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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

Monday, February 16, 2015

● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): This will be out of the ordinary, ladies and gentlemen. Because we have a vote and the bells will ring at a quarter to four, I thought we'd start a few minutes early, since we have enough people here for that.

This is the Standing Committee on Justice and Human Rights. It is meeting number 61. We are dealing with the order of reference of Monday, November 24, on Bill C-26.

We have a number of witnesses with us. You've all been given a five-minute heads-up. That's what you're going to get. We're going to try to hear all of you, and then, unfortunately, the bells will ring and we'll have to go and vote, and that'll it be it for you for today. But committee members will be coming back here for about 4:30 to get started with the second panel, and we'll have a full round with the second panel.

Yes?

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Mr. Chair, this afternoon we will be hearing four extremely important witnesses. And yet the time they were given to present their report has already been reduced to five minutes. After we go and vote, we should at least take the time needed to question them. Otherwise, we could simply have asked them to submit their briefs, which they have already had the kindness to provide, and read them. In that way, they would not have had to go to the trouble of coming here.

The Standing Committee on Justice and Human Rights has studied a large number of bills, but as I was saying earlier, and as I said to my colleague the parliamentary secretary, I have the impression that for the first time we don't have a reasonable and sufficient period of time at our disposal to do the work that is expected of us.

These people are available to answer our questions. My colleague —I believe it was Mr. Wilks—said two weeks ago that this was important. We were willing to reduce the length of their presentations so as to have some time for questions and answers with them. However, we do not even have that time. If they stayed, we could make some progress in our work. We could hear witnesses again on Wednesday.

Our priority with regard to this file is to do serious work.

[*English*]

The Chair: Here's my suggested solution to that. We'll hear the presentations. I think that's only fair; you've done the presentations. You know we have a second hour. If you would like to stick around, as witnesses, you can be part of the question and answer section of the second hour.

How does that sound? It's not a great solution, but it at least gives you an opportunity.

Mr. Bob Dechert (Mississauga—Erindale, CPC): The only other suggestion would be, Mr. Chair, to allow one round of questions for this panel, and then just reduce the number of rounds of questions for the second.

The Chair: The more chatting we do, the less chance they get to give their presentations.

Mr. Bob Dechert: Either option is fine with me.

The Chair: The bells are going in 15 minutes, and they have four folks.

Instead of introducing each of you, I'm going to call on the Criminal Lawyers' Association to give the first presentation and you can introduce yourselves. Thank you.

Mr. Michael Spratt (Member, Former Director and Member of the Legislative Committee, Criminal Lawyers' Association): My name is Michael Spratt, and I'm here representing the Criminal Lawyers' Association.

In the interest of brevity, I won't go through the opening spiel. I've been here before, and you can check past transcripts to find out who we are and what we do. To cut to the chase, I'd like to talk about one thing predominantly, and that's the use of mandatory minimum sentences. I also have some comments on the registry and on further limits of judicial discretion through the use of mandatory consecutive sentences, but I'll begin with the minimum sentence point.

You've heard a bit about minimum sentences. Mr. MacKay was here. He testified before you. He said, "...mandatory minimums, the short answer is that we can't do enough to protect vulnerable children."

This is the message that's being sent, that minimum sentences and harsher sentences make us safer. You know that's not true. You've been told that before. You've been told that by me, and you've been told that by other experts. The evidence suggests quite the opposite —minimum sentences don't make communities safer. They don't deter the commission of offences. They impede rehabilitation. They are costly, and they can be unconstitutional.

I refer you to the case of R. v. S.S., 2014, O.J., No. 1887 on Quicklaw, 2014 ONCJ 184, the neutral cite. That case deals with some of the very offences contemplated in this bill. It deals with the minimum sentence of 90 days, which is being increased to six months under this bill. In that case, there was a perilously close finding of unconstitutionality. It seems the only reason it wasn't found to be unconstitutional was that a reasonable hypothetical wasn't put by the parties and was created by the court, and the court didn't see fit to rule on something that wasn't argued before it.

Over the last eight years you've heard evidence about minimum sentences. Your own legislative summary from the Library of Parliament speaks of mandatory minimum sentences. You've heard from Dr. William Marshall, Mr. Randall Fletcher, Dr. Stacey Hannem, Craig Jones and Julian Roberts. All these experts have come and talked about how minimum sentences don't deter, how minimum sentences can actually increase danger.

Anthony Doob, a pre-eminent expert from the University of Toronto testified that “mandatory minimum penalties of this kind do not deter crime”. On February 4, just last week, Steve Sullivan testified, not only speaking to the ineffectiveness of minimum sentences but also how they can make the situation worse.

I don't need to go on about the evidence. It's been before you. It appears the government isn't listening to that evidence. Minimum sentences don't deter crime, and they don't make us safer.

There are many better uses of money than for minimum sentences and mandatory incarceration. You heard from James Foord last week about CoSA. Programs like this, programs that can rehabilitate, reintegrate, and prevent crime from happening in the first place are a better use of money than limiting judicial discretion.

There are downsides to minimum sentences. They will increase the use of court time. They are a perverse incentive for those who are innocent to plead guilty. Ironically, they are a perverse incentive to those who are factually and obviously guilty to go to trial, wasting court time and subjecting victims to testifying in the court process. But that doesn't seem to have resonated over the last eight years. I don't expect it will this time.

What I think the committee should be aware of is this. In addition to the cruel and unusual argument under section 12 of the charter, this committee should be worried about section 7 of the charter, and that is arbitrariness. When we are told that minimum sentences and the raising of sentencing tariffs keep us safer, deter crime, and prevent crime, I'm going to suggest to this committee that there is a danger that section 7 will be engaged; that is, that legislation is being proposed, and there is no connection between the legislation and the purported aims of that legislation. In that respect, it's arbitrary. That's what I have to say about minimum sentences. That's what I've said before. That's what others will say again.

If the government wishes to proceed with minimum sentences and wishes to sell minimum sentences as mechanisms to deter crime and keep us safe, there's a thing in criminal law called “onus”. The party moving for a proposition should prove that it's true, should justify it with evidence, not rhetoric.

● (1535)

I would urge this committee to look for evidence and try to find evidence of the effectiveness of minimum sentences. I'd suggest that evidence has not been found in the last eight years, is not going to be found in my brief time here, and if you look hard, I don't think you're going to find it all.

I'll leave it at that. I have more to say.

The Chair: Thank you. If you can hang around that would be great. There may be questions in the second hour.

From the Canadian Bar Association, the floor is yours.

Ms. Gaylene Schellenberg (Staff Lawyer, Law Reform, Canadian Bar Association): Hi. I'm Gaylene Schellenberg, a lawyer with the law reform directorate of the Canadian Bar Association. The CBA is a national association of over 36,000 members with the mandate of seeking improvement in the law and the administration of justice.

Our submission on Bill C-26 was prepared by our national criminal justice section, which represents a balance of crown and defence lawyers from across the country.

With me today is Mr. Paul Calarco, a member of the section, and a defence lawyer from Toronto.

Mr. Paul Calarco (Member, National Criminal Justice Section, Canadian Bar Association): Thank you.

In addition to being a practising defence lawyer in Toronto, I also have served as a part-time assistant crown attorney and a standing agent for the Attorney General of Canada, so the perspective I bring encompasses both defence and prosecution experience.

The CBA supports measures that enhance the safety of Canadians, particularly the most vulnerable members of our society. It is vital to use the correct measures, and this is especially important when we consider how best to protect children. We must avoid measures that exacerbate the problems of abuse. This is complex, and simple one-solution-for-everything approaches are often not appropriate.

I would like to address two main points in my remarks: first, the sexual offender registry; second, the use of mandatory minimum and consecutive sentences in certain situations.

There is little evidence to suggest that sexual offender registries, as they are presently constituted, prevent sexual assaults. This can be seen in both the reports of the Auditor General of Ontario and the John Howard Society, cited in our written submission.

This bill does not make the prevention of sexual exploitation any more likely. It's reporting requirements are unlikely to have any discernible effect on public safety, or will be unenforceable when they deal with matters outside our country. Requiring an offender to report that he or she has a driver's licence as provided will not protect anyone.

It is well known, and confirmed by the government's own statistics, that in 88% of sexual offences against children and youth, the perpetrator is known to the victim. An offender registry does nothing to prevent abuse by a relative. Similarly our submission quotes a senior member of the Ontario Provincial Police in an affidavit used before the Supreme Court of Canada noting that many sexual offences are crimes of opportunity. A registry will not prevent these incidents.

One of the most important ways to ensure a safe and just society is by rehabilitating offenders. Once rehabilitated, that person no longer presents a threat to the well-being of our society, and in this way the national or social interest and the interest of the rehabilitated offender are congruent. To address rehabilitation, prevent recidivism, and promote offender reintegration into society, offenders need treatment and counselling. This requires resources, but it is the most effective way to ensure the safety of the community. A simplistic approach of increased sentences will not do this.

The bill proposes a publicly searchable database be created, claiming it too will enhance public safety. A public database is more than likely to have the opposite effect, thus increasing danger to the vulnerable.

It is no answer to say that such a database will only deal with high-risk recidivists. We do not know how or if the government of the day intends to determine by regulation the meaning of this term, and prior testimony before this committee indicated that a determination of who was a high-risk offender may be left to individual police forces. This creates inconsistency and uncertainty.

