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Wednesday, February 16, 2011

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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 number 49 of the Standing Committee on Justice and Human Rights, and for the record, today is Wednesday, February 16, 2011. This 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). After we hear three witnesses who are before us right now, we'll move to clause-by-clause consideration of the bill.

Before we move forward, there are two items.

We received a communication from a witness who testified at last Wednesday's meeting with a clarification of his status. Mr. Randall Fletcher was shown on the meeting agenda as representing the Office of the Attorney General of Prince Edward Island. You may recall that the chair sought to confirm his representation of the AG during Mr. Fletcher's testimony, at which time Mr. Fletcher appeared to confirm that he understood his presentation had been reviewed by the minister. Last Thursday, Mr. Fletcher sent a clarifying note to the clerk. I'll read it verbatim:

Prior to my videoconference presentation to the Standing Committee on Justice and Human Rights yesterday I advised the person I report to about the request to present. I was not certain if this was being passed on to the minister and had not had a chance to pursue the matter before the presentation. When I was introduced as representing the Department of the Attorney General for P.E.I., I thought perhaps there had been some communication to that effect, as I had not represented myself as doing so in my own communications. As of this morning I believe that the matter was not put before the minister and would like to clarify that the opinions I expressed in the session may, or may not, represent those of the department. I will attempt to get further clarification on this but do not want any current misunderstanding to continue.

That's the end of his quote. That's just for the record. He wanted us to ensure that it was on the record.

The second item, before we move to our witnesses, is that you have before you the eighth report of our Subcommittee on Agenda and Procedure of the Standing Committee on Justice and Human Rights. At that meeting we decided to move to Bill C-4 next, meaning the Youth Criminal Justice Act amendments, and it was agreed that we were going to ask approximately 21 witnesses to either come for a first time or to return for further testimony. We've agreed that the panels will consist of no more than three groups apiece per hour. That's your eighth report. I believe it accurately reflects what we settled on there.

Do we have a mover for that report? It is Monsieur Lemay.

(Motion agreed to)

The Chair: Moving to our witnesses, we have with us Julie McAuley, Craig Grimes, and Mia Dauvergne. They are representing Statistics Canada and are all coming back to testify.

You know the process. I don't know if you've prepared remarks. Would you like to start? Then we'll open the floor to questions from the members.

Ms. Julie McAuley (Director, Canadian Centre for Justice Statistics, Statistics Canada): Thank you very much, and thank you for the opportunity to present to the committee on the act to protect children from sexual predators.

Statistics Canada does not take a position on the bill.

The presentation we have prepared contains our most recent data on the sexual offences committed against children that are the subject of this bill. They include only the sexual offences against children that have come to the attention of the police and the courts.

The version we are presenting to you today differs slightly from the advance copy you received. During the verification process we noticed an anomaly with data received from Quebec; that anomaly has been corrected. Slides 4, 5, and 6 of the presentation were affected.

All data sources used are clearly indicated on the slides, as are any pertinent data notes. My colleagues, Ms. Mia Dauvergne and Mr. Craig Grimes, will help answer any questions.

Please turn to slide 2 in the presentation.

Using data received from police services across Canada, we can examine trends in police-reported incidents of sexual offences committed against children. Over the last ten years, the rate of overall police-reported sexual offences committed against children has remained relatively stable.

Sexual offences committed against children can be grouped into two categories: sexual assault and other sexual offences.

The rate of police-reported sexual assaults committed against children has been generally declining since 2005, while the rate of other sexual offences committed against children has increased in the last two years.

On slide 3, we can examine the geographical variation in the rates and number of victims of police-reported sexual offences against children.

In 2009, the highest rates of these offences in Canada were in the north. While rates were used to ensure that trends are not biased by variations in populations, it is important to note that the number of incidents of these offences in the north is considerably lower than in most provinces.

Slide 4 provides an overview of the ages of police-reported sexual assaults against children. In general, for police-reported sexual offences committed against children and youth, we know that females are more likely than males to be the victims and that teenage girls are the most at risk. This finding holds true for victims of police-reported offences of child sexual assault.

In 2009, more young females than males were victims of police-reported—

• (1535)

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Could you slow down a little bit? The interpreters are unable to follow.

Ms. Julie McAuley: Oh, forgive me.

[*English*]

More incidents were reported of females aged 12 to 17 being the victims than for those in other age groups, whereas the number of incidents for boys remained relatively stable regardless of age.

The Chair: I think the witness knows she has to slow down.

[*Translation*]

Mr. Marc Lemay: The problem was that we were no longer getting the translation.

[*English*]

The Chair: Thank you.

Please proceed.

Ms. Julie McAuley: Slide 5 provides an overview of the ages of victims of police-reported other sexual offences committed against children. While females are more likely than males to be victims, the distribution of the victim's age is different from what we saw on slide 4 for sexual assaults. While the number of incidents for boys remains relatively stable regardless of age, the risk of victimization for girls peaked at age 13.

The next three slides show 2009 police-reported data on the relationship between victims and those accused of committing a sexual offence against a child. As you will see, as children age, the accused-victim relationship generally shifts from parents and other family members being the most frequent perpetrators to acquaintances being the most frequent.

Slide 6 focuses on children aged 0-5 years. Here we see that parents and other family members comprise the majority of accused persons. In 2009, almost 6 in 10 boys and close to 7 in 10 girls were victimized by a family member.

On slide 7 we look at the accused-victim relationship for reported sex offences involving children 6 to 11 years old. As you can see, while boys and girls in this age range were still most likely to be victimized by a parent or other family member, the proportions were less than those for younger children. In contrast, 6- to 11-year-olds,

particularly boys, were more likely than younger children to be victimized by an acquaintance. In other words, the relationship is beginning to shift from family members to acquaintances.

Slide 8 shows the accused-victim relationship for police-reported sex offences involving children 12 to 17 years old. Here we see an even greater drop in the proportion of children who were victimized by a family member and an increase in those victimized by acquaintances and strangers. These data also show that teenage boys are about three times more likely than teenage girls to be victimized by an authority figure such as a teacher or a coach.

During the teenage years we also see a substantial increase in the proportion of sexual victimizations committed by strangers to about 10% for boys and 14% for girls.

The number of sexual assault and other sexual offence cases completed in adult criminal courts in Canada has remained relatively stable during the last five years. In 2008-2009, there were approximately 7,400 sexual assault charges in Canada, which were contained in approximately 5,000 court cases.

Sexual assault data collected from criminal courts does not permit us to differentiate between those committed against children and youth and those committed against adults. As a result, it is not possible to identify the ages of the victims in sexual assault cases using data collected from adult criminal courts. However, we know from police-reported data that approximately half of sexual assaults committed in Canada in 2009 were committed against children. The vast majority of these were sexual assaults level 1.

In 2008-2009, there were approximately 7,200 charges of other sexual offences, contained in approximately 3,300 court cases.

Cases involving child sexual offences often include charges for other offences as well. Slide 10 shows the proportion of guilty findings for charges of both sexual assault and other sexual offences, regardless of whether this was the most serious offence in the case.

In 2008-2009, 32% of cases contained a charge of sexual assault and 48% of cases contained a charge of other sexual offences resulting in a finding of guilt. These proportions have remained relatively stable since 2000-2001.

Slide 11 shows the difference in the types of sentences imposed for cases of sexual assault. In 2008-2009, custody was the most serious sentence imposed in approximately 55% of cases involving sexual assault. This represents a slight increase from the year prior. While the proportion of conditional sentencing has remained relatively stable since 2000-2001, the use of probation has been decreasing.

As we can see from the next slide, most custody sentences imposed in cases with a guilty sexual assault charge were for a term longer than three months but less than two years. The median length of custody for these cases was approximately one year.

●(1540)

Since 2000-2001, between 23% and 27% of cases with guilty sexual assault charges involved sentencing to custody for two years or more—which is federal custody—compared with only 4% of adult guilty cases in general. These longer custody lengths may indicate the seriousness with which the courts treat these cases.

