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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting 46 of the Standing Committee on Justice and Human Rights. For the record, today is Monday, February 7, 2011.

Just as a note, today's meeting is being televised.

You have before you the agenda for today. We're continuing our review of Bill C-54, An Act to amend the Criminal Code (sexual offences against children).

To help us with our review we have with us the following witnesses. First of all, representing the Canadian Centre for Child Protection, we have Lianna McDonald. Welcome back. We also have Signy Arnason. Welcome.

We have BOOST Child Abuse Prevention and Intervention, represented by Karyn Kennedy and Pearl Rimer. Welcome to both of you.

We have the Criminal Lawyers' Association, represented by Michael Spratt and Leonardo Russomanno. Welcome to both of you.

As an individual, we have Andrew McWhinnie.

I think you've been advised as to the process. Each of you has ten minutes to present. Organizations have ten minutes collectively. Then we'll open the floor to questions from our members.

Why don't we start with Mr. McWhinnie. You have ten minutes.

Mr. Andrew McWhinnie (Andrew McWhinnie Consulting, As an Individual): Thank you.

Good afternoon, Mr. Chair and committee members.

I am Andrew McWhinnie. I hold a master's degree in psychology with an emphasis on the psychology of criminal conduct. About one-third of my private practice is with men who have come into conflict with the law as a result of their sexual behaviour. I also work with men and women who have been sexually victimized. I also consult with correctional agencies nationally and internationally with regard to reintegration strategies for people who have been convicted of sexual assault and other sexual crimes, called circles of support and accountability. I welcome this opportunity to appear before you today.

I wish to address three points. First, as it stands now, while Bill C-54 is a good bill generally, its efforts to institute and modify minimum sentences upwards for sexual offences against children will have the unintended effect of actually decreasing safety for children. At the same time, it will handcuff one of the best-placed safeguards against those unintended consequences, the judiciary. We can and must do better for our children.

The majority, over 80%, of sexual offences against children are perpetrated by a relative or someone known to the child. Further, we need to remember that the majority of those convicted of sexual offences against children will return to the community. Increasing mandatory minimum sentences exposes potential child victims and their families who are the unseen victims of sexual assault to increased harm, because many families, including the children, are dependent on the offenders. The ability to remain in the community, while unpalatable for some, means that the offender will in many cases be able to continue supporting his family while receiving treatment. We cannot and must not ignore or trivialize this fact. These family members are innocent and should not be punished.

The bill proposes a virtual automatic jail sentence of five years for an incest offender, given that most of these incest offences are prosecuted years after the incidents occurred. Incest offenders are the least likely to reoffend, and yet the stiffest penalty proposed under Bill C-54 is reserved for them. This makes no sense and is not what Canadian families want.

For others, an automatic jail term compromises the ability of offenders to access treatment in the community. Receiving treatment in jail will not happen during sentences of 30 and 90 days. Treatment could, however, be started in this time period were the offender left in the community. This is important, given that we know that treated offenders are less likely to reoffend than untreated offenders. This is even more important when you consider that one of the developmental factors that most differentiates child molesters from non-sexual offenders is the history of being sexually victimized in childhood. We should think about that.

Following even a minimum sentence, offenders will be returned to their community—or some other unsuspecting community—and their families as untreated, unemployed, unsupported, and despised. How does this accomplish a major goal of the proposed legislation to prevent the commission of sexual offences against the child?

Left as it is, this bill has the very real risk of doing exactly the opposite. It is true, of course, that not all offenders are members of intact families, not all are employed, not all are in communities where treatment is available, and not all are victims of horrific sexual assaults. True, some families will want them removed from the community. Bill C-54 does not distinguish these differences. Instead, it would handcuff that critically important part of our justice system best placed to assess these variances. Judges will not be able to consider the needs of this complex and diverse group of offenders and craft sentences designed to meet the needs of those people and protect Canadian children.

● (1535)

Other countries, and particularly the United States, have been down this road ahead of us. We need to look carefully at what their experience has been. Some members of the European Union—for example, Latvia, Great Britain, the Netherlands, and Belgium—and some states in the United States are looking at their laws with a view to reducing the time some offenders spend in jail. I will soon be offering testimony to the California Supreme Court, which is interested in exploring options other than incarceration for some of their sexually violent predators who are currently subject to their civil commitment statutes. They have discovered the hard way that increasing the incarceration rate with ever more severe punishment-focused laws is unaffordable, and it is having a serious impact on their fiscal and social economies.

Some like to think that victims want perpetrators to be punished harshly by spending more time in jail, but this is not always the case. Many simply want only three things: for the offences to stop and not to happen to other children, for the offender to obtain the help and support they need not to offend again, and to know why they were chosen by their offender. In other words, they want counselling and support for themselves.

Finally, I want to emphasize that the best practices nationally and internationally recognize that the prevention of crime through treatment, especially of youth at risk, and provision of support for victims, especially those who may go on to become abusers, are practices that make real differences in a society's bid to protect its most vulnerable members.

One such practice that provides those needed supports and encouragements to living safe and accountable lives among adult offenders is circles of support and accountability. Circles of support and accountability are a Canadian innovation, first attempted by members of a Mennonite church in southern Ontario. Circles of support and accountability are groups of between four and seven citizen volunteers who agree to accompany, support, and hold a sexual offender accountable following his release from imprisonment. Volunteers are screened and they receive training for this purpose.

In a national study of the effectiveness of circles, researchers found circles of support and accountability participants had an 83% less likelihood of reoffending, 73% less violent reoffending, and 72% less reoffending of any kind than a matched comparison group who did not participate in circles. Further, in looking at the total number of new charges incurred by the two groups, as opposed to just the numbers of offenders who recidivated, the comparison group garnered 76% more charges than the circles of support and accountability group.

I have submitted a report containing those numbers to the clerk, which will be translated and made available to members of this committee.

Circles of support and accountability are supported in part by the Correctional Service of Canada chaplaincy division and by other faith and non-faith supporters in the community. Currently they work with about 160 offenders, with over 350 volunteers nationwide.

The annual budget for COSA, circles of support and accountability, in Canada is $2.5 million, a fraction of the cost that will be incurred by Bill C-54 and other tough-on-crime measures. Borrowing from the Canadian example, Great Britain, the Netherlands, Latvia, and several U.S. states have developed COSA in their jurisdictions.

While Bill C-54 has the potential for good and the potential to deliver on its promises of protecting children, it also has some serious flaws. These have especially to do with the blanket mandatory sanctions that will not safeguard children. Indeed, these may actually increase the danger towards children.

Other countries are looking at other options instead of increasing incarceration rates. The resources that would be required to implement the mandatory minimums called for in Bill C-54 would be far better diverted to increasing treatment for sexual offenders and equipping alternatives like circles of support and accountability.

Both of these options, circles of support and accoutability and treatment, have proved to be very effective at reducing reoffence rates against children, thereby substantially increasing safety in our society and internationally.

Thank you, Mr. Chair and members of this committee, for the opportunity to discuss these very important matters with you. I am available for questions, as you see fit.

● (1540)

The Chair: Thank you very much.

We'll move to the Criminal Lawyers' Association. Mr. Spratt, I believe you are going to start.

Mr. Michael Spratt (Director, Criminal Lawyers' Association): Thank you, Mr. Chair, and good afternoon to the honourable members of this committee.

My name is Michael Spratt. I'm a criminal defence lawyer. I practise at the law firm of Webber Schroeder Goldstein Abergel here in Ottawa. I practise exclusively in the area of criminal law. To my left is Mr. Russomanno, who practises at the same law firm, also exclusively in criminal law. We're both members of the Criminal Lawyers' Association. I'm on the board of that organization and Mr. Russomanno is a member.

The Criminal Lawyer's Association was founded in 1971 and is made up of over a thousand criminal lawyers. We're routinely consulted by governments and committees such as this committee on proposed legislation that affects criminal law. The CLA supports legislation that's fair, constitutional, and supported by evidence. The CLA supports protecting vulnerable members of our society—in this case, children.

The CLA remains opposed to the use of the mandatory minimum sentences. They are not fair, and they do not accomplish the objectives that this bill seeks to accomplish. Bill C-54 is another example of the government's love of mandatory minimum sentences. This love persists despite evidence that minimum sentences just don't work. They don't accomplish the objectives that we sometimes believe they might. This bill's short title is “Protecting Children from Sexual Predators”, so I take it that the aim of this bill is to protect children. Unfortunately, the bill as constructed, largely because of the use of mandatory minimum sentences, will fall short of this goal.

There are many problems with mandatory minimum sentences. The first is that minimum sentences remove judicial discretion. This is a departure from one of the historic underpinnings of our justice system—the discretion of a trial judge to impose a just and appropriate sentence. Trial judges are in the best place to craft appropriate sentences. They hear the facts and the circumstances of the offence. They hear details about the offender—his personal circumstances, treatment that the offender sought, and in many cases reports from medical professionals about the risk of reoffence. They also hear from victims through victim impact statements. With this information, they're in the best position to craft a sentence that's fair to the offender and proportional to the offence, to craft a decision that reflects the principles of sentencing.

Mandatory minimum sentences limit this judicial discretion. In fact, they do something even more insidious in transferring that discretion to the police and to the prosecutors—the police who decide what charges to lay, and the prosecutors who decide how to proceed with a charge. Is it a summary offence or is it an offence that will proceed by way of indictment? The crown has discretion to take pleas to lesser included offences that sometimes don't carry mandatory minimum sentences.

The removal of judicial discretion hides the decision-making process. Judges have to deliver reasons, and substantial reasons, for their decisions. Judges are reviewable by appellate courts. The police and the prosecutors are not. Their discretion is not reviewable and is not made public. In short, the removal of discretion will undermine confidence in the judiciary.