Further, public access to such data is likely to drive offenders underground, away from police scrutiny, away from treatment, and away from supervision. As sex crimes are often crimes of opportunity, untreated offenders are more likely to repeat an offence creating more victims. This is entirely preventable. In addition, innocent parties have been mistaken for offenders when vigilantes wrongly suppose it is proper to take the law into their own hands. Nor can it be acceptable that self-styled avengers decide to become executioners. In our submission we cite several examples from the United States. There is no reason to believe this would not happen in Canada.

The second issue I want to address is the use of mandatory minimum sentences. Criminal sentences must be proportionate to both the offence and offender. This is a constitutional requirement. The courts of this country take offences against children very seriously, and it is a myth to say those who abuse children receive minimal sentences. It is also well established that mandatory minimum sentences are of little, if any, value in deterring crime.

Considering time, as my colleague from the Criminal Lawyers' Association mentioned, sentences must be proportionate. If they are not, there will be constitutional litigation in order to deal with these things, which is costly, and the bill is constitutionally vulnerable on these grounds.

● (1540)

I would be pleased to answer questions when we reconvene.

The Chair: Thank you, sir.

I want to first of all thank the Office of the Federal Ombudsman for Victims of Crime. Sue has offered to be a presenter in the next panel. We only had three and now we have four.

We'll now go to the Sheldon Kennedy Child Advocacy Centre.

Mr. Kennedy, the floor is yours.

Mr. Sheldon Kennedy (Lead Director, Sheldon Kennedy Child Advocacy Centre): Hi, and thanks for having me here today.

I'm Sheldon Kennedy with the Child Advocacy Centre. At the centre in Alberta we do all the sexual assault investigations in the city of Calgary and surrounding area. We've pulled together RCMP, the Calgary Police child abuse sex crimes unit, Alberta Health with four pediatricians and 15 psychiatrists, 35 child and family service workers, and we all work as one under one roof to investigate these crimes and to treat our young people to turn their lives around early.

One of the things I've learned is that the reality is if I look at my offender and many more of the victims that I've talked to as offenders, these individuals operate in our society because of society's ignorance and indifference, period. That's how they get away and that's how they operate within our country and within our communities. I think our best defence is to create awareness and confidence within the community of who these individuals are because one of the myths out there in society is that the people who hurt kids jump out from behind buildings and have masks on and so forth. In reality that's not the case. In our data that we've created at the CAC here in Calgary, we've been able to open the files of all the existing partners: health, child and family, police and crown, and so we've been able to paint the picture of the invisible damage of this crime.

I think that is one thing that our courts and systems don't really grasp. We talk about mental health, depression and so forth, but the reality is: what's the root cause? It's all about trauma-informed care. Can you believe in this country that our family physicians, our nurses, the majority of police officers, unless they specialize in this crime, don't have the training to deal with child abuse? At the Child Advocacy Centre, in 20 months, we've done 2,500 investigations in Calgary alone; 60% to 80% of those are sexual assaults; 93% of these children know their abuser; 47% of abusers are parents or caregivers; and 32% have experienced abuse in the past. The majority of the children are four to seven years old, so to think that this is only happening to older children is ridiculous.

I'd like to focus on some of the impacts. What are we really dealing with when children are abused? What's happening? What's the damage?

[*Technical difficulty—Editor*]

● (1545)

The Chair: Technology's great when it works.

Well, ladies and gentlemen, the bells are ringing, and that means we have to go and vote. There's only one vote, though, so we'll be back around 4:30. If you could hang around, that would be great. We'll have a few more people make presentations, and then there will be a big discussion period. I've heard rumours that there might be a discussion about extending the meeting. We'll see what happens at that point.

With that, we'll suspend until we're back.

● _____ (Pause) _____

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● (1635)

The Chair: I'm going to call this meeting back to order. We are dealing with Bill C-26 here at the Standing Committee on Justice and Human Rights. I want to thank those who hung around for 45 minutes or so for the voting, and we are off to our second panel.

I want to thank Ms. O'Sullivan for her kindness. She's the federal ombudsman for victims of crime and she offered to step down her time to start off this panel. So we'll do the panel—five minutes each for those who haven't spoken yet—and then we are going to a question and answer period. There has been an agreement amongst our colleagues here that if you're willing to stay till six o'clock, they're willing to stay till six o'clock to ask questions. We completely understand if you have flights or other things to go to, but if you're here, you may get asked the questions.

With that, we'll call on Ms. O'Sullivan from the Office of the Federal Ombudsman for Victims of Crime to start us off.

● (1640)

Ms. Sue O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Thank you very much. I think out of deference to everyone else, I'll skip some of the intro. You've heard from our office about what we do. I'll go right into the comments on the bill.

Bill C-26 seeks to make a number of changes to the Criminal Code and other legislation to address some issues related to sexual offences against children. We know that these changes include an increase from minimum to maximum, making it mandatory to impose consecutive sentences, increasing the reporting obligations, and creating a new national public database.

Over the years, we have had several victims contact our office expressing frustration and concern with issues regarding offenders who have committed sexual offences against children. As with all victims of crime, they have a need to be informed, considered, protected, and supported. We have heard from victims who are frustrated by the lack of meaningful information they are able to access about offenders being released into the community. We have also heard from victims who did not feel considered and protected at different stages of the criminal justice system, including at sentencing and in setting release conditions. As well, we have heard from victims about the need for supports throughout the entire criminal justice process, starting at the time of the crime, through the courts, and through to post-conviction and conditional release; and as you have heard from other witnesses before the committee, these needs can also be lifelong.

Bill C-26 seeks to make information available to victims through a publicly available database of information on high-risk child sex offenders. Our office has found that most communities across the country have processes in place related to public interest notifications for high-risk offenders. In some provinces, these notifications are posted on public websites. The proposed public database should provide victims and communities with more consistent access to information about high-risk child sex offenders.

Legislative changes to sentencing and to the sharing of information should also be supported by resources to assist victims in reporting and recovering from the crimes committed against them. As for sharing information between law enforcement officials, I support changes to the sex offender registry act that would allow police and the Canada Border Services Agency to share more information in combatting child victimization abroad.

Under Bill C-26, the minimum and maximum sentences for sexual offences against children would increase, and the sentences for multiple victims would need to be served consecutively. We have heard from victims who support consecutive sentencing because it acknowledges and recognizes the harm done to each victim. Although sentencing may be an important issue for some victims, alone that would not address the concerns and needs of victims. When having conversations about such sensitive issues, it is important to keep in mind that every victim's experience and needs are unique. Cases of child sexual assault are complex and often involve someone known to the victim.

I would like to emphasize the importance of having community resources and supports in place, not only for when a victim comes forward about abuse but also to deal with the lifelong and sometimes intergenerational trauma that can come from this type of victimization.

In closing, I would like to thank the committee for its consideration of this bill and the work in examining this important issue. I believe that Bill C-26 would provide a measure to better inform and consider the needs of victims of crime.

I thank you for your time and look forward to any questions you may have.

The Chair: Thank you very much.

Our next presenter is the Privacy Commissioner of Canada.

Commissioner, the floor is yours.

[*Translation*]

Mr. Daniel Therrien (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Good afternoon, Mr. Chair, ladies and gentlemen members of Parliament.

With me today is Carman Baggaley, Senior Policy Analyst at the Office of the Privacy Commissioner.

My comments today will focus on the amendments proposed to the Sex Offender Information Registration Act, or SOIRA, and the creation of the High Risk Child Sex Offender Database.

While Canadian courts have recognized that privacy is a quasi-constitutional right, it is not an absolute right. In certain cases, it can be restricted to achieve other important societal goals, including enhancing public safety and protecting the most vulnerable members of our society.

However, with any proposed incursions into privacy, we need to evaluate beforehand whether these incursions are necessary and likely to be effective; whether they are proportional to the benefit that may be derived; and whether there are other less privacy-intrusive measures that would achieve the same objective.

SOIRA received royal assent in 2004. The act imposes significant obligations on convicted sex offenders. These are obligations that are not imposed on other offenders who have completed their sentences. In previous appearances before parliamentary committees on this act, the Office of the Privacy Commissioner has raised questions about the effectiveness of this registration scheme.

In 2009, we recommended a formal evaluation of the effectiveness of the legislation and the registry by an independent third party. To our knowledge, no publicly funded evaluation has been done. On the contrary, evaluations that have been done based on the experience in the United States suggest that there is little or no evidence that registration and notification laws are effective, either in terms of deterring sex offender recidivism or in reducing reported sex offences.

● (1645)

[*English*]

The high-risk child sex offender database act would establish a publicly accessible database that contains information about persons who have been convicted of sexual offences against children, and who pose a high risk of committing crimes of a sexual nature. Although this information would be limited to information that a police service or other public authority has made public—through existing provincial registries, for example—making it available on a national database would greatly expand the number of people who have access to this information. This, in our view, is a clear intrusion on privacy, which if justified, should be based on a proportionate and effective public safety objective.

Based on the research we have read, we at the OPC are concerned that the publicly accessible high-risk offender database proposal may not be a proportionate nor an effective response to the very real problem it is trying to address. This is in part because law enforcement agencies already have access to information about registered sex offenders through the national sex offender registry and other databases such as CPIC. How would the publicly available database increase the likelihood of arrest or reduce the risk of recidivism? We've not seen any evidence of such outcomes.

