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Chair

Mr. Art Hanger

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• (1535)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the Standing Committee on Justice and Human Rights to order. In our agenda, we're still on Bill C-10, an Act to amend the Criminal Code (minimum penalties for offences involving firearms).

We have quite an august group of witnesses here today. Many have undoubtedly testified before the committee. It's good to see you all.

From the Canadian Police Association, we have Tony Cannavino, and you have Mr. David Griffin with you. Hello.

As individuals, we have Mr. Ian Lee of Carleton University; Lee Stuesser of Robson Hall, University of Manitoba; and Paul Chartrand, professor in the College of Law, University of Saskatchewan. Thank you all for being here.

I know, Professor Lee, that you wanted—and maybe it's a good idea—to proceed with the presentation you have. You have a PowerPoint presentation.

If you would begin, Professor, that would be fine.

Prof. Ian Lee (Professor, Carleton University, As an Individual): Thank you very much.

I'd like to thank the chair and honourable members for inviting me here today before your committee. It's a real honour, and I appreciate it. And I hope it will be lively.

I'm going to be talking about what I characterize as the three urban legends. I'm using that term—this will come out during the presentation—because of my very public frustration with the Department of Justice ministry and the Public Safety ministry concerning a very important and serious literature called the *Journal of Law and Economics*.

I'll run through some of these very quickly. The first urban legend—and I've seen it quoted in Jeffrey Simpson's article earlier this year in *The Globe and Mail*, as well as in Dan Gardner's article in the *Ottawa Citizen*—is that violent crime is down in Canada. This is factually, statistically, and actually not true.

The slide being shown is from Statistics Canada, starting in 1962. I chose 1962 for a reason. I'm in the middle of the baby boom generation. In 1962 I was 10 years old. I remember 1962 and afterward very vividly. We could do things at that age—at 10, 11, or 12 years old—that we can't do today.

This is from Statistics Canada. The crime rate per 100,000—so we're not playing games with the absolute population—has gone up from 221 crimes per 100,000, and these are violent crimes, to 943 in the past 40 years, in my lifetime, the lifetime that I can recall and remember.

The second urban legend is dealing with the law and economics research program. I just want to speak to it very briefly. The law and economics research program is centred at the most prestigious universities in the world—Stanford, Carnegie-Mellon, Yale, Princeton, Harvard—and it was pioneered by a person called Gary Becker, who won a Nobel Prize about 10 years ago. There are about four Nobel Prizes that have been issued in this area called law and economics. This is a very serious and very highly respected research area. Gary Becker earned his Nobel specifically dealing with crime and punishment. The other three Nobels were in the law and economics area, but not dealing specifically with crime and punishment.

There is a certain researcher. I've quoted him extensively. His name is Steve Levitt. He's under the age of 40. He won the very prestigious Bates Medal for the most brilliant economist in the United States under the age of 40. He has published over 60 academic articles, which most academics will not publish in their lifetime. On top of that, *Time* magazine this year said he was one of the 100 most influential people in the world. He has published in journals of quantitative criminology and he has published some extraordinarily impressive research. This is one of the articles, as you can see, in front of you.

Why I'm talking about incarceration as urban legend two, before I go to MMS, is because it is the broad case. MMS—minimum mandatory sentences—are simply a special case of incarceration. To put it another way, if incarceration doesn't work, then minimum mandatory sentences cannot work by definition—logically they can't—because it's a subset of incarceration. So this data set was interpreted and analysed by Steve Levitt in a series of articles published in some of the most important journals in the world, and he came to these conclusions. I would draw your attention to the third paragraph especially: "...the increase in incarceration over the 1990s can account for a reduction of about one-third of the observed decline in crime."

In fact, in another article he did, analysing the reason for the very dramatic decline in crime in the 1990s, he came up with four reasons: first was incarceration, which accounted for one-third of the decline; second was the legalization of abortion, which accounted for one-third of the decline, approximately; third was the waning of the crack epidemic, which is 10%; and last, the increase in the number of police on the ground.

That brings us to the third minimum mandatory. Dr. Joanna Shepherd is a brilliant young researcher who is both a professor of economics and a professor at a law school. She has a double appointment. She has undertaken the most comprehensive analysis of minimum mandatory sentencing, studied in California, and she concluded that they decreased murders by 16%, aggravated assaults by 12%, robberies by 24%, rapes by 12%, and larcenies by 3%.

I'm going to skip over this because I really do want to make sure I have enough time in the ten minutes to get to my final set of points, which we can talk about later, concerning the California three strikes law. I would just caution you to note that there is a lot of mythology about the three strikes. One of them is, you can go to jail for stealing a pizza three times. This is not true, because the first and second strike is reserved for only violent crimes. The third crime can be any crime, but the California three strikes law requires that the first and second strikes be serious acts of violence. Again, this shows the data. We can talk more about it later.

Florida has come up with a similar law called 10-20-life, which again is a minimum mandatory. You can see up there the three years, ten years, twenty years, and then life. Again, this shows the statistics from the Government of Florida Statistical Analysis Center, which has stated that it reduced crime by 50% during the period that it has been in effect.

I'm shifting gears now to Canada, to the changing role of the Canadian federal offender. The CSC, the Correctional Service of Canada, has published a lot of empirical, statistical information over the past four or five years, and the commissioner, Dr. Keith Coulter, has given several speeches. The reason I want to emphasize this is that the profile of our offenders has changed very dramatically. They are much more violent today than 10, 15, or 20 years ago, and they are there for much shorter periods of time on average. These are statistical numbers from the CSC, not my interpretation. You can see the numbers there: nearly 50% of offenders have served a prior youth sentence; 75% of offenders in our jails are now there for violent offences; one in four are sentenced for homicide; 1,000 for first-degree murder; and one in six are affiliated with gangs.

• (1540)

This shows up in the statistic from Correctional Service Canada, showing that 70% of federal offenders are there for a violent offence. This is a statistic, which I hope everyone takes a very close look at, showing the average time actually served for a given sentence.

Sorry?

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): That's too quick: the interpreters can't follow.

[*English*]

The Chair: The translation is not keeping up.

Prof. Ian Lee: Okay, sorry.

I can go?

The Chair: Yes, please.

Prof. Ian Lee: This graph shows three different sentences: someone convicted and sentenced for between two and three years, between three and four years, and between four and five years. What it shows is that the average actual time served is 15 months for a person sentenced for two to three years and approximately 18 months to 20 months for the three- to four-year sentence.

That leads to my final point, which is based on some data I obtained from the Auditor General's report, but then I went beyond this and did some numbers. If the average offender is in a federal institution for three years, they serve only 15 months, according to the CSC data. The average rehabilitation program requires seven months for a high-intensity or violent offender, and on average they need three to rehabilitate. The person is only in a federal penitentiary for 15 months, but it takes 21 months to rehabilitate that person. What this means is that we are releasing people who have not yet been rehabilitated, violent people, back into the Canadian population.

This is really a graph, which I'm sure everyone has seen. It's the dangerous offenders designation, but it supports what I was saying earlier. There's a very small number designated each year.

This leads me to my final slide. Violent offenders need more time, not less, for rehabilitation. In fact, we are not rehabilitating them fully, because they are getting out prematurely—that is, before they are rehabilitated. The outcome is more dangerous communities. The evidence for that statement is the increasing crime, per Statistics Canada, between 1962 and today.

So my conclusion is that we need minimum mandatory sentencing to ensure that the rehabilitation takes, which many people today claim is the purpose of sentencing a violent offender.

I thank you for your attention, and I will be more than willing to take questions afterwards.

The Chair: Thank you very much, Mr. Lee.

I'm sure we're going to be coming back to some of those slides over the course of the afternoon.

Representing the Canadian Police Association, we have Mr. Cannavino.

[*Translation*]

Mr. Tony Cannavino (President, Canadian Police Association): Thank you, Mr. Chair.

Mr. Chair, committee members, good afternoon.

The Canadian Police Association welcomes the opportunity to present our submissions to the Standing Committee on Justice and Human Rights with respect to Bill C-10, An Act to amend the Criminal Code (minimum penalties for offences involving firearms).

The CPA is the national voice for 54,700 police personnel serving across Canada. Through our 170 member associations, CPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services, members of the RCMP, railway police and First Nations police associations.

The Canadian Police Association is acknowledged as a national voice for police personnel in the reform of the Canadian criminal justice system. Our goal is to work with elected officials from all parties, to bring about meaningful reforms to enhance the safety and security of all Canadians, including those sworn to protect our communities.

● (1545)

[English]

Urban violence has been a significant concern for our association. For over a decade, police associations have been advocating reforms to our justice system in Canada, and in particular we've called for changes to bolster the sentencing, detention, and parole of violent offenders.

At our 2004 annual general meeting, CPA delegates unanimously adopted a resolution that includes a call for federal legislation to be introduced to ensure tougher and more adequate mandatory prison sentences for individuals involved in firearm-related crime.

Repeat offenders are a serious problem. There's been considerable debate at this committee about the use of minimum sentences and the frequency of repeat offenders. Make no mistake about it: repeat offenders are a serious problem. Police understand this intuitively, as we deal with these frequent flyers on a routine basis.

Statistics released by the Toronto police homicide squad for 2005 demonstrate this point. Among the 32 people facing murder or manslaughter charges for homicide in 2006, 14 were on bail at the time of the offence, 13 were on probation, and 17 were subject to firearms prohibition orders. The revolving-door justice system is failing to prevent further criminal activity by these repeat violent offenders.

Gun violence requires a non-partisan approach. Support for tougher measures to thwart gun violence transcends party lines. During the last federal election, three major parties promised tougher sentences for crimes involving firearms. The NDP platform promised to "Increase the mandatory minimum penalty for possession, sale and importation of illegal arms such as hand guns, assault rifles and automatic weapons", and "Add mandatory minimum sentences to other weapons offences", including a "four-year minimum sentence on all weapon offences, such as possession of a concealed weapons".

Former Prime Minister Martin promised to toughen penalties "by re-introducing legislation to crack down on violent crimes and gang violence, by doubling the mandatory minimum sentences for key gun crimes". Former Liberal Justice Minister Irwin Cotler introduced Bill C-82 in November 2005 to address gun violence. Bill C-82 would include increasing certain minimum penalties relating to smuggling, trafficking in, and possession of firearms and other weapons, and creating two new offences, breaking and entering to steal a firearm and robbery to steal a firearm.

