from 10% in 2004, the year before the reforms, through to 2009.

So we talked about a lot of that. That was part of the U.S. experience that we're hearing about. We're hearing about Texas; we're hearing about other actions in the United States that are important.

The other item that I want to bring to your attention is connected to cost, but it's also connected to human rights and to the costs of prisons and the conditions in prisons. There was a story yesterday on the CBC news that talking about the double-bunking and segregation cells in British Columbia and Manitoba, a practice that was supposed to be abolished. But they show that in at least two prisons, one in Manitoba and one in B.C., and in a number of Ontario prisons, mandatory assessments that are required before double-bunking takes place aren't done. I am quoting the Office of the Correctional Investigator, Mr. Sapers, who testified before us saying that "double-bunking in segregation is a violation of government policy, the Charter of Rights and international human rights standards".

So what we see as a result of this is that these confined spaces are not designed to house more than one inmate, and you're bordering on inhumane custody. And then they quote some statistics based on a date of September 11, with a snapshot of double-bunking among the general population in Canada's 58 prisons. Nationally, 13.5% of inmates were double-bunked. A half have had no double-bunking, but others showed a high proportion of offenders: for example, in the Frontenac Institution in Kingston, 72%; in Millhaven, in Ontario, 65%; Bowden Institution in Alberta, 50%; Grande Cache, 58%; Mission Institution in B.C., 24.9%.

What we're seeing already is overcrowding in our prisons to the point where we have double-bunking. We know, and we've heard many of the experts tell us, and it's common sense, of course, that this is going to lead...these measures that are here, and the drug provisions and other provisions of this act, which lead to harsher and longer sentences, are going to result in significant increases in overcrowding in prisons, inhumane conditions, possible violations of human rights obligations, as well as, if these conditions are going to be ameliorated, significant costs to the government, to the taxpayers. Whether they're provincial taxpayers or federal taxpayers, someone is going to have to pay.

When we take that into consideration, along with the reasons that this shouldn't be done—as I've just outlined by paraphrasing and in some places quoting the Canadian Bar Association—we're going to have a very serious situation on our hands. These are many of the reasons that thousands and thousands of people have contacted me, and they've contacted other members of this committee and perhaps the chair and the Minister of Justice over the past number of weeks in wholesale opposition to this legislation. These particular provisions are ones that we oppose. Some of the major reasons for opposing them are the consequences of, in this case, the proliferation of mandatory minimums that are going to lead to more people in prison for longer, more recidivism, more crime, and not achieving the safer society that the bill is supposedly named after.

● (1930)

Mr. Chairman, perhaps the next speaker would—

The Chair: Thank you, Mr. Harris.

Ms. Boivin.

● (1935)

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

We know that we are nearing the end of the time we are allowed by democracy to make ourselves heard on Bill C-10, and more specifically on the amendment to clause 39 of the bill. Before beginning to state my case on this subject, I would like to take the opportunity, because I may not have another chance to do it, to thank our people from the Legal and Legislative Affairs Division and the Social Affairs Division at the Parliamentary Information and Research Service of the Library of Parliament. This is not the first time I have sat on committees and had the chance to read the legislative summaries that I consider to be nonpartisan and that help members do their job. They are amazing sources of information, along with the various witnesses who appear before us. To put these people in context, I would like to quote something in the document dated October 15, 2011, that was provided to us. It concerns the issue of mandatory minimum sentences, clauses 39 to 41 of the bill. The people listening to us or who read us will be thinking this is sometimes very technical. There are in fact a few sentences here, and we are changing... For example, look at an amendment proposed by the NDP, which says:

> That Bill C-10, in clause 39, be amended by replacing line 3 on page 22 with the following:
>
> in Schedule I, is guilty of an indictable

That is how the proposed amendment concludes. It is not very easy for people to understand.

It has to be understood that clause 39 of the bill amends paragraph 5(3)(*a*) of the CDSA. For those who are wondering what the CDSA is, it is the Controlled Drugs and Substances Act, that is, the part we are currently studying.

This is what the legislative summary of Bill C-10 says:

> Clause 39 of Bill C-10 amends section 5(3)(*a*) of the CDSA to provide in certain circumstances for mandatory minimum terms of imprisonment for the offence of trafficking in a substance included in Schedule I or in Schedule II if the amount of the Schedule II substance exceeds the amount for that substance set out in Schedule VII. There will be a minimum punishment of imprisonment for one year if certain aggravating factors apply: the offence was committed for a criminal organization, as that term is defined in section 467.1(1) of the Criminal Code (a group of three or more people whose purpose is to commit serious offences for material benefit); there was the use or threat of the use of violence in the commission of the offence; a weapon was carried, used or threatened to be used in the commission of the offence; or the offender had been convicted of a designated substance offence, or had served a term of imprisonment for such an offence, within the previous 10 years. A “designated substance offence” is defined in section 2 of the CDSA to mean any of the offences in sections 4 to 10 of the CDSA, except the offence of possession of a substance found...

Those notes also say:

> Defining such places may prove to be difficult. The use of the terms “school ground, playground, public park or bathing area” in section 179(1)(*b*) as a restriction on the movements of those who may commit a sexual offence against a child was found to be overly broad and, therefore, a violation of section 7 of the Canadian Charter of Rights and Freedoms. The minimum two-year punishment will also be imposed if the offender used the services of a person who is under 18 years of age, or involved such a person, in committing the offence or committed the offence in a prison, or on its grounds. The term “prison” is defined in section 2 of the Criminal Code to include a penitentiary, common jail, public or reformatory prison, lock-up, guardroom or other place in which persons who are charged with or convicted of offences are usually kept in custody.

I encourage people to read that document because it explains the bill clearly, and there are questions stated in the document that are very similar to what we have heard. We have heard them, but not at great length. Fortunately we have read the documents that all of the witnesses have submitted to us. There are people I would have liked to spend more time with to be able to ask them for a little more explanation about the documents we have read. Because we really are dealing with legal matters and it is not particularly easy to understand. We often talk about things relating to criminal law, and we also know that in that area, the burden of proof is "beyond a reasonable doubt". There is a presumption of innocence.

● (1940)

Sometimes, we wonder whether it can still be imposed, or whether there will not be another attempt to try to abolish it. Sometimes, I wonder what kind of legal system we have.

I want to highlight a few points that the Barreau du Québec tried to demonstrate. It should be noted that the representatives of the Barreau had exactly five minutes for their presentation, after which they were interrupted. The representative of the Barreau said that it regretted [Translation] "the government's choice to undertake such a substantial legislative reorganization (over 200 clauses) by presenting an omnibus bill and, moreover, to pass those amendments within 100 days of the return of Parliament".

The people from the Barreau pointed out that [Translation] "there is no objective reason or situation that justifies this approach, particularly since this bill proposes a fundamental transformation of a number of statutes that comprise the legal framework of the criminal law and the treatment of offenders".

Although the bill is called the Safe Streets and Communities Act, after hearing the various witnesses who came to speak here, I have serious reservations about that. Once our work is done today, will we be reporting a bill to the House that will make our streets and communities safer? I have serious doubts about that.

The people from the Barreau continued:

> [Translation] When the law requires that everyone who has committed certain offences be sentenced to imprisonment, regardless of the circumstances surrounding the commission of the offence, the specific characteristics of the persons who have committed the offence and the possibility of those persons being rehabilitated, there is a real possibility that these people will become further criminalized.

That is a serious statement. If the entire bill is based particularly on minimum sentences...

[*English*]

The Chair: Just a second. When you read a document, if you could just slow down—

Ms. Françoise Boivin: Slow down for the translator?

The Chair: For the interpreter, yes.

Ms. Françoise Boivin: Excellent.

[*Translation*]

I will repeat what I read before, in part:

> [Translation] ... regardless of the circumstances surrounding the commission of the offence, the specific characteristics of the persons who have committed the offence and the possibility of those persons being rehabilitated, there is a real possibility that these people will become further criminalized.

[*English*]

Mr. Brent Rathgeber: No English? Sorry.

[*Translation*]

Ms. Françoise Boivin: That's right.

[*English*]

We just add to the time. There's no time limit, so....

The Chair: That's fine.

[*Translation*]

Ms. Françoise Boivin: Continuing my reading of the document from the Barreau:

> [Translation] In other words, we would actually be afraid that this law will not achieve the objective ascribed to it, while there is a real risk that it will have the opposite effect.
>
> Considering the impact of this legislative proposal, it would have been desirable to have a major public debate, one that would allow everyone involved in all aspects of the judicial process and social intervention to be consulted. That kind of consultation would produce a broad consensus concerning the best known methods of: (1) reducing the incidence of crime ...

I stress this because that is the objective of everyone in this room. Continuing:

> [Translation] ... (2) responding appropriately to persons who have committed criminal offences, ...

We do all want to be fair, and myself, I do not want someone who has committed a heinous crime to get away with a slap on the wrist, just as I do not want someone who has committed a summary conviction offence to be imprisoned for two years and for the effect to be simply that they become more deeply involved in crime. Reading on:

> [Translation] ... while targeting the most effective methods to promote denunciation, deterrence and rehabilitation of offenders, and (3) identifying and remedying weaknesses in relation to reintegration.

Those should always be our three objectives when we consider legislation like the legislation affected by Bill C-10. They go on to say:

> [Translation] Bill C-10 comes at a time when the data provided by Statistics Canada show that crime is declining in Canada; in 2011, the crime rate in Canada was at its lowest point since 1973. Violent crime is also declining, year over year, to a lesser extent.

With apologies to my Conservative colleagues who do not take these statistics seriously or who think the figures are not accurate. Reading on:

> [Translation] It must be noted that while the national crime rate has been declining constantly for 20 years, and today is at its lowest point since 1973, this is largely a result of the existing sentencing system, which seeks a balance between denunciation, deterrence and rehabilitation of offenders. Proportionality and individualization of sentences are fundamental values.

And that kid of decline does not just happen by itself. Obviously, it is caused by something. When I was studying law, denunciation, deterrence and rehabilitation were always the three concepts we were told about. For any crime committed, there is denunciation, there is deterrence and there is rehabilitation of offenders. And proportionality and individualization of the sentence are fundamental values. I think that out of the whole of the Barreau's brief, those are some of the most important sentences to remember. Sometimes, I get the impression that we have forgotten these extremely important concepts. They also say that [Translation] "numerous studies show that imprisonment does not reduce the incidence of crime".

That does not mean that there should be no imprisonment. I do not want to be quoted as saying I am opposed to imprisonment. I simply think that imprisonment must be justified. My career was in labour law, and when someone was dismissed, I always told the employers that it was the equivalent of the death penalty. So what the person was accused of doing had to be punished by a penalty that was proportionate to what they had done, and the person's record had to be taken into account.

The same is true in criminal law. The same concepts apply: an individual who is guilty of wrongdoing, of a crime, has to be punished on the basis of that crime. Do we need to apply deterrent effects to try to prevent it from happening again? Can the person be rehabilitated? I recall a case going back to the beginning of my career, when I did a little criminal law. It was a young person. Both the representatives of the Crown and myself agreed that if the Criminal Code were applied strictly, we would be sending that young person straight down the path of crime. The judge, the representatives of the Crown and myself therefore took steps to adapt the situation to the individual whose fate was in our hands. When it comes to minimum sentences, the problem is that everybody is treated the same way, without consideration of any factor that might be favourable just as well as unfavourable. It cuts both ways. If two people who have committed the same act appear before a judge, but one of them has committed it six times and the other only once, there has to be some logic applied.

● (1945)

The brief of the Barreau du Québec also says:

> [Translation] Numerous studies show that imprisonment does not reduce the incidence of crime. Public Safety Canada has released the results of a study on the impact of imprisonment on recidivism by offenders who serve their sentence in prison. The conclusions are as follows:
>
> > 1. For most offenders, prisons do not reduce recidivism. To argue for expanding the use of imprisonment in order to deter criminal behaviour is without empirical support. The use of imprisonment may be reserved for purposes of retribution and the selective incapacitation of society's highest risk offenders.
> >
> > 2. The cost implications of imprisonment need to be weighed against more cost efficient ways of decreasing offender recidivism and the responsible use of public funds. For example, even small increases in the use of incarceration can drain resources from other important public areas such as health and education.
> >
> > 3. Evidence from other sources suggests more effective alternatives to reducing recidivism than imprisonment. Offender treatment programs have been more effective in reducing criminal behaviour than increasing the punishment for criminal acts.
>
> More and longer minimum sentences are the figurehead of Bill C-10. The Barreau would note the glaring disparity between real needs in terms of penalizing offenders and preventing crime and recidivism and the solutions in these regards proposed by the government.
>
> Moreover, and having regard to the inevitable and exorbitant costs that implementing these more coercive measures will generate, victims of crime are again being ignored.

This is something that has really troubled me throughout the analysis of Bill C-10, whether on second reading or now here in committee. My Conservative colleagues talk a lot, and rightly so, about victims. However, I see nothing in this bill other than the possibility of having a little more impact and visibility when it comes time to consider the criminal's sentence. That is all I see.

Is this bill going to solve the problems for victims? I have had an opportunity to speak with some of the victims who testified before the committee.

When I was in practice, people who had been fired came to my office. When they said how they wanted to get very large amounts of money, I always told them that no amount of money would ever satisfy them or make up for what they had been through. That is true when it comes to victims, and they agree with me. There will never be a sentence that will satisfy someone, particularly in the cases we have heard, where heinous crimes have been committed.

Do we want a sentence to be imposed in order to provide personal satisfaction for someone else? Do we want to do it so that society will say that the offender is a disgusting person? Will we want society to hit them over the head and damn the consequences, as long as society feels better? I think we have to get past that way of looking at things.

It is all very well to look tough. It is all very well to look as if you care about civil society and to say that things will be safer because we are getting tough with criminals. But if what we are doing with our criminals does not solve the crime problem, society is not going to come out of this situation looking any better.

I encourage you to read the brief of the Barreau du Québec again. In the section [Translation] "Principles of justice in issue", it says, concerning minimum sentences and judicial discretion:

> [Translation] Section 718.1 of the Criminal Code specifically states that it is a fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

This is the basic premise when it comes to sentencing. It could not be clearer.