Mandatory minimum sentences accomplish two negative things at the same time. They act as an inducement for someone who may not be guilty to plead guilty to avoid a mandatory minimum sentence if the prosecutor offers to bury the charges the person is facing. At the same time, they offer an inducement to take a matter to trial, to use court time to litigate a matter. That often happens. Because the penalty is so severe under the mandatory minimums, there is no risk, no advantage, in taking the matter to trial.

We're all aware that resources are not infinite. What I just mentioned doesn't even take into account the increase in the prison population. Mandatory minimums also disproportionately affect minorities, particularly aboriginal groups. The Supreme Court of Canada in the landmark case of Gladue has recognized that because of their unique background and historic disadvantages, the sentencing of aboriginal people is different. There are different considerations to be taken into account.

● (1545)

Mandatory minimum sentences have the risk of being unconstitutional in that regard, where those considerations the Supreme Court directs cannot be taken into account because there is a mandatory minimum sentence that dictates the result—sometimes an inappropriate result.

Lastly, mandatory minimums do little to advance the principles of sentencing. Mr. Russomanno—if I haven't used all his time by the time I'm done speaking—is going to talk to you about how mandatory minimum sentences don't offer any positive benefits with respect to deterrence, how they don't deter people from committing crimes.

Apart from that, as you've heard already, mandatory minimum sentences can interfere with rehabilitation, which is a paramount principle of our sentencing principles. They essentially abandon rehabilitation or devalue rehabilitation, and put an offender sometimes in a worse position. Mandatory minimums, as Mr. Russomanno will tell you, don't deter.

What mandatory minimum sentences are good at is denouncing conduct, and retribution. Unfortunately, those two principles do not lead to safety. They do not lower the risk of reoffence or offence in the first place, and they often result in the use and overuse of scarce resources and the potential result of unfit sentences.

I'll turn the floor over for whatever time is remaining to Mr. Russomanno.

The Chair: You've got four and a half minutes.

Mr. Leonardo Russomanno (Member, Criminal Lawyers' Association): Thank you.

Good afternoon, Mr. Chair and honourable members. I just want to start by making some introductory remarks.

As with Mr. Spratt, I practise in a criminal law firm practising exclusively criminal law in Ottawa and surrounding jurisdictions. Really, my comments come from somebody who does have a great deal of confidence in our justice system. I have a great deal of confidence in our judges and the ability of our courts at all levels—be it at the provincial level or the superior court level, appellate and Supreme Court—in dealing effectively with sentencing, and in particular with the principles that Parliament enacted under section 718 of the code.

That's really the starting point for a discussion on sentencing, because what section 718 of the code deals with are the different principles one looks at when sentencing. Deterrence is one of those principles, as well as retribution, incapacitation, rehabilitation. With any given set of circumstances or any given set of offences, our courts are left to determine which principles are paramount.

I want to commend to the honourable members an interview of Chief Justice Beverley McLachlin. I'm certainly able to make that available to any member who's interested. It was an interview with *Maclean's* magazine from November of last year. I'm sure the honourable members can appreciate that Madam Justice McLachlin doesn't have absolute liberty to talk about how she feels about things, but she was asked quite pointedly by the interviewer in *Maclean's* whether or not she agrees with the suggestion that courts have been coddling criminals.

The reason I'm referring to this interview and this particular answer is because in my respectful view, what mandatory minimums do—aside from removing discretion—is in removing discretion they're sending a signal that we can't trust our justice system. We can't trust judges to craft appropriate sentences. That's very important, because in my respectful view, it sends the wrong message.

What I would suggest this committee undertake is an exercise in looking at whether there's a problem here that needs to be fixed. Are there offenders guilty of these crimes that are going through a revolving door of justice, as I would submit this suggests? Is there an act of coddling criminals that our sentencing judges are going through? In my respectful view, there is not.

I would commend to the members this interview, where Justice McLachlin says that overall, "You have to realize that judges under the Criminal Code have to take into account not only retribution. In fact, they have to look at rehabilitation. They're directed to."

She's referring here to section 718 of the code. They have to look at a number of factors in sentencing, and sometimes a perspective from the person who's making a speech about how judges are too soft is simply one of this conduct deserves more retribution.

This really is the heart of the issue. In my respectful view, looking at cases from the court of appeal, we already have a range of sentencing that's been discussed by the court of appeal, by the Supreme Court of Canada. For these types of offences—and I can certainly refer members to these cases—specific deterrence and denunciation are already determined to be paramount principles for these offences, for obvious reasons, which I'm sure everybody is aware of: that everyone has concern about vulnerable victims. These are the paramount principles: specific deterrence and denunciation.

Our appellate courts have time and again reinforced this idea in saying that jail is the norm for these offenders. When you're found guilty of committing these offences, jail is the appropriate sentence.

I know in my review of some of the previous debates on this bill there was concern about conditional sentences being applied. When courts look at whether a conditional sentence is appropriate, they're mandated to look at whether the principles of sentencing can be achieved through a conditional sentence.

My time is up, so I won't go on any more, but thank you for the time. And I'll be happy to refer any materials to the members.

● (1550)

The Chair: Thank you very much.

We'll move on to Lianna McDonald. You've got ten minutes.

Ms. Lianna McDonald (Executive Director, Canadian Centre for Child Protection): Mr. Chairman and distinguished members of this committee, I thank you for the opportunity to provide a presentation on Bill C-54 and the larger issue of child sexual abuse and exploitation on the Internet.

I had the privilege to present to this committee a few months ago on Bill C-22, which provided the occasion to share some important background information on our agency and other relevant data surrounding the online sexual exploitation of children. Therefore, my goal today is to provide insight and information specifically to Bill C-54 and to make a few arguments for support of this new legislation.

The Canadian Centre for Child Protection will offer testimony today based on its role in operating Cybertip.ca, Canada's tip line to report the online sexual exploitation of children, as well as its coordinating role with law enforcement and the public and private sectors in combatting online child victimization.

I am joined today by my colleague, Signy Arnason, who is the director of Cybertip.ca. She will speak later to some of the actual reports received by the tip line over the course of the last year.

As stated previously, Cybertip was established in 2002 in partnership with the Government of Canada, various provincial governments, a national law enforcement advisory committee, and a federal task force and steering committee. Like other international hotlines, Cybertip has analysts who review, confirm, and triage reports to the appropriate law enforcement jurisdiction. In particular, the tip line accepts reports related to child abuse material known as child pornography, luring, child sex tourism, children exploited through prostitution, and child trafficking. The tip line is owned and operated by the Canadian Centre for Child Protection, a national charity dedicated to the personal safety of all children.

Since launching nationally, the tip line has received nearly 48,000 reports from the public regarding the online sexual exploitation of children, which has resulted in over 70 arrests by law enforcement and numerous children being removed from harmful or abusive environments.

As the front door to the Canadian public, Cybertip receives information regarding various types of concerning behaviours and harmful activities towards children. Often the tip line is the first to become aware of new trends and ways in which adults target or hurt children for sexual purposes. This would include reports dealing with the new offences captured under Bill C-54.

Based on our data, the proposed legislation rightfully acknowledges the role of the Internet in facilitating crimes against children. It is well established that the Internet facilitates the sexual abuse and exploitation of children in a number of ways. Individuals with a sexual interest in children often misuse technology to gain access to them, to normalize their deviant sexual interest, and to fuel sexual fantasies. As a result, reporting to Cybertip and other hotlines continues to grow annually in response to this growing problem.

Beyond reports to Cybertip pertaining to child abuse images, the tip line continues to receive reports that pertain to what is generally defined in the public domain as grooming. This activity often includes adults sending sexually explicit material to one or many targeted children. In the majority of these reports, the children are under the age of 13 and are sent sexually explicit images or videos, usually involving the offender either masturbating, pictures of their genitals, or hard core adult pornography. The grooming process is often used to bring down the child's inhibitions, to attempt to normalize sexual activity, and to engage the child in sexual interactions. In most cases, children do not have the maturity, emotional capacity, and development to manage the short- and long-term implications of such activity.

To date, little has been done to address such activities through the criminal justice process, contrary to the opinion and outrage of most Canadians.

Some of the more concerning reports deal with adults agreeing or making arrangements to commit a sexual offence against one or more children. It is hard to believe that people would offer up their very young children for other individuals to sexually abuse. In one report to Cybertip, a forum moderator was reported as making arrangements to trade his 12-year-old daughter for a second person's four-year-old daughter. The reported information indicated that there was discussion that the second person was going to have sex with the 12-year-old, film it, and impregnate her.

● (1555)

The tip line to date has received a handful of these types of reports. Clearly, they are very much of concern and warrant immediate action. Law enforcement's ability to use the new provisions outlined in Bill C-54 will greatly assist them in their efforts to charge individuals engaging in this type of harmful activity.

Similar to Canada's luring legislation, these two new additions will prove effective, in that law enforcement will be able to take swift action and potentially prevent a child from being victimized. As a result of Canada's existing luring legislation, countless children have been protected in advance of a serious sexual offence occurring; moreover, our agency believes that once the public becomes aware of these new amendments and understands their role in reporting, more children will be saved from abuse.

The public nature of the Internet, combined with the viral nature of child abuse material, offers the opportunity for the public to report and assist in the detection of this type of material and harmful behaviour towards children. While our organization supports the new amendments included in Bill C-54, it should be noted that public education and awareness efforts must also be key components to addressing this problem. Awareness efforts to educate parents and adults surrounding healthy boundaries towards children are essential, as is public education about laws protecting children. The responsibility of adults to take the necessary steps to report and protect them is also imperative.

In concluding, it is critical that governments recognize the particular vulnerability of children, combined with the fact that in today's society children are connected to a technological world that allows unprecedented access to them. This unlevel playing field has given children a new, largely unsupervised playground and has opened to doors for adults to take full advantage of this opportunity. For this reason, the Canadian Centre for Child Protection supports Bill C-54 and urges the government to move swiftly and enact this important legislation to better protect Canada's children.

