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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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•(1105)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call this meeting to order.

This is meeting number 28 of the Standing Committee on Justice and Human Rights, and pursuant to the order of reference of Thursday, February 2, 2012, we have before us Bill C-217, An Act to amend the Criminal Code (mischief relating to war memorials).

Before we get started, I'll just say that we need to have a couple of minutes, or maybe more, at the end of this meeting to deal with a budget issue with respect to one of the previous bills we dealt with, and, perhaps if we have time, to deal with the issue of estimates that we had before us a couple of weeks ago.

Those things out of the way, we have witnesses before us today. You have them on your list there: Mr. Tilson, the sponsor of the bill; Mr. Eggenberger, from the Canadian Peacekeeping Veterans Association; as an individual, Mr. Earl Page; and Terence Whitty, executive director, from the Army Cadet League of Canada.

You do have an opportunity, if you wish, to address the committee for between seven and ten minutes for the length of your address. If you go over the seven, I will let you know at nine minutes that you have one minute and then we'll cut you off.

Then we'll go to the parties. Each session is five minutes in length, and that includes their question and your answer. The microphones will be taken care of by the staff member here—she'll turn them on and off—so you don't need to worry about dealing with them. If you need translation, make sure it's turned to English and in the earpiece you'll get translation.

Mr. Tilson, do you have an opening address?

Mr. David Tilson (Dufferin—Caledon, CPC): Yes, I do, Mr. Chairman.

Thank you, members of the committee, for letting me speak this morning on Bill C-217.

I've distributed copies of my comments to members of the committee, in French and English, and one of the witness's comments as well.

Perhaps, first of all, Mr. Chairman, I could introduce the two witnesses I've asked to attend here.

Mr. John Eggenberger is from Ottawa. He is the vice-president of research of the Canadian Peacekeeping Veterans Association. He served in the Royal Canadian Air Force from 1955 through 1981,

when he retired as a lieutenant-colonel. During that time he continued his education, earning his Ph.D. in 1976. He began his career as an airborne interceptor navigator, flying out of Comox, in British Columbia. He subsequently served in many postings, including a stint on the DEW line in the Northwest Territories, as well as the Royal Military College. He spent many years in the European theatre, in both France and Germany, during the Cold War. He completed his career here in Ottawa.

Mr. Earl Page is a veteran of the Korean War, from Woodstock, Ontario. He joined the Royal Canadian Navy in 1948, where he served for five years, until 1953. His posting was in the engine room. He served on three ships: HMCS *Swansea*, HMCS *Huron*, and HMCS *Quebec*. His voyages included both North American coasts, including the Arctic Circle; Europe, from Norway to Gibraltar; and the Far East, to Korea, Japan, and China, in 1951. Mr. Page has been a Royal Canadian Legion member from 1954 to the present. He has served on the executive for four years, including as first vice-president. He was a member of the Royal Canadian Naval Association from 1976, including various executive duties. He is also a member of various other veterans groups and organizations.

As members of Parliament, Mr. Chairman, we are all acquainted with veterans and members of the Canadian Forces in our communities. We are equally familiar with the cenotaphs and war memorials and similar structures that hold places of pride and honour in our ridings. Our cenotaphs and war memorials remind us of the ultimate sacrifice paid by fellow Canadians in defence of our freedoms and our cherished way of life. They also remind us of the ongoing service by our brave men and women of the Canadian Forces. These monuments represent a debt that we owe to those who have served and died, and it can never be fully repaid. When one of these honoured structures is vandalized or desecrated, it shocks and sickens us, and rightly so.

However, as the mischief section of the Criminal Code is currently written, cenotaphs and war memorials fall into the same category as a mailbox or parking meter or other mundane bits of property, when it comes to penalties for vandalism. That's just not right.

In early 2008, in my community of Orangeville, Ontario, the town arranged for our cenotaph to be sent for restoration. In late October it was reinstalled with a dedication ceremony. Then, just days before the annual Remembrance Day services, vandals hit it with eggs. It cost the town of Orangeville more than \$2,000 to repair the damage.

Mr. Chairman, that despicable act was the original impetus behind this bill, and it is why I have introduced it. When I began doing research on this, I sadly found that the incident in Orangeville was not isolated. I've come across dozens of incidents of vandalism and other acts of profound disrespect from across the country, over only the past five years. I referenced several of them during the debate at second reading. Since the House has sent the bill to this committee, on February 2, there have been yet more acts of senseless destruction.

Up until that time, Mr. Chairman, I have a binder of incidents going back over the years across this country. It's quite remarkable.

Bill C-217 sets out to remedy the current deficiency in the mischief section of the Criminal Code by attaching significant penalties to anyone who is convicted of mischief of a cenotaph, war memorial, or other structures that honour those who have died as a result of the war. I believe we have an obligation to protect these sacred spaces in our communities in order to honour the Canadians these structures represent. We have a duty to take strong action against those who would so profoundly dishonour the memory and sacrifice made by our greatest and bravest citizens.

• (1110)

Most members here today in this committee are aware of an incident that took place in this city, Ottawa, a number of years ago on Canada Day when a young man was caught urinating on the national war memorial. More recently, Malvern Collegiate in Toronto restored and rededicated its world war monument at the front of the school, only to have vandals attack it a few nights later, causing thousands of dollars in damages. Just before Remembrance Day the newly dedicated memorial wall in Calgary was hit with spray paint. Also, last fall, a Canadian Forces Afghan veteran discovered that the cenotaph in a park in Notre-Dame-de-Grâce in Montreal had been tagged with graffiti.

Mr. Chairman, enough is enough. That's why I have introduced this bill for the consideration of this committee.

Only a few weeks ago, Mr. Chairman, it was discovered that dozens of veterans' grave stones in the cemetery in the St. Catharines area had their bronze maple leaves pried off to be sold as scrap metal. I believe the two witnesses who are supporting this bill, who are here with me today, will be sharing other examples of shocking disrespect for our war memorials and cenotaphs.

As members of Parliament we are at the sharp end of our great democracy. It was to preserve that democracy and the freedoms that go with it that so many Canadians signed up and continue to enlist in the Canadian Forces. Too many of these Canadians did not make it home, so we have places of honour and great respect in our communities to honour their sacrifice. We'd repay them poorly if we did not do what we can to deter people from dishonouring these hallowed and sacred places. I believe we owe it to our men and women in uniform, and especially to those who have paid the ultimate sacrifice, to send a strong message that vandalism and desecration of our war memorials and cenotaphs will not be tolerated. Anyone convicted of engaging in such profoundly disrespectful behaviour must know they face a stiff mandatory penalty.

I have one final point, Mr. Chairman. I understand the parliamentary secretary will be moving an amendment that is technical in nature in order to keep these provisions in line with the rest of the mischief section of the Criminal Code. As I said in my remarks on second reading, I'm fully in support of this amendment.

Mr. Chairman, I encourage members of this committee to adopt Bill C-217 and report it back to the House so that we may put these measures in force that will help protect these most important places in our communities.

Thank you very much.

The Chair: Thank you, Mr. Tilson.

Mr. Eggenberger, I understand you have an opening address.

Mr. John Eggenberger (Vice-President, Research, Canadian Peacekeeping Veterans Association): Thank you, Mr. Chairman and members of the committee.