The Barreau du Québec also says in its brief:

> [Translation] On that point, judicial discretion alone provides the means for complying with and giving full effect to the principle of proportionality and individualization of the sentence, and ultimately to criminal justice in general. Although it is essential that offenders be accountable for their acts, judicial discretion alone provides the means for weighing the various principles of sentencing, and thus imposing a fair penalty that takes into account all the circumstances and the offender's real degree of responsibility.

● (1950)

At one time, during a television broadcast, I had an opportunity to debate Senator Pierre-Hugues Boisvenu. His answer to a question put to him made it clear that it was all based on the fact that the government does not trust the judiciary. And yet, as even the people on the Supreme Court said, it is important that the judge, who is not on the side of either party, and who hears the facts of the case, who hears the defence and the Crown, be allowed to continue to enjoy the advantage of being a trial judge, with the power to use all of the options available to them.

I could talk about this at great length. I simply want to remind this committee that it seems to me that it would have been our role as legislators to focus our attention to the documents provided by the government, to hear all these speeches and to see all these red lights warning us that the stated goals will not be achieved in any way with what has been put on the table by the Conservative government. With the costs associated with this, we are creating the same system the Americans are trying to get away from, when they are no longer even able to pay for it and they are up to their necks in debt. Consider, for example, the women's prison population. These women who are in detention centres already do not have a lot of room. Are we going to devote all our time to building prisons, knowing full well that this will not solve the problems? I have a bit of a problem with this.

I am horrified to think that someday we might be saying we told them so. Unfortunately, I have the impression that this is in fact what is going to happen when it comes to this bill.

This is not a matter of being soft. It is understanding how the system works and, as the people from the Barreau said, foreseeing the possibility that people will plead guilty to offences when they should not. No one thought about that. There will be cases for which there should be a trial, but people will prefer to plead guilty to a lesser offence rather than end up with some of the charges that will be laid against them that will mean minimum sentences. I cannot call that a system where everyone has the right to a trial, to the presumption of innocence. It is not a fair system where all of the factors are heard before rendering a verdict and passing sentence.

I know that my colleagues also have things to say on the subject, so I will say no more for the moment.

● (1955)

[*English*]

The Chair: Thank you, Madam Boivin.

Mr. Rathgeber.

Mr. Brent Rathgeber: Mr. Chair, it's certainly a delight for me to contribute to the debate on Bill C-10, and specifically on the clauses that are under consideration dealing with minimum mandatory sentences.

I listened quite intently to the comments of my friends, Mr. Harris and Ms. Boivin. Of course, I disagree with their assessment on minimum mandatory sentences, specifically their suggestion—or I would suggest, accusation—that they would somehow lead to arbitrariness and unjust conclusions and sentences. I would suggest —and for those Canadians who are still watching this debate—it is quite the opposite.

If you'll indulge me for a couple of moments, I want to quote from a decision of the highest court in Alberta. As the members on this committee know, I too am a lawyer. I practised in the law courts of Alberta for perhaps not quite as long as Mr. Harris did in the courts of the Maritimes, but for a considerable period of time.

In any event, the Chief Justice of Alberta, in a decision released in 2010, Regina v. Mr. Arcand, in a very lengthy judgment talked about the principles of sentencing. I will only refer to the facts of this case very briefly to give the members of the committee some background, but the individual was convicted of a sexual assault, and not a minor sexual assault. It was what the former Criminal Code would have referred to as rape. In fact, the victim in this case was a second cousin of the accused. She was passed out from alcohol intoxication when her second cousin sexually assaulted her. The trial judge sentenced Mr. Arcand to a period of three months incarceration to be served intermittently on weekends.

With that background I want to briefly, if the committee will indulge me, read three or four paragraphs from this court of appeal decision. I think its very elucidating in the way the jurists themselves feel about ranges, starting points, and the principles of sentencing. I think it will refute Mr. Harris's concern about arbitrariness and Ms. Boivin's concerns about unfair results.

It's a very well-written judgment. I encourage members to read it if they have time. I will only read a couple of pages.

> We must face up to five sentencing truths. First, it is notorious amongst judges, of whom there are now approximately 2,100 in this country at three court levels, that one of the most controversial subjects, both in theory and practical application, is sentencing. That takes us to the second truth. The proposition that if judges knew the facts of a given case, they would all agree, or substantially agree on the result, is simply not so. The third truth. Judges are not the only ones who know truths one and two, and thus judge shopping is alive and well in Canada–and fighting hard to stay that way. All lead inescapably to the fourth truth. Without reasonable uniformity of approach to sentencing amongst trial and appellate judges in Canada, many of the sentencing objectives and principles prescribed in the *Code* are not attainable. This makes the search for just sanctions at best a lottery, and at worst a myth. Pretending otherwise obscures the need for Canadian courts to do what Parliament has asked: minimize unjustified disparity in sentencing while maintaining flexibility. The final truth. If the courts do not act to vindicate the promises of the law, and public confidence diminishes, then Parliament will.

That is where we are. Public confidence in the criminal justice system has been weakened, if not shaken—I would suggest significantly so. There is considerable disparity in sentencing from jurisdiction to jurisdiction—and even within a province like Alberta, from region to region. That deficiency, with the disparity within sentencing and the public's lack of confidence in it, brings us to the need to give some guidance to the courts on appropriateness.

● (2000)

I would like to continue with just a couple of phrases more from the Chief Justice of Alberta, the Honourable Catherine A. Fraser. She said:

> Such disparities undermine the public's trust that the criminal justice system, and the exercise of state power that it involves, will treat people fairly and equally. They also breed disrespect for the law.

With respect to the whole issue of minimum mandatory sentences and starting point sentencing, the court of appeal says, quoting Chief Justice Lane in two appeal courts in England and Wales, “We are not aiming at uniformity of sentence; that would be impossible. We are aiming at uniformity of approach.” And “This court has a duty to offer guidance in the form of a statement of typical cases and starting-points.”

In a recent judgment, Justice Fraser opines that there is a need for starting points or minimum mandatory sentences to prevent the very things that Mr. Harris talked about—arbitrariness, randomness. There has to be some consistency if the public is going to have confidence in the criminal justice system. Justice Fraser tells us:

> Starting point sentencing does not fetter judicial discretion but ensures that its exercise is based on proper factors....
>
> In summary, starting point sentencing accords with the proportionality principle. It is hostile to rigidity and actively embraces the aim of a proportional sentence fit for the offence and offender. The argument that it unreasonably confines “judicial discretion” is misplaced. Every process of reasoning must start somewhere and it needs acceptable standard reference points along the way. Starting point sentencing is not only loyal to Parliament’s will—and the governing proportionality principle it has mandated—but antithetical to randomness and arbitrariness, the polar opposite of *judicial* decision-making.

With respect to this whole issue of minimum mandatory sentences, I would submit that when you have a criminal justice system where the sentencing is so disparate as to be erratic and almost random, Parliament has a duty to act, to give some guidelines to the trial judges and the appellate judges on what the appropriate starting point is. It maintains flexibility, Mr. Harris, because a minimum mandatory sentence is much different from a mandatory sentence.

There are some mandatory sentences in the Criminal Code—the obvious one is first-degree murder. There is one sentence and one sentence only: life imprisonment without eligibility for parole for 25 years. But that is a rarity.

The amendments to the Controlled Drugs and Substances Act propose to create a starting point. Judges still have flexibility to go up from the starting point, but the starting point creates a standard that Parliament has determined is fitting for a sentence for that severity.

I am hoping that my friends on the opposite side of the table will accept that although they have well-articulated arguments in favour of their position, there are equally compelling arguments on the other side of the debate. We see a huge sentencing disparity from region to region in this country, which leads to the same results that they are arguing against—arbitrariness and injustice. We see cases where judges, for whatever reason, have passed sentences that cry out for guidance, for a starting point, while maintaining flexibility.

Thank you.

● (2005)

The Chair: Thank you, Mr. Rathgeber.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair. Like my colleague, I am happy to be able to finally participate in this clause-by-clause review.

I'm going to focus my comments this afternoon—I guess we're into this evening now—on NDP amendment number four, which, as Mr. Harris was saying, is how they want to remove schedule II from that clause. I want to put it into context, because I don't think people who may be watching or listening necessarily understand what this clause deals with and what it talks about.

Section 5 of the Controlled Drugs and Substances Act deals with trafficking. Subsection 5(1) starts out by saying, “No persons shall traffic in a substance included in Schedule I, II, III or IV”. So when they're seeking to amend that section, they're trying to take out schedule II from trafficking. Schedule II, if we look through it, deals with marijuana and marijuana derivatives.

What the NDP are proposing to say is that there should not be mandatory minimum penalties for people who are trafficking in marijuana. I think everyone should understand that, because in my estimation that is an extreme position.

I'm going to go through a few things to explain why I believe that is such an extreme and unsupportable position.

I'll start with a quote that we have right here. This is from Chief Superintendent Fraser McRae from the RCMP Operational Intelligence Centre in Surrey, where he states “...what can't be debated is that cannabis is a currency for organized crime.”

So organized crime traffics in marijuana and the NDP is saying that we should remove that so there's not a mandatory minimum penalty.

I've noticed that only today on the news we hear of a large drug bust that was going on in Quebec that dealt with the Hells Angels, and of course they seized large amounts of marijuana. Again, simply to reiterate, the trafficking of marijuana is the lifeblood of organized crime, so when we are including that in this legislation it's to target things like that, trafficking in marijuana.

What we also know is that the argument that is being put forth on the other side is that somehow this legislation is a little too difficult. What about the poor person who is only growing six, seven, or eight plants in their basement? They might be affected by this legislation.

In my discussions with police officers, and in a little research I've done, a marijuana plant can produce between 500 and 1,000 joints, depending on how large it grows. So if you're looking at someone who has six plants of marijuana, this is a person who could be producing 6,000 joints. This is not the poor misguided person who wants to have some personal use. This is somebody who is growing marijuana for the purpose of trafficking. That's exactly why this section needs to stay in the legislation.

When we talk about some of the comments that I just heard from Madame Boivin, saying that this legislation does not do anything to support victims, that is strange to me, because as I sat on this committee I watched victim group after victim group come forward and stand here and say strongly, “We need this legislation. We want this legislation.” The reason why they talk about it is because—and my colleague commented on this—this legislation changes so many sections of the Criminal Code to give a sentence that fits the crime, and it restores faith in the justice system.

I've spoken to many people who have gone through the justice system, and they say over and over again that not only were they victimized by the perpetrator of the crime, but they were victimized by the justice system when they watched the person who committed the crime receive a sentence that was absolutely not proportionate to the crime they committed. Those are the kinds of people we are standing up for, and that's why we are introducing this legislation. Victims support this legislation. That is clear from the testimony we've heard at this committee.

● (2010)

When we talk about the issue of deterrence...we heard from the chiefs of police. They came and sat here and talked to this committee. They said this legislation is going to stop the revolving door of what they called “rounders”, people who are going through the system over and over again with no perceived consequences to their actions. They don't see that the current legislation is any impediment to their committing the crime, so they feel free to continue to do that.

This is going to give our police officers the tools to get those people off the street and keep them off the street for a longer period of time, which means they won't have the ability to continue to traffic drugs to our families and to our children.

I have a quote here from Dr. Darryl Plecas, Royal Canadian Mounted Police research chair and director of the Centre for Criminal Justice Research at the School of Criminology and Criminal Justice in the University of the Fraser Valley:

> We absolutely have to get people off the street. It's not a question of getting tougher on sentencing, it's a question of getting more effective. We want to make a difference. We know we can. We've seen it happen. Let's do more.
>
> I absolutely applaud the government on the initiatives to get mandatory penalties.

These are the kinds of people who are supporting our legislation.

Don Spicer, superintendent of the Halifax Regional Police, stated:

> We believe that Bill S-10 will have a positive effect in aiding Halifax Regional Police to decrease acts of illegal drug activity and the corresponding acts of violence in our community. As such, we view Bill S-10 as an important step in the right direction.

So here on this side, the government side, we've heard from law enforcement. We've heard from victims. They support this legislation. Those are the people we're happy to have supporting this legislation.

We've heard comments today from members of the opposite side of the committee that we're bundling this together, that we're rushing this through. It's absolutely not true. I want to put on the record just a few pieces of information.

As of today, for this specific piece of legislation, there have been four days of debate in the House of Commons, with 16 hours of debate and 53 speeches; nine days in committee, with 16 hours in committee, 68 witnesses, and appearances by two ministers.

When we look at the predecessor legislation that was introduced in this House, which is part and parcel of this legislation, we have an even more impressive record of debate and discussion. We had 33 days of debate in the House, with 81 hours of debate, 225 speeches, and 45 days in committee, with 78 hours in committee, 252 witness appearances, and six ministerial appearances.

It continued in the Senate: 20 days of debate, with 14 hours of debate and 36 speeches; 22 days in committee, with 61 hours in committee, 111 witness appearances, and three ministerial appearances.

I don't need to add those numbers up. People can do that. But anyone trying to suggest that this legislation has not been properly reviewed or properly studied is trying to sell something that is absolutely not saleable.

I hope that when my friends on the other side consider this legislation, they'll realize the necessity, get on the sides of police officers, police chiefs, and victims groups, and support this legislation.

Thank you.

The Chair: Thank you, Mr. Seeback.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): With all due respect for my two colleagues, I cannot agree with them. You will not be surprised if I tell you that I agree more with Mr. Harris and Ms. Boivin.

We should leave discretion with judges. We should not lose the benefit of experience on the ground, which is invaluable. Certainly if the party concerned is not satisfied they can always go before the appropriate appellate court. That is the first thing I have to say.

The following appears in an independent report by the Department of Justice:

> From a utilitarian point of view, incarcerating occasional, non-violent offenders, for substantial periods, constitutes a colossal waste of justice system resources.
>
> Mandatory Sentences for Drug Offences.
>
> Harsh MMS and the “drug war” approach in general show little effect in relation to drug offences.
>
> MMS do not appear to influence drug consumption or drug-related crime in any measurable way.
>
> MMS are blunt instruments that fail to distinguish between low and high-level, as well as hardcore versus transient drug dealers.
>
> From a utilitarian perspective, the federal system appears to be incarcerating the wrong people; individuals who are easily replaced in the illicit market.

For all these reasons, I think that mandatory minimum sentences will mean, according to several experts who have testified before the committee, that there will be an increase in incarceration, and prison is not a cure-all. Nor are super prisons the solution to crime for the victims, since the crime rate will rise in the long term. They are also not the solution for inmates, since there will be an increase in the number of cases, overpopulation and a lack of privacy, and this will cause tension. There is going to be less access to rehabilitation and reintegration programs. There will be no pardons, since that concept is going to disappear. Prison personnel will not be assured of safety.

