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Chair

Mr. Dave MacKenzie

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•(1105)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order, this being the Standing Committee on Justice and Human Rights, meeting number 38. Pursuant to the order of reference of Wednesday, February 29, 2012, we're studying Bill C-299, An Act to amend the Criminal Code (kidnapping of young person).

We are awaiting the arrival of one other witness. We have two witnesses before the committee today. Ms. Dunahee is appearing by video conference from British Columbia.

Welcome. You can hear us?

Ms. Crystal Dunahee (President, Child Find British Columbia, As an Individual): Yes, I can.

The Chair: Very good.

We also have Chief Rod Freeman from the City of Woodstock.

In your correspondence with the clerk, I think he indicated an opportunity for an opening address, and Ms. Dunahee, if you have an opening address and you want to begin, please go ahead.

Ms. Crystal Dunahee: Thank you.

This morning I spent some time going through the notes from your last meetings and I was very interested in everything that all the members had to say. I'm not a lawyer by any means and I'm trying to understand everything that is coming forward. There obviously is a need for some change to our Criminal Code and this is probably the best forum to make those changes.

The Chair: We're not all lawyers here either, although most of them are.

Chief, if you have an opening address, I would just say to you that the microphones will be operated from the table. You don't have to turn them on and off, and the earpiece is for translation. Some of our colleagues will speak to you in French, but you can speak back in English and it will get translated.

Chief Rodney B. Freeman (Woodstock Police Service): Thank you very much. I do have some notes I'd like to start off with.

The Chair: If you have notes and you wish to make an opening address, please go ahead.

Chief Rodney B. Freeman: Thank you. Good morning.

Let me begin by thanking each of you, members of the House of Commons Standing Committee on Justice and Human Rights, for

having me appear today to comment on this very important issue. It is truly an honour and a privilege for me to be here before you.

My name is Rod Freeman and I am the very proud chief of police for the City of Woodstock. As all of you are now aware, our community has just achieved justice through the court system in relation to the tragic abduction, sexual assault, and first-degree murder of eight-year-old Victoria Stafford.

That investigation began on Wednesday, April 8, 2009, when Victoria was taken from our streets in broad daylight at 3:30 in the afternoon while walking home from school. She was lured to a waiting vehicle by her kidnappers, who had enticed her with the promise of seeing a puppy. Victoria was pushed into the back seat of the car and forced to the floor between the seats. Within near minutes, Victoria was taken from Woodstock eastbound on 401, eventually arriving in Mount Forest, which is north of Guelph, Ontario.

For approximately two-and-a-half-hours, Victoria had endured the terror of being forcibly taken by strangers away from her mother, her brother, her family members, friends, and our city. While sitting on the back seat floor, concealed under a jacket, she was bullied and terrorized by the now-convicted Michael Rafferty to keep her controlled and hidden.

His accomplice, the also-convicted Terri-Lynne McClintic, provided false comfort to Victoria, knowing fully the horror that lay ahead for the little girl. This horrific situation ended a short time later with Victoria's violent rape and murder. Her body, put into garbage bags and concealed under rocks by her abductors, was not recovered until 103 days later, on July 19, 2009. She was then returned to her family to be laid to rest with dignity.

For this reason, and for the protection of our country's most vulnerable citizens, our children, I find myself here before you today. I hope to contribute to your deliberations in some small way, deliberations that result in crime prevention strategies being discussed or created to prevent tragedies such as Victoria's—a fate that no child should have to endure—and measures being created to deter offenders from victimizing our children anywhere in our country and to hold those evil offenders who victimize our children fully accountable before a court of law.

As a chief of police, I fully support any legislative amendments that will assist in making Canada's communities safer, will safeguard our children, and will provide support to victims of crime. Canadians need to know that their police services and government officials at all levels are working together to ensure their safety, and in particular to ensure the safety of our children and others most vulnerable in our communities. This is why I'm here today. My citizens of Woodstock and all Canadians want to be reassured that if our children are victimized, the offenders will be dealt with firmly by the criminal justice system and will face the appropriate consequences for serious criminal acts, such as the kidnapping of a child under 16 years of age by a stranger.

Thank you.

• (1110)

The Chair: Thank you, Chief.

Now Mr. Surprenant has arrived.

I think you perhaps had correspondence from the clerk indicating that if you wished, you had an opportunity to make an opening address.

[Translation]

Mr. Michel Surprenant (Vice-President, Association of Families of Persons Assassinated or Disappeared): Hello. My name is Michel Surprenant, and I am the vice-president of AFPAD, an organization that deals with issues related to persons assassinated or disappeared. My particular interest is sexual predators.

Good morning to you all.

[English]

The Chair: Good morning, sir.

If you wish to make an opening address to the committee, you can do so. We have five to seven minutes allotted for that.

[Translation]

Mr. Michel Surprenant: No, that's okay.

[English]

The Chair: Okay, thank you very much.

We will start with the rounds, commencing with Madame Boivin.

[Translation]

Ms. Françoise Boivin (Gatineau, NDP): Yes, thank you.

I'd like to thank the witnesses for being here.

[English]

Chief Rodney Freeman, we all followed that case. We all rejoiced, in a sense, at the verdict and at what sentence is coming in that horrible case. You were describing the event, and it just gives us chills.

[Translation]

On Tuesday, Mr. Wilks spoke to us about his work as a police officer before becoming an MP. He told us, justifiably, that unless you've been through it before, you cannot know what it's like to knock on a parent's or anyone's door and tell them that someone has died, sometimes under absolutely horrible and inhuman circum-

stances. You wonder how a human being can even do this kind of thing. I think we all feel that way. Kidnapping and confining a child under age 16 is terrible, as is any kind of confinement, in my opinion, especially when harmless people who have no way of defending themselves are involved. That's even more difficult.

The issue isn't really how horrible the crime is; it's knowing what to do with that type of crime. We need to ensure that Bill C-299 of our colleague Mr. Wilks will help us achieve the intended goal. This is what I take pains to say over and over again every time we study this type of bill.

There is a danger, you know. This is for the three witnesses. This week, the *National Post* hit the nail on the head. Some politicians stand up in Parliament and wave around the front page of a newspaper. Right away, we want to react, we want to do something, but without thinking about the long-term consequences.

