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Chair: Mr. Randeep Sarai



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• (1610)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call the meeting to order.

Welcome to meeting number 16 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Thursday, March 31, the committee is meeting to study Bill C-5, an act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Today's meeting will be taking place in hybrid format pursuant to the House order of November 25, 2021. Members are attending in person in the room and remotely, using the Zoom application. The proceedings will be made available by the House of Commons website.

I'd like to say, in the interests of time, that since we had votes and started late, I will condense the first round of questions to five minutes from six minutes, the second round to four minutes and the third round to two minutes—if we reach the third round. I'll try to make sure we reach it, so we'll do them for about 45 minutes each.

For our guests, to let you know, I will give you a 30-second card when your time is at about 30 seconds left, and then I'll give you an “out of time” card. Today, I'll have to be particularly precise on timing, due to the time constraints.

I'll begin with opening statements. We have three panellists for the first hour, or 45 minutes. From Peacebuilders Canada, we have Marlon Merraro, executive director; from Six Nations Police Service, Darren Montour, chief of police; and from Victim Services of Brant, Penny McVicar, executive director.

It's over to you, Mr. Marlon Merraro, for five minutes.

Mr. Marlon Merraro (Executive Director, Peacebuilders Canada): Good afternoon, Mr. Chair, members of the committee, and distinguished guests who are also presenting here today.

I would like to start off by saying that the integrity of the justice system depends on equitable social conditions in which we all live. I'm here today to express the Peacebuilders' support for and provide some advice on Bill C-5 and to draw attention to the substantial strides this bill makes in remedying Canada's response to significant social health issues impacting marginalized communities.

For over 17 years, Peacebuilders relied on restorative justice practices to encourage the reintegration of the community with those involved in the justice system. A restorative justice model addresses the individual and collective experiences of systemic

marginalization as it relates to exposure to violence, mental illness, mental health, systemic discrimination, poverty and unequal access. Our programs directly respond to the disproportionate number of Black and racialized individuals involved in the justice system.

While we understand the causes of over-incarceration are complex and multi-faceted, we know that sentencing and charging processes play an important role in mitigating the cycle of oppression and connecting individuals to necessary supports and services. Indeed, Peacebuilders believes that Canada's justice system requires sentencing and charging structures that adequately address and respond to the needs of Black justice-involved individuals. We see Bill C-5 as a means of promoting fairer and more just outcomes for Black and marginalized Canadians, while continuing to protect public safety by amending sentencing laws to increase alternatives to incarceration.

By no means does this legislation address the historical issues impacting Black and indigenous folks who are overrepresented in the justice system. It is a step in the right direction. When we look at the wide range of mandatory minimum penalties that have been added to Canadian laws in recent years, it's no secret that many politicians may feel more comfortable with the idea of eliminating some types of mandatory minimum penalties than they do eliminating others. Discrimination, the undermining of public safety and violations of constitutional rights are problems associated with all mandatory minimum penalties, not only the 13 of the 72 offences carrying mandatory minimum penalties dealt with in Bill C-5 and the seven additional offences partly dealt with by the bill.

As countless previous reports and Black and indigenous leaders have urged across this country, we think that the proposed amendments would move beyond a piecemeal approach and address all mandatory minimum penalties. We believe that you will be making the right decisions by addressing the historical needs of various communities, especially those who are Black and indigenous and who are overrepresented in the justice system.

Peacebuilders believe that Bill C-5 will address and respond to some of the needs in a more fulsome way, while also promoting public safety and improving confidence in the justice system. We hope to see an increased use of accountability measures that are better suited to addressing the underlying reasons for criminality and that best prevent recidivism. Evidently the public will benefit greatly from Bill C-5 as a tool to respond in enhancing public safety, support the administration of justice, and save funds for other critical resources.

It is through our collective frontline experience, research and community partnership that Peacebuilders can confidently endorse and encourage that more work be done with regards to amendments to Bill C-5, as in committee forums, necessary to begin transforming Canada's justice system. Consequently, we're calling on the Government of Canada to enact and make changes to Bill C-5 in recognition of the need for the justice system to do better for Black and indigenous folks who have been over-represented in our communities. This is about providing other opportunities, such as diversion programs and alternatives to sentencing, and ensuring that we have safer communities for those who are in need of supports that are culturally relevant to integrate back into their communities and have the opportunity and support to better themselves and members of their families.

It is in the best interests of communities that Bill C-5 works to provide judges and other justice officials with the means to be able to support both the community's safety and those who are in need of support to address the overrepresentation of Black and indigenous folks across this country.

Thank you.

The Chair: Thank you, Mr. Merraro.

Next we have Darren Montour from the Six Nations Police Service for five minutes.

Darren.

Chief Darren Montour (Chief of Police, Six Nations Police Service): Thank you, sir.

Good afternoon, everyone.

I come from an indigenous police service. Here at the Six Nations of the Grand River Territory, we have seen a drastic increase in violent crimes over the past few years mainly due to the infestation of illicit drugs within the community. Outsiders are supplying the drugs. As a result, community members become addicts, resulting in an increase in violent crimes. We have also lost numerous community members to fentanyl overdoses in the last few years.

In my 30 years as a police officer on Six Nations, this violence has become unprecedented. Many community members have died due to the opioid crisis that the entire country is facing. Homicides have become increasingly frequent. The root cause of all this is drug addiction, which results in people committing other residual crimes, such as break-ins, theft, auto theft, etc., to feed that addiction.

In my experience, sentences imposed by the courts have shown no deterrent effect against this criminal activity. We have charged the same people for the same drug trafficking offences several

times over, and they still continue to traffic in this community. Rarely is there a custodial sentence for controlled drugs and substances trafficking. In conjunction with the drug charges, traffickers arm themselves with various types of weapons, including firearms that are both prohibited and restricted. None of the traffickers has the proper licence to even possess these firearms. There needs to be a deterrent to persons committing acts of violence when armed with firearms. Regardless of race or ethnicity, there needs to be a deterrent in place for offenders to realize that the violence in our community and against others needs to stop before any further loss of life.

Our Haudenosaunee way of life here at Six Nations is suffering. The recent mental health review of the Ontario indigenous police services contains a comparison of crime severity between indigenous and non-indigenous communities. The crime severity index for the Six Nations of the Grand River in 2020 was 217.62 compared with Brantford at 112.95; Hamilton at 93.53; and Toronto at 90.41. The current murder rate per capita in Ontario is 1.59 per 100,000 of population. The rate here at Six Nations is 7.79.

The proposed conditional sentences for violent offences will not deter offenders from committing further crimes. We are not in a position to continuously monitor sentenced offenders to ensure their compliance with the conditional sentence restrictions handed down by the courts. Police services across the country, and especially those within indigenous communities, are significantly understaffed. We are continuously asked to do more with less, and we cannot sustain this workload. We are currently faced with officers being off for mental health and mental well-being. This will worsen as time goes on.

The Gladue case law for sentencing purposes also has a great influence on whether or not an offender receives a custodial sentence. I can appreciate the statistics regarding the overrepresentation of indigenous offenders in our jails, but along with the rights of offenders, victims and victims' families deserve rights as well. Gladue has a place in sentencing of certain individuals, but those repeat offenders know the difference between right and wrong, and the sentencing principles under Gladue are exploited to the benefit of these offenders.

