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Chair

Mr. Art Hanger

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● (0905)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order. Today is Thursday, March 29, 2007, and our orders of the day are our continued study on Bill C-22, an act to amend the Criminal Code on age of protection and to make consequential amendments to the Criminal Records Act.

We have an impressive list of witnesses today, I dare say, starting with one individual, Mr. Paul Gillespie. He's a consultant and former member of the metro Toronto police department.

The Canadian Centre for Justice Statistics is represented by Lynn Barr-Telford, director, and Karen Mihorean, assistant director.

From the Canadian Bar Association, we have Ms. Tamra Thomson, director of the legislation and law reform section; Mr. Kevin Kindred, branch section chair; and Margaret Gallagher, treasurer of the national criminal justice section.

We also have Ms. Judy Nuttall, coordinator of the White Ribbon Against Pornography; Mr. Steve Sullivan, of the Canadian Resource Centre for Victims of Crime; and Martha Mackinnon and Emily Chan, of Justice for Children and Youth.

We'll begin as the witnesses appear on the agenda.

Mr. Gillespie, you have the floor.

Mr. Paul Gillespie (Consultant, As an Individual): Thank you very much, Mr. Chair.

My name is Paul Gillespie. I was previously employed by the Toronto Police Service, where I was lucky enough to serve for 28 years. For the last six years of my duties, I was the officer in charge of the child exploitation section of the sex crimes unit, and I was very fortunate to be working with a tremendous group of individuals. The team did some great work in pioneering some of the efforts that are being used around the world today in regard to the online sexual exploitation of children.

Since I left the police service last June, I have been working with a not-for-profit group in Toronto that I helped to start, called the Kids' Internet Safety Alliance, or kinsa.net. Our mission statement is simple. We're simply dedicated to the elimination of the sexual exploitation of children on the Internet and in all related issues.

In my time as a law enforcement officer, and certainly in the child exploitation section of the sex crimes unit, we had a very talented group of young officers who were very sophisticated with technology. This allowed us to conduct intelligence investigations in very deep, dark areas of the Internet. Some of those areas are known as the “freenet” or the “undernet”. They are the bowels of the Internet and are basically impossible to trace. It is down there that we found the worst of the worst. Pedophiles would operate and conduct intelligence, refer members, pass on information, and teach each other. It was through these areas that the most vile of the pictures and movies that we are unfortunate enough to all now be aware of would enter the Internet.

We had officers specifically assigned to monitor chat rooms and news groups in this area, and to take the temperature of what was occurring around the world. On numerous occasions, members and pedophiles around the world would openly advocate coming to Canada and would explain to each other that one might be allowed to have sex with a 14-year-old child because it's legal. They did so often not to the dismay, but the wonderment and surprise of others around the world.

I have had the opportunity to conduct hundreds of presentations on safety issues, children's sexual issues, and sexual exploitation issues, to school groups, church groups, and public meetings, including one yesterday in Brantford. At some point in the meeting, I typically just ask everybody to raise their hand if they're aware it is legal for 50-year-old men to have sex with a 14-year-old child. To this day, most Canadians just don't understand it. When you lay out the facts, they're just most often horrified, understanding that if it happened to them, they would be mortified. They feel that the fact is, it can't be right. Luckily enough, and hopefully, if this legislation passes, I think it will be very good.

For the last four years, I've been working with Microsoft in relation to software that we developed, called the child exploitation tracking system. This takes me around the world as I work to have other countries accept this software, which will someday be a global network. In the last two years, I've been on six different continents and have spoken to officers in different areas. I'm keenly aware of what's occurring in those areas in regard to the computer-facilitated sexual exploitation of children, and this is first and foremost on everyone's minds.

The one common theme that I deal with, certainly from my peers in law enforcement and in government, is the fact that grown men truthfully should not be allowed to have sex with children. That's something I hope this legislation fixes.

Thank you.

The Chair: Thank you, Mr. Gillespie.

Now we'll hear from the Canadian Centre for Justice Statistics, and Ms. Lynn Barr-Telford.

Mrs. Lynn Barr-Telford (Director, Canadian Centre for Justice Statistics, Statistics Canada): Thank you for the opportunity to present to the committee, Mr. Chairman, data relevant to your consideration of Bill C-22. You have the presentation information with you.

We will present to you police-reported information on children and youths as victims of sexual offences as these offences are currently defined in the Criminal Code, and data on the processing by the courts of sexual offence cases.

Statistics Canada collects national data on the overall number of incidents of sexual offences in Canada that have been reported to police. Information on the characteristics of sexual offences reported to police—the age of the victim, the age of the accused, and the relationship of the victim to the accused—was available from a subset of 122 police services in 2005. While these subsets provide useful information on children and youths as victims of sexual offences, we must keep in mind that they are not nationally representative. Data limitations are noted on the various slide input notes.

First, let me begin by telling you what we know about the sexual activity of youth according to Statistics Canada's National Longitudinal Survey of Children and Youth, as of 2000-01, in which we asked youths if they had ever had consensual sex. We found that 5% of 12- and 13-years-olds, 13% of 14- and 15-year-olds, and 41% of 16- and 17-year-olds reported having had sexual intercourse. Among the sexually active 14- and 15-year-olds, 37% reported first having had sexual intercourse when they were 10 to 13 years old, and 36% when they were 14, with the remaining 27% at 15 years of age.

Before turning to what we know about sexual offences in Canada, it's important to recognize that given the secrecy that often surrounds sexual offences, they are the least likely offences to come to the attention of the police. According to the 2004 general social survey on victimization that covered the population 15 and over, only 8% of sexual offences are brought to the attention of the police. We suspect that reporting rates may even be lower for those younger than 15. At the end of the presentation, you'll find a supplementary slide on reasons for not reporting.

Turning to the second slide in the presentation, in 2005 there were about 26,000 sexual offences known to police. Among these, about 23,000 were sexual assaults, and just under 3,000 were other sexual offences, which included sexual interference, invitation to sexual touching, sexual exploitation, incest, anal intercourse, and bestiality. While we're unable to disaggregate the individual offences that make up the other sexual offences in our police-reported data, we do know from our court data that about three-quarters of cases of these other offences are sexual interference incidents.

Data from a subset of police services indicate that sexual offences are crimes largely committed against young women under the age of 18. Overall, in six in ten incidents of sexual violence, the victim is less than 18 years of age. As the slide clearly indicates, young women between the ages of 13 and 15 are the most vulnerable to being the victim of a sexual offence.

Concerning the age of the accused, for sexual assault and other sexual offences in which the victim is under 18, the accused is 21 years of age or older in about two-thirds of the incidents, and therefore outside the proposed age of exclusion. Young males aged 13 to 17 are at the highest risk of sexually offending. You'll also find a supplementary slide on age of accused at the end of the presentation.

While we cannot predict the direct impact of Bill C-22 on the number and type of sexual offences reported to police, we are able to look at incidents of sexual assault in which the victim is 14 and 15. There were 788 such incidents in which an accused was identified, as reported by a subset of 122 police services in 2005. We found that in six in ten of these incidents, the accused was 21 years of age or older; in about one-quarter of the incidents, the accused was 16 to 20 years old.

Our subset of police reported data allows us to look at the relationship of the victim to the accused when an accused can be identified. The majority of sexual offences against children and youth are committed by someone known to them, more often by friends and acquaintances, about 50% of the time. Just over one-third are committed by family and just over 10% by strangers. We know that when kids are younger they are more likely to be sexually victimized by a family member. As they get older and more socially interactive, they are most likely to be sexually victimized by a friend or an acquaintance.

● (0910)

Turning to slide 4, we can turn our attention to trends, and we're able to look at 16 years of nationally representative data on other sexual offences. We see that there's been an overall decline of about one-quarter in the rate of these offences between 1990 and 2005. Despite this overall decline, however, in three of the four most recent years there have been slight increases. This overall decline is similar to trends in violent crime rates, where we've seen declines throughout the 1990s, followed by relative stability since 1999. You willl also find, in supplementary slides, information on trends in sexual assaults.

We can offer some insights into the offence of luring that the proposed bill touches on. These data are also from the subset of 122 police services in 2005, and although not nationally representative, they do provide a general sense of trends for these offences. Between 2003 and 2005 there were 116 reported incidents, of which 44 were reported in 2005.

We can also speak to the processing of sexual offence cases. There are three things that can happen to an incident when it's reported to the police: it can be cleared by charge, cleared otherwise, or remain unsolved. In 2005, next to robbery, the charge rate for “other” sexual offences was the lowest among violent offences, at 37%. What's noteworthy is the 44% decrease in charge rates for other sexual offences between 1990 and 2005. This is significantly larger than the 22% drop in charge rates for sexual assaults and the 4% drop in charge rates for violent crimes overall.

Remembering that only about 8% of sexual assaults are reported to police, and, as I've indicated, that other sexual offences are among the offences least likely to be cleared by charge, once cases do get to court, with the exception of homicide and attempted murder, sexual offences are the least likely to result in a conviction, compared to other violent offences. Overall, 49% of violent offences are convicted. This compares to just 39% of sexual assaults and 37% of other sexual offences.

Although conviction rates for sexual offences are low, once convicted they are dealt with harshly. Rates of incarceration are higher for these offences than they are for overall violent offences. For example, overall, the rate of incarceration for convicted cases of violent crimes is 35%. In the case of each sexual assault and "other" sexual offences the rate is 45%. It is higher for homicide, attempted murder, and robbery.

We also know from our court data that someone convicted of a sexual assault or an "other" sexual offence is more likely to get a longer prison sentence than cases of physical assault, including major assault; and "other" sexual offences, such as sexual interference, invitation to touching, and sexual exploitation, get longer prison sentences, on average, than cases of sexual assault. In 2003-04, on average, a person convicted of an "other" sexual offence and who was sentenced to prison had a sentence length of 529 days. This was up 117 days since 1994-95. This compares to an average prison sentence length of 212 days for violent crimes overall, and of 466 days in the case of sexual assault. Only homicides, attempted homicides, and robbery have longer average terms of imprisonment.

All sexual offences, be it either "other" sexual offences or sexual assault, are treated more harshly when the victim is 11 years and under than when the victim is 12 to 17 years old. For example, 47% of "other" sexual offence cases, where the victim was 11 or under, received a term of imprisonment. This was true for 39% of other sexual offences involving a victim of 12 to 17 years of age. Whether the accused is a family or non-family member also has an impact on whether the accused will receive a sentence of imprisonment. Upwards of 50% of cases where the accused is a family member get a term of imprisonment, compared to about 40% of cases where the accused is non-family.

In summary, Mr. Chairman, the data have shown that sexual offences are the least likely offence to be reported to the police. Young women aged 13 to 15 are the most vulnerable to sexual offences.

● (0915)

Roughly two-thirds of the accused are over the age of 21, where the victim was under the age of 18, and yet young males are at the highest risk of sexually offending.

Fewer incidents of sexual offences are being cleared by charge, and sexual offences have one of the lowest rates of conviction. However, when there are convictions, sexual offences are dealt with harshly by the courts, particularly when the victim is young and the accused is a family member.

Thank you, Mr. Chairman.

You'll find a series of supplementary points at the end of the presentation.

Thank you.

The Chair: Thank you, Ms. Barr-Telford.

To the Canadian Bar Association, you have three people here. Are you all going to present, or is there going to be one presenter?

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): We will each speak for about two minutes.

The Chair: Fine. That would be great, Ms. Thomson.

Ms. Tamra Thomson: I will start.

The Chair: Thank you.

If you want to introduce the topics of conversation that the other two members are going to present, go ahead.

Ms. Tamra Thomson: Thank you, Mr. Chair and honourable members. The Canadian Bar Association is pleased to have this opportunity to speak to you today in support of Bill C-22.

The letter we have provided to you analyzing the bill has been prepared by our criminal justice section, which has among its membership both crown and defence counsel, as well as by the sexual orientation and gender identity conference.

The mandate of the Canadian Bar Association is to improve the law and the administration of justice, and we have analyzed the bill within that optic.

I'm going to ask Ms. Gallagher to speak about the Criminal Code aspects of the bill, and then Mr. Kindred will address some things that we think would improve the bill even more.

● (0920)

Ms. Margaret Gallagher (Treasurer, National Criminal Justice Section, Canadian Bar Association): Thank you.

As we've set out in the letter that Ms. Thomson has referred to, the CBA is very mindful of the fact that children must be protected from sexual exploitation by adults. We are also aware that the existing age of consent might contribute to sexual exploitation in some cases.

It is a reality that some young people engage in responsible and healthy sexual activity within consensual age-appropriate relationships, and this activity should not be criminalized. If the age of consent is to be increased, it is also appropriate to increase the close-in-age exemption.

Because Bill C-22 does this in a fair manner, the CBA supports the amendments proposed in the bill. However, to ensure the objectives of this bill are met, it is important that the law be fairly and consistently applied.

Mr. Kindred will speak to this issue.

Mr. Kevin Kindred (Branch Section Chair, Sexual Orientation and Gender Identity Conference, Canadian Bar Association): The CBA is pleased to have the opportunity to present today on an important equality issue in this area as well. It's an issue that the legal community has been aware of for more than a decade. It's raised now before this committee, because for the first time in some time, Parliament is again dealing with the issue of age of consent. I am speaking about the discriminatory provisions around anal intercourse in section 159 of the Criminal Code.

Since 1995 courts have told us that section 159 violates the charter, discriminating against gay men by stigmatizing their sexual conduct. One might ask why this is still an issue if courts have told us since 1995 that section 159 should be of no force and effect.

Courts have still had to deal with section 159 since 1995. We saw it come up again in 1998 in Quebec, in 2003 in British Columbia, in 2004 in Alberta, and in 2006 in Nova Scotia. All of those cases are cited at footnote four of our submission.

I would particularly note that for the 2006 case in Nova Scotia, a self-represented individual had to take the issue to the court of appeal in order to have his conviction under section 159 overturned.

This is actually still a live issue. But regardless of it being a live issue in the courts today, the fact that a discriminatory provision still exists in the Criminal Code sends a message in and of itself that is inappropriate and discriminatory.

We have also heard there are objections being raised to dealing with section 159 in the context of this bill.

Of course it's not for a witness to tell the committee about its own procedure. I will say there may be ways this committee can deal with the section 159 issue that are within the scope of the bill before you today. It may be that it instead requires the political will of the government and the minister to either amend the bill or to deal with section 159 in some separate manner.

The CBA firmly takes the position that full equality requires the repeal of section 159 and that the time is now.

Thank you.

The Chair: Thank you.

From White Ribbon Against Pornography, Ms. Judy Nuttall.

Ms. Judy Nuttall (Coordinator, Affiliated with Citizens Addressing Sexual Exploitation, White Ribbon Against Pornography): Thank you for giving me the opportunity to make this presentation today.

Ladies and gentlemen, Concerned Citizens Against Child Pornography has worked in Barrie for over ten years to bring awareness to parents and to our community that children's safety can no longer be taken for granted. Working with the White Ribbon Against Pornography campaign, each year we deliver boxes of ribbons and information to school staff rooms. Letters containing white ribbons are sent to all members of Parliament. Boxes of ribbons with flyers have been available in banks, churches, and stores. Letters are sent to local and national TV, and interviews on local TV and Rogers—

● (0925)

The Chair: Excuse me, Ms. Nuttall, but perhaps you would slow down a little for the interpreters, please.

Ms. Judy Nuttall: Oh, I am sorry.

The Chair: That's not a problem. Just slow down a little.

Ms. Judy Nuttall: Okay.

Letters were sent to all provincial MPPs in Ontario, and in 2006 it was recorded in Hansard that by unanimous vote, the white ribbon from the White Ribbon Against Pornography campaign was to be worn for one day of that week. We also sent 8,000 letters from Barrie constituents to the judges of the Supreme Court, pleading for the age of consent to be raised, as the John Robin Sharpe case was debated.

Why are we doing this? In 1995 a judge ruled in Toronto that a man who had sexually abused a 14-year-old boy received minimal punishment. There was no concept of the agony of the victim. As well, 1999 brought the scourge of child pornography right to our door in Barrie, when Ivan Cohen was found guilty of possessing and producing child pornography. A jail sentence was ruled, but on being sent to the Ontario Court of Appeal, the sentence was commuted to house arrest, causing great anger locally. Then the case of John Robin Sharpe, with all its twists and turns, emerged before the public eye.

The Universal Declaration of Human Rights was and is being abused here in Canada. In exercising rights and freedoms, there must be accountability for the corrupt uses of personal rights that harm other people, especially children, and that abuse of all our rights. The rights of the individual have to be seen in the context of the ultimate good of the nation. The rights of the victim have to be considered against the rights of the offender. Without this, we lose our freedoms. We disintegrate into a justice system that has lost its way, that has lost sight of what real justice is.

The linchpin of the increase in child pornography centres on the age of consent. Canada has an age of consent to sex that is lower than in any other country in the world. Adults can legally engage in sexual activity with children 14 and older. The age of consent creates a large loophole in the law. Case: at 14, Canada's consent is lower than most western nations. There are no other western countries that have legalized sex as low as the age of 14. The *National Post* reports that a growing number of foreign men have used the Internet to lure Canadian children. And according to Concerned Citizens Against Child Pornography, reducing the age of consent is the key to the rise in Canada's pedophile crime, including Internet luring.

On asking my former MP about this, she replied that it was ancient law. So how many other ancient laws has Canada retained? The U.S.A., the U.K., and other countries have updated their medieval laws on marriage and sex. Why hasn't Canada?

The age of consent continues to be a legal loophole by which pedophiles are abusing our children. Action must be taken, and quickly, in order to protect and ensure the innocence of our children. Police Chief Fantino has said that even third world countries are more civilized and conscientious than ours is about our duty as adults to protect the most vulnerable component of our society, our children. According to Focus on the Family, a clear and present danger is facing our children. And Manitoba Premier Gary Doer has said that we believe the rights of children should be superior rights, in our country, to the rights of perverts.

In terms of development, a 14-year-old is not prepared for the responsibility of sex. Emotional, physiological, physical, mental, psychological, and spiritual maturity—all are factors over the next two to four years. A 14-year-old cannot understand or appreciate the danger of STDs, some of which are fatal, all of which play havoc with the lives of people who have been impacted by them.

Children abused in child pornography demonstrate multiple symptoms: emotional withdrawal, anti-social behaviour, mood swings, depression, fear, anxiety, a high risk of becoming perpetrators in later life, and destructive feelings of guilt and shame. Pornography desensitizes children.

Canada has cumbersome, outdated, time-consuming, ineffective, and expensive pornography investigation and laws. As the WRAP campaign flyer puts it, outdated disclosure rules force police to examine every computer file they seize before a charge is laid. Other western countries examine two or three files and then arrest the pedophile. The work of Project P and other similar groundbreaking endeavours are making clear progress in this very difficult and stressful protective work for Canada and Canadian children.

Finally, the “name and shame” move in England held a very apposite point, as this headline illustrates: “Named and Shamed: The MPs who won't back Sarah's Law”. This is with reference to the offenders' registry. It's similar to Christopher's law in Ontario and Megan's law in the U.S.A.

● (0930)

I call on the federal Parliament of Canada to bring in vital legislation necessary to raise the age of consent from 14 to 16 in order to protect the children of Canada, who are the future generation for this country.

Thank you.

The Chair: Thank you very much, Ms. Nuttall.

Now we'll hear Mr. Steve Sullivan of the Canadian Resource Centre for Victims of Crime.

Mr. Steve Sullivan (President, Canadian Resource Centre for Victims of Crime): Thank you, Mr. Chair.

It's a pleasure to be before the committee on this bill. It's one that, Mr. Chair, you and I have discussed in the past in your own attempts to pass similar legislation, which we supported. We supported as well the measures in Bill C-2, which this committee dealt with a couple of years ago and which I think provided added protection for children up to the age of 18, with more discretion, obviously, than this bill.

I won't say very much. It's rare that we come to a committee when everyone seems to agree, at least on the principles of the bill. There's not a whole lot for us to say.