When Bill C-10 was introduced this spring, Premier McGuinty was quoted as stating that the bill will "make a real difference when it comes to promoting safety for our families and our communities". Last year, Conservative MP Daryl Kramp introduced a private member's bill, Bill C-215, that would require that a sentence for commission of certain serious offences be supplemented if a firearm is used in the commission of that offence.

A justice department survey conducted in March 2005 by Decima Research confirmed that an "overwhelming majority" of Canadians support mandatory minimum jail terms for gun crimes such as robbery with a firearm and criminal negligence causing death with a firearm. According to CanWest news, the poll of 2,343 Canadians revealed that "Support for mandatory jail terms for robbery with a firearm was as high as 82%, compared with 14% who opposed the prospect".

Similarly, an Ipsos Reid CanWest Global poll conducted December 30, 2005, to January 2, 2006, of 8,336 Canadian voters found that 73% of the respondents supported changing the current laws so that being convicted of committing a gun crime would carry a mandatory 10-year prison sentence with no eligibility for parole or early release.

Clearly, there is broad political and public support for tougher measures to deal with firearm crimes. We urge Parliament to move swiftly to address the areas of consensus as quickly as possible. The CPA supports in principle the measures contained within Bill C-10 with necessary modifications.

On amendments, although the CPA supports the vast majority of proposals contained within Bill C-10, we do have one significant area of concern. It relates to the proposal dealing with the use of firearms in the commission of attempted murder, discharging a firearm with intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage-taking, robbery, and extortion.

● (1550)

Bill C-10 contemplates a tiered response. Offenders who commit these crimes, whether with a restricted or a prohibited firearm or any firearm in connection with a criminal organization, are subject to escalating penalties—five years for a first offence, seven years for a second offence, and ten years for a third or subsequent offence. Conversely, if the firearm is not used in connection with a criminal organization and the weapon is not restricted or prohibited, the mandatory minimum sentence is only four years, regardless of whether it is a second, third, or subsequent offence.

We find the different treatment for long guns to be misguided, and we are at a loss to understand the rationale for distinguishing the penalty on the basis of the class of firearm that is issued by a person in the commission of a very serious crime. Police officers routinely discover these weapons in firearms seizures, clandestine drug labs, and marijuana grow-ops. Will shotguns and rifles become the weapons of choice for repeat violent offenders? In many situations, a rifle or shotgun is a far more lethal threat in the hands of a criminal than a handgun.

For example, high-powered rifles are capable of shooting through body armour and other protective equipment. Shotguns can be extremely powerful weapons when used at short range. A tragic example is the murder of Constable Valerie Gignac of Laval last fall, who was shot through a wall with a high-powered rifle. Of the 13 police officers killed with firearms in the past decade, only three were murdered with handguns; 77% were murdered with long guns, and it's unlikely that any of the offenders in these cases would have met the threshold for participation or membership in a criminal organization.

This latter threshold of connection with a criminal organization also presents an additional hurdle for prosecutors to prove in order to obtain the higher mandatory penalty. While we applaud measures to deal proactively with criminal organizations, we contend that any person who uses any firearm in the commission of an offence should receive the full mandatory minimum penalty available, and particularly repeat offenders.

The recent tragedy at Dawson College in Montreal has reinforced the need to strengthen Canada's control over civilian firearms possession. To our knowledge, no new firearms have been added to the restricted or prohibited categories in Canada for over a decade, yet many new firearms have been designed that are being offered for sale in Canada and would arguably meet existing criteria. As a consequence, some weapons are being legally sold in Canada despite the fact that they meet existing criteria for restricted or prohibited status and present significant concerns for public safety.

Retailers understand and exploit these loopholes, as demonstrated by the website for Wolverine Supplies in Manitoba. You'll find that in our brief. We submit that further steps must be taken to close the loopholes by updating and maintaining the restricted and prohibited firearms classifications.

[*Translation*]

In conclusion, I'll say that one of the concerns of police officers across the country is to stop the violence. The solution to this begins with bringing an end to Canada's revolving door justice system. Canada's police officers have lost confidence in a system that sees violent offenders regularly return to the streets. We need to restore meaningful consequences and deterrence in our justice system, which begins with stiffer sentences, real jail time and tougher parole eligibility policies for violent offenders. We need stiffer minimum sentences for offenders who commit crimes with guns, or any type of weapon.

Bill C-10 provides a positive component in an integrated strategy to address current shortfalls, specifically pertaining to the concern with gun violence. We believe that it can provide an effective deterrent against violent gun crimes, and we fully endorse the

principle of creating tougher mandatory minimum penalties for the commission of serious offences involving the use of a firearm.

• (1555)

[*English*]

We thank you for your attention and we welcome your questions.

Thank you.

The Chair: Thank you, Mr. Cannavino.

Now to Professor Lee Stuesser.

Prof. Lee Stuesser (Professor of Law, Robson, Hall, University of Manitoba, As an Individual): Thank you, Mr. Chairman.

I want to first of all thank the committee for inviting me to appear this afternoon. It's my honour and privilege to do so.

I don't represent any association. I don't represent any lobby or interest group. I'm simply a law professor who has been teaching criminal law, evidence, and trial advocacy for the past 20 years. Hopefully, I can assist you with some of my experience.

I'd like to start with two fundamental principles in criminal law: clarity and fairness. The law has to be clear and it has to be fair. In my written submission to you, I point out that there are two problems with Bill C-10. I think there is a problem with clarity and a problem with fairness. I've provided two suggestions on how to make the law clearer and fairer.

First of all, I'd like to turn to the issue of clarity. Actually, it builds upon something the last speaker was talking about. In my view, Bill C-10, as it now stands, is unduly complex, and it will in fact be unworkable in practice. In fact, if Bill C-10 is put into law, you may well be creating a loophole for those who do use firearms in the commission of offences. That's my primary concern: the issue of firearms in the commission of offences. I think what you simply need to do is to simplify the law. Make it simple. Use the existing wordings in the Criminal Code.

I want to illustrate this with some examples. Let's assume we have an accused who robs a store. He has a shotgun, which isn't that unusual. Let's say the Crown can prove identification, which isn't that easy, but they can. Well, once they have identification, they also see that he has a prior record for violent offences using firearms. You'd think we'd now be triggering the second offence mandatory minimum of seven years. Will it apply? No. When you look at your triggering mechanism in Bill C-10, it requires that the weapon either be restricted or prohibited—a shotgun is neither—or that this person is a member of a criminal organization acting for the benefit of or at direction of the criminal organization. Quite frankly, good luck. That's very difficult to prove. In the absence of that, you have the residual, which means the four-year minimum. We can prove that he used the shotgun. We can see that. We have witnesses to that. We can prove identification. But this will not trigger the legislation.

Take another example. A woman is sexually assaulted at gunpoint. She's traumatized by it. When she's asked to describe the weapon, she has difficulty. She can't tell whether it's a handgun or a rifle or a shotgun or anything. She knows for darn sure that there was a gun and that she was sexually assaulted. We have DNA that shows the perpetrator. We have him. We can identify him. Will we trigger the second or third offence? Say, for instance, we see that he has prior offences for violence. Will it be triggered? No, it won't. She won't be able to tell us whether this is a prohibited or a restricted weapon. If she can't, you then have to try to prove that he was a member of a criminal organization doing a sexual assault for the benefit, direction, or association of the gang. Good luck, again. It's not going to happen.

Let's take a third one, a drive-by shooting. A person is shot. He was driving down the street, a car drove up, and someone shot him. We see that it was a .22 calibre. We have our forensics that can identify that. But can they identify that it's a .22 handgun? Or is it a .22 long rifle? If you can't prove that, you're not into the second or third strikes. You're back to the residual four-year, where we are now.

Here's the simple question I have for the members of the committee. If your intention is not to have those individuals punished with the second or third strike, then ignore what I have to say. But I would venture to say that your intention is that those people should be caught by the legislation the second or third time, and that's where I urge the committee to go back to simplicity.

• (1600)

In my written submission, I compare the wording in Bill C-10 with the existing wording. Isn't the concern firearm violence? Isn't that the fundamental concern? And if your answer to that is yes, then does it matter that the rapist or the robber used a handgun versus a long rifle? I think the answer is obvious—it's no.

Given this added complexity, I will tell you what crowns will do: they will not charge using your two or three strikes legislation; they will not. They will charge using the residual. Why? Because that is the course of least resistance.

You are giving me, a former defence counsel, an argument to raise in court with this legislation. You are giving me a means to negotiate out of two or three strikes with the Crown, because they're going to have real difficulty proving a criminal connection. My guy may well

have been a gang member, but he was freelancing, and that means it doesn't apply.

So I urge the committee, there is nothing wrong with the existing wording. It has been around for over 10 years, since this Parliament passed the mandatory minimums for these intentional crimes, and I urge the committee to go back to simplicity. I think you will find that it will be workable. As drafted, the bill is, in my view, unduly complex, unnecessary, and, quite frankly, it will constitute a loophole.

I've got a second concern, the issue of making the law fairer. I don't care what anyone says—and you've no doubt been told this—mandatory minimum sentences are a blunt instrument. They remove discretion and they make all offenders subject to the same minimum. Some people are unfairly caught. Some people should not receive the mandatory minimum; they are caught. Some might say that's the price of justice, that's the price of using a firearm, but I think most countries who have introduced mandatory minimums have recognized that there needs to be some discretion.

When I look at the types of crimes where, in my view, people ought not to receive the mandatory minimum, there are two types of crimes committed. They are criminal negligence causing death and manslaughter. Both now have the four-year minimum—and, incidentally, they are not part of Bill C-10.

What I urge the committee to do is to consider discretion for those types of unintentional deaths arising from firearms. I want to give you two simple specific examples that occur on, I hate to say, a regular basis, but very routinely.

We've got the police association here. Let's deal with police officers, who have weapons. Let's assume we've got a police officer in a volatile standoff. The officer thinks he hears a gunshot. The officer panics and uses a weapon; he fires in return and kills someone. He ought not to have fired. He was mistaken; he panicked. He may well be charged, because we expect our police officers to be well trained and to be restrained in their use of firearms. He may well be charged with criminal negligence causing death, and he would then be subject to the four-year minimum sentence. I'm not sure what the views of the gentlemen to my right would be on that, but I can give you cases where this has indeed been the situation.

