



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 018

Tuesday, May 17, 2022

Chair: Mr. Randeep Sarai



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• (1535)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order. Welcome to meeting number 18 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 is taking place in a 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 via the House of Commons website.

I'd like to welcome our two witnesses today. We have Matthew Taylor, general counsel and director, criminal law policy section, and we have Andrew Di Manno, counsel, criminal law policy section. They are both here to answer any questions any of the members have as we do clause-by-clause.

I'd like to start with the clause-by-clause consideration of Bill C-5. I would like to provide the members with some instructions and a few comments on how the committee will proceed with this.

As the name indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to a debate and a vote. If there is an amendment to the clause in question, I will recognize the member proposing it, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on. Amendments will be considered in the order by which they appear in the bill or in the package each member received from the clerk. Members should note that amendments must be submitted in writing to the clerk of the committee.

The chair will go slowly to allow all members to follow the proceedings properly.

Amendments have been given an alphanumeric number in the top right corner to indicate which party submitted them. There is no need for a seconder to move an amendment. Once moved, you will need unanimous consent to withdraw it.

During debate on an amendment, members are permitted to move subamendments. These subamendments must be submitted in writing. They do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time,

and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first. Then, another subamendment may be moved or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will vote on the title and the bill itself. An order to reprint the bill may be required if amendments are adopted, so that the House has a proper copy for use at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments as well as an indication of any deleted clauses.

Are there any questions? Are we all good to start?

We're fine. Okay, I will begin.

(On clause 1)

The Chair: Go ahead, Mr. Moore.

Hon. Rob Moore (Fundy Royal, CPC): Some of these clauses are similar, but I'm just wondering if the department can give us a brief description of the effect if we choose as a committee to adopt clause 1.

Mr. Andrew Di Manno (Counsel, Criminal Law Policy Section, Department of Justice): Subsection 84(5) of the Criminal Code directs that a conviction for certain offences in an earlier offence for the purpose of triggering increased mandatory minimum penalties applicable to second and subsequent offences.... This is for the offences of section 85, using a firearm, or imitation firearm, in the commission of an offence; section 95, possession of prohibited or restricted firearm with ammunition; section 99, weapons trafficking; section 100, possession for purpose of weapons trafficking; and section 103, importing or exporting knowing it is unauthorized.

Clause 1 would remove the references to subsections 85(3) and 95(2) from subsection 84(5), because these subsections will no longer have escalating MMPs. Clause 1 is a consequential amendment to clauses 2 and 4 of the bill.

Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice): I'll just add, Mr. Chair, for your consideration that, because it is consequential to other clauses in the bill, the decision on those other clauses would have an impact on this clause as well. For example, if you decide to pass some of the clauses that propose to repeal MMPs, then you would need to make this consequential amendment. If you choose to retain those MMPs, you would have to revisit whether this amendment is necessary as well.

The Chair: Go ahead, Mr. Moore.

Hon. Rob Moore: Mr. Chair, I want to just flesh this out a little bit because, frankly, in the context of the committee meetings we've had... We haven't had a ton of them. I think we had seven where we heard witnesses, and today's meeting is our eighth. Just for clarification, when we talk about the mandatory minimum penalties in these sections, this is on someone who has already been convicted of the same offence, so now they've been convicted twice of, for example, weapons trafficking or possession for the purpose of weapons trafficking.

Frankly, a lot of the discussion that happened and witness testimony at committee were couched in the terms that this was someone who got caught up in an unfortunate incident or someone who had a few drinks and shot the side of a barn. For this section, are we talking about, for sections 85, 95, 99, 100 and 103, someone who has this as their second offence? Is there a minimum on their first offence? Do any of these...? This says, "second or subsequent".

I guess I'm a bit familiar. In a previous government, when there was a mandatory minimum penalty of four years for certain gun crimes and because of the issue of recidivism, which is basically the same person committing the same types of crimes over and over, we brought in a change to the law that meant that, on your subsequent offence, it would be five years and then after that, seven. I think that's where it kind of landed. I think originally it was four, seven and 10, or something like that, but eventually it landed at four, five and seven, I think.

I just want the committee to be 100% clear, because I don't think it ever came up in our witness testimony. Are we only talking in this clause about someone who's already been convicted of a prior offence in the same section of the Criminal Code?

• (1540)

Mr. Matthew Taylor: This is a clause that really provides guidance to the courts as to when they're considering whether to impose a higher MMP because the conviction is a second or subsequent conviction. The offences listed in paragraphs 84(5)(a), (b) and (c) constitute a first offence for the purposes of determining whether the higher MMP would trigger.

Currently section 85 is use of a firearm in the commission of an offence, and section 95 is possession of a prohibited restricted firearm. Sections 99, 100 and 103 are trafficking and smuggling offences. If an individual has been convicted of one of those offences, the court would look to this provision. If they have a previous conviction, it's a broader list, sections 85, 95, 96 and 98. If they have a previous conviction for those offences, there would be a higher MMP imposed by virtue of this provision.

Hon. Rob Moore: I should be asking these through you, Chair, but I want to flesh out a couple of things here.

The list of offences that are subsequent is broader than the list of offences that predicate the triggering of the mandatory minimum. On those offences, for the first offence, is there a mandatory minimum attached to each and every one of those first offences? I think there is on some of them, but is there a mandatory minimum penalty at first offence for weapons trafficking and for possession for the purpose of weapons trafficking?

Mr. Matthew Taylor: Section 85 has a mandatory minimum.

Hon. Rob Moore: Can you go through it, if you have it in front of you?

Mr. Matthew Taylor: Sure. Section 85 does have mandatory minimum penalties. Section 95—

Hon. Rob Moore: Is the mandatory minimum in section 85, at first instance, one year?

Mr. Matthew Taylor: It's one year, and the subsequent is three years.

Section 95 did have mandatory minimum penalties, but they were found unconstitutional—

Hon. Rob Moore: They were struck down.

Mr. Matthew Taylor: —by the Supreme Court in Nur. Section 99 has mandatory minimum penalties of three and five years, I believe, for first and second or subsequent offences with firearms, and a one-year MMP for other things like prohibited or restricted weapons.

Section 100 is the same. It's possession for the purposes of trafficking, so it follows the same sentencing structure as section 99: three and five years for firearms, and one year for prohibited or restricted weapons.

Section 103 is the firearms smuggling offence—three and five years again, with one year for things other than firearms.

Hon. Rob Moore: This legislation touches on a lot of different offences. There are different offences, different impacts and, I would argue, different levels of seriousness. Obviously, they're all Criminal Code offences, but, no doubt, we as a committee may feel that some of them are more serious than others. Of those five you've been speaking about—85, 95, 99, 100 and 103—is it possession of a prohibited or restricted firearm with ammunition? I remember this case... Is that the only one of the five that has been challenged and the mandatory minimum found unconstitutional?

To follow up, could you walk us through why this discussion isn't moot? While the mandatory minimum in this narrow case was struck down, it remains a trigger for the escalation for subsequent offences. Is that why this conversation isn't moot, since the court, in that case, struck it down? While we know.... The government's own backgrounder suggested that, I think, mandatory minimums were struck down in 48% of cases, meaning that, in 52% of cases, they were upheld. We acknowledge there are cases where they've been struck down and there are cases where they've been considered and upheld.

Could you walk us through the effect of that one offence being struck down, and why it still matters in the context of this clause?

• (1545)

Mr. Matthew Taylor: In the Nur decision, the Supreme Court struck down the two MMPs for section 95, so there are no MMPs, currently.

To go back to an earlier question that was posed, there is constitutional jurisprudence on the other offences listed, with varying results. In some cases, provisions were upheld by the courts. In other cases, they were found unconstitutional. In terms of section 85, there have been appellate decisions where the MMPs were upheld. I should caution, though, that those decisions occurred before the Supreme Court's decision in Nur and its subsequent decision in Lloyd, which adjusted the interpretation of section 12 and constitutional jurisprudence.

On section 99 on weapons trafficking, there have been cases where it has been struck down as unconstitutional, as with section 100, Quebec Court of Appeal in 2019, and section 103, Quebec Court of Appeal in 2019. None of those cases went to the Supreme Court of Canada, but there is jurisprudence, as described.

Hon. Rob Moore: Thank you for answering all those questions really thoroughly.

Mr. Chair, on this, and I'm going to ask the committee.... All of us as members have an opportunity to vote on this clause. I look at these offences, and we are talking about recidivists with these offences. No one is arguing that we shouldn't do everything, our level best, at the federal level, with our provincial counterparts and at the municipal level. No one is arguing that we shouldn't do everything we can to help people and help them reintegrate into the community.

We have to recognize that at some point people are going to be back in the community and we should do our best to reintegrate them, but when I look at this list of offences, it's like they're pulled from the headlines of what we're dealing with right now in this country. Police chiefs.... We had witnesses at the committee who spoke about their own jurisdictions. Some of them were major municipalities. Some of them were the most rural places imaginable, and some of them were urban, suburban or first nations policing.

We heard from a variety of witnesses in policing. The evidence they gave us is that the types of firearms they're seeing, in both urban and rural settings, are not those of John Q. Duck Hunter, farmers and sport shooters. They're weapons and firearms that have come in largely from the U.S. They've been trafficked in. I see weapons trafficking as one of these offences. They are largely pro-

hibited weapons or restricted weapons. The people using them are not licensed. They're unlicensed.

What we have in these offences—and I'm speaking specifically of the offences in this clause—is that we're dealing with people who at no point have tried to comply with Canada's laws. All of us have people in our ridings who have complied. They're law-abiding firearms owners. First, they have a licence. They're licensed owners. Second, they've gone through proper channels. They didn't necessarily buy a handgun out of the trunk of someone's car. They went to a dealership and purchased a firearm legally.

The testimony we've heard over and over again at committee is that those are not the individuals who are creating the problem. Even while we were in committee, we heard—again, ripped from the headlines—stories of people using drones to take a bag of handguns from the U.S. and bring it across into Canada, presumably to be picked up by the criminal element here and distributed and sold and, at some point, very possibly used in a crime against an innocent Canadian.

We can have a debate about the role for mandatory prison sentences, and we've done that. We've gone around and we've heard from a lot of different witnesses, and we've heard from members of the committee, but I want us to look really carefully at this particular clause, because to me it's dealing with scenarios right now where Canadians are calling out for action. We're seeing it in New Brunswick, in Ontario and in Quebec. We're seeing it in every province. They're saying, "We need help." Rural crime is an issue, and urban crime is an issue.

We just saw that Mitch Marner, for Pete's sake, of the Maple Leafs, was robbed. I don't know all the details, but from what I read about the armed assailants, I will guarantee you that the people who robbed him didn't drive away in a pickup truck wearing fluorescent orange, with the shotgun they use for duck hunting. This is a criminal element.

I will also guarantee you that it probably wasn't their first offence. These are individuals who knew exactly what they were doing, and they carjacked Mitch Marner the same way that they've probably carjacked other people, and, yes, eventually someone's going to get killed in the process.

It's that kind of recidivism. It's that kind of wanton disregard for other Canadians, for innocent individuals. That's the reason these laws are in here.

• (1550)

We have to start from the premise that we have a Criminal Code in which we, as Parliament, have said that these are things that are bad. These are things that we don't want to happen in society, and there's a reason why some offences are dealt with summarily. Some offences are seen as less serious. For some offences in Canada you receive a monetary penalty, a fine. If you're speeding in New Brunswick, the fine might be \$168.

But if you have possession for the purpose of weapons trafficking, if you have importing and exporting, knowing it's unauthorized, if you're involved in weapons trafficking or using a firearm in the commission of an offence, these are the offences Canadians want us to deal with.

I'll leave it at that, Mr. Chair. I just want us to really take a sober look at these offences before we vote on them.

I do thank you again, Mr. Taylor, for very thorough responses to all those questions.

The Chair: Thank you, Mr. Moore.

Seeing no other debate, it will be a recorded vote, I assume.

Hon. Rob Moore: Yes. Can we get a recorded vote, please?

(Clause 1 agreed to: yeas 7; nays 5)

(On clause 2)

● (1555)

The Chair: On clause 2, we have a CPC-1. Are there any comments, or shall we go to the vote?

Hon. Rob Moore: Yes, I'll speak to amendment CPC-1 quickly, Mr. Chair.

The Chair: Sure, Mr. Moore.

Hon. Rob Moore: Recognizing that it seems to be the will of this committee, I don't want to be presumptuous, but based on the last vote it would appear that the mandatory minimums that are in place are at risk of being struck down, which, in my view, puts our communities at risk, particularly when there is a recidivist element and repeat offenders who are committing the same crimes and the same types of crimes over and over.