Moving on to the budgets of the provinces affected, how are they going to manage this whole system, which is going to be increasingly onerous?

So we should leave discretion with judges. I think the system works quite well.

I would like to come back to the YCJA in particular.

> [Translation] A single, mathematical approach to measures that are proportionate to the gravity of the offence and the degree of responsibility of the offender does not provide for adopting individualized intervention strategies based on factors relating to the offence ... but also to the unique characteristics of each [offender].
>
> On this point, the Quebec model is characterized by differentiated intervention aimed at the right measure at the right time, based on the following assumptions:
>
> A young person is a person who is developing ... who has different needs ... the intervention must be appropriate to that status.

We have to [Translation] "offer the right service at the right time", and so we have to hire "a team of professionals who have the necessary skills".

The intervention must be speedy, a [Translation] "concept that has a different meaning to a young person", since at that stage of development, things move very quickly.

The parents' participation is [Translation] "sought, valued and supported throughout the intervention".

> [Translation] We also have to be concerned about victims and consider the impact the offence has had on them; [the offender will be] made aware of the wrongs and harms they have caused them, and where appropriate a reparation process [will be] proposed.

I adopt all of these recommendations.

● (2015)

I adopt all of these recommendations. They are all made by the Association des centres jeunesse du Québec and they all relate to Bill C-10.

The first recommendation is to keep [Translation] "the objectives of rehabilitation and reintegration of [offenders] at the top of the list, to protect the public in the long term".

Second, the Association recommends that [Translation] "the principles of denunciation and deterrence continue to be excluded from the [principle] of sentencing, as decided by the Supreme Court of Canada in 2006".

Third, it recommends that [Translation] "the ban on publishing the identity [of a young offender] who is the subject of measures under the YCJA be maintained".

Fourth, it recommends that [Translation] "the current sentencing rules, as laid down by the Supreme Court of Canada, which place the burden on the prosecutor of showing that it is necessary and appropriate to sentence [the offender] as an adult, be maintained ...".

I also concur in the conclusion: [Translation] "The loss of protection for the identity of young persons, exemplary sentences based on denunciation and deterrence and above all proportionate to the offence, are the opposite of what we have built as the model for intervention with young offenders ...". That is in fact what we have built in Quebec. It works and it results in a significant reduction in crime. The statistics show that we have one of the lowest crime rates in all 10 provinces.

For all these reasons, I would also reiterate that the Association des centres jeunesse du Québec and the provincial directors have always advocated balance. We are also advocating balance between protection of the public and rehabilitation of young persons. I believe this is the only way to manage this. We believe that investing in social services, in concrete action to reduce poverty, in programs to help young people find jobs and to expand access to social housing, would have more impact in the long term on young people in our society than focusing on enforcement by having tougher laws.

● (2020)

[*English*]

The Chair: Thank you, Mr. Jacob.

Madam Borg.

[*Translation*]

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): I apologise for the delay.

I would not want to repeat what my colleagues have said. They have done a relatively good job of covering the reasons why we oppose the concept of mandatory minimum sentences. I just want to stress a few points.

The government seems to be saying that we on this side of the room do not want the situation to improve. Yes, we want the situation to improve. We are concerned that there are criminals on the streets, trafficking in drugs, and organized crime groups doing the same thing.

However, we have heard numerous experts who have provided us with evidence. I do not think a single expert in criminology has said that mandatory minimum sentences work. We heard about Texas, where this measure did not work when it was implemented. They believe their money was not invested well. For every dollar spent on programs, and not on imprisonment, they get a return of $9.34.

I also want to point out quickly that we also have to think about the double-bunking problem that is very common in prisons at present. Mr. Harris has already pointed out the problems double-bunking causes. I think it is particularly important to think about the workers. Their work environment will become more dangerous and more unhealthy. These are not acceptable working conditions. Their positions were not created with double-bunking in mind, they were created with single cell occupancy in mind. That is being changed.

I simply want to point out that we already have a problem with double-bunking. In my riding, in Ste-Anne-des-Plaines, there are three federal penitentiaries, as I have mentioned several times. In fact, a report released last night said that 47.52% of the cells held two people. We are already at 47.52% and you are asking us to increase that proportion even further. It will take a bit of time, certainly, to adjust to this big change and the influx of prisoners that sentences like these are going to bring about.

I am going to conclude fairly quickly. This is not how you stop organized crime. A number of the witnesses who came here even said that prisons could be places for encouraging organized crime. An inmate who gets out of prison has friends, telephone numbers and sources. They know everything. They get encouragement from other criminals. Why then do we not get them out of that place and get them involved in programs, set them on the right path, tell them that they have to reinvest in society, go out to work and pay their taxes? That will all come back to Canadians and be good for Canada. That is how we are going to solve the problem of drugs and organized crime, the problem of trafficking in drugs like marijuana.

Thank you.

● (2025)

[*English*]

The Chair: Thank you, Ms. Borg.

Mr. Wilks.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Mr. Chair.

I want to just speak a little bit with regard to marijuana. Just to qualify that, I was 20 years with the RCMP. I was qualified as an expert before the Supreme Court of British Columbia, knowing how much is required for trafficking in marijuana and being able to identify marijuana without its being analyzed. I can tell you from three years of drug work that marijuana is not the benign drug everyone believes it is. It has come a long way since the 1960s and the open crops of California.

The THC levels in marijuana have gone from 6% and 7% up to as high as 40%. The highest I have ever seen is 38%. You get a pretty good bang for your buck at 38%. When you're growing it at those levels, you're doing something right.

I want to just give an example of why I believe minimum sentences need to be in place, and I want to provide the rationale behind that. With regard to the testimony I used to provide, I'll give that to some degree.

On average, one marijuana plant will produce approximately six ounces of marijuana. It can go up and it can go down, but this is the average. It depends if it's outdoor, indoor, sea of green—it all depends. If we equate that and we assume that every person rolls a joint of a half a gram—and that's being fairly nice because normally it's a little lower, but let's go to half a gram—and everyone smokes four joints a day, which is quite a lot considering you have to be working sometime, that would equate to 13 days per ounce. Now equate that to six ounces times 13 days. That's 78 days that you get from one plant. And from that you grow six plants at six ounces. So now you have 36 ounces at 13 days. So you have 468 days worth of marijuana at four joints a day, and that's not missing a day.

The problem is that your THC levels are dropping as you keep it off the plant. So now you're either forced to smoke really crappy marijuana or you're going to sell it, one of the two. In all likelihood you're going to sell it. Female plants grow over a 16- to 18-week cycle. That means you can grow a crop from two to three times year. So now we're not just talking about six plants; we're talking about 18 plants. And I've never met any individuals who had only grown six plants and then said they were stopping because they had had their fill and were moving on. It doesn't happen. I've never seen it, and I never will.

The largest thing that concerns me is the misconception that marijuana is not a gateway drug. I have never in my life met a heroin addict who started at heroin—never, and I never will. They always start at the lowest denominator and work their way up. That's the way the system works.

With regard to some of the minimum maximums we're talking about, those who have been around for a while, like Mr. Harris and Mr. Rathgeber, will recall the days of the NCA and the FDA, where we had minimum sentencing for importation of drugs at seven years. We took that out in the late eighties, I believe.

● (2030)

Mr. Jack Harris: It was ruled unconstitutional.

Mr. David Wilks: It was ruled unconstitutional. Thank you very much, Mr. Harris.

As a result of it being ruled unconstitutional, all of a sudden we had this great ability for people who just love to trade marijuana and cocaine to move drugs back and forth between two countries. That's the United States and Canada. And all of a sudden we had a prolific problem.

When people say that minimum sentencing will not work, I will never be convinced, never. I've seen enough of the revolving door when it comes to grow ops. In the amount that I've seen in my service, which is countless, very rarely did I see anyone ever go to jail, ever. They got a fine, probation, and have a good day.

I can give you the example of one case of the seizure of 1,000 plants. The gentleman pled guilty, was convicted, given a $10,000 fine, walked from the court house to the court registry, paid his $10,000 fine, and walked out. It is such a lucrative business that the only way we can get through to people who are dealing in drugs is to take away the one thing they can't have, and that's their freedom. Take it away. They have the money. They can pay their way out of this. There isn't one dealer who can't.

I've heard testimony here in the last little while with regard to going after the small guy. Last time I checked, “Mom” Boucher doesn't deal in dope. Granted, he's in jail, but that being said, he never dealt dope. Why? Because you will always get someone smaller to do the dealing. Why? Because there are a whole bunch of them, and they're expendable.

That's the unfortunate part of this. But the reality is that most people go into this with their eyes wide open. They understand the consequences, or the lack thereof, of getting caught. They recognize that if they get caught and it's their first time, in all likelihood they're going to get probation, and that's it—if in fact they get that.

We have to send a message, and the message is that it will not be tolerated. I believe that minimum sentencing is long overdue. I believe that most police officers in Canada will tell you that minimum sentencing is long overdue. Why? Because, as I can probably tell you from a lot of people I've spoken to, first of all, the victims will always say, “Why should I testify? Nothing is going to happen anyway.” That's followed by the accused saying, “It's not going to matter. All I'm going to get is probation anyway.” We need to stiffen these laws.

I fully endorse Bill C-10. I fully endorse minimum sentencing. And I fully endorse the fact that, yes, there are people going to jail, and yes, it is going to be a hardship on them. But the fact is, if they go in there once and they don't like it, they probably won't want to go back. That may be the biggest deterrent of all that we have. If a person went into the correctional system, got their eyes opened, and didn't want to go back, that would change them.

We can create programs to try to teach people not to do this. But let's face facts. If they have a problem, they are the only ones who can admit to it. No one else can. So let's stay on track here. Understand that minimum sentencing is required, that there are those in society who need to be put away. Take their time away. Do not take their money away, because they have lots of it anyway.

I'm quite concerned as well that people have overlooked the fact that most large, significant marijuana grow ops are all done by organized crime, in one way or another, historically the Hells Angels. These people do not play by the same rules we play by. They have a tendency to ensure that if you're going to break into their territory, they're going to make it very difficult for you to do that.

● (2035)

We see it time and time again. We've seen it in the turf wars in Quebec. We've seen it in the turf wars in the Lower Mainland of British Columbia. And we will see it again. The only way to stop it is to send people to jail. This is a good start, with minimum sentencing.

Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Wilks.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Thank you, Mr. Chair.

There are several things I want to address here, and one of them is to my friend Mr. Harris. He was talking about the Canadian Bar Association, an association I've had a lot of familiarity with. I was the national constitutional section chair for the Canadian Bar Association. I was on their provincial and national councils for over 20 years. I was the elected president of the Canadian Bar Association for the B.C. branch.

I will tell you that as much as I have a great deal of respect for that organization and have worked in it for many years, we obviously differ with respect to this legislation. I would like to note that this is a voluntary organization. Not all lawyers in Canada belong to the Canadian Bar Association—I'm still a member—and you mentioned that you didn't think they were active in Quebec. The Quebec branch would be most disappointed to hear that.

The Canadian Bar Association is very much alive and well in Quebec. Barreau du Québec is also very active in representing lawyers, but the bar association is definitely active there.

I will also tell you that they are like any large organization. When they look at legislation, it is not something that passes through all members of the organization. They would give something like this to a certain sector, the criminal law section, I believe, who would opine on it, just as when I was involved in the constitutional law section I was asked to comment on constitutional issues and I would talk to my colleagues.

I say that to emphasize that although I respect the work they've put into this, we disagree on this particular legislation. It is not necessarily the view of all lawyers in Canada who belong to that association. Far from it. I've had many colleagues writing to me that they support the government's position, even though they continue to be members of that association.

I would also like to comment on Mr. Jacob's comments about discretion in judges. I have a lot of personal and kind feelings towards Mr. Jacob, but in my opinion this legislation does not take away from the discretion of judges. We place a lot of respect and faith in the judges in our courts, both the provincial judges appointed by provincial governments and the superior court judges appointed by our federal government across this land. However, it is the role of legislators to draft and pass legislation. It is the role of our judiciary to take laws that we have passed and then apply them.

I find it interesting that no one seems to criticize or hardly comment when the federal government puts forward maximum sentences, but they get very excited and agitated when we talk about minimum sentences. In fact some of the minimum sentences we're calling for in this legislation are actually quite mild. If one looks at the cases that have gone through the judicial system, many of those sentences are higher than our minimums.

We are trying to achieve some consistency across Canada. Right now there is a great deal of inconsistency from province to province, region to region, in the kinds of sentences handed out for various criminal activity, particularly when it comes to drug offences.

I think this consistency assists law enforcement. It assists the public. It assists anyone coming into the world of criminal behaviour to understand the consequences better and that there are certain minimum expectations within our system if one is convicted of such a crime.

The one thing I hear very little of from the opposition, and I want to point it out again, is that the idea behind these mandatory minimum sentences is also to associate them with what are called “aggravating factors” in the legislation. In other words, these go to the sentencing stage of criminal behaviour. One has to be proven to have trafficked in drugs for the purposes of assisting organized crime. One has to be proven, with respect to drug trafficking, to have threatened violence or to have actually been violent. One has to be proven to be targeting children. If those aggravating factors are there, minimum sentences apply.

● (2040)

As you know, of course, because we've all studied this now, we also have one, I think, very important exemption, which is when an accused who is then found guilty and is convicted has a proven addiction and is willing to get some help and some rehabilitation for that addiction. In those situations, a mandatory minimum penalty can be waived. I think that's very appropriate, and it strikes the right kind of balance that is trying to be achieved here.

The production of and trafficking in illicit drugs is the most significant source of money for gangs and organized crime, and it does do profound harm to neighbourhoods, to individuals, and to children.

As for marijuana itself, I want to say a little more about grow ops. Both urban and suburban homes can be utterly destroyed by grow ops and crystal meth labs. I don't know to what extent any individuals here, other than those who have been in the police force, such as Mr. Wilks, have had exposure to that. I am from British Columbia. I'm from the Lower Mainland of British Columbia, and I hardly know a person in a rental home situation whose home hasn't been destroyed. There has been criminal activity in previously peaceful neighbourhoods because of grow ops there. It is devastating.