I give you another common situation from one of the first cases I was involved in when I was a young man. It dealt with a middle-aged woman. I remember the case well because it wasn't that often we had a truly innocent person, if you like, we were defending, so it stuck in my mind. She had blasted her husband away with a double-barrelled shotgun at close range with both barrels. It didn't look good. She was charged with murder. When we started to investigate, though, we found that the husband had been abusive. We found as well that he was a drinker, and we found that he loved his guns—and he had guns all over the place. He would routinely take those guns and threaten her and her family. She got so fed up one day, she picked up the shotgun—and she didn't have any idea if it was loaded or not—and pointed it at him and said, how do you like this? How do you like this? And bam, the gun went off because it had a hair-trigger. When the first barrel went, the second one discharged too. And she was devastated.

She was convicted of manslaughter. We got it reduced from murder, but she was convicted of manslaughter. At the end of the day, the sentencing judge gave her a suspended sentence. Members of the committee, that was a just and fair sentence for that woman.

•(1605)

The problem with criminal negligence and manslaughter charges is they are so broad, they catch people who unintentionally kill with firearms. Now, you might say, what does that have to do with Bill C-10? Well, if this committee or Parliament were to look at an exceptional discretion for criminal negligence and manslaughter offences, I would think it would show three things. First, it would show that Parliament has turned its mind to be firm but fair. It would recognize where the vast majority of fairness cases would arise. Second, it would provide a simple mechanism for people like the woman I represented to seek a just sentence. Right now, she would have grave difficulty doing so; she'd have to challenge the legislation under the charter or seek a constitutional exemption. And here's a third reason. It would show the distinction between unintentional and intentional crimes. Bill C-10 is concerned with intentional crimes.

Quite frankly, here's what my argument would be. If Parliament had a discretion for unintentional crimes, it would actually reinforce the point that when you use a firearm for an intentional crime—attempted murder, robbery, or whatever—Parliament has indicated there is no discretion. It would, if anything, make your mandatory minimum, in these types of crimes in Bill C-10, charter-proof.

I simply point that out to you. In my view, the vast majority of cases involving unintentional killings is where you have a disproportionate sentence.

Members of the committee, those are my concerns and my suggestions. I look forward to your questions.

Thank you for listening.

The Chair: Thank you very much, Professor.

Now we'll go to Professor Chartrand, if you would, sir.

Prof. Paul Chartrand (Professor, College of Law, University of Saskatchewan, As an Individual): Thank you, Mr. Chairman.

My name is Paul Chartrand. I teach law in the College of Law at the University of Saskatchewan.

I thank the committee for inviting me. I am here at the invitation of the committee. I belong to no political party. I have never belonged to any political party. The views I will offer are based on my experience, which includes being involved in the production of some reports and recommendations on criminal justice policy, particularly pertaining to aboriginal peoples. I cite in particular my service as a commissioner on the Royal Commission on Aboriginal Peoples, and also more recently as a commissioner on Manitoba's Aboriginal Justice Implementation Commission.

I am here at your invitation and I view my participation here as a matter of my contribution to public service.

As legislators, you have a high duty and responsibility to protect society. Whatever can be done to make our community safer, including reducing the use of firearms, is a good thing and you ought

to do it. We all deplore and denounce the use of firearms in the commission of crimes. However, the matter of sentencing and the matter of administration of criminal law is fraught with emotion and complexity.

We must recognize that there are no easy solutions to complex problems. In fact, I always advise my students to be very wary of those who offer simple solutions to complex problems. I can give you examples of the danger they pose to society.

I presume that all of us wish to legislate in such a way as to promote a just and tolerant Canada. Let me ask, then, with respect to Bill C-10, is minimum mandatory sentencing a legitimate means to address the problem? My answer is no.

A second question is, will minimum mandatory sentencing work? The answer again is no.

Let me elaborate in the short time I have. It is not a legitimate means for the following reasons. First, it is arguably contrary to the law of the Constitution. Second, it is demonstrably in conflict with Canada's obligations under international human rights treaties. I cite among others—and I will elaborate if there is sufficient time in the question period to follow—the International Convention on the Elimination of All Forms of Racial Discrimination with respect to aboriginal peoples.

Mandatory minimum sentencing is unprincipled. It clashes with the fundamental principles of our criminal justice system. In fact, mandatory sentencing is an oxymoron. After conviction, the process of sentencing seeks to address the degree of blameworthiness. If you have seven people committing the same offence, you are faced with potentially seven different degrees of blameworthiness. All that is removed by a minimum sentence.

A very quick example is taken from a case involving an aboriginal man who used a rifle and was subjected to one of these mandatory minimum sentences. He used his rifle in defending himself against a criminal gang in his community. He didn't like gangs, but he had a rifle—he belonged to a hunting community—and he faced the mandatory minimum.

•(1610)

Let me go on and emphasize why mandatory minimum sentences do not work, notwithstanding what has been proposed to you by Professor Ian Lee. When I say this, I'm relying mainly on the literature that I read and on my being briefed by Canada's and other places' top criminologists, lawyers, and practitioners who work in this area every day. I must say I'm not aware of the work of Professor Lee from the School of Business at Carleton in this regard.

Why will it not work? First, it will create a much more expensive system. True, it's a political easy fix because you don't need to attach a budget to this particular legislation, but it will cost a lot on the road. All the statistics point to that. It will be tremendously expensive, and if you ask questions later on on this, I will elaborate on why it has become more expensive. First of all, I think it costs roughly \$80,000 a year to keep people in jail. Obviously, if you're going to put more people in jail, it will cost you a lot more. If you set a minimum, and if judges do try to ignore what I suggested, that it's an oxymoron, then they will take the minimum to be applicable to the best offender and all the sentences will go up, ergo the costs will increase. You cannot avoid that. It will be horrendously expensive.

My next point is that it will not work, because presumably you're trying to create a less dangerous society. An earlier speaker suggested that we need harsh sentences. We have a lot of experience in the use of harsh sentences. We can cut off their hands. We can jail them forever. We can use steel pincers to pull out the flesh and pour molten tar into the wounds, which are examples of the harsh punishment that has been meted out to offenders in the past. These are historical examples. If you want to be harsh, there are many ways of doing that very effectively, but it does not work. You create a more dangerous society.

Usually people are inclined to look at the people going into jail. As you will hear with these minimum sentences, they ought to go to jail; they have to go in. So you're looking at the front door and then you don't look at what goes on inside. Essentially, I suggest to you that you're telling people to go to hell. You want to ignore them because there the place is hell.

I submit there's no evidence to support the previous contention that you need longer sentences to allow for rehabilitation. That proposition is based on the assumption that there is rehabilitation. Instead of looking at the front door, at who goes into the jail, I invite you to go and have a look at the back door. Who comes out? Every day criminals are sentenced and come in the front door, but every day criminals come out the back door. If you think you're sending dangerous people to jail at the front door, think of the kind of people you're letting out the back door. Send a 20-year-old—

I ask you when you're contemplating enacting legislation like this, think about Canada and jailing Canadians. Think of a recipient of those kinds of sentences as your son, your grandson, or your niece. They're human beings. They will come out tougher criminals. In jail they will get sodomized. They will become heroin addicts. Those are the kinds of things that happen there. They will be harsher and tougher. Being tough on crime actually results in creating and manufacturing tougher criminals. It seems to me if society can live with the people who get out the back door, surely you can live with most of the ones who go in the front door.

Finally, I want to say that aboriginal people are incarcerated...in statistics that are disproportionately higher in comparison to other people.

•(1615)

This will create tremendous social disruption and problems, not only for aboriginal individuals, their families, and their communities, but for the provinces. In effect, the federal government will be off-loading a lot of the costs onto the provinces, particularly the western

provinces, like Saskatchewan and Manitoba, that have very high aboriginal populations. I think there are statistics that suggest that something like over 500 aboriginal people were sentenced last year. If they were subjected to this mandatory minimum sentencing, you'd have 500. So multiply 500 times 80 and so on and you get the statistics.

I want to conclude my presentation by suggesting that these complex problems can only be fixed in a holistic way. Holistic is realistic, but it's very difficult. You have to attack the root causes of crime. These are not easy to sell politically or in 15-second sound bites. The evidence all shows us—and I've been briefed on this—that you can tell when a child is about seven years old whether that child is going to go to jail. And Indian people who become reserve residents have way more probability of going to jail than of going to university.

So the way to combat crime is to combat the root causes of crime: assist children, have children's benefits, assist families, have community services and recreation, and so on. I can give you statistics on that. The Manitoba Northern Fly-In Sports Camp that the RCMP conducted some years ago would be an example of that. But the federal government can't do it alone. You would have to work not only with the provinces but with the municipal governments as well.

It's very easy to just adopt an easy fix like minimum sentences, but they're neither legitimate nor do they work. I ask members of the committee not to adopt Bill C-10, because this kind of legislation will create not a more tolerant and just Canada; it will create a meaner and nastier Canada, and I wish that my little granddaughters would not live in a meaner and nastier Canada.

Thank you very much

The Chair: Thank you very much, Professor.

Now we'll go to the questions.

Mr. Murphy.

•(1620)

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

I want to thank the witnesses.

Professor Chartrand, I know that my colleague, Mr. Bagnell, will be keying in on your testimony, so if I pass you over on this round, please don't be offended.

It seems that when we discuss this matter, we're all I think on common ground: we want to make the laws of Canada more effective and make our communities safe. We have, however, some debate from time to time on the best tools to use. We were fortunate last week to hear evidence from the chief of police of Toronto, and in the same week here in Ottawa we heard evidence from a ranking RCMP officer charged with community safety—the chief superintendent, in fact.

There's a common theme between that bit of testimony and Mr. Cannavino's testimony on behalf of CPA, and I think Mr. Stuesser said this as well—and it goes to amendment time down the road, which we should all keep in our minds—in that distinguishing between the types of firearms used is really no way to deal with this matter. If we are going to talk about mandatory minimums, there seems to be fairly consistent evidence that we should consider crimes done with all firearms. I invite members of the committee to take that, whatever page you want to come from politically, as the overwhelming testimony.

The big question I have, and it's arising from the testimony, is that what seems to be missing here, and I would commend this to Mr. Lee and other members of the subcommittee, Mr. Chairman, is that we really haven't had sufficient evidence on what happens to the offender when he or she is in the prison system, or the system.

I'm quite struck by Mr. Lee's very emphatic—I'm not necessarily saying I agree with it all—evidence that the course of rehabilitation is not completed during a short sentence. You don't have a footnote to back that up. I'm sure you can give us the facts on that or elaborate briefly when I'm finished this questioning. But it does strike me that we have to examine what happens to offenders when they're in the prison system. There's quite a bit of anecdotal evidence that it's education for higher learning in crime, it's a rehabilitation model, or it's a model for further criminalization. What do we get out of the process when we put somebody away? What do we hope for and what do we get? So there's very much a gap in our testimony here.