What our CPC-1 would do, in an effort to compromise, is reduce the mandatory minimum penalty from one year to six months. For virtually all of the minimums we deal with in Bill C-5 and Bill C-22, which came before it, I think the lowest minimum is one year. I don't think there were any that were below one year. Some of them were more than a year, but the majority of them were a year.

What this would do is acknowledge what appears to certainly be the will of this committee to deal with mandatory minimums but also acknowledge the cry from the public right now that there be real consequences for serious crime. This amendment would be an effort to extend the olive branch and say, if one year is too much, then six months would take someone off the streets, hopefully get them some of the help they need and also show that there is a level of confidence in our justice system that if you commit some of the serious firearms offences and other offences contained in Bill C-5, we as a Parliament say that if you commit an offence like that, there needs to be some period of incarceration.

This amendment would lower the mandatory minimum penalty from one year to six months for using a firearm in the commission of an offence.

The Chair: Thank you, Mr. Moore.

Mr. Garrison.

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

I have to say, Mr. Moore, by your own logic, this would make the Conservatives soft on crime, because you have always argued that the mandatory minimums do something to affect crime.

What we heard repeatedly from witnesses, and what we know from all of the peer-reviewed literature in criminology, is that mandatory minimums do nothing but increase jail time. They do not have a deterrent effect. They do not, by increasing jail time, make people less likely to offend. In fact, if anything, the literature shows that it makes people more likely to reoffend.

I think you're right in identifying that everybody around the table is interested in keeping the community safer and preventing more victims in our society. What we disagree on is whether mandatory minimums [*Technical difficulty—Editor*].

In this case, I'm of course going to vote against your amendment, because it restores a mandatory minimum that Bill C-5 would [*Technical difficulty—Editor*].

The Chair: Thank you, Mr. Garrison.

I have Ms. Brière, and then we have Mr. Morrison and Mr. Brock.

[*Translation*]

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

I agree with Mr. Garrison. It is not because we are removing the mandatory minimum sentences that the alleged offences will be taken less seriously and that the sentences will be less significant. In fact, we are giving judges greater judicial discretion.

We will therefore vote against the amendment.

● (1600)

[*English*]

The Chair: Thank you, Ms. Brière.

Next, we go to Mr. Brock.

Mr. Larry Brock (Brantford—Brant, CPC): Actually, it's Mr. Morrison.

The Chair: I couldn't see who I had first.

Mr. Morrison, go ahead.

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

When we talk about the witnesses we had, I think there were two groups of witnesses. We had people supporting offenders, which we need to look at, and I just gave a speech about that recently because I think that's very important. However, when we had the victims come in, it was certainly a black-and-white picture. The victims were certainly extremely upset, and they were upset with the whole bill.

I'm looking at the victim side of it. If we just drop the offenders, because victims should be first in my opinion and then we should look after the offenders, a period of six months, which is reasonable, still demonstrates to Canadians looking at public safety that we, as a government, are still interested in keeping our streets safe and supporting victims.

These are pretty serious offences. I would think, in a lot of cases, our judges would be handing out more than six months. It gives them the discretion to do more when the offence warrants it, but it also gives them the discretion to do the six months.

From what we had from witnesses, especially the victims, I feel we're missing the point of where Canadians stand if we start thinking that these violent offences are something we should be completely removing the mandatory minimum penalties for.

The Chair: Thank you, Mr. Morrison.

Mr. Brock.

Mr. Larry Brock: I want to start off by highlighting the talking points that the government repeatedly used when this bill was introduced at first reading and at second reading, what we've heard from the government committee members in their questioning of witnesses and, in particular, how the Attorney General, the highest legal officer in this country, has said that the whole purpose behind Bill C-5 is to make a significant step to once and for all address the overincarceration of indigenous offenders and other marginalized individuals in the country.

My colleague Mr. Naqvi, in his previous capacity as the Attorney General of Ontario, was my boss, and certainly in his tenure would give us instructions from time to time to be ever-cognizant of that particular fact and to look at ways in which prosecutors in Ontario—I can speak only for Ontario—would be afforded the additional tools to exercise the appropriate discretion. As Crown attorneys, we are vested with an enormous amount of power when we receive a case. When we receive a case, there's a Crown brief. There's an indication of what the accused's name is and what the offence is and perhaps a summary of the salient facts, but apart from a particular Crown attorney such as me being familiar with a surname that could be the same as that of an indigenous offender in my community or unless someone has experience as a prosecutor and knows repeat offenders, they may not know whether or not that particular accused falls within the class of individuals who this bill is designed to assist.

We take a position. We take a screening position as to what we believe the offence is worth, but through the process of the prosecution for an offence such as a section 85 offence.... For the non-lawyers on this committee, section 85 offences are most often committed in an armed robbery scenario. They are extremely violent offences that impact community safety. They're quite often committed as a result of an addiction someone has as a quick scheme to acquire money to feed that addiction, quite often targeting convenience stores and vulnerable members of our community. We take a very stern approach that this cries out for a significant denunciatory sentence. However, the process could take upwards of a few years to resolve. Quite often individuals charged with this offence will acquire defence counsel, and defence counsel will bring to the at-

tention of me or other Crown attorneys some of the other factors that we should be considering when we exercise our discretion.

This is a long, roundabout way of my saying to this committee that something no one has spoken about in the House, and something I have tried unsuccessfully many times to bring up, is that it completely ignores the discretion that Crowns in Ontario—and, I would like to think, across this country—have reflected and are doing in their work to ensure that we are addressing the overincarceration issue. When you're dealing with an offence like the ones in subsection 85(3), the serious nature of which I have highlighted—and this is to Mr. Garrison's point—with all due respect to Mr. Garrison, I completely disagree with his interjection, because a message must be sent to like-minded offenders. The sentencing provisions in the Criminal Code mandate principles that a judge must consider.

• (1605)

This is over and above factoring in the indigenous background or taking a look at the court of appeal decision in Morris, when you take a look at the impact of being a Black Canadian in an urban centre and whether or not that can be taken into consideration by a judge.

The fact of the matter is that there is much jurisprudence, and I'm sure my colleagues at the DOJ will back me up when I say that the predominant sentencing principles for this type of offence is denunciation, general and specific deterrence and, most importantly, separation from society. These are individuals who will not be getting a conditional sentence. These are individuals who, regardless of an indigenous or a Black background, will end up in jail. In my view, this sets the appropriate bar, sending out a message to like-minded individuals that should you engage in this activity, you're not going to "pass Go", to use the Monopoly metaphor. You are going to jail, no ifs, ands or buts. However, with Crown discretion, there are ways of adapting and taking a look at the overincarceration issue.

The last thing I want to highlight—and my DOJ colleagues can confirm this—is that this particular offence has been charter-proofed by the Ontario Court of Appeal 2013 decision of Meszaros, post-Nur, and the Al-Isawi decision by the British Columbia Court of Appeal in 2017. Both cases stood for the proposition that this particular section and the mandatory minimum penalties did not infringe upon section 12 of the charter.

Thank you, Chair.

The Chair: Thank you.

Mr. Cooper is next.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you very much, Mr. Chair.

I wish to speak in support of this amendment. I have to say that if it were a choice between maintaining the status quo or going where the Liberals and NDP want to go, which is to eliminate mandatory jail time for some pretty serious offences, including the very serious offence of using a firearm in the commission of an offence, I would prefer the status quo.

That is where I hope we arrive at, but looking at the submissions that were made by certain individuals who came before the committee, by the Liberals and the NDP, and hearing some of the comments made by my colleagues throughout the rather limited number of meetings that we have had, I'm not optimistic that we're going to go there.

Instead, it seems that, blinded by ideology, the Liberals and the NDP want to move full steam ahead and simply eliminate these mandatory jail times, despite some very compelling testimony from witnesses, witnesses who were victims of offences, including firearms offences, and from law enforcement.

So much testimony came before the committee calling on the members of this committee to put a pause on rolling back mandatory jail time for, specifically, firearms offences that I think it would be helpful to remind committee members of some of that testimony. There's a lot. It's tough to know, frankly, where to even begin.

For example, André Gélinas is a retired detective from the intelligence division of the Service de police de la Ville de Montréal. He said this in general about Bill C-5: "There will be no deterrence." He said, "The message this sends to the police who confront these criminals"—the criminals he's speaking of are criminals who go out and commit offences with firearms—"will only fuel discouragement and disengagement from these police officers."

Mr. Gélinas also said:

This does not bode well for our collective security. As a society, we are facing an abdication and a retreat that is certainly not a solution to the overrepresentation of the communities [supposedly] targeted by this bill.

He said, "People who live in neighbourhoods where gangs and organized groups are very active feel totally abandoned by Bill C-5." He also stated:

Just imagine how you would feel if you were the victim of an assault with a firearm.... I don't think you would feel any safer in your community knowing that this person would not be subject[ed] to...minimum...sanctions.

That was Mr. Gélinas, who has very extensive experience in law enforcement on the front lines, dealing with perpetrators who go out, who commit serious crimes with firearms, who undermine public safety and who terrorize communities and leave victims in their wake. He certainly said, as a starting point, don't go where you want to go, where the Liberals and NDP want to go. I agree with him.

Anie Samson is a municipal elected official and represents an ethnically and culturally diverse area in Montreal that has been hit hard by firearms crimes perpetrated by criminals who use illegal firearms. She said before our committee that, "[These] weapons have destroyed families, friendships and lives." She also said, "The message being sent at present is that because certain mandatory minimum sentences have been abolished, a criminal can commit a crime and get a reduced sentence, while the victim may be traumatized for the rest of their life."

• (1610)

Stéphane Wall, another retired police officer, again from the city of Montreal, said—again, generally about Bill C-5 as it pertains to firearms offences—that Bill C-5 would "trivialize" the possession of arms for further use in criminal activities. It would give the

"wrong message" to these criminals. She said, she didn't think this would coincide with the reality as we find it in the streets.

Members of street gangs already feel completely immune prepassage. They are going to be supported in a number of crimes. They are already laughing at the justice system. They just mock it

Then there is Sergeant Michael Rowe, who came before the committee representing the Canadian Association of Chiefs of Police. I saw the Minister of Public Safety earlier today, or perhaps it was yesterday, citing the Canadian Association of Chiefs of Police in answer to a question in question period. Sergeant Rowe said:

For police officers, victims of crime, members of the public and even the offenders themselves, the circumstances that result in a criminal charge for most firearms offences often result in a real threat to public safety, exposure to stress and trauma that has a lasting impact on mental health and the erosion of public safety.

In that regard he spoke and raised serious concerns about mandatory jail sentences being rolled back by Bill C-5.

As Mr. Brock noted, when we're talking about individuals who are charged under this particular section, we're not talking about folks who are going to walk away with a conditional sentence. We're talking about folks who are going to be spending some time behind bars in most cases.

Having regard for the evidence that came before our committee about the prevalence of illegal firearms and the fact that crimes are being committed by people who are often involved in gangs and organized crime.... Having regard for the fact that these witnesses told us that, as it currently stands, there is a need to provide for denunciation, and having regard for the impact that these types of offences have on victims and on the collective sense of security in communities, particularly communities that have a wide array of social issues, this is not where I'd like to go, but again, it is a matter of saying there should be at least some maintenance, some assurance that if someone goes out and commits the crime using a firearm in the commission of an offence, there ought to be, at the very least, a mandatory jail time, at least some preservation of that, and that's what this amendment does.

• (1615)

On that basis, given where this committee appears to be going, I think it's.... I hate to use the word "compromise", but that's essentially what it is, to maintain at least some level of accountability in place.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Cooper.

Go ahead, Mr. Moore.

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

Just quickly on this, in the context of the debate on Bill C-5 and Bill C-22 before it, this is not to be partisan in any way, but to illustrate that the idea of the concept of Parliament sending a clear message to Canadians, to victims, to criminals and, yes, to the judges presiding over sentencing, is not a Conservative notion in some way exclusively.

Before we take what I think is a drastic step and possibly eliminate a mandatory prison sentence for some of these section 85 offences on using a firearm in the commission of an offence, I want to quickly note that the minimum was first introduced as far back as 1976. In 1976 and forward since then, some of these have been on the books. That doesn't mean we can never make changes—I get that—but some of these sections have lived on through Liberal governments, Conservative governments and so on, all of them agreeing to keep these provisions in place, and all the while, these provisions, although challenged, many of them were upheld.

I think it's important to contextualize that, because if you listen to the debate, you would think that all of these mandatory minimums—I'm kind of lumping a bunch of them together here—somehow came from the previous Conservative government when, in fact, I've taken the time to look at all of the mandatory minimums being eliminated, and virtually all of them pre-existed the previous Conservative government.