I think I'll echo what Mr. Gillespie said about the issue of the Internet and the discussions that go on within those chat rooms between people who would seek to exploit children.

About the lower age of consent, I was at a conference recently with investigators and crown prosecutors who deal with these kinds of situations, and this was a topic of discussion. One of the investigators gave us a demonstration. He went into a chat room, posing as a girl who was 13. We could tell the number of men who wanted to initiate a discussion with that officer by the pings. It was just ping, ping, ping—one ping after another. It was quite disturbing to see. This was one o'clock in the afternoon, and to see that many people out there, many of whom would, I think, seek to exploit that child—

The officer talked as well about how, when they initiate discussions, some of these individuals will try to keep the discussion going with that child until they reach the age of 14. That was a concern as well. I think this bill will add a tool to the repertoire of law enforcement and will better protect children. It's important to keep the focus on the motivations of the adult and not on the consent of the young person. This is focusing on individuals who seek to exploit children for their own purposes.

I'll just briefly mention one other issue. We've recently testified before some your colleagues on the access to information committee, which is reviewing PIPEDA, the privacy legislation. We're trying to get the debate about privacy—in that case the privacy of Internet subscribers—expanded to include the need to protect the privacy of these children, whose images are being traded on the Internet like baseball cards. We have to begin to deal with the realization that we have young people who have access to Webcams, who are being manipulated by older individuals to share their photos. We need to begin to protect those privacy rights as well.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Sullivan.

From Justice for Children and Youth, we have Martha MacKinnon and Emily Chan.

Who will be presenting?

Ms. Martha Mackinnon (Executive Director, Justice for Children and Youth): I will. Thank you, Mr. Chair.

I would also like to express our gratitude for the opportunity to be here. Justice for Children and Youth is a legal clinic that addresses all of the legal regimes that affect children. In fact, we're Canada's only clinic with the breadth of the types of laws that affect children and youth that we deal with.

In addition, Justice for Children and Youth is a strong supporter of Canada's implementation of the UN Convention on the Rights of the Child, and for that reason we're particularly happy to be here, because the convention recognizes the balance both of the intrinsic individual rights of the child and of their need for special protections. So I thank you very much for the opportunity.

We have read Bill C-22 with those principles, this balancing in mind. I will apologize. We have prepared a written submission; however, I was unable to complete it in time for translation, so I have provided it to the clerk and I hope you will have the opportunity to look at it when it's in a suitable form for you all.

We have a few recommendations or positions relating to Bill C-22. The first position, which I believe everyone in this room shares, is that no one wants young people to be sexually exploited. We are also supporters of the amendments referred to by Mr. Sullivan in 2005 that set out criteria and broadened our understanding of what sexual exploitation might look like. And in fact those amendments specifically identified age and age difference as two of the possible criteria to be considered. We supported those amendments and are delighted they have been enacted.

Bill C-22 doesn't change our understanding of sexual exploitation. It does, however, broaden the protection against predatory luring for 14- and 15-year-olds. We support that as well.

I'm not going to go into our lengthy submissions on this point, but we agree with the Canadian Bar Association that this legislation is the opportunity—and there is a moral and I think a legal mandate—to repeal section 159 of the Criminal Code. That provision is, in our opinion, discriminatory. In fact, Justice for Children and Youth intervened at the Ontario Court of Appeal in the case that changed the law in Ontario, the case that has been referred to by the Canadian Bar Association. So I won't go on and make further submissions. As I said, they're in our written comment about that. I'll simply agree with the Canadian Bar Association.

I will, however, point out one piece of language, and that is that the government's backgrounder with respect to Bill C-22 suggests that the age of 18 is the age at which exploitative sexual relationships are legal. So I would point out that it's therefore not appropriate to be indicating that section 159 of the Criminal Code by its very nature is addressing exploitative conduct.

The next point I'm grateful to have the opportunity to make is slightly more complex. That relates to the close-in-age exemption. The close-in-age exemption, in my view, is a proxy for power imbalance. We assume—and I think mostly we're right—that people who are significantly older have more power, more ability to manipulate. It's a proxy for what we think is wrong.

We don't have rules about it if you're over 18. We've all seen relationships in which age isn't the determining factor for what creates a power imbalance, so it's problematic. As then Minister Toews suggested, sexually active 14- and 15-year-olds mostly are having their relationships with peers or cohorts, but not all—it's "mostly". In addition, again as then Minister of Justice Toews suggested, the intent of this legislation is not to criminalize teenage conduct, and yet the relationship of a 14-year-old and a 19-year-old, even if their birthdays are the same day, would in fact be criminalized.

● (0935)

The law likes ages because they're certain, they're easier to apply, and there is an attractiveness to them, yet they might not in fact reflect a relationship that is exploitative or has a power imbalance or is manipulative. Therefore, we have a suggestion that I think would allow our courts to look at the nature of the actual relationship in perhaps a more effective way. It is our submission that the sexual exploitation provisions be amended to say that an age gap of five years or more is presumptively exploitative. It's not just a factor to be considered; one can presume legally that it is exploitative.

Legally, presumptions are rebuttable; hence, if you had a relationship in which — We can all picture somebody who is as sophisticated, as in control, as mature, as someone who's five years older than they, and that would allow for that sort of relationship not to be criminalized.

Our last suggestion with respect to this bill relates to the past as well. Canada's laws with respect to sexual activity are complex. They're hard to follow. At one point in my career, when I was counsel to a school board, I actually drew a chart trying to show what was legal and what was not, because young people have difficulty understanding it. It won't be any easier if Bill C-22 is passed unamended. It's our submission that there needs to be a targeted public education campaign.

I think there are two targets. One is a general public education campaign for everyone, which may have a deterrent effect, but in any case will make it clear what the rules are, because they're somewhat complicated.

The second thing is that young people need to be addressed in a targeted public education campaign. They don't necessarily understand the rules that apply to them. One of the concerns—and I know others have expressed this to you—is that if you think it's illegal, you won't seek the help you need. You won't report to the police; you won't seek health information; you won't seek birth control information. You'll go underground. No one wants that, and it ought not to be the effect of Bill C-22, but it may well be, because it's going to be hard to understand.

In our submission, a campaign that fleshes out what exploitation looks like and what luring looks like and that helps young people to actually understand the rules that are going to apply to them and their relationships might have the effect—and I hope it would—of allowing young people themselves, through their own voices, to say, "Hey, you can't do that to me."

Thank you.

● (0940)

The Chair: Thank you, Ms. Mackinnon.

We will begin questions. Ms. Jennings is first.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much for your presentations.

Mr. Kindred, you referred to section 159 of the Criminal Code, which has already been found to be unconstitutional by several courts in Canada because of its discriminatory nature. You said that it was possible to repeal it without violating committee and House procedures. I would like to hear your suggestions on that.

We agree with the Canadian Bar Association and the other witnesses that the government should have corrected the bill. The government, for whatever reason, decided not to do so. We would like to know if it is possible to correct this bill.

[*English*]

Mr. Kevin Kindred: Thank you very much.

I should preface my response by saying I'm certainly not an expert in the committee's procedure, and I would also preface it by saying that the firm view of the CBA is still that the most appropriate response to section 159 would be a complete repeal. So I would far from suggest that any other measure would be a complete or appropriate response. However, I'm not sure that the same effect couldn't be accomplished by way of amendments to section 151, the section that does set out the age of consent defence for sexual offences. That section lists a number of sexual offences. I'm not sure that we couldn't accomplish the same end by adding section 159 to the list of offences in section 150.1. Again, that's something to consider as a way around. The CBA's position, though, is that the only really appropriate response is a full repeal of section 159.

Hon. Marlene Jennings: Thank you.

The other question that I have is for Ms. Mackinnon, Justice for Children and Youth.

You talked about how your organization was an intervenor in the Ontario Court of Appeal case dealing precisely with section 159. I'd like to ask if that was through the court challenges program, or do you have your own private sources of funding?

Ms. Martha Mackinnon: Justice for Children and Youth is a legal aid clinic. We are funded primarily, not 100% but primarily, by Legal Aid Ontario. And because we're a specialty clinic—it may be more than one area of law, but it's specializing in the laws that affect youth—we have a mandate to do test cases or legal work that will have a broad systemic effect to enhance both the rights and the protections for young people.

● (0945)

Hon. Marlene Jennings: Then the answer is no.

Ms. Martha Mackinnon: The answer is no, it was not—

Hon. Marlene Jennings: In your case, you're fortunate enough to have a specific mandate given to you by the government, I'm assuming, and the budget in order to carry out these test cases, for instance.

Ms. Martha Mackinnon: I was going to say yes, but when you broadened it to "these test cases" we sometimes do have court challenges—

Hon. Marlene Jennings: Or specialty cases.

Ms. Martha Mackinnon: We have obtained court challenges funding in the past.

Hon. Marlene Jennings: You have.

Ms. Martha Mackinnon: Yes, we have.

Hon. Marlene Jennings: Could you give us an example of the nature of the issue?

Ms. Martha Mackinnon: Yes. That was the repeal of section 43 of the Criminal Code, the corporal punishment offence. That was funded by court challenges.

Hon. Marlene Jennings: Thank you.

Those are my questions for now. If I have any time I would turn it over to Mr. Lee.

The Chair: Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I'd like to direct a question to the Canadian Bar Association or any of the legal technical heads around the witness table.

Ms. Mackinnon has mentioned this concept of a presumptive exploitive relationship. I'm attracted to the concept, because if a court were confronted with a real relationship between, let us hypothetically suggest, a 15-year-old and a 21-year-old, which by all accounts looked like a real relationship and where the charges were generated by suasion of family or something, not necessarily by the 15-year-old complainant—let's say he or she wasn't a complainant but the charges just got generated—it seems to me that a court would look somewhat sympathetically at a defence that was based on a constitutional freedom of association, personal freedom of the 15-year-old and of the 21-year-old. I'm suggesting here the potential availability of some constitutional defence that would be analogous in impact to the impact of the presumptive exploitive relationship concept suggested by Ms. Mackinnon.

Would you care to comment on whether or not the rigid close-in-age exemption would be vulnerable to a Constitution-based defence in a small number of cases, but hypothetically out there?

Ms. Tamra Thomson: I will address that, if I may.

Certainly we were very happy to hear the suggestion of a presumption. The close-in-age exemption is a very important aspect of the CBA's consideration of Bill C-22, and we consider it essential. Anything that would allow a defence to be raised in the appropriate circumstance, I can say, should please both crown and defence and obviously maintain judicial discretion.

If a relationship is not shown to be exploitive, there should be a defence. People should not be criminalized for non-criminal activity. As my friend has pointed out, presumptions are certainly rebuttable. If it is shown to be exploitive, the purposes of the legislation would still be met.

You're asking whether the close-in-age exemption must be rigid. It would be my response, and I think I would speak for both crown and defence when I say this, that under the charter rigidity in the law is not something we should strive for, but there should be flexibility and tolerance. Certainly no one will escape a penal consequence if in fact a relationship is shown to be exploitive, regardless of the age difference. But there ought to be the lack of rigidity rather than—

● (0950)

Mr. Derek Lee: If the rigidity—

I'm sorry. Do we have a time issue here?

The Chair: It is a time issue. I know that probably Ms. Mackinnon wanted to comment. Your question was directed to certain individuals?

Mr. Derek Lee: I was just going to do a bit of a supplementary on the same issue to Ms. Thomson, but I can come back.

The Chair: Your time is over, but we'll get back to you.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): She will start and I will use the remaining time.

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good morning. I would like to thank you all for the quality of your presentations. I think we all support this clause in the bill.

We discussed statistics earlier on, and you yourselves have already presented other statistics. It would seem that only 8% of sexual offences are reported to the police. Once they were and charges were laid, etc., statistics show that 62% of reported sex offences, in 2002-2003, were either stayed or did not go any further.

Only 8% of cases are reported, and out of that, 62% do not make it to trial or do not lead to a conviction. We can adopt any legislation we like, but we still need to do more.

What do you propose to better protect our children? My question is for Ms. Mackinnon or Ms. Lynn Barr-Telford.

[*English*]

Ms. Martha Mackinnon: My suggestion was at least to begin with the public education campaign. I really believe that people are —in fact, you've heard it from others—confused about what the laws actually are in Canada. They're complicated and difficult.

I believe that young people themselves need to feel empowered. You've also heard from Ms. Barr-Telford that the largest part of the problem is from within families, and there are all kinds of reasons that young people don't report within a family. We have certainly represented young people whose mothers will take strong steps to discourage the young person from reporting criminal and inappropriate behaviour from a father towards a young daughter because the mother doesn't want to lose the income.

I've had calls myself from very young teenage girls who don't want to report because what happens is that they get taken into care, rather than the older family member being excluded from the home. Within a family, it's simply complicated, and it's very difficult to know. But I think the first step is public education.

The second step probably relates to hearing and giving more credence to the voice of young people themselves. We have been working on allowing young people to testify in ways that are safer for them, and we need to continue on that path.

[*Translation*]

Mrs. Carole Freeman: Thank you.

Regarding the 62% I just mentioned, do you know why these cases go no further or are stayed?

[*English*]

Mrs. Lynn Barr-Telford: What I can speak to is what we know and what we've seen in the data. I'll reiterate some of the information that we do know in terms of statistics.

We do know from our 2004 general social survey on victimization —this covers the population for ages 15 and over, it doesn't cover the population under the age of 15—that 8% of sexual assaults come to the attention of the police. That we do know. We know that once the incidents are reported to the police, there are three things that can happen: they can be cleared by charge, cleared otherwise, or unsolved. We know that the charge rate for other sexual offences was low relative to other violent offences. So we do know that.

What we can't speak to are underlying reasons for why certain incidents may or may not be resulting in a charge or the laying of a charge. What we can speak to a bit—and I will draw your attention to one of the supplementary slides in our data package—is what we've learned from our general social survey of 15-year-olds and older on reasons for not reporting to the police. That's on page 9.

I'll reiterate that this covers the population for ages 15 and over, and it provides some information—from those who did not report the incidents to police—on the most frequently occurring reasons. You'll see that the victim saying that the incident was not important enough to the victim to report it to the police, that it was dealt with in another way, or that it was a personal matter are among the most frequently occurring reasons being cited for not reporting to the police.

As for the—

● (0955)

[*Translation*]

Mrs. Carole Freeman: Ms. Barr-Telford, I did not ask you to repeat the information you've already stated; I understood that. My question rather has to do with other statistics we heard regarding section 153, dealing with sexual exploitation. According to these statistics, once a case is reported, up to 62% of charges are either stayed or withdrawn. That's already at another stage. Eight per cent of cases are reported to police and could be brought before the courts. However, once they are, 62% of them are either stayed or withdrawn.

Do you have any information for us on that?

[*English*]

Mrs. Lynn Barr-Telford: We do have data—I believe we've brought some with us—and we can supply others on the numbers of cases that are withdrawn or stayed, but we can't speak to any underlying reasons for why that happens. We can count the incidents but not speak to the reasons for why.

[*Translation*]

Mrs. Carole Freeman: You don't know on what grounds these cases are stayed?

[*English*]

Mrs. Lynn Barr-Telford: No, we do not.

[*Translation*]

Mrs. Carole Freeman: So, very few cases are reported to the police, and once they are, once they get far enough along, they are then stayed.

Do I still have some time, Mr. Chairman?

The Chair: Yes.

Mrs. Carole Freeman: Regarding Internet luring which you referred to, Mr. Gillespie, do you have any further statistics on the number of people or children involved? I know this type of practice is widely condemned. It is often discussed, but the talk isn't supported by anything. Could you refer us to a study on this matter? It is something that matters to me a great deal, and we've denounced that type of behaviour at every turn, but we never seem to be able to get additional information or specific studies on the extent of this problem.

[*English*]

Mr. Paul Gillespie: Mr. Chair, the problem with the Internet and it being relatively new technology, coupled with the fact that children of very tender years, again, do not generally report and aren't likely to follow through on charges for a number of reasons.... The short answer is there are no specific studies that I'm aware of that can directly answer your question.

I can simply speak from my own experience in relation to why it seems like the rate of reporting is so low, and then, once reported, why it seems like most charges aren't followed through on. Again, I can only speak from my particular experience in those cases.

[*Translation*]

Mrs. Carole Freeman: I appreciate you sharing your personal experience with us, as several have done before you. However, at this stage in our committee's deliberations, we would expect a stronger case supported by specific data. We need to go further than describing the personal experiences of citizens in this country. We need more substantial studies.

This scourge of Internet luring requires in-depth studies, and we need to find a way to address the problem. What do you think?

[*English*]

Mr. Paul Gillespie: Again, the technology being so new, the level of law enforcement that is capable of dealing with it, the number of officers and actually cities and law enforcement agencies in Canada that are trained to deal with it.... It is simply a newer phenomenon, this whole Internet luring thing. Thus, the numbers and the studies simply haven't been done yet, because it is so new. That's about the only thing I can say about it.

● (1000)

The Chair: Thank you, Ms. Freeman.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you all for being here.

I'd like to follow up, Mr. Gillespie, with you, and with Ms. Barr-Telford.

I understand and I agree with you that it's just about impossible at this point. But Ms. Barr-Telford, do we have any numbers at all? You gave us the percentage, that about 90% of the sexual assaults and exploitation of youth and children are by family members or close associates of family members, leaving 10% that are basically by strangers. Of that 10%, do we have even a rough idea of how much would be as a result of luring over the Internet?

Mr. Gillespie, as well, have you seen any statistics or any sense of that?

Mr. Paul Gillespie: No is the short answer. Again, it's so new that the numbers would probably be less than, or just around, 100 cases in Canada that officers might have been involved in, cases of active Internet luring. Typically they're the ones we read about, or they're in the media. Again, it has just been a very much under-reported offence.

Mrs. Karen Mihorean (Assistant Director, Canadian Centre for Justice Statistics, Statistics Canada): All we have on luring are the actual numbers that Lynn gave you of charges from our police statistics. We don't have it broken down by relationship.

Mr. Steve Sullivan: Could I just quickly add a point there? I think when you look at how young people define their use of the Internet, if they've been chatting with someone for six months, he's not a stranger. He is a friend; he is someone they know. So how we might define “strangers” and how young people define “friends” and “colleagues” is quite different.

Mr. Joe Comartin: Within the luring charges—and again, Mr. Gillespie, if you have any comments on it—is there any sense of how many of them, if you take the 100 cases, are domestic and how many are international?

Mrs. Lynn Barr-Telford: No, we are not able to provide that information. The only information, as Karen mentioned, that we have at the moment is the number of offences of luring that we're able to present.

Mr. Joe Comartin: Mr. Gillespie, have you any sense of, of those 100 cases, how many would be domestic and how many would be international?

Mr. Paul Gillespie: I know there have been some international ones, which are, again, well publicized. The majority would be domestic. Certainly in the United States, where these types of cases have been investigated more thoroughly and with more experience than us for the last several years, they're typically out of state but simply within their borders. They're not very often international.

Mrs. Karen Mihorean: What we could do is look at the 116 cases of luring that we have, and if there has been a charge, we could look at the relationship through our police-reported data. We'd be happy to provide that to the committee if there is some information there. It's only 116 cases, though, that we do have since 2003.

Mr. Joe Comartin: Thank you.

Mrs. Lynn Barr-Telford: That would be information on relationship, not information on whether it was international.

Mr. Joe Comartin: I understand.

Ms. Barr-Telford, with regard to section 159, on anal intercourse, I have statistics up to 2003-04, showing that in 2003-04 there were 78 not convicted and two convicted, so there were 80 cases in that year. Do you have statistics for 2005 and 2006?

Mrs. Lynn Barr-Telford: No; 2003-04 is our most recent year of available data.

Mr. Joe Comartin: Mr. Kindred, with regard to that charge, do I understand that the Bar Association's position is that it should be completely taken off the books, not just the age reduced to 16, if we go with age 16 on this bill?