Of course, when we hear a story like Victoria Stafford's, everyone wants to rewrite the Criminal Code in the hope that the worst punishments will be imposed on the guilty, but within a democratic and human society, we must make sure we proceed properly, given our charter.

I'll tell you what worries me about Bill C-299, and I would like to hear your comments about it. Section 279 of the Criminal Code already sets out a sentence of life imprisonment. We cannot be more severe than that, unless we reopen debate on the death penalty, which I hope we don't. This is the maximum sentence we can impose for any kind of crime.

Having said that, based on the analysis of people's files and the jurisprudence related to this section, people who have been found guilty...

• (1115)

Mr. Michel Surprenant: Which section are you talking about?

Ms. Françoise Boivin: Section 279 of the Criminal Code, which includes kidnapping. That's the section the bill is aiming to amend.

Even Justice Major, a former Supreme Court judge, very clearly said when he came to testify before us that the jurisprudence would show that the sentences varied. In general, sentences of less than eight years are not imposed. Setting the minimum sentence at five years concerns me. That concern is different from the concern I had about imposing minimum sentences in the case of other offences, where the judges are in the best position to properly analyze the file. In fact, I would like it even better if a judge did this type of thing, rather than the Crown or the defence. It needs to be someone impartial who can look at the file from all sides, based on the sentencing principles that already exist in section 718 of the Criminal Code. You must know them quite well, Chief Freeman. The section stipulates that there are aggravating factors when it comes to children, and so on.

I'm concerned that we are sending a strange message to the community by imposing a minimum sentence of five years, which is less than what is normally imposed. If I were a defence lawyer, I would make the argument that the legislator does not talk needlessly. If it thought it good to impose a minimum sentence of five years, is it possible that people think a sentence of 8, 10, 12 or 15 years is too harsh? I don't see why we are establishing a minimum sentence that is less than what is normally imposed in similar circumstances.

In addition, Ms. Dunahee, I would like you to speak about your work. You told us that the committee might not be the right forum to do so. That's true, if we think of your work and your needs in terms of looking for children when they disappear, and so on. Perhaps this isn't the right committee for that, but we are certainly quite interested in what types of problems you face and that could be very useful. I think that was sort of what Mr. Wilks wanted to do. I'm tempted to say as well that perhaps we aren't carrying out the right exercise to resolve the problems you deal with every day, you and your organization.

[English]

The Chair: Thank you, Madame Boivin. You've already used up way more than your time.

Ms. Françoise Boivin: But we have so much time today; don't we have longer?

The Chair: I think we'll have to have the answers with another individual.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank to the witnesses for appearing here, and to those who are at a distance, thank you also for your participation.

I have a question for Chief Freeman.

I want to take you back to the initial news conference that you gave after the abduction of Tori. You were saying that "returning Victoria to our community and to her family will bring some sense of relief to Tara McDonald [the mother] and Rodney Stafford [the dad] and all the family". We all know, unfortunately, that this did not happen.

In your experience, kidnapping cases don't involve just kidnapping, do they? There are always more horrific events that surround them, whether it be sexual assault or murder. Is this something that's fairly common in your, I guess regretful, experience?

Chief Rodney B. Freeman: Thankfully and fortunately, this is the only experience during my career that I've had to deal with such a horrific investigation. This has been the worst that all of us have experienced in our careers, and I'm talking about the 1,000 police officers who shared in this investigation from 14 police services across the province.

You're absolutely correct that usually a kidnapping is accompanied by other offences that will generally take the severity of the penalty to another level.

In our particular case, this started off as a kidnapping. If it had turned out differently and we had somehow... We had absolutely no chance of recovering Victoria alive, now that we know what the evidence is. It all came out in trial. Our police service had absolutely

zero chance of recovering Victoria alive. This was always an investigation, as it turned out, to hold her murderers accountable.

But say, for example, we had caught them before they hit Highway 401 and we had simply had a kidnapping offence. Currently there is no minimum sentence for kidnapping. The offenders could get six months or whatever is meted out.

What we are hoping to establish is that, at a minimum for that lone charge of kidnapping, there be a minimum standard sentence of five years in penitentiary.

An offender has all the other opportunities for parole and so on to get out before a five-year period. But we're looking for that sentence of five years so that the offender is taken off our streets, rehabilitated if possible, but certainly facing a stiff punishment for that offence—while recognizing that kidnappings in the past, and I'm sure into the future, will always involve more than one offence.

• (1120)

Mr. Robert Goguen: I guess what you're focusing on is possibly deterrence, whether it be specific or also general, a message to the public.

On May 15, Mr. Justice Major, who is a retired Supreme Court of Canada judge, appeared. He was questioned about whether he felt the minimum sentence in this type of offence, the kidnapping of a vulnerable child, would survive the "cruel and unusual punishment" test because it was a reasonable sort of infringement upon democratic rights. That was his take on it.

From your point of view as a police officer, would it really have the deterrent effect that we hoped it would? Is it reasonable, from our point of view, to put in the minimum mandatory sentence?

Chief Rodney B. Freeman: Yes, sir, I think it is. That's the short answer. As a police chief and a father of two kids that are under 16 years of age, I have absolutely no mercy and I see absolutely no justification in a circumstance where a stranger would scoop up a child—any child, male or female, under 16 years of age—and forcibly take them away from their area of safety. I see that as absolutely unforgiveable and absolutely unjustifiable, and I believe in my heart, as both a police chief and a father, that a five-year sentence should be the minimum that they should expect. I think many Canadians share that belief with me.

Let's not stop there. If it involves a firearm, certainly, it is punishable by life in jail. If it's a run-of-the-mill, straight kidnapping, I believe that if it's prosecuted as an indictable offence, the maximum is 10 years. If we were to open up this discussion even further, let's take that 10-year cap and make it life, too. So it would be a five-year minimum with a maximum of life, firearm or no firearm, whatever the case may be.

I'm emotional about this right now, I admit. This has been a brutal three years, and the Stafford and McDonald families didn't see closure when we returned Victoria's body to them. I saw more of an indication of closure when the verdict was rendered by the jury of guilty on first-degree murder. Then I saw closure in their eyes. They will still have to work to heal in the next few months and years, because Victoria was a perfect child—a blond-haired, blue-eyed, eight-year-old girl whom any one of us would be privileged to have. But she is no more.