I am pleased to be here today to speak to this legislation as a veteran and a representative of a national veterans organization. This is an issue that is very close to my heart.

As Mr. Tilson just said, our cenotaphs and war memorials are important and venerated places in our communities. They are a physical reminder of our military heritage and the debt we owe to those soldiers, sailors, and airmen and airwomen who died or suffered injuries to preserve our freedom. I think it is important that we do whatever we can to protect those places their families and friends have chosen to set aside in their memory.

By way of some background, I spent many years serving in Europe during my career in the air force, and I have seen first-hand how well war graves, cemeteries, and other places of remembrance are treated. Vandalism over there is almost unheard of. The Commonwealth War Graves Commission and others do tremendous work maintaining these sacred sites. Many of you have likely visited some of these sites, and you will know the high regard in which they are held in the country where they reside.

Contrast that with the distressing number of ugly incidents here in our own country. Desecration of our war memorials and cenotaphs is sadly quite frequent and shocking. I'd like to cite some examples, if I may.

In 2008, just blocks from here at the Korean War veterans memorial, human feces were found smeared on the monument. The National Capital Commission, to its credit, cleaned it up within an hour of the discovery, but the shock and outrage was widespread.

In 2010, in Trail, British Columbia, a group of youths were caught on video defacing the town's recently restored cenotaph. While some of the offenders were identified, they faced no monetary sanction for their acts.

In November 2009, anti-Semitic graffiti was sprayed on a war memorial in southwest Calgary during a binge of hateful behaviour that also included mailboxes and several synagogues.

In April 2009, a large red X was painted over the names of World War II veterans inscribed on the war memorial next to the town hall in Lennoxville, Quebec. A beer bottle was also smashed against the monument.

In May 2009, four teens were charged after the war memorial in Welland, Ontario, was vandalized with spray paint. The Minister of Veterans Affairs of the day, Greg Thompson, said it was deeply disappointing that anyone would deface a memorial honouring our nation's truest heroes.

In July 2008, a 14-year-old boy was caught spray-painting the war memorial in Esquimalt on Vancouver Island. The local Legion president was quoted in the media as saying, "I think it's despicable, it is beyond belief really."

In June 2008, local Montreal Legion members were outraged to discover FLQ slogans painted on a nearby cenotaph in a southwest suburb of the city.

In September 2006, the monument in Vimy Ridge Memorial Park in Winnipeg was tagged with silver spray paint. A local Legion member was quoted in *The Winnipeg Free Press* as saying, "It's a slap in the face to all who died. It's as bad as when the fellow out east urinated on the war monument"—referring to the incident Mr. Tilson spoke of when a young man was caught defiling the National War Memorial on Canada Day in 2006.

In July 2006, a teen was charged for urinating on the war memorial in North Bay, Ontario. A local navy veteran is quoted as saying, "It's very, very sad.... I wonder how he would feel if someone walked in and urinated on his parents' headstones, because that is what it is like for us".

Mr. Chairman, I would cite many more examples of such disrespectful and dishonourable behaviour in recent years. It is sadly all too common in this country.

Before I conclude, I will say that my mother's brother was a soldier during World War II and is buried in Ravenna, a little way up the road from Ortona. I would not be kind to a person who desecrated his gravestone.

Thank you.

• (1115)

The Chair: Thank you, sir.

Mr. Whitty, do you have an opening statement you wish to make?

Mr. Terence Whitty (Executive Director, Army Cadet League of Canada): Yes, Mr. Chair.

Thank you very much for having me attend here today. I found out about this late last night, so I come a little bit unprepared, but you're going to get it right off the cuff. Sometimes that's good; sometimes that's bad.

Listening to these gentlemen, I couldn't agree with them more, but I'd like to counter the bad youth of our nation with the good youth of our nation. These are the kids I work with, the army cadets

principally, but cadets all across the country. They are very respectful of our veterans and they're very respectful of Canadian military history.

Having said that, veterans are, for the most part, very forgiving folks. There is a big difference between a young man making a monumental, stupid mistake of urinating on the National War Memorial and somebody putting a chain around a concrete cross in Innisfil, Ontario, ripping the cross off and throwing it through a church window.

On a minimum sentence, as a Canadian, I'm not so sure that's the route to go. I don't think putting a penalty on behaviour like this is going to prevent it. I think people, given a chance, as the young people were here in Ottawa, to make restitution is not out of line. There should be another way to go, and if we take that away from the judges—I'm not a lawyer, so I can't speak to the technicalities of sentencing—we're only creating another problem.

Names on cenotaphs to our young people today are just that. They don't make the connection in history. We're paying a lot of attention to this in the cadet world right now because we've just started a vigil across the country for Vimy Ridge. Army cadets all across the country are standing guard at monuments on April 9 every year.

If we don't make that connection between youth and the names that are on these memorials, there is no realization of what they represent. They don't get it, and some of their actions are predicated on that lack of knowledge.

For instance, at the Vernon cadet camp in British Columbia there is a Japanese artillery piece that was seized when Canadian engineers went to Kiska during the Second World War. Up until about five years ago, it had been a right of passage for the kids to paint that artillery piece white, to desecrate it, until a warrant officer with the PPCLI got upset with this and got all these kids together and said, "Listen, you guys, this gun was captured by Canadian soldiers, just like you, who went off not knowing whether they would live or die. They brought this gun back as a prize of war in remembrance of what they did. Now stop this." And they did, once they realized what it signified. Every year now they shine this gun up. The brass is brilliant.

It's a matter of education. I'm not saying there shouldn't be penalties; there should be penalties. But a 14-year-old spraying paint on a monument is completely different from somebody who has a scrapyard taking bronze maple leaves for profit off a memorial. They are two separate things, in my personal view.

You folks, you're on the sharp end of Canadian democracy, but perhaps there might be a balance found somewhere here.

In closing, I'll just give you a little update on my background. I've had a relationship with the Canadian army since 1957, when I joined as an army cadet. I sit on my regimental council and am chair of a military museum. I'm still active here with the Army Cadet League of Canada as its executive director. One of these days I'm going to retire. I was a better businessman than I was a soldier, but I really believe that the youth of Canada, if educated properly, will become more aware of our veterans, their sacrifices, and what has gone on in the past, and they would pay more respect to memorials.

• (1120)

They are in tune on Afghanistan. They understand Afghanistan. To my granddaughter, a veteran is not a gentleman with medals; a veteran is a young guy in CADPAT wearing a beret. But she understands what these folks have done in Afghanistan, because it's current.

There is a bit of a disconnect. Let me assure you, I want our war memorials to be respected. I'm not saying we should just give people free rein, but there should be a balance.

Thank you.

The Chair: Thank you, Mr. Whitty.

Now we begin the questions and answers.

Did you have something you wished to say, Mr. Page?

Mr. Earl Page (As an Individual): I respect Mr. Eggenberger's remarks, and I wanted to express my deep disgust on behalf of all the people in Woodstock, all the veterans in Woodstock, as well as the many children there. Children were mentioned. We always have a great many children out to that cenotaph on Remembrance Day, and they all come and shake our hands. They're happy to see us.