Mr. Kevin Kindred: Yes. The CBA takes the firm position that real equality requires the complete repeal. There are other aspects of section 159 that are also problematic for other reasons. So a complete repeal really would be the only full and workable solution.

Mr. Joe Comartin: Switching to another point, Ms. Mackinnon, is your agency the one that Wilson started, way back when?

Ms. Martha Mackinnon: I'm going to say yes.

Mr. Joe Comartin: Does he take credit for having set it up?

Ms. Martha Mackinnon: That would be the right answer. In fact, when he was an undergraduate law student, he wrote a paper saying that there should be such an organization. He didn't, in fact, legally create it, but it for sure was his idea, and he does talk about it with pride, I'll say.

● (1005)

Mr. Joe Comartin: Is he still involved?

Ms. Martha Mackinnon: No.

Mr. Joe Comartin: To the Bar Association—and Mr. Quist, you may have some comments on this—this is in regard to the whole issue of youth being reluctant, even resistant or maybe in denial of needing health care, feeling that if he or she got involved in the health care system it would result in either themselves or their partner being charged. I've been looking for a mechanism, either amendments to the code, amendments to the Canada Evidence Act, that would make any information that they gave not compellable, but admissible if it was given voluntarily.

Has your agency or the Bar Association looked at that issue? It was up before the committee once before.

Ms. Martha Mackinnon: We have not. I have not actually written a brief or a clear position on that. We have paid attention to the desirability of creating safe environments for young people to testify and for their evidence to be given the same weight as adult evidence. That part we have paid attention to, but your suggestion is certainly worth our following up on.

Mr. Joe Comartin: The Bar Association.

Mr. Kevin Kindred: We haven't considered the issue in any formal way, and we have no submission, really, to make on the issue, but I perhaps can sort of flesh it out a little bit.

The obligations that a doctor would face to report fall under provincial legislation, child and family protective legislation. They put an obligation on doctors to report situations in which they feel a child is at risk of abuse, essentially. In reality, that's not necessarily the same as whether there were criminal offences committed. There might be cases where criminal offences have been committed that are abusive. There might be cases where criminal offences have been committed where there is no ongoing risk of abuse. And there may be cases where there is ongoing abuse, but no Criminal Code offence has been committed. So the two aren't precisely and identically the same issue. No matter what happens with the age of consent in Parliament, it will still fall to doctors to make those judgments.

Addressing it through the Canada Evidence Act would address part of that concern, but most of it would probably fall to the provinces.

Mr. Joe Comartin: I have a quick question to Ms. Barr-Telford.

This is a chart, which we were given, I think, Mr. Sullivan, from your agency when we were doing Bill C-2, the child porn bill. It's a chart of all the countries in the world and their ages of consent.

Has *Juristat* done a look at that around the globe, what the age of consent is?

Mrs. Lynn Barr-Telford: No, we haven't.

Mr. Joe Comartin: Mr. Sullivan, did we get this from you?

Mr. Steve Sullivan: No.

Mr. Joe Comartin: Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Comartin.

Mr. Moore.

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

Thanks to all the witnesses. I certainly heard some thoughtful insights today on the bill, and some important issues have certainly been raised.

I want to focus on the reason we brought the bill forward, and that was to prevent the exploitation of children, 14- and 15-year-olds, from adult sexual predators. That's the main issue and the main reason this bill was brought forward.

Mr. Gillespie or Mr. Sullivan, you've dealt with victims of crime, each of you. Why is there the need to raise the age of consent? We know there were measures that were brought in on Bill C-2. There is the issue of luring. Yet there was always the call that to really protect young people, 14- and 15-year-olds, the age of consent had to be raised.

Maybe you could just speak to what the current limitations are in the code that prevent us from being as effective as we could be once the age of consent is raised to 16.

Mr. Paul Gillespie: From the investigative standpoint of a front-line officer, it is heartbreaking to see the results of some of the life decisions that have been made by children of 14 and 15 years old because they were allowed to. In my opinion, children are often simply not capable of or able to make such serious life decisions, nor should they be able to. On the other side of the coin, you have very seasoned, mature adults who are very focused on having some kind of a relationship with a child through conning, persuading, or coercing a child into doing things.

On the thought that there could be some consent, I don't think a child under the age of 16 should be legally allowed to give consent. I believe it simply goes against the moral fabric of Canadians that somebody under that age might be able to be involved in a relationship with an older person, typically a man, with all of the repercussions that come from those relationships.

It is heartbreaking to be involved in an investigation and see the families come to us, expecting us to do something, and we can't do anything. I again think there is a general lack of knowledge in Canada on exactly what the laws actually say.

Again, this is a personal point of view on what it's like to deal with these situations.

Steve.

● (1010)

Mr. Steve Sullivan: I would echo what Paul said.

The justice system is not a pretty place for victims of crime, especially young victims who have been abused or sexually exploited. I think it's one of the reasons the reporting rates are so low, and it's one of the reasons the numbers get even lower as it proceeds. It's a difficult thing.

For us, the issue is whether or not adults should be having sex with children 14 and 15 years old or younger. I think most Canadians would say no to that.

It's tough. When you get into the close-in-age exemption, we all agree there should be an age when young people can experiment with their peers. Personal relationships are difficult. They're not defined in black and white, as the law often demands, but I think at some point we have to make the cut-off.

Although I haven't considered the presumptive issue, one of the concerns I would raise is on putting young people into the courtroom to possibly testify on these things, to answer questions on whether or not they were exploited, and those kinds of things. I think if we simply cut off the age at five years, in many cases we would spare young people from going through that process.

There are going to be cases, as Mr. Lee has mentioned. Whatever the laws are, there are going to be cases where there is a grey area.

Mr. Rob Moore: Thank you both for that.

There's a message that we want to send out.

To both of you or to anyone else who has expertise in this area and wants to comment on it, we heard testimony today and we've heard testimony before about individuals who develop a relationship with a 13-year-old child, and they wait until he or she is 14. To be clear, this legislation is targeted at adults who want to exploit 14-year-old and 15-year-old children and take advantage of Canada's age of consent as it currently stands.

How fast is the message going to get out to the community you talked about that is behind what we see on the Internet? We heard prior testimony that they perhaps know the law better than anyone around the table as to what the age of consent is and what types of sentences people in Canada receive. They're very aware of the situation.

We also heard testimony that the average Canadian is not aware of it. To use the situation of the 45-year-old man, they think it is illegal for that person to have sex with someone who's 14 years old.

If this bill passes, how soon is that community going to get the message that things have changed and Canada is not the destination it was for people who want to have sex with 14-year-old and 15-year-old children and are significantly older than them?

Mr. Paul Gillespie: If I might, at the speed of light is the short answer, at the speed that the Internet allows.

The one thing I have learned about the criminal element and those who would use computers and the Internet to facilitate their crimes is that they use it very well. There is a tremendous networking capability, and intelligence passes back and forth. They have news groups, chat rooms, and bulletin boards for anything and everything. Every time I give a press conference different chat rooms go up, and exactly what I said appears on some of these bulletin boards.

I think they will very quickly get the message, and I think it's very important that they do so. It would send a very strong message.

Mr. Rob Moore: Do I have time for one more question?

The Chair: Quickly.

Mr. Rob Moore: I want to ask a question to the CBA.

Mr. Kindred, I don't know if you remember me, but I remember you from law school at UNB, when you were a bright up-and-coming law student.

● (1015)

Mr. Joe Comartin: We won't hold that against him.

Mr. Rob Moore: We have an age of consent now; it's 14. We've heard that there are always going to be challenges when you have a “line in the sand” type of thing. We're raising it to 16, and the close-in-age exemption is five years. Does the CBA have any comment? I know you say the support, the close-in-age exception—On that close-in-age exception, should it be larger or should it be smaller?

If there's time, anyone else can comment on whether the close-in-age exemption should be greater than five, less than five, or if five is a good, approximate—that takes into account the intent of this legislation. It is not to criminalize young people from having sex, but to prevent older people from victimizing young people.

Mr. Kevin Kindred: I appreciate that the question was directed at me, but Ms. Gallagher is more an expert on the criminal issues, so I'll defer to her.

Ms. Margaret Gallagher: Thank you.

Certainly the close-in-age exemption is essential in the CBA support. We are satisfied with the five-year exemption; we feel that it is realistic and it is fair.

Mr. Rob Moore: Okay.

The Chair: Thank you very much.

Did someone else want to respond to that point?

Ms. Mackinnon.

Ms. Martha Mackinnon: If I might point out, there are lots of kids in the same secondary school who are five years apart. I think it's important to know that especially people coming from different countries and different education systems may arrive at different grade levels and they may think of themselves as social peers, though chronologically they may well be five years apart. Again, that's the reason we suggest, as opposed to a hard and fast age rule, that it merely be a rebuttable presumption.

The Chair: Thank you, Ms. Mackinnon.

Mr. Bagnell.

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

I'm only going to be about 30 seconds, and then I'll let Mr. Lee have the rest of my time.

I wanted Judy Nuttall to know that her organization is very effective. I'm from the farthest riding from Ottawa. I have all these ribbons and the big banner from the Catholic Women's League of Canada of Whitehorse, Yukon. I always want my constituents to know they've been heard, so they've been heard here in Parliament.

The Chair: Mr. Lee.

Mr. Derek Lee: Thank you.

I'm reading Bill Mooney's ribbon.

I have two quick questions and they're back on the subject I had left off on in my previous line of questioning. I support the bill, certainly I do, but I'm probing it here to make sure it's technically proficient in accomplishing the result.

The first question follows up, and it's to Ms. Gallagher. If a court were to find, on an individual basis, a constitutional defence in the way that I described the last time, essentially based on a charter and a real relationship between let's say a 15-year-old and a 21-year-old, outside the five-year exemptions, would that decision undermine the whole law? Or could it just be done on an individual basis, based on the existence of what the court felt was a real relationship? That's the first question.

Ms. Margaret Gallagher: Perhaps I misunderstood your question earlier. I had taken you to mean a presumption beyond the close-in-age exemption, and I just wanted to correct that.

I don't know the answer to that question. I do know that in the past, based on past law, what we have agreed to would pass constitutional muster, we believe. You're asking something that obviously needs further discussion. And the nature of the presumption would vary, if it were to be a presumption of a relationship with greater than the close-in-age exemption.

Mr. Derek Lee: My point was that using a presumption technique might save us from the problems of the rigidity, and that's the point Ms. Mackinnon had made.

Ms. Margaret Gallagher: Again, thank you for the opportunity to clarify that. Certainly we stand by our position.

Mr. Derek Lee: You support the close-in-age exemption—it's fair and—

Ms. Margaret Gallagher: We take no issue with the close-in-age exemption as proposed.

Mr. Derek Lee: Okay, that's it. Gotcha.

In terms of sexual assault, the general provision involving sexual assault and the age of consent, I realize there are other sections of the code dealt with in this bill that will provide additional protection to 14- or 15-year-olds, but strictly in relation to the sexual assault provision, from where we take this consent. That's why we're using the consent concept; that's where it comes from, because in the other sexual offences, consent is not an issue or not usually an issue, so the sexual assault section deals with and involves a complainant. You have to have a complainant of that age. In the event we don't have a complainant, in the event 14- or 15-year-olds say they are not complainants, regardless of what you say, this is a real relationship, and they are not complainants. My question is, does the whole protection fail for those 14- or 15-year-olds if they say they are not complainants? The section does use the concept of complainant.

● (1020)

Ms. Margaret Gallagher: Yes, it does, and by definition in the Criminal Code, a complainant and a victim are the same.

To answer that question, that's a decision a court would have to make.

Mr. Derek Lee: So we're not clear here. This hasn't come up before?

Ms. Margaret Gallagher: As to whether....

Mr. Derek Lee: To your knowledge. If an individual says they are not a complainant, there's no case.

Ms. Margaret Gallagher: Certainly the state of the law—All that is changing here is the age of consent. The notion that somebody who was under the age of consent could, under existing law, come in and say they were not a complainant hasn't changed.

Mr. Derek Lee: Because the section doesn't refer to a person of that age. It says “a complainant”.

Ms. Margaret Gallagher: I understand.

Mr. Derek Lee: If the individual says they are not a complainant, do they therefore lose the protection of the law, because they want to lose the protection of the law?

Ms. Margaret Gallagher: But then that becomes an issue for police and crown and discretion in the eyes of the authorities.

Mr. Derek Lee: Yes, but we're trying to impose protection here. If the person on whom we're trying to impose the protection rejects his or her circumstance as a purported complainant, have we lost our protection? Do you understand my question?

Ms. Margaret Gallagher: I understand your question, sir.

The CBA understands that children, young people, are sexually exploited, and there is a need to protect them. We feel the existing law has done so, and effectively the new proposal isn't going to change the mechanism by which that is done. It is changing some of the logistics of it in the sense that the numbers have changed. It will catch a different number of people. But the actual functioning of the law, as I understand the law, has already been found to be sound, and the CBA is not taking a position to argue that this particular mechanism is unsound.

Mr. Derek Lee: Thank you.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I simply want to make sure that I understand this correctly. Otherwise, perhaps Ms. Mackinnon or the Canadian Bar Association could provide greater clarification.

What would be the advantage of having a presumption, which I would imagine would be rebuttable, within this bill, instead of a clearly established rule of law? As far as I'm concerned, it is the first I have heard of this. Am I right in thinking that you seem to be encouraging us to support a presumption rather than a clearly prescribed rule of law? If so, what would the advantage of that be? Did I understand what you are saying correctly, or did I misinterpret your comments?

I'll also have one other question, which will be brief.

[*English*]

Ms. Martha Mackinnon: You are understanding me correctly. I am saying that from the point of view of Justice for Children and Youth, a rebuttable presumption is preferable to an absolute rule, because we are all trying to prevent exploitation, and it's hard to get hold of, so we use age as a proxy, not because we actually know for sure it's exploitative.

In our view, the autonomy of young people must be recognized. Their individual rights—If they are not being exploited, if there is no exploitation, then it shouldn't be a criminal activity.

So we would prefer a presumption that would allow for young people who mature in different ways in different circumstances. Some have less emotional maturity and greater physical maturity. Some have greater intellectual maturity. They develop in different ways at different times, and if we're trying to get at the heart of their individual sexual relationships and not criminalize behaviour that was not exploitative, not manipulative, not part of a power imbalance, then that is denying the autonomy of the younger person.

● (1025)

[*Translation*]

Mr. Réal Ménard: Would the presumption be to the effect that if an adult has sexual relations with a 14-year-old, the relationship is exploitive? What would the presumption be, according to you?

[*English*]

Ms. Martha Mackinnon: The presumption would be that for what is now absolutely in the bill a prohibition—it's not actually five years, if I'm right, but less than five years, so four years plus 364 days—if the age gap is larger than that, one would presume there is sexual exploitation.

It is only through evidence, whether the evidence is found through the non-complaining young person, or wherever the evidence is found—in journals, in the observations of others—That can be tested by a trial judge. In our experience, trial judges are very good not only at knowing whether people are lying—that's more straightforward—but they can detect whether someone actually is being manipulated.

[*Translation*]

Mr. Réal Ménard: Do I still have some time? I do not want to go over my allotted time, Mr. Chairman.

It depends whether we're dealing with a legal presumption or not, but presumptions can hold pitfalls when you look at the way the law works. I think that for the Canadian Bar Association representatives, especially if we're dealing here with a rising star and someone who is particularly brilliant as Mr. Moore said at the faculty, there are various types of presumption. It is the first time I've ever heard of this. I would need to think about it further. It may be worthwhile, but rebuttable or non-rebuttable presumptions may give the Crown certain options or not. Once we read your brief, perhaps we'll understand this better.

If I still have some time, I'd like to ask you one last question. Otherwise, I'm in your hands, Mr. Chairman.

None of the witnesses have explained this to us... I will be 45 in May. In my cohort, when I was 14, 15 or 16, early sexual relations were rather more the exception than the rule. But we see the statistics today. Perhaps it depends on a person's environment, their past history or whether they're good looking or not—I don't want to get into the various reasons why—but in your opinion, why is it that, from a sociological standpoint, young people are having early sexual relations? You don't have to name any names; I'm only appealing to your sociological experience.

[*English*]

Ms. Martha Mackinnon: And I certainly don't need to identify my own experience either.

I believe that the age at which young people first engage in sexual activity is fairly culturally based. Young people often do what their peers do. They often—

Well, here's an example that doesn't even occur in Canada. In refugee camps, you will find young people engaging in sexual activity and becoming pregnant at extremely young ages, in part to reproduce their tribe. There is something highly survivalist about reaching out and recreating those people who have been victims of genocide or other atrocities. That's the safest example, because we can all understand that one. We might not think it's the very best way for 11-, 12-, and 13-year-olds to be behaving.

The other thing is that young people, through nutrition and a variety of other things, are in fact reaching puberty sooner than they did many years ago. So there are a variety of reasons, some individual, some cultural, some physically developmental.

But the age at which young Canadians on average first begin to be sexually active is about 14. That, of course, corresponds to what, as of today, is the age of consent. It's in our brief. I can't remember, but it's 14.1 years for one gender—presumably that's girls—and something like 14.5 years for the other gender.

● (1030)

Mr. Réal Ménard: Merci.

The Chair: Thank you, Mr. Ménard.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you very much.

First of all, I'd like to extend my congratulations to Mr. Gillespie on moving into this new position in the new battle taking place. And thank you for the six years of hard work in the area where you worked in Toronto. I'm well aware of how difficult it was for you and your staff over those years to deal with this evil thing of child pornography. I just want to extend our best wishes in your new work, and thanks so much for your past work. Nationally, your efforts have awakened a lot of people to the seriousness of this problem. You've done very well on that. So I congratulate you.

I have a short question for the people from Statistics Canada.

Ms. Barr-Telford, do you have any indication of how many 14- and 15-year-olds are living in a situation where they have given their consent?

Mrs. Lynn Barr-Telford: A more specific definition of that is that we do have information on the proportion of 15-year-olds, for example, who are in a married or common-law situation, and it's 0.07%. So it's about 72 per 100,000 population. That's for 15-year-olds.

Mr. Myron Thompson: Okay, but you're not aware of any 14-year-olds?

Mrs. Lynn Barr-Telford: There were none.

Mr. Myron Thompson: Okay, thank you.

In my years as a principal of a junior high school, I ran across five serious occasions that I can remember when 14- and 15-year-olds had moved out of their homes and taken up residence with an adult. In every case I dealt with, it was a female taking up residence with an adult male.

In my experience with that situation, I saw a very serious thing taking place, and that is how it victimized the family, the mother and the family of the child. I had no authority to do anything about it. The mom and dad who wanted to remove their child from that situation had no authority. The police could not act on their behalf.

You can only imagine what a parent could be living with at night, night after night, wondering what's happening with their 14-year-old daughter who's taken up residence with a 25-year-old male who has a constant flow of friends and parties and what not, how devastating that could be on them.

I'd like to ask Mr. Sullivan, have you any evidence of the number of people who are victimized, who aren't the teenagers, but mostly parents, in close relation to these people?

Mr. Steve Sullivan: I don't have any studies, but I can tell you generally, working with victims, that victimization goes beyond the immediate victim, whether it's sexual assault, sexual abuse, assault, or even homicide, that families are tremendously impacted by the suffering of their loved ones.

I can tell you, we deal a lot with families of homicide, and when the victim is a child, the suffering of the parents is incredible. It leads to breakups of marriage and breakdowns. I've known families who have committed suicide. So the suffering of one's child has a tremendous impact on families. I don't have any studies as evidence, but anecdotally, I'm sure there are studies out there that can speak to that issue.

Mr. Myron Thompson: I'm sure if everyone just stopped and thought about it for a moment, these are children, 14- and 15-year-olds. They have a mother and a father. I have children, and I have to say that sometimes you worry yourself sick over some of the things they get involved in. But when you have no authority as a parent to do anything about it, that's just wrong.

In my opinion, this bill will help a great deal in removing that lack of authority, lack of ability to work with your children, your kids. That alone makes this bill very worthwhile, in my opinion.