There is, however, research that supports the view that laws that reduce the privacy of sex offenders make rehabilitation and reintegration more difficult. Ultimately, this could increase the rate of recidivism.

A publicly accessible database also creates a risk of vigilantism, as recognized on provincial dangerous offender websites such as the one in place in Alberta, and increases the risk that fears of being attacked or harassed will drive offenders underground. There is evidence that similar databases in the United States have actually led to the killing of sex offenders in the community.

To be clear, we empathize with victims of sexual offenders and we understand the importance of the problem that this bill is attempting to address. However, we urge the committee to look carefully at the likely effectiveness of this proposal.

Thank you, and I will be pleased to answer questions.

The Chair: Very good. Thank you for that presentation.

Our next group of presenters are from Victimes d'aggressions sexuelles au masculin.

The floor is yours, Monsieur Fortier.

[*Translation*]

Mr. Alain Fortier (President, Victimes d'agressions sexuelles au masculin): Good afternoon.

Thank you for allowing us to testify before you today. My name is Alain Fortier. I am the president of VASAM and I am accompanied by Mr. Frank Tremblay, the vice-president. So as to respect the time I have been given, I will begin my presentation. Afterwards, Mr. Tremblay will continue.

VASAM is the only organization in Quebec that offers support to men who have been sexually assaulted. After less than a year of existence, we have already accomplished a great deal for male victims. We already have several hundred individual and corporate members.

It should be noted that even though we only work with male victims of sexual assault, we also cooperate with organizations that help female sexual assault victims.

The mission of the organization is to raise the awareness of the population and of political bodies regarding the sexual assaults that are committed against men during their childhood, and to encourage men of all ages to break out of their isolation and to regain control of their lives.

Regarding the rights of victims, our association reacts to any legislative change by working tirelessly to demand a reaffirmation and strengthening of the rights of victims.

We are very happy to have the opportunity today to share with you the reasons behind our unqualified support for Bill C-26. Among the provisions in the bill and the measures proposed, two of them were of particular interest to us.

The first are the longer minimum and maximum prison sentences for certain sexual offences committed against children.

The second is the obligation imposed on the convicted child sex offender who has been found guilty of offences against several children, and has received separate sentences, to serve them consecutively, that is to say one after the other.

Mr. Tremblay, I now yield the floor to you.

Mr. Frank Tremblay (Vice-President, Victimes d'agressions sexuelles au masculin): Thank you.

Good afternoon everyone.

Our unqualified support for Bill C-26 is not only ideological, it is also based on a series of painful personal experiences. Our objective is not to punish the abusers more severely, but to offer better protection to the victims, to see appropriate sentences imposed on child sexual predators, and to see provisions that will mean that they will really serve their sentences. Children who have been assaulted have to be given greater consideration and respect. The protection of children is both the spirit and the letter of Bill C-26. It is not simply a matter of months or years.

I would like to give you a personal account. Twenty- three years ago, the person who assaulted my colleague Alain Fortier was given a 90-day prison sentence. The person who assaulted me, who had abused 13 victims, was given a 3-year prison sentence. The case was appealed by the Crown, and the Appeal Court reversed the judgment unanimously and imposed a 5-year prison sentence.

At first glance, one may believe that it is good to see some evolution. People have understood that the sentences should vary according to the cases. My aggressor had assaulted 13 victims and was give a 5-year prison sentence. As for Mr. Fortier's aggressor, he received a 90-day sentence.

Things are not quite what they seem, because in the past 20 years, there was no evolution whatsoever. The devil is in the details. Let's go for a brief visit to hell, so to speak. As I already said, my abuser was given a 5-year sentence after assaulting 13 victims. He was released in March 2014, after having served only 26 months of his prison sentence. If you divide 26 months by 13, that is equivalent to two months of prison time per victim.

I launched a class action suit against my abuser and his organization. During the civil trial, he mentioned that he had assaulted me at least 80 times. In Canada, that is not how the justice system works, I know. However, in my head and heart of abused child, Raymond-Marie Lavoie, my sexual abuser, was given 60 days of detention for having imposed 80 nights of love on me. That is the sentence Raymond-Marie Lavoie received.

How have sentences evolved in the past 20 or 30 years? To my way of thinking, my abuser was given 60 days of prison for having imposed 80 nights of love on a child of 13. Do we want to keep things the way they are? Is that what Canadians want?

Bill C-26 would allow for a recognition of wrongs, in order to protect children. Our support for Bill C-26 and its reforms goes beyond the simple mathematical proportion between the sentences and the harm inflicted. It is based on the recognition of a disaster experienced by the victims during their childhood and the immense efforts these people have to make to free themselves.

Bill C-26 finally recognizes the harm inflicted on abused children by showing greater consideration when the motion is dealt with, when their abuser is being sentenced, and by ensuring better protection through the creation of a public database on child sex offenders.

I will conclude by saying that all of us still have an inner child. That is the case for all of us. However, when that child was violated when young, this makes the victim, male or female, a broken person.

VASAM was created to come to the assistance of these people who were destroyed when they were children. By passing Bill C-26, you will be telling society that you want to protect the children that are still within us, even if we have grown up.

Vote in favour of Bill C-26.

Thank you.

● (1650)

The Chair: Thank you.

[*English*]

Thank you.

Our next presenter is from the Canadian Criminal Justice Association.

Welcome, and the floor is yours.

Dr. Stacey Hannem (Chair, Policy Review Committee, Canadian Criminal Justice Association): Thank you.

I'm Dr. Stacey Hannem. I'm the chair of the policy review committee for the Canadian Criminal Justice Association, and I'm also an associate professor of criminology from Wilfrid Laurier University. I do have some research background in released sex offenders and reintegration.

As criminal justice professionals, the members of the CCJA certainly are sympathetic to the public's desire to be protected from people who would commit acts of sexual aggression and exploitation. We've carefully read and considered the proposals within Bill C-26, and we want to highlight a few aspects of the bill that we have some concerns with.

The CCJA is on record many times as being opposed to the creation of mandatory minimum sentences. Of course there is a range of increases to the mandatory minimum sentences contained within this bill. I won't belabour the issue, I think my colleague Michael Spratt quite nicely covered the issues with mandatory minimum sentences.

However in particular in relation to this issue, we do want to highlight clause 7, which amends subsections 163.1(2) and (3) of the Criminal Code to remove the summary conviction option from the offences of creation of child pornography and the distribution of child pornography.

The issue that we see with this is that given the lack of clarity around our definitions of child pornography in a digital age, and given some of the cases coming out of the United States where children have indeed been charged with creating and distributing child pornography for taking photographs of themselves and sending these via text message or via other digital means to boyfriends, girlfriends, and peers, our concern with this clause is that any young person in that kind of grey scenario around child pornography would be subject to the mandatory minimum provisions of the indictable offence—the one-year mandatory minimum. Given the increasing prevalence of that kind of behaviour among young people and given the role of peer pressure, we would want to caution Parliament and the government against placing those kinds of restrictions on prosecutorial discretion by removing that summary conviction option.

The second issue I want to highlight concerns the increased maximum sentences. Across the board this bill raises the maximum sentences on summary convictions to two years less a day for a range of offences against children.

By setting that maximum at two years less a day, the offenders remain in provincial custody. The issue that we want to highlight around this is the fact that effective sex offender programming is not universally available in provincial systems across the country. Ontario has some quite good programs; Alberta has none. There is absolutely no treatment specifically for child sexual offending in the provincial system in Alberta, for example.

When you're considering these types of offences and you're thinking about this as an offence that is worth two years less a day, you might want to consider ensuring that the provinces have the capacity to effectively treat these kinds of offenders and to make those programs available across the country, both while in custody and also in our communities.

The third issue I want to talk about is around the issue of the publicly accessible high-risk child sex offender database. I'm going to preface these comments by telling you that the longitudinal research on sex offender registries coming out of the United States—we have no research on it in Canada—tells us that these registries are of limited use.

A study published in 2008 looked at the sexual offence rates during the 10 years prior to and the 11 years following the creation of the sex offender registry in New York state. It found that it had absolutely zero impact on arrest rates and charge rates for sexual offences. Of all people charged with sexual offences during that time period—10 years before, 11 years after—95.9% were first-time offenders. They would not have been on the registry anyway. Again, that suggests that this registry itself is of limited use.

When you make a registry like that public and you put that information into the public domain, it does have a range of unintended consequences. The first one I want to point to is lowered compliance. Ontario has a compliance rate with its sex offender registry between 95% and 97%. It's very effective in terms of compliance, whether or not you think it makes a difference in actual change.

● (1655)

The provinces that have public information available—Alberta and Manitoba—have considerably less effective compliance. They are at 84% and 88% respectively at the last available data. So assuming you think sex offender registries are a useful tool for police investigations, then you should be concerned with the implications of lowered compliance.

The second issue is the identification of victims. One of the things is that, if you take a look at the publicly available information from Manitoba in particular, you will see that in talking about the nature of the offence, it often identifies the child or the spouse of the offender as the victim, for example, which makes these people publicly identifiable. That is a problem.