Since the desecration of our monument, the city has gone to the trouble of re-facing all the names on that monument, and it cost the city a great deal of money. I know the feelings of the veterans: if we had got hold of that guy, I don't think he would be walking around today. But he was not a child, or even a teenager—he was an adult, and he got away with it. We spent six or seven days going to court to see what was going to happen to him, and he got off with a slap on the wrist, a couple of days of community service. Terrible. I won't say much more, because I'm liable to say things I shouldn't.

Thank you.

• (1125)

The Chair: Thank you, Mr. Page. I'm sorry I neglected to ask you earlier.

Mr. Harris.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair. I want to thank Mr. Tilson, member of Parliament, and the others for coming here today.

I think we all agree that vandalism or desecration of war memorials is something that's terrible, particularly in light of what they're for and that they're there to memorialize and remember those who made the huge sacrifice of their lives on behalf of their country. I agree with Mr. Tilson that it's not right that war memorials and cenotaphs fall in the same category as mailboxes and parking meters.

I'm looking at the mischief section of the Criminal Code. It has different types of offences for which the penalties are, in fact, different.

I will say that the way the Criminal Code treats the seriousness of offences is by having a maximum penalty. There's no minimum penalty, by the way, for this. For example, it says that "Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life". For actual danger to life, life imprisonment is the maximum penalty. There's no minimum penalty, no fine, no nothing. The courts and the judges decide, and that's the way our system works.

When you deal with certain other kinds of property, such as a swastika painted on a synagogue, the penalty listed here is that a person is "guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years...or is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months".

I wouldn't want a system that said that if some ignorant young man or woman spray-painted "Bravo" on a war memorial, he or she would be given a mandatory minimum sentence, and someone who put a swastika on a synagogue, which is the evil our war heroes were fighting against in World War II... One should be treated more seriously than the other. As Mr. Whitty said, we're trying to achieve a balance here.

I agree with Mr. Tilson. There should be consistency. We should point out that there's a problem with this.

I'm talking in the spirit of trying to do something that recognizes what Mr. Tilson wants and also recognizes other aspects of the Criminal Code. For example, I've looked at this penalty section, proposed paragraph 430(4.11)(a) of your bill, which calls for a mandatory minimum fine of \$1,000 for a first offence and a mandatory minimum penalty in jail for a second and third offence. These look very like the penalties for impaired driving.

I know the history of those offences. I practised law for 30 years. Over those 30 years we've had hundreds of thousands of accidents and deaths due to impaired driving. Gradually, in order to change people's attitude, to change people's minds about impaired driving, we've increased the penalties to the point where they are now.

I want to suggest to you that this is not where we need to go as a starting point on this. The starting point on this should be to recognize that the desecration of a war memorial is a significant offence and it can attract, in the right cases, as Mr. Whitty points out, a severe penalty. But there ought to be an opportunity for dealing with some young person, for example, who does this out of ignorance or stupidity or whatever. I want to suggest that to you.

I want to also add to Mr. Eggenberger's concerns. For example, in July 2008, a 14-year-old boy was caught spray-painting the war memorial in Esquimalt. One of our members who spoke during the debate in the House is from Esquimalt. He quoted the Legion president. His name, by the way, is Ken Irvine. He called for what he characterized as an appropriate punishment for the youth. He didn't call for jail. He said that the youth ought to have to come to the Legion on a regular basis, meet with the veterans, and hear their stories of sacrifice on his behalf. He felt that when a youth had that re-education, he or she would then be very much committed to talking to other youths who were taggers, which is spray-painting, about trying to avoid tagging war memorials. The two police officers also publicly called for using this form of restorative justice.

Whether it be a restitution order, working with the Legion, or getting that education, there are other ways of diverting those who are ignorant and don't know. Also, as Mr. Whitty points out, if you have somebody who has a profit motive and is treating a cenotaph as a source of scrap metal, well, then you have a larger sentence available in appropriate cases.

• (1130)

I want to suggest to Mr. Tilson, and those who are concerned, as we all are, that having a penalty that's consistent with some of the other aspects of mischief is more appropriate. Putting mischief in relation to cenotaphs and memorials into the Criminal Code is a good way to let people know that this is being treated very seriously by Parliament and society.

I'll invite any one of you to comment on those points.

The Chair: The problem is, Mr. Harris, you've used up more than your five minutes.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): I have a point of order, Mr. Chair.

It is my understanding that under our youth offender provisions, mandatory minimum penalties do not apply. So when we're talking about youth who commit these crimes—and many of these unfortunate situations cited deal with youth—this would not apply to them. When you're talking about 14-year-olds, this is not the issue. The issue here is with adults who commit these offences. These mandatory minimum penalties suggest—

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

Ms. Kerry-Lynne D. Findlay: I'm still talking, Mr. Harris.

Mr. Jack Harris: I can raise a point of order at any time.

Ms. Kerry-Lynne D. Findlay: You can raise it in the middle of my point of order?

Mr. Jack Harris: I can if you're speaking on something that's not in order.

The Chair: Just a minute. Let's finish with one here.

Ms. Kerry-Lynne D. Findlay: Mr. Harris, is this really the way we're going to do it?

I think this is very significant.

Mr. Jack Harris: It's a point of argument that you're making.

Ms. Kerry-Lynne D. Findlay: No, I'm making a point of order for clarification here. Otherwise, the comments and testimony will go in a direction not applicable to this proposed legislation.

Ms. Françoise Boivin (Gatineau, NDP): Can I speak on a point of order?

The Chair: Sure.

Ms. Françoise Boivin: I agree with Mr. Harris. I don't think it is a point of order; I think it's a point of debate. They are his five minutes. He's making a comment on the bill. It can be rebutted during your line of questioning. But if in the middle of what we're saying somebody interrupts with a point of order on the content, I don't think it's proper.

The Chair: The fact of the matter is the legislation deals with the adult section. That's fair enough. We understand that, and I think it's time that we move on.

Ms. Kerry-Lynne D. Findlay: That is my point of order, and I let Mr. Harris finish his five minutes before I made my point.

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

I will point out, however, that we're talking about the offence itself. The witnesses—and I have no problem with this—talked about four teens being charged in 2009 and 14-year-old boys in 2008, so we're talking in general about this. We can debate whether a 19-year-old is a young person or not if we wish. I think a 19-year-old is pretty young. We're talking about people who need to be educated to understand what's going on.

The Chair: Okay.

We all got the point, but we should move on because we have witnesses here who we've asked to come before the committee.

We used almost six minutes, Mr. Harris.

Mr. Goguen.

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

Thank you, Mr. Tilson, for introducing this bill.

Thank you to all the witnesses for coming here to give your testimony.

We're now going to talk about the subject matter of this thing: the desecration of war memorials.

Mr. Tilson, as you know, the 200th anniversary of the War of 1812 is upon us next year. As Canadians, we're extremely proud of our role in that great war and the role the country played. Following the anniversary of the War of 1812 there'll be the 100th anniversary of World War I. That will come upon us soon enough. We all know that Canada and Canadians played an immense role in this war, and the anniversary will be a time to remember all those who died defending the country and democracy—a large number. Tens of thousands of brave Canadians went to the aid of the allies in the cause of freedom in the Second World War as well. Of course, let's not forget the Korean War.