In my experience growing up and working here on Six Nations, indigenous communities everywhere, as well as here, face the same issues. Intergenerational trauma from the residential school system still plagues our communities. There is a lack of social programs, a lack of infrastructure that non-indigenous communities take for granted—including, for example, clean drinking water and housing—and the list goes on. It is more than just improved law enforcement that is needed to better the lives of all indigenous people in this country.

Among indigenous people there is an inherited historical lack of trust in the justice system and other federal statutes, such as the Indian Act. Colonization has imposed this and other cultural values, such as religion and policies, on indigenous peoples who do not favour them. For some indigenous nations their way of life is no more. For far too long our people have suffered under the effects of colonization. We deserve to feel safe and, more importantly, our children deserve to grow up in a community free from violence. I implore you to consider the well-being not only of the people of Six Nations, but also of all indigenous communities on Turtle Island, when making your decision on proposed Bill C-5.

I'd like to thank this committee for their time today. I look forward to your final decision on this important matter.

Thank you.

• (1615)

The Chair: Thank you, Chief Montour.

Next is Ms. Penny McVicar from Victim Services of Brant.

Ms. Penny McVicar (Executive Director, Victim Services of Brant): Hi. Thank you.

I have been the executive director of Victim Services of Brant for over 20 years. We're located in Brantford, Ontario, and part of our catchment area is the Six Nations of the Grand River.

I'm here today to speak on the concerns that victims may have about changes in this legislation.

In the past year, we have responded to eight homicides in our community. Many of those have been homicides with a gun, a weapon, and quite a number of those have also been drug-related.

We have seen that over the last five years our domestic violence numbers have almost doubled and our sexual assaults have increased by about 20% of those that have been forwarded to Victim Services. I think it's significant to understand that over 40% of the calls to Victim Services of Brant are gender-based violence.

We saw sudden deaths, especially during COVID, increase by almost 58%, and the majority of those were overdose-related. They had to do with a lot of bad fentanyl coming into our community and people overdosing, many of them just occasional drug users and not understanding the drugs they were getting and that they might contain fentanyl.

I think it's really important that I also note that of the incidents we dealt with last year, we had 427 breaches of probation or breaches of conditions. I think that's important to note because many of those are with regard to domestic violence victims or criminal harassment victims, who continue to be threatened and fear for

their safety because the offenders are out of custody and are able to access them. I think as a representative of victims, I would like to make sure that when you're looking at the legislation you will be building in many protections for victims, especially of gender-based violence, who may be impacted if some of these mandatory sentencing are reduced.

We deal with it every day. Safety planning is something we do repeatedly with victims. We have a number of very serious high-risk victims in our community, and even though the offender has been charged and has spent time in custody, they are now out and the victims are still feeling very much at risk themselves and for their families.

Once again I would thank you for giving me the time to speak today. I will be interested in any questions that may come forward.

Thank you.

• (1620)

The Chair: Thank you.

Thank you to all the witnesses.

I will now begin with Mr. Brock, for five minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair, and thank you to all of the witnesses for your attendance today.

I'm going to start with Chief Montour.

Chief, it's good to see you again. Thank you for participating.

Chief, you touched upon an important point in your summary. You talked about the differences between repeat offenders and first-time offenders.

This particular bill, Bill C-5, makes no distinction between them. It offers the same benefits to first-time offenders as to repeat offenders by eliminating the mandatory minimum penalties for those significant firearm offences, the significant drug offences, and opening up the possibility for further consideration for conditional sentences.

I would like to know from your perspective how this is going to impact policing on the territory and community safety if the current version of Bill C-5 passes without amendment.

Chief Darren Montour: It's good to see you as well, Mr. Brock.

It's going to have an effect here because 99% of the time the victims as well as the offenders are from the Six Nations of the Grand River territory. It's a small community, with a lot of families intermixed by relationships, and in my experience here when people receive conditional sentences, a lot of times these are breached like Penny referred to.

There's breach of probation, and breach of any recognizances, or form 11s now from Justice. It's going to have an effect that we're going to be continuously dealing with these people. In my experience, people reoffend quite often here, and if there's a conditional sentence, that really doesn't do much as far as a deterrent for them is concerned, because even if they have family members, if the person is breaching they will not call the police to report anything. Then the victims feel basically that they are left out with no one on their side.

I know Penny has testified to that. I see that quite often because the first brunt of who hears the complaints of all the people is the police here. We take a lot of heat over that. Then we explain that it's not our call, that we have done what we need to do. The courts do their thing in the process and the sentences are handed down, but it's not anywhere near satisfactory to the victims. That's how I look at it, that we're here to help this community.

• (1625)

Mr. Larry Brock: I have to cut you off. I have a limited amount of time; I want to get to one more question for you before I turn to Penny.

We all agree about the over-incarceration issue. It's a very real issue.

Chief Darren Montour: Yes.

Mr. Larry Brock: In my previous career as a Crown attorney, I was always cognizant of that.

Can you offer this committee your perception of indigenous offenders and their respect for or lack of respect for the Canadian judicial system?

Chief Darren Montour: In my experience, the majority don't have respect for the justice system. The fact is that they see, if they're a victim of crime, there's nothing done to the offender. Again, I allude to the fact that victims and offenders are from this community. I've seen what I'm going to call "payback" from a victim's family to an offender. We don't need that; it just increases the violence.

Granted, the Gladue case law does work in certain situations for certain offenders. I've seen it myself in the indigenous persons court in Brantford. It does work, but for repeat offenders who know the difference between right and wrong, it doesn't, and we see it.

Mr. Larry Brock: Thank you, Chief.

I'll move on to Penny McVicar.

Penny, the Victim Services of Brant provides accessible, confidential, client-centred support for victims of crime. As the executive director, can you provide this committee with your opinion of Bill C-5 and the impacts on victims and survivors of crime, particularly in the context of domestic violence, bearing in mind now that

the offence of sexual assault will offer the benefit of a conditional sentence, if Bill C-5 passes?

You have 30 seconds.

Ms. Penny McVicar: I would say that I see too many victims who are now not reporting to police because of the fact that they feel like it's a revolving door. They report to the police, the suspect is arrested, and then they're back out on the streets before the victim even has time to get a good safety plan in place.

It's a big concern in our community. We have a large number of domestic violence cases. I think we rank pretty high on the uniform crime reporting for domestics.

I write priority housing letters on an almost daily basis for victims trying to relocate, hoping to find someplace safe that they can live where their abuser won't be able to find them. The shelters are overflowing because we don't have enough shelter space for women trying to get away from violent offenders.

The Chair: Thank you, Ms. McVicar.

Now we'll go to Ms. Dhillon for five minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you to our witnesses for being here.

My question is for Mr. Montour.

You spoke about the increase in drug consumption and violence. Can you please explain, in your opinion, why this is the case, from what you've been seeing during your work?

Chief Darren Montour: With the influx of more hard-core drugs like fentanyl and cocaine, the addiction level has increased to the point that the addicts here in the community have no cares of where they get their next fix. The crimes to help feed that are on the rise, as well as the violence, because we have outsiders coming in who are supplying the drugs and the traffickers are community members here. At times there's violence against each other, and then there's violence against their spouses, like Penny has alluded to with domestic violence. More recently, there have been a lot of homicides in the last little while involving firearms. The basis of everything is drugs.

Ms. Anju Dhillon: Thank you, Mr. Montour.

My next question is for Mr. Merraro.