Slide 13 shows the difference in the types of sentences imposed for cases of other sexual offences. In 2008-2009, custody was the most serious sentence imposed in approximately 65% of cases involving other sexual offences. This is an increase over the year prior and a continuation of the upward trend seen since 2003-2004. The use of probation has declined since 2003-2004, and in 2008-2009 it was the most serious sentence in approximately 18% of cases involving other sexual offences. The use of conditional sentencing has also decreased over the last four years.

On slide 14 we see that the distribution of custody sentences for other sexual offences has been changing since 2005. There has been an increase in the use of custody with a term of three months or less and a decrease in the use of custody of longer than three months but less than two years. This change began in 2005 and coincides with the introduction of mandatory minimum penalties for several of the offences in this category.

Once again, thank you for the opportunity to present to the committee. This ends my presentation.

The Chair: Thank you. I'm assuming both Ms. Dauvergne and Mr. Grimes are there as resources to answer questions.

Ms. Julie McAuley: Yes.

The Chair: All right.

We'll begin the questioning with Mr. Murphy.

You have seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Chair, and thank you, witnesses. That was a very interesting report, and I'm going to thank you for the breadth of it in timing. My generalization is that most of the slides in the deck show a fairly static situation with respect to sex crimes.

One question I have is a general one. There has been a lot of publicity about unreported crimes. Now, you're Statistics Canada, so I'll let you answer it in your own time and in your own way, but I suspect you can't really tell us what crimes are not reported; at least, they're not in this deck. I'll let you answer that at the end, because I have more specific questions from your presentation.

On page 13 we see an increase of custodial sentences by a significant amount—I'm going to say 15% or more—after 2006. I'm going to guess that it has something to do with some legislation, but you can maybe help me there. The green line spikes up.

The blue line on page 14 is decreasing. That's for sentences of more than three months and less than two years. I think you said it was declining because of mandatory minimum sentences that were introduced in 2005.

Can you clarify? You said it, but I'm not sure I got what the relationship would be. Can you explain that a little further?

●(1545)

Ms. Julie McAuley: I'll start with your last one and ask Mr. Grimes to interject as needed.

What I said on that slide was that it “coincides” with the introduction of mandatory minimums; I did not say it was a result of the introduction of mandatory minimums.

Mr. Brian Murphy: You say it coincides, but you can't say that there's a relationship?

Ms. Julie McAuley: I cannot comment on the relationship between the statistics and the legislation.

Mr. Brian Murphy: We're supposed to figure out whether that is or is not just a fluke or something.

Ms. Julie McAuley: I can only comment on the data.

Mr. Brian Murphy: I understand.

You're talking about mandatory minimums that were brought in in 2005. Is that the 14 days, or which mandatory minimums are you talking about?

Mr. Craig Grimes (Chief and Advisor, Courts Program, Canadian Centre for Justice Statistics, Statistics Canada): Those would be the mandatory minimums brought in in 2005, which were the 14-day and 30-day ones. They are shorter mandatory minimums than some other mandatory minimums that currently exist in the Criminal Code.

Mr. Brian Murphy: I should know this, but might a custodial sentence of more than three months and less than two years have been used before 2005, instead of a 14-day minimum? Is that possible?

Mr. Craig Grimes: Yes, it is possible, but prior to 2005, it would also be possible for probation or a conditional sentence to be a sentence for those offences. After 2005, conditional sentencing would not have been a valid sentence.

Mr. Brian Murphy: A mandatory minimum is a custodial sentence, right?

Mr. Craig Grimes: Yes, that's right.

Mr. Brian Murphy: So it's probably represented by the green line, which is three months or less. That's probably what that is. We're left to figure it out for ourselves. That's fine. I think that's what it must be.

Let's go back to slide 13.

Ms. Julie McAuley: In terms of slide 13, again, Mr. Grimes can comment on exactly what legislation was introduced in 2006-2007, but we cannot comment on whether what you see in terms of the increases is a result of the legislation.

Mr. Craig Grimes: What I can tell you about those lines and about how they're changing is that if there were mandatory minimums in place in 2005, and there were more cases going into custody, and those mandatory minimums were short, then it's possible that you would see an increase in those shorter sentences, which would change the distribution we're seeing in this chart on page 14.

Mr. Brian Murphy: Okay. I appreciate that.

My first question was a general question on unreported crimes. If I don't have it here, I should have brought it. I think it was from the Macdonald-Laurier Institute. I may be wrong.

Can you give us any comment on how you measure unreported crime?

Ms. Julie McAuley: Certainly. Unreported crime is measured by Statistics Canada through the general social survey on victimization. That is a survey of Canadians aged 15 or older. Eight specific offence categories are asked about.

Based on the results released earlier this year, we know that one-quarter of Canadians 15 years of age or older reported being victims of a crime in the 12 months preceding this survey. Just under one-third of the Canadians who had been victimized reported that victimization to the police, and that's slightly down from 2004.

Now, one thing we do need to keep in mind with these data is that it is the individual's perception of the situation. It has not been an offence that has been substantiated by the police.

• (1550)

Mr. Brian Murphy: Okay.

Frankly, those are the questions I had. I don't know if Mr. Lee or Madam Jennings would like to take up the rest of the time.

Thank you.

The Chair: We'll move to Monsieur Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): First of all, my apologies for being late. I did my utmost, but after question period, I had to meet with reporters who were intent upon obtaining explanations about what took place yesterday evening in committee, as well as with people who worked on the issue.

I would also like to emphasize that I saw this information for the first time here. Even if I had had knowledge of it earlier, it would nevertheless be impossible to have a good understanding of the meaning of these statistics. I do however attach a tremendous importance to them. I am familiar with Statistics Canada and I am convinced that it is one of the best organizations in the world, overall. I often read the publications it puts out.

However, statistics such as these do not read out in the way you have just read them out. One must study them; otherwise, one only retains a few aspects. I had asked that we be provided with this document a little bit ahead of time. I do not know when it was provided, but I believe that my assistant received it yesterday, whereas I sat in committee until 10:30 p.m. Therefore, when we ask you to forward documentation within a certain timeframe, I would be grateful if this could be done a little sooner.

I do not see how this will assist me with the votes that we are going to have this very afternoon, and it is very unfortunate.

Defence lawyers have told us, during the course of our hearings, that the courts had established, as a matter of principle in cases of sexual offences against children, that the rule would be jail time. My impression is that this is not what is reflected in your statistics.

Could you enlighten my in this regard?

[English]

Mr. Craig Grimes: The sexual offences against children that we can identify in the courts are identified on page 13, which shows the most serious offences in cases containing at least one guilty verdict. The top line shows the increase in the use of custody for those types of offences. In 2008-2009, it's approximately 65%, which is quite a bit more than what you see in criminal court generally, where use of custody is around 34%.

[Translation]

Mr. Serge Ménard: When you speak of 34% in general, does that correspond to the other types of offences?

[English]

Mr. Craig Grimes: It's for all offences in criminal court. I can provide a more detailed breakdown of that if you would like.

[Translation]

Mr. Serge Ménard: I wish to understand you properly. You are saying that 34% of the sentences handed down generally in Canada are prison sentences. Is that what you are saying?

[English]

Mr. Craig Grimes: That's correct.

[Translation]

Mr. Serge Ménard: All right. Let us come back to the case of sexual offences. On page 13, it says: "[...] in "other sexual offence" cases in adult criminal courts [...]". What I want to know is if your statistics confirm the opinion provided to us by defence lawyers, namely that the courts have established that, with regard to sexual offences against children, the rule would be prison time. That does not come out on page 13, because it talks about "other sexual offence cases".

• (1555)

[English]

Mr. Craig Grimes: I can't confirm the statement by a previous witness. I can talk about the data that I have access to and can analyze, and I can show you the outcomes of criminal court cases that have child victims for those offences that I can identify. That doesn't include sexual assault, because in sexual assault you can't identify the age of the victim from the Criminal Code section. That's the way the data are collected in criminal court—by section, subsection, and paragraph—so it's not possible to differentiate a young victim from an adult victim by using the court data.

[Translation]

Mr. Serge Ménard: There are however specific types of sexual assaults or sexual offences against children. You are unable to provide us with statistics on these specific types of offences?

[English]

Mr. Craig Grimes: So you're talking about sexual interference, invitation to sexual touching, and those kinds of offences.