This past summer the Canadian Forces wound down combat operations in Afghanistan. This is Canada's longest-ever combat mission, a mission in which the country lost 157 brave men and women of the Canadian Forces. Now, of course, there's also the Gulf War, the Balkans, Afghanistan, and Libya. The best of our young men and women have shown time and time again their willingness to lay down the ultimate sacrifice, showing the values of Canadians. All too often that willingness has cost them their lives, and of course the memorials are there to remember that.

Mr. Tilson, how will your private member's bill achieve its purpose of showing that the disrespect—by damaging war memorials—shown to persons who were killed or died as a consequence of war will attract profound public disapproval in the form of a specific Criminal Code offence?

•(1135)

Mr. David Tilson: Thank you very much for your comments.

I can only say—and I'm just repeating what I've said in my comments both in the House and here at this committee—that whatever we have now isn't working, Mr. Chairman. Whatever we have now is clearly not working.

I've heard particularly members of the opposition in debate at second reading saying, well, you know, these young people should work with the Legion. I have no problem with that. That's a good thing. My belief is that they're going to have to do it after they've paid \$1,000, because essentially that's what we have now. One can say that the retribution is working. Well, it's not working. All you have to do is look at what happened this past November. There were incidents of damage right across this country. How do I know? Because I was interviewed by radio stations all across the country just after incidents happened in their cities.

Mr. Chairman, I believe that working with the Legion is fine, but the judge has the capability of making such an order after they pay at least \$1,000.

Mr. Robert Goguen: Generally, for the other witnesses, what are your thoughts on whether this bill would be favourably received by the Royal Canadian Legion, the army, the navy, the air force, and the veterans association? Is this something these associations would be very happy to receive in law?

Mr. Page.

Mr. Earl Page: It would probably be well received.

Our thoughts usually are that something should be done and must be done, because this desecration cannot go on. I don't know whether the bill will deter anything, but anything that helps to get over this or get past this is welcome.

As far as the Legion and the navy club are concerned, we have the army cadets and the sea cadets. One of our high schools has sent people over to the European memorials, and that's working with the youth. They all honour what's going on with the veterans and what's going on with the Legion. Our legions and our veterans groups are fading very fast. We'd like to see something done, and we will welcome this bill if it gets passed.

Thank you.

Mr. Robert Goguen: Thank you, sir.

Mr. Eggenberger, did you have a comment to make?

Mr. John Eggenberger: The Canadian Peacekeeping Veterans Association, of which I'm a vice-president, polled our membership just before I came. The bill was circulated to them. I don't know if it's okay or not, but we did that. They came back giving absolutely 100% approval. We didn't have anybody who came out and said we ought not to approve it.

So what can I say? That's about it.

•(1140)

The Chair: Thank you.

Mr. Cotler.

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

When we debated this in second reading, I said in the House what I will repeat today. It was basically stated by witnesses that there is a duty to take action against those who would dishonour our heritage, our history, our memorials, referred to then as *le devoir de mémoire*, the duty of memory. And as you said today, vandalism and desecration of monuments is intolerable and such desecration dishonours us all.

We have right now in the Criminal Code an offence of mischief in relation to both cultural property and religious property. Indeed, I introduced the legislation regarding mischief on religious property. In 2005, at the time when we had a national justice initiative on racism and hate, I spoke specifically about the desecration of war memorials.

When we speak about the definition of “cultural property”, it includes immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art, or history, whether religious or secular.

I have a question specifically on this point. In your opinion, are war memorials cultural property under this definition? If not, why not? And if so, why would it not be sufficient to prosecute mischief relating to war memorials under existing provisions? That's the first thing.

The second thing is this. As I said then, I supported this amendment, in principle. My question is and my concern then was on the issue of mandatory minimums, because my problem has always been with mandatory minimums. They are often disproportionate under the circumstances. They serve neither as a deterrent nor as an effective remedy, particularly having regard to the individual circumstances of the case and the removal of judicial discretion in that regard.

We may have a situation here where it also removes transparency—that's another problem with mandatory minimums—and it doesn't achieve exactly the objective you want. What I mean by that is you have a plea bargain out of court whereby the accused pleads guilty to a lesser offence of mischief. No record is made of the fact that it was mischief with regard to, let's say, urinating on a war memorial, so we don't achieve that kind of educative possibility, nor do we have the alternative remedies, of which reference has been made today, of apologies, working with the Legion, etc. You end up having a situation where you don't achieve the objectives you wish. It might be best to have this kind of principle adopted but without the mandatory minimum.

Those are the two questions.

Mr. David Tilson: Thank you, Mr. Chairman, and this is through you to Mr. Cotler.

You've asked some good questions. You're right. Those questions were raised during the second reading debate.

With respect to churches and items of culture, no, this bill does not deal with those items. Perhaps other members of Parliament want to introduce an amendment with respect to churches, items of culture. You could get into historical items. My colleague over here raised the issue of 1812, which may apply to this section. It may not. That would depend on what has been damaged.

My focus is strictly on cenotaphs because of the observation I've had across this country, for incredible reasons. I don't know why this is done across this country. Obviously, this leads to your second question, the issue of mandatory minimums.

I appreciate that. The Liberal Party and the New Democratic Party, in recent examples, are opposed to that type of penalty. I understand that philosophy. I do not...particularly in this particular section.

This may not be the time to debate it, but quite frankly, the issues we have now.... The minimum penalty in the proposed bill is \$1,000. If it gets more serious, it could be more than \$1,000. As well, it doesn't preclude a judge from saying, "Well, in addition to that penalty, you're going to have to work with the Legion. You're going to have to do community service with the Legion." There's nothing to preclude a judge from doing that.

The whole purpose of this bill, Mr. Cotler, is that the process we have now is not working. It has not been working even in 2011 when we had examples of destruction of cenotaphs right across this country. We can't continue to allow the simple mischief penalties to allow for those things.

• (1145)

The Chair: Thank you, Mr. Tilson.

Mr. Cotler, we're up to five and a half minutes, I'm sorry.

Hon. Irwin Cotler: I want to say that I understand what you're saying.

My concern is the same as yours. If you do have a mandatory minimum, it may still not work because you may end up getting a plea bargain. Therefore, you end up not only with the fact that you don't have the kind of punishment you want, but people don't know what the punishment was for.

We have no transparency; we don't even know.

Mr. David Tilson: You're not going to blow \$1,000 on a plea bargain, I'll tell you that.

The Chair: Thank you.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Thank you.

I have an initial question for Mr. Tilson, following up on what Mr. Cotler was saying. He spoke of his opposition to mandatory minimums in general as usually being disproportionate to the circumstances.

The mandatory minimum penalties proposed in this legislation seem to me to be quite modest, if that's a good word. Can you speak to the proportionality, in your view, of a \$1,000 fine for a first offence, 30 days for a second offence, and 90 days for a third offence?

Mr. David Tilson: If anyone is so stupid as to vandalize a cenotaph a second or third time, that would be absolutely incredible. He or she is going to jail.

My friend Mr. Page here and his colleagues in Woodstock attended a trial and saw what happened: some person just got a slap on the wrist. That's absolutely unacceptable.

If that sort of incident were to happen a second time, you deserve to go to jail. If it happens a third time, then you're going to spend a bit more time in jail.

I cannot emphasize that the whole purpose of this is that these places are sacred places. They're sacred. We go to cenotaphs at least once a year, every year, and honour those who have died and those who have served in the different conflicts going back in time.