Thank you.

● (1600)

Ms. Signy Arnason (Director, Cybertip.ca, Canadian Centre for Child Protection): Thank you, Mr. Chairperson and honourable committee members.

I'll keep my comments brief.

As my colleague mentioned, my name is Signy Arnason, and I'm the director of Cybertip.ca, under the Canadian Centre for Child Protection.

I'll first start out by saying that we rely on the public to come in to the tip line and report to us. As was mentioned, we have received over 48,000 reports from Canadians.

We currently don't have either of the categories proposed under this new bill, as it relates to sending sexually explicit material to a child and using telecommunications to facilitate the commission of a sexual offence against a child. We take reports on child pornography, child abuse images, luring, child sex tourism, children exploited through prostitution, and child trafficking.

We absolutely are finding among Canadians that they're still finding ways to come in to us and report these types of incidents. We believe, certainly as it relates to the grooming process, that there is a significant underreporting of this type of crime and of sending sexually explicit content to a minor, not only from adults but from the children, the adolescents within a home—the parents' environment—who are uncomfortable with telling their parents that in fact something like this has happened to them, for fear of reprisal, such as by having the Internet taken away from them or some form of punishment.

I'm here today simply to provide you with a few examples of what we've seen over the course of the last year, most involving children under the age of 13.

In January of this year we had a 10-year-old girl. It was reported to us that she was on instant messaging and that a suspect who in fact indicated that he was 22 was sending sexually explicit images of himself to the child. In that same month, we had a 12-year-old girl who was exposed to an adult male masturbating when she opened up her Facebook account. In December 2010 we had a report involving an 11-year-old child who received an e-mail with images of an adult exposing his genitals in the image. And finally, we had a suspect contact a 12-year-old girl over MSN Messenger and expose himself to her on webcam while masturbating. This is simply a sample of what we've received over the last year as it relates to this.

Finally, in terms of communications facilitating the commission of a sexual offence against a child, we had a 21-year-old female in a networking site who was approached by an adult male asking her to find 13-year-old children and offering $300 if she could set him up with children in this age range.

That's simply a sampling of what we've seen come in to the tip line as the front door to the Canadian public.

I thank you for the opportunity.

The Chair: Thank you very much.

We will go over to Karyn Kennedy and Pearl Rimer. These two witnesses have indicated that they're going to have to leave a bit early, around 5:20, so if you have questions to ask them, you may want to do so early in the process.

Ms. Kennedy, you have ten minutes.

● (1605)

Ms. Karyn Kennedy (Executive Director, BOOST Child Abuse Prevention and Intervention): Good afternoon, Mr. Chairman and honourable committee members.

Thank you for this opportunity to speak to you about Bill C-54, the Protecting Children from Sexual Predators Act.

My name is Karyn Kennedy. I'm the executive director of BOOST Child Abuse Prevention and Intervention, and I'm here with Pearl Rimer, manager of research and training at BOOST.

BOOST is located in Toronto and has offices in Barrie and Peterborough. For the past 30 years, BOOST has provided programs and services to children, youth, and their families who have experienced abuse, and we have worked collaboratively with our community partners to improve the prevention, investigation, treatment, and prosecution of child abuse.

BOOST has provided services to tens of thousands of children and youth and has trained more than 50,000 professionals across the province. We're seen as a leader in the field of child abuse and as an advocate and a voice for victims.

I'd like to address several sections of the bill, beginning with the two new offences, and offer a quote based on research from my colleagues at Cybertip.ca:

> There needs to be a shift in the way we view the problem and a solution of child abuse images on the Internet. The truth is that sexual abuse begins in the offline world.

BOOST supports the bill's recognition that sexual crimes against children that begin on the Internet are extremely serious and need to be prevented before they result in hands-on offences.

With respect to the two new offences, the creation of these laws is important because it recognizes the concept of grooming and the connection between it and the ways technology can facilitate sexual offences against children. By acknowledging this, the law will more effectively protect children, as there will be more opportunities to make arrests and interrupt the grooming and planning process before it proceeds to offline, hands-on sexual acts or potentially traumatizes a victim because of the content of the online communications by the offender.

Because of intervening earlier, not only will further offences be prevented, but education to child and youth victims and their families can be provided that will further reduce risk to children and youth. In addition, where treatment is indicated, it can be offered to address the negative impact of the crime on victims.

It's well known that sex offenders use technology as a common strategy to make sexually explicit material available to desensitize children and to normalize inappropriate sexual acts with children. We know from the research by Wolak, Mitchell, and Finkelhor that approximately one in 25 youth will receive an online sexual solicitation in which the solicitor tries to make offline contact, and in more than 25% of these incidents solicitors will ask youth for sexual photographs of themselves.

For these legislative changes to be effective, training is needed for police, crown attorneys, and the judiciary in order to define what grooming is and how to gather and use the information. These new laws will send a clear message that the government intends to keep up to date on how sex offenders commit crimes against children. Technology is continually advancing, and quickly. By prohibiting anyone from using any “means of telecommunication”, a broader definition has been put forward that is inclusive, as technology changes.

These crimes on their own may not seem so terrible, but the ultimate goal of these offenders is to commit a further hands-on sexual offence, facilitated by technology. New research is emerging that connects online offenders to offline contact offences. Based on official records, approximately 15% of online offenders have had previous contact offences against children; however, based on self-reporting, Hanson and Babchishin reported that 56% of online offenders admitted to committing hands-on offences, and Hernandez and Bourke reported that 85% of online offenders admitted to committing offline offences against children.

Research also tells us that the majority of offenders who produce child abuse media are known to their victims; 50 percent of all sexual abuse images—i.e., child pornography—is made by family members. To quote Taylor and Quayle:

> Child protection is of the utmost importance given that those who produce child sexual abuse images are generally adults who care for, or have regular access to, a child. A lack of contact with a child is probably the most significant factor limiting the production of child pornography.

This makes opportunity a central factor in this crime.

This brings me to the issue of supervision. The emerging research connecting online offences to hands-on sexual offences emphasizes the importance of the court's ability to allow access to a child by an offender only if supervised and to permit the offender use of the Internet only when supervised. On the surface, these prohibitions appear to be credible strategies to protect children. However, the implementation, enforcing, and monitoring of these conditions need to be in place. Who will make sure that offenders with these supervision conditions don't go into an Internet café or use their cellphone and BlackBerry to connect to the Internet? There needs to be a clear mechanism for how and by whom supervision will be provided.

● (1610)

Another key consideration is that in reality, the Internet is a fundamental part of everyday life. Once offenders have been released from prison, how are they expected to find employment? If the government does not put monetary and personnel resources together with this condition, then the opposite of what this bill is trying to accomplish may occur. Offenders may become socially isolated and more stressed, potentially leading to recidivism and the victimization of more children and youth. Supervision by an individual who is also Internet savvy is essential.

For offenders who are in a position of trust or authority, a child protection agency may also be involved. It will be critical to have a mechanism linking family court and criminal court, where supervision orders have been imposed by either or both the child protection and criminal systems. Many luring cases involve victims who are not within the offender's family, and some cases involve adolescents. Under these circumstances, it's unlikely that a child protection agency will be involved. This puts more pressure on the court to ensure that offenders comply with the supervision orders and that there is a clear accountability to the public.

Supervision orders mandated by the court under this new legislation could potentially have no time limits, which further adds to the difficulty in ensuring that the conditions are adhered to, as supervisors may change over time. And there needs to be a mechanism to review the orders if a situation changes.

I'd like to also speak to mandatory minimum sentences. The increase in length of mandatory minimum sentences is positive and will be seen by victims as an indication that the crime is a serious one with serious consequences. The impact of any sexual offence is different for every victim. And from the perspective of victims, including mandatory minimum sentences for all child-specific sexual offences sends the message that there are no underlying values as to which sexual victimizing offences are more serious than others. From the victim's perspective, the experience is very individual. The law takes into account that all sexual offences against children must be taken seriously.

The increase in some mandatory minimum sentences and the addition of others may also increase the possibility for more treatment options while in custody and provide greater opportunities to engage offenders in treatment as well as conduct treatment-related research so that we can have a better understanding of sexual offences against children and online offences and their connection to offline crime.

In summary, I'd like to conclude by saying that as a community agency that provides services to victims of child abuse, Bill C-54 addresses many issues that are critical to the protection of children from sexual offenders. And while there are still some areas, such as supervision, that we feel require further work, we believe that the bill will contribute significantly to the safety of children from sexual offenders.

Thank you.

The Chair: Thank you very much.

Ms. Rimer.

Ms. Pearl Rimer (Manager of Research and Training, BOOST Child Abuse Prevention and Intervention): Karyn Kennedy said it all for our agency.

The Chair: Thank you very much.

We'll move to questioning. First we have Ms. Jennings, for seven minutes.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Chair.

Thank you all for your presentations.

I take note that while some of the presenters here today representing their respective organizations addressed both the issue of the new offences created in this legislation as well as the expanding list of offences that could be subject to probation and recognizance orders, and the expanding list of specific conditions that could be included in said orders, some did not address the issue of minimum mandatory sentencing. Others only appeared to address the issue of minimum mandatory sentencing.

So I'd like to ask the Criminal Lawyers' Association, what is the position as to the creation of two new sexual offences? What is the position of your association with regard to expanding the number of criminal offences that may be subject to probation and/or recognizance orders? And what is your position with regard to the expanding list of specific conditions that can be included in probation and/or recognizance orders?

In terms of the Canadian Centre for Child Protection, you addressed very well the issue of the two new sexual offences. I'd like to hear you as to the issue of the minimum mandatory penalties that are included.

I believe the only witness who addressed both aspects of the bill was our last witness, and I do appreciate that greatly.

Thank you.