You spoke about keeping young people out of prison. How does your program help youth recidivism or even with youth entering the justice system to begin with?

Thank you.

Mr. Marlon Merraro: Our program looks to work with young people on two levels. One is to repair the harm and relationships that have been damaged through their actions. Second is to look for ways in which they can address some of the root causes of the behaviours that brought them to the justice system in the first place.

We work with young people to encourage them to fulfill their education, seek full-time employment and mentorship, and look at their own psychology of how they think of themselves, their identity and how they fit and sit within the world they live.

There are two key points to our restorative justice model. One is repairing the harm caused by an individual. The second is not as common. It's looking at how the system—whether it's the education, justice or the child welfare system—has impacted them. It's helping young people and their families come to terms with the damage that has been caused by the system they exist in, which they have very little power to change.

Our program is not about hugging a thug. It isn't about not being responsible for your actions. Our program would never say that some people should not be processed through a criminal justice system.

What we do say is that we need to provide young people and young adults—emerging adults, especially those from 19 to 25 who are overrepresented and who face mental health, drug use and abuse issues because of trauma that has been caused in their life... We need to go to the root causes of that and support them in their transition to making better decisions for them and their loved ones. That actually increases the safety within our communities. We've seen this in many cases.

Working at addressing root causes is one of the things we believe the criminal justice system can help support. Support funding for women's programming and family supports. Support educational attainment for students and their families. Support family reintegration because many families are separated when they come through, for example, the immigration system. I, myself, have gone through that process.

Those are the kinds of things we believe help create safer communities, utilizing a restorative justice model.

• (1630)

Ms. Anju Dhillon: Thank you for that response.

In your opinion, do you think this tough-on-crime stance that a lot of people advocate for disadvantages Black Canadians, indigenous people and other marginalized communities the most?

Very recently, a report came out showing that, for the first time ever, 50% of incarcerated women are indigenous.

Could speak to us about these two things, please?

Thank you.

Mr. Marlon Merraro: Absolutely.

There is enough science, data and research that tells us who is filling up our jails, who is being exploited within our child welfare system and who is not gaining educational attainment. We know those are Black and indigenous racialized folks and communities. This is not by happenstance. This didn't just fall out of the universe.

We have systems at play here that continually perpetuate systemic racism. The federal government, our provincial government and the city of Toronto all recognize that there is systemic racism. If we all agree as a nation that there is systemic racism, then we know the individuals and communities who are being impacted by systemic racism.

What we would—

The Chair: Thank you, Mr. Merraro. Hopefully you'll be able to answer in the subsequent questions.

The next round goes to Monsieur Fortin for five minutes.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

I'll continue with you, Mr. Merraro.

The last part of your testimony interests me, but there's something I don't understand. You've told us that prisons are filled with black and indigenous people and this is due to systemic racism, but how does it happen? Do police officers fabricate nonexistent evidence against the racialized people they arrest? Are judges tougher on them? In clear terms, why do you think there are so many racialized people in our prisons?

[*English*]

Mr. Marlon Merraro: Excuse me, I did not get the translation in English. I am very sorry for not understanding the question.

The Chair: I'll give the time again. Can you please put your interpretation to English at the bottom of your screen? I'll reset your time.

[*Translation*]

Mr. Rhéal Fortin: Mr. Merraro, I'd like to go back to the answer you gave to the last question you were asked. Correct me if I'm wrong, but you said that prisons are full of black and indigenous people and that it is due to systemic racism.

Why do you think this is the case? Why are there more black or indigenous people in our prisons? Is it because the police are harder on them? Is it because the judges are too harsh and send them to prison?

• (1635)

[*English*]

Mr. Marlon Merraro: I would explain this phenomenon with a couple of reasons. We are overpolicing particular communities in the city of Toronto. We have priority neighbourhoods that are overpoliced, which means young people are coming into contact with police not in a positive way, but in more negative engagements.

The second thing I would say is the trauma that is caused by engagement with particular institutions is creating people who distrust the system. Sometimes we'll make bad choices.

One of the biggest reasons our jails are filled up with Black and indigenous folks, racialized folks, is the fact that we're criminalizing poor people. We are criminalizing their acts. We're criminalizing how they live because they don't have the means to be able to take care of themselves. In turn, people sometimes make decisions that may not be in their best interests or in the interests of their families or communities.

We have to agree that Canada has been built on the issues of racism. In our truth and reconciliation process that went through, we all agreed that things needed to change for indigenous folks, and we know from the reports that there is bias with regard to how young people, especially, are getting diversion programs or access to support programs within the criminal justice system. The treatment is not the same.

I believe we have enough research and data at all three levels of government that tell us this is a problem. It isn't just an individual problem—

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Merraro. I understand your message. There are indeed statistics that prove your point: many black and indigenous people are in our prisons. I don't question that. What I am questioning, however, is why things are the way they are.

First, you said that some communities are over-policed. Then you said that people no longer trust the system. Finally, you said you don't have enough resources and people are desperate.

All this makes me wonder whether this is not so much a problem with minimum sentences as a problem with social inclusion. Perhaps these people in trouble should be helped with special resources, perhaps even with sessions to help them learn about the police? I'm not a sociologist and I don't want to invent new ways of doing things, but I wonder if it would be possible to take more productive measures than just abolishing minimum sentences.

Even if we abolish minimum sentences, these people are still going to end up in prison if they commit crimes. Whether it's one year, four years or six months, they're not going to avoid it. Of course that's not what you want or what we want as a society.

To really tackle the problem, are there no solutions other than abolishing minimum sentences?

[*English*]

Mr. Marlon Merraro: I agree with some of your points with regard to other options. Providing justice with other options around diversion-supported programs is one way of dealing with the issues. I don't believe that we should abolish all minimum sentences, but I think we need to look at which ones we need to have and which are the ones we need to provide alternatives to incarceration.

Where do we fund and support programs that help young people and adolescents stay out of criminal activity?

This is a quick piece. When we think of young people not feeling safe and telling the police that their safety is at hand, they go out and protect themselves. This is a reality that young people face in communities. If they don't trust the police to protect them, they will trust someone else.

The Chair: Thank you, Mr. Merraro.

Next we go to Mr. Garrison for five minutes.

● (1640)

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

I want to continue with you, Mr. Merraro. Something you said at the beginning struck me, because it goes against what we often hear here at the committee from both questioners and witnesses. There's often a presumption that this bill will actually be a threat to public safety. I think that is sometimes based, without any evidence, on the idea that violent and repeat offenders would get lesser sentences by eliminating the mandatory minimums.

You said that you think the bill promotes public safety. Can you tell us a bit more about why you think that's true?

Mr. Marlon Merraro: I believe the bill promotes public safety to a particular extent. There are, I believe, situations where individuals who are not receiving the kinds of support that they need to receive have to be supported within a different facility—understandably, and agreed. I have worked with young people who have faced mental health...and there are no community supports for those young people. They are not only harming themselves; they're also harming individuals within the community. It's not because they are choosing to. It's because of their mental health, and their support to address their mental health isn't being addressed within the community.

If we allow for minimum sentences to be placed on those individuals who may not have the options, I can understand how it promotes safety. But we cannot lose sight of the fact that minimum sentences do not guarantee public safety. The individuals supporting individuals in making the transition from being in the justice system to productive citizens promotes safety in communities. In no way would I ever advocate for those individuals to be just out on the street without any kind of conditions or without any kind of supports. We see what happens when they're not supported. Individuals and families get hurt. Communities become unsafe.