Is there anybody who would disagree with that statement among the witnesses today? If so, speak up.

● (1035)

The Chair: It doesn't seem that anybody is disagreeing with you, Myron.

Mr. Myron Thompson: Then I would suggest that when we look at it from the point of view that we on this committee are here to try to bring in some legislation that will reduce the number of victims, and everybody agrees that this will, then for heaven's sake, let's move forward and get the job done. It just makes good common horse sense.

Those five families resulted in three suicides and two family divorces, all because a 14-year-old or 15-year-old could make up their own mind and consent to such an activity. That's what caused it. Let's get rid of it. Let's pass this bill. Let's move forward and reduce the number of victims in our country. That's what our job is, and we're not doing a very good job of it when we allow these things to exist.

Thank you.

The Chair: Thanks, Myron.

I think for the most part, in the sentiments here at this table, it seems like there's a fairly broad consensus of support, with some exceptions.

I as a former police officer certainly recognize the anguish that parents go through in trying to recover a child from a really delicate situation and they're a 14- or 15-year-old. That's a pretty common theme, I know, among police officers.

Mr. Myron Thompson: Just as a short comment, Mr. Chair, I couldn't believe the number of restraining orders issued to parents to keep them away from their own kids. That was amazing. That shocked me.

The Chair: I know. That's a reality, but maybe this will change it somewhat.

I think almost everyone has had an opportunity to ask questions, with the exception of Mr. Brown and Mr. Petit.

Mr. Brown.

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

I've enjoyed hearing the responses so far, so I'll try to touch on an area that hasn't received any questions so far. Maybe I could direct this toward Mr. Sullivan and Ms. Nuttall.

Obviously, one angle we have to look at this from is that of the victims. I wanted to get some information shared with the committee on what this means for the victims of sexual exploitation, of children who are exploited. What are the long-term consequences for someone who might have been abused before, but who didn't fall under the previous law? When we look at raising it to 16, what is that going to do in terms of the protection of those 14- and 15-year-olds who may not have been protected before? How is that going to help communities? How is that going to help families? How is that going to help neighbourhoods?

Perhaps I could get a response from Mr. Sullivan and Ms. Nuttall on that point.

Ms. Judy Nuttall: The work that we've been doing in Barrie has really been trying to wake parents up, to wake the community up to what is going on, so that they can begin to face the situation. As Mr. Gillespie said, people just won't believe it. If a statement or a strong move is made by Parliament, they will see that something is done, and it will reinforce their ability to deal with these situations.

One of the difficulties with children who are—I'd like to describe one child I've taught, only please don't go back to the school board I come from, because I'll be in terrible trouble and get kicked out.

I came across a girl who was extremely—

Hon. Marlene Jennings: On a point of order, Mr. Chair, I just wish to point out to Ms. Nuttall that these are public hearings. If she's concerned that she could get into trouble by giving out information, then she might want to think twice.

The Chair: Maybe you can couch your statement without making any reference to anyone.

Ms. Judy Nuttall: Okay.

Let's say there is a girl whose strong ambition—and it's more than an ambition—is to be an actress. There's something that lies behind it that you can't put your finger on. She cannot respond to discipline, and she's very disruptive. Just one example is that she says she can't write because it will hurt her hand. This is an 11-year-old. The thing is, this child and many like her may be in a situation in which they need help, they need to have the ability to reach out. That does come from education, from the word getting out that something is appropriate and something else isn't, and they can do something about it.

● (1040)

The Chair: Excuse me.

Did you have a point of order, Mr. Petit?

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I agree with Ms. Jennings because I believe our witness is going a bit too far. She is describing a situation which some may recognize. This is a public hearing, and I think that we have a duty, as committee members, to warn our witness that the information is public, and it may be a problem. So, it would be good for the chair to remind her of a few points.

[*English*]

The Chair: Thank you, Mr. Petit and Ms. Jennings.

Just for your own benefit, ma'am, just try to keep your comments very general. Try not to make reference to specifics, if you possibly could. It is a public hearing.

Mr. Patrick Brown: We are short of time, so maybe I could get Mr. Sullivan's comments on the long-term consequences for those 14- or 15-year olds who weren't covered under existing legislation.

Mr. Steve Sullivan: Generally one of the benefits is that hopefully we prevent kids from being exploited by those who would seek to do that. I don't think any of us is naive enough to think that when we pass this law, people won't still be motivated, but hopefully when the word gets around, as Paul mentioned, it will stop some people from abusing children.

I think one of the things we have to recognize is that many of the young people in these situations won't recognize right away that they are being exploited. There may be benefits to these relationships that most of us wouldn't think of: acceptance, gifts, attention that they don't get from their parents, and all those kinds of things. They might not recognize it here and now.

In a general sense we've dealt with some historical victims of sexual abuse who are now reporting and going through compensation boards to get compensation, or reporting to police. The long-term implications are lack of trust and lack of intimate relationships. Some turn to alcoholism and self-abuse and all those kinds of things. The long-term implications of sexual abuse for individuals—and it's not just limited to 14- and 15-year-olds, but any victim—can be life-altering.

I think, hopefully, it will prevent some victims, stop some abuse before it gets too far, and also give enforcement and parents, as Mr. Thompson mentioned, the power to intervene when those situations are going on, and hopefully prevent even longer-term impact of this abuse.

The Chair: Go ahead, Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you to all witnesses who have appeared before us this morning.

My first question is for Mr. Gillespie, but it is in a slightly different vein. The bill seems to be supported by all parties. When you have children, in our society, oftentimes you drop your kids off in the morning to catch their school buses, and do so until they are in grade 6. Then, they go to high school, and in my province, the CEGEP. Often, parents lose touch with their kids. Parents and their children come home at different hours and in the end the relationship is a difficult one.

At some point, the young woman or the young man turns 14 and experiences an adrenaline rush. It happens among all adolescents, and parents have no power over it. They may see that things are not going well, they feel responsible, guilty and do everything in their power to solve the problems.

Mr. Gillespie, I don't want to discuss the question of new technologies. According to you, would this bill help parents as was stated earlier on? The age of consent is being raised to 16. Could this bill, in some cases, help parents who are no longer able to fulfil their roles because of these very modern lifestyles and the furious pace of things? Forget about the word "luring". I don't want to discuss computers. I simply want you to tell us whether, based on your experience, this bill could help.

[*English*]

Mr. Paul Gillespie: I think so.

Let me first say that you're right. Kids are kids, and some children are going to make decisions in various life situations and potentially make mistakes. This bill will stop, however, those who will take advantage of those situations in which children may wish to get outside of the rules within the family and make some bad decisions. If it will at least deter some of those from getting involved with some of these kids, I think it will help parents, because they will perhaps have a little more sense of safety, a sense that older men are not allowed to prey on their children no matter what they want to do. It will not, certainly, stop everything, but I do believe it will make a difference and allow a little more control over your kids.

● (1045)

[*Translation*]

Mr. Daniel Petit: Mr. Gillespie, you know as well as I do that in large cities where there are a number of ghettos and where newcomers often settle, parents work long hours and children are sometimes left to their own devices, thereby ending up in street gangs which, at some point, will sexually exploit them.

We know full well that other legislation, other Criminal Code provisions can help us here. Also, immigrants arrive here with 14 or 15-year-old children. That is my case, I'm an immigrant and I experienced having to adapt to a new culture. So I'll repeat my question, because street gangs are a serious problem in our large urban centres.

Would this bill, if it were passed, help parents report "unfortunate" behaviour among their teenagers with respect to street gangs which may be exploiting them or may exploit them in the future? Could this help? Of course I am not referring to computers here, but to events in the real world.

[*English*]

Mr. Paul Gillespie: I think you've made an interesting observation. Certainly, within different cultures and different lifestyles, and certainly with new immigrants, it raises several new issues and challenges. However, I think if the line is drawn definitively that this is not legal, it will at least allow parents potentially a little bit of comfort, and hopefully children will start to make better decisions.

The truth is there are always going to be older people willing to exploit younger people, whether it's for the purpose of enticing them into a street gang to commit criminal activity or to perhaps perform sexual favours. I just think it will help society in general if the line is drawn in the sand: this is off-limits, and that is the law.

[*Translation*]

Mr. Daniel Petit: My next question is for the Canadian Bar Association.

Earlier on, a very relevant question was asked. There is a difference between a five-year close-in-age absolute rule and a presumption. The presumption would be that we will presume that an adult, say a 22-year-old, going out with a 14-year-old girl, is exploiting her.

What distinction do you make? Would it make things easier? We do not want to complicate everybody's life nor spend all of our time before the courts trying to reverse the presumption. Do you understand what I'm trying to say? I would like to know whether or not it would be preferable to keep an absolute rule.

Earlier on, a question was raised—and I haven't yet thought about it—about presumption. We cannot forget that presumptions would open the door quite wide. You know what an irrefragable presumption is, and God only knows how many problems we've had before the courts because of this notion.

Could someone from the Canadian Bar Association, without giving legal advice, provide us with some guidance? Have you thought about this?

[*English*]

Ms. Margaret Gallagher: The CBA as a whole has not considered the presumption option. Again, when I spoke earlier, I had misunderstood the question. I thought it was an expansion beyond the original close-in-age exemption as set out in the bill, proposed, and as supported by the Canadian Bar Association.

If I just may repeat again, the charter challenge has earlier been made in the context, obviously, of the existing law. In several courts it has been found not to infringe on equality rights to remove the consent defence when a complainant was under 14 years.

Without entering into a constitutional debate or the merits of an individual case, which is obviously how it would happen, it is the position of the Canadian Bar Association that the proposal would, on the face of it, based on that and with the consensus of the body that is the CBA, survive a constitutional challenge—probably. Obviously, I can't say that for certain.

We are not here to promote the notion of a presumption, even though certainly it's something that's come forward this morning. It hasn't been put to the membership.

● (1050)

The Chair: Thank you, Mr. Petit.

Mr. Gillespie, you wanted to make a comment.

Mr. Paul Gillespie: Yes, may I just quickly respond?

Regarding the concept of a presumption, I believe a similar concept was debated some years ago that would potentially allow for the examining of the nature of the relationship and thus call the nature into examination, potentially bringing the victim in, and opening up this large, very significant problem.

Here's the problem: everybody will do it. The victims will not want to get involved. Law enforcement will be very frustrated, knowing that some long-going battle fought out between lawyers is eventually going to frustrate everybody. So law enforcement will choose to spend its time, under most circumstances, following different routes, perhaps laying different charges. It will simply bog down the courts.

In my opinion, it will basically be an ineffective law and will not be enforced.

The Chair: It's interesting you would say that about the court issue, and I can see that happening.

Reviewing my years at the Calgary police department when the age was at under 14, I remember that the extent of the child abuse investigations was such that it bogged down the police department with untold numbers of investigations that they really couldn't handle, and many were farmed off to social services. By including two more years onto that list—and from what I understand from the stats, there's much more activity in those years now—what's that going to do to investigative teams when it comes to handling this increased number of complaints that will be coming through? How is the court going to be able to handle that?

Mr. Paul Gillespie: I simply believe that a trier of fact will ultimately be responsible for examining the nature of a relationship. Based on all the extenuating circumstances that surround the exploitation issue, it will be a very long and lengthy process and very frustrating for all involved.

The Chair: You're talking about presumptive?

Mr. Paul Gillespie: Yes, if there were a presumption.

The Chair: If there were no presumptive aspect to it, but rather just looking at it from the point of view of the way investigators and the courts handle it right now, you're still going to have a substantial increase in complaints.

Mr. Paul Gillespie: Absolutely.

The Chair: Are police departments prepared and ready to accommodate that?

Mr. Paul Gillespie: The truth is, no, it is what it is. Officers do their best. At the same time, crown attorneys will go forward with cases that they think result in conviction and result in the greater good, and these are the kinds of cases that just don't seem to move forward.

The Chair: Right.

Are there any other questions to the witnesses?

Mr. Comartin.

Mr. Joe Comartin: Ms. Barr-Telford, I have a couple of questions on the statistics.

On the chart that you have, the second-last page, we have a precipitous rise from 1981 to 1983, and then an almost similar drop through to the present, but the rate of sexual assaults remains somewhat higher. I don't think I've ever seen a chart have that kind of variance in that short a period of time in any other crime.

My suggestion to explain this is it's a reporting function, that at the beginning we weren't getting the reporting and in the middle part we are. That would explain that bump, but I don't understand why the drop is so dramatic. I don't think there was any particular change in law during that period of time, maybe better enforcement. You can maybe explain that.

● (1055)

Mrs. Lynn Barr-Telford: I'll offer a few insights, and also offer my colleague an opportunity to respond.

One of the factors that may be at play in the rise in the first part of that graphic that you're seeing does possibly have to do with the implementation of new legislation. Often after the implementation of new legislation there is a period of time when you might see this kind of trend occurring.

With respect to the post-bump decline, this decline in sexual assault rates is also consistent with a decline that we've seen throughout the entire 1990s in overall crime and in violent crime. This drop and then the stabilization since 1999 is a trend that we're seeing in other violent crimes as well.

Mrs. Karen Mihorean: I would simply add that the increase since the legislation, when we went to three levels of sexual assault back in 1983, certainly contributes to that increase. Also, during that period of time, although our statistics don't speak to it directly, obviously there were all kinds of education and awareness campaigns, training of police in how to deal with these cases.

Certainly there is an assumption that more victims perhaps are coming forward as well, as a result of what was going on.

Mr. Joe Comartin: Okay.

Ms. Mackinnon did this today, and we had two delegations the last time that did the same thing—that is, talked about the average age of sexual activity being around 14.

I looked at your statistics showing that in fact it's only 13% of the 14- and 15-year-olds who engage in sexual activity. I'm hearing this. In fact, I was on national TV a couple of years ago using the 50-percentile figure, saying we were going to criminalize 400,000 or 500,000 youth—in one of those bills, Mr. Sullivan, that you spoke favourably of that didn't have the near-age defence—by going ahead with the raising the age of consent to 16 without the near-age defence.

I'm confused. Is it a question of how we define "sexual activity"? Are your statistics suspect? I'd like a comment from both of you on that.

Mrs. Lynn Barr-Telford: Let me first comment on what it is that we have presented to you.

It is information that we gathered in the 2000-2001 national longitudinal survey of children and youth, where we posed specific questions around consensual sex and sexual intercourse. I'm not aware of nor familiar with the data to which you are referring. It may be a case of what the definition of sexual activity is.

Mr. Joe Comartin: You used today the figure of 13%.

Mrs. Lynn Barr-Telford: I used today the figure of 13%, and I have the precise wording, in fact, of the questions that were posed.

Those who were 14- to 15-year-olds were asked whether they had ever had sexual intercourse; 12- to 13-years-olds we asked whether they had sexual intercourse with a boyfriend or girlfriend, and so forth. It is a specific measure of a specific type of sexual activity. I can't really speak to whether the other data to which you are referring has a broader definition, but the 13% specifically refers to that question.

Mr. Joe Comartin: Ms. Mackinnon, you said that on average people start experimenting at 14. What does that mean?

Ms. Martha Mackinnon: The source for our data is a 2003 study, so it may be—I don't know—that it's a different year. That's the source.

Indeed, the notion of what constitutes sexual activity has broadened, and this study had as its purpose exploring the prevention of HIV/AIDS, so we were talking about "risk behaviours", I guess not all of which, but nearly all of which, will include intercourse.

Mr. Joe Comartin: Ms. Barr-Telford, the figure for using sexual intercourse would not include oral intercourse or anal intercourse.

Mrs. Lynn Barr-Telford: Quite honestly, it is what the question is in terms of what is posed to the respondent. It's what he or she replies to in terms of "sexual intercourse".

● (1100)

Mr. Joe Comartin: So you agree with me that it does include the other two.

Mrs. Lynn Barr-Telford: I have no way of knowing, but the question was very specifically "Have you ever had sexual intercourse?"

Ms. Martha Mackinnon: This isn't a study, but I can tell you anecdotally that many of our clients—and I've read this and can't tell you where those studies were, but I know I have read it as well—many young people are very precise in what they consider or would disclose as "having had sexual intercourse". Of many things, like oral sex, they would say, "Oh, well, I'm still a virgin." There are many ways of describing their own conduct that would tend—

Mr. Joe Comartin: There was a certain president who had the same problem.

Ms. Martha Mackinnon: Apparently. Perhaps that's where they learned.

Let me use the opportunity to just say one other thing that rather concerns me and is the reason that pushed Justice for Children and Youth to look for a rebuttable presumption. That is that, while on the one hand one would hope that young people in a happy family can benefit from the guidance of their parents, what you don't want is to drive kids to the point where they won't tell their parents what they're doing because they're afraid. Many of the charges that we're aware of that get laid currently are because the parents complain to the police.

It's the driving underground of the behaviour that I earlier referred to as seeking out of information and being willing to disclose, but that's an additional concern that reveals itself in the way young people describe their behaviour as well. They're very careful and self-protective about it.

Mr. Joe Comartin: Ms. Barr-Telford, on the point about the near-age defence and the relationships that we have, I went through your paper again. I didn't see it. I think you said something verbally, that we had some information as to what percentage of youth are engaged in sexual conduct with somebody who is within the five years, and then above.

Did you give us some figures on that? I couldn't find them. Do we have anything reliable as to how many relationships are going to be above the five-year near-age defence?

Mrs. Lynn Barr-Telford: Your question is about how many are having sexual relationships and the age of the partner?

No, I don't have information on the age of the partner of those who reported having sexual intercourse.

What I did provide was information, with respect to sexual offences, on the relationship of the accused to victims as well as the age of the accused and the age of victims. It is very specific to sexual offences.

Mr. Joe Comartin: And we don't have any other study that shows how many are above the near-age defence that we're providing for in this legislation?

Mrs. Lynn Barr-Telford: With respect to sexual activity and sexual relations, I do not have that information.

Mr. Joe Comartin: I have just one more, Mr. Chair.

To the Bar Association, this is a potential charter challenge coming from the gay, lesbian, and transgendered community. This is the argument that I've heard, that because of that culture, separate from the heterosexual community—I want to say to you I haven't accepted this argument, but I've heard it, and I'm just wondering if you've had an opportunity to hear it and consider it, whether it is a concern we should have. The argument is that within that culture it is more common for the age to be greater than five years where there is sexual contact between the two partners—consensual, but greater than five years.

Have you heard the argument?

And then the argument is that at some point we'll put demographics in front of a court showing that it's a different culture, so it's discriminatory within that culture; therefore, this section will get struck down, at least with regard to gay, lesbian, and transgendered community members.

Mr. Kevin Kindred: I have heard that argument. I believe it was part of the submissions from EGALE Canada and possibly other groups. It would be speculative for me to give an opinion on a charter issue on that, so there's not much that I can say on it.

What I can say is that the CBA does support the age of consent as currently set out in Bill C-22, and to that extent, we don't raise the same argument that Egale has made on that point.

Mr. Joe Comartin: Have you seen the argument raised in any other common-law jurisdiction? Would it be a constitutional bill of rights type of challenge to that near-age defence?

● (1105)

Mr. Kevin Kindred: Off the top of my head, I'm trying to think of a situation where it has been raised. There are American cases—they wouldn't be precisely the same—on the availability of close-in-age exemptions for same-sex sexual conduct on the same grounds as opposite-sex sexual conduct, but that's not really the question you're asking. So no. I can't say there is no case, but I can't think of one.

The Chair: Thank you, Mr. Comartin.

Mr. Thompson.

Mr. Joe Comartin: I think Ms. Mackinnon has something to add.

The Chair: Please reply.

Ms. Martha Mackinnon: I can't tell you of any studies either, and I certainly have no information about same-sex cultural norms. I can't tell you that. Again, I can tell you only the experience of our clinic. There I can tell you that many of our clients report more homophobic slurs, behaviour, and criticisms in the adolescent period, and therefore homosexual young people are more likely to seek intimate relationships outside of their school peers or where it is less known.