The public nature also impedes reintegration. There's a range of issues we encounter around harassment of offenders and their inability to reintegrate effectively, and I would suggest to you that, if you actually care about reducing the risk to children, you would consider groups like Circles of Support and Accountability, which has a 70% effectiveness rate in reducing recidivism and is currently being defunded here in Ottawa. It's going to have to close while there are people coming out of prison wanting to have the support to reintegrate, wanting to be able to work with people to help create safer communities.

I would urge you to consider funding these kinds of programs with proven effectiveness, rather than funding longer sentences of incarceration.

Thank you.

● (1700)

The Chair: Thank you, Doctor. Thank you for those presentations.

We are now going to an hour of questions and answers. Just before we do that, there is a budget that's on your table. It's for $8,800. Would somebody move that for me?

Mr. Bob Dechert: So moved.

The Chair: All those in favour?

(Motion agreed to)

The Chair: Thank you very much.

Our first questioner will be from the New Democratic Party, Madame Boivin.

We have a lot of panellists. Please try to identify who you are questioning.

[*Translation*]

Ms. Françoise Boivin: Thank you for taking part in today's meeting.

[*English*]

I will start with Dr. Hannem because I think you pinpointed something really important.

[*Translation*]

The database you are talking about worries me considerably. It may mean that the victim will be identified. I don't think that is the intended objective. There seem to be two problems with this database: this matter of identification, and the issue of determining who will identify the person who is at high risk of recidivism.

If I understand correctly, we should perhaps include in clause 5 of the part of Bill C-26 that deals with the database a sentence specifying that none of this public information should be used to identify or contribute to identify the victim.

Would that be an acceptable caveat?

As for determining what should be included in this new database, should this responsibility not be given to the court rather than the RCMP? The governor in council could intervene first, in accordance with what is specified in the bill, which reads as follows:

> 11. The governor in council may make regulations:
>
> (a) establishing the criteria for determining whether a person who is found guilty of a sexual offence against a child poses a high risk of committing a crime of a sexual nature;

Clauses 3 and 4 refer to "information with respect to persons who are found guilty of sexual offences against children and who pose a high risk of committing crimes of a sexual nature."

Would this not be a better way of framing this database?

[*English*]

Dr. Stacey Hannem: That's a very good question.

Currently when we're making determinations about public notification, the Correctional Service of Canada will generally inform the local police services when it is making a high-risk release, and it is up to the local police service to determine whether or not it wishes to make a public notification. It is done at its discretion.

So I do think, in terms of determining who is going to be identified as a high-risk release, you might want to have the parole board involved at that stage, because it is certainly in a position to determine what the level of risk is when people are being released. That would be my first recommendation, if we have to put some stipulations on that.

The second piece is about identifying victims, and I think this is the other problem. The bill itself stipulates that only information that was previously made publicly available by public notification would be available, but that is at the discretion of the local police service once again.

Ms. Françoise Boivin: Do you also agree with a lot of the witnesses, and sometimes the victims themselves, or the associations of victims, that say that over 85%—I'm being conservative, which is rare in my case. But between 85%, and some said 95%.... We heard Sheldon Kennedy talking about how 93% of the cases are family oriented.

Are we not creating more problems than anything else, or is what's going to happen just that they will not venture that way? It's just a law that will serve absolutely nothing.

Dr. Stacey Hannem: In my opinion, the law will do very little, if anything.

Ms. Françoise Boivin: Now to all my friends, lawyers like me, who don't like

[*Translation*]

minimum sentences. When I read Bill C-26,

● (1705)

[*English*]

Most of the clauses are stating minimums that already exist, so they're not even in contention in C-26. There are a few, maybe two or three, that are just upgraded from maybe 90 days to six months, but nothing really.... I know we all share big doubts about the efficiency of it. We had Mr. Gilhooly, and he's been one of the big victims of such crimes, who came and said he doesn't think it will do anything because of all types of concepts.

You spend a lot of time on the minimums and the maximums, but the maximums are rarely where the tribunals go. There's not that much change to the minimums, so is that really the biggest problem you see with Bill C-26?

I'll start with Mr. Spratt.

Mr. Michael Spratt: The minimums are already there. Whether the minimums work or not, I guess there can be some debate. You can't really debate the evidence.

The problem with saying we're just increasing what's already there is that the minimums that are already there are barely passing constitutional muster. The case that I referred to was a 90-day minimum. The judge said he would have given 14; he thought that's what was reasonable.

Is 90 grossly disproportionate? It's really close, and he said, probably, yes. Let's let the court of appeal figure it out.

You're doubling it, so what was perhaps arguable—and I don't think it was—when you increase it, it's the nail in the coffin. These things are going to be found to be grossly disproportionate now.

Ms. Françoise Boivin: Does the CBA have the same opinion?

Mr. Paul Calarco: Yes, I agree with my colleague.

These are very significant increases. I believe it is far more likely now that there will be constitutional challenges, there will be a finding of gross disproportionality, and that means the entire sentencing regime must be struck down. It is not possible to simply take one offender out of that. Courts have to have the flexibility to impose a proportionate sentence for the individual before them. As I said in my presentation, one-size-fits-all does not work.

[*Translation*]

Ms. Françoise Boivin: Mr. Therrien, what could we do to include elements that would satisfy your office, and to protect privacy in the best possible way with regard to this database? Let's be realistic, the government has a majority and there is going to be a database. What do you suggest we change in the bill to meet your concerns?

Mr. Daniel Therrien: I heard the testimony stating that the victims only want the criminal justice system to take better account of what has happened to them. I sympathize entirely with that viewpoint. I don't think there is much to be done with the public nature of the system in question.

It is conceivable that certain victims of crime would be advised of the release of the person who assaulted them and that in that way the victim would consider that he is being better treated by the state and by the criminal justice system. However, the bill that is being studied proposes that all of the Canadian population be advised through a website of the names of various persons and the circumstances that led to their convictions.

As to the public nature of the document, of the system in question, there is no middle ground. The only thing I could suggest is that the victims be advised personally, but insofar as publication is concerned, it is either public or it is not.

[*English*]

The Chair: Yes. Thank you.

Our next question is from the Conservative Party's Mr. Dechert.

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

Thank you to each of our guests for joining us today.

I want to start with the question of sentencing, both the mandatory prison sentences and the consecutive sentencing provisions in the bill. Unfortunately Mr. Kennedy is no longer with us. I would have liked to have heard his comments on those sections, but I do see that we have Mr. Fortier and Mr. Tremblay with us.

Mr. Tremblay, I believe it was you who said that Bill C-26, in your opinion, would better protect children and recognize the harm done to victims. You may know that in our last session we heard from Mr. David Butt who was here on behalf of the Kids Internet Safety Alliance and is a former crown prosecutor, and currently I think is a defence counsel. I'll just go to the bottom of his remarks about mandatory minimums. He said the mandatory minimums as proposed don't go too far. They recognize an appropriate level of moral opprobrium for the offence and they preserve judicial discretion.

We heard from the Canadian Bar Association, the Criminal Lawyers' Association, and others that they don't think that the minimum sentences contribute to deterrence, but they didn't say anything about public denunciation, the abhorrence that society feels about a crime of this nature committed against a child.

You mentioned the harm done to victims, and Mr. Butt mentioned the moral opprobrium concept, as I said, and I think it's kind of strange that we don't hear anything about that from the Canadian Bar Association or the Criminal Lawyer's Association. What's your view of mandatory prison sentences for people who commit these kinds of heinous offences against children, who are proven to have done so? What is the impact on the victims when they see both a minimum sentence that's meaningful and consecutive sentencing in a situation where the accused has committed similar offences against several children or multiple times against the same child?

Mr. Tremblay, can I hear from you and then Mr. Fortier as well? I'd also like to hear from Ms. O'Sullivan on those issues.

● (1710)

Mr. Frank Tremblay: Thank you very much.

I'm going to talk in French; it's better for me.

[*Translation*]

Minimum sentences are also a message that is sent to victims. There are several of us around this table. Overcoming what happened represents an enormous challenge for victims. As a victim and the representative of a victims' association, I interact with individuals, hundreds of men, fathers and grandfathers who were assaulted as children. The people we deal with, who write to us or speak to us, express a profound disgust for society.

Throughout our lives, that is to say from childhood until the age we are now, when a sentence is handed down that constitutes an injustice, we are disgusted. You can see that in a schoolyard just as in the adult world. When you leave a courtroom, and see that the consequences on the life of an individual are enormous and that the whole debate centres on how the private life of the individual who assaulted the child can be protected... Whenever that individual decided to assault someone, he did so voluntarily. He targeted his victim. He knew there would be consequences, but he decided to commit the assault. What is the point of saying that we won't help that individual stop committing crimes if he is given a minimum sentence, and if consecutive sentences are imposed rather than concurrent ones?

When people act that way, they are only looking at one side of things. From where you sit, you don't see things the way I do. The message would be different if everyone could sit on the other side and wonder what we are doing for the victims as well the members of our society who see these things. The message would be that we have to stop thinking that it is necessary to focus on the person who assaulted someone else. That is often what we see in courtrooms and this gives rise to profound disgust.

If you tell me that there will be fewer assaults, I will feel that I have obtained redress. But as for my personal case and that of many others, I do not have the feeling that that redress was obtained.