In fact, on the mandatory minimums that we brought in under the Safe Streets and Communities Act or previous legislation, the current government has chosen to keep those on the books, to not eliminate them.

It's important, before we make a change like this, to recognize that some of these have been on the books for the better part of 50 years. It's not something that just is a recent invention but something that we should really consider really very weightily as we deliberate on each of these clauses and on removing what could amount to the only barrier between someone who has committed a serious offence and their being right back out on the street.

Thank you, Mr. Chair.

• (1620)

The Chair: Thank you, Mr. Moore.

Shall Conservative amendment number one carry?

An hon. member: I ask for a recorded vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 2 agreed to: yeas 7; nays 4)

(On clause 3)

The Chair: For clause 3, we have amendment CPC-2.

• (1625)

Hon. Rob Moore: I will speak to that really quickly.

For this section of the code, what our amendment would do, again, is replace the one-year mandatory minimum with a six-month mandatory minimum.

Mr. Cooper reminded me of something that I think is important that I put on the record. In no way, shape or form would I want anyone to think that I think the mandatory minimum should be reduced in these serious firearms cases. What we're attempting to do is to salvage some form of statement from Parliament denouncing the very serious firearms offences we're talking about here.

These are current in the case of a first offence under Section 92(3):

Every person who commits an offence under subsection (1) or (2) is guilty of an indictable offence and liable

(a) in the case of a first offence, to imprisonment for a term not exceeding ten years;

(b) in the case of a second offence, to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; and

(c) in the case of a third or subsequent offence, to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of two years less a day.

I think we are talking here about some of the serious firearms offences that we're seeing in the headlines today. Just to be clear, we're talking about the commission of an offence with a firearm and these are some of the more serious offences. Not all of these are exactly the same. There's not just a series of mandatory minimums that this Bill C-5 eliminates. We have to put each and every one of them into context.

We have seen two clauses carry. I'm hopeful that on some of these clauses we might take a look at what the impact is, and we might give that some thought and say, "Do you know what? In this case, we should maintain a clause that perhaps has been in the Criminal Code for half a century."

I'm going to ask a question of our witnesses to walk us through the process under this particular section, because I want to draw to the attention of the committee the fact that the minimum punishment in the present section is only triggered on a subsequent offence. The escalated minimum punishment, a term of imprisonment for two years less a day, is only triggered by a third offence.

We heard testimony from police, from community members and from victims' groups that their concern is not with the one-time offender, the person who innocently got caught up with a bad crowd and committed an offence. What we're talking about here is an individual who is deeply involved in serious crimes that, by definition, cause harm to their fellow Canadians.

It's bad enough to be charged and found guilty of one offence, but even at that threshold, it's not until you get to a second offence.... You have committed a crime under this section. Now you have gotten out. You have committed the same crime. You victimized another Canadian, and only now are we saying, "Okay, now you need to serve one year in prison." It's one year in prison, and that's not after the first offence. That's after the second offence.

• (1630)

Now, picture that same individual. They have been found guilty twice of a serious firearms offence that involves the victimization of fellow Canadians in our communities, whether rural or urban. They were out again on the street, having been afforded the opportunity for rehabilitation and course correction. Now there's a subsequent third offence, for which they have been found guilty under our Criminal Code with the full benefit of our Charter of Rights and the full benefit of a fulsome defence under our charter. They've been found guilty a third time, and all we are saying as a Parliament is that for a serious firearms offence involving victimizing other Canadians, there should be a minimum of two years. Even that is being stripped from our Criminal Code by Bill C-5.

The reason I'm speaking about this, Mr. Chair, is that I think it's really important for committee members to think about it, because I know not all of us dwell on each of these clauses every day. We're all busy. We all have constituents. We have people who are calling in because the passport they went to get back in February still hasn't arrived. The point is that we're all busy people and we all have diverse challenges, and I think this is that moment—when we're at this table—when we draw our attention to the really profound impact that we have on Canadians' lives through the Criminal Code.

We heard witness testimony from victims. It was bothersome sometimes when some witnesses came and spoke for their introduction but they never mentioned victims. In virtually all of these cases, there's a victim involved. When we listen to the victims, of course.... I will not deny that when we listen to the criminal defence bar, they say, "Get rid of these mandatory minimums that are so troubling to my client. We don't want them." However, when we listened to victims, they said it's an absolute affront to them that we would reduce the mandatory sentence that the person who victimized them would receive.

The question I have, through you, Chair, to our witnesses, is to distinguish subsection 92(3) from some of the others, so that the minimums we're dealing with here are not for first-time offenders, but for repeat offenders who, in some cases, are on their third offence.

The other thing I'll say.... I throw this out to committee members. I mentioned the case that we just heard about with NHL star Mitch Marner and the carjacking that happened. Do you know what? He's no more important than every other Canadian. The only reason we're talking about that is because we all know who he is. He's famous. What about the people who aren't Mitch Marner who had their car jacked from the same parking lot the week before? They're important too. They're Canadians too.

The point I'm going to make, and I'm guessing it's 100% true, is that if someone was convicted a first time, they committed an offence. They were caught by the police, had a trial, were found guilty and sentenced, and then there was a second time and a third time. If I asked every one of these committee members if they truly believe that those are the only three significant Criminal Code offences that this individual had committed, I don't think anyone would say they believe that.

These are the ones people are caught doing. It's one thing to get caught. It's another thing to get convicted under our system. They've been caught and convicted not once, not twice, but three times. Those are the minimums we're talking about.

Through you, Chair, to our witness, could you walk us through this clause and its application a bit? What are the triggers at each stage and the consequence of those triggers?

• (1635)

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Mr. Chair, I have a quick point of clarification.

I'm getting a little confused here. I'm wondering if we could separate the questions from the debate. If there is a question, maybe we could pose that first and then debate, or vice versa. Going into a discussion and then a question makes this confusing. Frankly, it may not be the best way to move forward.

The Chair: Thank you, Mr. Anandasangaree.

Thank you, Mr. Moore.

You're able to ask questions however you want. However, I think when you're making statements, then asking a question and then making a statement, it might be confusing for the witnesses just to make the statement at the other—

Hon. Rob Moore: Next time I'll ask a question, make a statement, then go back to the question and then a statement.

The Chair: We'll go over to the witness.

Mr. Matthew Taylor: I'll be very quick. Mr. Moore accurately described the sentencing implications. On a first offence, there is no mandatory minimum penalty prescribed. On a second offence, there is the mandatory minimum penalty of one year, and on a third offence, there's a term of two years less a day mandatory minimum penalty.

This offence targets, in short form, illegal possession of certain things. With respect to firearms, where somebody possesses a firearm and they know that they don't have the necessary paperwork to possess it, that's the offence that's targeted here. It also targets things like possession of prohibited or restricted weapons, and those are itemized in regulations enacted under the Criminal Code. It could be things like butterfly knives or ninja stars and things like that. That's the purpose of section 92.

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

My question part is over. You've answered it thoroughly and I appreciate the answer. Now, I'll go back to my point.

Every day in the House of Commons for the last number of weeks, the subject of gun crime has been coming up. No matter what newspaper you read, radio station you listen to or social media you engage with, you're hearing about firearms crime in Canada. We're dealing here with individuals who are in illegal possession of firearms, not by mistake but because they're engaged in criminal activity.

I should remind the committee that this deals with the very issue that Canadians are asking us to grapple with, which is illegal firearms in Canada and the possession of those illegal firearms by criminal elements. It's not duck hunters, sport shooters nor the poor guy who maybe inherited a firearm from his grandfather. They've jumped through hoops to get licensed, do safe storage, have a licence if they have to buy ammunition and are subject to the full weight of the law. We're talking about people who are flooding our streets with illegal firearms.

We know they come in vehicles across the border. We know they get smuggled across the border otherwise. I hadn't thought of this, but the law's always playing catch-up with criminals: We know, in fact, that they've used a drone to drop a bag of handguns from the U.S. into Canada.

That's how some of the people who are going to be convicted under this section will have come into possession of these illegal firearms. By definition, these people are in illegal possession of the firearm, meaning they're not licensed and they're restricted in Canada.

Gary, I guess there's a bit of argument, but you used to have to have a registration on a non-restricted firearm. That was called the long-gun registry. It was supposed to cost \$2 million. I think it ended up costing \$2 billion. This is important because a previous Conservative government ended the long-gun registry because it was targeting the exact wrong people.

It is my philosophy—and I think it's the philosophy of those on this side—that if you have a crime problem, you go after criminals. When I saw in my own riding senior citizens lining up to get their firearms licence, I thought to myself, “How is this making Canada a safer place?” If someone's going to line up for an hour to get a firearms licence so they can possess a firearm—a shotgun or a rifle that they inherited—how on earth is that making Canada safer?

That was the gun registry legislation. We committed to ending the long-gun registry. We did that and Canadians are better off for it. We're all better off for it because in spite of all the money that's spent globally right now with the pandemic and everything, there are finite resources. Dollars that we spend at the federal level chasing good guys are dollars that can't be spent chasing bad guys. We heard all kinds of witness testimony on this from police that said they're under-resourced. They don't have the resources sometimes to go after the bad guys.

I want to juxtapose what I just said about legislation that goes after the good guys. This legislation that we have before us, subsection 92(3) of the Criminal Code, is all about the bad guys. These are people who haven't got it right the first, second and now third time.

In light of everything, I would urge real caution. Think about what we're saying. We're saying that we, as parliamentarians, think that you can be in illegal possession of a handgun in Canada—a restricted, not licensed weapon—you can be found guilty of that, and you could possibly not go to jail. A month later, you could do the same thing and go before the courts, be found guilty and not go to jail. Then, a month after that, theoretically, you could do the exact same thing.

• (1640)

What I'm starting to hear is a message—and it's the message we heard from witnesses, which they didn't want us to send—that you can get away with crime in Canada. You can get away with gun crime. Illegal guns are part of gun crime, and this section is all about illegal guns.

I'm urging extreme caution before we vote on clause 3. Think about the message we're sending not only to the criminal element—they're getting the message loud and clear that you can do whatever the heck you want and not face a consequence under this bill—but also to the people who have been victims of gun crime. I don't need to explain this to you. It's in every one of our newspapers. There are victims of gun crime every day now in Canada.

I would strongly urge members to vote against clause 3.

The Chair: Go ahead, Mr. Brock, followed by Mr. Morrison and Mr. Cooper.

Mr. Larry Brock: I can't highlight enough the import of my colleague Mr. Moore's commentary on the nature of this particular offence. Actually, where I disagree just a bit with my colleague is... He made a reference—I don't know if it was a reference to this particular section or about firearms in general—to firearms generally having a victim component. I view this more in a regulatory format, as opposed to a victim-centred type of offence.

That's the beginning of my discussion, Mr. Chair.

I do have a question. Maybe I should put it to the DOJ witnesses first.

In the amount of time I had to prepare for today's meeting, I didn't have an opportunity to do any charter-compliant research on this particular section. Are either of you aware of the jurisprudence across the country at the appellate level, where this section has been charter-proofed?

• (1645)

Mr. Matthew Taylor: I only have limited information. I do have one lower court decision—it's a bit dated—that found the provision unconstitutional, but I don't have the specifics on whether it was for the second or third offence. We'd have to do some more digging on that.

Mr. Larry Brock: Is it a lower court decision in a particular province?

Mr. Matthew Taylor: It's a lower Ontario court decision.

Mr. Larry Brock: The other aspect—and I'll move on to debate—is that, unless you're living under the proverbial rock, people in this country know that, when you're in possession of a weapon, it is a highly regulated device. In fact, Canada leads the world in terms of the licensing requirements: the courses that you have to take, the costs associated with them, the rules and regulations with respect to purchasing the firearm, registration of that, transporting that from the place of purchase to your home, the storage, the makeup of the container in which you store it and the separation of weapon and ammunition. All of that is widely known across this country. The reason this is important for this committee to hear is that I heard, as a new parliamentarian, when this bill was introduced that it was targeting the low-risk, first-time offender. This isn't what section 92 talks about.

In fact, just today in question period, my colleague Mr. Anandasangaree talked about not punishing those first-time offenders, those low-risk offenders. There is a built-in safety mechanism already legislated in the Criminal Code. A first-time offender, to Gary's point, the the Attorney General's point, to the Minister of Public Safety's point, the points of all the other ministers I've heard from, the back bench I've heard from.... There is a built-in safety mechanism, because a first-time offender who finds himself mysteriously in possession of a weapon, loaded or not, without being a licensed holder, which could attract the attention of the police and hence a charge, is not going to jail on a first offence.