But to leave all of that weight of society on one individual—I think that's not the Canadian way. We know as Canadians that it's a complex web of support or not support. The systems also play a role within the lives of individuals in helping them make or not make decisions. That needs to be taken into account when justices of the peace are administering justice. They should have the opportunity to do so.

Mr. Randall Garrison: We know that with mandatory minimums, the result is a lot of people spending relatively short times of incarceration in provincial institutions. In your experience, does that result in them getting counselling, treatment, or the kinds of things they need when they're in provincial institutions for a very short term? Or would they be better off in diversion and conditional sentences?

Mr. Marlon Merraro: That's a very good question. It's not as easy to answer. We do know that when individuals are placed in custody, programs and services in custody.... Even better yet, when organizations like ours and others who are trying to get into facilities to support individuals in their reintegration back into community, that is also a struggle. They're underfunded. It's more around penalizing behaviours than it is addressing the root causes of behaviours.

When individuals are coming out, most of the programs that are working to either mentor or help in educational or life goal planning around employment, etc., are on year-to-year funding. There isn't a constant resource apparatus set up for organizations like ours and others. Direct Your Life works with individuals coming out of incarceration. There needs to be more emphasis on those supports. That is what creates safety in communities.

If our young people and those adolescents have a place to go to help address their mental health and deal with the trauma that's been caused, and we help support other positive activities like education and employment, we will have safer communities. It's not enough to just lock people up. We need to lock people up when necessary and provide support and resources for when they come out. The majority of them will be coming out. What they come out to is going to be a different world. They may not come out to the resources that are going to help them make different decisions. That has to be addressed if we want safer communities.

Mr. Randall Garrison: Thank you very much.

You also talked about how this bill doesn't address historic injustices. One of the things I see missing in the bill is expungement of criminal records. Can you talk about the effect of criminal records on the ability to rehabilitate and work with people?

Mr. Marlon Merraro: The expungement of criminal records is essential to young people, whether they be youth or young adults coming into communities. Most jobs that you will be applying for, if not all jobs nowadays, will involve a criminal record check. We don't know on the other side how those decisions are made for individuals with criminal records. It's a major barrier to employment.

The cost of getting it expunged has been reduced, and that's a good-news story, but the process of getting it expunged is also difficult and time-consuming. If you were innocent—

● (1645)

The Chair: Thank you, Mr. Merraro. I apologize. I don't feel like cutting you off, but due to the time constraints, I must.

Next I will go for two three-minute rounds. They're condensed a bit further.

The first round goes to Mr. Moore for three minutes.

Hon. Rob Moore (Fundy Royal, CPC): I will address this to Chief Montour. You raised so many great points. Thank you for using the word "victims" in your testimony, because oftentimes we do not hear about victims, and I'm afraid they're the forgotten group when we're dealing with Bill C-5.

You mentioned the problem with drugs and overdoses. There's a misconception with this bill that it somehow deals with the simple possession of drugs when, in fact, it eliminates mandatory prison

time for drug dealers. The mandatory sentence under the Controlled Drugs and Substances Act that targets drug dealers who are charged with, for example, trafficking or possession for the purposes of trafficking, importing and exporting for the purposes of exporting, and production of a schedule 1 or 2 substance—that's heroin, cocaine, fentanyl, crystal meth.... Mandatory prison time would be eliminated for all of those things.

Chief, could you speak to what impact you think that would have on communities, on offenders and even on morale within the police, who are trying to help make our streets safer?

Chief Darren Montour: It would be very frustrating, because we would be continuously dealing with the same people over and over. That's been my experience in the last several years. It's the same group of people—even family members who traffic drugs, and they're trafficking in the serious drugs fentanyl, cocaine and heroin. People are dying in this community.

We look to the justice system and there has to be some sort of deterrent, like I said before. I always speak of the victims because that's why I became officer; it was to help people in my community. Even others coming to this community, who are non-community members, have a right to be protected and feel safe in this community, as well, and with the infestation of drugs there's violence that goes along with that.

Seeing that over and over again, you can see it in the eyes of the officers. They're thinking, "We have to go to this place again and deal with this violence again". Hopefully, there's something that comes out of this, so that there is a deterrent that stays in place for simple possession.

Yes, we have a drug strategy committee in here to help the people with the addiction. That is forefront to us, because law enforcement is only one spoke in the wheel to help this community.

Hon. Rob Moore: On the issue with regard to guns, you mentioned that this bill eliminates mandatory jail time for robbery with a firearm, extortion with a firearm and possession for purpose of weapons trafficking. You mentioned that there's been an increase over the last several years of these types of offences.

What type of message do you think eliminating mandatory jail time for those serious gun crimes will send?

Chief Darren Montour: Where's the deterrent to the offenders? I've seen robberies with firearms increase due to drug addiction. Homicides with firearms are prevalent nowadays in this community, as well as other communities in and around the Six Nations of the Grand River territory.

Again, I go back to the victims. How do the victims' families feel if their neighbour is convicted of a serious firearms offence and that person is on a conditional sentence? We deal with the fallout of redemption from the victim's family next. That has happened here in this community.

The Chair: Thank you.

Thank you, Mr. Moore.

Next we'll go to Madam Diab for three minutes.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Thank you to all of the witnesses for appearing as we continue to talk about Bill C-5.

Today in Parliament, we have Science Meets Parliament day, and I have guests with me who are listening to these proceedings this afternoon. Much of what we've heard about this act goes to spot facts, evidence, science and reports.

I have a question with my less than three minutes for Mr. Merraro.

The Gladue reports and the impact of race and cultural assessments, according to facts and what we have seen in many provinces and jurisdictions, help judges to understand the role of systemic racism and bringing someone before the courts. However, mandatory minimum penalties of imprisonment impose a one-size-fits-all approach to sentencing that prevents them from using that information to craft a fit sentence.

Can you tell us why judicial discretion, in your opinion, based on your 25 years of experience working with young people, is important in ensuring that people receive appropriate sentences that take into account all of their circumstances?

• (1650)

Mr. Marlon Merraro: Taking into account the individual's life circumstances is very important to addressing the root causes and helping justices make much more informed decisions.

One of the stats that I would like to mention is that 86% of women in federal prisons have histories of physical and/or sexual abuse. In the work that we do with children and youth, we know that young people who are in the child welfare system are also in the justice system. They face family separation and trauma, and now they're in a justice system with its having no idea of the injustices of the history of this young person in regard to their addiction, the trauma that they've faced and why they may be standing or sitting in front of a justice today.

It's vitally important that justice officials have this information and can take the whole person into account when rendering their decisions. It allows for opportunities for those young people to be able to address some of the historical harms that they have caused. We would advocate and continue to advocate for that type of information to be within the justice process so that judges are able to make proper, informed decisions.

Ms. Lena Metlege Diab: Thank you.

With 15 seconds left, I will give that time to the next witness.

The Chair: Thank you, Madam Diab.

That concludes our first panel.

I'll suspend for 30 seconds for a quick sound check.

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, don't Mr. Garrison and I get a two-minute round?

[*English*]

The Chair: We only have 35 minutes.

I want to get you a good round in the next set of questions.

• (1650)

(Pause)

• (1650)

The Chair: We will now resume.