I'll start with you, if I may, Mr. Lee. What is your basis for saying that the rehabilitation is not complete in one or two cycles? Are you suggesting that if 21 months were the standard sentence, everybody would come out rehabilitated? Surely you know that there are studies that suggest that some people are not rehabilitatable.

Prof. Ian Lee: Thank you for the question.

I just want to step back for one moment to address your question and remind everyone here of the Canadian Sentencing Commission of 1988. It identified the different reasons, or principles, as they called them, for sending someone to a federal penitentiary.

Because my memory's not perfect—I am getting older—I can only remember five of the six, but someone might remember the sixth one for me. They were just desserts, retribution, deterrence, incapacitation, rehabilitation, and I think the sixth was to send a message or something like that.

Mr. Brian Murphy: It's denunciation—section 718 in the Criminal Code. We've been at it for a few months.

Prof. Ian Lee: Thank you.

They did not judge that one was superior to another. I argue in this article that is being published next spring that it's a philosophical choice that you, the parliamentarians, must make. Which principle do you wish to emphasize? I certainly wouldn't presume to tell you.

In the debate and all the literature, there seems to be an extraordinary emphasis on rehabilitation. So I piggy-backed on that assumption and said, okay, there seems to be an emphasis on rehabilitation in the Department of Justice, in a lot of the research on their website on public safety, and in the literature published by criminologists. So I took that as the assumption.

Now to deal with your point, the data I used is from published documents on the public record from Correctional Service Canada. I draw your attention to the safe return document. I have all the stuff electronically on this laptop, including some 400 articles dealing with this broader subject. So the data is from the safe return document and the statistical overview document from Correctional Service.

What triggered my approach—and this is again from memory, but it's in this computer—was that in 1994, 1996, 1999, and 2004, the Office of the Auditor General of Canada looked into this question. It's a kind of obvious question. If we are sending people to federal penitentiaries, how long does it take to rehabilitate them, given that a lot of people agree that is the purpose? So this data I quoted you is from two or three of the documents. I can give you the precise citations after, if you wish.

The safe return document and the statistical overview are the two that stick in my memory at this moment.

• (1625)

Mr. Brian Murphy: It seems to me you're suggesting that even if it's a seven-month sentence, the person should be in for 21 months to be rehabilitated. But I'll read the documents on safe return. Thank you.

To Mr. Cannavino, on blue-skying, we asked the chief of police of Toronto about this. What we have seen recently in the statistics is a sharp increase in gang-related violent crime, particularly with handguns—homicides and so on. There's no real division of opinion on that. There's a sharp problem right now, particularly in urban centres.

You eloquently canvassed the whole issue that there shouldn't be any difference between the type of firearm.... But is there a further measure of gun control that you think might be necessary, once we're done with Bill C-10?

Mr. Tony Cannavino: There are many things that should be done if we're talking about firearms. One of them, of course, concerns the storage of firearms.

We have a lot of people who go to different places because they like to shoot at targets. They become members of clubs. We had a discussion on our board about those clubs storing the guns. What is the use of bringing them back home? There's a procedure for bringing a gun from the club back to the house. You have to take the shortest way back home. That's a concern.

Why shouldn't the person leave the gun at the club where it would be properly stored? Maybe it would save us from things like what we saw happen at Dawson College. So that is one of the approaches.

Another concern is the fact that we have open borders. We don't have the RCMP patrolling the borders. I had the opportunity to talk with the justice minister and the public safety minister. I know they're looking into that.

We know that trafficking handguns and shotguns is prohibited in Canada, but it's so easy to import them here because our borders are not patrolled. Our ports are not patrolled by police officers either. Those are things we should look into. I think it's very important.

The Chair: Thank you.

Mr. Tony Cannavino: The last thing, which you'll see in our brief, is to update the prohibited and restricted list. It hasn't been done for over 10 years now. There are some new guns. If you go to the website of Wolverine, you'll see what kind of promotion that company is making. They say, "They're not on the list yet so you can buy them, and we suggest you buy them as soon as possible before they are on the list."

It's worth looking at the website. Those are different things you can do to make sure we're not flooded with those guns.

The Chair: Thank you, Mr. Murphy.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chair.

My first question is for Mr. Cannavino, whom I would like to welcome.

Ultimately, you'll agree with me that it's the duty of legislators to make decisions based on the most conclusive and most current information. As you'll no doubt remember — I don't know whether you were president of your association at that time, but you were definitely an active police officer — in 1995, a bill was passed, Bill C-68, which, in addition to creating the firearms registry, of which you are an ardent defender, added 10 mandatory minimum sentences for 10 offences. The reason we're coming out in favour of mandatory sentences is that we think they have a deterrent effect. We have to evaluate periodically whether they have a deterrent effect. That's not the only reason why we decide to impose such sentences. But that's part of the thinking.

I admit that few studies have been submitted to us by academics, by scientists. I'm not talking about interest groups. We understand it's not their work to do that, and I'm not asking you to conduct studies of that kind today. However, has any scientific study in the least satisfying been brought to your attention that would suggest that, since 1995 — we're just talking about firearms; there are roughly 40 mandatory minimum sentences in the Code, but let's just talk about those concerning firearms — mandatory minimum sentences, in the context of the commission of firearms offences, have had a deterrent effect? Would you be prepared to share your sources?

• (1630)

Mr. Tony Cannavino: If there's one problem that we've observed over the years, it's that plea bargaining, that is negotiations between the Crown prosecutor — which was a very well-paying livelihood for Mr. Lemay in his previous life — and the defence obviously considerably reduces the impact of the sentence, in terms of length of sentence. You heard the eloquent presentation by Ian Lee, who explained the statistics he had compiled on the effects of these minimum sentences, and on the reasons why we need them.

As you know, if we can find a way to reduce the crime rate or to prevent people from reoffending, we'll be the first to support that approach and to tell you to adopt that way of doing things rather than another. I was listening to Mr. Chartrand's presentation. Yes, indeed, we advocate prevention, therapeutic programs and all that. We understand that, and we're ardent promoters of that method, but, when that doesn't work, when the person, despite everything we've

offered him, nevertheless decides to use a firearm, that's when we need bills like this one, Bill C-10.

Mr. Réal Ménard: You're not answering my question. You're a man who believes in rehabilitation, and I know that.

Mr. Tony Cannavino: Yes.

Mr. Réal Ménard: I don't see you at all as a person who doesn't believe in that.

Mr. Tony Cannavino: No, I don't doubt it.

Mr. Réal Ménard: I know you believe in it. We're going to take the information, and we're going to pass laws on the basis of the information that's in the least conclusive. Have you had any knowledge of scientific studies, conducted not by pressure groups, but by...

Mr. Tony Cannavino: We've had presentations, such as that of Mr. Plecas. He came to submit a study report on the impact of sentences on crime and the correlation between sentences and crime. Dr. Plecas has made some presentations to us.

Mr. Réal Ménard: I don't know him. Do you think I could meet him?

Mr. Tony Cannavino: With great pleasure. We could give you his contact information. It's a quite eloquent study on crime over the past I don't know how many decades.

Mr. Réal Ménard: Where is he from, this gentleman?

Mr. Tony Cannavino: From the west. He's a professor from the west, and we'll give you his contact information. It will be a pleasure for us to forward it to you. He also explains the importance of this approach. Moreover, in the context of certain discussions, we've realized that the problem, when you don't have major deterrents, such as strict minimum sentences, is that you wind up with a reoffender who will continue to offend. He'll get out, he'll exploit all the loopholes in the system to get back onto the street and commit new crimes, because he knows that the sentence is trivial, that he won't spend a lot of time behind bars.

Mr. Réal Ménard: I'd like to understand your recommendation exactly. If I understand correctly, you're saying that Bill C-10 in its present form provides, for the offences you list on page 8, that, in the case of indictable offences committed with restricted weapons or for a gang, the system of escalating penalties applies. However, in cases where those two conditions aren't met, you're talking about a four-year sentence. You would like the new system of offences to apply in all cases where a firearm is used.

Mr. Tony Cannavino: Absolutely. Moreover, Mr. Stuesser also noted the point. In the case of a gun crime, we shouldn't consider the type of weapon or whether the person belongs to a criminal organization. We're talking about violent crimes, but also about violent criminals.

In another act, there are already provisions concerning membership in a criminal organization. That's considered an aggravating factor. In the context of Bill C-10, we're talking about a person who commits a crime using a firearm and who also belongs to a criminal organization.

In our view, a person who commits a crime using a firearm, regardless of which one, should be subject—

Mr. Réal Ménard: To the new system.

Mr. Tony Cannavino: That's correct.

•(1635)

Mr. Réal Ménard: Do I have the time to ask another question, Mr. Chair?

[English]

The Chair: Be very quick.

[Translation]

Mr. Réal Ménard: Have you heard about the professor cited by Mr. Cannavino? Are you familiar with the study in question? I'm asking you the question since you're both academics.

[English]

Prof. Paul Chartrand: I didn't get the name. I'm a little hard of hearing.

Mr. Tony Cannavino: It's Dr. Darryl Plecas.

Prof. Paul Chartrand: I've not heard of him.

[Translation]

Mr. Réal Ménard: The fact that we don't know him takes nothing away from his talent. That doesn't mean he isn't competent.

[English]

Mr. David Griffin: He was a witness on Bill C-9.

[Translation]

Mr. Tony Cannavino: I'm told he was a witness in the study of Bill C-9.

Mr. Réal Ménard: That doesn't ring a bell.

[English]

The Chair: He may have been invited, but I don't believe he attended.

Mr. Tony Cannavino: I'm sorry, Mr. Chair.

The Chair: That's not a problem.

Thank you, Mr. Ménard and Mr. Cannavino.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thanks very much. I appreciate you people being here.

I'm going to ask four questions, and I hope to ask them quickly. There's a question for each one of you. If you just make a note of it, I'll go back to the first question and then we'll go from there.

To Professor Chartrand, you say that the legislation we're doing here to try to lock up more people is going to cause more jail time and is going to cost a lot more. Have you ever done any cost analysis of what crime costs when these people are left on the street and continue to commit crimes? Sometimes we can measure that in monetary things. The cost of crime should never be left out of any formula. Why is that not talked about by people like yourself?

Front door to back door—we know what happens when we go into the front door of a penitentiary and out the back door. You say they come out more dangerous. I would suggest to you, sir, that what

happens inside the penitentiary should never be happening because of our lax laws. How in the world can you have a penitentiary where people are in debt because they don't pay their rent inside, or because they're drinking too much alcohol, or because drugs are overused, and they lay around an awful lot in these things? I've been to many of them and I've seen this. I think what takes place in that penitentiary could have a lot better effect on those coming out the back door than what we're doing today. You can comment on that.