When I went before the parole board again and exposed the lies that individual told six months before, in a civil case, while he was in prison, people were very kind to me, but what happened? The individual was released that very evening, and he was in a halfway house in Montreal by 8:00 p.m.

The fact that people are saying “be careful, let's avoid minimum sentences” is a big problem for me. This is the message you are sending society. When you only look at the abuser's side, you say that there will not be any impact, but if you try to see things from the other side, you will see that the impact felt by the victims and by society is important.

Have I answered your question?

● (1715)

[*English*]

The Chair: Go ahead, Mr. Fortier.

[*Translation*]

Mr. Alain Fortier: Insofar as the minimum sentences are concerned, I think that is a step forward. It is good to impose a sentence of two years less a day, especially in cases of sexual assaults against children. I would even go so far as to say that the ideal would be a sentence of two years plus a day, because we know that provincial penitentiaries are warehouses, that is to say places where people learn to commit crimes, whereas federal prisons offer programs and do follow-up. That is my first point concerning sentences.

I don't understand why some people doubt the deterrent effect of stricter sentences. If I drive 160 kilometres an hour on the highway and a policeman stops me, slaps me on the wrist and tells me not to do it again, I may do it again, whereas if it costs me $400, I might be less inclined to repeat my actions.

I'd like to mention one last thing. I was assaulted by two different people, repeatedly. I never brought legal action against the second aggressor in criminal court, but I launched full criminal proceedings against the first abuser that lasted five years.

I did not lay charges against my second abuser because I did not want to revisit all of that again, both for my family and friends' sake as well as for myself. I did all of that to see my abuser be sentenced to only 90 days in prison? No way! I did not bring charges against my second abuser, and he is still out there. Has he made new victims? Yes. If I had known at that point that the sentence would be adequate, I would have brought charges and I would have gone to testify.

[*English*]

Mr. Bob Dechert: As I understand it, you make a good point that if they're in longer, there's more time for treatment of the offender. Secondly, if they're in longer, there's less opportunity for them to commit another crime against another child, while they're in custody.

Go ahead, Ms. O'Sullivan.

Ms. Sue O'Sullivan: You've heard from witnesses here today, as well as other witnesses before this committee, that victims will come from their own experiences. For some victims, sentencing is a hugely important issue and is very much part of the process. For others, we've heard from victims where the important issue is restorative justice or other opportunities to work with offenders.

What is clear here is that the impacts of child sexual abuse—and I've heard Mr. Kennedy speak many times as well—and the implications are lifelong, and the cost to society is huge. We've talked a lot about the supports in place and ensuring the offender doesn't reoffend. You've heard me talk publicly about the importance, that if we really want to talk about a healthy society, we also need to make sure that the victims.... The legs of the stool are not equal. We need to ensure that victims have the supports and resources they need in place as well, to ensure they can cope.

We know the impact of abuse on people. We can talk about all of the concurrent issues that can come with it. I think we've heard from the witnesses here today, particularly about the importance, for many victims, of sentencing. In particular, we talked about minimums, but there are also consecutive sentences. I understand the proportionality and the totality of the system. But when we talk about acknowledging, we mean that each victim has been victimized. We need to ensure that the criminal justice system recognizes that.

The Chair: Thank you very much. That's your time.

Our next questioner is Mr. Casey from the Liberal Party.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chair.

In Mr. Dechert's first question, he criticized a couple of the lawyers' organizations for not talking about public abhorrence and denunciation when it comes to sentencing, but he didn't give you a chance to respond.

Mr. Spratt and Mr. Calarco, this is your chance. Where do public abhorrence and denunciation fit in sentencing? Where do they fit, compared to the other factors that you've spoken about at some length?

Mr. Michael Spratt: Briefly, denunciation is but one of the principles of sentencing. The problem with bills like this and with mandatory sentences is that they put too much weight on that principle, and in an unconstitutional way.

There's a fallacy in the logic that was employed in the question. These people are in longer so they get more treatment. Well, not if it's six months, not if they're in Alberta; they don't. When we say that this deters, that's what's being said here today, but that's not the bill of goods that's being sold by the politicians, is it?

The justice minister was in here, saying minimum sentences protect. If you want to go out and sell it that we're going to retributive, we're going to deter, that's fine. Bill it as that. If it falls as unconstitutional, that's fine. Your words are on record.

But when you go and sell it as a protection, that's not backed up by evidence. That might sound good when you say it, but evidence is what counts in court. That's why these things get struck down all the time. That's why these ones probably will, too.

Mr. Paul Calarco: Public denunciation is very much part of any sentencing and especially in a horrendous matter like child sex abuse. A judge has to say, in sentencing an individual, “You have committed a terrible crime, but there are many factors that I have to consider.” How does one, as a judge, say the sentence should be a very deterrent sentence, but then emphasize public denunciation more and increase that beyond what it should be? A judge can't say that. The fine balancing is necessary here for our traditions and to uphold our rule of law.

In overemphasizing public denunciation, a judge would make an error. No one believes that child sexual abuse should be dealt with lightly. But what about those cases where for an individual offender, the public denunciation is achieved through a lesser than minimum sentence than is proposed in this bill? Why should that offender have to serve a much longer period of time because of an overemphasis on public denunciation? It doesn't make sense from a sentencing point of view. It's unfortunate that public denunciation is overemphasized in some ways. We have to look at every aspect here. Just looking at public denunciation leads to improper sentencing, unfortunately.

● (1720)

Mr. Michael Spratt: If I may, just very briefly, when we look at the most serious and the most heinous cases, we're not talking about 90 days or six months for those. Routinely there are very lengthy sentences for those cases. But when we're looking at reasonable hypotheticals from a constitutional perspective, we're not talking about the six-month sentence, the minimum here, for a heinous repeat offender.

We're talking about some of those reasonable hypotheticals that the courts describe that are much less than that. A 21-year-old who might be sent a picture from his 16-year-old girlfriend or asked for that picture might fall under some of these provisions. So one can imagine some hypothetical situations that are much less serious than those situations being used to sell this notion, and that's where the unfairness on constitutionality really arises.

Mr. Sean Casey: Thank you.

Dr. Hannem, I get the sense that you might want in on this discussion as well. I have a specific question for you, but feel free to also address the one I just raised with Mr. Calarco and Mr. Spratt.

You have referred us to a specific provision in the act that needs to be amended, the one that takes away the summary conviction option in certain circumstances. Are there other amendments that you feel could strengthen the act or lessen its constitutional vulnerability? And if you want to weigh in on the previous discussion, feel free.

Dr. Stacey Hannem: In terms of the constitutional vulnerability, I think as Michael and Paul have said, the increase of the mandatory minimum is potentially problematic and I think will be subject to challenge. Keep in mind that any sort of sentencing range has to cover all possible hypotheticals, as they've said, from the least types of offences that could fall under that legislation to the most serious. So keeping open the widest range of judicial discretion is certainly the most advisable course of action in this case.

In terms of public denunciation, I also think again judicial discretion is what's really key there, the ability for the judge to look at all the facts of the case, to look at the seriousness, to look at the impact on the victim, and to make an appropriate decision that accurately reflects the situation and response.

In terms of other provisions around constitutionality and around things that might improve our response to victims, you should also know that research coming out of the United States finds that the public nature of those registries sometimes impedes people from reporting their victimization, because not only do they not want to go through the public nature of the trial, but they don't want to have the details of that offence and their identity associated with it, particularly when it's an intrafamilial offence. As soon as it's intrafamilial, you are identifying the victim by virtue of making that public, and I think that's something that I would really strongly caution against.

● (1725)

Mr. Sean Casey: Ms. O'Sullivan, does your office have a position with respect to the federal government's decision to dramatically reduce the funding to Circles of Support and Accountability?

Ms. Sue O'Sullivan: No. In terms of that specific agency, no. We have always been very public about the support for victims and the need to have resources available to support victims of crime. You've heard me say before that I think any victim you talk to says, “I don't want what happened to me to happen to anyone else.” They understand. They want prevention. They don't want an offender to reoffend, so we look holistically....

But my voice is here to speak to the need to ensure that victims have the appropriate supports in place, because that is not the only agency. There are other agencies that also provide that. You've heard this from previous witnesses as well. The other thing is that at an ombudsman's office, other than speaking for the need for resources for victims, we would be very hesitant to speak to a certain agency getting funding over another.

Mr. Sean Casey: Even in the face of statistical evidence that shows this program reduces the rate of recidivism and there is very little evidence that any of the other measures that are sought to be included in this legislation do that?

Ms. Sue O'Sullivan: Well, I think there are a lot of different studies out there on what reduces recidivism and what does not. I think if you're going to make a question about that, about what is the best plan.... I think if we're going to look as a country about protecting victims—and you've heard me talk about that continuum, about the need—it's not an either-or here. We need to look at prevention. We need to look at the time of crime. We need to look at afterwards in terms of that.

Again, I'm here for the victims. As Alain was saying, we've heard victims here talk about the impact. We know that 83% of the cost of crime in this country is borne by victims. We know about the lifelong impact; we have two witnesses here who are telling you about that and their needs. You've heard from other witnesses. I know that. This committee hears from many victims who talk about the need to have this, and I'm going to go back to that. They need information. On your comment about identifying victims, that would obviously be a concern as well.