For the witnesses who are online, please put the headset on. The witnesses in the room can put on a headset, set it to the preferred language, and then you should be able to get interpretation.

Please set that in the beginning, as we have to be efficient and on time.

To the witnesses, you have five minutes to make your opening statements. I have these quick flash cards. When there is 30 seconds remaining, I'll post this one. When you're out of time, I'll then post this one, and please wrap up accordingly.

To begin, we have Sarah Dover, a lawyer who is here as an individual. From the Criminal Lawyers' Association, we have Leo Russomanno, senior defence counsel; and Adam Weisberg, lawyer and secretary. In person today from the Federation of Asian Canadian Lawyers, we have Justin Yeun, criminal defence lawyer.

I'll begin with Sarah Dover for five minutes.

Ms. Sarah Dover (Lawyer, As an Individual): Good afternoon. Thank you so much for inviting me to come to present.

It feels today a little bit like I've crawled up from the grit and grime of the front line of the criminal justice system and am now sitting in polite company and not quite sure what fork to use.

On any day in those frontline criminal courts, you are going to encounter a parade of people who suffer from mental health and addiction issues, poverty and racialization. So, great days for me as a lawyer might involve clever word algorithms about charter rights, or evidence law or mandatory minimum sentences. The more common experience, however, is a persistent pounding of institutional failure in the lives of vulnerable people: a homeless client in full psychosis discharged from jail, wearing an orange jumper and holding a bus ticket; a client found naked and unconscious in a park, rejected by a woman's shelter for a history of being behavioural; a client so sickened by his own actions and the prospect of a mandatory minimum sentence that our time together is spent just de-escalating his suicidal ideations; a pregnant client released from jail with nowhere to go, who asks me for a ride to her street daddy's house.

These terrible days are punctuated by truly awful days that define me as a lawyer and a person. Those are the days looking down on a client in a casket; sending someone's jail art to their mother following an overdose death; sitting with a client in jail who is having to make an end-of-life decision for their sick child; or eulogizing a client with their family, remembering their joy and their laughter, but only after they were murdered. They don't teach this stuff in law school: how to get heart punched and still be capable of finding words that sound sensible in polite company. So to see a person at sentencing only for what they did I truly believe is a type of violence. The story is never so simple as just the offence.

The issue is not just whether people's stories will matter in the face of a looming mandatory minimum sentence, because humans always live fully dimensional lives; the issue is whether the sentencing process itself will matter. You see, the way in which stories are told and unfold and are woven together makes the sentencing process meaningful for everyone and the legal system. Don't you see? Legal systems are stories that are shared out in the open so that societies can create, yes, public legal institutions, the rule of law, but more to create meaning from what has happened.

Transitional justice is an area in international law that includes truth commissions like the TRC, the inquiry into missing and murdered indigenous women and girls, RCAP—reports and commissions that have offered us truths, national-level stories, to move us forward from systemic racism. The awful things that have happened to children who have died or survived and the life stories and present-day-lived experiences that indigenous clients have shared with me, I remember even though I don't represent them in this forum. I remember pins in tongues, bullying in school and sport, grinding poverty, a lack of clean water, treaty and inherent rights ignored, land defenders arrested, homelessness, under-housing, racist policing, money for social programs diverted into litigation, the whole thing. To say that none of that should matter at sentencing or at any time leaves us with a story about our justice system, which is called “systemic racism”.

This bill endeavours to make improvements to the criminal justice system as a step in the right direction, but a very modest one. A stronger bill would express UNDRIP compliance and indigenous self-determination. It would wholly implement the recommendations about mandatory minimum sentences that were issued by the TRC and the missing and murdered indigenous women's inquiry.

In closing, it has been the honour of my life to come into relationship, in some modest way, with the stories of the people and the communities I have worked with. I am grateful and humbled for the meaning they have brought to my life. I hope that you will make improvements to this bill to change the story of our justice system, how it treats vulnerable and marginalized peoples and how it shapes our relationship with indigenous peoples and nations.

Thank you.

• (1655)

The Chair: Thank you, Ms. Dover.

Next, I believe we have Mr. Russomanno from the Criminal Lawyers' Association.

Mr. Leo Russomanno (Senior Defence Counsel, Criminal Lawyers' Association): Hi, everyone. It's nice to be back here before the committee on behalf of the CLA. I also have some experience appearing before this committee when a lot of the mandatory minimum sentences in a previous government were introduced, as well as restrictions to the conditional sentence regime.

I've been a criminal defence lawyer in Ottawa, eastern Ontario and Quebec for the last 14 years. I have seen the impact, as a trial lawyer, of mandatory minimum sentences on a practical as well as on a human level; the limits to conditional sentences; and, broadly speaking, the disastrous effects of the war on drugs, which is one of the greatest policy failures of our time.

I have three broad points to make on behalf of the CLA about Bill C-5. I understand that Minister Lametti presented this bill as three broad areas of reform—number one, dealing with mandatory minimum sentences; number two, dealing with conditional sentences; and number three, dealing with prosecution for simple possession. CLA is broadly supportive of the first two measures, because in fact what they do is they restore judicial discretion in sentencing on an individual level.

On a fundamental level, we have faith in the justice system to get it right. We have faith in the process. We have faith in judges to be able to hear the evidence as part of the adversarial system where the Crown marshals its best arguments and evidence and the defence does the same. The judge decides. The judge gives reasons. That judge is held responsible or accountable for their reasons through the appeal process. Mandatory minimum sentences, as well as conditional sentences, limit this and create one size fits all, which often creates injustice and has broad negative impacts.

So in terms of the first two areas of reform, we're broadly supportive of this, because it restores judicial discretion and would call for the repeal of other mandatory minimum sentences. It's important to note that just because a mandatory minimum sentence isn't available, it does not mean that a person is going to automatically be sentenced to no jail. A primary example of this can be seen in the wake of the Supreme Court's decision in *R. v. Nur*, in which a mandatory minimum sentence for possession of a firearm in certain instances was struck down. It did not create this crisis in which all of a sudden people convicted of these offences were not getting jail sentences.

The second point I want to make is that as someone who is spending a lot of time in trial court, I can tell you that mandatory minimum sentences, as well as limits on conditional sentences, create delays in the justice system. They create delays because it makes people less likely to want to accept responsibility for what they have done and more likely to go to trial and consume valuable trial or court resources—and time, which is currently at a premium in our criminal justice system. We suffer from very significant delays in our criminal justice system. It impacts everyone, including victims of crime. Not having a conditional sentence available will often tip the scale in terms of whether a person decides to plead not guilty and have a trial, because they're going to lose their job if they're sentenced to jail.

It's important to note that the Crown and defence don't have to agree on whether or not a sentence of jail can be imposed. If a conditional sentence is available, an accused person can take a shot at it in terms of having their counsel argue as to why a conditional sentence should be imposed in this particular case. Part of what the court has to consider is whether or not a person is worthy of a less than two-year sentence—if it's two years or more, it's simply unavailable—and also whether or not if released on a conditional sentence they would be a risk to public safety.

Would they be able to follow those conditions? Can those conditions be enforced? If it can't be shown that they can, then a person will not receive a conditional sentence, but at least through the adversarial system an accused person can try to persuade the sentencing judge to give them a conditional sentence. That will lead to the resolution of more cases.