The Chair: Thank you.

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chair.

In any case, I think we are all very moved by these situations. We all want to protect our children. So it is not a partisan issue, but a question of justice and security. Will our environment be safer if we increase the minimum sentence?

We also need to answer another question. Should we be tying the hands of a judge who could have the capacity to make a decision based on the situation?

[*English*]

This is not a curve to you, Mr. Freeman, but do you trust the way judges work right now? Do you believe in their judgment? That's an important question. There could be a situation where the judge says he is not going to go there. We already have some provisions in the law, the Criminal Code, where you can get up to life in prison.

I'm not a lawyer. I'm a father too. I'd like to have your thoughts on that.

• (1125)

Chief Rodney B. Freeman: I can tell you that I've been part of the justice system for 34 years. My career is 34 years, and I have great faith in the system. I've seen it work. I've seen it fail. It's not a perfect system, but none are.

The sense I am getting, though, from speaking to many people in my community of Woodstock—and I think this is fairly reflective of opinions across the country—is that people are having some doubts about the criminal justice system and its effectiveness, perhaps because of a lack of consistency or legal decisions that regular people can't seem to wrap their minds around.

I'll kind of give you a political answer. As a member of the system, I believe in it. I have faith in it. I have worked in it for a long time, but I sense that society is having some lingering doubts, and they need the reassurance that we are striving to make the criminal justice system the best that we possibly can.

[*Translation*]

Hon. Denis Coderre: Mr. Surprenant, I know you have also lived through an abominable situation. It is important to step back a bit and consider it as a whole when we apply the Criminal Code.

Do you think that a minimum sentence of five years will have a marked impact, given that it has already been tried elsewhere? Do you think this could cause more repeat offences? Is there something in the Criminal Code we could apply?

I would like to hear your point of view on that.

Mr. Michel Surprenant: I fully disagree with what you said. In a debate, at a given moment...

I was speaking with Michel Dunn, who killed his associate. He was sentenced to 25 years in prison, where he did 17 years. He admitted that it took seven years before he admitted his crime.

A minimum length of detention is needed to accept the crime that has been committed.

You must also understand something. When a child is kidnapped, whether the child dies or not, that child's life is changed forever. It has been proven that a sexual predator cannot be cured. A minimum of five years, during which time he will be removed from the population, is a minimum to ensure safety.

It is important to understand that, for sexual predators who know they will be released, you are keeping that possibility of reoffending alive in their mind, which means that there will be other victims.

On behalf of future victims, can you take responsibility for releasing these people?

Hon. Denis Coderre: Therefore, the longer the incarceration is, the more protected you'll feel.

Mr. Michel Surprenant: We are talking about the safety of our children.

Hon. Denis Coderre: I understand your situation, and we know your story.

When we apply the Criminal Code, we cannot do so for one individual and one situation; we need to think about prevention. Do we need to operate in absolutes? Could we not have situations where this might create other kinds of problems? Perhaps these people could be rehabilitated.

In your opinion, there is no possibility: these people must stay in prison.

Mr. Michel Surprenant: It has been proven that sexual predators cannot be cured. As soon as they are released, their only concern will be to find a new victim to satisfy their fantasies.

Hon. Denis Coderre: Am I to understand...

[*English*]

The Chair: Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

I wanted to talk to you, Mrs. Dunahee. My name is Kerry-Lynne Findlay. I am a member of Parliament from British Columbia, and I well remember that fateful day when your son Michael was taken and we all became aware.

I grew up on Vancouver Island, so I know the park you were at that day very well, and I visualized, now as the mother of four, but at the time with two young children.... There were many of us who were identifying with your pain at that time, and I really applaud you for what you've been trying to do for missing children's rights.

Our Conservative government continues to try to address the issue of missing children through a number of initiatives and that includes the RCMP's Canadian Police Centre for Missing and Exploited Children. We have also expressed our support via a website called *missingkids.ca*, recently launched by the Canadian Centre for Child Protection.

Nevertheless, of course we all know and the testimony of Chief Freeman here only underscores that there is so much more we could do for victims and victims of kidnapping, in particular and of course, for our most vulnerable members of society—our children.

Could you please tell our committee today how, in your opinion, Bill C-299, introduced by Mr. Wilks—also a B.C. resident—provides us with an opportunity to do that?

• (1130)

Ms. Crystal Dunahee: From what I'm reading and hearing, it sounds as if there is nothing in place at present for a minimum timeline. In Tori's case, if they had been able to stop them before they hit the 401.... Six months is nothing compared to the trauma they instilled in that child in the timeline they had. Because at her age, it would have stayed with her indefinitely; she would have been remembering that constantly.

I don't know if a minimum of five years is enough time, but it's a start. I believe we need to have something in place to get the message across that we will not stand for people taking our children, whether we know them or not. It's deplorable.

Ms. Kerry-Lynne D. Findlay: There I'm sure, as are the other witnesses here today, that although it wasn't in the original bill, the government intends to introduce an amendment to make it very clear that we're just talking about strangers who kidnap our children. This minimum would apply to them.

Do you have any other comment on that or even on your thoughts or your feelings on our children being vulnerable to strangers taking them when they're so little?

Ms. Crystal Dunahee: Having strangers taking our children is not something that I would like to impose on anybody, as I'm still living that. Our family is still living that nightmare. We continue to do so. Who knows when it's going to end?

So having five years is—

I'm sorry.

Putting five years I think is just.... I don't know how to express that.

Ms. Kerry-Lynne D. Findlay: I really appreciate what it means for you to be here today. I really appreciate your courage, and I just want to say that I'm sure everyone here agrees with me as we deal with this very difficult issue. I want to thank you very much.

The Chair: Mr. Surprenant would like to respond.

Ms. Kerry-Lynne D. Findlay: All right.

Monsieur Surprenant?

[*Translation*]

Mr. Michel Surprenant: I heard what you said, and I want to clarify something. Sexual predators do not use firearms, they use

ruses. Sexual predators will not commit violent offences during the kidnapping as such. You must also understand that these are life sentences that sexual predators are imposing when they kidnap or assault a child. When you kidnap a child, you are destroying the child's life. How will the child react? How will the child recover from that experience? That is the whole issue. Regardless, it certainly is a life sentence.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Côté.