Last is root causes. I don't even want to go there. Root causes is something we should all work on, but not through this committee. We're talking about people who have committed a crime, and now we have to deal with it. The root causes are something we all can engage in by some other method than through the justice committee.

To the police commission, I thank you so much for being here. I really appreciate hearing about the number of cases that have happened when they're on bail, probation, and parole. I understand that the authority you have as police officers for arresting without warrant when someone is obviously breaking parole does not exist. I'd like you to comment on how much effect you think that would have in curbing crime, as well as some of the sentencing that's taking place with Bill C-10.

Professor Lee, I really appreciate your charts. A lot of people, this committee included, don't seem to think that from 40 years ago there has been a significant increase in crime. I agree with you, sir. I'm so glad to see that chart; it is extremely significant. The silly decisions we've made over the years are a lot of the root cause for that thing going up.

They keep claiming alcohol is a root cause of crime. Well, I agree, but we're the society that said it's okay to keep bars open seven days a week and it's okay to keep them open till three o'clock in the morning. So they carry a bunch of knives or anything with them. "This is Canada; we have some freedoms we have to respect", and all that nonsense. So we've asked for a lot of our own problems. I'd like your comment on that.

Mr. Stuesser, I too believe in the firm, fair, and fast—the three-F—system. We used to have it in the military. I thought that was one of the best systems. But I need a little more clarification. Are you suggesting that this Bill C-10 is okay, but we also need legislation for unintentional commissions of a crime? I think accidental shootings and self-defence are already covered in the code, but if that's not true, I'd like your comments on that.

Those are my questions, and if you take them in order, I'd like to hear your response.

The Chair: Mr. Thompson, I think you have one for each person there.

Mr. Chartrand, would you like to start, please?

Prof. Paul Chartrand: Thank you, Mr. Chairman.

I believe the honourable member of the committee, Mr. Thompson, has asked me two questions. I would like to address them properly so as to respond to the questions fully.

Mr. Chairman, I ask your assistance, please. Would you ask Mr. Thompson to elaborate what he meant when he said, "talked about by people like yourself"? What category is that, please, so that I can try to do my best to offer him that particular perspective?

• (1640)

Mr. Myron Thompson: It's people who oppose the bill.

The Chair: "People who oppose the bill", he states.

Mr. Myron Thompson: I've heard that message from people who oppose the bill.

Prof. Paul Chartrand: I'm sorry, I'm unable to identify any—

Mr. Myron Thompson: Other witnesses have—

Prof. Paul Chartrand: —any particular actual category there. It's totally abstract, who might oppose the bill, so I'll ignore—

Mr. Myron Thompson: Witnesses.

Prof. Paul Chartrand: —that gratuitous comment and do my best to address the substantive questions, Mr. Chairman.

First of all, he asked if the cost of crime ought to be addressed and I say, definitely. And I mentioned in particular that the effect of these sentences would be felt disproportionately by the aboriginal people. I also want to point out that, statistically, aboriginal people are also the greatest victims of crime as well. That is very well known. But there's nothing there to counter what I said, because I merely suggested that minimum mandatory sentences increase the costs. The costs of crime are existing costs. If this does not reduce crime, those costs will not be reduced. There is no evidence that it does, therefore there's nothing to respond to.

In regard to the second question...rather, it's an assertion. He asked me to comment on it and I'm happy to do so. He said the root causes are to be addressed somewhere else, not in this particular committee. Thank you, Mr. Thompson, for confirming the meaning of the statement that I made in my presentation where I said, essentially, minimum mandatory sentencing, which is easy to legislate for political purposes, says let them go to hell because then you don't care what happens to them; that's for someone else.

Thank you, Mr. Chairman.

The Chair: Mr. Chartrand, thank you. I would like some more dialogue on those comments, but we don't have time right now.

Mr. Cannavino.

Mr. Tony Cannavino: If I may, I'll be very brief. First of all, the cost of crime is unbelievable. Our front-line police officers see that every day in every area and community where you see organized street gangs and organized crime—violent criminals exploiting their communities. It's terrible what it's costing. It's costing freedom. It costs a lot of money and a lot of pain.

I agree with you, Mr. Thompson, about the root cause. This is not the place for that. There are people taking care of that by investing money in prevention and different programs to help kids and people.

We're asking for a review of Correctional Service of Canada and the National Parole Board because there are a lot of flaws there. They have to change their policies. As I said, Canadian citizens and our police officers are fed up with that revolving door. That's why we try to work with the government and try to support those bills,

because we have to do something. We have to stop the revolving door.

I'll let my colleague, Mr. Griffin, answer the other part of your question.

Mr. David Griffin (Executive Officer, Canadian Police Association): In relation to giving a police officer the ability to arrest a parolee who breaches his or her conditions, we have noticed two things. First of all, there's been an effort on the part of Corrections Canada to reduce the number of conditions they request when a parolee is released into the community, because it helps their recidivism rate if there are fewer breaches. Second, when police officers now come across somebody who is in breach of their parole, they have to report that back to the probation and parole authority. It's then up to the parole officer whether or not to take action on that breach.

Again, there's pressure from the top down to not breach a parolee for not living up to their conditions because they don't want their statistics to show that the offenders are not rehabilitated. Certainly, we have concerns about that.

The value of a police officer being able to proceed with an arrest for a breach is that it takes that offender out of that situation, whether it's because they've been consuming drugs or alcohol while they're out on parole, which is a violation of their conditions.... Generally, the conditions that are imposed are intended to try to prevent the type of behaviour that leads this individual to commit crimes. So we would certainly support providing police officers with the authority to intervene in those situations when there's a higher level of risk.

• (1645)

The Chair: Mr. Lee.

Prof. Ian Lee: Thank you for the question. I want to clarify that a little bit more. The reason I chose those statistics is because they are quite startling. As I think I mentioned, 1962 is really the mid-point of the baby boom generation, and the baby boom generation is the majority demographic group in our country. It's the dominant group. In fact, I think many of the people in this room are baby boomers, as I am. There are a lot of us, and we do remember the sixties and we do remember 1963, 1965, and 1968, when it was far less dangerous.

I grew up on a farm outside of Ottawa on the Franktown Road. I used to collect bottles. If you left a five-year-old, a six-year-old, or a seven-year-old now on a major highway to collect bottles, the parents would probably be charged with child neglect because it's much more dangerous. You can't do that today. I realize that's anecdotal, but the statistical data supports me from *Juristat*, which is the responsible—

The Chair: Thank you very much, Mr. Lee.

Mr. Stuesser.

Prof. Lee Stuesser: I'll just make a couple of general observations.

If you're going to look for statistics to show that deterrence works, you're not going to find them, quite frankly. I think all the studies have indicated that maybe there might be minimal input. This issue isn't really for criminologists or sociologists, quite frankly. It's a political decision that, as part of, hopefully a whole package of things, can address this. This is but one bit.

I'm just being blunt on this because when I look at the literature that I've seen, I've not seen any conclusive studies that say deterrence works. In fact, if anything, the studies in the United States in particular have shown that it has not worked. But, in fairness, I think the United States went to excess in California or elsewhere. The legislation that you have here is far more surgical. You seem to be pointing at violent crimes and the use of firearms, and that's far more surgical than what we have in the United States.

You can bring in all the experts you want on this, and one will say, "Mr. Lee will say one thing, but we can bring ten other experts to say the other." Where is that going to get you? It's the battle of the experts.

Firm, fair, and fast—I couldn't agree with you more. I come from Manitoba. We're a small province. You'd think we should be able to arrest a person, have the trial, and get that done within, say, three or four months. Do you know what the average time is from the time of arrest to trial in Manitoba? It's approximately a year or more. And we're a small province. That's terrible. And it's systemic, right? It's in the court system and the lawyers.

As a result of the delay, the judges have a very difficult decision to make. They have a person who has committed a violent offence. What do they do? Do they deny bail? That means he's going to be sitting in remand for a year, which is why judges will often release, as the legislation in fact provides. Then, of course, the person commits.... So if we could have speedier.... Now here's the reality. It's going to cost, and it's going to cost the Province of Manitoba a great deal because they're in charge of the administration of justice.

All I'm saying in terms of these things is that I quite agree with you.

On fairness, though, if you look across the common-law world where mandatory sentences have been in for quite awhile, do you know what they're doing? They're retreating. They've been moving a little bit more to some discretion because I think they recognized it was too blunt an instrument.

All I was saying in my presentation here is that I've identified two crimes in particular where I think real unfairness can occur, and I gave you the concrete examples. One is criminal negligence causing death and the other is manslaughter. They are not in Bill C-10. Bill C-10 is dealing with intentional crimes. All I'm saying is that I would like to see Parliament turn its mind to being firm and fair. Fair would be a discretion for those two crimes.

I'm a realist. I'm not here to say to you to have discretion everywhere. That's where I was coming from.

The Chair: Thank you, Mr. Stuesser.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

My apologies to Mr. Chartrand and Brian. I'm not going to ask you questions. You were very eloquent, you've said the things a lot of other witnesses have said, and I agree entirely. It exacerbates the problem of a disproportionate number of aboriginal people without doing anything about it, and it offends the section of the Criminal Code on sentencing that allows some leeway to look at options.

It's great having all of you here. Thank you very much for coming.

Mr. Lee, your stuff was very interesting. Can you tell me how we came to have a professor from the business school as a witness today?

Prof. Ian Lee: I'm a political scientist in a business school, for starters. I did my doctorate in political science. Canadian public policy was my major field and political philosophy was my minor field, something actually rather far away from the business school. I was asked by Professor Bruce Doern, of the School of Public Policy and Administration, to write an article on crime and punishment, because I've published before on public policy. That's why I got involved.

● (1650)

Hon. Larry Bagnell: So your background is that you wrote an article on crime and punishment.

Prof. Ian Lee: No. He invited me because I've published other articles on public policy where I've looked at the literature. He knows I have a reputation for being highly empirical and looking up all the data on both sides.

Hon. Larry Bagnell: I have another question for you later if I don't run out of time.

Tony, I probably don't have to ask you these because I think you already answered them, but most of the offenders are reoffenders in the world at large, people who have already committed. You would agree?

Mr. Tony Cannavino: Yes.

Hon. Larry Bagnell: Secondly, I think you said later, after I'd written the question down, that you want the recidivism to go down. You want people to be cured or fixed. You want them to be the safest when they come out. That's how I'll be voting on this bill. It's to achieve that end. Safety is the ultimate end for everyone, and for victims.