[Translation]

Mr. Serge Ménard: I am not talking only about that. It could go from sexual relations with youth all the way to rape; it encompasses all of the possible offences. There are at least 20 sexual offences in the bill we have before us and these are all sexual offences against children. Are you telling us that you are unable to provide statistics by category of offence?

[English]

Mr. Craig Grimes: It's not possible to isolate any information on the victim for sexual assault using simply the information we collect based upon the Criminal Code. Sections 271, 272, and 273 don't have any details on the victim. It's the nature of the offence, not the victim, that is included in the Criminal Code, so it's not possible to differentiate for sexual assault, other than by using the data that we get from police services, which indicate approximately 53% are against young people.

The Chair: Thank you. We'll go to Mr. Martin...Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I don't want to be confused with those other Martins, Mr. Chair.

Thank you, Mr. Chair. Thank you, witnesses, for being here.

I want to follow up on this, because you're leaving some confusion. The initial data that you have here on page 5 through to about page 9 all relate to offences against children.

Ms. Julie McAuley: In the presentation we have tried to show all of the sexual offences committed against children that are the subject of this bill. To go back to the point of Mr. Ménard, if you look on the other sexual offences slide, in the notes you will see exactly which sections of the Criminal Code we are referring to and have included in those data. When you look at the information from the police, because we are looking at the victim's side of the police-reported data—

Mr. Joe Comartin: Let me stop you, Ms. McAuley, because again we are short of time. As I'm reading it, these are reported by the police, but those first eight slides are not charges or convictions.

Ms. Julie McAuley: These are police-reported data. Slide number 3 includes the child pornography, because those are offences that we know about that have come to the attention of the police. However, for all the other information that looks at the age or characteristics of the victim, we cannot include child pornography because we do not have a victim record based on the police data we have.

Mr. Joe Comartin: Can I then take you to the slide with the age of the perpetrators? What slide is that?

Ms. Julie McAuley: We have the ages of the victims on slides 4 and 5.

Mr. Joe Comartin: I'm looking for the perpetrator. It was on page 14 of the material in the book you sent us Monday evening.

Ms. Julie McAuley: That was for a presentation that we made to the Senate on child pornography and child luring.

Mr. Joe Comartin: You haven't got that far into the attachment materials added here.

Ms. Julie McAuley: No, we haven't provided it for this. We can provide it later, if you would like.

Mr. Joe Comartin: Let me ask you a question about it, then. You have a very high level of persons accused of sex offences against children 0-17 years. You also have a very high ratio in the age group of 13, 14, 15, 16, and 17. Those figures were as of 2008. Has there been any change in that, or is that still the same?

Ms. Julie McAuley: Sorry; it would help me if I could see the graph you were discussing.

There hasn't been that much variation in the rate per 100,000 population.

Mr. Joe Comartin: To get back to what you gave us today, are those age groups reflected in the data you've got here as to the police reporting—not the charges or convictions, but just the police reporting?

Ms. Julie McAuley: In the information we've shown you here, you have the age of the victim. We haven't included anything on the age of the perpetrator or the accused individual. All we do on slides 6, 7, and 8 is show you the relationship between the accused and the victim.

• (1600)

Mr. Joe Comartin: Then if I could go to slides 9 and 10, are those sexual assault and other sexual offences against both children and adults?

Ms. Julie McAuley: The other sexual offences are the offences that are the subject of this bill and that are predominantly against children. In terms of the sexual assaults, as Mr. Grimes mentioned and as I mentioned in my comments, we cannot distinguish the age of the victim based on the court record. All we know is that based on police-reported information, about half of all sexual assaults in Canada in the last year were committed against children.

Mr. Joe Comartin: Mr. Chair, I'm a bit concerned, because I think the material they sent us on Monday is relevant. I want to be sure it's in the record of this committee and the hearings of this committee. Is that the case now? It has not been presented by them, and I would like to put it in. The clerk has it, because obviously she circulated it to us, but I'd like that in the record of this committee.

The Chair: Do you have the material there with you so that you can make it part of the record? It has been circulated to everyone at this committee.

Mr. Joe Comartin: I don't want to give up my copy.

The Chair: It'll be on the file.

Ms. Mia Dauvergne (Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada): May I just point out that the slide he showed us was 2008 data? We have more recent data than that. I believe that was a slide that we may have presented last year. We have more up-to-date information from 2009 that we would be happy to present to the committee.

The Chair: Mr. Comartin, would it be sufficient for them to provide each one of us with that updated data?

Mr. Joe Comartin: Yes. I just wanted to have it so that when this bill gets to the House, I'll be able to refer to it.

Ms. Julie McAuley: We can provide it.

Mr. Joe Comartin: I'm saying to you that I need it fairly quickly.

Ms. Julie McAuley: Certainly. We can do that quickly; there's no problem.

The Chair: I'm not sure you need our permission to refer to it in the House.

Mr. Joe Comartin: I want to be sure that the House is aware that this committee had this information.

The Chair: All right. We'll make sure that we circulate that information once we receive it. We'll circulate it as soon as we get it.

Mr. Joe Comartin: All right.

How much time do I have?

The Chair: You have about a minute.

Mr. Joe Comartin: I want to stay with these offences. It's the same chart; I think it is page 13.

Is there anything else in the data that have been reported to you that would show any other reason for the increase in the custodial rate—I'm on page 13 now—and the drop in the use of conditional sentences, other than the bill that was passed at that time that increased the penalties?

Ms. Julie McAuley: We would only be able to report on the actual numbers that you see. We wouldn't be able to make any inferences between any legislation that was passed and the impact it had on the data.

Mr. Joe Comartin: In the period of time from 2000 to 2005, just so we're clear, with regard to both custodial sentences and the use of conditional sentences, there is a fairly flat line.

Ms. Julie McAuley: Yes, I would say it's a fairly flat line. There is some variation. We can provide you with the actual data underlying it, if you would like.

•(1605)

The Chair: Thank you.

Is there anyone on the government side?

All right. We will go back to the Liberals. Are there any other questions? None?

Go ahead, Monsieur Lemay.

[Translation]

Mr. Marc Lemay: I have studied the statistics that you provided to us and I am really very concerned. Indeed, we have been presented with Bill C-54, a bill that will apply from one end of the country to the other, and on which we are getting ready to vote. I am concerned by the number of offences in the Yukon, the Northwest Territories and Nunavut.

Colleagues, I am on slide 3.

Do you have the statistics for Nunavik, which is a region in Northern Quebec? I am not talking about Nunavut, but of Nunavik.

[English]

Ms. Mia Dauvergne: We could certainly take a look at our data and the breakdown that we have. The RCMP polices that area in Nunavut, and we can look at a further breakdown.

[Translation]

Mr. Marc Lemay: We also see sexual offences against children aged 0 to 17 years on slide 3. Let us go back in time. In 2009, did sexual offences against children aged 0 to 17 years decrease, remain the same or increase in the Yukon, the Northwest Territories and Nunavut? I am talking here about those three territories, but the question also obviously applies to Quebec, Northern Quebec and Nunavik.

[English]

Ms. Julie McAuley: We would be able to provide trend information, going back in time, to the committee

[Translation]

Mr. Marc Lemay: Do you not have these statistics for 2008? Have these offences increased since 2008? Has their number remained steady? I do not know if you have the statistics for 2007 and 2008 here, but you are telling us that you have been keeping statistics since 1999-2000. My impression is that there has been an increase, but I would like to know if such is the case or if the numbers have remained the same.

[English]

Ms. Mia Dauvergne: We don't currently have that information with us. We'd have to go back to look at our databases to see whether it is possible to break it down by province and territory for previous years. It goes to the methodology of the way we collect the information. We might have to look at a subset of police services to be able to provide that information to the committee by province over time.

Mr. Craig Grimes: For some offences, it may not be possible to break it out for a long period of time. Prior to 2008, a number of these offences were grouped into a much larger category.

[Translation]

Mr. Marc Lemay: I understand perfectly. I am not asking you for the impossible. I wish to know if there is a sense of some increase, given the new offences that will be established and these minimum mandatory sentences that will be imposed, were this bill, that we are preparing ourselves to vote on, ever adopted. I must say that I am very worried about this situation prevention-wise.