But my understanding is the need for the public registry.... These are decisions that are already being made across the country. I absolutely agree with you that it would be.... I've heard from previous witnesses, and we would hope the federal government continues to have those conversations with the provinces and territories. There can be some kind of consistency. I too have looked at the Alberta and the Manitoba websites. If you look at the conditions even to remove people from their websites, you see that they're different. We really do need to have a national conversation about that.

Mr. Sean Casey: Thank you.

The Chair: Thank you for those questions and answers.

Our next questioner is Mr. Calkins from the Conservative Party.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Chair.

As I listen to some of the testimony today, I'm reminded of conversations I've had with Sheldon Kennedy, and I'm reminded of the time that Theoren Fleury came here. I was quite sympathetic to Theoren and all of the things he's been through. I could sense the lifelong anger and frustration that Theoren has gone through. That still is very evident in the conversations that I've had with him, of course. Sheldon is doing great. I missed his earlier testimony, but with his advocacy centre now, he's doing great and is a great spokesman.

I want to thank our victim advocacy groups that are here today, because I look at it from the perspective—and we've heard from other victim advocates here—of the totality principle. I'm sure the lawyers in the room know what that is. I'm not a lawyer, so I'm not going to pretend that I know it in its essence.

I come at it more from an enforcement perspective. I see—and I hear from these victims and their advocacy groups about it—the absolute lifelong damage that most of them suffer. As a matter of fact, I haven't heard any of them say that it hasn't been a lifelong journey so far. Greg Gilhooly, who was here, has talked about the fact that it has been a life-changing and lifelong issue that he's had to deal with. So I get quite upset when I hear words from those representing lawyers who say that there are non-serious assaults on children and I hear some examples of those kinds of things.

I think about the totality principle. I have some questions for some of the lawyers at the table. It comes down to the fact that for the totality principle, as set out in paragraph 718.2(c) of the Criminal Code, the global sentence should not exceed the offender's overall culpability. I'm wondering what you would say as individuals. Would you be saying the same thing if a member of your family or you yourself were the victim? Would you be saying the same thing? I heard Mr. Gilhooly several times say a couple of words, which I can't repeat, about the Manitoba justice system's handling of the totality principle when it came to what would seemingly be a long sentence, I think, in the mind of a lawyer—four to five years—for the cumulative crimes that were committed against him. It doesn't seem like a whole lot to me.

Would either of you—and Stacy, if you want to as well—like to talk about this totality principle from that perspective?

Mr. Paul Calarco: The first thing I'd say, sir, is that you used the term “non-serious assaults on children”. No, I certainly don't believe there would be a sexual assault on a child that is not serious. I don't think you'll find a defence lawyer anywhere who would think that a sexual assault on a child should not be taken seriously.

● (1730)

Mr. Blaine Calkins: I didn't say that you said it. I think I heard Mr. Spratt say it. Maybe I'm taking it out of context, but I appreciate where you're coming from.

Mr. Michael Spratt: Of course you're taking it out of context—

Mr. Paul Calarco: The situation—

Mr. Blaine Calkins: That's fine—

Mr. Paul Calarco: As defence lawyers, we see the harm that is caused by these acts. Having a constitutional duty to defend and make sure that our justice system works, and that people are only found guilty of what they are legally and factually guilty of, is a vital part of our process.

You asked if I would feel that a sentence would be long enough if a member of my family were victimized in this way—

Mr. Blaine Calkins: That's an unfair question, but....

Mr. Paul Calarco: But that exact sort of thing is why we need a completely objective justice system, because one cannot expect a victim of a terrible crime to see this in the way that the justice system must operate. The justice system is the state against an accused individual; it's not the civil system.

We recognize the harm that acts of this nature cause, and it is essential that people be supported. Victims can be supported through various organizations. They need funding. They need long-term help.

But one cannot say that because a person has committed a crime that a victim has to live with for a long time, the person necessarily should be in prison for the rest of their life. The justice system has to deal with a number of issues, and we cannot allow our justice system to react emotionally. We have to be objective about everything. That's our history. That is why we have Her Majesty the Queen against the individual.

Mr. Blaine Calkins: That's fair enough.

Mr. Spratt, would you like to clarify your comment? Perhaps I misheard. I thought I heard you say something to the effect that on a non-serious assault....

Mr. Michael Spratt: As you know, there are ranges to all offences. There are some that are very serious and some that are less serious. The problem with minimum sentences is that they treat less serious offences the same as a more serious offence, and in doing so they discard some very important principles of our justice system.

One of those principles is rehabilitation. When you over-incarcerate someone, there can actually be an increased rate of recidivism after their release, and of course you don't want that. You don't want someone released from jail who's more likely to offend. No one wants that. Your solution, though, begs that to happen in many cases. That's when you need to take a nuanced view. You need to be dispassionate about things, look at the evidence and see what actually works—to sort of leave rhetoric aside and see what works.

If you really do want to protect the public, if you really do want to rehabilitate, and if you really do want to deter, there are ways you can do that. But unfortunately, if you don't follow the evidence, you don't accomplish that, right?

Mr. Blaine Calkins: Following your line of thinking, then, in the bill, the movement away from concurrent sentencing to consecutive sentencing would give those people more than adequate time in order to be addressed by some of the programs that are offered. Would that not be—

Mr. Michael Spratt: If you actually go back and look at the sentencing research, you see that to a large extent courts do impose consecutive sentences a large majority of the time.

One of the other witnesses was testifying and using a sort of banal example of multiple offences against mailboxes. If you add up each offence, you can risk throwing away or giving less weight or no weight to other aspects of sentencing that also need to be taken into account. That's the danger you come up with, and then we're left with this ridiculous sort of U.S. system where someone can get 400 years in jail, which is ridiculous, right?

You need to have a balanced approach that takes into account all aspects of sentencing, not just retribution or not just denunciation.

Mr. Blaine Calkins: Some folks might call it ridiculous; some people people might call it certain....

To my friends over there, would you agree with the comments that were just made here? Is there such a thing as a minor or is there a range...? Is that how a victim views what has happened to them in a case where they've been sexually assaulted by an adult?

● (1735)

[*Translation*]

Mr. Alain Fortier: To react to what the other witnesses said, we are asking for somewhat the same thing, that is to say that sentences be proportional to the crime that was committed, which is not the case currently. When you condemn someone to 90 days in prison, I don't think that is proportional to the crime. That is the first thing we are asking for.

The second is the minimum sentence. What is the advantage of that? In Quebec, people are in favour of rehabilitation. I have nothing against those who are in favour of rehabilitation, but the courts tend to impose sentences that are much less severe, and to put offenders back into circulation more rapidly.

Many people are in favour of rehabilitation, but I don't know too many people who have taken in a recidivist pedophile. Personally, I would not be willing to do so. I say yes to rehabilitation. It is very important, but I think that by imposing minimum sentences we will send a signal to victims that we take the crime that was committed against them into account and that we don't simply want to ignore it, as is the case at the present time.

[*English*]

The Chair: Thank you very much for those questions and answers.

Our next questioner, from the New Democratic Party, is Madame Péclet.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

I don't really have much time, but this is a very interesting and important debate.

From what Ms. O'Sullivan, Mr. Fortier and Mr. Tremblay have said to us, I take that we need to listen to victims. When they make the decision to lay charges and to go through the laborious justice system—the trial, the parole and the sentencing—they need support, they need to be listened to, and they need the other actors in the legal system to be there for them. This may be the most important issue we hear about.

We saw each other previously when we were studying Bill C-32. And indeed, we consolidated what the victims tell us each time they come to testify here; they want information, and during the entire trial and even afterward, they want the actors in the justice system to be there for them and to listen to them; but we are talking about other kinds of help, other kinds of organizations.

The registry is going to disclose the name of someone who has already committed a crime. Will this really meet the demands of the victims and the people you deal with? I am sorry, it is the only term I could come up with. Does that meet the needs of victims who want to be listened to and to know whether there are negotiations? I really wonder what a registry adds to the equation.

If the victim is not listened to during all of the trial but is told that the name will be published on an Internet site, will this really be a response to what you hear in the field?

Thank you very much.

● (1740)

[*English*]

The Chair: Who do you want to answer that?

[*Translation*]

Ms. Ève Péclet: My question is addressed to Ms. O'Sullivan, Mr. Fortier or Mr. Tremblay.

[*English*]

Ms. Sue O'Sullivan: It's my understanding that we have a national sex offenders registry, which has 36,000 names on it, according to one witness. That is the registry that's available to police and is going to be expanded to CBSA, as I understand, which we support.

Then there's this idea of a public one. My understanding is that it would only include the offenders about whom there has been a decision already that they are high risk. They're coming back into the community, and they are at high risk to reoffend. So this is not about talking about the national registry that the police have access to. What we're talking about is that, right now—this is my understanding—there will be people who are at such high risk that there is a decision made by a process, having spoken to some people in law enforcement, involved in behavioural sciences, and in some cases obviously correctional services, in some cases having even met with the offender, depending on the community you're in.

These are decisions that are not taken lightly. These are decisions for which absolutely you would want to ensure there's something in the legislation so that these processes that are in place consider the identity of the victim.

However, I am going to say two things about a victim. In some cases, by the time the offender is charged, the child victim may in fact be an adult. So when it comes to—you've heard me say this before—choice and options, you've heard victims of both child sexual abuse and sexual abuse who have wanted to come forward and be public.