● (1615)

Mr. Michael Spratt: The matter of mandatory minimums, from our point of view, is the most pressing issue in this bill, but I'll address some of the other concerns.

Hon. Marlene Jennings: I understood that for the Criminal Lawyers' Association, the aspect of the new minimum mandatories was your priority. That message came across very well. But the bill also creates two new sexual offences. It also expands the probation orders, recognizance orders, and the conditions that can be attached to them. I'd like to hear what you have to say about that.

Mr. Michael Spratt: Increasing complexity in the Criminal Code is always something that should be avoided. If there's a solution to an existing problem in the Criminal Code, I don't think it gets us further ahead to add sections that duplicate what are already there.

A good example of that is seen with the sexual assault against children provision. It is a new offence and has a mandatory minimum attached to it. Essentially the mandatory minimum is the only difference between that and the existing provision. Of course, when a judge, in my experience, is dealing with a sexual offence against a child, positions of trust and authority and the age of the victim are often very aggravating features in sentencing that are already taken into account.

On the other offences, the grooming offences, I don't think we take any issue with criminalizing that sort of behaviour. Having said that, I don't think it's a section that will arise very often in terms of its application. It may well be captured by existing language in the Criminal Code, for example in the attempt section—it's an attempted sexual assault, or attempted sexual interference. But as far as the new offences being created, we don't have much of a problem with doing that. It seeks to regulate something that's undesirable from our perspective as well.

On the new probationary conditions that can be imposed, I'm happy there will be discretion to allow prohibitions against using the Internet or going certain places. It's interesting that the government seeks to allow judges to have discretion to put in those exceptions, so I'm happy to see that judicial discretion is left intact, at least to a small extent, in that area. But from my experience in convictions registered on these types of offences, prohibitions against going to certain places where children may be found, having contact with children, or using the Internet are often conditions that judges already incorporate into probation orders, and those probation orders can run up to three years.

So I'm happy that some discretion is left in the probation orders, as they're dealt with in this legislation. I'm not as pleased to see increasing complexity in the Criminal Code. It makes it less accessible to the general public, which isn't good from an educational or even a deterrence standpoint.

My position on the mandatory minimums is quite clear. That's the main difference when we look at the child sex assault provisions versus the sexual assault provisions we already have on the books. As I said, the age of the child, the circumstances of the offence, positions of trust and authority, if there was any grooming involved—those are all aggravating factors that are routinely and I dare to say always taken into account when the judge is crafting an appropriate sentence.

Hon. Marlene Jennings: Thank you.

Ms. Lianna McDonald: Thank you.

On the minimum mandatory sentences, we deliberately did not comment on that because we can't speak to the research on the impact. From our agency's viewpoint, we certainly support the new increases and the new MMPs associated with the new offences.

In terms of that too, I think it is difficult. There were some comments challenging the idea that it would increase the safety of children. I think part of the challenge is we know that cases of abuse are often not reported. We know that convictions are even fewer. We know that in many cases there is no record of a person even having an offence. We would certainly support this increase and the new mandatory minimums being put forward.

● (1620)

Hon. Marlene Jennings: Thank you.

Is there still time?

The Chair: You have 15 seconds.

We'll move on to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chair.

I want to thank all the witnesses for being here.

We really don't have much time, given that this is a very complex, important problem. It is important from the standpoint of human nature, but even more so since the advent of the computer and Internet age. It is a problem that I never had to face as a parent, but I can see that it will be quite a different matter for my children.

FIrst off, I want to point out that I have a background in criminal law. I only practised in that field of law. I observed that as a rule the problem involved a certain type of offender. When they have a criminal record, usually this is the only type of crime involved, although some are also dishonest.

Is it your opinion that people who commit these types of crime are deviant or suffer from a mental disorder? If so, if they cannot be completely cured, are there at least some treatments available to curb this kind of delinquent behaviour?

If anyone would like to answer my question, go right ahead.

[*English*]

Mr. Michael Spratt: I can perhaps address it by first saying that I'm no expert in mental health or sexual dysfunction, but I have dealt with many cases where we've used a very good local institution, the Royal Ottawa Hospital, which specializes in ongoing treatment and diagnosis of this type of problem.

I've received many reports from the very respected doctors who work at the Royal Ottawa Hospital, and quite often the last line in the report is “A risk of reoffence”. I received a report rather recently where the risk of reoffence for an individual, as diagnosed by the doctor, was zero. He had ongoing treatment with the hospital, and that was the doctor's professional opinion. I don't see it very often, but that was his report.

The difficulty I have with this legislation, as Mr. Russomanno said, is that courts have said that jail is the norm for these offences. In all honesty, jail as the norm is more than the minimums that are currently on the books—more than the minimums that are being imposed. But there is one case out of ten, one case out of a hundred even, where there has been treatment and a diagnosis, and that perhaps isn't the correct result in that circumstance.

[*Translation*]

Mr. Serge Ménard: Thank you, Mr. Spratt.

There are three minutes remaining and I would like to hear from Mr. McWhinnie, who has some experience in this area, as well as from the three women who addressed the committee on this subject.

[*English*]

Mr. Andrew McWhinnie: Certainly, sir.

I have in my hands "Sex Offender Treatment Outcome Research", from the research division of the Correctional Service of Canada. It shows significant reductions in sexual recidivism, violent recidivism, and any kind of criminal activity following treatment for sexual offences.

Sexual offences against children would be classified as deviant sexual arousal, clearly, but they are also included in the *Diagnostic and Statistical Manual of Mental Disorders* by the American Psychiatric Association. It is a mental disorder. It can't be cured in any respect, but it can certainly be managed and managed well in the community, as the numbers I have just referred to you state.

Also, in my own experience as a clinician I can tell you that these things are perfectly amenable.

Thank you.

● (1625)

Ms. Lianna McDonald: I would agree with my colleague about those who have a sexual interest in children. The question was whether it can be cured. I would say and the experts we work with would say no; it can possibly be managed.

It is also important to note that there are a number of variables in the individual's commitment to treatment, their long-term commitment, the number of environmental triggers and factors around them, and their ability to have access to children, with a number of really important factors. Certainly a lot of the literature and research suggests that it is about risk management.

[*Translation*]

Mr. Serge Ménard: Is prison the appropriate place to treat people?

[*English*]

Ms. Karyn Kennedy: If I could just respond, I respectfully would disagree with my colleague. I believe that for some individuals it may be a mental disorder; for others, really, it's not and it's an issue of power and control.

I don't currently work with sex offenders, but I have in my career. The ones who are able to benefit from treatment are the ones who are also willing to admit and take responsibility, and in my experience that's not the majority of sex offenders. I believe that for many, prison is necessary in order to have some leverage to get them into treatment. And there are many good institutional treatment programs that can be initiated while somebody is in custody and they can continue treatment in the community. But for many sex offenders, taking part in treatment is not necessarily something they agree to very easily.

The Chair: Could we have a further answer from Lianna?

[*Translation*]

Mr. Serge Ménard: Perhaps you could also enlighten us on another matter.

What advice do you give to parents these days to ensure their children do not fall into these types of Internet traps?

I was not exposed to pornography very much when I was a young person. However, when we did come across any pornographic books, I can assure you that it wasn't something that we discussed with our parents.

[*English*]

The Chair: Ms. Rimer.

Ms. Pearl Rimer: When we speak to parents we talk to them about the process of protecting their kids, actually early on, about the messages they're giving their kids from pre-school onward. It's really about open communication and giving the kids the message that if anything happens to them they feel uncomfortable with, whether it's in the online or the offline world, they should talk to an adult they trust. And we actually tell parents to make it okay for their kids not to go to the parents. So I would say to my child, I'd really want you to come to me, but if you were embarrassed or you didn't want to, who else could you go to who you trust about anything that happens that makes you feel uncomfortable?

We also help parents to understand what's normal for teens. When we didn't have the Internet, we flirted, and that was normal. Kids now have the Internet for flirting. So say to your kids, hey, we get it, you guys do this; but again, if anything happens that makes you feel uncomfortable, talk to someone you trust.

We also tell parents it's about self-esteem, it's about the types of kids who offenders target, and it's about supervision and how that changes over the developmental path. So we do give them a developmental perspective around that.

The Chair: Thank you.

We'll move to Mr. Comartin for seven minutes.

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

And thank you to the witnesses for being here.

Ms. Kennedy, I want to start with you because I want to challenge you on the position you've taken with regard to the availability of treatment, particularly at the provincial level. It's not great at the federal level by any means either, but at the provincial level there are any number of provinces where it's basically non-existent for the short-term sentences that we're going to have here—the 90-day to the one-year-. It just doesn't exist. That's my experience, and I'm actually calling witnesses who are going to say that.

Again, the government is dumping this cost on the provinces, with no corresponding finances going with it. Am I wrong? Every experience I've had, both as a practising lawyer and in my seven years on this committee, tells me and all the evidence I've heard says that we don't have those services at the provincial level. And the vast majority of the mandatory minimums that are going to be affected here, that are actually going to come into play, are going to be at the provincial level. They're not two years plus, they're two years less. So I just don't see it there.

● (1630)

Ms. Karyn Kennedy: I think you're right, but I would also argue that there aren't resources in the communities either to provide treatment.

Mr. Joe Comartin: That was going to be my next question.

Ms. Karyn Kennedy: Yes. Certainly not in my experience in Toronto.... Ten years ago there were resources that don't exist any more. So I'm not sure what is available in the provincial system now, but I'm also convinced there is little available in the community.

I'm not sure that's a reason to argue against mandatory minimum sentences, but I think you can still use the opportunity of having somebody in custody to get them engaged in treatment and get them thinking about it and taking responsibility for it. I think it also sends a very powerful message to the victim that this has been taken seriously. And having worked with thousands and thousands of victims, I see many who are disappointed and discouraged by their experience in the criminal justice system.