The last point with respect to simple possession is simply that the bill offers a great deal of discretion to police officers. It is my view that racialized and indigenous groups will not be benefiting from this, because they're already over-policed. This is not going to solve some of the problems that are seen in the war on drugs and with the over-incarceration of those groups.

• (1700)

I look forward to speaking to the members individually.

The Chair: Thank you.

Now we turn to Mr. Yuen from the Federation of Asian Canadian Lawyers.

Mr. Justin W. Yuen (Criminal Defence Lawyer, Federation of Asian Canadian Lawyers): Thank you. Good afternoon, everybody. Thank you to the standing committee for the invitation to present today. I'm a member of the advocacy and policy committee

of the Federation of Asian Canadian Lawyers and I'm also a criminal defence lawyer.

Largely speaking, FACL is supportive of Bill C-5 and the removal of mandatory minimum sentences.

Repealing mandatory minimums will not make our communities more dangerous. It does not mean that the courts will be light on violence and dangerous offenders. Removing mandatory minimums will allow justice system participants to achieve reasonable and fair dispositions in an efficient manner. Regardless of whether mandatory minimums exist, sentencing precedents provide a tariff in which courts are guided towards sentences that previous offenders received under similar circumstances.

A criminal charge captures a snippet of an individual's life. The trial itself then scrutinizes and dissects that moment. The crime is often a culmination of inescapable social circumstances and desperation. When it comes to sentencing, we must recognize that the offenders are more than their criminal charge. Along with addressing the harms done to the community, sentencing principles must focus on the individual's circumstances, how and why they turned to a life of crime, what steps they have taken since being arrested, whether they can rehabilitate and whether they can become productive and pro-social members of the community.

I want to focus my time on how the removal of mandatory minimums can streamline matters through the system and how judges will be allowed to ensure proportionality between the sentence and the harm done.

I was counsel on a matter where my 18-year-old client was charged with robbery with a restricted firearm. He was arrested with the gun less than five minutes after he committed the robbery. My client was young. He did not have a criminal record. During his time released on bail, he had taken meaningful steps to find employment and became involved with his local community. He never breached his bail.

Knowing that his charge had a five-year mandatory minimum, there was no real benefit in entering an early plea. The matter eventually made its way into the superior court and a four-week judge and jury trial was scheduled. It became apparent that my client had great rehabilitative prospects, and that a sentence shorter than five years would be appropriate. Eventually my client pled guilty to a lesser, related firearm charge so as to avoid the five-year mandatory minimum.

That disposition required substantial creativity from me, the Crown and the judge to find a way around the mandatory minimum, and doing so required additional resources to fight the charges, which drained valuable public resources. Without mandatory minimums, certain matters can be resolved in a timely manner. That prevents the court having to block off lengthy trials and prelims. Ultimately, it can alleviate the pressures that the courts are facing, especially during the current COVID-19 backlog.

I'll turn to my second point regarding immigration. Serious criminality can result in mandatory deportation. A sentence over six months is considered serious criminality. For the benefit of the court's information, oftentimes an accused person will actually end up spending a longer period of time in custody than is actually ever formally recorded. For example, if all parties agree that a nine-month sentence is appropriate and the individual has already spent four months in custody, often the judges will be explicitly asked not to note down the pre-sentence custody and simply sentence the individual to a further five months, and in doing so keeping the formal sentence noted on the information under six months. Mandatory minimums prevent any such discussions.

Courts are asked to consider immigration consequences when determining a fit sentence. Asians will often fall under a wide range of status in Canada, from being a visitor to holding either a work or student visa to being a permanent resident. Being charged with a criminal offence can greatly affect their immigration status. Mandatory minimums increase resistance in both the criminal courts and the immigration system. Clients have to fight both.

An informed member of the community would want judges to be able to have fair and open-minded discussions to consider the greater impact on the individual, their immigration status in Canada, and how deportation can then affect the lived realities of any of the dependents who they possibly care for.

• (1705)

Bill C-5 is not about being soft on crime. Those deserving of a long jail sentence will continue to get serious custodial time.

In addition to addressing the over-incarceration of people of colour and aboriginal offenders, Bill C-5 is about giving judges the discretion to ensure that justice is served in a proportionate manner.

Thank you, everybody, for your time.

• (1710)

The Chair: Thank you, Mr. Yuen.

We'll begin our first five-minute round with Mr. Morrison.

Mr. Rob Morrison (Kootenay—Columbia, CPC): Thank you, Mr. Chair.

I'm going to try to get to everyone, but in my limited time, I'm going to start with Ms. Dover when I get to a question.

I just want to go over this. One of our last witnesses was the Six Nations chief. He was talking about the escalation in offences. We're talking about eliminating mandatory prison time for things like weapons trafficking, discharging firearm with intent, robbery and extortion, and adding to that eliminating mandatory prison time for drug dealers, trafficking and production of fentanyl, crystal

meth and cocaine. The chief was saying that those are what's common now where he's policing and that to eliminate the mandatory prison time would actually have an adverse effect.

To add to that, we're talking about conditional sentencing where people could get conditional sentences for sexual assault, trafficking in persons, abduction of a person under 14 and assault causing bodily harm with a weapon. These people are put back into the community to live and now there's retaliation happening from the victims.

Sometimes it appears to some of the people we've talked to that the victims' rights are kind of being undermined a bit by trying to maybe help or do something more with the offenders. I think we really have to look at how we got to this point.

Ms. Dover, you really had a good story with the prison art. I've got quite a career in law enforcement, so I do understand that. When we look at how we can actually—forget this—talk about if there is some way that we could actually go back.... I think restorative justice is great for after the fact, but how do we get into, say, a crime reduction or prevention program, where we actually prevent crime from happening?

We did have one witness quite awhile ago who talked about a 15-year program that they were involved in. They started off with four-, five- and six-year-old children and worked all the way through to give them choices and to show them what was right and what was wrong. They had huge success. The problem with those crime prevention programs is they're long term and they're very expensive. I know you've also had some dealings with the indigenous peoples' court in Ontario, which could be expanded as well.

I wonder if you can maybe just comment a bit with your expertise and help us go further with a long-term solution that you might have in mind.

Ms. Sarah Dover: Thank you so much for your question. I appreciate it.

I want to say a couple of things. If you bring a plumber to your house and ask for input on a renovation, she's going to point to your pipes. I understand that the chief of police thinks about the types of solutions to underlying problems that might be available to criminal law. I respect Chief Montour, as well, as a member of the community and a leader of the community, but I want to tell you something. In a triple murder case from that community, two of the victims were former clients of mine. Two of the three significant charged people were former clients of mine. In sharing that earlier anecdote about eulogizing them and remembering their laughter, I was talking about one of the victims.

We have this idea that there are victims on one side and offenders on the other. There are not two camps of individuals, particularly for racialized people. They are one. There are road maps set out in the Royal Commission on Aboriginal Peoples, in the TRC and in missing and murdered women inquiry, where indigenous people have shared with us how to move forward from the history of colonization and racism to reforming criminal justice. We just need to listen and follow through.

A key thing they have said over and over again is that mandatory minimum sentences have to go because they are not the solution to the underlying problem. We cannot fix the fact that the Canadian criminal justice system has not earned the trust of indigenous people through mandatory minimum sentences.

If you really want to empower victims, put some teeth behind victims' rights legislation, so that the Crowns stop treating them like these are guidance. Give victims genuine participatory rights, as well as the ability to be involved in meaningful ways.