Now, I can't tell you what that necessarily means about age. I can tell you that Toronto created a specific school because so many LBGT young people were dropping out. While we would all wish that sort of bullying and homophobic conduct would stop, it's hard to root out. That community had a much higher dropout rate; therefore, a special safe school was created for them.

The Chair: Mr. Thompson.

Mr. Myron Thompson: During the years I was involved with education from the middle sixties to the early nineties, I saw quite a few changes take place. The role of the school became broader and broader. The three Rs became less the emphasis, and we moved into all kinds of different kinds of social education—you name it.

I just have a personal feeling about it. I don't know if it was ever really analyzed fully, but a lot of the education that went outside the scope of the norm, which was traditionally the job of the parents or churches or other community organizations in regard to certain activities, never appeared to me to be all that successful. I was thinking of teenagers and drinking and driving, and how that didn't seem to have the impact that we would like to have seen when we brought it into the education program.

When this becomes law, there are two messages I want to see get out: the message to the would-be perpetrators that it's no longer acceptable and you'd better get it out of your mind that you're going to pursue 14- and 15-year-olds—I'm not sure how you get that message out, but it needs to be communicated loudly and clearly that this is no longer the situation in Canada—and also the education needs to get out into the minds of the 14- and 15-year-olds that this activity is no longer a choice because it's illegal. This law would make it illegal.

I'm just wondering, does anybody have any idea how this should be effectively handled by the education system? If not, maybe we'll figure it out together some day.

The Chair: No comments?

I have a question for the Canadian Centre for Justice Statistics.

In my experience, reporting these types of offences to police departments has certainly, as time has gone on, overburdened many of those child abuse units with complaints. And many of the complaints have been funneled off to child welfare or social services, and they were dealt with there. Do the stats that the Centre for Justice Statistics accumulates deal specifically with those particular offences as well as those that ended up on a police officer's desk where charges were laid?

● (1110)

Mrs. Lynn Barr-Telford: The data that we presented and the data that we have with respect to the number of incidents comes directly from the police services, and they are those incidents that are reported to police. So if it's not reported to police or not reported by police, it's not reflected in the data.

The Chair: If they're reported to social services under any kind of arrangement between police departments and child welfare, do you receive those stats?

Mrs. Lynn Barr-Telford: What we receive is what the police would send to us, so it's very difficult to ascertain what their decision is at that particular point in time. If it's an incident that is reported to police and it's reported to us by police, we receive it. So it is very much what is reported to us by the police services.

The Chair: Mr. Gillespie or Mr. Sullivan, can you make comment in reference to any of that chain, if you will, of information?

Mr. Paul Gillespie: Over the last several years closer relationships have been built between child care services, children's aid, and law enforcement. But there has not always been that mandatory reporting that if one reports to one, they have to tell the other. And I think that's still fairly consistent in Canada, that it's not consistent everywhere. Thus there's not always a guarantee that one is going to know everything. That's simply been a problem in the past.

Mr. Steve Sullivan: I don't really have anything more to add. I don't have any special expertise, but my understanding is similar to Paul's.

The Chair: Right. So apart from what may end up on a police officer's desk or on the reporting file, even the stats as they are noted and accumulated by the centre really don't reflect—So we have even less of a view of what's happening out there.

Mrs. Lynn Barr-Telford: Let me add that at the very outset, as I've stated, our 2004 general social survey on victimization showed that among the population 15 and over, only 8% of sexual assaults were coming to the attention of the police. It is a low number of reporting.

The Chair: Yes.

Mrs. Karen Mihorean: I can just add that from our court statistics, if at court it is diverted or referred to social services or another program, it appears as a "stay" or "withdrawn" in our court data. We can't say specifically where it was referred, just that if it is referred, it appears as a "stay" or " withdrawn" in our court data.

The Chair: Okay, thank you.

Thank you very much, folks. That was a long session, and I think we received a lot of information. We really appreciate your attendance here at the committee. We have a lot to consider with the information that has been passed forward. Again, thank you for your presentations.

I will now suspend the meeting. We will reconvene at 12 noon. We'll see you then.

● _____ (Pause) _____

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● (1200)

The Chair: I call the Standing Committee on Justice and Human Rights to order with our continued discussion on Bill C-22, an act to amend the Criminal Code on age of protection and to make consequential amendments to the Criminal Records Act.

We had a fairly lengthy session this morning, and of course that discussion continues this afternoon. We have a substantial number of witnesses here to listen to, and I might just go down the order here for a moment.

With us today are, from the Canadian Council of Criminal Defence Lawyers, Mr. Trudell—it's good to see you here again so soon, Mr. Trudell; from the B.C. Civil Liberties Association, Jason Gratl and Christina Godlewska; from the Canadian Association of Elizabeth Fry Societies, Kim Pate; from Age of Consent Committee, Mr. Andrew Brett and Mr. Nicholas Dodds; from the Institute of Marriage and Family Canada, Mr. David Quist; and there is another noted person here, Daphne Gilbert, professor in the faculty of law, common law section, University of Ottawa.

Welcome.

We'll begin the presentation as the names appear on the agenda. I'll turn the floor over to Mr. Trudell.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Thank you very much, Mr. Chair.

It's an honour to be here again. I promise I'm going home today. Actually, Isabel Schurman, who has done quite a bit of work on this, was going to be here today. I'm filling in for Isabel, although not very well.

When we first looked at this bill quite some time ago on behalf of CCCDL, our original position was that the age really didn't need to change. It didn't really need to be increased for protection, because the Criminal Code is really protective of those predator-type situations up to and including the age of 18. However, I'm not going to waste the committee's time, because quite frankly, others have decided that this bill has merit to raise the age. So my comments are going to be more generally based today.

When you make these changes, I think it's very important for you to take into consideration, if you can, the fact that we're talking about young people who are much more sophisticated, at least optically, much more mature, at least optically, much more involved in the world around them—by the media and the Internet, etc.—and much more aware of their rights than we ever were in my generation, a hundred years ago.

When we're dealing with this, we have to be aware that we have to respect young people's ability to make decisions. We want to protect them, but we have to respect their ability to make decisions for themselves. Make sure this bill doesn't oppress in a way that these young people go underground in relation to wanting to continue relations, revolt against their parents, and not get the help they need from the health services that are available, so that AIDS epidemics, etc., blossom as a result of this. When you're considering this, it's really important to look at the collateral aspects that may occur.

We are in favour of the section in relation to luring. I don't think there's any question. We have no comments to make in relation to that.

If the bill gets passed, the anal intercourse section is out there on its own. If there's a way in which you could bring it in so that it can take advantage of the other provisions—I think it's section 150.1 or something like that—you can have the five-year principle apply. Some may say it should go completely, but if that's not the case, it should be under the umbrella of the spirit of the rest of the sections. If you can bring it in, I think that would be very important.

There are constitutional issues that may arise, and some others have talked about them in relation to the provinces in terms of licensing marriage, and the federal government. Someone talked to me about the scenario of, for instance, a judge in the province allowing a marriage and the feds then coming in and charging that person because the relationship is beyond the five-year period. I think there would be a challenge to that, and the challenge I could see is somebody representing the individual—let's just say it's a young woman and a man—in regard to the young woman's rights. So we have to recognize that they have to be protected. These young people have to be seen to have a voice and this has to protect them, but in a way that doesn't take away a respect for their individual decisions.

The same thing applies, I take it, in terms of what we would have to worry about if it was necessary for a doctor to report a relationship that the doctor felt was abusive. We don't want that young person to not seek out the doctor, right? So there has to be a balance that we figure out here.

So our comment is that the bill in itself, in its spirit, is a good bill. Having decided that it is going to pass, we would ask that your attention be addressed to the more general concerns, so that we make sure these people who are going to be affected understand that the government respects their right to make decisions, but wants to protect them from criminal activity.

● (1205)

Our laws have gone a long way in terms of protecting people in those predatory situations. We're talking about consent here. Sexual assault, those kinds of offences, formerly rape, are still going to be prosecuted. We're talking about consent, and in that regard, we have to make sure that the result of the legislation doesn't create social problems.

The last thing I will say is that I heard one of the previous speakers this morning, as I was listening in, talk about a presumption of the five years, a presumptive abuse of relationship—that's the wrong word, but I think you know what I mean. To me, that makes a lot of sense and it might be something you might consider. What it would do is it would instill the message that this is a presumptive relationship that is against the law, but it would give the parties, the individual, a recognition that they can satisfy the court that it's not as it appears, that they are mature, that it is not something a judge needs to worry about.

Those are my general comments.

● (1210)

The Chair: Thank you, Mr. Trudell.

Now, from the B.C. Civil Liberties Association, Jason Gratl and Christina....

Mr. Jason Gratl (President, B.C. Civil Liberties Association): My name is Jason Gratl. I'm the volunteer president of the British Columbia Civil Liberties Association. My colleague is Christina Godlewska. She's the articled student at the B.C. Civil Liberties Association.

We'd like to begin by thanking the members of the committee for the opportunity to make representations, however futile it might seem at this point politically. Still, we value the opportunity to put forward some of our concerns and considerations with regard to Bill C-22.

I'll begin with a general comment expressing our concern that Bill C-22 represents a fundamental shift of policy and attitude toward sexuality. In 1992, the Supreme Court of Canada, in the Butler decision dealing with the definition of obscenity, signalled a fundamental shift from the legislation of morality to the legislation of harm. From that point forward, the legislature and the courts were to look for specific types of harm, not necessarily scientifically measurable types of harm, but analytically discoverable harm, such as attitudinal harm—changes in people's attitudes toward each other that are fundamentally anti-social, psychological harm to individuals.

The idea was to rationally connect appreciable types of harm to the type of legislative endeavour underway. To our mind, that commitment to legislating against harm rather than legislating morality is endangered or imperilled by the approach this committee currently seems to be taking.

The existing protections for young people are adequate, in our submission. The sexual predators who exist in the world need to be taken account of, and much has already been done to ensure that those sexual predators are controlled, punished, deterred, and so forth, by the existing criminal law. The committee is well familiar with the crime of exploitation, as well as the restraints placed on persons in positions of trust, power, and authority to refrain from sexual contact with minors. Those go a long way to ensuring that young people are protected.

What we haven't heard before this committee, to my knowledge, is evidence that there is a rampant social problem in relation to a differential age. It's not as though there are a lot of relationships that involve older people and minors. Our concern is that in the absence of some evidence of harm, the rush on the part of the current government to enact Bill C-22 is an unconsidered response to a moral objection, rather than a legislative response to harms that have been shown to exist.

On the change in age and the five-year close-in-age exemption, empirically speaking there's a world of difference between a 12- or 13-year-old child and a 14- or 15-year-old child. Fourteen- and fifteen-year-old children are much more easily mistaken for adults, especially in a festive context—house parties, clubs, and so forth—where there is some concern that people whose proximity in age is greater than five years might mingle. In our view, even if the age is raised to 16, some of those concerns could be answered by a due-diligence defence. That is to say, if an accused person took reasonable steps to uncover the age of the person with whom they intended to have sexual contact, if there's any doubt, that ought to be an adequate defence in law to this offence.

We are talking about drastic consequences to individuals who are convicted of sexual offences—not only potential penal consequences, but inclusion on sexual offender databases and registries. These are consequences that ultimately change a person's life from there on in, making that person subject to extra monitoring, extra prescription, and so forth.

● (1215)

The notion that a person should suffer these consequences, despite having taken steps to discover the age of the person with whom he or she intends to have sexual contact, is to our minds abhorrent and totally inappropriate. We urge the committee to consider adding a due diligence defence to those provisions.

The submission is to the same effect as the notion of a presumptively abusive relationship, which we would support. Sexual contact with a person younger than 16 ought to raise a presumption that a relationship is abusive, but the presumption could be set aside with appropriate evidence.

We're also concerned that the change in age for sexual consent could undermine the access children might have to information about reproductive health, contraception, and how to keep themselves safe when engaging in sexual contact.

We've seen an unfortunate decline in the United States on the commitment to provide information to young people. Especially if there's going to be a shift to legislating morality, we wouldn't want to see that shift take place in the area of reproductive health education as well.

Finally, we support the deletion of any difference in age for anal intercourse and sexual contact other than anal intercourse. We regard that on its face as discriminatory and contrary to the charter.

Those are our submissions.

The Chair: Thank you very much.

We now have to the Canadian Association of Elizabeth Fry Societies, Ms. Kim Pate.

Ms. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Thank you, Mr. Chair.

Thank you for inviting us to appear. I bring regrets from members of my board of directors who were unable to appear with me.

I come representing 25 member societies that work with victimized and criminalized women and girls across the country. My comments will be brief, but I look forward to some of the discussion.

I would suspect that most of us everywhere would prefer that young people and children refrain from sexual activity until the time they are of sufficient age and maturity to engage in caring and consensual relationships. That being said, none of us want to see young people exploited, and none of us want to see young people further victimized. But we think the current Criminal Code health and child welfare provisions adequately cover many of these areas.

From our perspective, the gap tends to be in the bigger issue of the sometime lack of political or administrative will to ensure the existing laws and protections are implemented and the protections in fact exist in the way they're intended. There is also sometimes a reluctance to pursue those who violate those provisions.

We also have concerns about who might be pursued in this context. Let's say you have a young woman who engages in a sexual relationship with an older man and is observed by a doctor. We see situations where the young woman might refuse to provide information. We'd be loath to see those young women end up being cited for things like contempt or other potential charges. Those realities exist now, I would suggest, because of the lack of will to ensure that the current provisions are implemented in a gender-specific and fair way.

We also want to protect children in terms of a variety of other areas, but we don't see, for instance, the same interest in other potential areas where young people are being exploited, whether or not it's child pornography. We know there's an interest in that area, but pornographic advertising techniques aren't challenged in similar ways.

If we're interested in not promoting the sexualization of young people, I think there are many other areas we need to look at, including broader based education campaigns and ways to limit the use of young people who are increasingly being sexualized at very young ages.

We also do not support a differential age in terms of anal intercourse. If you decide to in fact proceed with this bill, in the alternative, we're interested in having some discussions about the issue of rebuttable presumption.

That's our submission. Thank you.

● (1220)

The Chair: Thank you.

Age of Consent Committee, Andrew Brett and Nicholas Dodds. Who will be presenting?

Mr. Andrew Brett (Member, Age of Consent Committee): Both of us.

The Chair: Keep your comments to ten minutes and I won't cut you off.

Mr. Nicholas Dodds (Member, Age of Consent Committee): Thank you very much for having us here today.

My name is Nicholas Dodds. I'm a youth rights advocate from Aurora, Ontario.

Andrew, would you introduce yourself?

Mr. Andrew Brett: I'm Andrew Brett. I'm also a youth from the GTA.

Mr. Nicholas Dodds: The Age of Consent Committee is a coalition of youth and youth advocates who came together in early 2006 out of concern for the dangerous effects of Bill C-22, which proposes to raise the basic age of consent in Canada.

Our members consist of students, social workers, sexual health workers, youth workers, and most importantly, young people themselves.

Over the past few days you've heard many arguments on both sides of this bill, and while we agree with many of the groups that have presented, there is a notable lack of input from young people themselves. We are here today in an attempt to bring youth concerns with this bill to the table.

Mr. Andrew Brett: As young people, we stand unequivocally opposed to Bill C-22 on many grounds, which we will outline in four main points.

The first one is that the motivation for this bill is based out of illogical fear and hysteria about cases that are either already illegal or exaggerated.

Number two, increasing the age of consent would result in young people not seeking out vital information or services related to sexual health.

Number three, an increase in the age of consent would result in social workers and teachers being reluctant to provide adequate sexual health information to young people.

And number four, this bill will have a—

The Chair: Excuse me. Just slow it down a little bit so that interpreters can keep up.

Thank you.

Mr. Andrew Brett: Okay.

Number four, this bill will have a disproportionate impact on the lives of lesbian, gay, bisexual, trans-identified, and queer youth.

Mr. Nicholas Dodds: After reading the news reports and minutes from previous witnesses at this hearing, it is frustrating to hear the type of evidence being presented to bolster the case for Bill C-22.

One newspaper reports that a witness used the sexual abuse of a two-year-old as justification for this bill, as if the law was somehow unclear on this and needed to be strengthened. The supporters of this bill claim that the age of consent must be increased in order to combat child prostitution and child pornography.

The reality is that both of these activities are already illegal, not just for 14- and 15-year-olds but for anyone under the age of 18. The laws are absolutely clear: sexual abuse and exploitation are illegal. If these laws aren't being enforced properly, the solution is not to make them more illegal. Redundant criminalization will not suddenly create an environment where young people are empowered to recognize exploitation and come forward about abuse. More work needs to be done to educate and empower youth, and Bill C-22 will be counterproductive to these aims, for reasons that will be outlined later.

Another claim is that Canada is a haven for pedophiles who want to take advantage of our supposedly low age of consent. In reality, when taking into account the 2005 law that expanded the definition of exploitation, which I believe was Bill C-2 before being passed into law, the Department of Justice says that "Canada's criminal law framework of protection against the sexual exploitation and abuse of children and youth is amongst the most comprehensive anywhere."

Our second point is that increasing the age of consent will actually put young people in more danger by inhibiting their access to sexual health information and services. In the United Kingdom, where the age of consent is currently 16, a survey of young women found that those under the age of consent were six times more likely to say that "fear of being too young" prevented them from seeking help.

In fact, the Department of Justice itself stated just two years ago that the age of consent should not be increased to 16 because "educating youth to make informed choices that are right for them is better addressed through parental guidance and sexual health education than by using the Criminal Code to criminalize youth for engaging in such activity".

● (1225)

Mr. Andrew Brett: Our third point is that an increase to the age of consent would result in social workers and teachers being reluctant to provide adequate sexual health education and information to young people.

The Ontario Court of Appeal noted in a 1995 ruling how age of consent laws, which purport to protect young people, can actually have the opposite effect by preventing them from accessing information. I'll quote from the ruling:

> The health education they should be receiving to protect them from avoidable harm may be curtailed, since it may be interpreted as counselling young people about a form of sexual conduct the law prohibits them from participating in. Hence, the Criminal Code provision ostensibly crafted to prevent adolescents from harm may itself, by inhibiting education about health risks associated with that behaviour, contribute to the harm it seeks to reduce.

Through federal and provincial laws and professional codes of regulatory bodies, mandatory reporting of suspected child abuse is widespread across Canada. In Ontario the Child and Family Services Act mandates reporting if the young person is under the age of 16. This applies to teachers, social workers, youth workers, doctors, nurses, and many others.

By criminalizing consensual sexual activity involving 14- and 15-year-olds, previously legal activity will now be considered abuse and the prospect of mandatory disclosure may prevent professionals from assisting young people. As a former peer counsellor for youth myself, I was trained to warn young people about the possibility of incriminating themselves or their partners before they spoke about their sexual activities. Increasing the age of consent would mean that more young people would have to be warned about disclosure and more of them would be reluctant to speak with professionals.

Our final point is that lesbian, gay, bisexual, trans-identified, and queer youth will be disproportionately affected by this bill compared to their heterosexual counterparts. The choices of queer youth already face additional scrutiny when it comes to their sexual identity and activity.

In the Marc Hall case, when a 17-year-old high school student was denied a request to bring his 21-year-old male date to his prom, the school board chair justified this homophobic discrimination by claiming that Marc's partner was too old to bring anyway. In reality, many heterosexual students bring dates of similarly disparate ages to their school proms and rarely are these decisions ever questioned.

When youth are queer it is often assumed their choices are uninformed, just a phase, or that they are being recruited and exploited. In addition, given the widespread homophobia that exists among teachers, parents, and society in general, we have very good reason to believe that Bill C-22 will be disproportionately used to regulate the sexual lives of queer youth.

It is not uncommon for queer youth to seek out relationships with older partners, as they can provide much-needed recognition and support in a context where many of their peers are still closeted due to prevailing homophobia in schools and families. Such age-discrepant relationships are not always exploitative or harmful. In fact, they can be beneficial, and this recognition is an important one in the lives of queer youth. This proposed law would further isolate them and expose them to danger.