I took note of what you said earlier, Ms. McAuley. Indeed, it gives me even more the impression that there is an increase. Would it be possible for you to provide these statistics, for which you will have to do research, before March 1st? We are not sitting next week. If you could send them to us next week, it would be perfect.

[English]

Ms. Julie McAuley: We will go back to our offices, look at the data, and provide you with any information that we do have available.

The Chair: Do we have any other questions?

We'll go to Mr. Murphy and then Mr. Comartin.

Go ahead, Mr. Murphy.

Mr. Brian Murphy: As I said, I apologize for not knowing this better, but a lot of what seems to create anxiety is the whole idea of luring over the Internet. There are some new offences here that respond to what are perceived to be problems, and I think they are.

It reminded me of earlier questions of earlier witnesses that were related to the many offences in the code under this category of sexual offences and corrupting public morals. Are you able to break down the offences by category, specific to the section of the code? I assume you have to do that to put them in here as a total.

• (1610)

Ms. Julie McAuley: Yes, we do, so we would be able to provide you with breakdowns if you like.

Mr. Brian Murphy: I would appreciate that.

I know you've put it all together, and it's a very interesting overview. Can you tell us off the cuff if there has been an increase in crimes that involve the Internet?

Ms. Julie McAuley: We did a presentation either last week or the week before to the Senate standing committee, looking at exactly that. I don't have the slides or the background information in front of me, but I'd be happy to provide it to the clerk. Some of these are new offences that have recently been introduced into the Criminal Code, such as luring a child via the Internet, which was introduced in 2002.

We do see a trend in the number of incidents; however, there are a few things that you should be careful about when you look at those data. The first is that it does take a while for police services across the country to start charging people with those offences as they become more embedded in there. The other thing is that policing practices can have an impact on newer crimes related to the Internet. We don't know whether the increase in offences or incidents is specifically related to increased activity or the creation of cyber-crime units within police services across the country. We can't disentangle that. All we can tell you are the actual numbers, and we can happily provide those.

Mr. Craig Grimes: For the criminal court, if you turn to slide 23 in the supplemental section of the presentation, the offences that are included in the other sexual offences are broken down, and those are the charges that are completed in court in the cases that contain at least one of those charges.

Mr. Brian Murphy: Well, child luring via the Internet—I'm sorry I didn't see this before—has spiked quite a bit since the Internet's inception. That's the second-last line.

Ms. Julie McAuley: What we can say based on those data is that the number of charges of child luring via the Internet is increasing.

Mr. Craig Grimes: This is different from police incidents. This is completed charges in a criminal court.

Mr. Brian Murphy: That's understood.

Thank you.

The Chair: We'll go to Mr. Comartin for a quick question.

Mr. Joe Comartin: Is it to be a quick one?

The Chair: Well, we do have clause-by-clause consideration.

Mr. Joe Comartin: I have a number of them, Mr. Chair.

On slide 25 you're showing the child pornography charges, and then on slide 26 you're showing the convictions. Is there any way of telling us what happened? I'm looking at the possession ones in particular, and we're getting less than half in convictions. Can you give us any indication as to how the other charges were disposed of?

Mr. Craig Grimes: Yes. I don't have that information in front of me, but I can provide it to the clerk.

Mr. Joe Comartin: Are you able to give us a general indication of what happened? Were they withdrawn or stayed or...?

Mr. Craig Grimes: Well, it would have been acquitted, stayed, withdrawn, dismissed, discharged, or some other final decision.

Mr. Joe Comartin: In the material you sent us on Monday you used, in terms of disposition, an "other" category, which was fairly substantial, as I recall. What is an "other" category?

Mr. Craig Grimes: Are you talking about type of final decision?

Mr. Joe Comartin: Yes, I mean the disposition.

Mr. Craig Grimes: An "other" final decision would include matters that were waived to a superior court in those jurisdictions that don't provide superior court data, and there are very few right now. It would also include being unfit for trial or loss of jurisdiction or nullity.

There are very few in that category. Most matters are found either guilty, acquitted, stayed, withdrawn, dismissed, or discharged.

Mr. Joe Comartin: Actually, Mr. Grimes, the rate of this kind of disposition was fairly high in the youth court; it was 15% or 16%.

• (1615)

Mr. Craig Grimes: In youth court there are a number of other decision types that are a result of the YCJA, so there is a much larger category in "other" for youth court.

Mr. Joe Comartin: Okay.

There was a significant variation in some places. You had done regional ones, mostly in municipal regions such as Toronto and Hamilton. The Hamilton rate of charges was at least 50% higher—closer to 75% higher—than Toronto's; Quebec's was substantially lower than Montreal's; the rate in St. John's, Newfoundland, was about a third of what it was in Saint John, New Brunswick.

I'm trying to get some sense of what that variation was about. It was quite noticeable. Is there any explanation?

Ms. Julie McAuley: All we can report on are the numbers that are provided to us through the police services and through the courts. We wouldn't be able to provide you with any indication as to why there might be that geographical variation. We know that there is a fair amount of geographical variation in the number of incidents and the rates, depending on the offence coming forward.

Mr. Joe Comartin: I have just one more question. With regard to the age factor again, you're showing a really large proportion of young people in the age group from 14 to 17. You haven't broken down the "adult" sexual offences from the "children" sexual offences, in terms of who the victims are. Is there any way of doing some kind of analysis? We might have a 17-year-old perpetrator and a 14-year-old victim. Is there any way of doing that?

Ms. Julie McAuley: Do you mean looking at the age comparison between the victim and the accused?

Mr. Joe Comartin: Yes.

Ms. Julie McAuley: We would be able to do that for you.

Mr. Joe Comartin: How long would it take you to do it?

Ms. Mia Dauvergne: It's a little bit more complicated for us to put together, but certainly it is something we could provide to the committee prior to March 1.

Mr. Joe Comartin: Would you do that, please?

Ms. Julie McAuley: Just for clarification on our end, would you like that for all sexual offences that are considered under this bill?

Mr. Joe Comartin: I want just the ones under this bill.

Ms. Julie McAuley: It's just the ones under this bill. Okay, we can do that.

The Chair: Mr. Ménard, did you have another question?

[Translation]

Mr. Serge Ménard: Yes.

You are talking about children. How old are these children you are talking about?

[English]

Ms. Julie McAuley: When we are looking at this, we are looking at people 0-17 years of age.

[Translation]

Mr. Serge Ménard: Is it because of the way the statistics are compiled?

[English]

Ms. Julie McAuley: No, we can break it down any way you would want. As you can see in the slides we presented, we've been able to group 0-5 years, 6-11, and 12-17. Depending on the subject matter, we'll just do a 0-11 and a 12-17 grouping. If there are data that you would like to see broken down in a different way, we'd be happy to provide it.

[Translation]

Mr. Serge Ménard: I consulted several dictionaries. They generally agree in saying that childhood is the period of life between birth and puberty. Obviously, puberty evolves progressively.

[English]

Ms. Julie McAuley: Depending on the topic, we will either refer to them as "children" or as "children and youth", children being aged up to 11 years and youth being aged 12 to 17.

[Translation]

Mr. Serge Ménard: In any event, I presume that it is not from 0 to 17 years inclusively, in other words that individuals of 17 years of age are not considered to be children. Is that correct?

[English]

Ms. Julie McAuley: No, 18-year-olds would not be included.

[Translation]

Mr. Serge Ménard: Oh.

[English]

Ms. Julie McAuley: It's from 0 through to and including age 17.

Mr. Serge Ménard: It's including 17. Okay, thank you.

Ms. Julie McAuley: Yes.

The Chair: We'll suspend for two minutes so that our witnesses can be excused and justice officials can take their place. Then we'll go into clause-by-clause consideration.

• _____ (Pause) _____

•

• (1620)

The Chair: We are reconvening the meeting. We're continuing our consideration of Bill C-54 and we're now moving to clause-by-clause consideration.

We welcome to our table Matthias Villetorte and Carole Morency, representatives from the Department of Justice.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed, so I'm going to call clause 2. There are no amendments proposed to clause 2.

Go ahead, Monsieur Petit.