Mr. Joe Comartin: Well, if that were true, Ms. Kennedy, the United States would have much lower sex crimes than we have, and in fact the opposite is true, because of the size of the penalties they have there. That doesn't work.

Mr. McWhinnie, with regard to services in the community, you told us the number of people who were involved in the circles. How many circles are there across Canada, and how did they get started?

Mr. Andrew McWhinnie: There are currently 162 circles in Canada, across the country. Circles are started when a person leaves prison and finishes their sentence if they are identified as sexual offenders at high risk to reoffend. We work closely with the correctional agencies to know who these people are and to be able to offer them a circle of support and accountability at that point.

Mr. Joe Comartin: You do a lot of work with the Mennonite Central Committee. Is that correct?

Mr. Andrew McWhinnie: I do some work with the Mennonite Central Committee.

Mr. Joe Comartin: So in terms of the services and what's available in the community versus what's available at the provincial level—because most of these offences are going to go there if this goes through—what's it like? Where is it better, not just in terms of quality but also in terms of availability?

Mr. Andrew McWhinnie: At the provincial level, in the community, while people are under sentence they're usually required, as a condition of their probation order and sometimes as a condition of their 810 order, to report and take treatment as directed by the probation officer. Forensic clinics in most provinces exist. Often they don't exist in rural areas or areas that are away from major centres, as I mentioned in my presentation.

The fact of the matter is that if we're talking about treatment, this bill is not going to get it there. These people are going to jail for mandatory minimums, and those mandatory minimums have absolutely nothing to do with whether a person receives or does not receive treatment. That's the flaw in this bill.

As for the other parts of the bill, in terms of the laws that are being added, I don't really see any problems with adding those additional laws for the reasons cited by my colleagues. But the mandatory minimums are not going to touch treatment. People are not going to receive treatment in jail for those periods of time. For periods of less than a year, they are not likely to receive any treatment inside an institution.

Mr. Joe Comartin: What about the position Ms. Kennedy has taken—because I know you've indicated you worked with victims of sexual abuse as well—that it gives them a sense of justice? And I don't mean retribution but just that the stronger penalties give them a sense of justice.

Mr. Andrew McWhinnie: I know that the bill says we want to deliver a message to Canadians that we take the sexual assault of children seriously. For goodness' sake, can anybody in this room tell me that there are people in Canada who don't take the sexual assault of children seriously? We simply do not need to add another law to do that. What victims want is for the offences to stop, and they want the people responsible for them to receive treatment. Sending them to jail for increasingly long periods of time, as you, sir, have just pointed out, has not worked in places where we've conducted that experiment, such as the United States of America.

Mr. Joe Comartin: Mr. Spratt or Mr. Russomanno, when I was practising and somebody was charged in a child sexual abuse case, one of the first things I did was to get them into counselling. Is that still the common practice? Do defence lawyers normally do that as a matter of course, assuming there's going to be a guilty plea or a finding of guilt?

Mr. Leonardo Russomanno: I think that's certainly one of the positive steps that can be taken up front. That way, when the time comes for sentencing, you're able to show that there were some steps taken. One of the things I was going to add before, which I think is still relevant here, is that we're dealing not only with treatment for sexual deviance per se but also with mental health issues and drug addictions, which also require treatment.

● (1635)

Mr. Joe Comartin: I had a quick question for Ms. McDonald. Where are we as far as getting your agency to be the one to deal with the luring provisions and getting you more money?

Ms. Lianna McDonald: We are working towards asking to be the designated agency under Bill C-22.

Mr. Joe Comartin: Is there a timeline on it?

Ms. Lianna McDonald: There is not one yet.

Mr. Joe Comartin: That will include public education.

Ms. Lianna McDonald: That's right.

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

The Chair: Thank you.

We'll move over to Mr. Woodworth for seven minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

I'd like to give my thanks to all of the witnesses who are here today. I know that for some of you, your work is intensely difficult and painful, and we appreciate you sharing that with us. I don't think that two people or two groups or two interests will ever agree on everything, but it is good for us as legislators to hear a diversity of points of view.

Mr. Russomanno, there was one thing I think I heard you say that I did agree with. I just want to be sure that I heard you expressing my thought as well, and that is that the courts have decided that jail is the appropriate sentence for sexual offences, especially for those involving the exploitation of children. Am I correctly perceiving what you said on that? Because that's what squares with my experience.

Mr. Leonardo Russomanno: Yes. The abundance of case law, including the cases from the Ontario Court of Appeal, suggests that when the victim is a child, and in particular when the offender is in a position of trust or authority, jail is the norm.

I don't think they would say that it's in 100% of cases. These were in circumstances where a conditional sentence was imposed and then it was overturned by the court of appeal, and that was because the court of appeal said that you can't achieve deterrence with a conditional sentence in these cases.

Mr. Stephen Woodworth: I won't ask you to get into too much detail. I just wanted to say that I agree that, in my experience—I should say, just so you know, and I think everybody else knows, that I practised criminal law for almost 30 years—indeed, jail is the norm. But I would draw perhaps two different conclusions from that than you might.

The first conclusion is that I think it takes a bit of wind out of the sails of those whose dissertation is that there's no point to mandatory minimum penalties because in fact the courts have in fact said that jail should be the norm. Everybody in the system knows it. And if that induces more trials, the courts are willing to accept that. If that induces more guilty pleas, the courts are willing to accept that. If jail is not a deterrent, the courts think that there are other reasons for jail in these cases. I must say that I do too, and our government does too.

The second conclusion I might draw that you might not agree with is that I happen to believe that the elected representatives of Canadians are in as legitimate a position to make such decisions as judges are, and that it is legitimate for the government to say that jail should be the norm. In fact, jail should be the unvarying norm.

I wanted to just comment briefly on Mr. Spratt's eloquent defence of judicial discretion. I only wish you had been here when we were debating the multiple-murder discount bill. We were trying to give judges the authority to impose stiffer sentences. I sometimes think that whether you like judicial discretion depends on whether you want stiffer sentences or not so stiff sentences. To be unvarying in it, as you propose, I hope is at least consistent.

Briefly, Mr. McWhinnie, I want to say that I'm very grateful for your work with circles of support and accountability. I hope you're aware that last year, not too many months ago, our government in fact did renew and increase funding for the national circles of support program. I happen to be aware of that because I was contacted by the Mennonite Central Committee, which advocated strongly for that. However, our government believes in a balanced approach, not only on issues regarding rehabilitation and prevention but also with respect to appropriate deterrence.

I want to just suggest a different point of view to you regarding the question of harm that comes to families from putting people in jail. I'm old enough to remember 30 years ago when that was exactly the argument we used to make regarding wife-beaters. If you know about spousal abuse, you know that women are very great advocates for their abusers. But society has changed. Over the years we've determined that even though putting a wife-beater, a spousal abuser, in jail or penalizing him may take away from the dependants of the victim, we still do it. I think we're at the point where we should do the same regarding incest.

Regarding the courts' views on sentencing, I want to bring to the attention of the criminal lawyer people that the Alberta Court of Appeal, about two months ago, rendered a judgment by five judges of the Alberta Court of Appeal indicating that “wide disparities in sentencing are precipitating a crisis of confidence in the justice system.... Trial judges must be restrained from injecting their personal views and predilections into the sentencing process... The vast sentencing discretion currently enjoyed by trial judges 'makes the search for just sanctions at best a lottery, and at worst, a myth'” and in fact “inevitably causes prosecutors and defence lawyers to 'judge shop'”. All of that rings very true, from my experience, and is a good reason for mandatory minimum penalties.

Do you know how many criminal lawyers there are in Ontario, by the way?

● (1640)

Mr. Leonardo Russomanno: I don't offhand, no.

Mr. Stephen Woodworth: There are probably a lot more than just a thousand.

Mr. Leonardo Russomanno: I would think so, yes.

Mr. Stephen Woodworth: Your organization represents a thousand criminal lawyers in Ontario, correct?

Mr. Michael Spratt: That's right.

Mr. Stephen Woodworth: How many submissions did you get from your members regarding Bill C-54?

Mr. Michael Spratt: Bill C-54?

Mr. Stephen Woodworth: Yes, that's the one we're studying today.

Mr. Michael Spratt: It was canvassed extensively.

Mr. Stephen Woodworth: How many submissions?

Mr. Michael Spratt: I don't know the exact number of submissions. It was canvassed extensively. We've spoken to many criminal lawyers who aren't members of our organization, and the universal opinion of all the criminal lawyers I've talked to is that mandatory minimum sentences accomplish none of the goals—

Mr. Stephen Woodworth: I'm asking about Bill—

Mr. Michael Spratt: —that your government has reported that they accomplished.

Mr. Stephen Woodworth: Sorry to interrupt you, but I have to stick with Bill C-54 because that's the bill we're here to study today.

How many lawyers did you speak to regarding Bill C-54?

Mr. Michael Spratt: I don't have a count off the top of my head. I'd be happy to provide you with names.

Mr. Stephen Woodworth: No, I don't need names, but I would be grateful to know how many submissions your organization received from its members regarding Bill C-54.

And how many lawyers were involved in the preparation of your submissions for today?

Mr. Michael Spratt: A number of members of the board have been involved in submissions.

Mr. Stephen Woodworth: I don't want to cross-examine you, we're not in court, but can you tell me how many members of your group were involved in the preparation of your submissions today?

Mr. Michael Spratt: It was discussed at a board meeting. I believe 30 members were on the board.

Mr. Stephen Woodworth: Did they see a copy of this submission?

Mr. Michael Spratt: Yes.

The Chair: Thank you.

All right, we're going to the next round. We're going to go to Mr. Lee, for five minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I just wanted to make sure if maybe Mr. Woodworth was going to give a written test or something here. He gave quite a long lecture. I didn't take notes and I didn't realize as he began that it was going to be so intensive.