The section talks about the maximum being 10 years. The language in the case of a first offence to imprisonment for a term not exceeding 10 years should never be synonymous to the non-lawyers on this committee as being applicable to a starting point of jail. It doesn't talk about that, and in my version of the Criminal Code...and I always use Tremear's because I find it extremely helpful. There are annotations, case law, charter analysis—

Mr. Gary Anandasangaree: I prefer the Martin's version.

Mr. Larry Brock: There is a section in my code—and I don't think Martin's has this so you may want to reconsider this, Gary—that's an offence table. Mr. Naqvi can appreciate this. Whenever you look at an obscure offence...and I'll be the first to admit there are a lot of firearm offences and they're nuanced. You have to be very careful with the language and in terms of how you screen a file to see what options you have available to you.

Under the offence table for this particular matter, it says that a first-time offender, for this particular section, is eligible for a conditional or an absolute discharge, the most lenient of sentencing options available to judges across this country. That way, if someone asks a person, “Do you have a criminal record?”, the person can respond lawfully, “No, I do not.” The only exception would be if a person were to ask or an employer were to ask, “Have you been convicted of a criminal offence?”, then the person would be lawfully required to say, “I have been discharged.”

That is available. Moving up the ladder of offences for a first-time offender is a suspended sentence, which is commonly known as probation. You mind your Ps and Qs, don't engage in any further criminal activity and, depending on the length of that suspended sentence, your sentence is complete. There's a fine. There's no minimum and no maximum fine. There's a fine and probation or the conditional sentence, which we know Bill C-5 talks about.

Again to my point and to reiterate and highlight and support my colleague Mr. Moore, the section already achieves what Bill C-5 is designed to do and, in particular, with respect to the emphasis and the talking points to try to reduce the overincarceration, there is a built-in safety mechanism already in place.

Thank you, Mr. Chair.

• (1650)

The Chair: Thank you, Mr. Brock.

We go now to Mr. Morrison.

Mr. Rob Morrison: Thank you, Mr. Chair.

There are a couple of things. One, I'm not disagreeing with Mr. Brock, but I know from my history in policing that there are some people who don't know what a prohibited firearm is and some people might have a handgun and not realize that it's prohibited. That's a possibility on a first offence. With respect to the clause we're discussing right now, I can understand a first offence not having a mandatory minimum. I totally understand that.

On the second or even the third offence, a serious offence, I couldn't imagine myself going to my rural community, standing up and saying to the people who are there, who have been victims or who are afraid, “Oh, by the way, we parliamentarians just struck down and we don't feel there's any need to have a mandatory minimum penalty for someone who's convicted three times of having a prohibited firearm.” I just can't imagine anyone here going home and saying, “We had a great day in Parliament today. We just decided that we wouldn't have mandatory minimums on a third offence.”

I don't even know why we need to discuss this. We should be able to vote on this without even thinking about it. Of course there should be a mandatory minimum for the third offence.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Morrison.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

The fact that the Liberals are repealing mandatory jail time in respect to this particular Criminal Code section, which deals with mandatory jail time for not first-time offenders, as Mr. Moore, Mr. Brock and Mr. Morrison have pointed out, but persons who were convicted twice and subsequent times of a serious firearms offence, means that Bill C-5 is not as advertised.

The Liberals had advertised this bill as being about first-time offenders, people who make a mistake and might have been caught in the wrong set of circumstances. In those cases, rehabilitation and seeing that such persons are not incarcerated might be a better course, but, Mr. Chair, that isn't what this section deals with. This section deals with mandatory jail time for a serious offence of persons who were convicted more than once. It's not a case of a one-off. It's not a case of someone just making a mistake. It's not a case of someone who was caught in the wrong place at the wrong time. It's a case that provides for mandatory jail time for recidivists.

It's interesting, on this theme of Bill C-5 not being as advertised, with the Liberals saying one thing and doing another, we have a government that likes to talk a lot about firearms. They obsess about firearms. There's good reason to be concerned about firearms being used out on the street by people involved in gangs and organized crime that have impacted and undermined the safety and security of our communities.

One would think that if one is concerned about public safety that one would go after folks who go out and commit serious firearms offences, who commit crimes with guns. The Liberals take exactly the opposite approach. Their approach is to go after law-abiding firearms owners while giving those who go out and commit crimes with guns a free pass. That's what this rollback, this repeal of this particular section of the Criminal Code with respect to the mandatory jail time provided for in it, would do. It would give criminals a free pass.

There is some level of consistency with the Liberals. In the last Parliament, my former colleague Bob Saroya introduced Bill C-238. Bill C-238 would have increased mandatory jail time for criminals convicted for being in known possession of smuggled firearms. We hear about the fact that most of the firearms that are used in the commission of firearms offences are smuggled, illegal firearms from the United States—around 80% or so. Bill C-238 would have demanded increased accountability, but the Liberals defeated Bob Saroya's legislation.

• (1655)

I think some are newer members, but others are not. One thing about Bob Saroya is that he always was a tireless advocate for his constituents. He represented a part of Toronto that had experienced serious issues with firearms-related crime. He put forward a common-sense bill to hold criminals accountable—criminals who are knowingly in possession of smuggled firearms—having regard for the fact that smuggled firearms are really the root of the problem when it comes to firearms crime.

What did the Liberals do? Being soft on crime, they voted against it. Now, consistent with that soft-on-crime approach, they want to eliminate mandatory jail time for those who are in knowing possession of an unauthorized firearm, for criminals who are convicted not on their first offence but on their second and subsequent offence.

It underscores, Mr. Chair, just how misplaced the priorities of this Liberal government are and how their rhetoric doesn't align with their actions. They talk a good game and a lot of Canadians buy into it. When one actually looks at what they put forward in the way of legislation or how they respond to legislation introduced by

then-Conservative member of Parliament Bob Saroya, it's very different from what you would think they would do based upon what they portray in public, on the campaign trail and in their talking points.

Mr. Chair, again, it's a case of a bill that is not as advertised. It's a further example of how misplaced the priorities of the Liberals are.

We as Conservatives believe that firearms aren't the issue, but those who go out and commit crimes with firearms are the issue. That was repeatedly emphasized at committee by law enforcement. Several witnesses were asked that question and in every instance they said that was the problem, but the Liberals want to go after the people who obey the law. They're not really interested in dealing with those who are recidivists, who commit offences and who intentionally and knowingly possess smuggled or unauthorized firearms.

Mr. Chair, I'm hopeful that the members opposite will spend some time and really reflect on what is happening. I would encourage them because I don't think we're going to get through the clauses in the 25 minutes that we have left today. I would really encourage the members opposite to spend some time going through the testimony of what some of our witnesses who came before the committee—from law enforcement and victims—had to say about the impact that firearms-related offences have. Then they could ask themselves how eliminating mandatory jail time for criminals who commit two, three or four offences helps and makes sense.

• (1700)

I would be very interested in hearing how they would say that does make sense and how it squares with their false advertising that this bill targets people who were caught up in the wrong place at the wrong time and who made a one-off mistake. This specific rollback mandatory jail sentence in terms of subsection 92(3) is not an example of that. It's quite the opposite.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Cooper.

Next is Mr. Brock.

Mr. Larry Brock: Mr. Chair, briefly, I put to the Department of Justice witnesses whether or not they were aware of any appellate case law that dealt with a charter-compliant consideration with respect to this section. They referenced one lower court decision in Ontario.

My suggestion is that we adjourn debate and voting on that particular clause until such time as that particular case is tabled for consideration, because one of the issues addressing one of the witness's comments was that he was unaware whether or not that decision spoke to charter compliance with respect to the second or subsequent offence issue. I think it's important for this committee to have that information before us.

• (1705)

The Chair: I'm told that the only way we can move forward with that is if we have unanimous consent to postpone.

Do we have unanimous consent to postpone?

An hon. member: No.

Hon. Rob Moore: On a point of clarification, Chair, do we need unanimous consent to skip a clause? Do we have to go sequentially? We couldn't move on to clause 4 if they're not related...?

The Chair: Mr. Brock, I'm told that it's by majority to skip over. We would have to have a vote if we want to skip over this motion, go to the next motion and then study this clause and this amendment afterwards.

If you like, we can take a vote to skip.

Hon. Rob Moore: Chair, I think it probably wouldn't take a ton of time to get that information for our next meeting, so I would think that we should skip clause 3, move to clause 4 and come back to clause 3 at our next meeting.

The Chair: We can go to a vote.

Mr. Michael Cooper: I would request a roll call.

Mr. Larry Brock: Before we do that, can I get some clarification under what authority the clerks are referencing that particular clause?

The Chair: It's under chapter 16, "The Legislative Process". I think it's on page 767, under "Clauses Allowed to Stand":

The committee may, by motion, decide to stand a clause, or a group of consecutive clauses en bloc. Debate on a motion to postpone consideration of a clause is limited to the issue of postponement, and may not touch upon the merits of the bill or of the clause in question. Unless provision to the contrary is made in the motion, clauses which were allowed to stand are considered after all the other clauses of the bill have been disposed of.

Mr. Larry Brock: Thank you.

The Chair: We will have a recorded vote of all those in favour of postponing hearing clause 3 and its amendment.

(Motion negatived: nays 7; yeas 4)

The Chair: We'll now go to a vote on Conservative amendment 2.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 3 agreed to: yeas 7; nays 4)

(Clause 4 agreed to: yeas 11; nays 0)

(On clause 5)

● (1710)

The Chair: On clause 5, we have Conservative amendment 3.

Go ahead, Mr. Moore.

Hon. Rob Moore: Clause 5 deals with prohibiting the possession of a firearm, a prohibited or restricted weapon, a prohibited device or any prohibited ammunition "that the person knows was obtained by the commission" of an offence. This makes it very different from some other clauses that we have dealt with and that we will deal with in Bill C-5. This is not just the possession of a prohibited weapon. It's possession of a prohibited weapon that the person knows was obtained in the commission of an offence.

I think that is an important distinction to make. There is a mandatory minimum penalty currently of one year for offenders

convicted on this offence when prosecuted by indictment. The same mandatory minimum does not apply if someone is not prosecuted by indictment but is prosecuted by a summary conviction.

I think a distinction has to be made here between this and other clauses, in that "the person knows was obtained by the commission" of an offence is a higher threshold to meet than just being in simple possession—we'll call it that, because that term gets tossed around a lot—of a prohibited or restricted weapon. In this case, the person knows that it was obtained by the commission of an offence.

Now, you may wonder, since I support our having a mandatory minimum penalty in this case.... It seems abundantly clear that there should be one. Our amendment would reduce the mandatory minimum from "one year" to "six months". The reason I am proposing this is that, as we've seen as we've gone through this clause-by-clause, all the mandatory minimums that have been in the Criminal Code dealing with firearms offences that Bill C-5 has thus far dealt with have been eliminated. The Conservative amendment would maintain a six-month minimum for possession of a firearm while knowing its possession is unauthorized. I think that is a really important distinction to make.

That is my commentary, through you, Chair, to Gary. That's the commentary part. I do have a question, though. I'm going to make that distinction.

Through you, Chair, I'm wondering if our witnesses could comment on whether there is an awareness on that additional threshold, and on how prosecution and police go about meeting that threshold, when this goes beyond other sections in that, first, you have to prove the person was in possession, under the law, of the prohibited weapon, but, second, for a conviction under this section, you have to go further and prove that the person knows it was obtained in the commission of an offence.

Could either of our witnesses walk us through that process? Again, I'm trying to draw the distinction between this and the other section, where a person may have no idea that the weapon was in their possession as the result of an offence. This has another threshold to meet.

I'm just asking if they could speak to that.

● (1715)

Mr. Matthew Taylor: Thank you for the question.

Mr. Moore is right in the sense that section 96 has that additional element. The Crown has to establish knowledge on the part of the accused that the thing they possess is illegal and it was obtained by crime. Knowledge includes wilful blindness. Knowledge can be established through circumstantial evidence. It is a requirement that the Crown would have to establish as well some information to show that the accused knew that the thing they possessed was, for example, a prohibited weapon or a restricted weapon.

Hon. Rob Moore: Through you, Chair, I have just one last question.

You mentioned the legal element of “wilful blindness”. I think people understand that, okay, you absolutely know that this was possession of a weapon “obtained by the commission” of an offence. You could establish that someone knew, or ought to know, that.

Could you speak to the element of wilful blindness or, if possible, even use a scenario whereby someone would be wilfully blind? I'm thinking of scenarios, but could you speak to the scenario where someone is wilfully blind to the fact that what they are in possession of came about through the commission of an offence?

Mr. Matthew Taylor: Wilful blindness as a mental element requires some evidence that the accused deliberately refused to make further inquiries. A scenario might be where somebody offers to sell this individual a thing and their suspicion is aroused, and they deliberately choose not to inquire further to assess the legality of the thing that's being offered to them in those situations.