Gay and bisexual male youth are already explicitly targeted in current age-of-consent legislation through section 159 of the Criminal Code, which sets a discriminatory age of consent for anal intercourse. It is important to note that when this section was struck down by the Ontario Court of Appeal in May 1995 the majority opinion held that the discrimination was unconstitutional, not based on sexual orientation but on age. This sets a precedent that leads us to believe that Bill C-22 can be struck down as a violation of section 15 of the Charter of Rights and Freedoms on the basis that it discriminates against young people without demonstrable justification.

Mr. Nicholas Dodds: The members of the Age of Consent Committee know from present and recent personal experience how youth are marginalized and their voices rarely heard in mainstream political processes. We note with anger and resentment that pushing forward this bill, which has had admitted virtually no consultation with communities of youth that are directly affected, sends a cynical political message about the importance of youth participation under the present government.

Additionally, we note that article 12 of the United Nations Declaration of the Rights of the Child indicates that children and youth are assured the right to express their views in all matters affecting them and to be consulted in decisions that affect their lives. Given the fact that young people directly affected by this bill are currently denied the right to vote, we are especially frustrated at the lack of youth consultation in this process.

● (1230)

Mr. Andrew Brett: As the only youth-led committee making a presentation to the justice committee on this bill, we urge you to listen to our concerns. Bill C-22 is dangerous for youth workers, health professionals, educators, and to young people themselves. We are firmly committed to defeating any move to increase the age of consent in Canada.

Mr. Nicholas Dodds: That's our submission.

The Chair: Thank you, gentlemen.

I'd like to turn to Mr. David Quist of the Institute of Marriage and Family Canada. Dave, the floor is yours.

Mr. Dave Quist (Executive Director, Institute of Marriage and Family Canada): Thank you.

Mr. Chairman, members of Parliament, on behalf of the Institute of Marriage and Family Canada, I would like to thank you for the opportunity to present to you our considerations in support of Bill C-22, an act to amend the Criminal Code on age of sexual consent

The Institute of Marriage and Family Canada is a research think tank based here in Ottawa. We are committed to bringing together the latest research on issues that face Canadian families and placing it in the hands of decision-makers such as you.

I offer my apologies for not having this presentation available in both official languages. Unfortunately, I received notice only on Tuesday that we would be appearing, and time restraints have necessitated that it be available only in English today. The clerk has copies, and they will distributed in the days ahead.

Bill C-22 is a bill that we are pleased to see being debated and poised for final voting in the House of Commons in the weeks ahead. As you know even better than I do, the premise of this bill has been under consideration for many years and advocated by family-friendly organizations for even longer.

In considering the text of this bill, it is clear to me that this bill will give law enforcement agencies and the courts the necessary tools to actively combat the sexual predators, those who would harm our youth. From my reading of the bill, this is not a sex bill, and rather is a child protection bill, strengthening protection of youth from adult sexual predators. It is clear from the legislation that the non-exploitive youth-to-youth sexual relationships are not under the microscope, but rather it is intended to give all levels of law enforcement the teeth to fight sexual exploitation.

Canadians have clearly stated that this change is wanted and widely supported. In May 2002 we commissioned a poll with Pollara, which, as you will know, is an international polling company. Through the survey, a total of 1,659 interviews were conducted with Canadians 18 years of age and older, in every region of Canada, and with roughly equal numbers of men and women. Through the survey three questions were asked on child pornography and, more importantly, the age of sexual consent.

The first question asked was the following:

> Recently, the B.C. Supreme Court acquitted John Robin Sharpe of possessing and distributing child pornography on the grounds that his fictional stories depicting scenes of violence and sex involving adults with children have some artistic merit and could not be classified as child pornography.

Of the respondents, 86% either disagreed or strongly disagreed with this ruling.

The second question was the following:

> Do you think strengthening child pornography legislation should be a high priority, a moderate priority, a low priority or not a priority at all for the federal government?

An astounding 91% of respondents stated that it was either a high or a moderate priority, and 76% of those said that it was a high priority.

The third question is most germane to our debate today:

> There has been some debate lately about the age of sexual consent in Canada. Currently the age of sexual consent for most sexual activities is 14 years of age. Do you think that the federal government should raise the current age of sexual consent from 14 to 16 years of age?

An overwhelming 80% of respondents felt that it should be 16 years or higher.

This poll will be included with my information and dispersed by the clerk as well.

As you can see from these dramatic results, Bill C-22 is clearly in line with the results of our Pollara survey. Based on the media work —such as radio and television talk shows—that I have done over the past year, it is my belief that these results remain accurate today as well.

There have been arguments that there is no need to change the law in this matter and that it will unnecessarily penalize sexually active teens. I fail to see the logic of this argument. First of all, the bill allows for most inter-teen sexual activity, within a set age range.

Second, it is clear from reading this bill that it is not written to promote sex or sexual abstinence. Rather, it is intended to protect our youth from sexual predators.

Third, and of particular importance, according to Dr. Eleanor Maticka-Tyndale of the University of Windsor in her paper, "Sexual Health and Canadian Youth: How Do We Measure Up?", taken from *The Canadian Journal of Human Sexuality*, Spring/Summer 2001:

> Half of young people do not initiate sexual intercourse until after their 17th birthday—approximately 3/4 do not initiate until their 16th birthday or later.

Clearly, moving the age of sexual consent to a minimum of 16 years of age is in keeping with this peer-reviewed study.

Information from the Henry J. Kaiser Family Foundation of California mirrors Dr. Maticka-Tyndale's research. In their October 2003 report, "Virginity and the First Time," their researchers found that

> Most adolescents surveyed agree that sexual activity is most appropriate among people aged 18 and older, or those who are married or in committed relationships.

In June 2006 I took part in a talk radio show on the New 940 out of Montreal. The topic was raising the age of sexual consent. Prior to my segment, three teenaged girls were discussing this issue with the host. I found it interesting that they were unanimous in their support of raising the age of consent to 16. All three had been sexually active for several years, and all three felt that the biggest issue for them, in retrospect, was that they were not emotionally mature enough to deal with all that sexual activity brought with it.

● (1235)

Former justice minister Anne McLellan was quoted in the February 5, 2001 *National Post* as saying:

> And people quite rightly believe kids are different—we all do. Young people simply lack, in many cases, the capacity to think and reason and understand the consequences and implications of their acts in the same way that adults do.

Mr. Chair, simply put, it's doubtful that the majority of teens under 16 fully understand and are fully prepared emotionally for sex. In light of this, society has an obligation to protect our children and youth from predators and from those who would take advantage of their youth and emotional immaturity. In the vast majority of cases, youth of 14 years of age are most often in a position of trust and dependency when dealing with older teens and adults.

So we turn to the implications of this bill and those who are targets. I'd like to bring some additional research to your attention as well. According to research on the website for Enough is Enough, approximately 89% of sexual solicitations are made either in chat rooms or through instant messaging, and one in five youth, ages 10 to 17 years, has been sexually solicited online. This was done by the *Journal of the American Medical Association*, 2001.

It is estimated that over 25% of youth participate in real-time chat, and even more use instant messaging. Internet exploitation is a very real problem today.

Furthermore, the American Medical Association reported in 2001 that "Solicited youth reported high levels of distress after solicitation incidents. Risk of distress was more common among the younger youth, those who received aggressive solicitations"—in other words, the solicitor attempted or made off-line contact—"and those who were solicited on a computer away from their home."

A research project based in the United States examined 129 cases where predators targeted youth under 18 through the Internet. The study found that an overwhelming 76% of victims were between 13 and 15 years of age. Furthermore, female victims accounted for 75% of the targeted youth. Sadly, over half the victims described themselves as in love or as having strong feelings for their abuser. The study found that most of the predators were upfront with their young victims about being older adults looking for sex with teens. Predators are not hiding in the shadows but are openly manipulating young teens into consensual sex.

I note that in the federal budget that was just passed, the finance minister included a government investment of $6 million per year to "combat sexual exploitation and trafficking". Our children are our greatest resource, and this measure reflects a sad reality within our society. For many of us, Bill C-22 will go a long way to assist this plan. According to Statistics Canada, the proliferation of sexual exploitation is highest among girls 11 through 19, peaking at 13 years of age, and among boys three to 14 years old.

Statistics Canada states that:

> Assault rates against children and youth generally increased between 1999 and 2002, but have subsequently fallen in 2003 for each age group.

I don't have statistics beyond 2003, although I do note that those assault rates are still double what they were 20 years ago.

Mr. Chair, in conclusion, let me first thank all committee members for the opportunity to make this presentation to you. The Institute of Marriage and Family supports the premise of Bill C-22, an act to amend the Criminal Code on the age of sexual consent. As legislators, you can do nothing better than protecting our youth and giving the legal system the tools to fight against the sexual exploitation of them.

I look forward to your questions and the discussion on this important issue.

Thank you.

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

Finally, Ms. Daphne Gilbert.

Professor Daphne Gilbert (Faculty of Law, Common Law Section, University of Ottawa, As an Individual): Thank you for the opportunity to speak to the committee.

I'm on faculty at the law school at the University of Ottawa, where I teach, research, and write in both constitutional and criminal law.

I'm going to take a slightly different approach to my submissions from some of the others today. I'd like to raise two matters with the committee. The first is a constitutional issue that I see in the amendment, and the second are some criminal law policy questions that Bill C-22 provokes.

To begin with the constitutional law question, I can offer the committee a very brief overview of how this amendment comes into conflict with provincial powers over the solemnization of marriage. It may be that this conflict is ultimately remedied by the judicial doctrine of paramountcy, but I think the committee should be aware of the issues raised by a change to the age of consent to sexual activity. It's fairly settled law, I think, that it is within provincial constitutional competence over solemnization of marriage to set the minimum age for marriage. There are varying regimes in the different provinces and territories, but there are two problems that this amendment immediately creates. First, in the Yukon, Northwest Territories, and Nunavut the minimum age for marriage is currently set at 15, with parental consent. This raises an obvious conflict with the federal Criminal Code provision that forbids sexual activity under the age of 16 if there's more than a five-year gap.

The second problem that immediately arises is in provinces where the minimum age for marriage is 16 but where there are processes for obtaining permission at a younger age, either through the courts or through the officiating minister. Although I have some questions and concerns about the criminal law policy implications of the amendment, which I will raise in a moment, it is likely within the federal government's criminal law power to make this change.

Given, then, that both schemes are constitutionally permissible—provincial age limits under solemnization of marriage competence and federal criminal law age limits for lawful sexual activity—the legal question becomes how to resolve the constitutional conflict.

The judicial doctrine of paramountcy is the usual route for constitutional conflicts, and it provides that in cases of conflict between federal and provincial laws, the federal laws are paramount and the provincial law is inoperative to the extent of the conflict. The Supreme Court of Canada has tended to prefer a very narrow approach to paramountcy, leaving a great deal of room for the concurrent operation of federal and provincial laws, except on the point of express or direct conflict. Where there is, as the court describes, an impossibility of dual compliance, the federal law prevails.

It may be, as famously declared, that governments should stay out of the bedrooms of the nation, and it may be that lawmakers can envision a platonic marriage, but it seems evident that constitutionally speaking, it's impossible to reconcile a lawful marriage between a 15-year-old and a 21-year-old and a Criminal Code provision that makes sexual activity between those partners unlawful. From a constitutional point of view, therefore, the provinces are faced with having to raise minimum age limits to 16 if there's an age gap of more than five years between the parties.

I've read and heard the policy justifications for the proposed amendment, and if it's to be enacted, I certainly support the close-in-age exemption. I think it raises constitutional and social problems in the marriage context. The reasons for permitting teenage marriage are myriad: cultural, religious, and social. The reasons for preferring provincial competence over the solemnization of marriage must at least in part be a response to the more localized or community norms on marriage across the country. I worry that you are in particular creating problems in our three territories, the jurisdictions with presumably justifiable expressed age limits of 15 for marriage, with parental consent.

There are always bright lines to be drawn when age limits are involved, and generalized judgments about maturity and readiness. However, I think that when it comes to marriage involving parental consent or judicial order or minister approval, as the case may be, the Criminal Code prohibition on sexual activity between, for example, a 15-year-old and 21-year-old could be an absolute bar that is problematic and regrettable in those rare instances when all parties believe a marriage is within the best interests of the younger party. In short, on this point, I think the committee needs to consider specifically in the marriage context the defencibility around laws permitting a 15-year-old and a 20-year-old to marry and those that would forbid it if the older partner is 21.

This brings me to my final point on the constitutional question, and that is whether, given the constitutional conflict, a defencible exception could be crafted for sexual activity within marriage. I have two brief but very strong arguments against a marriage exception. First, it is my view that privileging otherwise unlawful sexual activity within marriage is no longer legally permitted, given our expanded legal and social recognition of common-law relationships, but more importantly, given that under no circumstances would we permit sexual violence in a marriage context. If sexual activity is deemed unlawful because a party is legally incapable of giving consent, this is an offence akin to sexual violence offences, and I would not think it constitutionally permissible to create marriage exceptions in this area.

● (1240)

Second, I think it's extremely problematic to create marriage exceptions to otherwise unlawful sexual activity where the marriage requires parental, court-ordered, or a minister's permission. This places the regulation of teenage marital sexuality directly in the hands of others and places parents, courts, and ministers in the untenable situation of offering consent for a child to engage in otherwise illegal sexual activity.

To conclude on the constitutional issue, it's my view that the committee needs to consider the constitutional question that arises by virtue of the amendment and take positive steps to ascertain whether it's appropriate for the provinces to either reconsider age limits to marriage or deal with potentially inoperative age limits in certain circumstances.

This brings me to my second concern with the legislation, and that's the broader criminal law policy questions at play. The amendment deals with social concerns around teenage sexual relations by creating a new category of criminals. While the goal of targeting sexual predators is one that no one would disagree with, I am unconvinced that from a criminal law policy perspective this amendment is the best way or even a good way to get at sexually predatory behaviour.

Given the social norms around sexual relationships, and what we can take judicial and political notice of, even without all the statistics and support, it's evident that this law primarily targets male sexual predators. In most sexual relationships, and certainly in most where a teenager is involved, the older partner, the unlawful partner, will be a man. This then becomes a Criminal Code amendment that primarily involves regulating the sexual lives of teenage girls, and while framed as gender neutral, there are obvious gender implications.

We already have many under-enforced provisions in the Criminal Code around sexual violence, sexual exploitation, and incest, as well as laws around pornography and prostitution. These laws could combine to offer powerful protection to teenage girls against sexual predators without infringing on their sexual autonomy or sexual health and with a far stronger social message around the kinds of behaviours we condemn.

We should strongly enforce laws around sexual violence. We should make sure we require a legal culture that sends a message to young people that they control their sexual autonomy, that they, and especially teenage girls, have the right to say no to sexual activity. We should condemn the patriarchy that encourages predatory behaviour or encourages men to believe they have to relate primarily in a sexual way to women. I think this is best done through the laws around sexual violence or abuses of trust, authority, and power. Creating a new category of criminals does nothing to change the culture and only drives teenage sexual activity further underground.

Thank you for the opportunity to speak to you, and I welcome any questions you have about either issue.

● (1245)

The Chair: Thank you, Ms. Gilbert.

I'm going to ask the committee members to bear with me and help me resolve a slight problem.

Mr. Comartin disappeared on me.

Mr. Comartin was first to leave; he had an appointment at a quarter to one, apparently. Next on my list was Mr. Moore, and I don't know if there's anyone else here—Mr. Murphy as well—

Hon. Larry Bagnell: Mr. Murphy has to leave.

The Chair: I will split the 15 minutes between now and one o'clock between Mr. Murphy and Mr. Moore.

Go ahead, Mr. Murphy. You have questions?

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

The Chair: Who else has to leave?

Mr. Brian Murphy: We thank you all for your testimony. We listened attentively.

I think, with fairness, we have to realize that we're in a context here where in the world, age limits are set; we're in a spectrum. Every community is different. In some places in the United States, there are age limits of 18 years, with no close-in-age exception. In Mexico, it's 12 years. So we're in that spectrum. We know that in Europe it's essentially a mixed bag between 14 and 16, some with close-in-age exception, some not. I think that's one of the contexts.

The other context that is very important to remember is that this is a committee that has a legislative and political aspect to it. And while I myself will support this bill, what made it palatable, despite the rhetoric of the continual efforts to get laws like this, is that this is the first time that a close-in-age exception of five years has been tabled by way of legislation. That makes it palatable.

Perhaps I could be further persuaded, through the eloquence of Mr. Trudell and others, of a presumption. I think that's a good suggestion.

But this is what we've been presented. We're happy with it, to some degree, but we must underline, as the official opposition, that it's piecemeal, that it doesn't take into account the glaring paucity of any reference to anal intercourse. This is a glaring hole, and it should have been addressed.

If this act were not purely political there would have been more of an omnibus nature about it. But we're here, and this is what we have, and frankly, I support it.

I heard some very interesting testimony. I have two questions. One is to the B.C. Civil Liberties Association, and the other is to the Elizabeth Fry Society—and it picks up on your comments. It's the whole aspect of minors—people under 18 in the provinces like Ontario, and 19 in the province of New Brunswick. It's a hodge-podge. To quote our neighbours to the south, you can be old enough to go to war and lose your life, but not to drink in the state of Texas. We know that everything from Texas, politically, doesn't make sense. But in this country, looking in the mirror, we see we have some problems in terms of age discrepancy with respect to certain rights. I know the Civil Liberties Association would be very interested in those anomalies. Frankly, because I don't follow it that closely, I've yet to have a lot of information from what work you're doing either in B.C. or across Canada with respect to those anomalies.

I'd like to hear a little bit about that, because we're under time constraints, keeping in mind that you have to share your time with the second question, which I'm putting to Ms. Pate.

Ms. Pate, you said, and this is as close to a quote as I can get, “There is a political and practical reluctance to enforce existing laws.” You went into one example. I'm very much interested in that, because as you know, we believe that police forces are under-resourced and that they have to cherry-pick what laws they are going to enforce. Sometimes judges do this. Sometimes prosecutors do this. Rather than throwing legislation and letting it stick on the wall —most of it poorly written, like on the back of a napkin in the parliamentary secretary's office, perhaps—we need a more comprehensive enforcement policy and to resource that.

Those are my two brief questions. I would ask you to respect the time in answering those.

● (1250)

Mr. Jason Gratl: Just very briefly, the Civil Liberties Association is in the process of studying the very different ages for consent in marriage, driving, enlisting, having sex, drinking, and that sort of thing, and voting, of course, quite critically. It does seem like a hodge-podge. There seems to be little attention paid to capacity. And it would seem as though on the face of it, many of these activities have overlapping levels of responsibility and appreciation of the emotional consequences, as well.

As with the study of this bill, it seems as though little attention has been paid to the psychological and sociological evidence pertaining directly to the issue of capacity. So my friend Mr. Quist will speculate that 15-year-olds are unable to deal with the emotional consequences of having sex, without tendering any evidence—rather, relying on opinion polls. To that extent, the approach to children's sexual autonomy or the sexual autonomy of minors is much more populist than principled, and that seems to be, in our view, a dangerous approach.

The Chair: Ms. Pate.

Ms. Kim Pate: I was referring not necessarily to needing more police. I think you're right, that it's targeted. Sometimes it's very difficult to investigate and uphold sexual assault charges, and in our experience, and certainly in my experience now—I'm at the law school with Ms. Gilbert right now teaching a course around these lines—it's very clear that the ability and the will to police and protect children and women when they're in abusive situations is problematic, and that's what I was referring to.

If in fact our interest—and your interest, as you've articulated—is protection of children and youth, then I would argue that there are already provisions that we need to be focusing on implementing, not necessarily spending more time or money creating new laws that create a perception of more protection when in fact, if it's still not taken seriously at the forefront, we may not see any greater protection.

In fact this provision, as I went on to say, also creates the potential for ending up inadvertently with more young women in particular who might be in exploitive situations being criminalized if they're unwilling to testify, which is already an issue that we know exists in violent relationships to start with; that women who are for whatever reason fearful, children who are fearful to proceed after they initially report, then often will end up being charged themselves. That's the concern I was trying to raise.