Again, when I talk about a process that's in place and these decisions, my understanding based on the previous police witness here, is that in fact there are these discussions that will be going on with the provinces and territories, that there would be a consideration to that piece on the victim's identification, as part of that and a continued part of a process, any process. I would not always want to make the assumption, because I am aware from recently speaking to law enforcement—without getting into detail and confidentiality—of a case in which a victim had become an adult and in fact was spoken to by the police service as to his or her opinion.

These are the kinds of things. I'll just use those words, choice and options and the processes that are in place. Obviously if that child still is a child, then there are other safeguards that would have to be in place in terms of adults, caregivers.

The Chair: Mr. Tremblay, do you want to respond?

[*Translation*]

Mr. Frank Tremblay: Currently, if a crime everyone finds repugnant is committed, there will be a great deal of publicity. It will be talked about everywhere and we will see the abuser. What is the point of saying that we will really cause harm to that abuser if in addition to that, his name is added to a registry? It will be seen throughout Canada, and throughout Quebec.

We know some cases; Alain can tell you about them. The media will publicize the case, but the important thing is that we all return to our homes in the evening. As the father of 9- and 11-year-old children, I want to know if there is such a person in my neighbourhood, even if I don't want to know his address.

Earlier someone talked about the assaults that were committed and asked if those actions would be described and linked to the victim. I took part in a trial myself and I lifted the publication ban, because I wanted to do things properly. If someone does not want to do that—even an adult who was assaulted—no detail will be published and that person will never be identified. The person we want to see identified is the offender, the mentally ill person, the crazy one, the recidivist. We want to know if he is close to our home. Perhaps you are not scared of him, but I am, and I don't want my daughter to fall into his hands. That is what I want to prevent.

I also want us to stop looking at only one side. People are always concerned about the abuser, and wonder whether his rights are being breached!

[*English*]

The Chair: Thank you for those questions and answers. Sorry, that's our time.

Our next questioner is Mr. Wilks from the Conservative Party.

Mr. David Wilks (Kootenay—Columbia, CPC): Thanks, Chair. Thanks to the witnesses for being here.

Ms. O'Sullivan, part of the bill that hasn't been talked about a lot is in relation to probation orders, prohibition orders, and peace bonds. They're all found in the Criminal Code now. They're all in place for the protection of Canadians from convicted sex offenders and those who have been brought before the courts.

While at committee, the minister had stated that the purpose of those provisions was to ensure that those convicted of those offences follow through with the court-imposed sanctions that are put upon them. As a result of that, unfortunately, there are those who breach. Not everyone breaches, but some do breach, and that's just part of how things happen.

Although there have been attempts over the years to try to fix that, it's a really difficult thing to do because, let's just face it, some people have a really hard time following rules. That's just the way it is. But it's also an important message we have to send to the public and to the offenders that there are rules in place once they're released.

For the benefit of the committee, I wonder if you could talk about what your views are on this bill from the perspective of breaches of probation, prohibition orders, and peace bonds or supervision orders.

Ms. Sue O'Sullivan: This speaks to the whole process. I'm going to speak from a victim's lens.

The court has decided that this person is going to be under these conditions and has an expectation they're going to comply. If they breach those, then they have to be accountable. We're all accountable for our actions.

When an offender is out there these are court ordered, these are impositions that are put on by the court, so yes, it needs to be taken very seriously when somebody breaches those. They need to be held accountable for that. That process needs to be enforced because at the end of the day we hear about offenders who are trying to perhaps engage in rehabilitation and the rest of that, but it is all part of how there have to be those parameters in place that when they do breach they're held accountable.

Mr. David Wilks: I'll digress a bit here and I'll go back to my previous life as a police officer.

That's the challenge. Unfortunately, there are those in society who are released on conditions, who choose not to recognize the conditions. Irrespective of how hard the courts try, they choose not to follow their conditions. Then they're brought before the court again for a breach, and in some cases are provided with a jail sentence, but in a lot of cases they're not. They're released again, given a second chance, or sometimes a 10th or a 15th chance. We see it quite often.

I don't want to belabour the mandatory minimum because I think we've heard enough of that, but at the end of the day, when is enough enough? The question would be, to anyone here, if a person is released on conditions by a provincial court judge and/or a federal court judge, and they breach those conditions—let's say specific to a sexual assault case—what should happen if they come before the courts, breaching the conditions that they were released upon by the courts. Should they be released again, or be put in jail?

That's where I see the failure of the system when it comes to victims. The courts are trying their best to balance, but when is the balance done and you say enough is enough? You've had your chance. We've given you every chance we can.

I direct that to Ms. Hannem, if I may, and then I just want to ask another question.

● (1745)

The Chair: You won't have time.

Mr. David Wilks: I'll quickly ask it now.

Provincially, with a deuce less a day, you can mandatorily tell someone to take a course within the jail system. Federally they can be offered, but you don't have to take them. There is no one who has to mandatorily take any course in a federally imposed system. Should that change as well?

The Chair: Dr. Hannem, the floor is yours.

Dr. Stacey Hannem: To that question directly, treatment engaged in under coercion is generally less effective, often completely ineffective. I would say no, it doesn't really make sense. I think that to put your resources where they're going to be most effective, you have people volunteer to take those courses. If they choose not to, then that comes under consideration at the level of parole in terms of their risk. I think we have that covered.

You can't force people to take programs that don't exist. In Alberta, for example, a sex offender can't be forced to take sex offender treatment. It simply isn't there. You'd have to put them in the community, in a hospital, because that's where the treatment is in Alberta.

On the other issue of breaching, this is again a question of judicial discretion for me, in terms of what the breach is. What are the conditions? What level of risk does that breach pose to the community? There could be a range of conditions on a release, some of which may include not having access to a cellphone. The individual may need to have a cellphone for work, for other purposes. If they breach that condition—

Mr. David Wilks: The thing is, we're talking about sex assault.

Dr. Stacey Hannem: Yes, but this is a condition that gets put on sex offenders being released in the community because they can't have a phone that has access to the Internet. Finding yourself a phone that doesn't have Internet capability in this day and age is difficult.

If the breach is deemed to put people at risk.... If you have an offender whose offence cycle is linked to drugs or alcohol and that person breaches by engaging in using drugs and alcohol, then absolutely the judge needs to take that seriously and there needs to be a recourse. In other cases it may be deemed that the breach is not a significant risk.

We want people to not be breaching, to put in place the conditions that support them to remain effectively in the community. We know what does that. We know that programs like Circles of Support and Accountability have all kinds of research to back them up. I've worked with that organization. I've seen it in action. I've had convicted sex offenders in my home.

You ask, “Who would do this?” People do this to ensure public safety.

The Chair: Okay, we're going to have to move on. Thank you very much for those questions and answers.

Our next questioner is from the New Democratic Party.

Madame Boivin, I will give you lots of time too, by the way.

[*Translation*]

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

The discussion is very interesting.

What worries me is that bills are always presented as the panacea for all problems, but once passed, there is not much follow-up.

From the beginning, there is something that has been bothering me enormously. I remember the first interview I gave to a radio station in Quebec—which I am not going to name—after the Conservative government introduced Bill C-26. People felt that all sensitive-hearted people would oppose this bill, would play at being lawyers, and so on, although it had been introduced to protect our children.

I am worried that the bill that has been introduced aims to create a database to make information accessible to the public on persons who have been found guilty of sexual assaults against children and who are at high risk of committing sexual offences. My concern is not exactly the same as that of certain witnesses who are here. This has made me shudder from the beginning, because it means that someone will be back in society whereas we know, because it has just been determined, that he is at high risk of committing sexual offences. What is wrong with that picture? There is a problem somewhere.

The fact of knowing that offenders have been released and that they are at high risk of reoffending should help us all to sleep better, including previous and future victims. It seems to me that there is something wrong with that concept.

Is there someone among the witnesses who has thought about the criteria that will allow authorities to determine if a person is at high risk of committing a sexual offence? If there is a witness who is intelligent enough to help us provide guidelines to the government in that regard, we would appreciate it. According to Bill C-26, the governor in council will by regulation establish the criteria that will allow people to decide whether someone who was found guilty of a sexual offence against a child is at high risk of reoffending.

Ms. O'Sullivan, I would be tempted to throw that ball in your court, even though I am sure you do not want it. What should those criteria be? Should they not be established in advance, rather than leaving the whole topic open and saying that they will be established through regulations? Moreover, the context is such that there now seems to be a lot of overlapping legislation.

Not that long ago, we studied Bill S-2, which allows delegation through regulations. We may never see it again and we will suddenly realize that there is a regulation that establishes criteria and that we did not even know it.

Can someone suggest guidelines for these criteria? Is there someone among the witnesses who is concerned about the fact that a database will be created, while we know that an offender is being released who is at high risk of reoffending?

● (1750)

[*English*]

Ms. Sue O'Sullivan: Well, I have a couple of things. First of all, on your general comments about how we need to look at the entire.... We're here discussing one bill. Your colleague mentioned the issue of the victims bill of rights. You've heard me present on those issues.

Ms. Françoise Boivin: Yes.