(On clause 2)

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chairman, I would ask for a recorded vote for each clause.

[English]

The Chair: All right. We've received a request that we have a recorded vote for each clause.

If some of these clauses are grouped together because there are no proposed amendments, are you satisfied with doing a recorded vote on them as a group, or do you want to do each one separately?

[Translation]

Mr. Daniel Petit: I am not getting the translation.

• (1625)

[English]

The Chair: All right. The question is—

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chairman, I have a point of order. Could you just clarify who will speak for the government on this bill as we proceed to clause-by-clause study?

The Chair: I believe it's Mr. Dechert. Mr. Dechert, is that correct?

Mr. Bob Dechert (Mississauga—Erindale, CPC): I or Monsieur Petit will.

The Chair: Or Monsieur Petit?

Mr. Derek Lee: Mr. Dechert is shaking his head, so....

Mr. Bob Dechert: I said “or”; it will be either myself or Mr. Petit.

Mr. Derek Lee: That's fine. Either one is fine; I just want to know who it is.

The Chair: It's either one, apparently.

I'm going to go back to—

Go ahead, Mr. Woodworth, on a point of order.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I'd like to speak briefly to that point of order, because I want to make sure I understand the process. Can I assume the fact that a parliamentary secretary may speak for the government doesn't prevent me from speaking, if I choose to do so?

The Chair: Not at all.

Mr. Stephen Woodworth: Thank you.

The Chair: Monsieur Petit, I just want to clarify. We're going to have a recorded vote on each clause. Some of the clauses we may want to group together, with the unanimous consent of the committee. If that happens, are you okay with it?

[Translation]

Mr. Daniel Petit: No.

[English]

The Chair: No? You want to have each one done separately?

[Translation]

Mr. Daniel Petit: Yes.

[English]

The Chair: All right.

I've called clause 2.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I have a point of order.

The Chair: We have another point of order. Go ahead, Ms. Jennings.

Hon. Marlene Jennings: Just on procedure, is the simple request by a member to have a recorded vote on every single clause sufficient? Is there no vote? Does it just happen because a member asked for it? Is that the procedure?

The Chair: That's my understanding, yes. If a member requests it, it's incumbent upon the chair to allow that to happen.

Hon. Marlene Jennings: Okay.

The Chair: Go ahead, Monsieur Petit.

[Translation]

Mr. Daniel Petit: Mr. Chairman, I wish to reconsider my request.

When possible, we might group clauses together. There would therefore just be one recorded vote per group of clauses.

[English]

The Chair: Thank you for that. I think it will make this whole process much more efficient.

Is there anybody else who wants to comment?

Go ahead, Mr. Comartin.

Mr. Joe Comartin: Are we dealing with clause 2?

The Chair: Yes. I called clause 2, and then we had some discussion.

Mr. Joe Comartin: I'm going to want discussion on a number of others. I tried going through all of them and I just ran out of time. Then in the case of several, I couldn't understand what we were doing with them. This is one of them.

May we have a quick explanation from the officials as to what the effect of adding this to subsection 7(4.1) of the code will be?

Ms. Carole Morency (Acting General Counsel, Criminal Law Policy Section, Department of Justice): Clause 2 of the bill is amending the provision that we commonly refer to as the “child sex tourism provision” in the Criminal Code. This provision provides Canadian authorities with extraterritorial jurisdiction to assume an investigation and prosecution of a Canadian citizen or resident who travels abroad and commits one of the enumerated offences that, if it had been committed in Canada, could have resulted in the person's being charged and prosecuted here. That law has been in place since 1997.

Bill C-54 is adding the new offences to the provision. We're adding the two new offences being proposed by Bill C-54 as well as doing some other housekeeping, because with Bill C-54 we're trying to ensure consistency across the board. The provision would also be broadened to add the section 171 offence of “Householder permitting sexual activity” as well as the “Luring a child” offence, which is currently a Criminal Code offence but is not listed in the section before you, as well as the two new offences.

With this, the intention would be that if a Canadian goes abroad and commits one of these four offences that are not now listed, it is possible to have a Canadian prosecution. It is always subject to whether the Canadian is charged and prosecuted for that offence abroad; if not, a Canadian court could assume the jurisdiction.

The Chair: All right.

Shall clause 2 carry?

Some hon. members: Agreed.

The Chair: Actually, we need a recorded vote.

(Clause 2 agreed to: yeas 11; nays 0)

(On clause 3)

The Chair: We'll move on to clause 3. We have a Bloc amendment, and you have it in your package.

Monsieur Ménard, would you like to introduce that amendment?

•(1630)

[Translation]

Mr. Serge Ménard: I would prefer to be very clear at the outset. The study I did and the evidence I have heard have convinced me that this bill, overall, is a good bill. I am, exceptionally, prepared to recognize that the minimum sentences set out are in pursuit of a legitimate objective, because we are talking here of children, and these are the most vulnerable victims. These are also victims for whom sexual offences, or even offences overall, have the gravest and most long-lasting consequences.

It is also because I accept that, in all cases where there are minimum sentences, the need to denounce the crime and to impose a punishment and deliver a shock to the individual having committed the offences is important, despite the fact that we know that, in some cases, there will be no impact, in the end, on their recidivism rate. It should be noted that, in those cases, the punishment is even more justified.

Clearly, and I have said so in the context of the study of a good many other bills, I have a bias against minimum sentences. Previously, in other circumstances, I have shown what an awful direction that can lead us in, what that has brought about in countries that have systematically adopted minimum sentences. As I have said, we have no doctrinarian position here. We are prepared to recognize minimum sentences when they are justified. In this case, we consider that they are.

Furthermore, I did a detailed study of the bill and did see that it was carefully drafted and that there is a clear rationale as to the minimums for indictments and summary convictions based upon the seriousness of the offence committed. There is a very broad spectrum. The sentence varies between 15 days and five years. When the sentence is set at five years, it is for offences of armed sexual assault with violence and incest involving a child aged less than 16 years. There again, we heard evidence Monday last, as well as previously. I accept the reasoning of those witnesses, namely that of Mr. Van Gijseghe, who stated that, even if it is strange, there are children who recover.

Lastly, I would like to say that the risk of recidivism in cases of incest is not very high. However, the consequences for the victims are generally crushing, such that, in many cases, minimum sentences are very appropriate in dealing with the risk of re-offending and based on the seriousness of the crimes.

However, there is one thing that always concerns me with regard to minimum sentences. Based on my experience in the practice of criminal law since 1966 and on the experience of other countries where such minimum sentences are enforced, in certain circumstances, this leads to judges not imposing the sentence that they would consider fair and equitable. This is why, in the end, we see cases which, if you think about it long enough, might have justified or not justified the minimum sentence that the judge must impose.

•(1635)

Other Commonwealth countries, as well as certain American states, have provisions such that, when the judge considers that there are compelling circumstances, he or she is not required to impose the minimum sentence on condition, however, of establishing and

explaining the compelling circumstances that in his or her view justify the decision.

This obviously has the advantage of not forcing a judge to impose a sentence that he or she considers unfair, as well as the advantage, when one studies the use made of this clause, of determining if the minimum sentences are properly justified or not. This allows for an examination, as is the case in other jurisdictions where such provisions are in place. These are exceptional cases that are difficult to predict.

If there is one context where there is a risk of this arising, it is in the case of the clause that we are presently studying. I understand full well the minimum sentences outlined in subsections 151(a) and (b) and I know what the aim is. What is clearly targeted here is sexual touching involving children. Most of the time, as a matter of fact, when such touching comes to light, it has been continuous and will have obviously been important in the evolution of the child, in the suffering the child will endure during a good portion of his or her life.

It is however impossible to describe this offence without including — and this is what we are doing — occasional touching in specific circumstances. You will have observed that the expert witnesses that appeared are those who have devoted their lives to the study of this issue. I am speaking here of Mr. Van Gijseghe and Mr. Quinsey, who corrected some of our impressions. They told us that sexual offences against children are committed by pedophiles in 20% of cases. In 15% of cases, these offences are those of psychopaths. There therefore are such tendencies present in individuals who do not have these characteristics. The law is important to punish these individuals and to discourage them from re-offending. That is what the law is there for.