• (1715)

Mr. Rob Morrison: Okay.

The Chair: Thank you.

We'll go to our next round.

Madame Brière, you have five minutes.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

My question is for Ms. Dover.

In Gladue, the Supreme Court of Canada acknowledged the serious issue of the overrepresentation of indigenous peoples in Canadian prisons and asked judges to take into account unique systemic or background factors at sentencing.

If certain mandatory minimum sentences were abolished that impose a one-size-fits-all approach and conditional sentences were used more, do you think that would give judges the discretionary power to follow the recommendations in Gladue?

[*English*]

Ms. Sarah Dover: It's "yes but". Yes, we should follow Gladue, but it is broadly misunderstood.

Gladue was the second case in time that formed a bridge between the Royal Commission on Aboriginal Peoples, the history of colonization and the breakdown of the relationship between Canada and

indigenous people. It bridged that background then into criminal law to say, "How do we move forward constructively given the reality of systemic racism?" Gladue has become narrowed and is misunderstood as a clarion call for rehabilitation and restraint. It was really meant to create creative space for judges in different contexts to try to divine different ways so that the system is less racist.

Until we get to a point where we're able to openly, expressly challenge systemic racism, we will continue to fall back on familiar ways of doing things and familiar stereotypes in the way that we're thinking. We'll fail to actually reduce the number of people who are in the criminal justice system and to make sentences, in the context of Gladue, meaningful for indigenous people.

Mrs. Élisabeth Brière: Thank you for your response.

[*Translation*]

My next question is for Mr. Russomanno.

The Supreme Court explained that conditional sentencing is generally more effective than incarceration for achieving rehabilitation and reparation objectives for victims and the community, as well as for promoting the sense of responsibility in the offender.

Based on your experience, is that correct?

[*English*]

Mr. Leo Russomanno: Thank you for the question.

A conditional sentence has a very practical effect in the sense that, if you have an offender who is being sentenced, the conditional sentence has the ability to combine more rehabilitative components that enable a person, once they have finished their sentence, to actually not go back to a criminal lifestyle.

I mean, drug trafficking is an obvious one. Drug trafficking, when it's not motivated by addiction, is motivated by a desire for profit. When a person comes out of jail without any prospects for employment, it's a lot easier to fall back into that lifestyle, whereas a conditional sentence would allow a person to remain employed. It would allow a person to access better health care and better mental health counselling or other forms of counselling or other forms of rehabilitative programming that just wouldn't be available to them while they were incarcerated.

In that sense, a conditional sentence is infinitely better in terms of reintegrating someone into society and providing that they rehabilitate properly.

Mrs. Élisabeth Brière: Thank you.

My question is for Mr. Yuen.

[*Translation*]

You said that judges could improve the administration of the justice system by abolishing certain mandatory minimum sentences, as provided for in Bill C-5.

Do you think judges could impose more appropriate sentences based on the sociocultural context?

• (1720)

[*English*]

Mr. Justin W. Yuen: Yes. I certainly believe so. I believe judges often do take into consideration the full background of an offender. The alleviation of mandatory minimums opens up the door for judges to take every circumstance into consideration about the offender, their background, rehabilitation prospects and family or other individuals they care for as well.

Certainly, I do think so.

Mrs. Élisabeth Brière: Thank you.

The Chair: Thank you.

Next is Monsieur Fortin for five minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Ms. Dover, what I understand from your testimony is that there is a resource problem in the community. You say that pregnant women come out of prison and don't know where to go sleep that night. You talk about cases where people are found guilty without their full background being considered to try to understand the root of the behaviour that should be corrected. You brought up a number of similar situations that make us think there is really a problem in terms of resources. I don't know whether that is the case, but that is my understanding.

You also mentioned that the victims and the accused sometimes live in the same community. You talked about a case where two of the accused and two of the victims were among your former clients. In such cases, people must learn to live together. My understanding is that the behaviour needs to be corrected.

In that regard, Ms. Dover, don't the victims need to feel that the justice system is meant to protect them? I understand there are exceptional circumstances where they will say a minimum sentence should not apply. We agree on that. However, generally speaking, would it not be better to keep minimum sentences for social peace, instead of abolishing them and letting the victims of those crimes have to face the same individuals overnight who, in principle, according to the current Criminal Code, should be in prison?

Shouldn't we think about ways to better protect victims?

Ms. Sarah Dover: Thank you, Mr. Fortin.

[*English*]

I could keep you all day with thoughts about victims.

What if we had a criminal justice system that responded to victims by saying, "That never should have happened to you"?

What if there were a measure of accountability when recidivism happened, and offenders who had been to jail and had been through this system had not been helped? They were still homeless. They still suffered from addiction. They never got the counselling they desperately wanted. What if there were some mechanism of accountability for them? What if victims genuinely had a voice within the system? What if they didn't have to have their voices moderated through Crown attorneys or victims services, and they had a role?

The idea that a victim wants a template number, like the ingredients on a bottle of barbecue sauce, that says, "For this offence, you get six months. That's what you're worth as a victim"... Victims want to be integrated, so that their stories matter and so that there is a connection to the court in the way they are considered. The principles of sentencing have that as their idea.

There is no such thing as a conditional sentence that should be ordered where there are public safety grounds. Where victims are able to have a voice—a real voice, not a pretend voice, where we give them a number for an offence that happened to them—we make a justice system that is more meaningful not only for victims but for everybody.

I don't believe there's any such thing as a meaningful number for any victim.

[*Translation*]

Mr. Rhéal Fortin: In other words, abolishing all minimum sentences, as proposed in Bill C-5, could send the wrong message to victims. We have to be careful about that.

Witnesses we have heard from here have given us examples of cases where, in a perfect world, the individual should not have been imprisoned and should have rather received a conditional sentence. So exceptional circumstances could lead to departures from the rule.

Otherwise, generally speaking, abolishing mandatory minimum sentences would send the wrong message right now. That is my understanding.

Do you agree?

• (1725)

[*English*]

Ms. Sarah Dover: Think about sentences for aggravated assault, for example. These are circumstances where somebody beats the living tar out of somebody. It's not to the level of an attempted murder, but it's really bad. It's maiming and injuring. In that circumstance, we have a dialogue and stories within the justice system that ensure that there are jail responses to serious offences.

We do not need mandatory minimum sentences to respond effectively to the victims in that way.

The Chair: Thank you, Monsieur Fortin.

Mr. Garrison, you have five minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Thank you to the witnesses today. I really appreciate it.

Mr. Yuen, you mentioned something that has not been brought up before in these hearings, and that's the issue of deportation as a result of mandatory minimums. I'm wondering what you would say to people who say, "Well, they did the crime, so they should be deported."

What happens to families? What happens when there's a deportation?

Mr. Justin W. Yuen: It depends on the circumstances. For example, before the arrival of mandatory minimums....

For example, take the production of marijuana with a mandatory minimum of six months. Oftentimes, new immigrants or people who come to the country without many resources will take the first housing opportunity they can get. Especially in the Asian community, we had elders who took up housing in overpopulated houses where there weren't sufficient rooms. Essentially, they were live-in tenants for the landlord to then go about the production of things they had nothing to do with. It was nothing that they knew about or were part of, but they were there so they were charged. The minimum is six months. That's deportation.