Mr. Stephen Woodworth: Point of order.

The Chair: A point of order, Mr. Woodworth.

Mr. Stephen Woodworth: I presume that just as Mr. Lee has the opportunity to debate with me about what I said, I have the opportunity to put on the record and to try to let members of the public know the facts on which I am proceeding when I make my decisions.

If the chair would like to allow Mr. Lee and me to debate those points, I'd be more than happy to.

The Chair: No, I don't want that debate right now.

Everybody here at this committee knows that we do have a right to put on the record whatever we wish to state, and if that is without any questions, that's still acceptable.

So Mr. Lee, why don't your proceed, five minutes.

Mr. Derek Lee: Yes, I was just wondering how many members of the Conservative Party of Canada were consulted on this bill, but I'm not going to ask the question. And I hope—

Mr. Stephen Woodworth: Point of order.

Mr. Derek Lee: —this dialogue does not come out of my time, Mr. Chair.

The Chair: A point of order, Mr. Woodworth.

Mr. Stephen Woodworth: Mr. Chair, I know the chair is bound by certain rules of civility, and I know that Mr. Lee is suggesting that somehow I'm here representing some group other than myself. I suspect the chair knows we are here as individuals at this committee, so I would ask you to rule Mr. Lee's immediate past comments to be out of order.

● (1645)

The Chair: I'm not going to rule them out of order, but I'm going to ask Mr. Lee now to concentrate on the witnesses at hand. They attended here—

Mr. Derek Lee: I just want it added to my time.

The Chair: The witnesses are appearing here—

Mr. Derek Lee: And I should have about—

The Chair: —to be able answer questions from members—

Mr. Derek Lee: —five minutes left.

The Chair: —of this committee, so if you could focus on that....

Mr. Derek Lee: Thank you. I do have about five minutes left.

The Chair: You do.

Mr. Derek Lee: Thank you very much.

The Chair: If you keep on going, it will be less.

Mr. Derek Lee: Okay. I want to re-focus on two sections of the bill.

One question I want to direct to the lawyers from the Criminal Lawyers' Association. I've raised the idea before. Proposed section 172.2 creates this new offence of facilitating an arrangement. It's like an attempted offence. It's new, and it will probably work in some cases, but it's unclear how well it will work.

I'm concerned about the possibility for entrapment or for a setup of some person, for example Bob from Moose Jaw, who happens to be visiting Vancouver. The section creates this pseudo-attempt to make an arrangement with somebody. It removes the defence of *mens rea* in terms of the knowledge of the age of the person, and then it imposes a presumption that the person was under 18, if there was any representation that the person was under 18. It imposes a presumption. Then it removes another defence that says that even if the person about whom the arrangement was being made didn't exist, it doesn't matter and the person is still guilty.

That is the setup, entrapment of Bob from Moose Jaw problem. I don't like the look of that at all. I'm nervous about it, and yet I realize there are these people out there who do go around trying to make arrangements with kids for a criminal purpose. I would ask that.

Perhaps this could be directed to any of the other witnesses. Second is the new mandatory minimums imposed on the sexual offence of indecent acts; that is, section 173 as rewritten. This is not an Internet offence. It's subsection (2):

> Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 16 years....

That's an exposure. That's exposing the sexual organs by a male or a female.

If that happens in some little village in the Northwest Territories, even though it seems like a relatively minor offence, there is a mandatory minimum imposed. Whoever the person was, as misguided as they were, as difficult as the circumstances may be, inside or outside of a family, that person is going to be taken away. The person may have to be flown out 500 miles or put on a dogsled. I don't know what happens. I'm just trying to figure how that mandatory minimum helps or doesn't. I don't see it as a fit in the far north. In the city, there is a local jail. In the rural areas, there isn't. That's simply a difference.

I would ask the first question to the lawyers and the second question to the panel.

Mr. Michael Spratt: With respect to section 172.2, it does require that reasonable steps be taken, which isn't much different from some of the provisions we have now with regard to the age of consent. The courts have outlined what those reasonable steps are. I do think that the reversal of onuses will attract constitutional litigation. I don't think it's the most problematic part of the legislation.

Your question about entrapment is very interesting, because of course the cases that deal with entrapment don't allow police or the authorities to randomly approach people for no reason and suggest things to them. If that's the road we're going down, there definitely will be challenges. Those challenges for entrapment arise after the trial process, so it's a very resource-intensive process.

We're getting close to the area where that seems to be a possible outcome for there to be random virtue testing on people to see if they'll engage in the conduct or not. The courts have found that's not acceptable, and that has yet to be legislated away by the government at this point.

● (1650)

The Chair: Thank you.

We'll move on to Monsieur Ménard—

Mr. Derek Lee: Sorry, is that my time?

The Chair: We're done. It's five minutes.

Monsieur Ménard, five minutes.

[*Translation*]

Mr. Serge Ménard: Thank you.

Several people have testified that according to the many surveys conducted, minimum penalties did not have a deterrent effect. Could you be more specific? Can you tell me about some of the surveys that were conducted on this subject?

[*English*]

Mr. Michael Spratt: Yes. Our organization has prepared some material for you, which is being translated. We submitted it only earlier this week, so I don't think it has been translated yet.

It does make some references; study after study has indeed shown that mandatory minimums.... A great piece of literature is the November 2010 report authored by the Canadian Centre for Policy Alternatives. I can forward a copy of that report to you as well, if you like.

The Canada Safety Council, the National Criminal Justice section, University of Alberta law professors, directors from the John Howard Society, a 1990 University of New Brunswick paper—they've all found, in study after study, that there is no evidence that mandatory minimums deter conduct. It's the certainty or the likelihood of being apprehended, and the criminalization of the conduct itself, that results in deterrence, not mandatory minimums.

The objection we have is that when you're looking to change a fundamental underpinning of our criminal justice system, the person who's looking to change that should have the evidence that the changes will work. We're all interested in protecting children, and it would be tragic to see resources used in a manner that's not effective.

Mr. Leonardo Russomanno: Perhaps I could just add something about the American experience.

Different states in the United States, including Michigan, Connecticut, Indiana, Louisiana, and North Dakota, have all passed laws eliminating some of these mandatory minimum sentences. There's a trend in other common law jurisdictions moving away from these mandatory minimum sentences because they have actually now had years of experience with these not working.

That's another area that I would commend the honourable member to look at.

[*Translation*]

Mr. Serge Ménard: A study by Mr. Julian Roberts commissioned by the Department of Justice prior to the imposition of minimum penalties came to the same conclusions as you have. This study looked at all Commonwealth countries.

As you all know, in 2005, the legislation was amended to include several minimum penalties for sexual offences against children. The current legislation also provides for increases in the minimum penalties agreed to in 2005.

Are you aware of any studies that came to the conclusion that the minimum penalties imposed in 2005 have achieved the desired results?

[*English*]

Mr. Andrew McWhinnie: If I may, Mr. Ménard, you'd have to wait a few more years to see what the results of those would be. Introducing a law in 2005, and then trying to see whether it worked five years later, is probably not going to produce that result. I think we have to therefore rely on other jurisdictions, as mentioned by our lawyers, and what their experience has been. To detect recidivism, you're going to need at least seven to ten years of something being in place before you can determine whether it's working or not.

● (1655)

[*Translation*]

Mr. Serge Ménard: Some witnesses who testified before you talked about sex offenders who check out the laws in different countries to find out which ones pose the lowest risk for them. Many of these offenders determined that the risks were lower for them in Canada than in other foreign countries.

My question is directed to the representatives of Cyberaide.ca. Have you found that a large number of sexual offenders tend to shop around to see what kind of penalties are imposed in countries around the world?

[*English*]

Ms. Lianna McDonald: I don't think that we could respond to that question. We're not aware of whether offenders from other countries would look to Canada as an avenue because of more liberties here. We have presented previously only on some of the content issues surrounding child abuse material being hosted and located in Canada, and these practices affect Canada internationally.

The Chair: We'll move on to Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Ladies and gentlemen, thank you for being here today and sharing your expertise with us.

One of the things I'd like to explore is public confidence in the criminal justice system. A number of the panellists have made comments on that today. As members of Parliament, we have to represent everyone. I understand there are people here today who represent victims of crime, and I'm grateful for what you do. There are people here from the Criminal Lawyers' Association who represent their clients, and I appreciate their perspective. And there are people here who represent those who treat child sex offenders, and I appreciate their perspective as well.

Ms. McDonald, you mentioned that most Canadians express outrage about these offences and the fact that little has been done to address them. Can you comment on the importance of the general public having confidence that child sexual predators serve an appropriate amount of time in jail for these offences?

Ms. Lianna McDonald: I can speak on a few points.

In advance of what is now Canada's luring legislation, our organization worked with various law enforcement and provincial governments. You had adults communicating via computers for the purposes of sexually exploiting children. We would get comments from Canadians, families coming in, moms calling in about this type of communication, and they were very upset that nobody could do anything.

My comments were in reference to the new offence, which captures grooming. We receive numerous complaints, whether they're through reports to the tip line or people coming to contact us. They would express strong concerns and outrage that an adult sent their ten-year-old daughter a video of himself masturbating without any action being taken.

In the court of public opinion, most parents would agree that when these sorts of incidents take place and there isn't a direct remedy, from a common-sense approach, it is upsetting. My comments were in reference to the complaints we received.

Mr. Bob Dechert: Ms. Kennedy, do you have a comment on how the public's confidence in our justice system is affected when they see a child sex offender, or a person who sexually abused a child, get no jail time or a very light jail sentence? What does that do to their perspective on the fairness of our criminal justice system?

Ms. Karyn Kennedy: We see about 500 children in the Toronto and central Ontario area go through the courts every year. I would even go further and say the likelihood of a conviction is not great. So we don't even get to the point of sentences in many cases.