Clearly, an individual who begins touching children with a sexual intent during a certain period of time or who decides to indulge in such behaviour deserves a minimum sentence.

However, one can imagine that an individual who had never presented such inclinations or had never acted upon them might do so during the course of some celebration, under the influence of alcohol or for some other reason. Other circumstances could be at play. Such occurrences could involve individuals of approximately the same age. Just one touching incident could not justify sending such a person to prison.

There could be other circumstances as well that might be presented to the judge, but what I am thinking to myself is that, among all of the offences that I have examined, there is just that one case for which I see a real possibility that a judge might consider a jail sentence to be unfair and unproductive.

•(1640)

I put forward my amendment only for those cases where there is touching. In cases where one invites a young person to touch his or herself, this is a criminal act that is more serious than some touching which might just be a very quick gesture.

In drafting my amendment, I asked the law clerk to rely upon various laws containing similar provisions. This is why it is formulated in this way, and I quote:

[...] the court may impose a sentence of detention of lesser duration than the minimum punishment of imprisonment if it is of the opinion that compelling circumstances relating to the offender or the nature of the offence warrant it. If the court does impose a sentence of lesser duration, it shall provide a written statement of its reasons at the time of sentencing and include it in the record of the hearing.

I will bring up another element, a little later on, to justify that. In this case, exceptionally, my party and myself deem and accept that this is one of the rare cases where minimum sentences are justified. It is at both extremes that we presently have minimums that I find acceptable. First of all, we have murder cases, because this is the most serious offence, that which has the greatest impact on victims. At the other extreme, there are short minimum sentences for repeat offenders. These individuals can indeed, in the case of crimes that are not solely committed by people with a criminal past or who are habitual criminals, be threatened with short minimum sentences, which could really have an impact on their risk of re-offending. Such is the case with driving under the influence. The minimum for a first offence is 15 days, and for a second offence, it is 90 days. The criminology studies that I have seen over the last thirty years demonstrate that this can have an impact. Among other things, at sentencing for the first offence, the individual must be advised that, the next time, there will be another minimum sentence.

In this case, it is really because of the impact on the victims and of the fact that it is children that are involved.

We have learned something else: whether or not there is a prison sentence, whether or not there is treatment, it is at the outset extremely difficult to establish those treatments that offer a real chance of bringing people to not re-offend. Whether or not there is an effect is very much hit and miss, which is why, in this area, the offender must endure condemnation and shock. This can prove beneficial and prevent the individual from re-offending. Furthermore, it is generally recognized by the society in which we live, and by all societies in the world, that the protection of children from this type of crime is nearly as important as the protection of life.

[English]

The Chair: Thank you.

Thank you for the introduction to your amendment. I have a draft ruling from the chair before the rest of you intervene here.

It's a ruling, not a draft ruling; it's a ruling.

Bill C-54 amends the Criminal Code to increase or impose mandatory minimum penalties for certain sexual offences involving children. This amendment proposes to allow for the court to exercise its discretion and select a lesser punishment than the minimum provided for by the bill.

As the 2009 second edition of *House of Commons Procedure and Practice* states on page 766, Principle and Scope: An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of the concept of discretion is contrary to the principle of Bill C-54 and is therefore inadmissible.

That's my ruling.

Go ahead, Monsieur Ménard.

● (1645)

[Translation]

Mr. Serge Ménard: I had anticipated that I would be presented with that argument. However, I do not believe that it makes very much sense and I wish to appeal from the ruling of the Chair. We can in fact clearly be of the view that we must eliminate...

[English]

The Chair: Mr. Ménard, the ruling isn't debatable, but it can be challenged.

Mr. Murphy, do you want to challenge the ruling of the chair?

Mr. Brian Murphy: I do. I want to make a motion to challenge.

This act is called "An Act to amend the Criminal Code (sexual offences against children)" and the "Protecting Children from Sexual Predators Act". There's nothing there that speaks of mandatory minimum sentences.

Therefore, I challenge the ruling. I gather it's not debatable either.

The Chair: It's not debatable. The question is whether the ruling of the chair shall be sustained.

There's no debate.

The Clerk of the Committee (Ms. Miriam Burke): Shall the chair's ruling be sustained?

Mr. Bob Dechert: No—I mean, yes. It's sustained.

Some hon. members: Oh, oh!

Mr. Bob Dechert: I apologize. Yes, it should be sustained. It's correct.

(Ruling of the chair overturned: nays 6; yeas 5)

The Chair: The ruling of the chair is not sustained; therefore, we will continue debate on the amendment. We have Ms. Jennings on the list.

Hon. Marlene Jennings: Thank you.

I'm pleased to be able to speak to this amendment. I wish to announce that the Liberals will not be supporting this amendment. We do believe that it was and is in fact within the scope of the bill; however, Liberals in previous governments established minimum mandatory sentences for these sexual offences that we find currently in the Criminal Code, sentences that the current government wishes to raise.

We are in favour of minimum mandatory penalties in very targeted areas. One of those areas, as everyone knows, is firearms-related offences, for which we brought in minimum mandatory penalties. We're also in favour of minimum mandatory sentences for sexual offences committed against children. The proof is that the existing minimum mandatory penalties for those types of offences, which the Conservative government now wishes to increase, were in fact brought in by Liberal governments, so we will not be supporting this amendment of the Bloc.

The Chair: Thank you.

We'll move on to Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Very briefly, I too will be voting against this proposed amendment.

With all due respect to Mr. Ménard and his nearly half century in criminal law, his reasons for introducing this amendment are counterintuitive to what the amendment says. He talks about the need for mandatory minimums and how he is not doctrinaire in his opposition to mandatory minimums, but then he introduces an amendment which essentially allows a court to ignore mandatory minimum sentences, if in the opinion of that court there are compelling circumstances to do so.

I will be voting no.

The Chair: Thank you.

We'll move on to Mr. Comartin.

Mr. Joe Comartin: I'll be supporting the amendment. I actually have a private member's bill on the same issue, which I derive from the experience in England, which has exactly this type of provision. I think it's a general provision in their whole criminal justice legislation that, given exceptional circumstances, the judiciary has an ongoing judicial discretion even when there are specific penalties, whether those penalties be minimum or maximum.

I hear the argument about its being counterintuitive. In fact, it is the practice in England. It has been for at least a decade now.

Mr. Chair, I do have one question, just so that we're very clear on this. I know Mr. Ménard sees this as applying only to section 151. I'm wondering if the officials agree with that, or whether there is any way this can be interpreted as applying to any other sections in this bill.

• (1650)

Ms. Carole Morency: I have two comments to make.

First, the amendment is being proposed simply to section 151, so the obvious interpretation is that the discretionary clause, if it were enacted, would only apply to section 151.

My second comment, though, would perhaps speak to some of the background offered to the motion. Just to clarify, section 151 does require what we call a specific intent offence—that is, it requires the crown to prove that the accused touched a young person under that age for a sexual purpose. It doesn't apply in the situation described as a general accidental touching. Very much with this offence, it does clearly apply to a specific touching for a sexual purpose of a person under the specified age.

Mr. Joe Comartin: I have a follow-up question. If I'm reading this correctly, the five-year near age defence applies to this section, so if a person up to age 21 touches directly or indirectly, etc., somebody who is 16 or over, that would not be an offence.

Ms. Carole Morency: That's correct. Bill C-54 does not change anything in the Criminal Code as it applies right now to what we refer to as the age of consent and a close-in-age exception, so it does apply. If a person over the age of consent engages in consensual sexual activity, it is not an offence. If the person is below the age of

consent—14 or 15 years old—and the other person is less than five years older, it is not an offence if it is consensual.

The Chair: Mr. Murphy, you're on the list.

Mr. Brian Murphy: I don't think so.

The Chair: Go ahead, Mr. Dechert.

Mr. Bob Dechert: I will also be voting against the amendment. I acknowledge that the previous Liberal government did impose mandatory minimums for these sexual offences. I agreed with that amendment at that time and I agree with the government's position that those mandatory minimums need to be increased.