Then take into consideration perhaps the other people they care for. Let's say you have a young single mother who is facing deportation. They have to leave the country. What about their young child who is in the country? Maybe they are Canadian-born and maybe they are not. Do they leave the child with social services or with family members? Do they take the child with them?

Those are considerations that extend beyond the criminal sphere, so to speak, and into the livelihoods of the offender, those they take care of and those around them.

Mr. Randall Garrison: Thank you.

I know that in my riding, we've seen consequences where the sole supporter of elderly parents has been deported for something that most people wouldn't have thought deserved that harsh a penalty.

I want to turn to you, Mr. Russomanno, on the question of discretion. I think that's something we haven't discussed enough in these hearings. Your opinion is that the discretion to charge will not necessarily benefit racialized and indigenous people. Could you tell us a bit more about your analysis of that discretion?

Mr. Leo Russomanno: Yes. Thanks for the question.

Practically speaking, when a person comes into contact with the criminal justice system for, let's say, simple possession, one of the things that a police officer may do, and most often will do, is check their police records to see how many contacts that person has had with the police. It doesn't take too much mental energy to figure out that racialized groups and indigenous groups, who are overpoliced and are overexposed to the criminal justice system, will only be further disproportionately affected by leniency that is rooted in police discretion. We have seen time and time and time again that when

you provide those persons with a wide degree of discretion, it is disproportionately negatively impacting racialized groups.

A person who is found by a police officer to be smoking cannabis in their upper middle-class neighbourhood is going to be dealt with leniently. A person who is found in a lower-class or subsidized-income neighbourhood that's overpoliced, who has had a number of contacts with the police even if they weren't found guilty, is not going to get the benefit of the doubt. That, in my view, is how that's going to play itself out.

Mr. Randall Garrison: Bill C-5 as drafted doesn't require keeping any records on the exercise of that discretion. I wonder whether you would be concerned about that, in the sense of how we would know who is benefiting from the discretion if the police aren't required to keep those records.

Mr. Leo Russomanno: In many different ways I guess the failure to keep those records is going to have an impact just in terms of being able to track how that discretion is used.

The simple solution to this—I was slightly encouraged, I guess, to hear Minister Lametti express that it is something they are looking into—is to decriminalize all simple possession offences. If we're talking about people who are using drugs for their own personal use, it is a health care issue. If it's a matter of there being concurrent criminal offences being committed, then those offences can be prosecuted. But to resolve the situation of people who are prosecuted for simple possession by continuing to prosecute them, I mean, what better evidence is there of the abject failure of that than the last several decades of a failed war on drugs?

• (1730)

Mr. Randall Garrison: We do have Bill C-216, which is coming before the House of Commons for a vote on decriminalization of simple possession. That's a different process from this one, but it will be coming forward.

Mr. Chair, I see that I am out of time. Thank you.

The Chair: Thank you, Mr. Garrison.

I can do two quick three-minute rounds over six minutes, if I have the consent of the committee. Otherwise, we'll have to wrap up, as it is 5:30 p.m.

A voice: [*Inaudible—Editor*].

The Chair: That might be tough. That will go to 10 minutes.

Is it the will of the committee...?

A voice: We can wrap up.

The Chair: Okay. We'll do two three-minute rounds. Then we can wrap up.

Mr. Moore, you have three minutes.

Hon. Rob Moore: Thank you, Mr. Chair.

I appreciate all of you for being here today. You've all brought your perspective to this bill.

I want to ask a question of Mr. Russomanno.

It's no secret that we've raised some concerns about the legislation. You mentioned your involvement in the past when the previous government was bringing in some changes to conditional sentencing as well as mandatory minimum penalties. In spite of what the talking points are, which is that this bill is about getting rid of Harper-era mandatory minimums, I can tell you that one of the great ironies of this bill is that for the minimums being contemplated to be removed by this legislation, some go back to the seventies and they certainly go back to the nineties. Many of the mandatory minimum penalties, particularly some escalating ones around gun violence, that came in under a previous Conservative government, the government has chosen to leave in.

Do you feel that there is any place for mandatory minimum penalties in the Criminal Code at all? We know there's a mandatory minimum penalty for first-degree murder, for example. We know that some serious firearms offences have mandatory minimum penalties that are not touched by this legislation.

From that starting point, do you believe there's any role for mandatory minimum penalties?

Mr. Leo Russomanno: Thank you for the question.

I think that from your perspective.... I heard one of the members in a previous discussion with Ms. Shanmuganathan say that mandatory minimums serve a purpose for Parliament in expressing a denunciation or a revulsion to certain crimes. I suppose on a theoretical level it certainly has that effect and it has that use.

Do I personally believe that mandatory minimum sentences are necessary? No, I don't believe they are. I don't think there is going to be a judge on a first-degree murder sentencing who will be sentencing people to a conditional sentence. I think judges do take into account victims of crime. I think they're very mindful of the impact that these crimes have on the community. If you go to a sentencing courtroom for first-degree murder, you'll see that this is what's actually taking place.

No, I don't believe that, because I believe judges have to be accountable for their decisions. They have to provide reasons. They have to consider certain factors. First-degree murder is the most serious crime in Canada, so I don't think there is a need for it in court.

Although I do understand how, as parliamentarians, you might feel like that has some sort of communicative effect to members of the community, I think it does more harm than it does good.

Hon. Rob Moore: Thank you.

The Chair: Thank you, Mr. Moore.

We'll go to Mr. Zuberi for three minutes.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

My first question is for Mr. Russomanno.

It's in relation to the third point that you mentioned in your opening remarks. You said that the Criminal Lawyers' Association has hesitation around the aspect of simple possession.

If we were to keep the spirit of what is there currently in the bill, but we want to mitigate it for what you identified, which is the wide discretion of police and how that can unwittingly continue the overrepresentation of indigenous and Black communities, what would you recommend for us to do while maintaining what is there? Would you, for example, recommend that some new wording, language or certain guidelines be added?

● (1735)

Mr. Leo Russomanno: Thank you.

That's a complicated question. Fundamentally, we're against the sort of structure that's being proposed because of the injustices it perpetuates, but you're asking me what sorts of changes I would make within that structure.

I would say that, for example, police officers should not be in any way basing their discretion on the number of police contacts that a person has had in the past. They should have to take into account whether a person is racialized, indigenous or otherwise a vulnerable member of our society or someone who's overexposed to the criminal justice system.

That discretion isn't really reviewable, so I think it's kind of ineffectual.

Mr. Sameer Zuberi: From your perspective, does the “tough on crime” approach really help reduce crime, or does it increase injustice towards indigenous communities and other racialized communities?

Mr. Leo Russomanno: I think that everybody probably knows that the “tough on crime” model has not done anything in this country or in any country to lower crime rates or to keep people safe. I listened intently to Chief Montour talk about the issues that are plaguing his community. I can't speak to the individual or specific issues in that community, but something that did strike me was the comment that serious drug trafficking has gotten worse and violent crime has gotten worse.

I thought to myself, all of that has happened under the guise of increased mandatory minimum sentences for violent offences through successive “tough on crime” models being imposed, and what do we have to show for it? We have overcrowded jails, money spent on incarcerating people and not keeping Canadians safe in the end. I think, as they say, the proof of the pudding is in the eating.

The Chair: Thank you, Mr. Zuberi.

Thank you to all the witnesses for your invaluable testimony.

I will now conclude this meeting. I'll see everyone else in this committee on Friday.

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