[*Translation*]

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

Ms. Dunahee, I'm Raymond Côté, and I'm the member for Beauport—Limoilou. I would like to thank you immensely for coming and testifying before our committee.

I'm not a jurist, and I have no legal training. However, like you, I have been involved in various organizations, including in the school network. I was the chair of the parents' committee of the Commission scolaire de la Capitale for two years. You said that you have no legal knowledge. That reminded me that several parents I helped as chair were intimidated to represent their school on a body like a school board. So I pay tribute to your presence. Please don't be intimidated by our committee. No, you are really in your element here.

The Criminal Code is a whole, it's an important tool for our justice system. My concern doesn't involve just the section of the act but everything surrounding it, meaning, victim support and all the consequences of crimes.

Given your role as the president of Child Find British Columbia and as a mother who went through this, what can you tell us about the needs of people like you who go through the very trying experience of a kidnapped child? What do you need in the longer term? Tell us about the quality of services and support that are available.

• (1135)

[*English*]

Ms. Crystal Dunahee: We did draw on victim services for the emotional support that we needed at the time. Becoming involved with Child Find B.C. brought more support to us, because that wasn't readily available. Of course, over the years, with all the different organizations that have grown because of the abduction of our children, the resources are now there and available.

Having some sort of limit within the Criminal Code gives us that much more of a secure feeling that those criminals are going to be off the street and not released in six months with a rap on the wrist—"don't touch our children".

[*Translation*]

Mr. Raymond Côté: That's very good. Thank you very much, Ms. Dunahee.

I would like to ask a question of all the witnesses. With respect to the bill as presented, we are concerned about its potential unpleasant or unintended consequences. We cannot ignore it, which is why I'm mentioning it. Justice Major gave us his testimony earlier in the week, and he confirmed this. The Criminal Code forms a whole. When you fiddle with one section in particular, like my colleague David Wilks is trying to do here, there are consequences. The goal is entirely respectable, but sometimes there can be unintended consequences.

One thing troubled us quite a lot. In almost all reported kidnapping cases, the sentences were eight to 10 years on average, even more. In the Gillen case, in British Columbia, the woman who kidnapped a two-week-old baby received life in prison.

You might think that this works. But if we impose a minimum five-year sentence, we're afraid that this will send the message to the judicial system that a five-year sentence could be an acceptable punishment for this crime, while it might be better to impose a harsher sentence.

In addition, it could lead prosecutors to consider other avenues, to prevent the accused from not getting a lesser sentence than what we might want.

Chief Freeman, what do you think of our concern?

[*English*]

Chief Rodney B. Freeman: I'd be pleased to, and thank you very much for the opportunity.

In speaking with Mr. Wilks, we see this as just a starting point. In some of the other cases you may have reviewed with the penalties of eight years and so on up to life, those sentences may have included other offences over and above the kidnapping, because as was explained to this committee, so often that kidnapping is for the purpose of sexual assault, rape, or murder.

When I was contacted, I looked at the section of the code and I looked at it in just the perspective of that charge alone—kidnapping alone—and quite frankly I was shocked that there was no established minimum. There was no established minimum sentence. In speaking with Mr. Wilks, I expressed that, and we determined that five years was a start.

As far as I'm concerned, there is nothing on this earth more valuable than a child's precious life.

• (1140)

The Chair: Thank you, our time is up.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you to all the witnesses who came today.

I was a criminal lawyer for a period of time. That doesn't mean I was a criminal and a lawyer, it means I defended criminals. I stopped after a period of time, because frankly, I couldn't deal with this type of business anymore, after dealing with a couple of cases.

Now I do understand as well, based on my experience, that pedophiles cannot be rehabilitated. That is my information. That is my evidence, and consistently I heard Mr. Surprenant say that.

Is that your understanding, Mr. Freeman, as well?

Chief Rodney B. Freeman: It is.

Mr. Brian Jean: In fact as time goes by and these criminals get away with this type of behaviour, they become more complex. They plan it out more. In fact, based on 1980 stats, I understand that somewhere between 20% and 21% of the actual kidnapping cases led to a charge, so that means somewhere in the neighbourhood of 79% of the cases in 1980 are still not solved or there were no charges that led from that. Is that fair to say?

Chief Rodney B. Freeman: I'm not familiar with that statistic, but I'll accept what you're saying.

Mr. Brian Jean: Okay.

In fact in 2008 based on the stats—and I know there are better stats today—there were almost three times more kidnappings and abductions that took place than did in 1980.

I guess my understanding, and I did some work as I said in this area.... It's very disturbing. Excuse me.

Based upon your experience, Mr. Freeman, not only as a police officer, what do you think is a reasonable disposition for these people?

Chief Rodney B. Freeman: You do have to consider all the circumstances, but quite frankly, I'd be at the upper end leaning toward life imprisonment. They can't be rehabilitated. They've harmed sweet, innocent children. That has had an impact on the family, and the ripple effect is incredible. My entire community was traumatized by the abduction and murder of Victoria Stafford. Her family will never fully recover. Emotionally and physically, it has taken a toll on all of us as police officers.

There would be no mercy from me for the child abductor.

Mr. Brian Jean: I think a lot of people don't understand that many of these people who commit these crimes are people who have had the crime committed on them. In fact it continues and continues and continues. It becomes more complex. They actually enter into agreements with other people to commit these crimes after a period of time.

Indeed I would suggest that is why many of these crimes go unsolved. It's because once they get away with it once, they will continue and continue. I have had cases where there have been brutal assaults and people have received conditional sentences of two years less a day to their homes.

Can you comment on that?

Chief Rodney B. Freeman: I fully believe that's happening out there in some cases. That's why I chose to stand with Mr. Wilks on this bill.

That is entirely unacceptable. I don't care what other peripheral circumstances may factor into the decision, that is absolutely unacceptable. I believe the victim and the victim's family and the community would share my thoughts.

Mr. Brian Jean: Isn't it fair to say this is exactly why we need minimum mandatory sentences? In my experience judges see this every single day. In my mind, they come to a point where they don't become immune, but certainly, they become desensitized to it. That has been my experience.