That's the whole purpose of the bill, and as Mr. Cotler quite rightly said, we have a duty to take action. I believe that we do have a duty to take action, and I believe this bill is doing just that.

Ms. Kerry-Lynne D. Findlay: Thank you.

I was remiss in the beginning in not thanking you all for being here and taking your time to help us look at this legislation.

Mr. Page, I understand you're from Woodstock. Although I'm a B. C. MP, that's the area where my mother grew up, so I know the community well. It is my understanding that in the incident we're referring to here, swastikas were painted on the war memorial at Woodstock that were still visible during the ceremonies on Remembrance Day.

Is that correct?

Mr. Earl Page: Yes.

Ms. Kerry-Lynne D. Findlay: You said that the person charged with that offence was an adult. Is that correct?

Mr. Earl Page: Yes, he was. I think he was 29 years old.

Ms. Kerry-Lynne D. Findlay: I wanted to give you an opportunity to say how that made you, as a war veteran yourself, and your fellow veterans feel on that Remembrance Day when this was still evident at the ceremony.

Mr. Earl Page: I can tell you that if we had got hold of that guy that day or shortly thereafter, we wouldn't have had to worry about mandatory minimums. That is not justice, but maybe it's our type of justice.

Giving that person or any person over to the Legion or any veterans organization for punishment I think would not be very appropriate. Our organizations, as I expressed, are losing our members so fast. We don't mind; we like to work with the youth, and we always do.

We're getting too old to supervise a bunch of kids erasing paint or something like that, but we do welcome any legislation that will help get rid of this. It's not right. It's a desecration of honour and respect.

Our youth and all our people in Canada, except those who are doing the damage, honour the veterans every Remembrance Day. I don't think I've missed a Remembrance Day in 60-some years, and there are always a lot of children. People come out to respect the memory of the veterans.

• (1150)

Ms. Kerry-Lynne D. Findlay: I'm sure you'd agree with me that it's the majority of Canadians, of course, who bring their families and participate.

Mr. Earl Page: I think so.

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: Madame Boivin.

[*Translation*]

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

Thank you for being with us today.

I really have a lot of admiration for what you represent and what you have accomplished. In my riding, there are two legions. Every year, November 11 is a pretty special day. I have had the opportunity to talk with a good number of veterans, and even "new veterans". It is not always easy. I agree with you, Mr. Whitty: to a large extent, it involves education.

I am from the region and my riding is Gatineau. I can tell you that we heard a lot here about the incident that occurred in Ottawa. I am quite aware of it, Mr. Tilson. I used to have a radio show, like the very well-known host, Lowell Green—who is going to be very happy to know that his name has been spoken publicly here today—and I listened to some of the calls. It was very "hot in the city." I do not know quite how to say it, but this incident was really insulting, it got us very upset. Still, sometimes you have to know when to breathe through your nose and let the dust settle. Actually if we had listened to all the opinions expressed on the air that day, on both francophone and anglophone radio, we might have hanged the person found guilty of that mischief.

I think that everyone here agrees. Mr. Tilson, we appreciate your introducing this bill and, within section 430 of the Criminal Code, your proposing that a specific provision be created as a sign of the importance of these memorials throughout Canada. I think it is basic. However, we must strike a balance. Your role, Mr. Tilson, is to introduce this bill, a right I fully acknowledge. But as a legislator, MP and member of the Standing Committee on Justice and Human

Rights responsible for determining whether it is really in line with the Criminal Code, I am worried about there being two categories whose scope is equally severe.

Earlier Mr. Cotler gave the example of mischief targeting a synagogue. I do not think anyone here would say this is a more important or a less important incident. To my mind, it is the same. If you will forgive the expression, I would say that both incidents are equally sickening. By passing your bill, we would be creating a provision within the Criminal Code and, in my opinion, this would be a mistake because these situations would no longer be equivalent. Mr. Tilson, you answered Mr. Cotler in this regard. I understand what you said, but it does not answer the question. An amendment would have to be passed so that equivalent sentences could be imposed in cases where the degree of severity was the same. Otherwise, there is going to be a problem, and this will be discussed when a charge is laid, whether it involves a summary conviction or an indictment for a criminal act. That is problem number one.

Problem number two concerns minimum sentencing. Mr. Page, I understand what you are saying, but I can tell you that, as you go through a court system dealing with such offences, you want to see some results. But I can guarantee you will not get them. Why not? Let us take one of Mr. Harris's examples. The Crown will reach an agreement with the defence that the mischief be regarded as a lesser, included offence, that the accused plead guilty to ordinary mischief, that he do some community work and that he spend a week with the cadets or some time in the legion. In other words, we would not get the desired result.

The problem is always there when provision is made for a minimum sentence, as in this case, or 14 days in prison. You just have to look at the newspaper headlines. Mr. Harris talked about criminal offences related to drunk driving. When I read that someone has been arrested for the seventh or eighth time, I say to myself that someone, somewhere, was not being very vigilant. Most of the time the Crown tells us that, in many cases, time constraints mean it is impossible to check a person's record. That is why it always lays a charge as though it were a first offence. So providing for a second or third type of sentence is not necessarily effective.

My reservations concern these two aspects. I want your bill to become part of the Criminal Code, so that there is a special category for these offences. I would also like it if amendments were passed to include other elements, such as religious symbols. I do not think that would adulterate your bill, but I think we should stick with that, or there is going to be a problem of imbalance in the Criminal Code. In addition, we have to take a close look at the question of the thousands of dollars. Sometimes young students do stupid things. I do not think that any of the witnesses would want the life of these young people to be ruined forever. I studied law. If one of my classmates had been stupid enough to commit this idiocy in Ottawa and were then caught, I would have a bit of a problem.

• (1155)

[*English*]

The Chair: Excuse me, Ms. Boivin. We are way over time. Thank you.

[*Translation*]

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

[English]

The Chair: Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): I'm not sure where the question was there, but I'll try to get a question in so that we can actually have some testimony from our witnesses.

Madame Boivin is talking about balance. She seems to think that a mandatory minimum penalty of \$1,000 is out of whack in the balance in the scheme of the offence. Perhaps, Mr. Page or Mr. Eggenberger, you could comment on whether or not you think a mandatory minimum of \$1,000 shows an appropriate amount of balance for the desecration of a war memorial.

When you put it into context, at minimum wage, the person who commits that offence would have to work for maybe 40 hours to come up with that fine. Do you think 40 hours of work to come up with a \$1,000 fine is an appropriate sentence for someone who has desecrated a monument that is so important to all Canadians?

Mr. Earl Page: No, I definitely don't.

But there's one thing about this hearing here. We've got to start some place. Where are you going to start? Are you going to keep letting this thing happen to us?

As far as \$1,000 minimum, I'll bet you if anybody that does this wants to get a lawyer, it's going to cost them a lot more than \$1,000.

Mr. Kyle Seeback: So when you say no, you're saying that you think \$1,000, in fact, sets the balance a little too soft.

Mr. Earl Page: I definitely do. Yes.

Mr. John Eggenberger: Perhaps I could add to that. When we polled our folks, there was one gentleman who was speaking probably for the bulk of our group. He said that it should start at \$10,000. You've got to get serious. A fine of \$1,000, well, you know....

Mr. Earl Page: It's a slap on the wrist.