The government believes that every person who for a sexual purpose touches directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 should serve some time in jail. On that basis I will not support Mr. Ménard's amendment. It seems to me that he is essentially trying to remove a minimum that really flies directly in the face of not only what the government is trying to do here but also what the previous government did with respect to these provisions.

The Chair: Thank you.

Mr. Woodworth is next.

Mr. Stephen Woodworth: Thank you very much.

I'll begin by saying that I'm very heartened and hopeful as a result of the comments that Mr. Ménard has made and what appears to be a sincere expression of the fact that his heart has been touched by the pleas of the victims we so often hear at this committee who support mandatory minimum penalties, and at least that his heart has been touched by the pleas of victims of child sexual assault.

I am very grateful to him if he has now seen his way clear, as he says he does, to support a mandatory minimum penalty and even to use his considerable powers of persuasion to convince the rest of his caucus to support him. However, I believe that his pen has betrayed his heart, and that somewhere between his resolve to accept mandatory minimum penalties to protect the victims of child sexual assault and the drafting of this clause, his pen lost its way, because this clause would not be a mandatory minimum penalty. A mandatory minimum penalty that is not mandatory is not a mandatory minimum penalty. I wish I could say that in French to be sure that the translation is clear.

I was happy that Mr. Comartin clarified for Mr. Ménard that the close-in-age exception will protect perpetrators that Mr. Ménard was concerned about. As well, I was happy that the Department of Justice official clarified for Mr. Ménard that in fact this is a specific intent section, meaning that an accidental touching does not need any protection from a mandatory minimum penalty. There will be no conviction.

I hope that Mr. Ménard will vote with his heart and accept the clause as a real and true mandatory minimum penalty. I have a great admiration for *les gens du Québec* and their intelligence. I'm certain that the people of Quebec will know that a mandatory minimum penalty that is not mandatory is not really a mandatory minimum penalty.

I respect their intelligence enough to see through that. I'm sure that Mr. Ménard will too.

Thank you.

• (1655)

The Chair: Thank you.

Is there anybody else?

We will call the question on amendment BQ-1.

(Amendment negatived nays, 8; yeas, 3)

The Chair: The amendment fails.

We'll move now to clause 3 as unamended.

Mr. Lee, I understand you want to intervene.

Mr. Derek Lee: I have a question.

This particular dual amendment increases the mandatory minimum penalty under proposed paragraph 151(a) from 45 days to one year, and proposed paragraph 151(b) increases it upon summary conviction from 14 days to 90 days.

My question is to government officials. I'm bearing in mind that the Statistics Canada data we just got show that we have, over the last 10 years, some 7,000 convictions for sexual interference. Each of these convictions, in which the mandatory minimum would be used by the court, would send a person to a provincial institution, not a federal institution, by definition. Sentences of one year or 90 days are served provincially, not federally, so there's a full imposition of the cost of this on the provinces.

My question is this: has the department done a workup on what this might cost provincially? Second, has there been any consultation with provincial counterparts in relation to these costs before we go ahead and impose the measure on them?

If Ms. Morency or Mr. Villettorte can't answer that, perhaps Mr. Dechert can.

Ms. Carole Morency: As the question has noted, yes, the proposed increase in time means the sentences would remain under two years, which would mean provincial time, so what Bill C-54 is doing is adding to what is already there.

Have officials done an assessment of what the implications might be? Yes, we have. That information was provided, and the decision you see is reflected in the bill before you. I am aware that there is the motion on costs for crime justice bills and that it is being debated in the House; that might be another opportunity to get the other information more specifically.

And no, in the course of developing Bill C-54, there were not specific consultations on that aspect; however, that said, it is fair to say that over the course of the work we do in the area of criminal law

reform, we work closely with our provincial and territorial counterparts, and over the years it is generally fair to say that there is support for measures to strengthen criminal law responses to child sexual abuse. When there is disagreement, whether it's here or in other fora, it tends to be about how you achieve it.

That said, there is generally support; however, we did not consult specifically on Bill C-54.

• (1700)

The Chair: Thank you. I will then move to clause 3—oh, I'm sorry. I didn't notice your hands.

Mr. Murphy is first, and then we'll hear Ms. Jennings.

Mr. Brian Murphy: To follow up what I thought was not as specific an answer as I would have liked to Mr. Lee's question, and paraphrasing you, you said you did an analysis and you provided that material, presumably to officials in the Department of Justice, who made a policy decision. I understand that.

Did the research or material that you amassed include a costing? I think his question was fairly specific. I didn't hear you say "including costing", and I just want to be clear on that.

Ms. Carole Morency: Whenever there's a matter that goes before cabinet for a decision on whether to come forward with reforms or a package or a response of some sort, obviously the cabinet is informed by all of the analysis that is available and required to support that decision, but I'm obviously not in a position to advise this committee of a matter that is a cabinet confidence.

Mr. Brian Murphy: Look, just to follow up on that, I'm not satisfied with that answer either, because no one is asking you to betray cabinet confidence and nobody is asking you at this point to provide the figure. The question is, were figures provided to the government?

Ms. Carole Morency: Yes, the matter was costed out, and yes, the advice was provided to inform the decision, but as I've already noted as well, the bulk of the reforms that are presented or proposed in Bill C-54 fall within the areas of what's already in the Criminal Code now for mandatory minimum penalties. Increasing from 14 days to 90 days is an increase within that timeframe, but—

Mr. Brian Murphy: Yes. That's fine. Thanks.

The Chair: Thank you.

Next we have Ms. Jennings and then we have Mr. Comartin.

Hon. Marlene Jennings: I just want to make sure my colleague has finished speaking to his amendment.

Mr. Derek Lee: No. We're on the clause; we're not on my amendment yet.

Hon. Marlene Jennings: We're on the...?

The Chair: Ms. Jennings, we're on the main motion right now.

Hon. Marlene Jennings: The main motion...?

The Chair: That's right. We're on clause 3.

Hon. Marlene Jennings: Okay. I don't have anything to say on that.

The Chair: All right.

Mr. Comartin is next, and then Mr. Lee.

Mr. Joe Comartin: I just wanted to do a follow-up to Mr. Murphy's question, in terms of the information that was given.

Was the analysis for the increased incarceration rate at both the provincial level and the federal level? There is at least the one section, on incest, in which it is five years, so they would end up in the federal prisons.

Was it done at both levels?

Ms. Carole Morency: Well, obviously federal responsibility is within federal corrections, but in looking at what implications there might be, we're not in a position to cost out provincial implications.

Mr. Joe Comartin: So it was just done at the federal level of incarceration?

Ms. Carole Morency: Yes.

Mr. Joe Comartin: I'm sure this is relevant, because almost all... I'll ask it anyway.

I'm not sure how you were able to do that, given that in the information we got from Statistics Canada today, they weren't able to separate out the adult sexual offences from the youth ones.

Mr. Stephen Woodworth: I have a point of order.

The Chair: Go ahead on a point of order, Mr. Woodworth.

Mr. Stephen Woodworth: I'm not sure whether I'm following the thread of this, but I thought I understood the witness to raise an issue of cabinet confidentiality earlier, and it sounds as though Mr. Comartin is asking about the same information. If I'm right that he is, then I would think that the same issue of cabinet confidentiality is going to arise on all of his questions about it, and that the witness ought to be protected from having to receive questions that might result in a violation of cabinet confidentiality. For that reason, I'm asking you to rule his questions out of order.

• (1705)

The Chair: Well, I don't think his question is out of order. The witness has made it very clear that she will be protecting cabinet confidentiality. She's a very capable, highly intelligent individual who I know will not cross that line, so I'm going to allow Mr. Comartin to continue.

Mr. Joe Comartin: And I'm obviously not asking you to tell me what the result was. I just don't know how you could have done an analysis, given what we heard from StatsCan today. Because of the way the reporting is done, they couldn't differentiate between victims who are adults and victims who are children. I don't know how you'd have been able to do it.

I may have missed something. That's really what I'm asking. Is it possible to do that assessment?

Ms. Carole Morency: Well, to clarify in terms of the statistics we just heard about, we obviously have access to the same statistics that the committee has heard. We have access to older reports as well.

The committee heard that there is a difficulty for adult criminal court survey data in breaking down the number of general sexual assault offences that involve child victims as distinct from adult

victims, and that's a challenge that I have little control over in terms of trying to provide better information to this committee.