Mr. Stuesser, you talked of your principle of fairness, and you gave a couple of examples. Can you tell me what would happen in the cases in which a prosecutor or crown attorney sees that, with limited discretion now, there's no option for a fair result in a trial? What options might they take instead? For instance, there's going to be probation or not, pressing charges or whatever.

Prof. Lee Stuesser: Let's deal with the scenario I gave you with the woman who shot her husband. The prosecution started with the murder charge. There's a dead person here, a victim, and we're all very concerned about that. Prosecutors will not end up saying, let's just do alternative measures here in such a serious crime. It's not going to happen. They're going to have to charge when there's been a death involved. And you start going down: what are the parameters? Manslaughter is probably the most logical one, and, if you like, the beauty of manslaughter was that it had no minimum sentence. When you look at the past use of manslaughter, that's where prosecutors would use their discretion, and that's where actually in sentencing you could hear prosecutors say they quite agree that this lady should not go to jail, and they would do that.

Unfortunately, now, because a firearm was used, there is no option. What's it going to be, manslaughter or criminal negligence caused death? Are you going to fudge the data or fudge the charge and say there wasn't really a death, let's charge you with something else? You can't.

Hon. Larry Bagnell: Okay, that's good.

The ultimate outcome would be an unfair outcome, in that case.

Prof. Lee Stuesser: Yes, and she would have to challenge the legislation.

Hon. Larry Bagnell: On another side, on some of these offences, could there be a situation in which if the mandatory minimum was too high to be fair, therefore a prosecutor would proceed by another process, like probation or something, thus having a person not in jail at all when they should have been in jail, but for a shorter time, to be fair?

Prof. Lee Stuesser: It's hard to imagine, but there could well be. For example, in the attempted murder, you might try to reduce down to an assault causing bodily harm of some kind. For sexual offences, you may well, rather than charge with aggravated, have what we might call just a simple sexual assault. So there is some basis there for, shall we say, more creativity on behalf of both the defence and the Crown.

Hon. Larry Bagnell: Mr. Lee, your chart on page 6 shows violent crimes going down dramatically in the United States. At the same time, prison has stayed relatively the same. What has changed dramatically is probation, people not being in jail. Basically these stats suggest that what's caused violent crimes to go down the most is not having people in jail.

Prof. Ian Lee: That's not how I interpret the data and that's not how Levitt interpreted the data. There was a dramatic increase in incarceration during the late eighties and into the nineties. In fact, this was the reason he identified as the single most important for the decline in violent crime in the 1990s. This was based on his work in a series of articles he has published.

The Chair: Thank you, Mr. Bagnell.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Good afternoon.

Mr. Cannavino, I've read and reread your brief. On page 13, more precisely in Recommendation 5, second paragraph, you say, and I quote:

Section 745 should be repealed, removing the so-called "faint hope clause" that has allowed 80 percent of applicant killers to obtain early release.

Here I have the Criminal Code. When you mention section 745, exactly what section of the Criminal Code are you talking about? I know the Code fairly well, but I haven't found the section you're referring to. There are sections 745, 745.01 and 745.1 up to 745.61. Can you find it for me and give me the answer?

• (1655)

Mr. Tony Cannavino: That's what's called the faint hope clause. It's section 745.

We're talking about those who apply under the faint hope clause. That's the expression. You no doubt know that expression. It's the faint hope clause, which enables someone who has committed these crimes to be granted early release.

Mr. Marc Lemay: I didn't see that in section 745, but perhaps I misread it. I'd like you to find it for me.

Mr. Tony Cannavino: Yes, we'll send you a copy.

Mr. Marc Lemay: If you could send me section 745, I'd appreciate it.

Now we're going to get down to business. We know each other well. I've previously heard you testify on Bill C-9, and, well before that, on other matters. When I listen to you, it seems to me there's a problem at release. Revolving doors work in both directions. We can probably control the entrance; we're saying we should control it, but also leave the judge some discretion. It seems to me the problem is at the exit.

Mr. Tony Cannavino: I think the problem is at both the entry and the exit. In fact, the problem is quite clear. Moreover, that's the reason we asked the previous government and the present government to conduct a full review of the Corrections and Conditional Release Act.

Mr. Marc Lemay: You're requesting a full review of the act.

Mr. Tony Cannavino: We're talking about the whole thing because it's not just one point in particular.

Mr. Marc Lemay: I'd like you to find section 745.

Mr. Tony Cannavino: We're going to send you the section in question as well as the applicable conditions.

According to the statistic that was given, 80% of those who have applied under the faint hope clause have reoffended.

Mr. Marc Lemay: I'd like you to file that statistic with the clerk so that it's forwarded to everyone.

Mr. Tony Cannavino: Absolutely. We'll provide it to you, along with the contact information of Dr. Plecas, who we referred to earlier.

Mr. Marc Lemay: Mr. Chartrand, I won't ask you any questions because I entirely share your convictions, having myself worked with Aboriginal people during my last years in criminal law. I think we're on the same wavelength. Pardon me if I don't ask you any questions.

However, I'd like to put two questions to Mr. Lee and Mr. Stuesser.

Mr. Lee, you say that minimum prison sentences are important because the longer the sentences, the more we'll be able to rehabilitate a person. Is that in fact what you're telling us? Did I understand correctly? I'm going to listen to you in English to make sure I understand.

[English]

Prof. Ian Lee: What I'm arguing is that rehabilitation takes time, and the more violent the person, the more damaged the person; the more damaged the person, the greater amount of time needed to intervene in the transformation of this person. There is a great deal of psychological research on this.

• (1700)

[Translation]

Mr. Marc Lemay: I agree with you. I've even represented a number of clients. However, isn't it up to the sentencing judge to tell the individual who is before him: "Sir, we've tried everything with you; we believe that you should be removed from society for a number of years, and I'm therefore going to sentence you to 25 years"?

I've had clients who were rehabilitated after 22 months of detention. Where do you get that statistic, that 20 months isn't enough to rehabilitate a person?

[English]

Prof. Ian Lee: I filed an ATIP request to the Correctional Service of Canada and I received some data back. This article that I'm publishing in the spring will have much but not all of the data. There are gaps, and I hope you, the parliamentarians, can address these gaps by calling on the Correctional Service of Canada to give data I can't get.

One of the pieces that is missing for me is the rate of success attached to specific programs. I don't want to leave you with the idea that there's one magic program. There are multiple programs—and this is straight out of the CSE documentation. There's a program of rehabilitation for sexual offenders; there's another program for violent offenders; there's yet another program for people with anger problems. There are multiple programs, and they customize and analyze the offender and then come up with a customized program.

I am working with averages in my article, as you saw in my presentation, and these said the average violent offender needs three programs. The length of time required is between 15 and 36 weeks, so I chose the midpoint, and I state this in my article...in months, that's right. I converted it to months.

The Chair: Mr. Lemay, one very quick question, and I'll cut you off if it's too long.

[Translation]

Mr. Marc Lemay: Do you have those figures, Mr. Lee? Could you provide the committee with the figures on which you base your study?

[English]

Prof. Ian Lee: Yes.

[Translation]

Mr. Marc Lemay: Thank you.

[English]

Now?

Prof. Ian Lee: After. It's in my article.

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Chair.

Thanks to all the witnesses for attending.

Some questions have been raised concerning the government's approach. You can comment on anything I say to the witnesses. In the report from Statistics Canada, the national homicide rate rose for the second straight year in 2005.

I think, Dr. Lee, you mentioned that it's a myth that crime is going down. In fact, the most recent statistics say it's increasing, and in 2005 it reached "its highest point in nearly a decade", while firearms-related killings increased for the third year in a row, as the government looked for better ways to control gun violence. "Police services reported 658 homicides last year, 34 more than in 2004. Of these, 222 were committed with a firearm, up from 173 in 2004. Most of the increase in the homicide rate was driven by a jump in gang-related homicides, particularly in Ontario and Alberta." Also, "107 homicides were believed to be gang-related in 2005, 35 more than in 2004". As well, Statistics Canada reported that "Two-thirds of gang-related homicides involved a firearm, usually a hand gun."

So this is some of the information that Statistics Canada is telling us, and that's why we have the focus on gang violence and the use of handguns. The points that were made today are well taken, including wanting to minimize the bill's complexity and make it as effective as possible.

I want to ask, Mr. Cannavino or Mr. Griffin, about this serious issue. Our government's approach has been to target criminals. In the past, it seems we've seen efforts to target everybody but criminals. There's always reluctance to get tougher on crime, and I don't say tough just for the sake of being tough, but to try to restore some effectiveness and balance, and that factor we were looking for—denunciation of our criminals.

I hear from my constituents, and I know everyone else does, about someone who's literally back on the street before the victim is out of the hospital. There's no denunciation when that type of thing happens, so we're trying to have a very focused approach on specific crimes.

Regarding the issue of firearms, we heard from Chief Blair that it used to be about 50-50 between smuggled and stolen firearms, and he said even more are smuggled in now.

We also wanted to focus on the issue of a robbery or a break and enter where firearms are stolen. You represent police from coast to coast, in large and small communities. The point was made, does this necessarily address the rural reality? My argument would be that it's serious. If you break into someone's cabin in New Brunswick and steal their shotgun or you break into their house or apartment in Toronto and steal their shotgun, it's serious. Can you comment from the urban-rural...where you represent both? We have heard from the urban police, but I'd like to hear from the rural perspective on this issue of break and enter and robbery?

•(1705)

Mr. Tony Cannavino: I think your example is very pertinent. It's exactly that. You make a B and E in a rural community and you steal a long gun or a restricted gun. It's the same thing. What's going to happen with it? It's going to be bought by somebody who's in a big city, and they use it. It's very easy to buy or sell those guns.

As I said, the biggest problem is the fact that we need to protect our borders and our ports. Those are places where our country has open doors.

For the last six months, the government has been bringing in legislation to address violence in our communities, by bringing in bills with tougher sentencing addressed to violent criminals. You make serious crimes, you're going to spend serious time. I think that philosophy is good.

It's starting to have an effect. It's going to take time. We do hope this legislation will be accepted and adopted as soon as possible. That's why in our presentation today we said, let's hope it's a non-partisan thing here. We're talking about the security of our communities, and I think everybody is concerned about that. Everybody wants to live in a country that is safe, and that's why we're very supportive of those initiatives.

Mr. Rob Moore: Thank you.

Go ahead, Mr. Griffin.