Mr. Kyle Seeback: But it's perhaps a good start.

Mr. John Eggenberger: Well, you've got.... Take the bill and get something going. Something is better than nothing.

Mr. Kyle Seeback: So when we continue with this balance—that seems to be the concern from members on the opposite side of this committee, that somehow this is out of whack. Let's talk about the person who has the audacity to desecrate a war memorial a second time. They think that having some kind of a mandatory minimum penalty, and I believe the bill suggests 30 days.... Are we starting to move in the right direction? To me it seems like we're starting to strike some kind of a balance.

I can't believe anybody would have the nerve to—

Ms. Kerry-Lynne D. Findlay: It's 14 days.

Mr. Kyle Seeback: —desecrate a war memorial a second time. But 14 days' imprisonment...what do you think about that?

• (1200)

Mr. Earl Page: Well, 14 days doesn't seem like a very long time either.

Like I say, if we don't start some place and get something going, it's going to keep happening. Where do we go from here? Let's get something going, at least.

Like I say, veterans today—and parts of my family are still in service—we're getting few and far between, and we'd like to see something done, because we don't want this to carry on forever. Let's get it started, get it going. We're leaving it up to you, members of Parliament, to help us out. You're our last hope. You're our representatives. Let's do something.

Thank you.

Mr. Kyle Seeback: It seems to me they think it's far too harsh, these amounts. You're saying it's maybe a little too light; it should be harsher. It seems to me perhaps we've gotten somewhere in the middle, and actually we have gotten the balance right, perhaps.

Mr. Tilson, you gave a great speech on some of the things, and so did Mr. Page and Mr. Eggenberger. Are there current examples of people who have desecrated war memorials where those punishments, in your mind, certainly have not been appropriate—people have not been adequately punished? Do you have any examples of those?

Mr. David Tilson: I don't have my complete notes here. I can only say that the incidents that I gave in my prepared remarks for the committee and in second reading were not sufficient.... That's why I've introduced this bill. Community service has been the emphasis. I've heard Mr. Harris speak in the House. I shouldn't pick on members, but he's a good one to pick on. He or one of his colleagues said that working with the legions is the answer. The penalties that have been implemented, like working with the legions, simply haven't worked. We know this because it continues to happen. It even happens during the second reading debate on this bill, for heaven's sake.

I emphasize that these penalties—and I don't mean to provoke Mr. Cotler—are mandatory minimum penalties. That's the lowest. Madam Boivin was talking about plea bargaining. Well, you can't go any lower than that. That's as low as you can go. In fact, you will go up from there if the penalties are more severe. With the Malvern incident, for example, I would hope that the penalty would be a lot more than \$1,000. These young people actually stood around and took pictures and came back a second time.

The Chair: Thank you.

Madame Borg.

[Translation]

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

I would like to thank the witnesses for being with us today.

I understand the importance of cenotaphs. I also understand why veterans and the population as a whole should be irritated by the fact that someone committed mischief relating to a cenotaph. It is really horrible.

You mentioned an amendment, but we did not see it. So if it answers my question, you can tell me and that will end the discussion.

Mr. Harris gave the example of mischief targeted at a synagogue. In your opinion, we should not apply a minimum sentence in this case, but we should do so when someone is found guilty of having urinated on a cenotaph, is that right? Would the proposed amendment mean that the minimum sentence was applicable to all cases of mischief, Mr. Tilson? Can you answer that question?

[English]

Mr. David Tilson: I'll give you a copy of Bill C-217 and you can read it for nighttime reading.

[Translation]

Ms. Charmaine Borg: Thank you, but I have already read it.

• (1205)

[English]

Mr. David Tilson: I will only say—

[Translation]

Ms. Charmaine Borg: As an MP, I do my homework, Mr. Tilson. My question concerns the amendment.

[English]

Mr. David Tilson: Okay, I misunderstood you.

I can only say that I'm not dealing with other incidents of mischief. I'm dealing with cenotaphs, war memorials. I'm not dealing with anything else. This question has been asked by Mr. Cotler, and it may also have been asked by someone else. The bill does not deal with that. Those churches, synagogues, temples may be in a different category. That may be. I don't know. My concern is cenotaphs, war memorials, anything to do with men and women who have returned from wars, or who have died in wars on behalf of this great country.

The bill does not deal with churches, synagogues, and temples. It doesn't deal with those things. That would be up to someone else, perhaps the government, perhaps another private member's bill. That's all this bill deals with. I'm not going into any other aspects of mischief.

[Translation]

Ms. Charmaine Borg: I understand that. I think it is very important to honour those who have defended us abroad and who have given their lives for us. My point is that we do not impose a minimum sentence on someone who commits mischief based on hate in relation to a temple or some other such place, but that we should impose such a sentence on someone who urinates on a cenotaph.

You mentioned an amendment, and I would like to know whether it will mean that these other cases would be covered.

[English]

Mr. David Tilson: Mr. Chairman, Bill C-217 deals strictly.... I'm starting to repeat myself.

[Translation]

Ms. Charmaine Borg: That is fine.

[English]

Mr. David Tilson: Excuse me?

Ms. Charmaine Borg: I don't think you understood my question.

Mr. David Tilson: Could be.

Ms. Charmaine Borg: You mentioned an amendment. Could you give us more detail on that amendment...or if Mr. Goguen can, that's fine.

Mr. David Tilson: Mr. Chairman, I don't know what I'm supposed to do. Am I supposed to read the bill?

I'm sorry. I apologize.

The Chair: Just a minute, Mr. Tilson. My understanding is the amendment has been distributed. You should have it.

Go ahead.

Mr. David Tilson: There's nothing different. I don't think I have anything to add, Mr. Chairman.

The Chair: Thank you.

Done?

Mr. Jean, go ahead.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair, and thank you for attending today.

I appreciate having a person from northern Alberta here. I understand you're now part of John Baird's world, Mr. Eggenberger. You are originally from northern Alberta, where I'm from.

Mr. John Eggenberger: Hear, hear!

Mr. Brian Jean: Notice the cheers in the room. That's great.

I want to tell you that my father served in the Second World War. He died in 2004, but he was a member of the armed forces, and so is my son. I went to France for the 95th anniversary and served our country by attending many of the ceremonies there. I can't believe how the people in the rural areas in northern France respect Canadians—and the tears, 95 years after the first World War, and all the graves. Unbelievable.

Mr. Tilson, congratulations on this bill. I think it's a great bill. In my mind, a thousand-dollar fine is not enough. As well, only 7% of crimes are actually solved, which means that somebody who receives 30 days in jail, even for their second offence, will spend only five or six, maybe seven, weekends in jail. So I don't think it's enough. But we are where we are.

Could you explain, Mr. Tilson, why you think it's necessary to separate types of property? In this particular case, why do you think war memorials justify receiving, in essence, a different treatment than other property, personal property and public property?

Mr. David Tilson: Thank you, Mr. Jean.

I'd rather answer that in another way. What I don't understand is why the desecration of war memorials or anything to do with this sort of thing is put in the category as simple mischief charges. That's what I said in my introductory comments. I believe it's most inappropriate that when someone desecrates a war memorial or a cenotaph, it's put in that category. So that was the purpose: to make it clear that this is a most serious matter and should be treated as such.