Would you say that's fair?

Chief Rodney B. Freeman: I would agree with you, sir. Yes.

Mr. Brian Jean: Mr. Surprenant, would you agree as well in relation to what I've mentioned?

[Translation]

Mr. Michel Surprenant: I'm sorry, but I didn't fully understand the question.

[English]

Mr. Brian Jean: In essence, what do you think would be a fair disposition for people who are caught kidnapping young people?

[Translation]

Mr. Michel Surprenant: In the case of sexual predators, the maximum sentence is always what people are most hoping for. If, for example, an eight-year sentence is given, it needs to be eight years of imprisonment, period. If the person is released, the release should be supervised, which might require him to wear a bracelet that would monitor the sexual predator's movements at all times. If a child is assaulted and we see that a sexual predator was in the neighbourhood, that person can already be targeted.

I think a minimum amount of supervision would be absolutely necessary because a sexual predator is always waiting to become anonymous again to reoffend. So it is extremely important to be able to track him.

We can make an analogy with an animal that goes and hides away, waiting for the right moment, then leaps out, does what it has to do and moves along. It's practically the same thing with a sexual predator. The difference is that the brain of the sexual predator controls what happens down below. That's the difference. That's the strategy that is used to respond to the impulse that comes from below.

Wearing a bracelet would be an important measure. It would make it possible to know where the predator is at all times, to use a GPS to track him. That would be the minimum.

• (1145)

[English]

Mr. Brian Jean: Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Jacob.

[Translation]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Chief Freeman, Mr. Surprenant and Ms. Dunahee, thank you for being here this morning to give us your testimony and shed light on this matter.

The kidnapping of a child is always a very serious offence, regardless of the circumstances. That's why I somewhat agree with Ms. Boivin about the minimum sentences. The retired Supreme Court justice, Mr. Major, said that the jurisprudence showed that

kidnapping cases involved an average minimum sentence of eight years or more. Section 279 mentions life imprisonment. I am also thinking about the legislator who never speaks to say nothing and that that could be misinterpreted.

Chief Freeman, based on your vast experience, could you tell me if you have any knowledge of cases where the sentence for kidnapping a child had been five years or less?

[English]

Chief Rodney B. Freeman: Thankfully I've had very few abduction investigations, but I have had a couple. One I will remind you of, which I was involved in when I was chief in Fergus, was Peter Whitmore, now incarcerated for life, I believe. He was a sex offender in Ontario who had a propensity to abduct or lure away young males and sexually assault them. On one of the occasions when he got out of jail, he then went to British Columbia and was involved in another abduction for sexual purposes out there.

I think the message that is being conveyed when there is no established minimum is an empty message. By establishing a minimum five-year mandatory penitentiary term, we are taking a stand. We're expressing something. It's a start. By having no minimum, we're saying nothing.

I'm not sure if that makes sense. It made sense up here; I'm not sure it made sense coming out.

We're making a declaration by saying a minimum of five years. By accepting no minimum mandatory jail term, we're saying nothing. We're standing mute.

[Translation]

Mr. Pierre Jacob: Very well.

My second question—

Mr. Michel Surprenant: Forgive me, but there is something I would like to add. Someone said earlier that the sentence of eight years was always the penalty for kidnapping involving a sexual offence. As the gentleman said, the five-year sentence is a minimum. For kidnapping alone, before a sexual offence is committed, I think a minimum sentence of five years is called for. If the predator is caught before he has the chance to do anything, a minimum sentence of five years should be imposed. It's a minimum safety measure.

Mr. Pierre Jacob: Thank you very much, Mr. Surprenant.

Everyone wants to protect children. The abduction of a child affects not just the parents, but also the whole community for a long time, if not forever, as you said.

This is for Mr. Freeman. Would putting more police officers in the field reduce the number of victims?

I also have a question for Mr. Surprenant. Would a bigger focus on kidnapping prevention, targeting children, parents and the community, reduce the number of victims?

Go ahead, Mr. Freeman.

• (1150)

[English]

Chief Rodney B. Freeman: Thank you, sir.

My short answer is, no. I don't think additional police officers would stop this problem. In this investigation we brought in 1,000 investigators in the aftermath to do the investigation. These predators, the people who are preying on our children, do so very covertly. They lure. They groom. They work very much behind the scenes in the darkness, and that's when they grab our kids.

I think crime prevention strategies, educational strategies for perhaps parents and children, and consistent unified strategies in schools right across the country would help a bit, but the strongest deterrent I see is harsh, firm, clear sentencing. That's from my perspective.

[Translation]

Mr. Michel Surprenant: I want to add something to what Mr. Freeman said. Prevention is very useful, but it doesn't replace deterrence. The two go hand in hand. Measures are needed to deter sexual predators from reoffending. In other words, we have to make life hard for them. At the same time, however, it is appropriate to educate children about certain things. For instance, if they are going to the convenience store, they should go with someone, not alone; that is very important. Those kinds of measures should be taken, but they should accompany and complement deterrents, not replace them. That is key.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I want to comment on a concern raised by a member of the committee earlier. He said he was worried about the message a minimum sentence sends judges.

[English]

I want to reassure the member that when a judge sees a minimum penalty for any offence, the judge understands full well that Parliament intends that to be a minimum; that is to say, it is intended for the case of that offence which is least culpable. A judge knows full well that, as the degree of culpability for that offence increases, the penalty ought also to increase. So judges do know that a minimum penalty is exactly that—it's for the least culpable instance of such a case—and that increases are warranted thereafter.

Ms. Dunahee, I would like to direct some questions to you. I will begin by thanking all of the witnesses, by the way, but particularly you, because the pain in which your circumstances have left you is quite apparent. I know the courage that it takes to be here, and I know that your intentions in attending here are to assist all of us in understanding the point of view of the victim, because clearly the children who are taken are not the only victims in such cases. So I think it's important for us to ask you to do your best to put across for the members of the committee that point of view, the point of view of a victim.

What I know about your case is that your son, Michael, was taken when he was four years old. He was not found despite the fact that there was, as I understand it, one of the largest police investigations in Canadian history; despite the fact, I understand, that some 11,000 tips have been received by the police; despite the fact that this was well reported in the media across Canada and in the United States; and despite the fact that there was a \$100,000 reward offered. Nonetheless, the police have not been able to make progress in your case.