Hon. Rob Moore: Thank you.

The Chair: Thank you, Mr. Moore.

Shall Conservative amendment 3 carry?

Mr. Larry Brock: No, we still have—

The Chair: I didn't see any hands raised.

Go ahead, Mr. Brock. I'm sorry.

Mr. Larry Brock: Again, to the Department of Justice officials, has there been any research done with respect to charter compliance?

Mr. Andrew Di Manno: The MMPs that would be removed through this amendment have been previously held to be unconstitutional, including in a case *R. v. Robertson*, 2020 BCCA 65. That's the reference.

• (1720)

Mr. Larry Brock: You said it was unconstitutional.

Mr. Andrew Di Manno: It was unconstitutional.

Mr. Larry Brock: What section?

Mr. Andrew Di Manno: It's section 96.

Mr. Larry Brock: No, what section of the charter did it infringe upon?

Mr. Matthew Taylor: It would be section 12.

Mr. Larry Brock: Was there only one court of appeal decision in British Columbia?

Mr. Matthew Taylor: That's the information we have available with us now. There may be others, but we don't have that information.

Mr. Larry Brock: When was the mandatory minimum created?

Mr. Matthew Taylor: This one was enacted in 1995 in the Firearms Act amendments.

Mr. Larry Brock: That was in 1995, under a Liberal government. Were there any appellate decisions, apart from British Columbia, where it's been constitutionally tested and it passed and was upheld?

Mr. Matthew Taylor: With the information I have, I don't have any other appellate decisions that have upheld its constitutionality. I

have some other, earlier lower court decisions predating *Nur* and *Lloyd* that were upheld in Ontario and in British Columbia in 2004, 2010 and 2016. I also have a B.C. case in 2018, which would have predated the decision that my colleague spoke to you about. A 2017 Ontario lower court struck the MMP as well.

Mr. Larry Brock: In your responses to my colleague Mr. Moore about wilful blindness, there is also a concept of simply being reckless in terms of the origin of the weapon. Do you put the term “reckless” along the same continuum of wilful blindness in the context of the mental element that is required for the prosecution to prove?

Mr. Matthew Taylor: Recklessness is a slightly different mental element. It's similar to wilful blindness. Because the provision doesn't speak to recklessness, it isn't an essential element of the offence. Recklessness requires somebody to appreciate the risk. In this case, they have a strong sense that the thing they possess was obtained by crime and they don't care. That is the difference between recklessness and wilful blindness. There's that subjective thought process that goes on.

Mr. Larry Brock: Would you disagree with the commentary in my *2021 Annotated Tremear's Criminal Code*? It that says that:

The critical feature of the mental element [in this offence] is knowledge. [The defendant] must know or be reckless with respect to the characteristics of the weapon that make it a firearm or other regulated item. [The defendant] must know or be reckless with respect to the spurious origins of the property, though not the legal character of the predicate offence. No ulterior mental element is required.

Is that a phrase and description that you would agree with, based on your legal knowledge?

Mr. Matthew Taylor: If the courts have read in recklessness to those distinct elements, then yes. However, as a general matter in criminal law, if essential elements are stipulated—in this case they are knowledge and wilful blindness as a substitute for knowledge—because criminal law is significant legislation in terms of its impacts on the citizenry, courts typically interpret criminal law statutes narrowly. That said, if you have case citations that have interpreted it broadly—

Mr. Larry Brock: That's why I asked you. If I had case citations, I would make reference to them for the committee. Sometimes I have citations in this version, and sometimes I don't.

Those are the questions, Mr. Chair.

Now I want to move on to debate.

In addition to my previous comments about clause 3, there is a feature of section 96 that affords the prosecution discretion. I will highlight discretion throughout much of my commentary, because I think it's important to drive home this message, particularly when you hear a consistent message from the government that this bill is to address the overincarceration of indigenous and other marginalized individuals, and to give a break to the first-time or low-risk offender.

They never talk about recidivism. We as Conservatives do that and, to a certain degree, the Bloc does. That's where our concern lies as a Conservative team. Our focus is on the protection of our communities from coast to coast to coast. It's no wonder, when I post various messages on my social media—either as a result of interviewing witnesses at this committee or making statements about some of the weaknesses of this particular bill—that I get a flurry of messages from across the country, and from many parts of the United States, about it being high time a Conservative or Canadian politician actually put the needs of the community before the needs of the offender. I didn't think it would be that much of a stretch, for my colleagues across the floor and beside the Conservative bench, to understand that we have a dual purpose here as legislators to try to improve the law to assist Canadians and to assist those who find themselves in conflict with the law, particularly “first-time offenders”, to use the words of the Liberal government.

This section contemplates that. It contemplates the very scenario the Attorney General made the very first time this bill was introduced at first reading. He said, to the entire House—and I'm paraphrasing and this is not an exact quote—to imagine a scenario where a person decides to have a few pops on a Saturday night. For the benefit of my colleagues who may have sensitive ears, we're not talking about Pepsi. We're talking about alcoholic pops. That person finds himself in possession of a loaded gun and decides to shoot wildly into a barn. He asked how you would feel if that were your child making the mistake of having too much to drink, finding a gun—not even considering for one minute that maybe it was acquired through the commission of an offence—and choosing to discharge that weapon into a barn, not knowing whether there happened to be any farmers or farmhands inside the barn, or animals for that matter.

He used that example to highlight the import of this particular bill and the significance of trying to distinguish a first-time offender from a seasoned, dangerous criminal, one who finds himself or herself in possession of a weapon and shoots wildly, not knowing about the dangers this might present. Section 96 contemplates that.

• (1725)

Section 96 is a hybrid offence where the Crown has the option to take a look at all the circumstances of the offence, to take a look at that person who had a few too many pops and found himself for the very first time in possession of a loaded weapon and shot wildly into a barn. If that person happened to be an indigenous male from my riding on the Six Nations of the Grand River, the very largest first nation in all of Canada, a first nation that I'm very close to, fond of and fight hard for every day as a politician to ensure that the inequities on that reserve are addressed at a federal level and that I worked hard for every day as a Crown prosecutor to take appropriate steps to address the issue of overincarceration, I now have the tools already under section 96 to exercise my discretion, to pull that unique offender away from the harshness of the punishment of a mandatory minimum penalty, most likely because we have a “Gladue court” or, as we call it, the indigenous peoples court.

I have the opportunity to find out why he had too many pops, why he found himself in possession of an illegal firearm and why he felt it necessary to discharge the firearm in the fashion that he did. It gives me an opportunity to explore all the racist and systemic

issues that person grew up in. Maybe he's a product of the residential school system. Maybe his parents or grandparents were involved in that. Maybe he suffers from poverty. Maybe he suffers from housing inequities. Maybe he suffers from a lack of education, or maybe he suffers—or she suffers, I can't discriminate here between males and females—from addiction issues. These are all rampant on the Six Nations of the Grand River.

• (1730)

Mr. Michael Cooper: I have a point of order, Mr. Chair.

I hate to interrupt my learned colleague Mr. Brock, but I see it is now five minutes past the time of adjournment.

Mr. Larry Brock: I lost track of time. I'm sorry, Mr. Chair.

The Chair: If it's the will of the committee to continue—it looks like it's the will of the committee—we can continue.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Mr. Chair, as far as I am concerned, I have to attend another committee meeting at 6:30 p.m. and I would like to get something to eat in the meantime.

If we continue for five minutes and the amendment is put to a vote, I can stay, but if it's a systematic filibuster, I can't.

[*English*]

The Chair: Go ahead, Mr. Anandasangaree.

Mr. Gary Anandasangaree: We would be agreeable to continuing the meeting, Mr. Chair.

Mr. Larry Brock: I can't agree to that. Both Monsieur Fortin and I are involved in a three-hour Emergencies Act committee hearing starting at 6:30. I have to get ready for that, so I'm not in a position to continue.

The Chair: I'm told somebody would have to move to adjourn. Then we could have a vote.

Mr. Michael Cooper: I'll put forward a motion to adjourn.

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, do we not need the unanimous consent of the committee members to extend the meeting?

[*English*]

The Chair: I've been told no, Monsieur Fortin.

Go ahead, Mr. Cooper.

Mr. Michael Cooper: Out of respect for Mr. Brock and Mr. Fortin, I will put forward a motion to adjourn.

The Chair: You'd like a recorded vote, I assume.

[*Translation*]

Mr. Rhéal Fortin: Wait a moment, Mr. Chair. Could you clarify what the vote is about, please?

[English]

The Chair: It's on the motion to adjourn.

(Motion negatived: nays 6; yeas 5)

The Chair: We'll continue.

Mr. Cooper, I think you were on—

Mr. Larry Brock: I'm not done, Chair.

The Chair: You can continue, Mr. Brock.

Mr. Larry Brock: Out of respect for the well-being of all the committee members, may we have five to 10 minutes for a comfort break, please? Certainly my Liberal colleagues won't deny that opportunity to me.

• (1735)

The Chair: We'll break for five minutes and return at 5:40.

Thank you.

• (1735)

(Pause)

• (1744)

The Chair: We'll resume our meeting.

I think Mr. Brock had the floor at the time. Am I right?

Mr. Larry Brock: I have nothing further, Chair.

• (1745)

The Chair: Mr. Cooper, go ahead.

Mr. Michael Cooper: I wanted to ask the justice officials something.

They had cited one B.C. Court of Appeal decision. For clarification, was that a post-Nur decision? Could you just remind me of the case, as well as the other cases that you referenced but didn't name from Ontario and Manitoba?

Mr. Matthew Taylor: I'll have to get you the names of the lower court cases. I don't have those immediately with me. The Robertson case from the B.C. Court of Appeal was in 2020.

Mr. Michael Cooper: Okay. You don't have the names of the other cases?

Mr. Matthew Taylor: I don't have them with me.

Mr. Michael Cooper: If you could provide them, that would be helpful.

The Chair: Shall the Conservative amendment 3 carry?

An hon. member: On division.

[Translation]

Mr. Rhéal Fortin: Mr. Chair, what was just adopted on division? I did not understand.

[English]

The Chair: It was the Conservative amendment 3, CPC-3.

[Translation]

Ms. Lena Metlege Diab (Halifax West, Lib.): It has not yet been adopted; we are voting now.

[English]

The Chair: We're not getting the translation.

Can we just suspend for a minute or two?

• (1745)

(Pause)

• (1745)

The Chair: We're going to resume again.

My understanding is that there was no translation services, so we're just going to do that vote again as Mr. Fortin could not hear the question.

Shall Conservative amendment 3 carry?

Hon. Rob Moore: On division.

[Translation]

Mr. Rhéal Fortin: No, I request a recorded vote.

[English]

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 5 agreed to: yeas 7; nays 4)

(On clause 6)

The Chair: The first amendment is PV-1 from the Green Party.

It's deemed moved, according to the House order of a while ago.

Going with that, I'm going to allow Ms. May to say a few words.

• (1750)

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

I'd like to start, with all due respect and affection, by correcting you. This wasn't a House order. This was a committee motion that is a subterfuge that the Green Party objects to and has objected to since it was first used to deny us the rights we would ordinarily have at report stage. As a result of the motion, in identical language, passed in every committee every time we have an election, we now have—without proper process to change the ways in which the House of Commons works to address legislation—a bad habit, which I'm sure will soon be referred to as some kind of law, that members of Parliament who are either independent or members of parties that do not have recognized party status are required, on a very short timeline, to turn around amendments and bring them to committees without the right to vote on them, without the right to speak much on them and without the right to move them. This is why they're deemed moved, which puts me in an awkward circumstance.

I can see what's happening in this committee. I support Bill C-5, but it doesn't go far enough. We've looked at the Supreme Court decisions. We've looked at many court of appeal decisions all across the country. We know a number of things. I'll go back to when Bill C-10, the omnibus crime bill under Stephen Harper, went through Parliament. I was a member of Parliament. I fought very hard against it because there was absolutely no evidence that mandatory minimums worked to reduce crime rates. There was evidence to the contrary. The State of Texas was already removing its mandatory minimums, while our Parliament was charging ahead to bring them in.

Therefore, I support removing mandatory minimums. All of my amendments, and a few others that are to a slightly different point, seek to do more to remove mandatory minimums. They are expensive and inefficient. They pass the costs of incarceration onto provinces. There are many arguments as to why they don't make any sense. Of course, the arguments we've heard a few times mentioned today are that we see disproportionate incarceration of people of colour and of indigenous people at rates that are well known, so I won't repeat that evidence here.