However, as part of one of my undertakings from my last appearance, I did provide the committee with the report "Child and Youth Victims of Police-reported Violent Crime, 2008". It was released in 2010. This is a document produced by the Canadian Centre for Justice Statistics. Vis-à-vis the three general sexual assault offences—sections 271, 272, and 273—they did provide a number here that broke it down, showing that 80% of the cases that proceeded involving child victims proceeded under those three general sexual assault offences.

I'm not able to provide any further breakdown to the committee, and neither is CCJS, but in terms of how many child victims there are, it does give some sense of, for example, the implications of proceeding under section 271. The minister made reference to that same statistic when he appeared.

With regard to the other statistics that CCJS just provided to the committee, when dealing with a child-specific offence, it's very easy to identify that this is clearly affecting a child, because you have an age criterion. The challenge from one of the questions was on how you get the age of the offender. We look at the number of offences—incidents reported—the number of offenders who are convicted of a particular offence, and perhaps what data exist in terms of the average length or the median for the different penalties or sentences that are imposed. We do look at that.

The committee could look at, for example, the presentation you had just before this, which is before you right now. In it you see the number of incidents reported by the different child-specific offences. That would give the committee an indication of what kind of change we have seen over that number of years and how many offenders are being charged or processed under these different offences. You have some parameters from that data, which we use as well.

Of course, federal corrections can look, as would provincial corrections, to their own inmate population and do calculations based on their own actual numbers, but that's not for me.

Mr. Joe Comartin: Do we know whether they have done that, province by province, on this bill? I think what I'm really asking is whether that information is shared with you by the provinces, if each province has done that?

Ms. Carole Morency: No. My answer before was that within the areas of federal responsibility, calculations of cost would be for those areas that are a federal responsibility—that is, federal corrections.

Mr. Joe Comartin: I understand that, but if Ontario, say, did the assessment based on this—

Ms. Carole Morency: I'm not aware if provinces have.

Mr. Joe Comartin: They don't share that with you?

Ms. Carole Morency: Sometimes it happens. There's no question that we've had opportunities in recent years to engage in discussions through existing FPT fora, but I'm not personally aware of issues having been identified on Bill C-54 through those FPT fora.

Mr. Joe Comartin: Okay.

Ms. Carole Morency: It has been out since November, and we have had various FPT meetings.

The Chair: All right.

Go ahead, Mr. Comartin.

Mr. Joe Comartin: Those are just questions.

By way of comment on this section, I think the problem we have is trying to assess this. Mr. Ménard made points earlier about the difficulty of taking a cookie-cutter approach, especially since all parties supported this legislation with the earlier mandatory minimums, including the Bloc at that time. The statistics we're seeing and the evidence you heard from just about all the witnesses say that these types of offences should result in jail time. The stats show that in fact, in the vast majority of cases, they do result in jail time.

However, the real issue—and this is really what it comes down to with regard to the psychologists who have spent their whole careers working on these files—is that it really is significant, and I think it's absolutely mandatory, that the sentence fit the individual. When you go with these solutions that try to fit everybody into one box, it just doesn't work.

Having said that, Mr. Chair, I'm obviously not going to be supporting these mandatory minimums in this case.

• (1710)

The Chair: Thank you.

We're going to go to Mr. Lee and then to Mr. Murphy.

Mr. Derek Lee: Thank you.

There was reference made to cabinet confidences and Parliament. Parliament doesn't force cabinet to reveal cabinet confidences, for reasons that we all understand. It could, but it doesn't.

However, just the fact that a weather forecaster somewhere gives a weather report to the cabinet doesn't mean the weather report becomes a secret document. The data are there, and the information doesn't have to come from the cabinet.

I want to ask Mr. Dechert, who will try to speak for the government, if consultation was had with the provinces—whose provincial reformatories would bear the burden of this sixfold to sevenfold increase in the mandatory minimums on this section alone—and whether there was a workup on the additional incarceration costs that would be imposed on the provinces.

It's a simple question. I'll just ask it to him. I'm happy to have whatever answer it is—yes, no, or maybe.

The Chair: Mr. Dechert doesn't have to answer, but he may if he wishes.

Mr. Derek Lee: Well, he's speaking for the government. I think he should answer. If he doesn't answer, then we don't have someone speaking for the government.

Mr. Bob Dechert: Mr. Chairman, I'm not aware that I'm a witness.

The Chair: You're not a witness.

Mr. Bob Dechert: Okay, so I don't know why I'm being asked a question by Mr. Lee. I know Mr. Lee purports to be an expert in the rules of committee, so perhaps he could explain why it's appropriate to do so, given his vast 22-plus years of parliamentary knowledge, or why it's incumbent upon any other member of a committee to answer questions that one member may impose.

Mr. Derek Lee: Well, at this point Ms. Morency is speaking for the government. She is a government official, but all throughout the history of Parliament, it is ministers who speak in Parliament for the government. In fact, your own government has made the point more than once, and in writing, that it is ministers who speak for the government, and not public officials.

We are deliberating passing, clause by clause, a government bill here, and if there is no one speaking for the government—

Mr. Bob Dechert: Mr. Lee, the minister wasn't speaking—

Mr. Derek Lee: If there is no one speaking for the government, then I don't have my ability to ask the question of the government. Earlier in this meeting I asked who was speaking for the government. I believe the responsibility was divided between Mr. Dechert and Mr. Petit, so I simply asked the question of the person I believed was representing the government.

If there is nobody speaking for the government here beyond Ms. Morency, then let the record show that.

The Chair: Let's be fair. I believe what Mr. Petit and Mr. Dechert indicated was that with respect to this legislation, the position on each of these clauses is being articulated by those two individuals. I don't believe there is anything to compel Mr. Dechert to answer questions. I don't believe he is here representing the minister in the sense that he is a direct conduit to cabinet.

Ms. Morency correctly stated that she was in no position to disclose cabinet confidences, and I think we all understand why that is the case. I think we want to respect that.

I want to go to Mr. Murphy; you have a question.

Go ahead, Mr. Dechert.

Mr. Bob Dechert: I just think it's worth noting, and anyone watching should note, that the Minister of Justice was in fact before this committee on this bill, and Mr. Lee had an opportunity to ask him any questions he wished.

Further, the information provided by Statistics Canada earlier today noted on page 13 that there was a significant increase in custodial sentences for people convicted of child sexual offences following the enactment in 2005 of mandatory minimum penalties under the previous government, as Ms. Jennings pointed out earlier.

I wonder whether perhaps they could provide the information on what the additional cost of that was. Perhaps they could also provide the committee with the answer to the question as to whether or not they supplied that information at the time their legislation was being debated in Parliament.

• (1715)

The Chair: I think what we want to do is get back to the clause at hand.

Mr. Murphy, it's your turn.

Mr. Brian Murphy: On unauthorized undertakings, when we're back in government, we'll give you those responses.

I didn't put a time limit on it, did I?

Some hon. members: Oh, oh!

Mr. Brian Murphy: Basically what we have here is, through volition.... I have to respect a member of the committee not answering a question that is in the air about how much will this cost. Whatever the reason, I have to respect members of committee for that; I think the chair is correct on that. There is no compelling the parliamentary secretaries—two of them—in the government to do so.

What I can't understand, Ms. Morency, is why you can't tell us what the figures are, because you know what they are. You're not disclosing a cabinet confidence, because only once it gets to cabinet does it become a cabinet confidence—

Mr. Bob Dechert: I have a point of order.

Mr. Brian Murphy: —but your department had....

Anyway, we'll leave it there, I guess.

Was that a point of order?

Mr. Marc Lemay: I have a point of order, colleagues. The vote is been called, Mr. Chairman.

The Chair: All right.

Mr. Marc Lemay: I asked that—

The Chair: Unless we have consent—

Mr. Brian Murphy: I had the floor.

The Chair: Yes, you had the floor, but someone indicated that the bells are ringing. Unless we have consent to continue, I will have to adjourn.

Mr. Marc Lemay: No.

Some hon. members: No.

The Chair: There's no consent, so the meeting is adjourned

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