I also understand that you have, yourself, been a leading advocate for missing children issues, and that in 2002 you lent your voice to support the Royal Canadian Mounted Police in their calls to introduce an AMBER alert system in British Columbia. These are examples of how your terrible circumstances have been turned to good use.

I don't even know when it was that your son was lost, so perhaps you could start by telling us how long you have suffered with this tragedy and give the members of this committee some insight into why it is, from your experience, that the law we're considering needs to be looked at so seriously.

• (1155)

Ms. Crystal Dunahee: Thank you.

Michael was taken from us on March 24, 1991. He has now just had his twenty-sixth birthday. The person or persons responsible for taking Michael from us and eluding every channel that we've attempted, because we chose to make our case very public.... We wanted it out there so that we would have more eyes helping us search for Michael. Unfortunately, that hasn't worked to this date. I do believe that he is out there somewhere and that one day he will see himself and find his way home.

On the changes to the Criminal Code that your committee is looking at, there is that chance that something.... I don't know how to put it. Not having that minimum there is.... It needs to be there, as far as I'm concerned and as the member who put forth the bill said, because there is that opening there that needs to be shut. We need to have that stronger message put out there that we shouldn't be taking other people's children. It's just....

Mr. Stephen Woodworth: The word a lawyer would use—

Ms. Crystal Dunahee: I don't know if I'm answering your question.

Mr. Stephen Woodworth: Sure. I was just going to say the word a lawyer would use for that is “deterrence”. It helps to stop others in their tracks before they commit the act.

But thank you very much again for your attendance.

The Chair: Thank you.

I have Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Madam Boivin.

The Chair: Madam Boivin.

Ms. Françoise Boivin: Mr. Scott takes many forms today.

To continue on from Mr. Woodworth, and to quote Justice Major, who was here on Tuesday:

That would be the hope,

—when you have a minimum—

but experience shows that the severity of the crime seldom acts as a deterrent, because there's a philosophy that says the criminal doesn't believe he's going to be caught.

That's sometimes the problem.

I would like to ask the chief—I knew I'd get your attention—if you think Rafferty would have committed his crime had there been a five-year minimum. Do you think that would have stopped him?

Chief Rodney B. Freeman: I don't think this would have stopped him, no. He is an absolute monster, and he is now away, hopefully for the rest of his life, where he will never, ever harm another child, as is his accomplice. Those two were fuelled by the Internet, by pornography. They were googling a lot of extremely harmful websites, and they were determined that they were going to take a child that day, and it happened to be Victoria.

Ms. Françoise Boivin: You see me coming. That's my problem, in the sense that I don't know if we're just giving us, as a society, a sense of comfort, and in a sense a sad sense of comfort. Because if we're sending the message to society that by doing this you can feel more secure and that your kids are now safe, there's a problem, because they're not. There are still predators out there. There are still sick people out there. By doing so sometimes I think we avoid taking the real bull by the horns and addressing the real problem. So that's one of my problems, because I don't, in my heart, even though I'd love the sentence to be even bigger, I say to myself that it will not make somebody stop doing that.

What I do get comfort from is not looking at the bottom and the minimum sentence but looking at the top. I review the jurisprudence and I try to see if there's a problem. Normally if we try to fix something, it's because there is a problem. Otherwise, I don't know what we're doing. I'm looking, and I don't see a problem because I don't see the court being lenient with that type of infraction.

I don't know if the witnesses have read section 279 as it is. The bill is trying to amend section 279. When you read that section... Being a lawyer, I can tell you that it's mind-boggling. You have section 279 talking about kidnapping, and as Judge Major was saying, it's for commercial purposes. It's kidnapping with intent. So when you say there's nothing attached to it, to be guilty of section 279 there always needs to be something attached to it. So you can't just say it's simple. They kidnapped, and thank God, the police arrived fast enough, grabbed the kid, and so on. They still could be guilty of section 279 if there was intent. We'd have to see what the motivation was, and it would be hard to prove that. But then it might not be a section 279 but another infraction.

Then you go to all the others in that section, which are hard to understand. You have section 280, which is on abduction of a person under 16, and then you have a maximum that is less than life imprisonment. So when you put all these together, I don't know what putting a five-year minimum on section 279—and the private member's bill says it's for that specific section, and we can't change what the private member's bill is saying—will add to the situations we are looking at every day, all the dramatic, specific cases that we hear about, or your case, Mr. Surprenant, which has moved the whole province.

•(1200)

[Translation]

The entire province went through it with you, clearly not in the same way, however. As I said earlier, we can't know what it was like for you to live through a parent's worst nightmare or imagine what Ms. Dunahee went through. But, as elected representatives, as

members of Parliament, we must stop trying to convince society that including a few words in the law is going to solve the problem, when we aren't solving a thing, in my opinion.

Mr. Michel Surprenant: That is how you see it.

If your primary objective is protecting children, you will understand that a minimum is really the way to go. As already pointed out, judges appreciate that it is just a minimum. Another approach is necessary.

Ms. Françoise Boivin: Could you give us an example of a child abduction case in which a minimum sentence was used?

Mr. Michel Surprenant: It sounds like you are more concerned about the sexual predator's ability to reoffend.

Ms. Françoise Boivin: Not at all, I am not referring to that. Quite the opposite, I am saying harsher sentences are imposed.

Mr. Michel Surprenant: That is how it sounds to me, as the father of a victim.

Ms. Françoise Boivin: Perhaps you misunderstood me. I said more than the minimum is being imposed.

[English]

The Chair: Ms. Boivin, your time is up.

[Translation]

Mr. Michel Surprenant: I don't know why you're dwelling on this. What we are asking for is a minimum, not—

Ms. Françoise Boivin: I am not trying to be stubborn with him.

Mr. Michel Surprenant: Neither am I.

[English]

The Chair: Mr. Goguen.

[Translation]

Mr. Robert Goguen: Mr. Surprenant, you said that pedophilia could not be cured.

•(1205)

[English]

I'll ask the chief to comment on this too.