I'm thinking particularly of an elderly couple I knew who couldn't sell their home. They both had to go into care, so they rented out their home to what they thought was a young single mother and her child. They turned out to the front for the gang that wanted to turn their home into a grow operation, and of course, because the couple was elderly and had limited mobility, they weren't checking the house all the time. When the rent cheques stopped coming in and they finally went to check, their house was completely destroyed by water damage, by all the chemical damage, and by all the indicia that go along with that kind of behaviour. They were devastated. Their life savings were wrapped up in that home, which they had hoped would continue to fund their old age. These are real people that this affects, and in that case people I know.

Anyone who has witnessed the drug wars in places such as Vancouver can attest to this. Historically peaceful neighbourhoods have been turned, literally, into killing fields of the kind that most of us see only in the movies. We've had shootouts between rival gangs in the middle of neighbourhoods and on school grounds. We've had executions of specific people connected to organized crime and drugs. In fact, unfortunately, it's become quite a common occurrence in British Columbia.

Our measures, I strongly believe, are proportionate and balanced. They're a measured response. What are they designed for? They're designed to disrupt criminal enterprise. They are designed to disrupt, as Mr. Wilks put it, the currency with which organized crime operates. Often that comes from marijuana grow ops and not just what we refer to colloquially as harder drugs. This is what scares individual Canadians. It is that their neighbourhoods are being treated so disrespectfully and they are creating places for crime to be perpetuated.

I also want to mention what Ms. Borg talked about. She was saying that the problem with prison, more or less, if I understood her comments, is that people go in, and then they get involved in organized crime, and then that flourishes in jail.

● (2045)

It reminded me of the testimony of Pierre Mallette before this committee on November 3. We were talking about rehabilitation, if you recall, in programs in prison that are designed for rehabilitation and reintegration, both of which are laudable, and within this legislation that approach is taken alongside the approach of sending a tougher message with respect to the consequences of criminal behaviour. In his testimony, he said:

> We have been trying to introduce programs for 10 years because the public's safety also depends on inmates' safety. We sincerely believe that a large number of inmates have a chance of rehabilitating, a chance to return to society. At the same time, however, some inmates are not prepared to rehabilitate immediately. Here I'm talking about criminal gangs, people who don't help other inmates rehabilitate, who put pressure on them, people who take control of the institution.

He went on to talk about the fact that the programs can be there, but there has to be a take-up. He singled out members of organized crime, gangs, saying that when they go into prison, they are exactly the inmates who do not participate in programs. They're not interested in the programs. They don't want to be part of any true rehabilitative process.

In talking about marijuana...and I am zeroing in on that because your proposed amendment is to take schedule II out of these provisions, which, as Mr. Seeback has pointed out, is basically marijuana and its derivatives. Mr. Harris said it's a less harmful drug. I want to quote from Mr. Len Garis, who is chief of Surrey Fire Services. He was speaking on the subject on April 30, 2009. He said, "In 2003, 2004, and 2005 in our community"—and for those of you maybe not familiar with my part of the world, Surrey is a suburb of Vancouver in British Columbia—

> ...our firefighters were attending 1.3 fires per month that were caused by marijuana grow-ops. That's 15 to 16 a year. They had concerns and started to treat every structure fire like a grow-op. They were concerned about entering those homes in a smoke-filled environment. They were concerned about getting shocked or electrocuted, which they had been, but not fatally. They were concerned about dealing with that kind of environment. They were concerned about arriving in the middle of the night and finding two and three houses on fire, or being impinged on by fire, because a house was set on fire by a grow-op and nobody was in attendance so nobody called it in. They were concerned about trying to evacuate homes where people were sleeping; they were concerned about trying to get them out.

We did a study, and a home with a grow op is 24 times more likely to catch fire than a home without one. We experienced that big time. Now I have members of my own family in fire services. It is a very dangerous and concerning thing when our first responders, our firemen, our law enforcement, our paramedics, attend these kinds of situations that have gone out of control, and they are putting themselves at risk to try to deal with these kinds of activities.

I have something here from Chief Vernon White of the Ottawa Police Service from about the same time.

> From our police service perspective there are a number of areas where we believe the legislation is important...

—and I'll just say in brackets, this legislation, because he was talking about prior legislation that was similar—

> particularly when it comes to attacking criminal organizations that are involved in the distribution of drugs. Secondly, it's important in any case where it's school-related or it gives a police service the opportunity to try to defend those we see as most vulnerable: young people at school grounds. Again, it's an opportunity for us to attack criminal organizations or drug traffickers who decide to participate in drug distribution at that level.

I'm a mother myself. I have four children. I just had a new little niece born a few hours ago, I was told on my BlackBerry. Children are important to me, as I know our children are important to all of us here in Canada. I know, as opposition members, you have been supportive of the parts of this legislation that deal with those who would use our children for sexual purposes, who would improperly groom and lure children in order to perpetrate sexual offences.

● (2050)

Children are affected by drugs as well. Children are affected by drug traffickers. Children are targeted by drug traffickers. We have organized crime deliberately using children to sell drugs to other children, because they know that if they're caught the penalties won't be as severe. They know that if they get younger children—and I was surprised to find we're talking about kids sometimes as young as eight and nine years of age—experimenting with using drugs at an early age, they will have people who they can continue to have abusing substances for many years to come. So this idea of organized crime groups recruiting young children is a very serious matter. What happens to that young person who is recruited by these gangs?

I was recently at the Canada-Mexico parliamentary delegation; some of you may have been there. It was a privilege to be there to talk to some of our colleagues from Mexico. Of course, drug crime in Mexico—we all look at this on the news and comment on it—has become extremely violent. It's extremely violent because it's extremely organized and because the seduction of the money involved is so great that more and more people are involving themselves in that kind of activity for the money. Although we don't believe here in Canada that we have the same level of drug crimes they may have in some other countries, when it's violent, it's just as violent. When people are executed, they're gone. When you see shootouts on the school grounds and in the streets in British Columbia, as I have read about continually, there's no coming back from that.

It is a very serious problem. It's a transnational problem. We're not the only country dealing with this, of course, but it is a serious problem here in Canada. I worry, and I think this legislation is attempting in its targeted way to alleviate some of that worry by at least sending a strong message that if you target children, if you're a part of organized crime and you're going to use children to traffic drugs, if you're going to use children to sell drugs to, you will be treated consistently across Canada and in a certain way. These are very important messages for us. These people are very sophisticated. They know that it's better to use someone else to traffic in drugs than to do it themselves, but they are the ones who end up with the profit.

I also want to mention another comment from Chuck Doucette. He's someone I've known in British Columbia and dealt with at a community activist level. At the time, May 2009, he was vice-president of the Drug Prevention Network of Canada. His observation was this:

> Things have changed from when I first started in drug enforcement in 1977. Over those 30 years, I saw the sentences for drug offences getting progressively weaker.

And this is a very important point:

> At the same time, I saw the problems related to drug abuse getting progressively larger. I also saw the drug scene in downtown Vancouver increase as the enforcement efforts in that area decreased. From my perspective, I do not see how anyone could possibly examine the past 30 years and make a case that weaker sentences lead to less damaging social consequences. My experience is that the more lenient we got, the more problems we got. I also believe that other countries have experienced the same thing, and I would like to make a comparison.
>
> One of the main reasons that so many gangs got involved in cannabis grow operations in the Vancouver area is because of the weaker sentences here compared to sentences for trafficking elsewhere, and trafficking in cocaine and/or heroin. The risk-to-wealth ratio is much better.

This is where we have to realize it is a business. For organized crime, it is a business. The small fines they were receiving were simply considered to be the cost of doing business, much as in the example Mr. Wilks gave.

● (2055)

We are trying in this legislation—and we are getting it right, in my opinion—to be balanced. We know it's important to continue to fund youth crime prevention, which we do. We know it's important to give a pass to someone who has an addiction and is willing to deal with their problems. We know it is important to continue to have the ideas of rehabilitation and reintegration.

But the balanced approach, I would suggest, is to also say—particularly to those who are violent and involved in organized crime—that Canada is not the place for you. We want you to understand that if you target our children, if you are violent, or if you are part of this whole organized criminal element, there are consequences, and they will be consistent across the country.

Thank you.

The Chair: Thank you, Ms. Findlay.

Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I wanted to intervene for a few minutes to respond to a couple of the comments made opposite. I listened to Mr. Rathgeber's discussion about the Alberta Court of Appeal, and I agree with the judge who he was talking about.

But I find that lawyers—and this is no reflection on Mr. Rathgeber, who quoted from a case—don't quote all of the case. It sounds as though the comments of the judge.... It seems to me that that was an appeal from a sentence that was regarded as particularly low, and the judge wanted a standardized sentence and was speaking about the problems, and I suspect he probably raised that sentence—I'm seeing a nod from Mr. Rathgeber—because the court said there should be standards and starting points.

A starting point is something with a range of sentencing or expected sentencing. Some crimes would demand a certain response as a starting point, but that's not the same as a minimum sentence. A starting point could go up and it could, with significant mitigation, go down.

The point that we've been making here is that the sentences we're talking about in clause 39.... The sentence for trafficking, for example, is life imprisonment. That's the sentence.

The minimum sentences being put in are various versions of one year, two years, three years, 16 months, 18 months in some cases, and others. The maximum is life imprisonment, which is indicative of the seriousness with which it's taken.

I've listened to the comments about marijuana, and the strength of marijuana today versus yesterday, and I appreciate Mr. Wilks' comments on that and his opinion about what he believes the effect of mandatory minimums would be. I would make one small comment: I don't think Mr. Wilks heard Mr. Seeback's suggestion as to how many cigarettes come from a marijuana plant. I think it was up to 500 or 600, where your plants are more modest.

Ms. Françoise Boivin: You don't smoke the same thing.

Some hon. members: Oh, oh!

Mr. Jack Harris: He must have better sources than you do, Mr. Wilks.

Ms. Françoise Boivin: Or he rolls smaller.

Mr. Jack Harris: Or he has better gardeners.

Mr. Kyle Seeback: There's going to be a point of privilege.

Ms. Françoise Boivin: I'm surprised at your expertise on this point.

Mr. Jack Harris: That being said, I don't think we need to make any weather of that.

The point is that when you're dealing with something like trafficking.... Trafficking could be anything, from the things we're talking about here, with big operations, the mafia, Mexico, the cartels, and all of that, or it could be.... Unfortunately, the definition of "trafficking" is very modest. A group of 20-year-olds sharing an ounce, rolling up joints and sharing them, that's trafficking.

The problem is that we're not dealing with.... And trafficking attracts life imprisonment as a sentence. There's no distinction here, unfortunately. That's why we believe the approach that's being taken is wrong. We understand that individual police officers, some police organizations, and you, sir, as an experienced police officer, have this strong feeling. But the evidence of what's happened in other countries is pretty clear. I'll give just two quotes. I know there are lots.

The Toronto Star, for example.... You may not like the *The Toronto Star*, but *The Toronto Star* article in December of 2007 talked about mandatory sentencing, not about drugs in particular. It says that even though "American courts mete out sentences that are double that of British and three times that of Canadian courts, the U. S. violent crime rate is higher" than in those two countries.

The point being made is that higher sentences, longer sentences, don't necessarily lead to a safer society. That's what we're talking about here. The example of the U.S. is one that I talked about earlier and that we heard evidence on as well.

The *Calgary Herald*—a little bit close to home for Mr. Rathgeber—in a May 15, 2010, editorial called "Reefer madness" and subtitled "Automatic jail for six pot plants is too harsh" noted that

> Despite 25 years of harsh mandatory minimums, disproportionate numbers of the poor, the young, minorities and the drug addicted have been thrown in U.S. jails with no impact on the drug business itself, which has flourished.

That underscores the concerns we have that we're going down the road others have gone on. We're going to have people.... The complexities of the drug trade, we understand that. There are people at the top who are making the organized efforts, and they're the ones who are benefiting. The ones who are at the bottom, at the lower level, are the ones who are likely to be picked up by these mandatory minimums. They are the ones who are going to end up in the jails. I'm not saying they shouldn't go to jail for what they do. What I'm saying is that they're the ones who are going to actually be the low-hanging fruit, if you will, and the criminal element is not going to be attracted by this.

We're not interested, in any way, in supporting or promoting the drug trade. The matters that Ms. Findlay talked about, the destruction of houses through grow ops of the nature you have in B.C.... I have every sympathy for anybody whose house or property is victim to that, or the fires that.... These are all horrific things.

The question is, when these matters come before the courts, they're not given $500 fines and told to walk away. I'm satisfied that the sentences that would be given in a situation like that would reflect the seriousness of the events.

Yes, we need some consistency in sentencing. That's exactly what the Alberta court was doing in the case Mr. Brent Rathgeber referred to.

We do have a difference of opinion. I'm quite happy to acknowledge that. But I don't want anyone to get the impression that we're singling out marijuana as being separate.

We have a whole series of amendments here. We are opposing all of the mandatory minimums here because we are convinced, based on the evidence of other countries, based on the experts we have.... We'll be making a series of amendments—and we hope we get to them soon—on an individual basis, although I know Mr. Cotler wants to speak on the generalities, that will replace the mandatory minimums with the life sentences that are there, and we would expect the courts to respond to the courts of appeal, to appropriately deal with sentences.

● (2100)

What we don't want to see is an arbitrary situation where an individual, a 19-year-old, is in a situation of a very minor nature and is treated in the same way or under the same laws and the same rules and is caught up in something that's really designed for something else.

So that's the aim of our changes here, and we will be seeking to remove all of the mandatory minimums even for the other offences, as well as the marijuana ones.

● (2105)

The Chair: Thank you, Mr. Harris.

Mr. Woodworth.

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

Ladies and gentlemen, I think the issue here is whether or not you are satisfied or dissatisfied with what the increase in illegal drug trade has done to the youth of our country, has done to our country. To put it in another way, are you going to stick your head in the sand and do nothing but more of the same or—to mangle Shakespeare a bit—are you going to "take arms against a sea of troubles" and at least try to find a solution?

This is a sad debate to have, but it is where we are at, and I have to tell you, one of the biggest surprises to me, sitting as a member of this justice committee over the last three years, has been to sit and listen to respected academics come to committee and actually say that they recommend that all illegal drugs—all illegal drugs—from marijuana to cocaine to heroin to Rohypnol, no longer be criminalized. This is one academic opinion, and I won't bore you with the reasons, but they had their reasons. I suggest to you that this is simply not in touch with what's going on in our country, and I know one of the other members provided this quote earlier, but I would like you to contrast that academic opinion with the opinion of someone who's on the street.