I can only repeat... I don't want to inflame the members of the opposition because I know they don't like mandatory minimums. The penalties I've put forward in this bill are mandatory minimum penalties. Other witnesses have said that they may be even too weak. This is the weakest they're going to be. A judge has the right to increase those penalties.

• (1210)

Mr. Brian Jean: Indeed, these people who cause these issues, they have to have intention, *mens rea*. They have to actually know what they're doing in order to be found guilty of the offence. So they actually have to understand that they are desecrating a war memorial. Is that correct?

Mr. David Tilson: That's correct.

Mr. Brian Jean: Mr. Tilson, have you considered mandatory community service being a part of the punishment for this particular case? From my perspective, a thousand-dollar fine is exactly that, and not sufficient, nor do I think the 30 days is sufficient. What about some time in the community, where they could spend 100 hours of community service working for the Legion or other places like that?

Mr. David Tilson: As I've indicated, Mr. Jean, this is the minimum penalty. It doesn't stop a judge or a court from saying "In addition to those penalties, you're going to have some community service; you're going to have to work with the Legion members."

Mr. Page made the comment...and the difficulty with that is the judge is going to have to know something about that particular Legion, because some of these Legion members—I'm trying to say this in a delicate manner—because of age or otherwise, may not be capable of supervising that community service. But it does give the judge the discretion. The judge can go anything above that, and that would include community service.

Mr. Brian Jean: I'm a member of my Legion in Fort McMurray, and I have to tell you the numbers are dwindling quickly.

Can I ask the other witnesses if they would consider it to be a positive step to have these individuals who would desecrate a war memorial, monument, or such thing spend some significant time in the community working for groups on a voluntary basis? I know it has been very effective in courts in Fort McMurray in the past, in tribal sentencing circles and things like that.

Mr. Earl Page: Again, it goes back to "let's get started". Yes, we'd do our best to see that the community service was done, if that's what the judge would wish to do.

Some of the past remarks have been that we're trying to mix apples and oranges here. Synagogues, churches, mosques, or whatever being desecrated has nothing to do with war memorials. That's strictly a veterans affair. The rest of this has nothing to do, as far as I'm concerned, with the desecration of our monuments.

Mr. Brian Jean: I would agree.

Thank you very much for your testimony today, and thanks for attending.

And thanks for this initiative, Mr. Tilson.

The Chair: Thank you.

Mr. Jacob.

[Translation]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you Mr. Page, Mr. Eggenberger, Mr. Whitty and Mr. Tilson for coming here to share your concerns with us.

We all consider that vandalism, the desecration of war memorials, the defilement of our veterans' honour and the huge sacrifices they made to defend our democracy are horrible, but I liked what you said concerning the cadets you take care of, Mr. Whitty. From what you say, they have a lot of respect for these memorials. Perhaps that explains why they also have respect for Canada's history, particularly Canadian military history. They have a better understanding of the significance.

Instead of instilling fear of prison, we could acquaint people with the sacrifices made by veterans. This could be done by teaching history. I would like you to tell me how you manage to make cadets aware of this issue, how you succeed in instilling such respect among them.

• (1215)

Mr. Terence Whitty: I will answer in English.

Mr. Pierre Jacob: That is not a problem.

Mr. Terence Whitty: It is easier for me.

[English]

The military history of Canada is part of the cadet training program. Just by the fact that the cadets wear a military-style uniform, they feel themselves connected to the Canadian Forces in a direct way. They hold these people up as heroes right from the get-go.

I have to say, as a sidebar here, that we're not training teenagers to become soldiers, sailors, or airmen in Canada. It's a youth movement. We're training them to be everything the Canadian Forces members are, which is courageous, good citizens, family men and women. These are the qualities we are trying to impart to them. But because of the fact that they are connected directly to the Canadian Forces in a small way, they have a direct connection.

I mentioned earlier that the names on the monument are being lost because people don't have a direct connection to those names. But they do have a direct connection to the names of military units that took part in battles or served in Libya, and they have respect for people who served in those units.

So it's a little different. They are immersed in it.

[Translation]

Mr. Pierre Jacob: If I understand correctly, it would definitely be in our interest to reintroduce history to secondary- and post-secondary-level education programs.

[English]

Mr. Terence Whitty: The school program?

[Translation]

Mr. Pierre Jacob: Yes.

[English]

Mr. Terence Whitty: I don't think there's enough history taught in schools, if that's your direct question—especially Canadian history. They'd be hard-pressed to name any of the battles of the War of 1812, unless they live in Stony Point.

[Translation]

Mr. Pierre Jacob: I am convinced that your work with the cadets is essential. We should put the teaching of history back on the program to make young people aware of respect for these cenotaphs and other war memorials, instead of frightening them and pretending that the minimum sentences included in this legislation are going to settle everything. If we focused on prevention instead of repression, maybe there would be less vandalism. I make this statement as a criminologist.

Mr. Tilson, do you believe that mandatory minimum sentences suit all cases of mischief committed against war memorials, or rather that this question should be left to the discretion of the judge of the facts? Since this is the person who deals with the facts of a case, the presence of damage, the voluntary or involuntary nature of the deed, disrespectful gestures and so forth, would he not be better placed to decide what sentence to impose on the offender?

Thank you.

[English]

The Chair: Briefly, Mr. Tilson.

Mr. David Tilson: There are two areas that were raised. I'm quite proud of the education that goes on in my community. There's education in the schools. All of the schools in my community, secondary and elementary schools, hold Remembrance Day services. All of the churches have Remembrance Day services, where names of those who died in the different altercations are repeated. Many of the schools attend the cenotaphs in my community, and there are quite a few, and they're always loaded with children. As well, Mr. Chairman, some of the schools, the secondary schools, at least, have sent groups of young people off to see the different memorials in Europe. They have done that, so the education is good. But what's going on with vandalism isn't working.

Again, we're going back to the mandatory minimum question, and we're never going to agree on this, sir. I can only say that after the mandatory minimum penalty has been placed, because the judge will have the requirement to make that mandatory penalty, the judge will also have a discretion after that to impose community service, to do all kinds of things, and to increase the penalty. Maybe \$1,000 isn't enough, but the mandatory minimum is \$1,000.

• (1220)

The Chair: Thank you.

Mr. Goguen.

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

Mr. Tilson, obviously the object of this bill is pretty clear in my mind: denouncing the conduct and disrespect to war memorials. There's been some confusion with regard to other monuments, churches, etc. The war dead fought for democracy. They fought for religious beliefs. Isn't there indirectly a tie-in? There's really no need to change your bill. I mean, that's the objective, isn't it?

Mr. David Tilson: My concern relates to war memorials and cenotaphs. If you read the definition in 4.11, I'm dealing with cenotaphs and war memorials.

Mr. Robert Goguen: Very specific.

Mr. David Tilson: I believe it's very specific.

I'll repeat what I said several times, Mr. Chairman. If you want to get into churches, temples, and mosques...that's up to someone else to do that. It may be a completely different category. I don't even want to get into that debate. I don't know the answer to that. But I do know that what we're doing regarding the cenotaphs and war memorials isn't enough.

Mr. Robert Goguen: Fair enough. Thank you.

The Chair: Mr. Harris.