I will just say that my first amendment, and I can deal with it but I want to also raise a larger point, Mr. Chair, which is that if I could, seeing the painful filibuster that we've seen in the last two and a half hours, I'd say let's just take all my amendments that are inadmissible—

Mr. Larry Brock: I have a point of order.

In reference to my friend's comments about a “painful filibuster”, I heartily disagree and I find that quite offensive. We have an obligation to provide some commentary with respect to the amendments. A filibuster, again from a rookie politician's point of view, is if I decided to open up my Criminal Code on page 1 and started reading all 1,400 pages. That's a filibuster. I didn't hear any points of order from anyone on this committee regarding relevancy. In my view, my points and my colleagues' points were all relevant with respect to the points that we were making.

I wanted to bring that to your attention because I find that language rather offensive.

The Chair: Thank you, Mr. Brock.

Ms. May, you can continue.

Ms. Elizabeth May: I'd like to apologize from the bottom of my heart, Mr. Brock.

You're quite right that it didn't meet the definition of a filibuster, but it is a definite effort to slow down the review of this legislation. I had thought that since my first amendment came up under clause 6, it would be attended to relatively early in a two-hour committee hearing, and I'm not inexperienced.

You're quite right, Mr. Brock. It doesn't meet the definition of a filibuster, but since I've brought forward most of the amendments before the committee tonight, it does place me in something of a quandary, because I don't have the right to withdraw my amendments. They are deemed put forward by the committee. That is a committee motion that you yourselves adopted, unfortunately, and every committee has done so, right through the system of the Par-

liament of Canada, and it does mean that I must proceed to present each and every one of these unless we can find a solution.

I wanted to open with an offering that we know that a number of my amendments will be deemed to be inadmissible, and I would like to ask the committee.... From my point of view, there's no purpose in my speaking to inadmissible motions, so I don't intend to. I want to make that clear right now. We can skip over anything inadmissible.

Certainly the first amendment I have before us is admissible and does go to what we should be doing, which is, as in the Nur case, as Chief Justice McLachlin suggested, it would be better if Parliament got rid of all mandatory minimums and reviewed the use of mandatory minimums. She didn't go as far as to say to get rid of them, but to deal with them efficiently.... Bill C-5 removes some but not all, not even all of the mandatory minimums that have already been struck down by courts.

It certainly would be preferable to find a way.... As was noted by the court, it's better for Parliament to deal with this than to sit back and simply wait for the courts to handle them in a piecemeal way. The finding, of course—which I will quote from because I think it's central to this—is that after reviewing at least 50 years of research on mandatory minimums, as the Supreme Court of Canada did in Nur, they found, “Empirical evidence suggests that mandatory minimum sentences do not, in fact, deter crimes....”

If we turn to Statistics Canada, we can find that from 2003—which was the peak of any crime rate in Canada—and 2020, crime rates in Canada dropped by 30% and violent crimes dropped by 23%. The discussion that's happened today in committee would lead anyone to think that we had a terrible crime wave.

Any crime is unacceptable, any violent crime, and I wish we were doing more for victims. We do not have good legislation. We do not have a good framework. We do not have good supports for victims of crime, and we should, but in the context of mandatory minimums, all we are doing is removing the discretion that a judge would use on an individual case and potentially even giving a higher and more punishing sentence, if that's what you're looking for.

If we're looking for a criminal justice system that is affordable, one that's fair and effective and reduces crime rates, this isn't it, and that's why my first amendment calls for removing the provisions that impose mandatory minimums in cases where we have.... Basically, it's the provisions on trafficking in a firearm. Bill C-5 deals with only subsection 99(3), and my amendment would add subsections 99(2) and 99(3) so that we would be more efficient in improving our criminal justice system by removing more mandatory minimums.

With that, that's the longest submission I will make. I know that under the rules you've adopted, we're to make short submissions, but I wanted to take an overarching approach this time, because we do support Bill C-5. We just don't think it goes far enough.

● (1755)

The Chair: Thank you, Ms. May.

Before I go to you, Mr. Moore, I'm going to suspend for one or two minutes. I think there are some staffing changes for room services, so we'll suspend for one or two minutes.

Thank you.

• (1800)

Now we are resuming. Mr. Moore has the floor.

We are discussing Green Party amendment 1. It's Ms. May's amendment.

Hon. Rob Moore: Thank you, Mr. Chair and Ms. May.

There is irony in saying there's some kind of shock at the pace we're moving. Conservatives submitted 15 amendments to this bill, the Bloc six, the Liberals three and the NDP three. That's a reasonable number of amendments for a bill we've all been very vested in over the last couple of months. The Greens brought in 45 amendments to this bill, so I find it passing strange that someone would make a commentary about the pace at which we're going when they brought in 45 amendments.

I am interested in hearing about some of these Green amendments. I find it absolutely shocking to see, in print, the idea that even.... The Liberals, clearly, and the NDP have said, "You know what? We don't like mandatory minimums for all offences." I'd love to hear an explanation as to why sexual exploitation, incest, bestiality, making child pornography, parent or guardian procuring sexual activity, making sexually explicit material available to a child, luring a child.... These are all the absolutely disgusting offences for which the Green Party is saying we should have no mandatory minimum. It's outrageous to dump all of these amendments and basically gut the Criminal Code.

I don't know how many committee members have taken the opportunity to look at all the Green amendments, and I don't blame you if you haven't seen them all. There are 44 more of them. They apply to trafficking a person under 18, obtaining sexual services for consideration from a person under 18, procuring a person under 18. Is there a common theme? Almost all of them deal with Canadian children being victimized in the most awful way. The Green Party wants to remove the mandatory minimums.

I think these amendments are, frankly, disgusting. I really do. I think Canadians would be appalled. I was appalled when I saw them in print. It made me want to gag when I saw the types of offences for which they're saying, "Nope. If the judge wants to say you can walk out of here free, you can walk out free." I think it's appalling.

That is my commentary on the Green Party amendments as a whole.

On this one specifically, you know what? There's a reason that there's a mandatory minimum penalty for weapons trafficking with a firearm. There's weapons trafficking that could involve other illegal weapons, such as switchblades or other knives. This is weapons trafficking with a firearm. It's the kind of stuff we're dealing with and invested in. It's irresponsible to dump the gutting of the entire Criminal Code on our committee.

Those are my comments on that, for now.

Ms. Elizabeth May: I have a point of order.

I'm sorry, Mr. Chair, but I object to being mischaracterized as "gutting the Criminal Code".

Hon. Rob Moore: I will when it applies to children.

Ms. Elizabeth May: Those offences are offences that would remain in the Criminal Code. We're objecting to the use of the inefficient, expensive and counterproductive measures called mandatory minimums. All of the offences my colleague finds appalling make me sick, too. They are disgusting offences, and anyone found guilty should be prosecuted to the full extent of the law.

Hon. Rob Moore: That's not what your amendment says.

Ms. Elizabeth May: I prefer to leave it to a judge or the discretion of the judiciary looking at individual circumstances, and not using blanket approaches, which have been proven not to work.

I object to being put on the record, in any way, shape or form, calling for "gutting the Criminal Code". Those are offences that will remain in the Criminal Code. Let's hope they are fully prosecuted and that the punishment fits the crime. When you use a blanket cookie cutter and just say "mandatory minimum", you do not have a punishment fitting the crime. You reduce the discretion and ability of the prosecuting attorney to get the right sentence. You end up having some people going to jail who aren't guilty, because they're so fearful of a mandatory minimum they'll plead out even though they have not committed the crime.

I'm sorry, Mr. Chair, but I also want to put on the record that due to previous commitments and my not realizing this committee would run late, my colleague, the honourable member for Kitchener Centre, Mike Morrice, is going to take over, so I withdraw at this point, but I wanted it recognized by the committee before I left that it is acceptable for the member for Kitchener Centre to replace me on the committee.

• (1805)

The Chair: It should be acceptable.

I also apologize; I will have to suspend. There's some confusion about the clerk. I'm suspending now for 30 minutes for the staff change.

• (1805)

(Pause)

• (1835)

The Chair: I call the meeting back to order. We will resume.

We were at Elizabeth May's Green Party amendment to clause 6 before the break. We had finished our debates. I had no other speakers on the list.

I want to reiterate that if PV-1 is adopted, Conservative amendment 4, which is next, cannot be moved, as they amend the same line. It will be the same for other amendments when we have multiple amendments to the same clause.

If there are no questions on that, I'm going to ask if PV-1 shall carry.

(Amendment negatived: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: On CPC-4, Mr. Moore, would you like to say anything?

Hon. Rob Moore: I think everyone is familiar with our reasoning on this issue. I would remind everyone, because we just had that break, that in no way do I want people to think I feel a mandatory minimum penalty of one year is enough in this case. However, in the spirit of compromise—on the last vote, we almost had unanimity—I'm hoping that we would maintain a six-month mandatory minimum for the offence of weapons trafficking.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: Shall clause 6 carry?

We will have a recorded vote.

● (1840)

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, I made a mistake: I voted against, but I wanted to vote in favour. I apologize for that.

[*English*]

The Chair: I think he can correct it. Yes.

(Clause 6 agreed to: yeas 7; nays 4)

(On clause 7)

The Chair: On clause 7, we have Green Party amendment number 2. Again, if the Green Party amendment is adopted, Conservative amendment 5 cannot be moved, as they amend the same line.

Shall Green Party amendment 2 carry?

Go ahead, Mr. Moore.

Hon. Rob Moore: No one from the Green Party spoke to this.

We're dealing in Bill C-5 with amending a number of different provisions related to firearms and then provisions related to weapons. Sometimes people think of a firearm as a weapon, or a weapon as a firearm, and use the terms interchangeably, but in some cases the possession of a weapon does not include a firearm. In this case, I believe for this mandatory minimum penalty proposed by the Green Party, the removal would expand this to include a firearm when we're talking about weapons trafficking. In the legislation that's currently before us in Bill C-5, there are a number of very important measures that remove mandatory minimum penalties when it comes to firearms, but perhaps our witnesses could just speak to the distinction between weapons trafficking and firearms trafficking, which I think is important to this Green amendment.

Mr. Matthew Taylor: Thank you for the question.

Very briefly, the three- and five-year MMPs for section 100, possession for the purposes of weapons trafficking, apply to firearms, prohibited devices and prohibited ammunition, and the one-year MMP applies to prohibited and restricted weapons. My understand-

ing of the Green Party amendment is that it would repeal all of those MMPs in all cases, not only for weapons but also for firearms.

The Chair: Shall Green Party amendment 2 carry?

(Amendment negatived: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: Shall Conservative amendment 5 carry?

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: Shall clause 7 carry?

Go ahead, Mr. Brock.

● (1845)

Mr. Larry Brock: In keeping with the spirit of the Conservative amendments that you've heard Mr. Moore speak about, we're looking at a compromise.

We are not supporting the elimination of that particular mandatory minimum as contemplated by Bill C-5, but we recognize, again, the spirit behind Bill C-5 in terms of the objective of providing some recourse to the courts and to Crown prosecutors to exercise that discretion where required, but we also want to send a message to the community that should you engage in activities such as in the section that contemplates criminal behaviour, you can expect not to be treated leniently. You'll be expected to serve a period of incarceration.

We are reflective of the overall objective, and we feel that six months, as opposed to one year, is an appropriate compromise.

The Chair: Shall we go for a vote on clause 7?

(Clause 7 agreed to: yeas 7; nays 4)

The Chair: We turn now to new clause 7.1, as proposed by the Green Party. It's Green Party amendment 3.

I'm deeming that inadmissible. I'll read it out this time, but on the other ones I'll just deem the ruling.

The amendment seeks to amend paragraph 102(2)(a) of the Criminal Code, which deals with the offence related to alteration of a firearm. *House of Commons Procedure and Practice*, third edition, states on page 771 that “an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill”.

Since paragraph 102(2)(a) of the Criminal Code is not being amended by Bill C-5, it is therefore the opinion of the chair that the amendment is inadmissible.

(On clause 8)

The Chair: We have Green Party amendment 4. Again, if it's adopted, Conservative amendment 6 cannot be moved, as they amend the same line.

Shall Green Party amendment 4 carry?

(Amendment negatived: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: We now have Conservative amendment 6.

Go ahead, Mr. Moore.

• (1850)

Hon. Rob Moore: This clause deals with importing and exporting prohibited, restricted and non-restricted firearm weapons and prohibited ammunition. The offence provides a mandatory minimum penalty of three years for the first offence and five years for a second or subsequent offences.

Other cases are prohibited and restricted weapons and components related to the manufacture of an automatic firearm. I think it's important to know that fully automatic firearms are not, in spite of what people might think, legal in Canada, even under our "restricted" category of firearms. We have "non-restricted", we have "restricted", and we have "prohibited", and fully automatic firearms are not legal in this country.