Mr. Chuck Doucette, the vice-president of the Drug Prevention Network of Canada, said the following, and I'm going to read it because I think it contrasts with the academic opinion I just mentioned to you:

> Things have changed from when I first started in drug enforcement in 1977. Over those 30 years, I saw the sentences for drug offences getting progressively weaker. At the same time, I saw the problems related to drug abuse getting progressively larger. I also saw the drug scene in downtown Vancouver increase as the enforcement efforts in that area decreased. From my perspective, I do not see how anyone could possibly examine the past 30 years and make a case that weaker sentences lead to less damaging social consequences. My experience is that the more lenient we got, the more problems we got.

Now I ask you, does that not strike a chord? Does that not ring truer to what we really all know about what has happened with respect to sentencing in drug offences in Canada? Is that not a more realistic sentiment than the academic notion I mentioned to you earlier of some academics who simply want to legalize all drugs?

I want to comment a little bit on the issue of deterrence, because once again I have sat here and I have listened to academics come to this committee and virtually say—and I don't want to paraphrase too much—that there is no point in deterrent sentencing. This rather surprises me, because I'm only three or four or five years away from the practice of law and I can tell you that to say deterrent sentencing is practically of no value is simply to be out of touch with what is going on across our country.

Every day, in every major city in Canada, in every courtroom, there are judges who pass deterrent sentences. Are they all wrong? Are all the police who ask for deterrent sentences wrong? Are all of the parents who actually often plead with the court to impose deterrent sentences on their children wrong? Are all the victims who have come to this committee asking for deterrent sentences wrong?

● (2110)

I have to tell you, I swung both ways. I was a defence counsel and a prosecutor for many years. Most of my defence counsel friends recognize that deterrent sentences are often required in order to stop the revolving door of people going in and out of jail. I'm not a big fan of jail, especially when it comes to younger people. I'm happy that this act, along with the previous Youth Criminal Justice Act, indicates to judges that jail should be a last resort for young people.

We had a witness here a couple of years ago, a young man in his twenties, who said he got a lot of little sentences and they didn't faze him at all. Finally, he got a three-year sentence and was able to take some treatment programs to bring some stability into his life, and he came out a much better man. He was grateful. Not every jail sentence has all of the terrible consequences catalogued by the NDP members.

I want to relate something about a judge in my community, Justice Hardman, a youth court judge. Every time someone came before her in an assault offence, she made a point of telling him that if the assault occurred at a school where children are required to be, where they're captive, where they are defenceless, she would impose a prison sentence. Now why do you suppose she said that? She said it so that she would be deterring other young people from committing assaults at school. It seemed to work. She thought it worked, and so did I. You can call that anecdotal evidence or you can just call it common sense based on years and years of first-hand legal practice. Maybe it doesn't measure up to a textbook, but it works.

I want to say one last thing about the issue of deterrence. This bill that we're looking at is targeted largely at organized drug crimes. In the last year or two, we did a study in the justice committee. Some of the members with us today weren't here for it. Do you know what we discovered? We found that, ironically enough, organized crime is run by organized criminals and—what do you know?—organized criminals determine their actions based on their pocketbooks. The more expensive it is, the higher price they pay, the less likely they are to do it, and the more effective the deterrent is.

I wish to comment briefly on the issue of judicial discretion. The NDP always supports judicial discretion when it permits a judge to be more lenient. In the last few days, however, we have been trying to pass a law that allows judges the discretion to exercise a little deterrence, to permit custody or more consequential remedies. Now where are the NDP principles in favour of judicial discretion? They disappear like the wind. There's a place for judicial discretion, and there's a place for removing it. But if you're going to hang your hat on the notion that it's good to give judges discretion, then there's absolutely no reason to deny judges discretion to impose more consequential remedies as well as more lenient ones. I notice, by the way, that this same inconsistency appeared every time the Canadian Bar Association representatives came to our committee.

A brief word is necessary about the rather misleading comparisons that the NDP members often make between what this government is doing and what occurs in the United States. Much was made in the media recently about Texas adopting a more lenient approach to sentencing, and warning Canada not to go down that path of being less lenient. Well, my friends, it's necessary for you to know that even the more lenient sentencing rules that Texas is adopting still result in an incarceration rate five times greater than anything you see in Canada.

● (2115)

Nothing this government has proposed comes anywhere close to the ten-year mandatory minimum penalties that are imposed in some U.S. jurisdictions. Nothing this government has proposed comes anywhere close to the infamous three strikes and you're in jail for minor, puny little offences. That's not even rumoured anywhere by this government; it's not going to happen. The comparison is completely untoward. Instead, we have carefully targeted penalties for the worst offences or the worst offenders. In fact, if you actually read this bill, you'll be surprised by some of the things you see in it.

For example, if someone is convicted of trafficking in cannabis without any aggravating features—they haven't produced it, they haven't gotten children under 18 involved, they're not doing it near a school, they're simply trafficking in cannabis.... Do you know how much they can traffic without any mandatory minimum penalty? You will find this, by the way, in what will become under this act subsection 5(3) paragraph (a.1). It's three kilograms. Regrettably, I'm still a pounds and ounces type of guy, but it seems to me that three kilograms of anything is a good whack. Under this bill you can traffic three kilograms of cannabis. So if all you're doing is trafficking it—you're not producing it or invoking any of the other aggravating circumstances—there is no mandatory minimum penalty. That's how non-draconian this bill is.

I want to mention one or two other clauses that are of interest in this respect, Mr. Chair. I'm simply relating them to the comments about clause 39, but I want to jump ahead a little bit. You'll find that this bill will insert a new section 9 into the Controlled Drugs and Substances Act. Do you know what it requires? It says:

> 9.(1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act, including a cost-benefit analysis of mandatory minimum sentences, shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

In other words, ladies and gentlemen, this Bill C-10 has built into it a five-year review that will tell us what the cost benefits are of mandatory minimum penalties. So why don't we give a chance to those carefully targeted instances that I'm going to refer to in a moment?

One other provision that is of some interest, and showing you how moderate and balanced Bill C-10 is, is what will become subsections 10(4) and 10(5) of the Controlled Drugs and Substances Act. What this section says, and it's not mentioned by my opposition friends—or perhaps they mentioned it when I wasn't listening earlier—is that the mandatory minimum penalties under this part that we're discussing are not going to be required if the offender attends a treatment program and successfully completes it.

So when you hear the NDP talk about these drug addicts who are going to be thrown in jail because they're lower-level participants in the drug trade and happen to get caught up using a weapon or assaulting somebody, the reality is that those folks, if they successfully complete a drug treatment program, will not be subject to any mandatory minimum penalty under the act. That is how moderate and balanced this bill is.

I truly recommend to anyone that they read the bill, because what they will find is that it is targeted.

● (2120)

So I ask my NDP colleagues, if you found that someone was trafficking drugs for the benefit of an organized crime group, would you think that maybe they ought to go to jail to put a dent in organized crime? That's one of the aggravating features that requires a mandatory minimum penalty in this act.

Is it so terrible for the government to want to try to put a dent in organized crime? I don't think so, and I don't think most Canadians believe that either. I think the NDP and others who argue that we should not try to put a dent in organized crime in this fashion are out of touch with what's required in Canadian society today.

If it's not enough that a drug trafficker is working for organized crime, would it be enough for you that the drug trafficker used violence in the commission of his offence? Would that be enough to suggest that maybe a jail sentence was warranted?

I see Mr. Harris nodding his head yes. That happens to be the second aggravating feature in this act that would invoke a one-year mandatory minimum penalty.

But if it's not enough that violence was used, would it be enough that somebody used a weapon in the commission of their drug trafficking? We have a great concern about gun offences in this country. Surely if someone uses a weapon in the course of trafficking drugs, that ought to justify a mandatory minimum penalty. Indeed, that is another one of the aggravating features that will allow a mandatory minimum penalty of one year.

I don't often quote from *The Toronto Star*, but I want to mention an article on a rather in-depth study of young offenders court. It appeared on October 29, 30, and 31 of this year in *The Toronto Star*. With respect to weapons, at least—I'm going to come back to this point—and the use of young people in drug offences by organized criminals, but in particular with respect to drugs, it stated: “So many are arrested, charged and convicted of carrying, pointing and shooting guns, prosecutors call the problem a scourge.” They're right. Young people should not be using weapons, using guns, pointing them, and threatening with them. A justice of the peace in Toronto is quoted as saying about Toronto that our city is plagued with guns that exist in the hands of young people. So maybe a mandatory minimum penalty to deter the use of guns and weapons isn't such a bad idea.

If that's not enough to justify a jail sentence, would it be enough that a drug trafficker is hanging out at your daughter's or your son's school, at the skating rink where young people are accustomed to going, or any other place where young people are accustomed to going, in order to lure young people into the use of drugs? Would that be enough, I ask my friends across the way, to justify a deterrent mandatory minimum penalty? That's another aggravating feature under this act.

I'm going to mention one more. If it's not enough that drug traffickers are out where children congregate, luring them to purchase drugs, would it be enough for you if a drug trafficker actually enlisted someone under the age of 18 to sell drugs for him or her? Would that be enough to justify giving that trafficker a jail sentence?

Before you answer that I want to quote again from that *Toronto Star* article. I'm not going to mention names, but there were examples of three young people referred to in that article. One of them was convicted of marijuana possession after a car he was riding in was pulled over and found to contain hundreds of dollars in cash, half an ounce of crack, and a gun holster jury-rigged from a coat hanger. This was a young person engaged in the drug trade.

● (2125)

Another one was convicted of attempted break and enter and marijuana possession in April, then re-arrested in June after police allegedly found two starter pistols in his bedroom and more than a gram of narcotics up his rectum. A third one is referred to as one of the many crack dealers—a sixteen-year-old—to come through the youth court in 2011.

There is no question that organized criminals are recruiting young people to traffic drugs because we have to treat young people differently when we sentence them. They don't get penalized as heavily as adults. So if we know that an organized criminal has recruited a young person, surely that's enough to justify putting that drug trafficker in jail. That, my friends, is another aggravating feature that is one of the instances to invoke a mandatory minimum penalty under this act.

I could go on, but I think you get the drift, ladies and gentlemen, that this act is specifically targeting aggravating features and aggravating offenders in an effort to do something about a real scourge in our community. It is simply recognition that our government is in touch with police, parents, courts, and prosecutors in attempting to respond to a problem in a way that, unfortunately, for ideological or other reasons, you will never see from the NDP.

I will perhaps have an opportunity to speak later about the other provisions of this bill, but I appreciate this opportunity to express myself, Mr. Chair. Thank you.

The Chair: Thank you.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob: I am going to continue along the lines of what Ms. Findlay said. I have a lot of empathy for the points she raised, drug addiction, organized crime and street gangs, which are a scourge on society. Ms. Findlay said there are treatment programs. There are, but there are not very many in adult prisons. I am not talking through my hat: I have worked in that setting.

We talk about intervention under the YCJA, in Quebec, differentiated intervention. I do not know whether you are aware, but when a young person is offered a choice between a mandatory minimum sentence and treatment, they choose the mandatory minimum sentence. A young person actually prefers to go to prison, at the beginning. They know it is a trophy, and they proudly believe it is the university of crime. They think there is not much rehabilitation because they are in a state of revolt. They are more afraid of having to get down to the nitty-gritty in individual or group therapy. That is the only place we can have an influence on this offender. When their revolt dies down and they agree to get involved, they do it positively.

Certainly the success rate is not 100%, but it works: the crime rate is going down. On the streets of Montreal, when I come across the ones who have not changed, they cross the street, but the ones who have changed say "thank you, Pierre". In many cases, I do not recognize them because I have not seen them in five or 10 or 15 years. They have grown up, they have jobs and wives and children; they are involved and are contributing to society. Those ones, I never see them again. In other words, it works. That is all I wanted to add.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Mr. Jacob.

Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I think both sides have had a good opportunity to talk about the generalities of the mandatory minimums versus the experience elsewhere, and the evidence and representations that these wouldn't be effective. I recognize what an excellent rhetorical job Mr. Woodworth just performed, and I'm sure any judge listening to the most recent intervention—

● (2130)

Ms. Kerry-Lynne D. Findlay: What about me?

Mr. Jack Harris: I thought he was talking to me as a judge. This does not justify a sentence of a year or more. I thought there would have been modest sentences in the cases Mr. Woodworth was talking about. Surely the impression he gave was that somehow or other these people should go free without the mandatory minimums that are here. I would be inclined to think that any judge hearing that submission to sentence would be very much inclined to treat these matters very seriously indeed, particularly where the offences call for life in prison.

Without going back into the rhetoric that might be called for, I'd like to suggest, Mr. Chair, that you go through some of the amendments and call them so we can deal with them.

There are only six or seven clauses here, and we have a number of amendments. My approach will be to explain the amendments. Most of them are in the context of the minimum sentences and seeking to make some changes there. We're not anticipating that any of them will pass, given the comments we've heard from the other side. Some of them are dependent on fall-back positions if one or the other doesn't pass. It will be relatively easy to explain as we go through what the effect of a particular amendment will be.

There are a couple that we would like to make some comments on, as to why an amendment would go. But for the most part we will be seeking to put the amendment forward and have it voted on relatively quickly

The Chair: Thank you, Mr. Harris. I am certainly prepared to do that.

Within clause 39 there is still one Liberal amendment, L-16.

Hon. Irwin Cotler: That's correct.

The Chair: If Mr. Cotler would like to speak to it, we can address it.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I have been listening rather patiently to the discussion this evening, and I have to say that I feel it's been a very good discussion. I hope people, if they haven't been watching, will read the text, because there are competing considerations, and this will be a good way to assess those competing considerations.

I will begin my remarks with my amendment. Then I will do as my colleagues have done and speak somewhat generally about the issue of mandatory minimums. I'll try not to repeat anything that has been said, because I've been listening carefully to my colleagues.

With respect to the Controlled Drugs and Substances Act, under subclause 39(1), proposed item 5(3)(a)(ii)(A) authorizes a minimum punishment of two years if “the person committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years”. My amendment would add to that “if, at the time the offence was committed, persons under the age of 18 years were present or in the immediate vicinity”.