Thank you.

The Chair: Thank you, Mr. Murphy.

Mr. Moore.

Mr. Rob Moore: Thanks, Mr. Chair.

I want to reiterate. We've had several committee meetings on this already and have heard from a great panel of witnesses both today and in the past. Oftentimes the conversation turns around children's sexual rights, the rights of young people to engage in sex, mostly with other young people.

With respect to those who are raising that issue, I think this bill fully contemplates that. The bill we've brought forward has a close-in-age exemption that fully prevents any criminalization of activities between peers, with a five-year close-in-age exemption.

What this bill aims to get at—and we heard this in our previous panel, and I'd like some comment on it—is that we hear of those who actually treat Canada as a haven. They may come from a jurisdiction where the age of consent is 16. I'll use the example of a 50-year-old male, but we could use the example of a 40-year-old male or a 30-year-old male or a female.

I just read this morning about a case of a female where the age was reversed, but a significantly older person who wants to have sex with a 14-year-old or a 15-year-old. In their home jurisdiction it is completely prohibited, because the age of consent is 16. In Canada, the age of consent is 14. Now, there are categories whereby a 14-year-old would be protected if there were an exploitive relationship. That has to be proven.

What we have is a situation where society has said to us, and parents have said to us, they think this is already illegal. That's the evidence we heard. We've heard from witnesses who say that when they tell parents that a 40-year-old can have sex with your 14-year-old, they're shocked. They think this is already against the law.

What this bill aims to get at is to send a message to individuals who would like to come to Canada or are in Canada and want to have relationships with people who are significantly younger, 14 and 15 years old, that this is not going to happen, that it's against the law.

I'd like a general comment on how we've addressed the close-in-age. There may be some in this panel who think that "close in age" should be more than five years, and if that's the case, I'd like to hear arguments to support it.

I guess my question is—what this bill gets at is not about teens having sex with each other—whether you think it's ever appropriate for, as an example, a 40-year-old or a 45-year-old man to have sex with a 14-year-old. Is it ever appropriate in our society for someone who is 20 or 30 years older than a 14-year-old to have sex with them?

● (1255)

The Chair: Who would like to begin the response?

Mr. Trudell.

Mr. William Trudell: That is—

Mr. Rob Moore: I ask that question because that's what we're talking about.

The Chair: Mr. Trudell, you have the floor.

Mr. Rob Moore: That's what we're talking about here.

Mr. William Trudell: If you invite me back tomorrow I might be able to answer the question. I'd have to think about it.

It's an emotive question. I think it probably—

Mr. Rob Moore: I just want to interject one quick thing, Mr. Trudell. It's a difficult question, but this is a difficult issue. That is what we're dealing with. In Canada a 50-year-old man can have sex with a 14-year-old, and in fact they do. So I'm asking, should we as a society accept that? Is it ever acceptable?

Mr. William Trudell: Yes, it would be acceptable in certain circumstances, because we don't make laws right across the board. There have to be all kinds of factors in that example.

But let's just go back for a couple of seconds. If there are Americans coming across the border to have sex with Canadians, I think there are laws in the American jurisdiction that cover that kind of offence. So it's not just like it's open season. I didn't bring them with me, but there are American offences that cover that.

Mr. Rob Moore: Mr. Chair, I just want to interject on that point before you leave it. We don't want to rely on the Americans to protect kids in Canada.

Mr. William Trudell: No, but you were talking about open season.

You know what? I think it's really important that you mentioned the close-in-age exemption. Five years is an arbitrary figure; it's picked. That's why I've become very attracted to the idea of the presumption that was introduced. It wasn't our idea; it was introduced by a person who was sitting here earlier this morning. That really covers what you're trying to do in the protection of this act, but it also leaves it open for a judge to decide.

It's good that there is this close-in-age exemption; that's probably why you're getting a lot of support for the bill. But because five years is arbitrary, I think that you might want to go a little bit further to cover those circumstances where there may be explanations a judge would be satisfied in dealing with.

● (1300)

The Chair: Thank you.

Mr. Gratl, did you want to respond to Mr. Moore's question?

Mr. Jason Gratl: I'd have to say that the example is a telling one, because it's not obvious that there is anything like an epidemic or open season on relationships between 14-year-olds and 40-year-olds. People like to trot out that example as something unseemly because, I think many of us would agree, it *is* unseemly—perhaps not to those actually in the relationship, but many of us looking from the outside in might think it's unseemly and inappropriate.

The question is not, though, whether it's inappropriate. To my mind, the question is whether the criminal law should be brought to bear on the issue. When I think about it, I think, gee, aren't there a lot more troubling social issues out there where we actually know that there's a great deal of child exploitation, particularly in the area of abuse by persons in positions of trust, power, and authority? We know that the majority of child sexual abuse occurs within the family by somebody in a position of trust.

If attention is to be paid to this issue, why shouldn't it be paid to the area in which there actually is an epidemic, rather than this marginal issue, which seems to us to be an issue of moralizing, of concern over what kind and when children are having sex, rather than the actual predatory relationships that do exist that we know about, that we have statistics on? That's our position.

The Chair: Ms. Pate, do you care to reply?

Ms. Kim Pate: I would certainly support the last point made.

I would invite Professor Gilbert to talk a bit about the implications again in terms of the constitutional issues of marriage, because, as many of you well know, especially in generations preceding ours, a gap of more than five years between marriage partners is not unusual. My understanding is that would still be permissible currently under many of the marriage laws. So I'll wait and let Daphne come to that.

The Chair: Mr. Dodds and Mr. Brett, we'll get to you in a moment.

Mr. Rob Moore: Mr. Chair, since it's my question, I don't want to go down on a tangent on the marriage issue. We heard a statistic earlier that it represents, I think, 0.7 out of 100,000. The intent of the bill is to address the issue of adults who want to have sex with 14-year-olds and in many cases come from jurisdictions where they would not be allowed to. So can we stick to that question of whether it is appropriate?

I haven't heard anyone argue that there should not be any age of consent. If there are any arguments to that effect, I'd be interested in hearing them. I haven't heard anyone say there shouldn't be an age of consent, period. So presumably all the witnesses agree with the current age of consent, which is 14, and that we shouldn't lower it to 12. Right now there's a law against an adult having sex with a 13-year-old. This bill raises the age of consent to 16.

So that's the main question: is it appropriate? Should it be legal for a 45-year-old man to have sex with a 14-year-old?

The Chair: Under that particular point, did anyone else want to reply?

Mr. Quist.

Mr. Dave Quist: I'll just add my comments in here as well. In the vast majority of cases, it should be illegal. There are perhaps the odd extenuating circumstances, and perhaps the point Mr. Trudell has raised would deal with that. But if we're going to have a number, five years seems like a reasonable number to at least start the debate on and to substantiate the law into it at that point.

My colleague Mr. Gratl has raised a point as well in terms of sexual exploitation in the family, versus outside of the family. His point is valid as well. There are some certain academic issues happening within the family. There are also laws dealing with that at this particular point, and maybe they need to be strengthened. That's something this committee could be looking at in the future as well.

We do know, however, that sexual exploitation has risen dramatically in the last twenty to thirty years, between predatory adults and teenagers. I think that's what this bill is addressing. It's not addressing morality or whether kids should have sex or not. It's addressing how we enforce the law and make the laws tougher on adult sexual predators who prey on our youth and teens.

Prof. Daphne Gilbert: If I could just make one comment as well, this does come down to what Mr. Gratl was saying about the difference between what we find socially objectionable and legally objectionable. I think it is socially objectionable for a 40-year-old man to be preying on teenagers. I think it's socially unacceptable for a 40-year-old man to have sex with a 17-year-old. There are lots of things about unconventional sexual relationships that I wouldn't approve of if my own children were engaging in them, but I think there's a difference between what we say we don't like socially and what we want to make criminal.

● (1305)

Mr. Rob Moore: Would it always be “preying on” if it was a 40-year-old and a 14-year-old? You used the term “preying on”, and that's the way I would see it too. But I'm just wondering, because that's why we want the age of consent to be 16. Maybe there could be examples. We recognize in the code that there could be an exploitative relationship with someone who is under 18, but we have to draw the line somewhere. So, again, is it always preying if it's a 40-year-old and a 14-year-old?

Prof. Daphne Gilbert: I don't think it's always preying, but I do think it's always unconventional. It's always something you'd want to take a second look at as a parent, but I'm not sure you'd want your criminal law to be dealing with the specific issue of capturing an extra two years of teenage girls' sexuality. I keep coming back to the fact that this is primarily a law that's going to end up regulating the sexuality of teenage girls, because they're the ones who are going to be captured by this additional two-year age-of-consent issue.

You asked the question about whether we should lower or have no age of consent. No, clearly we wouldn't say there shouldn't be any age of consent, but raising it by two years isn't just a simple administrative matter. I think it has very real social policy implications. It's not just a simple administrative question of bumping it up a couple of years.

The Chair: Thank you.

I'm going to have to close this part of the debate off here.

I'm going to go to Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: I'd like to ask two questions.

First off, I'm quite pleased to hear your testimony and I thank you for having taken the time to meet with us.

However, I must admit I'm of a liberal bent when it comes to having an open mind. I believe that those who stand opposed to this bill have not given us very compelling arguments. Obviously, I'm not denying that young people who are 13 or 14 may show great maturity. However, when we legislate, we do so for society as a whole.

I'd like to get back to the constitutional aspect, because it is interesting.

I have a hard time with the argument according to which if we set the age of consent at 16 in a bill, with the close-in- age exemption which you are aware of, it could lead social workers, health care professionals or teachers not to provide information on sexual health, hygiene or protection.

It isn't easy for 13 or 14 year olds to talk about their sexuality. I understand there may be some taboos and some prudishness. Several members of the committee referred to sex education, and I agree with that. However, I don't think it is unreasonable that at 16, we consider that, except when it comes to teenagers exploring their own sexuality, there should be some type of a framework.

I would like you to expand a bit on what you were saying regarding this bill possibly making those who need information and those who must provide it more vulnerable.

Make sure your comments are brief and punchy, as though you were trying to impress your date, because I have a second question for the professor from the University of Ottawa.

[*English*]

Mr. Andrew Brett: I'd just like to point out the one statistic we mentioned in our submission, which was that young women in the United Kingdom who are under the age of consent are six times more likely to say that they are too afraid of being too young to seek help for sexual health information and education. I think that's proof right there that young people under an increased age of consent will be less likely to seek out help.

[*Translation*]

Mr. Réal Ménard: With respect, you will agree that this is not a very conclusive argument. I can understand that people may be shy, that we need to encourage parents to teach their youth to feel comfortable with their sexuality, but the purpose of this bill, it seems to me, does not quite fit with the argument you've just put forth.

If you'll allow me, I have a question for the professor from the University of Ottawa.

I am a student at the civil law faculty; I'll be finishing this year and I look forward to it. I hope you're not the type of professor to give your students a final exam that counts for 100% of their mark. But that is another question.

I'm concerned about incompatibility. Unlike Mr. Moore, I think it is something we need to look at. Before we pass legislation, if we have reason to believe there may be some encroachment into provincial and territorial areas of jurisdiction, specifically with respect to marriage and to age-related conditions, I would like you to clearly point to any potential problems of incompatibility.

Would you go so far as to postpone the passage of the bill until we hear from constitutional experts as to the way in which it may potentially be incompatible with provincial areas of jurisdiction?

● (1310)

[*English*]

Prof. Daphne Gilbert: I promise I won't pass any news to the civil law section with respect to your grades.

The constitutional question I think comes down to dealing with the province on what their reaction would be to the age of marriage issue that is raised. For me, the issue is looking at the places in particular where marriage is permitted at the age of 15 to find out if there's a justifiable reason why the territorial governments allow marriage at age 15. Across the rest of the country in the provincial jurisdictions the marriage age is 16, with permission to marry younger in special circumstances. The key when you get to provincial regulation of marriage is to know that the provinces are doing it based on local conditions and that's why we allow them to have control over rules around solemnization. Marriage is a local, community, and social value, and may change across the country and in the northern communities and may have very different implications depending on where you live.

I take Mr. Moore's point that perhaps only a small fraction of marriages actually happen between teenagers, but on the books at least you have a conflict. For those teenagers it might be a very significant conflict and it might be a life-changing conflict. In particular, where you have an express age limit of 15 it bears questioning why, in those northern communities, for example, it's felt that this limit is relevant.

Mr. William Trudell: Mr. Ménard, may I respond to this too?

There could be all kinds of cultural issues, but I see, without any doubt, a constitutional problem here. That's why, when I was trying to make my comments, I talked about the rights of the individual as being very important. If one party is saying that the province is right, and the other party is saying no, the feds have the right to prosecute, the judge in the middle is probably going to decide on the individual rights of that person who's affected. It's something I'm really glad to hear Professor Gilbert talk about, because I think it's a real concern in terms of how sophisticated somebody is at 14, and what rights they have in one province as opposed to another region.

[*Translation*]

Mr. Réal Ménard: Thank you.

[*English*]

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

Thank you all for coming. I was pretty positive about this bill, but you've raised some concerns I hadn't thought about. I'm glad you've come as witnesses.

As the only member from the territories, I want to ask about the constitutional question in relation to the territories. Although you should know that the Yukon government is onside with the bill, it raises the issue that we haven't had any witnesses from the territories, especially those groups that might explain whether or not the social mores are different there, why the ages are different, and what their thoughts are on this. I have to give second thoughts to having more witnesses.

Nicholas and Andrew, I'm very glad you're here. I'm a little upset you used my speech, because I was going to say it's adults making this legislation. We haven't had 14-year-old and 15-year-old youths here to give their opinions. We're legislating for them.

On the constitutional issue, if we put in an exemption that said notwithstanding the age in the province, it would only apply up to the age that would make it legal. In the three territories, for instance, this wouldn't apply for 15-year-old youths because they're allowed to be legally married. Would we then have another constitutional problem because people across Canada weren't treated equally?

● (1315)

Prof. Daphne Gilbert: Yes, you would. You'd have a very significant problem, in that when the federal criminal law powers envisioned it, it was a power that uniformly applied to the entire country.

I think you'd immediately get a challenge that this law is not in fact about criminal law, but it's about social morality issues. If it's not uniformly applied, it raises the issue of it not actually being a criminal law regulation, as granted by section 91.27 in the Constitution.

I think the court has been pretty clear that criminal law has to be uniformly applied across the country, and that's not to mention Americans coming up to Canada looking for safe havens. I don't think you'd want the rest of the country going up north looking for safe havens either.

Hon. Larry Bagnell: I want to put the Department of Justice on notice to give us an answer on that. The Department of Justice always says they've checked a zillion times on whether or not something is constitutional. I'm sure you'll get us a response on that question.

Nicholas and Andrew, you didn't get a chance to answer the question that Mr. Moore asked. I'm not sure the question was very fair when he said 14 and 40, because this law is about 15-year-old and 22-year-old persons. But in relation to Mr. Moore's question, did either of you want to answer that?

Mr. Andrew Brett: I think in response to a very emotive question, I'd like to give a very emotive answer.

Nicholas is 18. I'm sure a lot of people would be disgusted if a 70-year-old person hit on him, but it doesn't mean it should be against the law. That's all I'm saying in response to that question.

Hon. Larry Bagnell: In an effort to get more of a voice for youth, is there anything you haven't had a chance to say from the youth perspective?

We haven't heard from many youths yet. I don't know how big your group is. Are your views representative of a large proportion of youth? There were some references that adult witnesses made previously that suggested there were a number of youth who would support this bill.

Mr. Nicholas Dodds: It's a very hard question to answer. Of course, I unfortunately haven't conducted a poll of all of the youth in Canada. I would like to do that, but it's kind of impossible.

I think there are some youth who would support this bill. I believe there are other youth who would not. I know there is a significant proportion of youth who believe they're trod upon every day by the so-called democratic process, and there are other youth who have implicit trust in it. I think a significant number of youth in Canada believe they're being legislated against without any consultation whatsoever.

I believe we're here to try to equalize the fact that we haven't actually heard from any youth of 14 or 15 years old. We're here trying to equalize it. I think we bring some opinions that those youth hold, although I can't say I speak for them all.

The Chair: Thank you.

Mr. Trudell.

Mr. William Trudell: One of the things you find when you practise criminal law and represent young people is that they live in their heads and don't communicate a lot. That is probably the natural part of being a teenager.

I'm really delighted to hear Mr. Dodds and Mr. Brett, because they voice low-level concerns we had about not having this legislation interpreted by youth that it's not to protect them; it's to sort of legislate against all the pressures and choices they have to make.

It's so hard to get young people to open up to us old people—sorry, I didn't mean us—so I think that really should be kept in mind. I imagine a lot of young people don't understand the system and what we're doing here. They would interpret this as, “Wait a minute, I can turn on the television and see it, but you're telling me I can't make a choice”.

I think it's an interesting caution that we might keep in mind.

● (1320)

The Chair: Christina.

Ms. Christina Godlewska (Articled Student, B.C. Civil Liberties Association): Thank you.

I think we need to keep in mind that we're not talking about the age of approval; we're talking about the age of consent. Consent is a very basic act, and we're saying we don't want 14- to 16-year-olds to have the ability to have the legal capacity to consent at all. What follows from this is that a 15-year-old who represents herself as being over 16 and presents fake identification is acting in an unconscious fashion. They don't understand at all what's going on.

Perhaps from an adult perspective there are perceptions about teenagers engaging in risky behaviour. We've heard that some teenagers regret their decisions, and we might want to protect them from that. But we have sociological evidence, and studies show that teenagers perform on par with adults when considering the costs of risky behaviours. I can provide the citations for anybody who is interested, and we have a position paper that will be online shortly. Another study examined the common perception that adolescents feel invulnerable to negative outcomes of risky behaviour, and that perception was not supported.

So we think we're protecting teenagers from themselves here, but the truth of the matter is that if we're going to give teenagers a kind of autonomy and want them to act as autonomous adults, the way to do it is not to say anybody under 16 can't make the most basic of decisions for themselves under any circumstances.

The Chair: Thank you, Christina.

Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman: Well, the debate certainly is going off in another direction this afternoon. I thank Mr. Bagnell for his question.

Thank you, Mr. Brett and Mr. Dodds, for having come here today.

It is true that the bill concerns youths and that there is no mechanism set up to consult them, which is unfortunate.

What would have been the best way to meet with young people on this subject? There are no groups representing young people between the ages of 14 and 16.

[*English*]

Mr. Andrew Brett: The very fact that this bill was brought forward by adults and not by youth seeking help or protection indicates it was a paternalistic move in the first place. If you wanted to present that bill and seek youth approval, there are many youth groups across the country. In Toronto alone there's the Toronto Youth Cabinet, and youth agencies. Many of these groups are already against this bill. If they had been consulted, I believe the justice committee would have learned this.

[*Translation*]

Mrs. Carole Freeman: Thank you.

Ms. Pate, various witnesses testifying before us on this bill mentioned the difficulty young people may have in consulting their doctor, and the issue of confidentiality. Could you expand a bit on that? I also wondered about this and I wonder whether raising the age of consent would deter young people from going to see their doctor. That is a problem to my mind.

I should add, Mr. Brett and Mr. Dodds, that I am the mother of a 14-year-old. So, I know to what extent young people clam up: they don't talk. That said, it is true we did not consult them. I'm sorry about that. However, I wonder from a medical point of view, what adverse consequences there might be. Could you expand on that a bit?

Ms. Kim Pate: I'm sorry, my French is not—

Mrs. Carole Freeman: You can answer in English, if you prefer.

Ms. Kim Pate: Yes, thank you.

[*English*]

I am the mother of a teenaged son, and when I was preparing for this I had some discussions with my son's friends and my daughter—who is pre-pubescent—and some of her friends, and in a very interesting way, the least informed were the most supportive. Let me put it that way.