The families that we work with express a lot of disappointment that the crime was not taken as seriously as they had hoped. There are provisions that help children testify, but they're not being used on an ongoing basis. There's no consistency on that in our courts. So I think there are a lot of other issues that need to be addressed in addition to the sentencing.

● (1700)

Mr. Bob Dechert: Thank you.

Ms. Kennedy, you mentioned in your comments that many of the provisions in Bill C-54 will contribute significantly to the protection of children. Do you stand by that comment?

Ms. Karyn Kennedy: I do. In particular, I welcome the new laws that will allow the police to intervene earlier when an offender is trying to contact a child—sending pictures, beginning the grooming process—and when adults contact other adults about children. We've seen cases where—and nobody would have believed this ten years ago—parents are trying to sell their children over the Internet for sexual purposes. These things are happening on an ongoing basis, probably far more frequently than we in the system recognize. So I think creating laws that will give the police tools to investigate and make arrests will make a big difference.

Mr. Bob Dechert: Ms. McDonald, you mentioned that many of the provisions of Bill C-54 will prevent a child from being victimized. I assume you continue to agree with that statement. Do you think that increased penalties for some of these offences will also help to prevent children from being victimized?

Ms. Lianna McDonald: Right. Again echoing the comments just made, similar again to what we saw take place after the luring legislation came forward, we're really looking at new tools. These provisions will allow for action to be taken in advance of children being sexually harmed or victimized. So we know that's exactly what we're looking for.

The Chair: Thank you.

Mr. Bob Dechert: Do I have any time?

The Chair: You're finished.

Mr. Bob Dechert: Okay, thank you, Mr. Chair.

The Chair: We'll move on to Ms. Jennings. You have five minutes.

Hon. Marlene Jennings: I've got five minutes?

The Chair: Five minutes.

Hon. Marlene Jennings: Thank you. I know how quickly that time passes.

I have one piece of clarification that I'd like to have addressed and then I'll move on to another question I have.

In terms of some of the sexual offences against children that already exist in the Criminal Code, do there already exist minimum mandatory penalties for any of those sexual offences when it involves children?

Mr. Michael Spratt: Yes.

Hon. Marlene Jennings: Thank you.

My question now goes to a related issue. When we're talking about criminal offences, in particular sexual criminal offences and sexual exploitation of our children using the Internet and all of these new technical devices—whether it's the social media, Facebook, etc.—would the other piece of legislation that the government has basically held on to for a number of years and only recently brought out, which would modernize the investigative techniques for law enforcement and allow law enforcement to access warrants and to access IPS through the Internet when they have reasonable grounds to believe that a criminal offence is being committed, would that also assist our law enforcement in dealing with and investigating sexual exploitation and sexual offences against our children through the use of the Internet?

Mr. Michael Spratt: It would assist. The question would be if it would pass constitutional muster. Currently, law enforcement can access. If you look at file-exchanging software like LimeWire, or software that allows people to exchange peer-to-peer files, quite frequently the pattern that we're seeing is that law enforcement is able to get the IP address of the person sending the child pornography or inappropriate material, and is able to get to the subscriber information from the telecommunications company.

That's something they're already able to do, and it has been ruled mostly to be acceptable. The courts have ruled that. So these mechanisms are in place already.

Hon. Marlene Jennings: Have you actually looked at the legislation the government has brought forth? It's two specific bills. When it was under the previous Liberal government, they brought it through as one piece of legislation. But unfortunately it was never dealt with in the House of Commons.

The Conservative government has brought through two pieces of legislation—they split the bill, actually—and I know we're fairly supportive of it. We've been calling for it to come forward because there are aspects of the current law that hinder law enforcement in terms of their investigation, notwithstanding this statement that you just made.

● (1705)

Mr. Michael Spratt: I haven't looked at it in detail. But over the last number of years we've seen a number of these bills come through—you know, eliminate Bill C-25 and bills of that nature—that all have a common theme. It would have been interesting to see those bills brought as a package, because they do have an interplay with each other.

But I can't comment on that other bill. I haven't looked at it very specifically.

Hon. Marlene Jennings: If I may, can I arrange for these two pieces of legislation I'm talking about to be sent to you—

Mr. Michael Spratt: I'd be more than happy—

Hon. Marlene Jennings: —because I'd be interested in having your insight into that.

That was my second question, so if there is any time I offer it up to my colleague.

The Chair: Mr. Lee, one minute.

Mr. Derek Lee: Oh, great.

Mr. McWhinnie, do you have any comment on the mandatory minimum penalty now being imposed on the offence of indecent exposure?

Mr. Andrew McWhinnie: I have no specific comment on it that would not be subsumed under my comments to date.

The Chair: Thank you.

We move on to Mr. Rathgeber, for five minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you to all the witnesses for your attendance here this afternoon.

Mr. McWhinnie, I'm troubled by a couple of things you had to say, most specifically this proposition that a victim is somehow in a better position when the perpetrator of a sexual assault of an incestuous nature is left in the home. I'm trying to explore that and understand why that might be. Is that because of the breadwinning potential of the perpetrator?

Mr. Andrew McWhinnie: I don't think I'm advocating that in all cases of an incest offence the perpetrator should be left in the home.

Mr. Brent Rathgeber: But you said that it is one of your objections to the minimum mandatory sentences. You said very clearly that in some cases, although unpalatable, it's better to leave the perpetrator in the home.

Mr. Andrew McWhinnie: I said in some cases. Exactly. That's what I said. In some cases, that would be a better option.

Mr. Brent Rathgeber: Well, explain to me what one of those cases might be.

Mr. Andrew McWhinnie: Since we're into anecdotal evidence and not hard evidence today, let me take an anecdotal story of my own. In practice, I'm working with somebody who has committed incest. The entire family, including the extended family, has sat down with me around the kitchen table, wondering at first whether it would be wise to advance charges, given the fact that the person would probably be going to jail and that it would leave two children and a mother without any income whatsoever. They were deeply concerned about that.

Mr. Brent Rathgeber: Right, so it is because of the breadwinning potential of the perpetrator.

Mr. Andrew McWhinnie: What I'm saying is that we need to leave that decision to the judiciary, to the judge, who can make those kinds of decisions.

Mr. Brent Rathgeber: How do you feel about that, Ms. McDonald?

Ms. Lianna McDonald: Well, these are obviously very complex situations. Certainly Ms. Kennedy could speak from her experience working directly with victims. But I would suppose that there are a number of personal dilemmas when families and children are placed in a position in which they have to talk about whether dad goes to jail, and that it would be quite difficult.

We know that in many cases these children still have feelings towards the harming parent. That doesn't necessarily mean that it's in their best interest to keep that unit in the same capacity.

Mr. Brent Rathgeber: Ms. Kennedy, how do you feel about leaving a perpetrator in the home with his or her victims simply because of their breadwinning potential?

Ms. Karyn Kennedy: I don't feel that a perpetrator should ever be left in the home under any circumstances until there's been an opportunity for treatment, particularly treatment for the victim, treatment for the offender, and a process for the family. The victim's best interest always needs to come first. I think that's why we worked so hard many years ago to have decisions about arrests made by police rather than by victims. It's not fair to put a victim in a position of being asked whether the offender should be charged or whether the offender should go to jail or remain in the home.

I think there's always, always a risk when a sexual offence has occurred, even after treatment. We have to do the best we can to protect children, right from the outset.

Mr. Brent Rathgeber: Thank you.

I'll go back to Mr. McWhinnie. If a defendant or an accused or a perpetrator, whatever you want to call him or her, is not employed, is not a breadwinner, can you envision a circumstance in which it would be in the family unit's best interest to leave that perpetrator in the home?

● (1710)

Mr. Andrew McWhinnie: I think what I want to say, and emphasize, is that, as Ms. Kennedy has just said, the safety of the victim is always paramount. They should not routinely be left in the home. I'm certainly not saying that. I'm not saying that at all. In fact, in part of my submission I said that there are cases when families will want the perpetrator removed from the home. That's fine. The people in a position to determine that are not us and are not this committee. They are the people who are dealing with the cases up front: the judge—not the police, not the crown prosecutor—and those who are involved with the family. This legislation has no room there. That's what I'm saying.

Mr. Brent Rathgeber: Do I have any time left? I think Mr. Woodworth has a question.

Mr. Stephen Woodworth: Thank you.

I want to go back to Mr. Spratt and mention that we've heard evidence before this committee on this bill that pornographic materials are often one of the most commonly used methods for grooming children. Of course this bill creates a new offence regarding distributing or making available or selling sexually explicit material to minors. Would your agency at least agree that this is a step in the right direction?

Mr. Michael Spratt: The distribution of pornographic materials to minors for the purpose of grooming them is reprehensible.

Mr. Stephen Woodworth: Have you looked at this bill? Have you looked at that section? Does your association agree with that provision?

Mr. Michael Spratt: I have no difficulty with a criminal offence being created relating to the distribution of pornographic or other material to a minor for the purpose of grooming them or to induce them into a sexual offence.

Mr. Stephen Woodworth: Are you saying you can't comment on the specific provision that's in this bill?

Mr. Michael Spratt: I think I just gave you my answer. We're against anyone providing pornographic material to children for the purpose of grooming them and—

The Chair: Thank you.

Mr. Stephen Woodworth: Am I out of time?

The Chair: Yes, you are.

Mr. Stephen Woodworth: I just wanted to find out if he'd actually looked at this bill.

The Chair: I know what you're trying to do. Thank you.

We're going to go on to Mr. Norlock, for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): My thanks to the witnesses for being here today.

My question will be to Ms. Kennedy.

We had a previous witness whose name was Ellen Campbell, founding president of the Canadian Centre for Abuse Awareness. She was also a child victim of sexual exploitation. She mentioned that victims of child sexual offences often feel marginalized and belittled when the punishment does not fit the crime. She said that for them, and I think this is an exact quote, that's why minimum sentencing is important: it gives a strong message, first of all, but secondly, “it's giving a strong message to the victims that their life is worth something”.