The purpose of my amendment, Mr. Chairman, is to ensure—and I understand this—that the aggravating factor of committing an offence near a public place usually frequented by persons under 18 only applies if youth were present or were in the immediate vicinity when the offence took place. Otherwise, almost all locations in a city could be implicated. I don't believe this was the initial intention with respect to this particular provision. Indeed, this particular provision may end up, though it is not intended to be, constitutionally suspect because of its over-breadth. I would not wish to see that happen, because I think the vision is important. And I don't think my colleagues opposite would like to see that happen.

Mr. Chairman, if I may, I'll use this occasion to address what all members on both sides have done up to now, which is the issue of mandatory minimums, which underpin the Controlled Drugs and Substances Act. I will address clause 39 in particular. This will be the only time I speak to this issue this evening. It may come up with respect to other amendments, but I'm only going to speak once to the issue and will do so now.

Let me begin by responding to some of Mr. Woodworth's comments, which he made in his remarks, because I think they merit consideration and a response.

He asked whether we are satisfied or not satisfied with what the drug trade has wrought. My answer, simply put, is that I'm not satisfied. He asked whether I, or we, take the position that all drugs should be legalized or that any drug used should not be criminalized. I do not take that position. I happen to be an academic, among other things, Mr. Chairman, but I do not take that position, nor do I believe that all academics take that position.

Mr. Woodworth asked whether the witness testimony he quoted did or did not strike a chord. My answer to him is that I have been there. I know whereof he was speaking. It did strike a chord. I don't think any of us who have been confronted with what he described or what any of us have experienced would be able to be indifferent to it.

Mr. Woodworth said that to say that deterrence sentences are of no value is to be out of touch. Mr. Chairman, I don't say that deterrence sentences are of no value. I say that deterrence is one consideration. I think they have to be seen in the context of what the evidence also tells us about them.

Finally, Mr. Woodworth said that the offences in clause 39 relate to the scourge of organized crime. Organized crime is a scourge. We have to take it seriously. The addressing and redressing of it is important. But not all of the offences relate to organized crime. We have to look at it in that regard as well.

Mr. Chairman, having responded to Mr. Woodworth's questions, I hope, let me now turn more particularly to my whole approach with regard to mandatory minimums.

● (2135)

I want to begin by saying—and I hope you'll indulge me for a moment because I also evolved with regard to mandatory minimums. While I am now critical of mandatory minimums as a matter of principle and policy, I want to say that I did not start that way. In fact, I regarded any opposition to mandatory minimums to be, frankly, counterintuitive. My own sense was that we should support mandatory minimums. That was the beginning of my approach to this.

I believe, as I believe members of the government believe, that serious, I would say consistent, stern offences for all offenders who commit the same crime are an effective deterrent, are an equitable way to approach it, are the appropriate way as a matter of criminal law, policy, and substance. I have to say, Mr. Chairman, I did believe that. I can see reason for believing that. I believe that is very much grounded in an intuitive approach.

But I have to say that after looking into this and examining it, I came to regard mandatory minimums as being suspect from the point of view of principle and policy, if not also constitutional considerations; as being suspect from the point of view of whether one looked at it in terms of crime prevention, which is clearly our overall purpose, or the rehabilitation of the offender, or the protection of the victim, or the protection of public safety, or the cost to the system as a whole.

I have to say that my position evolved from initially being in favour of mandatory minimums for the reasons I mentioned. After considered study of this as a law professor, not as an academic who lives abstracted from the realities on the street, but after looking at it and examining it in disparate jurisdictions, Mr. Chairman, in South Africa, in the United Kingdom, in Australia, in New Zealand, in places I visited, where I met with experts in the field, victims' groups and the like, after prolonged study of this as a kind of street witness and during the period that I was Minister of Justice, because the intuitive sense of the government of which I was a member was that we should have mandatory minimums, at least more than I would have preferred, my position was known.

I felt that some of it was warranted by the government I was a part of, not because of an appreciation of the issue on the merits, though I don't want to impugn anybody, but because there was an intuitive response on their part that somehow if you didn't support mandatory minimums, you would be seen as being soft on crime. It appeared that it was politically important to support mandatory minimums, otherwise you would be accused of being soft on crime, otherwise you would politically suffer for it. I know that colleagues of mine felt that my position, critical of mandatory minimums, might not have been a politically good position. I'm saying that in terms of how we were looking at it at the time, but again I don't want to impugn anybody collectively or any individuals in particular.

Looking at all these specific assessment criteria I did come to the conclusion to be critical of mandatory minimums. Now I want to summarize this entire critique. I will try not to repeat anything that was said, and where I do, I will reference it. I do so in the context that reasonable people can disagree reasonably about what I'm going to say and in terms of what I heard this evening.

● (2140)

As I said, I think this is a good, engaged discussion, and I am prepared to be responsive to what I've heard from the other side. I hope they will be open to this critique that I'm offering. I'm not saying it is conclusive; I'm offering it as part of the argument.

The first thing is that my own appreciation of mandatory minimums is that they do not advance the goal that I thought they did, namely that of crime prevention and deterrence. Part of that, as I said, came from my look at international social science research and evidence. Part of it came from my own experience as minister in the Department of Justice. I came across a document—I think Mr. Harris referred to it—that was originally published in December 1990. It was called “A Framework for Sentencing, Corrections and Conditional Release, Directions for Reform”, Justice Canada 1990. In particular, if you look at page 9 of that report, it says:

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

Mr. Harris has made reference to that. I'm making reference to it, in that as Minister of Justice some of the evidence produced by the Department of Justice did have its own impact on my thinking, particularly as it dovetailed with what I was observing or appreciating or studying, not only in the Canadian jurisdiction but in other jurisdictions.

In a moment I will reference a report from the U.S. Sentencing Commission that was released this month, on November 12, which I think is relevant to our approach this evening. That's my first point.

The second point is that mandatory minimums do not necessarily target the most dangerous offenders who will already be subject to very stiff sentences because they have committed the most serious of crimes. Regrettably, Mr. Chairman, more often less culpable offenders may be caught by mandatory sentences and subjected to extremely lengthy terms of imprisonment.

In this regard, let me quote from the report that came out, as I said, in the second week of November. It's a 645-page report from the United States Sentencing Commission. I take what has been said about the differences between Canada and the United States, and I don't make applications in terms of Texas to Canada willy-nilly without knowing the differences, etc. I'm saying that on the issue of principle and policy, what was found with regard to the mandatory minimums...and I will just share it with you for its appreciation.

The Sentencing Commission found that federal mandatory minimum sentences are often “excessively severe”, not “narrowly tailored to apply only to those offenders who warrant such punishment”, and not “applied consistently”. I'm summarizing the report for reasons of time on that particular point.

That leads me now to the third consideration or critique I want to make, which is that mandatory minimums—and we've heard this—have a disproportionate impact on minority groups who already suffer from poverty, deprivation, and disadvantage. In particular, it may prejudicially affect aboriginal communities. Again, this is something I appreciated, not just from the studies but more when I was Minister of Justice, and that is why I made aboriginal justice a priority. I found that aboriginal peoples are overrepresented as inmates in the criminal justice system and underrepresented as judges, law enforcement officers, and the like.

Mr. Chairman, this has a particular application in terms of sentencing principles and the overall approach to the fallout with respect to mandatory minimums and their impact on aboriginal peoples. Accordingly, Mr. Chairman, Criminal Code paragraph 718.2(e) requires that the situation of aboriginal offenders be considered at sentencing. If a less restrictive sanction would adequately protect society, or where the special situation of aboriginal offenders should be recognized, increased sentences and mandatory minimum sentences would tend to conflict with that principle.

The Supreme Court of Canada, in the Gladue case, also recognized that incarceration should generally be used as a penal sanction of last resort and that it may well be less appropriate or useful in the case of aboriginal offenders.

● (2145)

I make that point to conclude this third critique, and that is the disproportionate and prejudicial impact that mandatory minimums may have on vulnerable communities, particularly aboriginals.

This leads me to the fourth critique, which is that mandatory minimums may undermine important aspects of Canada's sentencing regime. Reference has been made to that, and I don't want to belabour this point, but it can undermine principles such as proportionality and individualization and the corresponding reliance on judges to impose a just sentence after hearing all the facts in a particular case.

This leads me to the fifth critique. Let me return, if I may, to the United States Sentencing Commission, which I referred to before, and the manner in which it determined that federal mandatory minimum sentences can be excessively severe and can have a differential impact on those who do not warrant such sentences and the like. This, Mr. Chairman, is especially true...and this is the finding that I want to relate it to. The U.S. Sentencing Commission found...and there were similar results in terms of the Canadian Sentencing Commission. This is especially true in the matter of drug offences, which make up, for example, some 75% of those involved in mandatory minimums. So there's a particular fallout with regard to the genre of offences, and as I said, not all of them are engaged in the matter of organized crime.

Sixth, Mr. Chairman, mandatory minimums have the potential to add an unnecessary complexity to the framework that we now have with respect to our existing sentencing principles and to increase the court time that is required for sentencing hearings.

In other words, Mr. Chairman, we have a kind of double paradox here, almost a dialectic. Fewer accused are likely to plead guilty, adding to current strains on court resources. On the other hand, prosecutors may leverage the fact of mandatory minimums in order to get accused to plead guilty. So it's a kind of pincer movement where they are caught in between precisely because of the underlying premise with regard to mandatory minimums to begin with. Therefore, the bill would often conflict with existing common law and statutory principles of sentencing such that the sentences could end up, however inadvertently, being excessive, harsh, and even unfair, and raise a section 12 Charter consideration, which leads me to the eighth consideration. I'll go quickly to conclude, Mr. Chairman.

The mandatory minimums, for reasons I need not go into, and I think have been referenced, may invite a spectrum of constitutional challenges that will further clog up the courts and further take us away from principles of justice and fairness.

This leads me to the ninth critique, and as the U.S. Sentencing Commission and the Canadian Sentencing Commission have pointed out, inequitable and inconsistent sentencing policies—and this can and very often does result from mandatory minimums—may foster disrespect of and lack of confidence in the criminal justice system, another consideration or variable that I share, which leads to the tenth critique, Mr. Chairman.

At the end of it all, as the evidence has shown, we may end up with a situation in which we will find ourselves incarcerating more people for longer periods of time, thereby aggravating the existing problem of prison overcrowding, which we had even before the legislation was tabled and which may, in and of itself, raise a question of constitutional concern—as it has in the United States and the ruling recently in the United States Supreme Court in the matter of California—with regard to the perspective of cruel and unusual punishment.

The eleventh critique has been mentioned, and I won't mention any more. That is the question of costs.

● (2150)

We have a risk not only of increased or often skyrocketing costs, but also a fallout or impact on federal-provincial relations, where the provinces have to endure the burden of these increased costs by reason of these increased mandatory minimums, and there may not have been the appropriate federal-provincial consultation for that purpose.

Finally, Mr. Chairman, as the U.S. Sentencing Commission and equally Canadian evidence have pointed out, confirming evidence from other jurisdictions I have examined.... The U.S. Sentencing Commission confirms this or reflects other jurisdictions.

> The rise in mandatory minimum sentences has damaged the integrity of the justice system, reduced the role of judges in meting out punishment and increased the power of prosecutors beyond their proper roles.

Let me just continue on this point, Mr. Chairman, because that was from an editorial commenting on this U.S. Sentencing Commission report. This editorial came out even before it arrived, as a result of another study that was made in New York on the matter of mandatory minimums. I won't prolong it, but I just want to say that in *The New York Times* editorial on September 28, 2011, it referred to the fact that

> ...prosecutors can often compel suspects to plead guilty rather than risk going to trial by threatening to bring more serious charges that carry long mandatory prison terms. In such cases, prosecutors essentially determine punishment in a concealed, unreviewable process—doing what judges are supposed to do in open court, subject to review.

"This dynamic", the editorial holds—and again, I just throw it out for consideration, not for conclusive appreciation—is yet "another reason", as they put it,

> to repeal mandatory sentencing laws, which have proved disastrous across the country, helping fill up prisons at a ruinous cost. These laws were conceived as a way to provide consistent, stern sentences for all offenders who commit the same crime. But they have made the problem much worse. They have shifted the justice system's attention away from deciding guilt or innocence. In giving prosecutors more leverage, these laws often result in different sentences for different offenders who have committed similar crimes.

It concludes: "These laws have helped fill prisons without increasing public safety. In drug-related crime", which is what we are addressing right now, Mr. Chairman, "a RAND study found, they are less effective than drug treatment and discretionary sentencing."

In conclusion, Mr. Chairman, if you look at all the criminal justice organizations that have studied this—both in the United States and in Canada—and focused on this particular issue of mandatory minimum sentences, the general conclusion arising from all these studies is to be critical of, if not to oppose, mandatory minimums.

As I said, Mr. Chairman, I didn't start out that way. I started out in a way not unlike that which members of the government have related to this evening. It may be, because I started out where they are now, that over a period of time I came around to look at it somewhat differently. I don't, for a moment, have any disrespect for the manner in which the government members have put forth their position. I'm just trying to share, from my own experience and study, the perspectives that have led me to be critical of mandatory minimums for the reasons I mentioned.

Thank you, Mr. Chair.

● (2155)

The Chair: Thank you, Mr. Cotler.

We're dealing with clause 39, NDP-4, NDP-6, NDP-7, Liberal-16, and NDP-8.

Mr. Robert Goguen: Is it agreed to put those together, Mr. Chair?

The Chair: No. We'll have a vote on each one. Those are all on the same clause, and that's clause 39.

The question is on amendments NDP-4, NDP-6, NDP-7, and L-16.

(Amendments negatived)

The Chair: On amendment NDP-8, those in favour—

Mr. Jack Harris: I don't think I actually mentioned what that was about, Chair. That's an amendment to the same...because we stopped at Mr. Cotler's amendment.

NDP-8 actually changes this provision, which talks about other public places frequented by youth, because of vagueness, and leaves it to "in or near a school, on or near school grounds".

Go ahead and vote on it.

The Chair: Thank you, Mr. Harris.

(Amendment negatived)

(Clause 39 agreed to on division)

The Chair: Now we're at clause 40. We've been sitting for two and a half hours. I'm not sure how much longer we need to go without a short break.

Mr. Robert Goguen: Five minutes, perhaps?