Mr. David Griffin: To my mind, in relation to the rural, a case in point is the murder of RCMP Constable Dennis Strongquill in Manitoba. His assailants were two parolees and a woman who was accompanying them. They had started a crime spree in Alberta that finished with the officer being hunted down, essentially, by these offenders and shot dead in Manitoba, north of Winnipeg.

In that case the firearms involved were all long guns. They'd all been stolen from either private residences or vehicles. In some cases the firearms had not been properly secured. In one case the weapon involved was a long gun stolen from an automobile that was left running with the keys in it. The firearm was in the back seat.

From our perspective, these crimes transcend all communities. Certainly we've seen a lot of problems in Toronto, but we believe, in terms of this law, we have to recognize that often the weapon of choice is going to be the weapon of opportunity, and not necessarily based on a particular class.

Mr. Rob Moore: On the selection, yes.

I have a quick question for you, Professor Stuesser. You had mentioned the exception. We studied conditional sentencing, and the concern there is that what starts out as the exception becomes the rule.

Just so there's no confusion, you mentioned criminal negligence causing death and manslaughter. There are penalties associated with those, of course, but those are not included in this bill. This bill focuses on someone who deliberately sets out to commit a serious crime with a firearm.

Perhaps you wouldn't mind elaborating a bit on what you think an exception would look like, as I think you're the second person who's mentioned it. The concern obviously is not wanting the exception to

be the rule, sending the clear message that firearms offences are taken seriously.

Prof. Lee Stuesser: I suppose I'm a bit of a pragmatist. Some people may well argue that we should have general discretion for all of the sections in Bill C-10. I don't think that will fly, with all due respect. I believe the tenor of the community, of the country, is that they do want some tougher laws.

I propose a very limited exception. There is some wording used by, for example, some of the justices in a case called *Morrisey*, where they talk about "grossly disproportionate" with regard to both the offence and the offender. For example, if a gang person committed an offence, I would submit that no judge in the land would regard this person as falling within the exception. It would be phrased such that the court would well appreciate that this would be an exception.

Incidentally, in my own view, I feel that the courts will in fact support the constitutionality of the provisions. I really think the whole difficulty is going to be, as in my lady example, that she will have no recourse, she will go to jail for four years—unless Parliament recognizes that there should be an easier way for unintentional use of a firearm.

•(1710)

The Chair: Thank you, Mr. Stuesser.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

I'm going to drive you all crazy here, but I want to comment on the statistics again. I don't want to let the time pass without at least commenting on the suggestion that violent crime is increasing.

I do accept from Professor Lee his perspective. Looking at the data, it's very clear that from 1962, when Beaver Cleaver made it into the television world, crime did increase. But the Criminal Code changed, people changed; lots of sociological things happened.

As I look at the data—and I hope you'll agree with me—by the time we got to about 1990 or 1992, things changed. The data changed, the statistics changed. As of that point in time, in Canada and in California and in Florida, if you look at the charts provided by Professor Lee, all of that violent crime starts on a downward trend.

So as I read it, I can honestly say that for the last 14 years, violent crime has been decreasing. I will accept, however, your point that if you go back to 1962, you can see a trend of increase, which terminated around 1992.

I don't think we should be legislating for the fifties here, or the sixties, or the seventies. I'd like to legislate for the millennium, and that shows a decrease.

Have I described this relatively accurately, to your satisfaction?

Prof. Ian Lee: Somewhat. Let me qualify your qualification, if I can.

I want to step back, because there have been several comments today saying there's no research that proves it works. I want to make this broad comment, because this is what's been—

Mr. Derek Lee: If I may, I don't want you to go into another area, because I've only got five minutes.

Prof. Ian Lee: No, I won't. I'll keep it really short.

There are two broad research trends. There's the research you've been introduced to by many criminologists, who have said it doesn't work—incarceration doesn't work, minimum mandatories don't work. I'm not denying the existence of that research stream. Of course it exists. And there's a second research stream, the law and economics.

Dealing with your specific question, this has been debated, believe me, in the law and economics research tradition in which there's a very large body of evidence. They're looking at this, and they're trying to using very advanced statistical techniques, because the law and economics people are people with advanced economics degrees. They're trying to deal with that question.

I'm answering your question. Their conclusion is that notwithstanding what you're suggesting, when you tease out and put weights on, there is a causality between incapacitation or incarceration—

Mr. Derek Lee: Thank you for that. I didn't ask a question about the relationship between incarceration and deterrence; I simply asked you to recognize that violent crime has been decreasing for the last 14 years. You can take a different view, but that is mine.

I also want to append to that that Toronto has been the source of some concern here in terms of gang violence and the number of homicides. There was a horrible spike in homicides with firearms here over the last year and a half to two years, but fortunately, the year 2006 has seen much better data coming in. From the data provided by the Toronto Police Service, the number of firearm homicides this year with about one month left to go has dropped 44%. It's fallen through the floor. The number of firearm woundings has dropped 19%, and the number of shootings is down 20%. So these are good statistical data. It doesn't mean we don't have a problem with guns. We still do. But the spike that occurred has gone back to where we were. I still accept we have a problem with guns in the community, but we don't have the huge increases and crisis that we had before.

Professor Chartrand, I want to ask you.... The Supreme Court, within the last two or three years, has commented that we have a crisis in our corrections system. That was a warning and a red flag for all of us in Parliament, and should be for society. It had to do with the very high proportion of aboriginals incarcerated in our system. I want to ask you, because you do have a perspective on this from your position in Manitoba, do you believe the provisions in this bill will help or hurt or be neutral with respect to our ability to address the crisis described by the Supreme Court in terms of the proportion of aboriginals in our corrections system?

• (1715)

Prof. Paul Chartrand: I think it will not help and would most likely make the situation significantly worse.

Mr. Derek Lee: Could you put some meat on the bone? I appreciate your opinion. Could you describe what is in the bill, if that's your view? The procedures will exacerbate the numbers, the statistical data, the rate of incarceration, the disproportionality?

Prof. Paul Chartrand: There are many statistics. I can try to dig some of them out. I myself try to avoid these mysterious digits and leave most of that work to criminologists and other social scientists.

But I know the statistics that have been compiled both by government agencies and by independent academic researchers indicate that the removal of the judges' discretion in sentencing, which by the way is contrary to the principle in 718(e), will likely increase the incarceration rate and make the result particularly difficult in the provinces that have a high proportion of aboriginal people, given our extension of the existing proportional incarceration.

The statistics are very high in Manitoba and Saskatchewan, and this applies to aboriginal women in particular. In my recollection, by far the majority of the women in jail are aboriginal women. The percentage of aboriginal people in the Saskatchewan population is roughly 13%, but the incarceration rate is something like 70%.

The Chair: Thank you, Mr. Chartrand and Mr. Lee.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

My question is for Mr. Lee, Mr. Cannavino or Mr. Stuesser.

When we want to evaluate a justice system, we have to know how others perceive us. In the United States, one New York judge gave one criminal convicted of aggravated assault the choice of one year in prison in the United States or three years in Canada. The individual chose three years of prison in Canada. It's obvious: it's because we're permissive. Is that out of greatness of spirit? Is it a quality? I don't know, but for the moment, we have a problem, and that's how people perceive us.

When a drug trafficker has to land because we know he's transporting drugs, he won't land in Vermont. He'll do everything possible to land in Beauce, because he knows his sentence won't be as harsh.

There's also another factor that bothers me a bit. The Attorney General of Ontario, Mr. Bryant, appeared before our committee. He seemed to agree with us, and you mentioned him in your brief. He represents 16 million of the 32 million inhabitants of Canada, approximately half of Canada. I imagine he speaks on behalf of at least 50 percent of the population. What's strange is that he's a Liberal. In his region, there are other federal Liberals and New Democrats. So I imagine they must talk to each other because they're close to each other.

Mr. Cannavino, the bill we want to pass concerns serious crimes. However, in Montreal — here I'm referring to Mr. Chartrand's remarks — there are now gangs of blacks. That's the fashion. There are others in Toronto. We know there will be more blacks in prison, because they hold the power in the Montreal region.

In your view, is that the only justification? Mr. Chartrand said earlier that it was senseless, because there will be more people from certain ethnic groups in prison. I'd like to know whether you believe that Bill C-10 has a colour or whether it will help you solve the gang problem that exists right now.

• (1720)

Mr. Tony Cannavino: I liked your preamble. It's not a question of ethnic group. Otherwise, should I complain that more Italians were incarcerated last week?

Mr. Daniel Petit: Especially recently.

Mr. Tony Cannavino: Exactly. That's the exception to the rule. We're all good people, except the ones who were arrested last week.

It's not just a problem in Toronto; it's a problem in Montreal and Winnipeg. There's a problem in the cities and towns. They say the crime rate is going down. Then explain to me why citizens now feel less safe than 20 years ago.

Twenty years ago, when I walked in Old Montreal, on St. Catherine Street, I felt very comfortable. Today, I wouldn't do it at 11 o'clock, midnight or 1:00 a.m. I definitely wouldn't do it because now there's more violence.

You referred to an event that occurred not long ago, when an individual was offered the choice of serving one year in prison in the United States or three years in Canada. That's not the only person that's happened to. How many extradition applications have there been from people who want to come back to the country? Why do they want to come back to the country? First, because our prisons are a little more like hotels, and, second, because jail time in Canada is much shorter than in the United States.

The proof is the case of one individual who was arrested in the United States and sentenced to 15 years in prison. He was extradited to Canada. Since his crime wasn't considered a violent crime, he was released after serving one-sixth of his sentence. One month after he got out, he was killed in a hotel in downtown Toronto.

When I was on the Carcajou squad — we made a reputation for ourselves — and we were dealing with a trafficker, we hoped he'd go through the United States because we knew that, if he stayed in Canada, things would be easy for him and he wouldn't get a tough sentence. So we had them charged in the United States because we knew they'd be gone for 25 years. It would have been unthinkable for them to get long sentences in Canada.

You'll see what's going to happen next.

Mr. Réal Ménard: What about Mom Boucher?

Mr. Tony Cannavino: We took care of Mom Boucher. We got him in Quebec. He had run the show for too long.

I'm glad Mr. Ménard referred to the case of Mom Boucher. With tougher laws on organized crime, that's what we've done and we've used them. The gentleman in question is there for a long time, ad vitam æternam!

[English]

The Chair: Thank you, Mr. Cannavino and Mr. Petit.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Hanger.

My first question is for Mr. Cannavino.

One thing that always sticks with me is a piece of advice from our chief of police in Barrie. He said the biggest concern he has with the justice system is that it's a revolving door.