There's a mandatory minimum penalty of one year for those who manufacture an automatic firearm. Clause 8 would remove that MMP.

It's for that reason that we are opposed to clause 8. I already mentioned that CPC amendment 6 is an effort to reach a compromise that says that if you're in the business of manufacturing fully automatic firearms in Canada, possibly to be used illegally, and if you're convicted of that illegal activity, you would serve a minimum of six months. That's an effort for compromise. That's why we have moved CPC amendment 6.

The Chair: Go ahead, Mr. Morrison.

Mr. Rob Morrison: Are there any charter issues that have come up from our witnesses?

Mr. Matthew Taylor: We're not aware of any cases specific to the one-year MMP in which it has been found to be unconstitutional. We are aware of a lower court decision in Quebec finding the three-year MMP unconstitutional, but not one year.

Mr. Rob Morrison: Just for debate purposes, we're talking about somebody who can change a firearm to fully automatic, which is the heart of organized crime gang activity.

We all know. We sit in the House of Commons every day, and when we go home, we hear this every day. That's probably about as serious as it gets for a penalty for a firearm infraction.

I think we just have to have a look at this one and really think about it when we vote.

The Chair: Go ahead, Mr. Brock.

Mr. Larry Brock: This is debate only, with no questions. I'm putting it out to my Liberal colleagues to really reflect upon the purpose of this particular section and the type of criminal it's capturing. It is not capturing the indigenous first-time offender or the racialized Black Canadian offender. It's not targeting the low-risk offender. These are offenders who are knowingly engaged in a commercial enterprise to import and export weapons within our borders and internationally.

Please reflect upon the countless stories we have shared as politicians over the last several months, what we are reading in the papers, what we are seeing on the television about the floodgates being open and about the importing and illegal gun smuggling that's happening at our porous borders.

To my colleague Rob Moore's point, now we have drones that are circumventing our lawful borders to ensure that the commercial exchange of weapons continues.

We have to draw a hard line in the sand as parliamentarians and look at the type of criminal we are trying to capture here. We need to send a denunciatory message to these seasoned criminals that if they continue to do this, they will expect to go to jail—no ifs, no ands, no buts about it. This isn't a situation where they need to get a break. They have chosen an illegal enterprise and a way of life that is so opposite to what your government has been preaching to Canadians with the introduction of Bill C-5.

Please give that some consideration.

• (1855)

Mr. Gary Anandasangaree: I have a point of order, Mr. Chair. I think the debate should be directed through you and not to members.

Mr. Larry Brock: All my comments are through you, Mr. Chair. Thank you.

The Chair: Shall CPC-6 carry?

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 8 agreed to: yeas 7; nays 4)

(On clause 9)

Hon. Rob Moore: I have a point of order.

The Chair: Yes, Mr. Moore.

Hon. Rob Moore: Did you rule on clause 9.1?

The Chair: We've haven't got there yet.

Hon. Rob Moore: You haven't got to it yet.

The Chair: It's clause 9, and then 9.1 is right after it.

Hon. Rob Moore: No, clause 9 shall not carry.

The Chair: We'll have a recorded vote on clause 9.

(Clause 9 agreed to: yeas 7; nays 4)

The Chair: Next we have proposed clause 9.1.

On PV-5, I will rule that this is non-admissible due to the parent act.

I'll go one by one.

I'm going to rule PV-6 inadmissible for the same reason. None of the act that it's proposing to amend is being debated.

On PV-7, section 153 of the Criminal Code is not being amended by Bill C-5. It is therefore the opinion of the chair that the amendment is inadmissible.

On PV-8, section 155 of the Criminal Code is not being amended by Bill C-5. It is therefore the opinion of the chair that the amendment is inadmissible.

On PV-9, paragraphs 160(3)(a) and 160(3)(b) of the Criminal Code are not being amended by Bill C-5. It is therefore the opinion of the chair that the amendment is not admissible.

On PV-10, since subsections 163.1(2) to 163.1(4.1) of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is not admissible.

On PV-11, since sections 170 and 171 of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

On PV-12, since paragraphs 171.1(2)(a) and 171.1(2)(b) of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

On PV-13, since paragraphs 172.1(2)(a) and 172.1(b) of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

On PV-14, since paragraphs 172.2(a) and 172.2(b) of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

On PV-15, since paragraphs 173(2)(a) and 173(2)(b) of the Criminal Code are not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

On PV-16, since subsection 202(2) of the Criminal Code is not being amended by Bill C-5, it is the opinion of the chair that the amendment is inadmissible.

(On clause 10)

• (1900)

The Chair: Now we will move to Green Party amendment 17. Note again that if Green Party amendment 17 is adopted, Bloc amendment 1 and Conservative amendment 7 cannot be moved, as they amend the same line.

Mr. Gary Anandasangaree: I'm sorry, Mr. Chair; can you repeat that, please? I'm a bit confused here.

The Chair: Sure. We're on clause 10 now.

Mr. Gary Anandasangaree: Did we pass clause 9?

The Chair: We've already voted on clause 9. We're on clause 10, at Green Party amendment 17. Again, if Green Party amendment 17 is adopted, then the Bloc amendment 1 and Conservative amendment 7 cannot be moved, as they amend the same line.

Shall Green Party amendment 17 carry?

Would you like to intervene, Mr. Morrice?

Mr. Mike Morrice (Kitchener Centre, GP): Sure.

This is the same justification that Ms. May shared for Green Party amendment 1. It is based on the principle of judicial discretion and the fact that mandatory minimum penalties don't actually deter crime and disproportionately affect marginalized populations.

Thank you.

The Chair: Thank you.

We have Mr. Moore.

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

On this Green amendment—I know you've ruled the others out of order, so I'm not going to speak to them—it would have been interesting to hear Green members defend removing the mandatory penalties that Canadians have seen fit to put in place for making child pornography—

Mr. Mike Morrice: I have a point of order.

Hon. Rob Moore: —making explicit material, luring a child—

• (1905)

The Chair: The member has a point of order.

Mr. Mike Morrice: On a point of order, I believe we're speaking to Green Party amendment 17.

Can the member speak to Green Party amendment 17?

The Chair: Mr. Moore, I would ask that you stick to—

Hon. Rob Moore: I agree 100%. If I were Mr. Morrice, I wouldn't want to speak to all those things either, but they dumped eliminating mandatory penalties for serious offences against children into our committee, and now they don't want to speak to it, so it's a little confusing. If you're going to put forward an amendment that deals with these types of sexual offences against children, I think you should be prepared to speak to it and defend it.

The Chair: Thank you, Mr. Moore. We'll go to Mr. Brock.

Is it Mr. Brock or Mr. Morrison? I saw a flurry of hands—

Hon. Rob Moore: Yes, I am going to speak on Green Party amendment 17.

The Chair: Oh, okay.

Hon. Rob Moore: Green amendment 17, which has been ruled in order, removes the mandatory minimum penalty even if the offence is in association with a criminal organization, so I think we're starting to peel back some of the layers on the rationale on this piece of legislation.

We've already made it abundantly clear on other offences that there's significant concern around guns in Canada and that the crimes being committed are being committed not by law-abiding farmers, duck hunters and sport shooters but by the criminal element.

This amendment takes things one step further and specifically references criminal organization and repeat offenders. Most of these offences that we're dealing with involve criminal organizations, and some of the amendments we spoke to do specifically reference recidivism and repeat offenders. In fact, we discussed a particular Criminal Code provision that provided for escalating penalties, as there should be, on second and third offences. This Green amendment 17 relates to a criminal organization or an accused who is a repeat offender. It's for those reasons that I will be voting against Green amendment 17.

The Chair: I think we have bells. I will need unanimous consent to go on through the bells.

Some hon. members: No.

The Chair: Okay. We'll suspend until the votes are over.

We shall suspend.

● (1905) _____ (Pause) _____

● (2000)

The Chair: We will now resume.

I'll let you guys all settle down.

I think we were at Green Party amendment 17 for clause 10.

Ms. Lena Metlege Diab: Yes.

The Chair: We had just finished with Mr. Brock, I believe.

Mr. Larry Brock: No.

The Chair: Carry on, then, Mr. Brock.

Mr. Larry Brock: Are you starting with me?

The Chair: Yes.

Mr. Larry Brock: The Green amendment is designed to take the existing Bill C-5 as proposed by the government and essentially wipe out every single mandatory minimum under section 244.

Section 244, entitled "Discharging firearm with intent", reads:

Every person commits an offence who discharges a firearm at a person with intent to wound, maim or disfigure, to endanger the life of or to prevent the arrest or detention of any person — whether or not that person is the one at whom the firearm is discharged.

The "Punishment" section, which the Greens wish to annihilate, reads as follows:

Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years; and

(b) in any other case, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years.

Subsection 244(3) lists the provisions for subsequent offences. I'm not going to get into that discussion.

I'm looking at my *Tremear's Criminal Code*. I do see a section regarding charter considerations. From what I can see here, by way

of an annotation, there was a provincial Court of Appeal decision from New Brunswick, *Regina v. Roberts*, 1998. The minimum punishment provided for in that section does not offend charter section 12.

I will postpone my debate at this point, Mr. Chair, and I will turn to the Department of Justice witnesses.

Gentlemen, in addition to that particular case, are you aware of any decision, whether it be a lower court or an appellate decision, across this country that speaks to this particular offence?

Mr. Matthew Taylor: We are aware of a number of decisions. I'll quickly go through them.

A New Brunswick Court of Appeal decision from 1998 upheld the four-year MMP—

Mr. Larry Brock: Is that the Roberts that I just read out?

Mr. Matthew Taylor: I have "M.D.R." as the initials.

Mr. Larry Brock: Do you have the citation?

Mr. Matthew Taylor: It is 1998 N.B.J. No. 160.

Mr. Larry Brock: I have 125 CCC, third edition, 471. They could be one and the same case.

Mr. Matthew Taylor: We have a 2011 decision from Newfoundland, with the provincial court upholding the four-years.

There is a 2017 decision from the Ontario Superior Court, *Reis*.

We're also aware of a 2018 decision from B.C., upholding the five-year MMP as well in that provision.

● (2005)

Mr. Larry Brock: The majority of the jurisprudence that you just referenced upholds the mandatory minimum penalties as they relate to the areas that Bill C-5, as drafted, does not capture. Is that correct?

Mr. Matthew Taylor: Yes. Of the four cases I referenced, three speak specifically to the MMP that would be repealed in Bill C-5. Two of those decisions, as I said earlier, predate both Nur and Lloyd from the Supreme Court. One follows Nur in 2015.

Mr. Larry Brock: Right.

Am I correct—because I don't have the actual bill in front of me—that Bill C-5 speaks to paragraph 244(2)(b), which reads, "in any other case, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years." That's what Bill C-5 is trying to eliminate. Is that correct?

Mr. Matthew Taylor: That's correct.

Mr. Larry Brock: For my benefit and for the benefit of committee members, can you offer us some examples of what type of weapon is contemplated under section 244, which is not otherwise delineated in paragraph 244(2)(a)?

Mr. Matthew Taylor: For the four-year MMP, it essentially involves long guns that don't involve organized crime. The five-year and seven-year MMPs relate specifically to prohibited or restricted firearms or if the offence was committed "for the benefit of, at the direction of, or in association with, a criminal organization", so that could be long guns and organized crime.

Paragraph 244(2)(b) would encompass situations in which a long gun was used but it wasn't linked to organized crime.

Mr. Larry Brock: That's right.

Could either of you opine, based on your legal experience, on any such cases in which this type of criminal activity involved a long-arm weapon—a rifle of sorts—used in the context of what we as lawyers know of individuals charged with this offence, actually being discharged with the intent to wound, maim or disfigure? When you look at the constellation of all of those offenders who are captured by the language in section 244, can you opine on what percentage of cases we're actually talking about involving the use of a long firearm?

Mr. Matthew Taylor: I don't think I can give you that today. The best we would be able to provide would be information on charge data under paragraph 244.2(1)(b), but we wouldn't be able to give you a percentage breakdown in terms of handguns or restricted firearms today.

Mr. Larry Brock: Right.

I'm going to put a silly question to you, but this is the government's narrative, certainly from the Attorney General's own words from his own mouth on day one when this bill was introduced in the House.

You've probably already heard me give this example to this committee about an indigenous young male deciding to have a few too many alcoholic beverages, grabbing a weapon and discharging that weapon wildly into a barn. Certainly that does not envision any scenario proposed under section 244, does it?

Mr. Matthew Taylor: No. I think the extent that the scenario is captured in the offences is in section 244.2, which involves the intentional discharge while being reckless. I think that's clause 11 of the bill.