Mr. Jack Harris: Do you want to go five minutes? Yes, five minutes is fine.

The Chair: We'll suspend for five minutes.

● (2155)

(Pause)

● (2205)

The Chair: We'll call the meeting back to order. We're at clause 40.

(On clause 40)

The Chair: Mr. Harris, you have two amendments, NDP-9 and NDP-10, and then there's Liberal amendment L-17, and then NDP-11. If you'd like to speak to them and move them....

Mr. Jack Harris: Thank you. I'm going to move them and just explain what they do.

Amendment NDP-9 would have the effect of removing cannabis and derivatives from the provisions of clause 40.

Also in clause 40, amendment NDP-10 would have the effect of eliminating the one-year minimums provided for in that clause.

Amendment NDP-11 gets rid of the two-year minimum that's provided for in those clauses. In these cases, NDP-10 replaces the one-year minimum with "liable to imprisonment for life", and NDP-11 replaces the two-year minimum, leaving it as "liable to imprisonment for life" for the offences that are referred to in clause 40.

The Chair: Thank you Mr. Harris.

Mr. Cotler, you have an amendment L-17.

● (2210)

Hon. Irwin Cotler: I want to make sure I have the right one here. Yes.

Mr. Chairman, I'm moving that Bill C 10, in clause 40, be amended by replacing line 24 on page 23 with the following:

> purposes of trafficking for financial gain,

The purpose of the amendment, Mr. Chairman, is that clause 40 should be amended to specify that the offence of importing or exporting must be committed for the purpose of financial gain. Otherwise, persons who have shared personal drugs with friends could be caught by this provision. So it's a clarifying type of amendment.

The Chair: Thank you, sir.

Seeing no further discussion, we'll vote on amendment NDP-9.

(Amendment negatived)

The Chair: Amendment NDP-10.

Amendment NDP-10 is carried—

Some hon. members: Oh, oh!

The Chair: It's defeated. I made a mistake there.

(Amendment negatived)

Mr. Jack Harris: Could we get a recount on that?

The Chair: Everybody but the chair was awake. Sorry about that confusion.

We're at Liberal amendment L-17 now.

(Amendment negatived)

The Chair: Amendment NDP-11.

(Amendment negatived)

(Clause 40 agreed to on division)

(On clause 41)

The Chair: There are a number of amendments here.

Mr. Cotler, I believe the first five amendments are yours, NDP-12, -13...I mean Mr. Harris.

Mr. Jack Harris: Yes. Thank you. It is getting late.

The Chair: Yes.

Mr. Jack Harris: Thank you, Chair.

Amendment NDP-12 deals with clause 41, and there's a whole series of mandatory minimums there.

NDP-12 would have the effect of replacing the schedule and the schedule I offences and eliminating the mandatory minimum of three years and leave the punishment of life imprisonment for the offences listed.

NDP-13 replaces the one-year and 18-month minimums with life imprisonment.

NDP-14 provides for an exception for growing a certain number of plants:

> cannabis (marijuana), except if the production is for medical purposes

I believe you have a ruling on that one.

The Chair: I do, Mr. Harris.

As in others, this amendment was an amendment to a bill that was referred to committee after second reading. It is out of order. It is beyond the scope and principle of the bill. In the opinion of the chair, the introduction of an exemption is a new concept that is beyond the scope of Bill C-10. Therefore, the amendment is inadmissible.

Mr. Jack Harris: We're withdrawing NDP-15.

The Chair: Thank you, sir.

Mr. Jack Harris: NDP-16 would eliminate lines 19 to 43 on page 24 of the bill. This is where a whole series of mandatory minimums are set out in relation to "cannabis (marijuana)". This is what we believe to be the arbitrary distinction between numbers of plants, more than five, less than five, 200 attracting certain sentences, and 201 attracting others. We believe this is all arbitrary and not to be in the act.

So we would substitute a term of 14 years as a maximum for all of those provisions that provide for mandatory minimums. That's the purpose of NDP-16.

We have another, although Mr. Cotler is in there with an article between them.

I will advise that we're withdrawing NDP-17, NDP-18, NDP-19, and NDP-20, all of which refer to other subsets of those individual sentences, and we would stand or fall on the elimination of all of them as a group.

● (2215)

The Chair: Thank you, Mr. Harris.

Mr. Cotler, you have amendment Liberal-18.

Hon. Irwin Cotler: I thought we had done Liberal-18, Mr. Chairman, and that we are on Liberal-19 now. Am I wrong?

The Chair: I don't think Liberal-18 has been moved, Mr. Cotler. It's in the middle of the NDP ones.

Hon. Irwin Cotler: If you're referring to the one that says clause 40 be amended by replacing line 24 on page 23....

Some hon. members: No.

Hon. Irwin Cotler: No?

Mr. Jack Harris: It's on clause 41; I almost withdrew it.

Hon. Irwin Cotler: I had numbered it wrong in my own notes. It's that Bill C-10, in clause 41, be amended by deleting lines 21 to 24 on page 24.

Mr. Chairman, I believe Mr. Harris has previously addressed this. I will just restate the rationale for it, from the Canadian Bar Association:

> For example, clause 3(1)(b) would impose escalating MMS for production of marijuana geared to the number of plants produced. If less than 201 and for the purpose of trafficking, the MMS would be six months. If less than 201, for the purpose of trafficking and any of the aggravating factors apply, the MMS would be nine months. If more than 200 but less than 501, the MMS would be one year. In the same case, if any of the aggravating factors apply, the MMS would be eighteen months. If the plants exceed 500, the MMS would be two years. If any of the aggravating factors apply, the MMS would be three years.

Now, the whole point of the amendment, Mr. Chairman, is that it is somewhat

> ...contrary to common sense for someone responsible for a 200-plant grow operation to receive a six-month MMS, while someone responsible for 201 plants to be subject to twice that sentence.

That's the rationale for the amendment.

The Chair: Thank you, Mr. Cotler.

Now, Mr. Goguen, you have G-1.

Mr. Robert Goguen: Yes, thank you, Mr. Chair.

The motion is to amend clause 41 on page 24 at line 27, and we would add at that line, "and more than five".

Some of us will remember there was a witness who had picked up on this error. It's a drafting error. It's a technical mistake. What the clause was intended to do was set out a minimum sentence for a scale of number of plants, if there were aggravating factors and it was for the production for the purpose of trafficking. Where there was to be a parameter of five plants or more, up to 201, there would be a minimum sentence. The terms "more than five" were omitted. As such, all you've got is that it says, "is less than 201" plants and it doesn't give the other parameter of "more than five" plants.

It's really more of a cosmetic thing. I don't know if I've enunciated it clearly so you understand, but there was to be a greater and a lesser, and the lesser is not there.

The Chair: Thank you.

Mr. Cotler, you now have Liberal-19 and Liberal-20.

Hon. Irwin Cotler: Mr. Chairman, I move that Bill C-10 in clause 41, be amended by replacing line 28 on page 24 with the following:

> purpose of trafficking for financial gain and any of the

In other words, as with the previous section, this should be amended to specify that the offence, regarding the production of marijuana, must be for the purposes of trafficking for financial gain. Otherwise, Mr. Chairman, we run the risk again of having an overly broad provision.

We want to criminalize the trafficking, not the mere production.

Do you want me to do Liberal-20 at this point as well?

● (2220)

The Chair: Yes, please.

Hon. Irwin Cotler: Here in clause 41 it should be amended by deleting lines 5 and 6 on page 25.

In other words, proposed paragraph 7(3)(a) should be amended to remove the aggravating factor of using real property belonging to a third party. Otherwise we will find ourselves in the anomalous situation where all tenants would be subject to more severe sentences than homeowners.

Again, the purpose here is to clarify and rationalize the principle.

The Chair: Thank you.

Seeing no further discussion, we're at clause 41, dealing with NDP-12.

(Amendment negatived)

The Chair: NDP-13.

(Amendment negatived)

The Chair: NDP-14 is outside the scope. NDP-15 was withdrawn.

NDP-16.

(Amendment negatived)

The Chair: Liberal-18.

(Amendment negatived)

The Chair: NDP-17, 18, 19, and 20 were all withdrawn.

G-1.

(Amendment agreed to)

The Chair: Liberal-19.

(Amendment negatived)

The Chair: Liberal-20.

(Amendment negatived)

(Clause 41 as amended agreed to on division)

The Chair: Mr. Goguen, you have another motion, G-2.

Mr. Robert Goguen: New clause 41.1 is a more substantive amendment, and in 41.1 we're requesting that subsection 7.1(1) of the act be replaced by the following:

> 7.1(1) No person shall posses, produce, sell or import anything knowing that it will be used to produce or traffic in a substance referred to in item 18 or subitem 19(8) of Schedule I.

This motion is required to take into account the new offence created by private member's bill C-475 in the last session of Parliament. This offence, Mr. Chair, deals with possession, production, selling, or importing of anything knowing that it will be used to produce or traffic in methamphetamine or ecstasy. The new offence references ecstasy, which is found in schedule III of the Controlled Drugs and Substance Act, CDSA; however, bill C-10 transfers ecstasy from schedule III to schedule I.

Without this amendment, a part of the newly created offence in Bill C-475 will be nullified, and the new offence was added to the CDSA and came into force last June.

Mr. Jack Harris: I have a point of order, Mr. Chairman.

I recall an awful lot of motions of ours ruled out of order because they weren't contained in the bill at second reading and they introduced a new matter.

We're talking about something that doesn't relate to anything within Bill C-10 at all. This seems to me to be in the same category of being out of scope with respect to the rest of the bill. We're talking about satisfying some other requirements of other legislation. It seems to me that this is creating, in fact, a whole new offence that has nothing to do with.... It refers to schedules....

I would ask if our legal adviser can give us a ruling, or it's up to you to give a ruling on it, but it seems to me that this is totally unrelated and is a new matter that wasn't part of the bill at second reading.

● (2225)

Mr. Robert Goguen: We could refer this to the officials for their explanation.

Mr. Jack Harris: I understand there's an explanation as to why it would be there.

Mr. Robert Goguen: But maybe they can.

Mr. Jack Harris: I'm not suggesting—

Mr. Robert Goguen: I understood your argument.

Mr. Jack Harris: I'm not suggesting it is not being put forth in good faith. What I'm suggesting is that our amendments were being put forth in good faith too, but they added new things that weren't contemplated. I can't remember the exact wording of the ruling, but it was made several times, and the gist of it is that new matters that weren't contemplated at second reading then really ought to be, or need to be, the subject of another bill.

Mr. Robert Goguen: We're actually moving it from one schedule to another.

The Chair: Okay.

Ms. Boivin.

Ms. Françoise Boivin: I would be surprised if that would be deemed acceptable, because I couldn't change a title and you're bringing in a new offence? I understand the logic behind it and it might make good sense, but you might have to just present a new bill. To the same logic that we couldn't change a title because it was not part of the bill.... I will be very curious as to the decision that will be rendered here.

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I think it's unfair to ask the experts, because they deal with the substance of the bill; they're not experts on matters of parliamentary procedure. If we are following precedent and principle in terms of how we dealt with all the other matters that were deemed to be beyond the scope and therefore ruled out of order, it seems to me the same precedent and principle would have to apply here, if we want to be both principled and consistent.

The Chair: Thank you, Mr. Cotler.

The legislative clerk would like to hear from the officials to get an understanding of what it means.

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chairman.

This motion really introduces a coordinating amendment. The offence that's referred to here already does exist; it was created in Bill C-475. What this motion does is correct a reference in that offence that was created in Bill C-475, the reference to ecstasy as being in schedule III. This bill here moves ecstasy from schedule III to schedule I; therefore, a coordinating amendment is required to reflect the change of the move from schedule III to schedule I for ecstasy. That's all it does. It does not introduce a new offence, because that offence already exists now.

I offer that up for your information, Mr. Chairman.

The Chair: Thank you.

Just give me a minute.

Go ahead, Mr. Harris.

Mr. Jack Harris: I listened with interest to the official's comment, but there's nothing already in section 7 of the Controlled Drugs and Substances Act, which I have a copy of, unless that's a new bill that added 7.1. My copy is the Martin's Criminal Code 2011 edition.

Mr. Brent Rathgeber: A point of order.

The Chair: Go ahead on a point of order.

Mr. Brent Rathgeber: It appears to me, Mr. Chair, that if you've made a ruling that this amendment is in order, it is open to the opposition to challenge your ruling.

● (2230)

The Chair: I haven't made a ruling.

Mr. Brent Rathgeber: Thank you.

The Chair: Mr. Saint-Denis.

Mr. Paul Saint-Denis: Thank you, Mr. Chairman.

I want to point out that our version of the 2012 CDSA, the Controlled Drugs and Substances Act, does have the reference to the offence at section 7.1. Since the offence came into force in mid-2011, it will not have been included in the 2011 Martin's Criminal Code, but in our more recent version of the Criminal Code, which contains a number of statutes, including the Controlled Drugs and Substances Act, it is reflected, sir.

Mr. Jack Harris: Notwithstanding that, Mr. Chairman, the legislation before us here makes no reference to any issue of producing, selling, possessing, or importing anything, knowing that it will be used to produce or traffic in a substance referred to in any schedule of any kind. This is clearly an amendment to a clause of the bill that's not referred to or dealt with. Of course, they are not amending an existing provision. They are amending the entire bill by adding an entirely new provision, proposed new clause 41.1, which doesn't exist in the bill right now. They are inserting it after clause 41 and before clause 42.

If we are talking about consistency here, as Mr. Cotler said, in principle, this clearly is a new item, a new topic, and a new section of the Controlled Drugs and Substances Act that they seek to amend. It is an entirely new clause for this bill, on a new subject matter.

I think when Mr. Cotler, for example, moved the addition of a crime prevention board for Canada, it was ruled out of order because it was a new matter not contemplated in the bill. I don't see how this could be any different.

The Chair: Following discussion with the legislative clerks, one of the issues is that subsection 7.1(1) is not in the act. The amendment, then, becomes outside the scope of the bill.

Mr. Robert Goguen: It was to be added as a clause after line 20.

The Chair: But that's not your motion.

Mr. Robert Goguen: I've got it right here.

The Chair: I don't know, but your motion says:

> Subsection 7.1(1) of this Act is replaced by the following,

But there is no 7.1(1) in the act.

Mr. Robert Goguen: Preceding that—

The Chair: I mean in the bill; I'm sorry.