Ms. Sue O'Sullivan: I want to agree that we need to look.... If we want healthy and safe communities, it is about balancing and looking at all the prevention and the rehabilitation that victims would say they want. You've heard victims say this. They want what offenders have and they want the right to rehabilitate and have those resources in place. If we want healthy and safe communities, we need to look at that holistic look, not just at the time of crime but the entire continuum.

Second of all, there already are processes in place in this country. There have been high-risk public notifications going on. In many cases in some communities, they will include community members, and they will include, as I've said, the Correctional Service of Canada, so there already are processes in place that police services are using.

I think Ms. Hannem stated it. These processes may differ from community to community, and it's something that hopefully in a national conversation.... It's exactly what you're saying: let's have that conversation about what it would be. I too agree. Let's have an evaluation. We have an opportunity here at this time, if this bill does go through, in that we also can consider that there is an evaluation process put in place at the beginning so that we can ask a few years down the road if this is the most effective or if this is the best place to put the money. But at the end of the day—

Ms. Françoise Boivin: Aren't we luring ourselves or deluding ourselves in thinking that it would make our communities more secure to have that—

Ms. Sue O'Sullivan: But we have heard from victims, and we have seen cases where people have been released back into the community, and at some point when they are high risk there's an onus that the information—

Ms. Françoise Boivin: But isn't it included in the charter of victims rights that they will automatically know that their sexual predator is getting released?

[*Translation*]

There is a rule of law which says that Parliament does not speak in vain. The Canadian Victims Bill of Rights already states that there will be more communication with victims and that they will be kept informed. This is not what is being discussed here. With all due respect to Mr. Fortier and Mr. Tremblay, we are not talking about their case here. We are talking about informing the public that a dangerous person presents a risk. This is what the part of the bill that deals with the new database is discussing.

In that context, my question is whether we are not deceiving ourselves into thinking that communities will become safer in that way, while we have no criteria. There has not been any national discussion with people who are used to dealing with this issue.

The debate has been at an intellectual level, among lawyers and people who have their own experience, but we are not necessarily discussing what Bill C-26 aims to accomplish.

● (1755)

[*English*]

Ms. Sue O'Sullivan: But there are risk assessment processes, and again, Ms. Hannem has spoken to that in terms of the Correctional Service of Canada and the Parole Board of Canada. They do a risk assessment, but as well, there are the community processes in place that rely on some of that expertise coming to the table. I don't disagree with you. Is this alone going to make public safety...? No, because again, it's exactly what you said, combined with the victims bill of rights....

I wanted to add to one point you made about whether victims will be told when their offender is.... Federally, if someone is registered as a victim with the Correctional Service of Canada parole board and they choose to be notified of that information, then they will be notified. But it's not a public notification. It's for registered victims. You've identified it. We're talking about a very small percentage. Again, according to the data here, there are 36,000 registered sex offenders in Canada. That database is available to police agencies and is being used, and I think you even spoke about the efficacy in terms of the compliance issue—

Ms. Françoise Boivin: I don't think all 36,000 of them would fit the criteria, necessarily, and I'm still unsure about what they are—

Ms. Sue O'Sullivan: Oh, absolutely not. Like everybody, probably, I got on the databases that are currently the websites that are available publicly, and it's not a huge.... I think that in Saskatchewan there are only two on there.

Ms. Françoise Boivin: But you see, in your answers you're at the same time creating more doubts in my head, because you talk about the parole boards and you talk about the police, but we don't know who's going to be in charge of this. As a lawyer—and sadly for some people I am—

Voices: Oh, oh!

Ms. Françoise Boivin: —the danger for me is in the fact that we need to have uniformity. You cannot have a system in Quebec that is different from Ontario's or that is different from Manitoba's or wherever. It's going to be chaos everywhere—

Ms. Sue O'Sullivan: I'm in agreement. I'm in agreement. You want to have consistency, yes.

Ms. Françoise Boivin: —and meanwhile it won't secure the victims more or anything about the matter....

Ms. Sue O'Sullivan: I'm in agreement that consistency would be something that we would want to have.

Ms. Françoise Boivin: So should the RCMP be in charge of determining who goes into the...?

Ms. Sue O'Sullivan: I would defer to the experts on who would be appropriate for that in terms of offender management.

Ms. Françoise Boivin: You wanted to add something, Ms. Hannem?

Dr. Stacey Hannem: I wanted to jump in with regard to talking about efficacy and whether this will make communities safer, because I think the bottom line is that's the important question for me.

My concern is that in fact a public registry may actually put in place the conditions that create and increase the likelihood of victimization against another person, because we know that stress is highly correlated to offenders' cycles of offending for sex offenders, especially high-risk ones. If you put them in a situation where they've been publicly identified, where everyone in the community knows who they are or has the ability to know who they are, and where they can't get a job and they can't maintain housing, you escalate that stress. There's no support. There's no assistance. You actually create a situation where that person is more likely to offend.

For me, the danger is that what we're saying as a community and as the government is that we would rather create a situation where the person reoffends and goes back to prison for a longer time than spend the money to support them and prevent that victimization from happening. I'm only here because I want to see effective policy.

Thanks.

The Chair: Thank you very much, Doctor.

Thank you for those questions and answers.

The last questioner is Mr. Dechert for three minutes.

Mr. Bob Dechert: Thank you, Mr. Chair. I have a question for Mr. Calarco of the Bar Association.

In your opening remarks, Mr. Calarco, I believe you said that a publicly accessible sex offender registry would not make communities safer. That was your view.

Mr. Paul Calarco: Yes, sir, I said that.

Mr. Bob Dechert: Okay. My confusion comes from the actual Bar Association written submission to the committee that I read. In the conclusion on page 11, it is stated that in fact "a well-crafted and administered registry could contribute positively to crime prevention", so can it? If so, how would you suggest a registry be crafted so that it could prevent crime?

Mr. Paul Calarco: What I said, sir, is that there was very little evidence that the registries as they exist now have contributed to any sort of safer community or prevented crime—

Mr. Bob Dechert: But you think it could, the Bar Association...?

● (1800)

Mr. Paul Calarco: If there is a well-crafted registry, and first of all, not a registry where everyone found guilty of a sexual assault of any sort is put in it.

Mr. Bob Dechert: That's not what's proposed in Bill C-26. It's just those who are high risk to reoffend.

Mr. Paul Calarco: No, it's those proposed in Bill C-26—

Mr. Bob Dechert: Right, and it's not seeking—

Mr. Paul Calarco: But as was pointed out previously, in proposed section 11, "The Governor in Council may make regulations", and we have no idea what they are or what criteria could possibly—

Mr. Bob Dechert: Okay. Specifically, because time is short, the Canadian Bar Association has made the statement that "a well-crafted and administered registry could contribute positively to crime prevention". What would that look like? How would it be crafted and how should it be administered in a way that would prevent crime?

Mr. Paul Calarco: The first thing is that it should not be public. As you can see from our submission, various officers have all said that public registries actually create more danger.

Mr. Bob Dechert: Would it be any different from what already exists, though? There already is a national sex offender registry to which the police have access. What would be different?

Mr. Paul Calarco: It should only be police registered. It should be used for—

Mr. Bob Dechert: That exists today, though, does it not?

Mr. Paul Calarco: Yes—

Mr. Bob Dechert: Okay.

Mr. Paul Calarco: —and it should concentrate on those offences that are most likely to result in recidivism. Where there is a particular offender who may be suffering from a paraphilia, that is the sort of thing where police have to have access to knowledge about that particular offender.

Mr. Bob Dechert: Are those things that don't currently exist in the registry that is accessible by the police?

Mr. Paul Calarco: It's totally overbroad, sir, and the registry itself would not have as much information about these characteristics—

Mr. Bob Dechert: Just so I understand, for the registry that currently exists to which police have access, do you think it should be restricted from the current situation or do you think it could be expanded to help prevent crime? Is it already too broad?

Mr. Paul Calarco: No, if it's simply expanded—

Mr. Bob Dechert: Is it already too broad?

Mr. Paul Calarco: It's already too broad—

Mr. Bob Dechert: You think that as it currently exists it's already too broad.

Mr. Paul Calarco: As far as preventing any type of recidivism is concerned or offering protections—

Mr. Bob Dechert: Okay. So the Bar Association believes that the current police-accessible registry is too broad and should be narrowed.

Mr. Paul Calarco: As it relates to public protection or the detection of crime, yes, sir.

Mr. Bob Dechert: Okay. So you're suggesting something less than what we already have.

Mr. Paul Calarco: Yes. I think it has to be amended.

Mr. Bob Dechert: All right. That's fair enough. I just wanted to clarify that.

Thank you.

The Chair: First of all, let me thank our witnesses today. We had the interruption with the votes. You've provided a tremendous amount of information, and thank you for hanging in here, giving your presentations, and answering some very tough questions. The debate this afternoon has been excellent.

I want to remind committee members that we are to do clause-by-clause on this on Wednesday. Keep an eye open for the room number. We're trying to get a room that might be a little bit closer to the House, if we can do that, but keep an eye on it. Also, if you have any amendments, we would like them in advance, by 3 p.m. tomorrow, if you could.

Ms. Françoise Boivin: We'll try, but with what you have and what we have to do ourselves....

The Chair: I know you'll do your best.

Ms. Françoise Boivin: I can still present on the fly. We might have to because of the—

The Chair: You certainly can.

With that, we'll adjourn until Wednesday.