[Translation]

Actually, once they are released, they should be monitored. My understanding is that, under the current Criminal Code, the maximum probation period during which monitoring takes place is three years.

Do you think the Criminal Code should be amended as it relates to sexual offences against children so the probation period is longer?

[English]

I don't know whether you got that, Chief. I was just saying, basically, that pedophilia is probably not curable. Under the Criminal Code, the maximum probation period after being freed is three years.

Should the Criminal Code be extended to give a longer probation period in the case of sexual offenders against children?

[Translation]

My question is for Mr. Surprenant, first.

Mr. Michel Surprenant: Obviously, three years is not long enough. When you know a pedophile can't be cured, three years is nothing.

Mr. Robert Goguen: So we should extend that period, perhaps amend the Criminal Code to provide for a longer monitoring period. Should it be for their entire life?

Mr. Michel Surprenant: Right now, there are provisions whereby a sexual predator can be deemed a long-term offender who is subject to supervision for a minimum of 10 years.

In the U.S., for instance, after the second or third offence, the predator is castrated or sent to prison for life. I would say there is still a ways to go between that extreme sentence and ours.

[English]

Mr. Robert Goguen: Chief?

Chief Rodney B. Freeman: I'd like to comment that we could do a lot better in a lot of areas of the Criminal Code. I think that's why Canadians are looking at our system and sometimes viewing it as too weak. I think there are improvements we can make.

In the case of the kidnapping of a child under 16 years of age by a stranger, I believe that by establishing a five-year minimum we are making a statement. We are drawing a line in the sand saying that our children are our most vulnerable citizens, and should you kidnap one of them under 16 years of age, this is the minimum you're going to look at.

Right now, we're standing with our hands in our pockets and we're accepting—let's go way out there—that somebody could get probation for kidnapping a child under 16. Now that's way out there, and I appreciate that. But I think, first of all, that this member's bill has created this discussion, which I think is very helpful—I know it's helpful in our community—but I think that we as the lawmakers and the law enforcement community have to draw that line in the sand and say, if you do this, you're looking at five years minimum.

Mr. Robert Goguen: Okay.

Do I have any time left?

The Chair: Yes, you have two minutes.

Mr. Robert Goguen: Chief, the accused have both been convicted now. They're being incarcerated. Will they ever be placed in the general population?

Chief Rodney B. Freeman: I would have my doubts. Even inmates have their standards, and I don't think these two will ever see general population.....

I know Rafferty will not see general population, I wouldn't expect. McClintic is in a slightly different environment. I think she'll be in a controlled environment inside the institution.

Mr. Robert Goguen: So even among people who are incarcerated, this is a very heinous crime. They wouldn't expose them to the risks of being in the general population, because even the convicted people don't accept this. Is that correct?

Chief Rodney B. Freeman: That's right. They see them as the pitiful misfits that we see them as. As I say, even criminals have their standards, and child abduction, child rape, child murder is the very bottom of that cesspool.

Mr. Robert Goguen: Given that, it is fair to say that the average, ordinary Canadian would think that the minimum sentence on this would be pretty much acceptable to Canadian standard. Is that correct?

Chief Rodney B. Freeman: I absolutely believe so. If you polled parents with children, I think you'd be talking about much higher numbers than we're talking about at five years.

Mr. Robert Goguen: Thank you, Chief.

The Chair: Ms. Ambler.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thanks to all of you for being here today to discuss this very important private member's bill.

Mrs. Dunahee, I thank you in particular for being here today. I can't imagine the courage it takes not just to be here but to get up every morning and get dressed and go about your daily life. So please don't feel that you need to give long answers or answer at all. I will ask questions, but if they're too difficult for you to answer, I think we'll all understand.

As the mother of two teenagers myself, I can only say that I can't imagine.... You go through trials and tribulations every day, and I'm very sorry that you will never know that for your son Michael.

You mentioned that your nightmare is every day, and I hope and pray that it will be over one day. I think it's great that you celebrate his birthday. I want to wish you a happy birthday on May 12 for your son Michael as a 26-year-old. I saw the composite sketches of him online, and he surely is a handsome young man.

I want to say that we talked about this legislation as providing some measure of comfort. Madame Boivin said she thinks that part of this is just offering ourselves measures of comfort rather than doing the right thing. I would suggest that in some ways that's not a bad thing; that if the law does bring comfort by doing the right thing, it's a good law. So if the aim of this law is to protect children—if that's your main goal—would you say that it would bring you some comfort, as the mother of a missing child, if we were to implement this law?

I can go on. It's okay.

● (1210)

The Chair: There's a delay in the feed.

Mrs. Stella Ambler: Oh, okay.

Ms. Crystal Dunahee: As Chief Rodney Freeman stated, any parent out there would prefer a longer time. I don't know that five years is enough. I can see the difficulties that the members are having implementing that, with lawyers taking a minimum five years as acceptable.

In a parent's eyes, I don't believe that timeline is acceptable. It should be longer.

Mrs. Stella Ambler: I think it was MP Côté who said that he might be amenable to a longer period of time, which was very reassuring to me. In your remarks earlier, I noted that you said five years might not be enough and that ten might be more appropriate. So you would agree with that. You would say that not only would it bring comfort to you but that if keeping children safe is your main goal, this would go toward it.

I guess my point here is that Madame Boivin said something else. She said: "I'm looking and I don't see a problem" with regard to sentencing and judges.

I disagree completely. I look around and I do see a problem, because from what I can tell and from what Chief Freeman said earlier, the judges are rarely implementing the maximum sentences.

So my question to you, as a mother and as someone who knows this issue well and who I'm sure knows the law well, do you see a problem and do you think it's a good idea for judges to be given this directive and to be given a minimum, knowing that it doesn't mean that they would impose only the minimum. I think we can give our judges more credit than that. They know that a minimum is a minimum.

Do you think it's important for us to be doing this?

Ms. Crystal Dunahee: As some of the members have pointed out, I believe any terms that have been put out there have not been for less than five years. They've been for anything higher than five years, so putting five years in there.... I don't know to be quite honest, because as I said, judges are already going beyond that, and by putting in five years it now brings down that eight-year sentence to a minimum of five years, so I don't know if that is the message.

Mrs. Stella Ambler: I'm not a lawyer, but—

The Chair: You're out of time.