Mr. Robert Goguen: It proposes adding it after line 20.

The Chair: I've ruled it outside the scope of—

Mr. Robert Goguen: That's fine.

The Chair: So amendment G-2 will not be voted on.

There is no place, then, for amendment G-3. It was consequential to amendment G-2.

We now have amendment NDP-21.

Mr. Jack Harris: NDP-21 is an amendment—

The Chair: I'm sorry, Mr. Harris.

Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I just wanted to provide support for the ruling, which comes from the principle of relevance in the legislative process in the House of Commons, which says:

> An amendment to a bill must be relevant in that it must always relate to the subject matter of the bill or to the clause thereof under consideration [in particular]. In the case of a bill referred to a committee after second reading, an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

I think that supports what you just did.

The Chair: Thank you, sir.

Mr. Jack Harris: That sounds awfully close to a ruling that you've made in the past.

The Chair: NDP-21.

Mr. Jack Harris: Thank you, Mr. Chair.

NDP-21 is an amendment to clause 42. Clause 42 has two sections in it. One talks about notice that is required. Before a court is required to impose a minimum punishment, it must be satisfied that the offender, "before entering a plea, was notified of the possible imposition of a minimal punishment". Given the fact that all of the amendments have been lost, this notice is important, but it does give rise to the problem that Mr. Cotler referred to, essentially putting the sentencing power in the hands of a prosecutor, which is not where it should be. It should be in the hands of a judge. Unfortunately, that notice is certainly necessary. At least it ameliorates, to some extent, the minimum punishment. So we would reluctantly support that particular portion.

The second part of clause 42 includes a section 9 in the CDSA, to report "within five years after this section comes into force", to have "a comprehensive review of the provisions and operation of this Act, including a cost-benefit analysis" of the mandatory minimums. We are proposing to amend that to two years after the section comes into force.

Our next amendment is to the next clause, so I'll leave it at that.

● (2235)

The Chair: Thank you, Mr. Harris.

Clause 42, on the NDP-21 amendment....

Mr. Jack Harris: Does anyone want to speak to it?

[*Translation*]

Ms. Françoise Boivin: No, that is fine.

[*English*]

(Amendment negatived)

(Clause 42 agreed to)

(On clause 43)

Mr. Jack Harris: I just want the record to show that although our amendment wasn't accepted on the two years, we're satisfied to have a review in five years and a report to Parliament included in that. So we do support that, just for the record, despite the fact that our amendment was lost.

The Chair: Now we're at clause 43, amendment NDP-22.

Mr. Jack Harris: NDP-22 is replacing lines 18 to 28 on page 26. This is the drug treatment court. Despite the comments of my friends opposite about drug treatment being an exception if you prove you're an addict, etc., you don't have a mandatory minimum. The concern is that it only refers to participation in a drug treatment court program approved by the Attorney General or established under subsection 720(2) of the Criminal Code. We propose an amendment to replace those provisions with the following:

> convicted of an offence under this Part is not required to impose the minimum punishment for the offence for which the person was convicted if the offender is participating in a drug treatment rehabilitation program.

This eliminates the requirements of there being a drug treatment court and they have to successfully complete the program under proposed subsection 10(4) in order to avoid the mandatory minimum.

I'll speak to that. I just wanted to put the amendment on the table first.

The Chair: Thank you, Mr. Harris.

Mr. Jack Harris: Mr. Cotler has a couple of amendments to the same....

The Chair: Mr. Cotler, we have Liberal-21 and Liberal-22, but we need to deal with Liberal-21 before you move Liberal-22.

Hon. Irwin Cotler: Correct.

The Chair: So perhaps you would like to move Liberal-21.

Hon. Irwin Cotler: Yes, Mr. Chairman. I move that clause 43 be amended by adding after line 22 on page 26 the following:

> to receive treatment for mental health issues or attend a mental health treatment program approved by the Attorney General; or

In a word, Mr. Chairman, the purpose of this amendment is that upon conviction of an offence for which a minimum punishment is prescribed, the court may, when satisfied that a person requires mental health care, delay sentencing to enable the person to receive treatment or participate in a mental health program approved by the Attorney General. It's very analogous to the drug treatment, except the subject matter here has to do with mental health issues. I want to say, Mr. Chair, that it is utterly not only underrepresented but not represented in this bill.

When we had the debate on the need for a national suicide prevention strategy, we noted that 90% of the people there had some form of mental illness. Similarly, Mr. Chair, this legislation has no reference to the mental health component. I'm offering this provision so that, in the same way in terms of drug treatment, in an analogous fashion, the court can, when satisfied that a person requires mental health care, delay sentencing, etc.

● (2240)

The Chair: Thank you, Mr. Cotler.

Just so we understand, Liberal-22 cannot be moved if Liberal-21 is defeated, because it's—

Hon. Irwin Cotler: There's a connecting link. I understand that.

The Chair: Mr. Harris, did you say you wished to speak to it?

Mr. Jack Harris: I wish to speak to this, and perhaps one of my colleagues may as well. We're not going to speak very long, except to point out that the requirement that it be a drug treatment court.... We've had some discussion back and forth about this during the course of hearing witnesses, as well as in this debate today. The notion of the drug treatment court sounds very plausible, and certainly we don't have any objection to the drug treatment court, but the drug treatment court would be included in our amendment, because obviously a drug treatment court would be a drug treatment rehabilitation program.

The problem is that there are only a handful of places in this country that actually have drug treatment courts. So if we're going to provide an opportunity for people.... We've already been through the debate about mandatory minimums; this is an exception to it, and an exception that modifies and ameliorates to some extent the harshness of the mandatory minimums. This alleviates the requirement to impose the minimum punishment if they're engaged in a drug treatment rehabilitation program. By limiting it to drug treatment courts, or section 720 of the Criminal Code, the vast majority of the people in this country who would be exposed to the mandatory minimums could not avail themselves of this provision, because these drug treatment courts don't actually exist.

I believe there's one in Toronto, there's one in Vancouver, one in Edmonton, and a couple of other places—Calgary perhaps. They are not terribly extensive, there are not a lot of people who are able to participate in them, and the success rate hasn't been sterling. So it's not clear that proposed subsection 10(5), which we were proposing to eliminate by replacing it with this provision, would actually have much effect at all.

I think by putting this clause in, instead of the existing one in clause 43...not only would it allow more Canadians who are in this circumstance to be able to avail themselves of this so they could rehabilitate themselves from their drug addictions or dependencies, but it would provide encouragement to the provinces, which have a choice. Some of the provinces are complaining about the fact that they're going to be saddled with the costs of incarcerating people for mandatory minimum periods as set forth in this act. We know that the cost of that is tremendous, and the cost of that is tremendous compared to the cost of a drug rehabilitation program, which could serve the needs of the individual, but also serve the needs of society.

So instead of putting someone in jail, where they may not have access to any program at all—and I think we've had some evidence that the more overcrowding of jails we have, the less access to programming that's available—this would provide an incentive, an encouragement, to provinces to actually have drug treatment rehabilitation programs available to people when they are convicted of offences or if they're before the courts.

Some people may not avail themselves of them; some people may. They could in fact be conditions of a sentence added on if someone did receive a certain sentence of incarceration, or there could be a condition of probation if a person is willing to participate in a drug treatment rehabilitation program. This seems to me to be something that could aid in the rehabilitation of an individual and avoid the mandatory minimum sentence. If the individual wished to participate in such a program, and it was a condition of his probation or his sentence that he maintain his status in such a program, then the end result of failing to continue to participate in the program could be incarceration. If it was a suspended sentence, for example, that person could be back before the court and sentenced to incarceration. So it's a bit of a carrot-and-stick approach.

● (2245)

It is being obviously suggested by the existence of clause 43 itself. Then the fact of the matter is there's also.... You know, we're just using the stick. If there's a thought that a carrot should be available as well, then I think it should be readily available and not discriminate against people on the basis of where they live in Canada.

So that's the rationale for our amendment. I think it's a positive improvement to the act, and I ask for the consideration of government members to allow this amendment.

The Chair: Thank you.

Mr. Woodworth.

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

I would like to speak briefly to Mr. Cotler's amendment. In fairness, I'll say at the outset I do not propose to support it. However, having said that, I believe Mr. Cotler has put his finger on a real problem, and that is that the incidence of mental illness in our prisons is too great. There are people who should not be in prison because they suffer from mental health disorders of various kinds.

Having said that, I will not support this because, first of all, we're dealing with sections that address drug issues, and I'd like to keep the focus on drug treatment. Secondly, I think the issue of mental health disorders in our prisons is a much wider one that deserves wider government study and efforts to address.

Thirdly, and I know Mr. Cotler will know what I mean by this—if I can mangle the language again a little more—I don't want to "psychiatrize" our criminal justice system. In my youth, there were certain socialist East Bloc nations that did purport to put people into psychiatric hospitals for what were really criminal offences. It's a difficult and fine line to draw, and I would like to see a little more government study of this before we go down this path.

But I do want to commend Mr. Cotler for putting his finger on that particular problem.

Thank you.

The Chair: Thank you, Mr. Woodworth.

Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin: I am going to continue on amendment NDP-22 concerning clause 43 and drug treatment rehabilitation programs. This is not always the case. One of the problems with these centres is that there are not huge numbers of them. According to the information I have, there are six. I am going to read it in English:

[*English*]

only six drug treatment courts, and access is limited.

[*Translation*]

This clause deals with very specific cases. These are accused persons who still have a chance of rehabilitation through these treatment programs. I think this is a humane way to look at things. People may not be familiar with Canadian drug treatment courts.

The legislative summary from the Library of Parliament also says:

> One of the main goals of the Drug Treatment Court Program is to facilitate the treatment of drug offenders by providing an intensive, court-monitored alternative to incarceration. It is said that drug treatment courts have a more humane approach to addressing minor drug crimes than incarceration.

This is a constant in what we are saying. You have not seen us here trying to reduce the maximum sentences to which people are liable who commit absolutely horrifying offences, some of which Mr. Woodworth listed in his speech a few moments ago about an earlier amendment. No one here would like to see the life sentences reserved for certain cases abolished, or the 14-year sentences reserved for others. That is not the question, those are not at all the cases we are talking about here. We are talking about cases that call for a much more humane approach. Sometimes it is all very well to make passionate speeches, but we also have to be able to put things in perspective.

Once again, I think this is a good amendment, one that would make the legislation better, and that addresses certain objectives that will not be achieved. This may be one way that we could achieve those ends.

● (2250)

[*English*]

The Chair: Thank you, Ms. Boivin.

Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I want to speak briefly to Mr. Cotler's amendment as well. I think Mr. Woodworth has it wrong. He referred to the Soviet Union putting people in mental hospitals who should be in prison, or as a substitute for putting them in prison.

What I think Mr. Cotler's amendment deals with is suggesting that we'd be putting them in prison instead of having them receive treatment for a mental health issue, or attend a mental health treatment program instead of being put in prison, if the reason for being before the law has to do with mental health issues.

Yes, I agree that obviously he has put his finger on something very important that this bill doesn't pay very much attention to. I agree with Mr. Woodworth that this ought to be the subject of a great deal of parliamentary attention. I hope we will see that in terms of mental health receiving better support from the Government of Canada and mental health treatments getting the attention they deserve. Perhaps that should be the subject of much negotiation in terms of the new health accord.

Be that as it may, I think here we're talking about adding additional rationale for delaying sentencing rather than imposing this mandatory minimum in order to receive treatment for mental health issues or to attend a mental health treatment program approved by the Attorney General. I don't see how that interferes with the operations of the prisons or how it "psychiatrizes" prison treatment. It actually allows the delay of sentencing in order for someone to receive treatment for a mental health issue, as opposed to ending up in jail where they might not get any treatment at all.

The Chair: Mr. Wilks.

Mr. David Wilks: Thank you, Chair. I want to quickly comment on that.

The problem I see with regard to the mental health issue is that we go beyond the realm of a criminal offence and we get into the issue of person-by-person mental health issues. When we bring those people before the courts, at some point in time as well there's a requirement for them to be checked by a physician—and sometimes, in the case of British Columbia, two physicians—who must commit that person.

Although I completely agree with Mr. Cotler and his summation, I think we're going down a road that needs to be looked at in a far different scope. To try to attach the mental addictions to drug addictions...that may be the case in some cases, but a lot of times if you can quell the drug addiction you will solve parts of the mental problem as well.

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I have represented a number of political prisoners over the years from the former Soviet Union and Eastern Europe at the time who were committed to a psychiatric hospital, not for reasons of treatment but for reasons of criminalization and punishment.

This is the other way around, Mr. Chairman. We are in a democracy. I am saying that people who have a mental illness or a disability should be able to get the treatment they deserve and not be criminalized. This is the exact reverse of the example that Mr. Woodworth is giving. We do have these situations before the courts in this regard.

I am saying that in this entire legislation—and this is on the issue of mandatory minimums, so it is applicable here—there is no protective provision with regard to those who are suffering from mental illness or mental disability. This is being offered within the framework of the mandatory minimums with which we are dealing, and it is being offered for purposes of allowing the Attorney General to approve the program that can provide for treatment rather than incarceration.

● (2255)

The Chair: Thank you, Mr. Cotler.

Seeing no further intervention, we're at clause 43, NDP-22.

(Amendment negatived)

The Chair: Liberal-21.

(Amendment negatived)

(Clause 43 agreed to)

The Chair: Shall schedule 1 carry?

Some hon. members: Agreed.

The Chair: Shall clause 1, the short title, carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: That brings us to the conclusion.

Before everybody runs away, I'd just like to say a big thank you to the clerks and the analysts and everyone who has been here with us —the translators, the ministry officials who have sat through this. The staff and the committee members have put up with a lot, and I thank you all for what you've done for us.

I'd also like to thank the committee members, because we've had a fulsome discussion in a polite manner. I think this is what Parliament was intended to be. I think everyone has had their word and we've covered a lot of areas. I'd like to also thank you for the tolerance of the chair in trying to keep him straight as much as you could.

Just to remind you, there will be no meeting tomorrow.

Some hon. members: Oh, no.

The Chair: The clerk says we can have one if you want.

The clerk will send out a notice of meeting for next week, and depending on the availability of the minister, we'll either have a subcommittee meeting on Tuesday for future business or the minister alternatively on Thursday.

Thank you very much. The meeting is adjourned.

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