The reason I'm in support of this proposed legislation is that I feel it would help reduce that revolving door.

What type of feedback are you getting from—

• (1725)

Mr. Marc Lemay: Mr. Brown, can you turn in front of the microphone?

Mr. Patrick Brown: I appreciate your interest in Conservative opinions.

Mr. Marc Lemay: No. It's for the translation.

Mr. Patrick Brown: And you, too.

Could you let me know the thoughts of your organization and the officers within it on how this might alleviate this revolving door?

Mr. Tony Cannavino: We think this addresses the violent criminals. When we talk about the revolving door, there's more than one bill the government has presented that I think will help us. This is one of them. For those committing a violent crime, you need to have a strong deterrent, and you need to have significant sentencing. This addresses your concern exactly.

If we really want to stop that revolving door, the other thing we also need to do is a review of Correctional Service Canada and the National Parole Board. Why? Their policies and legislation have so many flaws that no matter what, they're going to get out anyway.

I'll give you an example, Mr. Brown. Among the 32 people facing murder or manslaughter charges in 2006 in Toronto, 14 were on bail at the time of the offence, 13 were on probation, and 17 were subject to firearms prohibition orders. It's always the same damn people we keep arresting. Those people are killing citizens or threatening our communities. That's why we have to address that specific problem.

Thank God we have legislation that will help us do our job.

Mr. Patrick Brown: Thank you.

I have a question for Mr. Stuesser.

You made reference to simplifying the code and enabling more discretion. I got from your comments that minimum penalties inhibit discretion. I'm a supporter of minimums and maximums. I realize that in some sense they inhibit discretion. Following your argument and logic of protecting discretion, using the opposite scenario, and to remain logically consistent, would it be fair to say you support getting rid of maximums as well?

Prof. Lee Stuesser: No. But to be blunt, maximums are meaningless, because maximums are never imposed. To be blunt, you can make it five life sentences for certain crimes and it wouldn't make any difference in terms of what a person is sentenced to.

Let's be clear about my discretion. Mine is a limited narrow discretion for people who, in my view, are unfairly punished in situations of an unintentional killing with the use of a firearm. What I was trying to show, if anything, was in terms of your minimums. Minimums can work, if there are other things going on.

There was mention of the fact that people would like to be incarcerated in Canada. We should be proud of that. We shouldn't be embarrassed by it; we should be proud of it. That means we are treating people humanely in our prisons. There are a lot of problems in our prisons, but when you compare them to other countries, we should actually be proud.

Mr. Patrick Brown: Following up on—

The Chair: Mr. Brown, I'm going to have to cut you short here. Sorry.

This basically brings our afternoon to a conclusion.

I have a question for Mr. Lee, on a personal level. The matter has been brought up several times, in reference to the collection of data. Sometimes, it's pooh-poohed because it's American data. You pointed out that the collection of this data by experts there is empirical. When you're looking at crime and criminals, what's the difference between a collection of American data and its application and that which would be compared to Canadian data? A criminal is a criminal, I assume. They operate in very much the same way. I'm curious. There seems to be a fear sometimes when we talk about American data.

Prof. Ian Lee: I agree completely with you. I teach on five continents around the world, and 48 hours from now I'm flying to Iran. Iran is a very different place from Canada. I've also taught in the United States. I also teach in China.

The point of this is that the differences between Canada and the United States, although some Canadians think they are very great, are I think very small. I look at the data between the States and Canada—demographic data, the interest rate, the unemployment rate, you name it. We track them; they track us. There's a very strong similarity between the two countries, because with the honourable exception of Quebec, they're an English-speaking country and we're an English-speaking country. With the exception of Quebec, we're a common-law country in both countries. So there are great similarities.

I lived in the States. I didn't disclose this, but I lived in the States twice. I taught in California for three years. The differences were so small they thought I was an American; whereas they don't think in Iran, when I go there, that I'm an Iranian, and they don't think I'm Chinese when I go to China. There are significant differences between those other countries, and very small differences. So I find the data compelling; I agree with you.

• (1730)

The Chair: Thank you very much, Mr. Lee.

Mr. Stuesser, I'm an old robbery detective; I've been a major crimes investigator. Among all the cases you have alluded to, when it comes to loopholes and the way matters are handled in court, the definition of things such as "membership in a criminal organization" has created a real problem for the courts. Nobody's been able to define it in logical terms, such that the police can go and collect the evidence and say, "Here it is." I know that some of this can be rectified. But to prove that a particular individual is a member of a criminal organization, you're having to go into maybe revealing police sources about what kind of evidence is there, which may not be to the best interests of the public, because it's intelligence.

If this is so difficult to do with Bill C-10—matters like this, or the description of a firearm—when you're looking at a victim who's been traumatized... If this is so difficult to do, what would your suggestion be? I detect that you're not wanting to really say, "We don't want this legislation, period." You see some very practical issues here that need to be addressed.

Prof. Lee Stuesser: Hopefully my message was, to assist you in making a law; if you're going to pass a law, let's make it usable. I think you've identified, Mr. Chairman, a real problem that you're going to have with the way the triggering provision is. To try to connect things to membership in a criminal organization is exceptionally difficult. All you have to do is look at how police forces have used the existing legislation. Quite frankly, they really haven't been able to use it that effectively. It's much easier simply to get an identification and connect it to a firearm, which is the existing law.

So I urge the committee to simplify it, to make it usable.

The Chair: Thank you, members.

I'm going to conclude the formal part of the meeting here. We have a brief business issue to deal with, and we're going to deal with it ASAP.

I want to thank the witnesses for appearing. I think this has been a very significant contribution. I'd like to see some more debate myself, but maybe that's for another day.

Thank you very much.

• _____ (Pause) _____
•

The Chair: Colleagues, I'd like to call the meeting back to order to deal with this business issue.

Before you is a motion by Monsieur Réal Ménard.

Monsieur Ménard.

• (1735)

[*Translation*]

Mr. Réal Ménard: Mr. Chair, I have a motion I'd like to us debate, and I'd also like to file a notice of motion.

The first motion, which I want us to debate, was sent to you 48 hours ago. Ultimately, it's an invitation to the minister to appear.

The minister has made a number of statements that have caused some controversy, as all committee members have realized. We think that the exchange must be continued. We want to have a discussion with the minister concerning judicial appointments that is productive, respectful and conducted in an atmosphere of camaraderie.

I have another motion concerning routine business. I don't know whether I should read it or whether you first want to dispose of my first motion.

[*English*]

The Clerk of the Committee (Ms. Diane Diotte): He wants to give notice of the second one.

The Chair: Oh, you're giving notice of the second one. Okay.

[*Translation*]

Mr. Réal Ménard: I can give notice immediately, quickly.

[*English*]

The Chair: We'll deal with one at a time. Let's deal with the motion you submitted last Thursday.

Is there discussion? None? Then we'll go to the vote.

Mr. Myron Thompson: I just wonder what the rush is, Mr. Chairman.

The Chair: Well, the motion has been—

Mr. Myron Thompson: We have so much legislation to deal with before Christmas that I'm just trying to figure out why we're rushing this one.

The Chair: Be that as it may, Mr. Thompson, I know that's part of debate, but I think we moved into the vote on the issue, so if I may....

(Motion agreed to [See *Minutes of Proceedings*])

[*Translation*]

Mr. Réal Ménard: Mr. Chair, I quickly give notice of the second motion, which reads as follows:

Whereas various important witnesses have indicated to the Committee that there is a significant link between armed offences, street gangs and organized crime;

Whereas parliamentarians have an obligation to legislate on the basis of meaningful and conclusive information;

It is proposed that the Standing Committee on Justice and Human Rights not begin the clause-by-clause review of Bill C-10 until it has devoted two more meetings to the issue of street gangs, and two more meetings to examine the overall effect on gangsterism of Bills C-95 and C-24, adopted in 1997 and 2001;

It is also proposed, with respect to gangsterism, that the research assistants produce a summary of the case law and provide Committee members with a file comprising the court judgments in full.

We could discuss it at the next committee meeting. I hope to have the support of all committee members.

[*English*]

Mr. Thompson, I'm a friend.

The Chair: Okay. Notice of motion has been served.

Mr. Lee, go ahead on a point of order.

Mr. Derek Lee: Mr. Chairman, on a point of order, there's been some chitchat on this side of the table about the meeting coming up on Wednesday. A number of us are going to have a very difficult time to attend the meeting. There are some really important witnesses.

I have been able to arrange it so I will be here for at least a portion of the meeting time, but there are colleagues who have not. It's a very difficult thing to deal with, because we don't have a lot of time. The best I could think of was to reschedule the meeting, but rescheduling pushes out the time for clause-by-clause consideration.

I wanted to make that point to see if there are any creative ways of accommodating the apparent absence of some of the members from the committee on Wednesday.

The Chair: Will all members be here?

Monsieur Ménard, will you be here on Wednesday?

[*Translation*]

Mr. Réal Ménard: I can be present, but it can be cancelled as well. I know there's going to be a Liberal leadership conference. I don't see any problem in cancelling it.

[*English*]

The Chair: Monsieur Lemay, what do you think?

[*Translation*]

Mr. Marc Lemay: There's no problem; we can cancel it.

[*English*]

The Chair: Mr. Bagnell, what is your position?

Hon. Larry Bagnell: I'd prefer to cancel it.

Mr. Derek Lee: Mr. Comartin had a difficulty as well.

The Chair: You have agreed to attend, obviously, but you're concerned about the length of time.

Mr. Derek Lee: I don't think there's any easy way to solve the problem.

The Chair: No, I don't think so, not at this short notice.

• (1740)

Mr. Derek Lee: If there were, I'd surely be presenting it. We'll do our best.

The Chair: We will work with it as well as we can, Mr. Lee. If it means possibly concluding a little early, we might end up doing that, too, if there aren't a sufficient number of members around.

Mr. Derek Lee: It was a coming together of two separate problems for members on the opposition side. There are different causes and different solutions, but thank you for considering it.

The Chair: Understood.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: If the meeting is postponed, shortened or cancelled, it's to promote democracy within the Liberal Party. Did I understand correctly?

[*English*]

Mr. Derek Lee: One of the reasons was to improve the democracy.

[*Translation*]

Mr. Daniel Petit: If that promotes democracy within the Liberal Party—

[*English*]

Mr. Derek Lee: The second reason was to improve the democracy of the New Democratic Party.

Thank you, Mr. Chairman.

The Chair: Such an antagonist, Mr. Petit.

The meeting is adjourned.

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