Mr. Jack Harris: I wonder if I could use the opportunity, Mr. Tilson, to talk about other charges that might be laid. You say the mandatory minimum is \$1,000.

The plea bargain works like this. Somebody is apologetic, has clearly made a mistake, was stupid, and offers to go to the Legion. A crown prosecutor either withdraws the charge and lets it go, which happens, or gets someone to plead guilty to mischief and mutilation to property, generally, not the new offence that you've created.

Madam Boivin was explaining that's what happens. You don't get the transparency. You don't get the message sent that this was an offence in relation to a monument or war memorial because the prosecutor or the system regards this type of approach as being an appropriate penalty for the particular individual. I think others understand that's what happens. Lawyers understand that's what happens.

I think that was the point here, that this bill won't be effective in that way because people will find a workaround. I don't think you'll be happy with that. I don't think the public will be happy with that. That's why we're suggesting that it be done in a little different way.

If you want to comment on that, I don't know if there's time to do that.

Mr. David Tilson: You're quite right. A number of people in this room have had experience with plea bargaining, and it happens all the time. The crown attorney, for whatever reason, could withdraw the charge. I'm simply saying that the purpose of the bill...the plea bargaining—this is it. The mandatory minimums that are in this bill are as low as they can go, and you may not like that, sir, but I'm telling you—I'm telling you—if you canvassed your community...if someone desecrated a war memorial in your community and all they got was a slap on the wrist and community service, and if the damage was serious, you'd be laughed at.

The Chair: Thank you.

Seeing no further intervenors, I'd like to thank the panel for being here...whoops, I'm sorry.

Hon. Irwin Cotler: Do I still have time to speak?

The Chair: Yes, sir.

Hon. Irwin Cotler: Thank you. I appreciate that.

I just want to say something so there is no misunderstanding.

Again, I want to welcome the witnesses. I think your personal experience as a backdrop to the legislation is important and compelling, and we appreciate that. That's why I appreciate what you said, Mr. Tilson, and the witnesses, about the importance of the symbolism and the specificity of this particular piece of legislation.

Now I can say, as a law professor, as a lawmaker, that this type of offence can come under an offence re cultural property, but again, I share, as I say, both the need for the specificity of this offence and the symbolism and resonance of it. So that's why, when we debated this in the House, I supported it in principle, and I should say I've discussed this particular offence with the veterans in my riding. We have a large number of veterans in my riding. We had a forum. I discussed it with them. They support the legislation.

My concern is not with the mandatory minimums per se. Let me just give you some examples, because I understand your approach. When you say you're concerned only with the question of war memorials and cenotaphs, etc., I'm concerned with that as well. You might say I may not be as concerned as you are, but as lawmakers we have to be also concerned about consistency in law-making. If you have a situation where a person urinates on a mosque or a church or a synagogue, there is no mandatory minimum. There is in this legislation with regard to a cenotaph.

You might say, well, I don't care about the other thing; I'm talking about this. I'm just saying that as lawmakers we have to speak about and concern ourselves both with consistency in law-making for the same type of offence and what I would call the equality of protection amongst the victims. Somebody may regard the desecration of a cemetery or a swastika drawing as being no less significant than that which is done on a cenotaph, and I'm saying they're all of concern. I understand the specificity of the legislation. I'm saying there is an issue. Why are there no mandatory minimums for the others and there is for this? You might say, okay, then have it for the others as well. That is something we have to bear in mind in terms of consistency of law-making and equality of protection.

Then, in this regard, you may say that the mandatory minimums are modest, and in fact that is true; they are modest mandatory minimums. But I think you have to take into account the unintended consequences of a mandatory minimum. Experience has shown that you end up not getting what you want, which is exactly that kind of symbolic resonance for the specificity of this particular offence, simply because the mischief charge may be dropped, as it was with regard to the urination experience you mentioned, or it's plea bargained away, and therefore you don't get that particular specificity.

I'm just saying that I support this in principle. I think we have to think about the question of consistency with other kinds of similar situations involving urinating on religious property or desecration and vandalism of cemeteries and the like, and we have to think about the unintended consequences. How does it work in practice in the criminal justice system? My sense is we've got a problem with law

enforcement to begin with, and this is something we have to bear in mind, and we have a problem with the plea bargaining in the case of mandatory minimums.

So these things have to be borne in mind.

• (1225)

The Chair: Thank you, Mr. Cotler.

We've come to the end. I'd really like to thank the panel. All of your views are certainly welcome to the committee as we move forward on this. I believe we'll have at least one more day with witnesses, so the bill will be debated even further.

We'll suspend for five minutes to allow the witnesses to leave if they wish. You're welcome to stay. We have nothing in camera.

• (1225)

(Pause)

• (1230)

The Chair: I call the meeting back to order.

I don't think it'll take us very long, so you can continue discussions afterwards.

The clerk has distributed a budget of \$3,300 to deal with Bill C-310, which we've already done. We just need it to pass the committee. It doesn't have to go to the Liaison Committee because it's under the amount. These are the actual costs that were incurred.

Would somebody move the adoption of the budget?

• (1235)

Mr. Jack Harris: I so move, Mr. Chairman.

The Chair: Thank you, Mr. Harris.

(Motion agreed to)

The Chair: I apologize, as the chair, that I forgot to bring this forward. We did the consideration of the main estimates. The budget has since been passed on interim supply. The clerk has again distributed the document with the numbers in it. If you look through it, there are nine line items. The first amount is the amount that is now reduced by the second column. We need to approve the amounts under the third column. We've already approved the second column.

Mr. Jack Harris: The interim supply has been approved and now it's going to be the rest.

The Chair: We have to go through it in the proper manner here for the record.

JUSTICE

Justice

Vote 1—Operating expenditures.....\$245,593,000

Vote 5—Grants and contributions.....\$368,799,000

Canadian Human Rights Commission

Vote 10—Program expenditures.....\$20,437,000

Canadian Human Rights Tribunal

Vote 15—Program expenditures.....\$4,105,000

Commissioner for Federal Judicial Affairs

Vote 20—Commissioner for Federal Judicial Affairs - Operating expenditures.....\$7,802,000

Vote 25—Canadian Judicial Council - Operating expenditures.....\$1,509,000
Courts Administration Service
Vote 30—Program expenditures.....\$57,857,000
Office of the Director of Public Prosecutions
Vote 35—Office of the Director of Public Prosecutions - Program expenditures.....\$155,465,000
Supreme Court of Canada
Vote 50—Program expenditures.....\$21,721,000

The Chair: Shall votes 1, 5, 10, 15, 20, 25, 30, 35, and 50 under Justice, less the interim supply amount, carry?

Some hon. members: Agreed.

The Chair: Shall the chair report votes 1, 5, 10, 15, 20, 25, 30, 35, and 50 under Justice?

Some hon. members: Agreed.

Mr. Robert Goguen: Mr. Chair, on Thursday I propose we hear the three witnesses and the clause—not clause-by-clause.

Mr. Jack Harris: I thought there was an amendment.

An hon. member: Yes, there will be one amendment.

Mr. Jack Harris: We have an amendment as well. Will there be anyone here from Justice for that?

Mr. Robert Goguen: Yes.

The Chair: Everybody come prepared. There will be three witnesses, and then we'll do clause-by-clause. The officials will be here.

Thank you very much.

The meeting is adjourned.

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