Mr. Côté.

[*Translation*]

Mr. Raymond Côté: Thank you, Mr. Chair.

I don't want my colleague Ms. Ambler to misinterpret my words. When I refer to much harsher sentences, I am referring to maximum sentences, not minimum ones. I agree fully with my colleague when it comes to kidnapping, depending on the circumstances. Judges should decide. I wholeheartedly support life in prison.

I want to thank our witnesses for being courageous enough to appear before us and somewhat relive the terrible things they went through.

I want to come back to you, Ms. Dunahee. Forgive me, I am not trying to pick on you. Unless I am mistaken, you've succeeded in bringing the AMBER alert system to British Columbia.

• (1215)

[*English*]

Ms. Crystal Dunahee: I wasn't 100% involved. I did voice my concerns that we needed to have it in British Columbia because we didn't have it.

[*Translation*]

Mr. Raymond Côté: That is wonderful, congratulations.

I don't mean to presume what my colleagues think, but I would say they share my concern about giving the public a false sense of security.

I want to discuss something other than the law with you. I have more of an economics background. I am not trying to criticize any government specifically. This situation goes back nearly 20 years. The federal government shirked a fair share of its responsibilities when it made significant budget cuts, to the detriment of the provinces and municipalities. This means that the other levels of government had fewer resources in these areas. That is a very unfortunate consequence, one that requires our communities to make very tough decisions every day. We must never forget that, when applied, a single provision in the Criminal Code can prove ineffective in terms of solving certain problems, if it is not accompanied by a whole set of extrajudicial measures.

Mr. Surprenant, you are in a perfect position to comment. You mentioned deterrence and you articulately described how a sexual predator is driven much more by instinct than by thought. I cannot see, then, how a five-year minimum sentence will deter a predator from committing an act, since basic instinct is really what drives them.

Mr. Michel Surprenant: The five-year minimum sentence is a minimum safety measure. I was listening to what you said, and I have a suggestion for you. If you don't feel five years is acceptable, why not propose ten years?

Mr. Raymond Côté: Mr. Surprenant, the reason is simple: I genuinely believe that minimum sentences are not the answer. On the contrary—

Mr. Michel Surprenant: Sorry to cut you off, but a minimum sentence is necessarily a deterrent. However, it should never be the only method used.

Mr. Raymond Côté: I agree fully.

Mr. Michel Surprenant: It must be accompanied by other measures. Earlier, I mentioned bracelets. From what I know about how an offender is monitored every two weeks, there isn't much to it. The person just signs a log, and that's it. There are no safety measures and no real follow-up. When a sexual predator strikes, in the first few days, they are still feeling the rush of adrenaline. There may be a way to obtain information at that point because they still have a sensitivity. But, two weeks later, they have accepted their crime, they have come to terms with it. They can be in a situation and remain calm. If the probation officer questions them about their recent comings and goings when the crime happened two weeks ago, it does absolutely no good.

Mr. Raymond Côté: Exactly.

Mr. Michel Surprenant: I know it is physically impossible to make a sexual predator who is out on parole meet with the authorities every three days. But a bracelet could tell us his whereabouts when a crime was being committed.

Mr. Raymond Côté: Very good. Thank you.

Chief Freeman, a few years ago in Quebec City, a man kidnapped a young boy. He put the boy in the trunk of his car and then locked him up in an oil heating tank. Luckily, a citizen saw the incident happen, called the police and followed the kidnapper.

• (1220)

Mr. Michel Surprenant: It was thanks to the AMBER alert.

Sorry for interrupting.

Mr. Raymond Côté: No problem.

Chief Freeman, there are measures such as public vigilance, the AMBER alert system and awareness raising about the problem—to encourage people to be more watchful and to get involved sooner by calling the authorities. Do you think measures like these could have a real impact on preventing kidnappings, whether by sexual predators or others?

[*English*]

Chief Rodney B. Freeman: Absolutely, yes. Community safety is a joint responsibility between all Canadian citizens and their local police services. If left alone to deal with crime and criminal quality-of-life issues, the police would be very unsuccessful dealing with community safety. We absolutely need the trust and support and safe participation of our citizens to keep our country safe.

Canada is a very safe country, because we already have those partnerships, right across the country, from east to west to north. There are AMBER alert programs. Community safety is going to come from a number of different directions, but the first one has to be trust and a working relationship between citizens and the police.

The Chair: Thank you.

[*Translation*]

Mr. Raymond Côté: Thank you, Mr. Chair.

Mr. Michel Surprenant: I have something to add to that.

As you may know, the Sûreté du Québec police force has adopted a safety code for kidnapping cases. They start out following code 1,

in other words, they deploy all resources. Then, depending on the severity of ensuing events, they move to levels 3, 4 or 5. The deployment level remains at the highest point until the severity of the situation is known.

Mr. Raymond Côté: So as soon as it is reported.

Thank you very much, Mr. Surprenant.

[*English*]

The Chair: The chair would just offer, though, that there are literally hundreds of missing children reports daily. They don't all automatically trigger. For most children who are missing, the vast majority are simply missing, so some of these things do not automatically trigger immediately. They may be at a friend's house and didn't tell Mum and Dad where they were going.

It puts a lot of responsibility on the police after the fact.

Chief Rodney B. Freeman: In Woodstock alone, in our small community of 40,000 people, we investigate probably 250 reports of missing children every year, and 99.99% of the time, it's for an innocent reason. The child just hasn't come home and has gone to a buddy's house, or whatever. Those are the ones we like to see. The one time, unfortunately, was Victoria's absence, which triggered probably the biggest criminal investigation and the biggest ground search in the history of the province of Ontario, and absolutely in the city of Woodstock.

The Chair: Thank you.

We did have scheduled committee business, but given the circumstances, we'll put that off until the next meeting. We don't have a lot of other things.

I'd very much like to thank the witnesses. I know that it is extremely difficult, Ms. Dunahee, for you to be here with us today. It meant a great deal to this committee. You've added a tremendous amount, and we appreciate it.

Mr. Surprenant, the same goes for you. I know that the circumstances make it very difficult.

Chief Freeman, it's always good to see you in Ottawa or at home.

Thank you very much.

The meeting is adjourned.

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