I had thought about it, and in fact Professor Gilbert and I had some discussion about the whole issue of consent to medical treatment. We talked specifically about young women, and we wondered whether a young person going in to see her doctor, if there was a sexually transmitted disease or some other sexual health issue and she knew that her partner was beyond the scope of the five-year age, would report that, and what the consequences would be if she refused to report.

I suspect there are others, and probably Professor Gilbert herself has more information. I think there would be ramifications. There certainly are now if young women recant or don't report or withhold information in situations where the criminal law presumes that they should be providing that information, so I think there very likely would be concerns in that area.

Also, when I was talking with some young people yesterday at a birthday celebration that involved young men and young women, many of the young women said that they not only wouldn't report, but they might not even go to the doctor if they were fearful of that, and that caused me great concern. Young people, including my child —My son doesn't necessarily report everything to me. I don't presume that I'll get it. But I thought that if they would tell me that in a fairly open discussion, I'd be concerned about what else they might not talk about. If they would say that they might not actually report the sexual activity, that's one thing, but more importantly, if they wouldn't seek assistance, that was a much graver concern.

If in fact our interest is, as I think it is for all of us, protection of young people—and in my case I agree that some of it is maternalistic —I would want to think that even if my child were participating in a relationship that he or she was not comfortable telling me about, he or she would be comfortable going to their doctor, to whom they do go and have private conversations, and would be able to feel comfortable in disclosing. Now I'm not so sure that would be true.

I could raise other concerns, as a parent, of course, in another context, but in this particular issue I was surprised to hear that. I was surprised to hear it from a young woman who I don't know particularly well.

● (1325)

The Chair: Thank you, Ms. Freeman.

Mr. Trudell, do you want to reply?

Mr. William Trudell: I was just going to say it obviously creates real problems for the doctor in terms of patient care versus their responsibilities, and that's another sort of collateral issue that really has to be kept in mind in this area.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Good afternoon and thank you for your testimony here today.

I have a question for Ms. Daphne Gilbert. Earlier on, you drew my attention to a question Mr. Bagnell also referred to. You referred to the solemnization of marriage in the provinces and territories. If you take the Yukon, for instance, the age is set at 15. Formerly, in the province of Quebec, the age was set at 12 and 14. However, although marriage is a federal area of jurisdiction, its solemnization is provincial. Perhaps that distinction should be made.

Canada is a multi-ethnic country, so there are a number of customs here and we must show great respect. I don't know if you live in Ontario, but if so, you know how close Ontario was to having Sharia law passed as a way of settling matrimonial problems. Sharia law recognizes marriage at a far younger age than we do. Imagine the situation which would have occurred if Sharia law had passed by a single vote at Queen's Park. What would have happened today and what would we do with this bill? The same problem arises in the Yukon, where under the law people can get married at 15. Sharia law almost became a reality in Ontario. I understand that there may be a constitutional problem here, but it cannot be solved. It is a chicken and egg situation: which one came first?

Was the constitutional problem you are raising not already settled, specifically in the province of Quebec, where people could get married at 12 and 14 pursuant to the Civil Code which, it should be noted, dates back to 1866? Try to explain your views on this. I will try to follow. I can understand why Mr. Bagnell has some concerns, I do too. The questions do not only relate to the Yukon. You almost had the same problem in Ontario.

[*English*]

Prof. Daphne Gilbert: First of all, on the question of the federal and provincial split on control over marriage, at least so far it's been fairly settled law—and there have been actual cases about this—that it is within the provinces' competence as a solemnization question to set the age limits for marriage. Certainly that is uniformly accepted across the country at this point in time. Again, I repeat that this is partly because we really do believe that marriage is a local or a community-based matter.

The question with respect to sharia law is a very interesting and telling point: that there are enormous cultural variations with respect to attitudes towards marriage and there are community norms with respect to attitudes towards marriage. That's exactly why it's a provincial competence and exactly why we have very many modes for getting permission. If you are a young person and you want to get married, in some jurisdictions it's parental consent, in other jurisdictions you can go to court to get a court order, and in some places a minister can decide to give permission. So the provinces have taken different approaches, depending on their feelings about the community they're representing.

There is no question that this bill will require all provinces and all territories to reconsider their minimum age of marriage with respect to marriages that are occurring in violation of the Criminal Code. The problem is you're creating two regimes, in a way: you're going to have legal marriages between 15-year-olds, and if the person is less than the five years different it's going to be fine, but a constitutional problem will arise if a 15-year-old wants to marry a 21-year- old. Comments aside around 40- and 50-year-old men, I think this is really a problem arising mostly with that just-outside-the-age-gap question, and that's where small communities, northern communities, and religious communities have particular constraints around how they're approaching the marriage question.

I think the one thing you would hate to see is some sort of exception for sexual activity within marriage for all of the reasons around privileging the marriage relationship. It's a question that the provinces are going to have to be involved in answering. You may have unanimity, they may all agree that they're going to raise their absolute age to 16, but you're still going to have the question of what to do with those processes for people who want to go to court and get a special court order giving them permission to marry. What does a judge do with competing laws on what is lawful sexual activity? Do we want courts and parents consenting to what would otherwise be unlawful sexual activity? Those are all important questions.

● (1330)

The Chair: Thank you, Mr. Petit.

Ms. Jennings.

Hon. Marlene Jennings: Thank you, Chair.

Thank you very much for your presentations. I have a couple of questions that follow on suggestions or recommendations that were made by witnesses earlier this morning. Before I ask them, I'd simply like to address the issue of the lack of consultation with teenagers.

Normally a government that is thinking about bringing about a substantive change to a particular legal framework or law conducts what's called pre-consultations. It actually informs the public that it's thinking of changing a particular law, and it asks for people and organizations to write in, to e-mail, and to send in their views, and there's a deadline. Once everything is received, it's all collated, and the basic views that are received are summarized.

The government then organizes panel discussions, round tables, or whatever, with a representative number of stakeholder groups. Only then does the government actually move forward with actual legislation, which is then tabled in the House, etc.

I'm not aware that this government did that. I am aware that the complaint we hear regularly on other bills is that there was no pre-consultation and the traditional process was not respected. That is an issue you may wish to take up directly with this government.

My questions follow on the recommendations of previous witnesses and are on the issue of the discriminatory section, section 159, which criminalizes anal intercourse if you're under the age of 18. It's criminal right now, even with the age of consent at 14. It doesn't change anything for anal intercourse, regardless of what the age of consent is; if you're under 18, it's a criminal act.

First of all, that has been judged to be unconstitutional by a number of provincial courts, and at least by the Court of Appeal for Ontario, but it hasn't gone all the way to the Supreme Court of Canada. It should be null and void. The government should in fact repeal the whole section, and it had an opportunity to do so with Bill C-22. Had the government done the pre-consultation, perhaps they might have heard from sufficient witnesses and legal experts that they would have included it.

Under our rules here in Parliament, because that section isn't touched by Bill C-22, it means that if we attempt to bring an amendment that would repeal section 159, it would be deemed out of order. Some witnesses have suggested that we should in fact amend section 150.1 of the Criminal Code, which is dealt with in Bill C-22, by adding section 159. I'd like to know if you have any comment on that. That would be a stop-gap remedy until the government, in its wisdom, finally repeals section 159 in its entirety.

There's a second point that I would like your comments on. There has also been a suggestion that rather than having a hard and fast law saying that if the difference in age is five years or more it's automatically deemed a sexually exploitive relationship and there is no defence, it should be presumed to be a sexually exploitative relationship, in which case it would allow for that to be rebutted. You would then have the possibility of someone who is 22 years old with someone who is 16 years old, and they would be able to rebut that. That's my second question.

If I have time—

● (1335)

The Chair: You won't have time. Your time is almost up right now.

Hon. Marlene Jennings: I like to get the questions out so that they can always respond in writing, through the chair.

The Chair: You can put the question, but the response may be cut short.

Hon. Marlene Jennings: The other point I have is that it is a real concern that young people, even today, will not share with health care providers, with people who have the information and can provide them with good, healthy information about sexual relationships and sexual health, etc. It may in fact become even more of a problem.

Given that it's already a problem, I don't think Bill C-22 is that substantive on that issue. I think the problem is that as a government, federally and otherwise, we haven't made the measures and the tools available in order to do the kind of education and provide the kind of information to young people so that, one, they know what the law is; and two, they're comfortable that they can go to and confide in their health care providers. I'd like your comments on that.

Thank you.

The Chair: I would ask those who are going to respond to make it very short.

Mr. William Trudell: Section 159 is dangling out there. I think you have to bring it in. If you can't, have it repealed.

It's too bad there's no preamble here. If you had a preamble, you could say that whereas we respect the rights of young people to make decisions, the government has to protect them. You'd be giving the message that you want to educate, too.

So perhaps there could be a preamble here.

Mr. Jason Gratl: One of the great difficulties of legislating in the area of sexual age of consent is that the law itself is not very well understood.

Mr. Quist from the family institute raised the percentage that 90% of people are in support of this bill. I think that may well be because the existing provisions are so poorly understood. The general public doesn't understand that there are laws against sexual exploitation of children, doesn't understand that there are laws preventing persons in positions of trust, power, and authority from having sexual contact with minors. A great deal of the public concern over sexual exploitation could be dealt with by educating the public on the existing ages of consent. It's a comprehensive, complex scheme.

The single unified message that's going to go out with Bill C-22 is not the close-in-age exemption; rather, it's that the age of consent is being increased from 14 to 16. And that will send a message about children's sexual autonomy that is wholly undesirable; it will signal a bit of a cultural shift towards moralizing, towards a kind of fundamentalist approach towards sexuality that's highly undesirable.

So it's that general tenor, not the specifics of the regime, that really will be manifest at the cultural level.

● (1340)

The Chair: Thank you, Mr. Gratl. Sorry to have to cut you short.

I understood Mr. Quist's statement to be that the public was under the impression that their children were protected already, and they were not very aware that the ages were so low in this area. That's my understanding, but Mr. Quist can comment.

Ms. Pate.

Ms. Kim Pate: Just very briefly, I would support everything Ms. Jennings said there. Rather than repeat it, I'll just say we support it.

In the alternative, our first position would be that rather than throwing another law at this issue, targeting the real concerns and implementing what laws do exist would be our first priority.

Yes, repealing section 159 is an issue. In the alternative, if you don't agree and you do decide to proceed with some version of Bill C-22, then to all of what you said I would say, yes, incorporate in terms of amendments.

The Chair: Mr. Dodds or Mr. Brett, either one of you.

Mr. Nicholas Dodds: I would like to address the reverse onus, specifically regarding proving that a relationship is not exploitive.

By saying that you can prove that a relationship is non-exploitive in a court of law, what you are saying is that this isn't a black and white issue. There are grey areas. There are areas where people may have non-exploitive relationships.

Also, if that provision were enacted, this would take the burden of proof—that is, the assumption of innocence until proven guilty—and turn it on its head. That's unconstitutional under the Canadian Charter of Rights and Freedoms, and I can't see that as being a realistic provision.

The Chair: Mr. Quist.

Mr. Dave Quist: As a point of clarification, the question was "Do you think the federal government should raise the current age of sexual consent from 14 to 16?" To that, 80% of respondents said yes.

I think education is important in this issue, as it is in all issues. Unfortunately, the law is so vague and so complex in many ways.... And I am not a legal expert, not a lawyer. I think we often know, or think we know, only the parts of the law we're faced with on particular issues, whether it be real estate or other issues. The education of the public is a big question that you as legislators face on a daily basis.

The Chair: Thank you, sir.

Ms. Gilbert.

Prof. Daphne Gilbert: I want to say that I certainly hope these two young men apply to my law school—I'm going to be handing out my card here—because I think they're acquitting themselves so magnificently today.

In terms of my feelings on a second alternative if the bill is going through, I would have to agree with what Ms. Pate has said in terms of supporting what you're suggesting.

With respect to the rebuttable presumption, I think the problem there is that you're still sending out the message of criminal behaviour. You're still sending out the message that young girls don't have control over their sexual autonomy. You're still capturing people within a criminal justice system. Rebuttable presumption would only work to the extent that you actually had a trial, and we know that most cases like this don't end up at trial. They're plea-bargained to avoid the costs and consequences of being caught up in the system.

So I see that as a really poor alternative, although I suppose it's the next best thing to an all-out ban.

The Chair: Thank you.

Mr. Brown.

We'll get to Mr. Comartin directly after.

Mr. Patrick Brown: Thank you, Mr. Chairman.

I've heard a few comments I'm going to respond to and then I'm going to have a question for Mr. Quist.

One comment I heard at the beginning of this hearing was that a lot of young people are against this. I wanted to note that I received two petitions in my riding from youth groups that were profoundly in support of this legislation, one from St. John Vianney Church, the other from St. Mary's Church. They were from hundreds of young people who very much admire the direction we're seeing in this Parliament—and not just from the government, a lot of parties are supporting this—that it is the right thing to do to protect children.

I also heard a comment that this is an erosion of a youth's sexual autonomy. I'd like to note that this is not an erosion of a youth's sexual autonomy. If a 15-year-old were having sexual relations with a 17-year-old, there's no erosion there. They may choose to do that. But what this means is that it's an erosion of child exploitation, and that's something to be very proud of. It's an erosion that someone who is 50 will not be allowed to have sex with a 15-year-old. That's the only erosion happening, and I think that's something that a lot of young people will be very much in support of and would be very proud of.

I also heard the comment that this is a move toward fundamentalism, and I found that very surprising. I think that characterization would be saying that mainstream Canada is moving toward fundamentalism. Because that's what this is. These are mainstream values. To use the legal term, if you're going to take judicial notice of something, I think it would be safe to say that the majority, the vast majority of Canadians, believe that it's unacceptable to have a 50-year-old having sex with a 15-year-old. This legislation is about the protection of children. Bottom line, that's what it's about. That's why it's getting so much support across political lines.

This legislation is very helpful for that. That's why we've been seeing these white ribbons across the country, wherever we are gathering steam, gathering support. By and large, Canadians of all age groups, in all regions, are very much in support of this legislation.

I think there are many reasons for that, but Mr. Quist, could you talk to us about the long-term consequences of this? To give you a few areas I'd be interested in, one is for children who are exploited in an area this legislation's potentially going to protect. Obviously we're never going to protect against every abuse, every crime, every exploitation, but for the ones that it may help, that this stigma may be there and may prevent a future crime, what are the benefits that's going to have in terms of people who may not have that erosion in their lives? For those who are exploited, are there greater rates of family problems? Are there greater rates of divorces down the road? Are there higher incidences of drug use? Are there higher incidences of crime? Is there any evidence your group might have that would suggest those who are abused or exploited at a young age have their future prospects damaged?

If someone's exploited at a very young age, I think one concern that many would have is that we are damaging their growth so much. It would be interesting if any studies highlight how that affects them, not just in the immediate tragic moment, but 10 years down the road or 20 years down the road, in terms of what happens to these victims.

● (1345)

Mr. Dave Quist: There's a great deal of social science research in this particular area. I do not have that with me. I would be pleased to present that through the chair to the clerk of the committee to pass on to the rest of the members.

There's certainly evidence that those children and those youth that are sexually exploited more often have higher rates of different forms of abuse later in their lives, be it substance abuse, be it mental abuse, the worst-case scenario obviously being suicide. Their education typically does not progress as far as it could or they don't reach their full potential. It is often seen as a major impediment that has changed their lives.

I would be pleased to present that information to the committee, chair and clerk, to bring that out and substantiate it. From within Canada, the U.S., and around the world, that social science is fairly solid.

The Chair: Go ahead, Mr. Brown.

Ms. Pate did want to reply to your question.

Mr. Patrick Brown: I have one more question, as I know my time is limited, for Mr. Brett and Mr. Dodds, just to get an idea for the committee where you're coming from.

This government legislation proposes the line at 16, and that's where our position stands. What is your opinion, going in the reverse? Is it the opinion of your organization that 14 is the right level, or do you think it's appropriate at 13 or 12? Using arguments that you have, suggesting that we are eroding some of the autonomy and rights of a 14-year-old, are you saying that would be the case with a 13-year-old too? If not, why the difference between a 13-year-old and a 14-year-old? Where is your line in the sand for the protection of children? And is there even a line?

● (1350)

Mr. Andrew Brett: Our committee was set up to fight legislation proposed by the Conservative government. Our committee is not set up to decide what the age-of-consent legislation should be for Canada. It's to oppose the proposed legislation.

Mr. Patrick Brown: You have no opinion of 13, 12, 11, 10, 9 as being inappropriate?

Mr. Andrew Brett: It's not really a discussion right now. We're discussing a bill proposed by the government.

We need to fight this bill. We're not devising age-of-consent legislation. It's already—

Mr. Patrick Brown: That's what we're looking at. We're looking at age-of-consent legislation, and obviously we're going to get input. We want to look at all the spheres of that input.

That's not very helpful, but that's okay.

Thank you.

Mr. Andrew Brett: I'd like to add one more thing. In response to "this is the mainstream values of Canada", I'd like to point out that in a recent survey more Canadians thought it was more wrong to commit adultery than to have sex under the age of 16. I'm wondering if we're going to be debating adultery next at the justice committee.

The Chair: Who knows? Whatever comes to the forefront. There may be some interested citizens who want to bring that forward. Right now we are discussing the age of consent.

Ms. Pate.

Ms. Kim Pate: With respect to the question you asked, Mr. Quist, I think that is precisely the point I was trying to make.

You're putting forth this bill as though it will solve all those issues, and in fact it won't. It deals with a very specific issue. If your concern is the sexual exploitation, the abuse of children, then there are many other issues that need to be targeted as well. I recognize that for political reasons it may be the sort of message you're trying to get out. That's almost what it sounded like now, an attempt to portray this as actually stopping the sexual abuse of children, and clearly that's not what this bill is about.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Just a point, Mr. Chair. I did make reference in a question to this chart. It's hard to copy, but I'll copy it in some form and pass it around at a subsequent meeting.

Mr. Gratl, I don't know if I missed something, but you raised this issue of a defence based on a mistaken belief of age, and that whole issue. I thought there was a specific provision in the bill in the first section, 150.1, that deals with it. I thought it did. Have I missed something here?

Mr. Jason Gratl: Perhaps not.

Mr. Joe Comartin: Okay. Because it does seem to address that if you have a reason, or your due diligence argument—this is the wording that they use—it's not a defence "unless the accused took all reasonable steps to ascertain the age of the complainant". I think that would fit within your due diligence.

Mr. Jason Gratl: That may be too high a requirement, "all reasonable steps". It should perhaps read "reasonable steps". Under the circumstances, "all reasonable steps" might be too high a burden to meet.

Mr. Joe Comartin: I assume they've used that wording because it's the same wording for the 12-year-old and the 13-year-old and the two-year and near-age defence.

Mr. Jason Gratl: That might well be.

Mr. Joe Comartin: That's all I have, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

One final question for Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman: This will be my last question, I'll be brief. We have all been referring to the five-year close-in-age exemption. I would like Mr. Trudell to get back to this arbitrary five-year period. Relations between a 15-year-old youth and a 21-year-old adult have become absolutely illegal.

Can you tell us a bit more about this?

[*English*]

Mr. William Trudell: I was just picking up on a submission made by a previous witness here that maybe it's a presumption. The issue was raised about whether it's shifting the onus. I think it merits consideration so that there's room to look at each individual circumstance because we're talking about criminal legislation and penalizing in the circumstances. There may be circumstances where one is satisfied that it is not an exploitative situation.

One of the things that is really going to be important here is that all kinds of other committees and other work going on by the government and the justice committee and access to justice and justice inefficiencies are talking about looking at cases in the front end. These new sections really put the pressure on the police and the crown in the front end to make sure these cases are not just being swept into the system but are screened effectively. I think that's going to be very important that this message go out.

● (1355)

The Chair: Thank you, Mr. Trudell and Madam Freeman.

I'd like to thank the witnesses for appearing today and for your testimonies. They were certainly valuable for the committee, and we will deliberate on your comments.

The meeting is adjourned.

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