Then she related instances when people have committed suicide. They took the brave step and they went public. Some of them were in their mid-adult years, around 30 years of age or 40 years of age. That big step left them feeling they had made the wrong step, and they committed suicide.

Through your practice, your advocacy for victims, but in particular your dealing with families and victims, I wonder if we could have a general overall picture of how these types of offences, in particular dealing with children, leave the families. In my experience, I've seen where families require ongoing treatment, for years and years, for everything from alcohol abuse to drug abuse, self-medication, because of what occurred. They get a mandatory life sentence for the crimes perpetrated against them.

I wonder if you could make some comments in that regard.

Ms. Karyn Kennedy: Certainly. I do know Ellen Campbell, and I know her opinion on this. I would agree with much of what she would say.

When a child discloses sexual abuse, it takes a lot of courage for them to do that. Generally it's something they have lived with for quite a long time—in some cases many, many years.

One of the key features for them in whether they will be able to recover and how quickly is what the response is. Do people believe them? Do they support them? Is the offender admitting and taking responsibility for this?

Many offenders will tell children, “If you tell, no one will believe you. I'll have to go to jail. You'll be taken out of the home. I'll be taken out of the home.” There are already seeds planted to make the child feel like it's their fault. If the justice system doesn't take the crime as seriously as the victim believes it should be, and the offender is not taking responsibility, then there isn't that feeling that he or she is being held accountable.

In one anecdotal example that comes to my mind, we worked with a young girl who is now in her early twenties. She came to us when she was 14. She had been abused for many, many years by a neighbour who lived across the street. He was an older person. He was convicted and he received probation, and they both went home from court together to their respective houses. He remained in his house across the street. He wasn't allowed to cross the street. He wasn't allowed to go to the same church. She went home, having gone through this process where she testified, which was a really difficult thing for her to do, and she saw him cutting his grass every day.

People learned about this. For her, there was no justice. She didn't feel that this person was held accountable. I can tell you many examples that are similar to that.

I think that if there isn't that sense of justice then it does a great disservice to children who have been victimized.

● (1715)

Mr. Rick Norlock: We've heard how we need to provide treatment for the people who perpetrate these crimes. We really worry a lot about that. But would you not say there is a need for the treatment of the victims and that part of that treatment for the victims is feeling their life is worth something?

Would you also agree there's a responsibility of the federal government to properly fund health care, and that includes psychiatric treatment? Would you not also agree that an increase of 30% over five years towards health care that is provided by the provinces so we can have provincial health care services to meet those needs...? It's never enough, but would you say it's a step in the right direction?

Ms. Karyn Kennedy: Absolutely, and I would also commend the government for having established a fund to develop child and youth advocacy centres across the country. It is a very big step in terms of offering specialized services to children who are victims of abuse, and it will bring together all of the different sectors: police, treatment, medical, and mental health. You won't hear me disagreeing with more funding, no.

Mr. Rick Norlock: Thank you.

The Chair: We're going to Monsieur Petit for five minutes.

[*Translation*]

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

I want to thank all of the witnesses for being here this afternoon.

It is never easy to broach subjects like the one we are dealing with as part of our study of Bill C-54. Quite often, we are forced to draw comparisons between cases of incest and of violence against women. I am from Quebec. A number of extensive awareness campaigns have been launched to encourage women to report spousal abuse. It is my professional experience that the victim often withdraws her complaints before the case goes to trial because the husband is her and her children's sole support. The wife is then beaten by her husband the following week.

The Government of Quebec formally decided that once a complaint had been filed, it could not be withdrawn, regardless of the positions taken. When a woman files a complaint, she cannot withdraw it. The situation is much the same for children because they are afraid. It is very hard for them. It is not easy for someone to admit that she was abused by her father for 10 or 15 years. Understandably, it is a truly terrifying prospect for them.

A lawyer who knows the system a little and who represents the accused will go and see the Crown prosecutor. He finds out that there will not be a trial and the client pleads guilty. The judge then asks the two lawyers if they can suggest anything. They may suggest a minimum sentence of three years in prison, even if the offender is liable to 15 years in prison. A man abuses his daughter for nearly 15 years, but no one wants a trial. They argue that the victim will be spared from having to testify, that a costly trial will be avoided. However, no one is thinking about this terrified child who is denied justice.

A lawyer may be called upon to defend a 72-year-old man who abused his daughters for 15 years. This person arrives at the courthouse, pleads guilty and leaves immediately in a wheelchair. He does not receive any penalty whatsoever. Incredibly, these things happen. Lawyers refers to these as “sweet deals”.

I don't know if you have any children, but if you do, look them straight in the eye. It is incredible to see what is happening. Young girls are being abused for 15 years and being treated no better than dogs, and people are trying to convince us that minimum penalties should not be imposed. I'm sorry, but minimum penalties are necessary because this is the only way to get the message across. The members of the legal profession are beginning to understand. When a person commits a serious offence, we will send a clear message to the public. That is what I wanted to say. I practised law long enough to know that something is wrong with the system.

Mention was also made of mandatory minimum penalties. DUI offenders have long been subject to such penalties. Interestingly, the Société de l'assurance automobile du Québec supports tougher minimum penalties because they mean fewer accidents and fatalities. This was a government decision. So then, minimum penalties are good. Minimum penalties are imposed in murder and firearms possession cases and interestingly, this approach works well. Why should the approach be any different in this case? This is the point I wanted to make.

You have to understand that this bill is intended not only for Conservatives. We are working for all children, whether they are the children of Bloc members, of Liberals, of New Democrats or of Conservatives like ourselves. We are not acting solely out of partisan concerns. We are also parliamentarians. In my opinion, it's ludicrous to waste our time on this. We should be banding together and unanimously endorsing this bill aimed at protecting our children.

● (1720)

[*English*]

The Chair: Thank you.

We've essentially come to the end of our time. Before we close, I have just one question.

As you know, the representatives from the Criminal Lawyers' Association made it very clear that they oppose mandatory minimum sentences for sexual offences against children, and they've made it very clear that they're confident that the discretion of the trial courts is sufficient to deal with sentencing. My colleague Mr. Woodworth earlier referred to the case of Regina v. Arcand, which was a case of the Court of Appeal in Alberta, in which the chief justice, no less, articulated serious concerns about the inconsistency in sentencing at the trial court level.

I just wanted to quote her comment. It was a long *obiter dictum*, but here's one part of it. She says that Parliament may then conclude in light of public concerns that it must further curtail the court's discretion in sentencing. It may impose minimum sentences or restrict sentencing options.

I put this question to our witnesses from the Criminal Lawyers' Association. The Court of Appeal of Alberta obviously disagrees with your position on mandatory minimum sentencing. I'm just wondering how you would respond.

Mr. Leonardo Russomanno: Thank you, Mr. Chair, for allowing me the opportunity to respond.

I haven't had a chance to review the full decision. I believe I've read the same *obiter dictum* that Mr. Chair just read with respect to the Alberta Court of Appeal. I haven't read the original decision, and I would refrain from making a complete comment without actually reviewing the decision, as I'm sure all the members of this committee would do.

But I would say this. The court concluded, from what I could tell, that the sentence imposed by the sentencing judge was unfit. It was outside of the range of appropriate sentences, and it was on that basis that the sentence was overturned. That is a process that takes place in our appellate courts every single week when these decisions are heard. It's not whether or not the sentencing judges agree but whether or not an error is committed, and that's whether something falls outside of the range.

Making that finding, which is open to the appeal court, I think is the appropriate way to go about it. These sentences have a particular range. As with the sexual exploitation provisions, I would encourage members to actually point me to a trend where individuals are getting probation for sexual exploitation. I think it paints a picture that is frankly not the case. We're furthering this view that our judges are somehow part of this revolving-door system of justice, coddling criminals, and it sends the wrong message. It sends the wrong message about what our justice system is about, and I would discourage that. I think it's completely unfounded.

If there are inappropriate decisions that are overturned on appellate review, that's the appropriate course of action. The Alberta Court of Appeal felt that sentence was demonstrably unfit. I don't quibble with that finding that it was outside of the range of the sentence. The sentence should have been harsher. That's simply that. I think that we fall on different sides of the spectrum as to whether or not sentences should be more cookie-cutter or consistent, or whether sentences should be more individualized.

But that our judges are somehow systematically not respecting appropriate sentencing principles I think is unfounded.

● (1725)

The Chair: Ms. McDonald, you're probably familiar with that case. It appears that the chief justice did speak approvingly of mandatory minimum sentences because of the inconsistency in the lower court's sentencing process. Perhaps you'd like to respond.

Ms. Lianna McDonald: Certainly we look to the separation between retribution and rehabilitation. I think our agency certainly supports mandatory minimums. We appreciate that there have been some inconsistencies. Again, without the data in front of me, I would point to when the child pornography offences first came out post-Sharpe, and conditional sentences were more often given at that point in time.

Since then, we have moved towards mandatory minimums there, and there has been a change. And it's been a good change. I think it's also done a lot in terms of changing the perception that this really isn't a serious crime, the viewing of images of child sexual abuse.

We certainly support it.

The Chair: Thank you.

Yes, Mr. Comartin?

Mr. Joe Comartin: On the article, the *Maclean's* interview, since you keep referring, Mr. Chair, your party, to the Court of Appeal of Alberta, perhaps we should get the article by Justice McLachlin, because it certainly shows a contrary view of mandatory minimums.

I'd ask that that be given to the clerk so that it can be circulated.

Mr. Leonardo Russomanno: I have a copy here. I can provide that.

The Chair: That would be great.

Thank you to all of our witnesses. I think we've had a fair exchange of ideas on this bill. We thank you for appearing.

We're adjourned.

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