• (2010)

Mr. Larry Brock: That's right, because the prosecution has to establish that there was an intent to wound, maim or disfigure, or to endanger the life of or prevent the arrest of or detention of any person. The Attorney General, the leading legal authority in this country, offered Canadians a woefully inadequate description of what Bill C-5 is really trying to capture.

Would you agree?

Mr. Matthew Taylor: To be fair—and we'd have to look back at the transcript, as I said—I think the scenario he was reflecting on was the offence under section 244.2, not subsection 244.2(2) of the bill. That is another offence that addresses similar conduct but different conduct.

The offence in section 244 is as you described, sir, in terms of the specific intent to wound, maim or disfigure. Section 244.2 had its genesis in scenarios in which it may be difficult to prove a spe-

cific intent to wound but there was an appreciation that the consequences of discharging the firearm could put somebody at risk. That's the recklessness element of section 244.2: The accused turns their mind to the fact that they don't know with certainty that the building that they are about to shoot at is occupied, but they strongly suspect it is and they decide to discharge in any event, without regard to the consequences. That's the scenario I think section 244.2 was speaking to.

Mr. Larry Brock: I've referenced this often this evening: Based on your current positions at the DOJ with your legal background, you would hopefully agree with me that this committee really cannot overlook the importance of prosecutorial discretion. Would you agree with that concept?

Mr. Matthew Taylor: Yes, absolutely. Discretion is a key component, as you and committee members know, of the criminal justice system from a constitutional perspective. We know that the exercise of Crown discretion can't save a decision or a finding of unconstitutionality from the Supreme Court's decision in Nur.

How a Crown chooses to proceed, whether it's by indictment or summary conviction.... While it's important in being able to respond to the circumstances as the Crown prosecutor sees them and as they're presented, it doesn't ultimately impact the outcome of a constitutional consideration of a mandatory penalty.

Mr. Larry Brock: Those are the questions, Mr. Chair. I'll go back to debate at this point.

I just want to share with the committee that with my 18 years of experience as a Crown prosecutor, I can probably recall, with some precision, at least a dozen cases in those years of prosecuting in the city of Brantford, Ontario, and in a small jurisdiction approximately 40 minutes southeast of Brantford, Ontario, in a little town called Cayuga, which is very close to the Six Nations of the Grand River as well as the Mississaugas of the Credit. I also had an opportunity of prosecuting in a smaller town known as Simcoe, Ontario, and for a period of time also in Hamilton.

I've had experience in a cross-section of small rural communities with an attachment to an indigenous population, a mid-sized city and large cities. I can tell you that in that experience, gun-related criminal offences really have no boundary. It's as prevalent and dangerous in a rural centre as it is in a larger centre and a mid-sized centre.

I will give credit where credit is due to my colleague, Mr. Naqvi. I don't know whether he's still with us—yes, he is. He had, in my view, an exemplary track record as the attorney general of our province. Mr. Naqvi insisted that policy had to reflect the appropriate balance in terms of how we hold offenders accountable while at the same time not being overly restrictive in our ability to exercise decision-making unencumbered by him, unencumbered by the attorney general, unencumbered by a Crown manager. It would only be a situation in which a decision that I made was called into question. If I had the ability to justify the decision that I made and the considerations that I took before making that decision, so long as the decision was grounded in law, grounded in Crown law policy and reflective of the circumstances of the offender, I had the backing of my former boss. I had the backing of my former Crown attorney in my jurisdictions that the decision would be respected and would be upheld by my superiors.

I'm saying this because I was part of a team of close to a thousand Crown attorneys in the province of Ontario. We would often refer to the Ontario Crown Attorneys' Association as the largest law firm in the country that practises nothing but criminal law. We have Crown attorneys from coast to coast to coast. I can only speak for Ontario, but I'm sure that the Crown attorneys in the other provinces would have conducted themselves in much the same fashion as Mr. Naqvi in giving those assistant Crown attorneys the discretion and the tools to make the right decision.

The reason I'm taking the long way around to make my point is to really highlight that we as Crowns are not just walking robots. We are human beings. In addition to our legal responsibilities, we are citizens of our communities. We reflect societal views and values.

• (2015)

I've repeated this, and I'll repeat it until my career as a parliamentarian ends: We as parliamentarians have to take steps to address the over-incarceration of indigenous offenders. To take a look at the statistics.... We've heard from several colleagues that the percentage of male offenders and female offenders in our prisons either meets or exceeds the 50% threshold in provincial institutions and federal institutions across this country. When you factor in the actual population of the indigenous population in Canada, it is a horrible statistic, but I think it's a danger to say that in each and every case when an indigenous offender commits a criminal offence such as a serious criminal offence under section 244, the default position has to be that we need to look at alternatives to incarceration.

The sad reality, Mr. Chair and members of this committee, is that I recognize that there are indeed first-time offenders with an indigenous background or a marginalized background, but a vast majority of those classes are repeat offenders. Really, it's a sad statement on society, because we have failed them as a government.

Our prime minister in 2015 made the pronouncement during that election that there was no greater relationship a government should have than with its indigenous neighbours. I believe that. I live that. I have numerous indigenous friends and have had them all my life. I was born and raised in Brantford and I'm proud to continue to reside there, but we have to take a look at what's happening on reserves across this country. We had the truth and reconciliation re-

port that came out years ago, and the current government is still grappling with the concept that you have to make this a priority. We have to address the calls to action.

We have issues with respect to legacies and traumas from the failed residential school system. We have issues of a lack of appropriate housing. My community, the Six Nations of the Grand River, under the Harper government was able to secure funding of almost \$40 million to secure the right and the ability to build a water treatment facility. The sad reality is that the treatment facility has the capacity, Mr. Chair, to service all of its 25,000 residents and businesses on that territory, but to this day—I think it was built in 2013 or 2014, some eight or nine years later—that treatment facility serves 20%, because they don't have the funding. The government dried up all the funding that was necessary to ensure that the necessary infrastructure and all the pipes were placed in the ground, so we have numerous issues of lack of potable water, and it's disgusting that in today's day and age, in the 21st century, in the leading democratic state of Canada, we have indigenous Canadians still with boil water advisories. It's inexcusable.

• (2020)

Ms. Lena Metlege Diab: I have a point of order. This is ridiculous.

Mr. Gary Anandasangaree: I'm sorry; I have the floor, Mr. Chair.

Mr. Gary Anandasangaree: On a point of order, I do think it's important to talk about relevance here, Mr. Chair.

I would be glad to debate the member opposite on reconciliation and the efforts by our government, but I don't believe this is the forum for that debate. This is specifically on mandatory minimum penalties. That's the nature of the bill, and I want to stress that deviating from that really is disingenuous at this moment. I would ask that the member focus his comments specifically to the amendment at hand, especially with respect to MMPs.

The Chair: Thank you, Mr. Anandasangaree.

Mr. Brock, I'm just reminding you that we're on clause 10, and in particular Green amendment 17. I would ask you to stay on that.

Mr. Larry Brock: I know exactly where I am, sir, but I'm very methodical when I do a deep-dive analysis into legislation. It may offend my Liberal colleagues. I apologize to you that I tend to be thorough. It quite often was a criticism that judges would make. They would say, "Mr. Brock, how long would you be in your closing statement or your submissions?" I would say, "Oh, I don't know—maybe one or two hours", and they would laugh. I had one case in which I spoke for nine hours in my closing submissions.

Now, I don't propose to keep my friends here until three o'clock in the morning, but I'm prepared to do that if necessary, because I think this is an important issue. They may be angry. They may be upset. They had an opportunity at 5:30 p.m., when the matter was called, to adjourn. Their notion that we were going to get through 70 amendments in two hours is just.... It's nonsensical, quite frankly, and to limit my ability to be thorough in my responses....

We're talking about over-incarceration of indigenous offenders. It's their bill, their talking points, not the Conservative government's talking points. They are the Liberal government's talking points. It's very disingenuous for Ms. Diab, and then Mr. Anandasangaree, to find a lack of relevancy when I'm talking about indigenous issues.

I'm passionate about this, Mr. Chair, and I wish to continue my discussion.

● (2025)

The Chair: You're more than welcome to continue, Mr. Brock.

Mr. Larry Brock: Thank you.

Before I was cut off, I think I was talking about the sad reality that many indigenous communities are under boil water advisories. It's disgusting how this Liberal government can claim to be an ally to our indigenous neighbours and have these individuals—hundreds, thousands, tens of thousands—suffering.

Do you think it would be different if in this precinct all of a sudden maybe we would have a chlorine issue with our drinking water, just like we had in Nunavut on a couple of occasions when some diesel fuel got into the water supply? You saw how quickly the government reacted. Do you think it would be any different in this precinct if we had a similar issue? Would immediate steps, regardless of the cost, be utilized and deployed to rectify the situation? It would happen in less than a week. We wouldn't have to wait for years.

That's the legacy of this government, and this is the message this government is sending to my indigenous friends and my indigenous neighbours across this country.

I've talked about water. We have housing issues. We have lack of education, a lack of nurturing, because, again, the whole concept of the trauma of the residential school system has prevented it and has robbed parents and grandparents of social abilities and social cues to raise their children, to guide their children to be law-abiding and respectful. It's no wonder that under all of those circumstances, Mr. Chair—again, to my earlier point—there is an overabundance of indigenous offenders who are engaging in very serious criminal activity. We heard not only from the chief of the Brantford city police at this committee, but also from the chief of the Six Nations police service. Both of them are indigenous, Mr. Chair, and both of them described an out-of-control situation on the Six Nations of the Grand River in terms of the lawlessness that exists.

Quite frankly, it got to the point a few years ago—and this was when I was a Crown attorney—that there were strong recommendations from the chief of police to our community in Brantford that it might not be a good idea to travel on the Six Nations of the Grand River during the day, because at that time there was an abundance

of high-speed chases. The Six Nations of the Grand River at that point had a reputation of being the car theft capital of Canada. It was a very lucrative trade for a lot of the indigenous youth and the young indigenous males on the territory. It got to the point where they recommended that you not travel during the day.

When you have all of these factors, Mr. Chair, it's no wonder that we find ourselves in a situation of having far too many offenders of an indigenous nature in our prison system, as well as Blacks—Black Canadians. I've read numerous newspaper articles, have watched television programs and have read online articles on the ever-increasing role that gang activity has in large centres. The predominant racial makeup of most of these gangs unfortunately is Black Canadians, and they are actively recruiting Black youth, because there's very little opportunity in larger centres.

● (2030)

I know that during the last election, to a certain degree the government and even the Conservative Party talked about crime mitigation measures. We talked about ways that we can deter offenders away from the criminal justice system. The Conservative platform certainly referenced that. I know the government's platform referenced it in the election, and they talk about it in the House, but what are they doing about it besides talking and meeting and, using the words of the Minister of Foreign Affairs, convening?

It's time to put some action into your words. Instead of talking the talk, it's time to walk the walk. If they are that serious about the overall impact of criminal justice reform, we need take a look not only at the existing legislation but at the underlying causes. That aspect is not being addressed. I know that's not a component of Bill C-5, but we don't want Bill C-5 to just be a band-aid to the overall significant issue. We have to be mindful of that significant overall issue as parliamentarians.

The committee will probably be very grateful to know that I'm going to move on to a different area. I think I've expressed my thoughts with respect to the indigenous issues close to my riding. I want to do a deeper dive under section 244.

As a prosecutor—and I talked about this earlier—I've had at least a dozen cases dealing with section 244. All of them were essentially drive-by shootings or one gang shooting up another gang. One case in particular was outside a variety store, a variety store that I attended every single day as a Crown attorney going home for lunch and picking up a newspaper. Just before this particular crime that I'm about to share with this committee, I happened to be there three days before the offence occurred. My vehicle is known to Brantford city police. We have an understanding that we have to share our licence plate numbers with the local police so they are in a position to ensure they can watch us and give us some protection.

I've dealt with numerous cases, Mr. Chair, in which my life was threatened, my family's life was threatened. I had to get resources in to beef up the security on my house, changing the locks, putting in bulletproof glass and surveillance cameras. I've dealt with a whole litany of things. When someone will ask me, "Mr. Brock, give me a day in the life of you as a prosecutor", I can say, "I don't know when I show up at the office if I'm prosecuting a shoplifting case or I'm getting ready for a homicide." It was that myriad of cases that I was dealing with. Given the experience that I had, Mr. Chair, it was more often than not that I would be handed the homicide, I would be handed the gang-related activities, I would be handed the shootings, I would be handed the child exploitation cases.

Going back to the variety store issue, an officer saw me and said, "What are you doing, Brock? What are you doing at this particular store?" The store had a notorious reputation for criminal activity.

I fluffed it off. I said, "I'm just getting a newspaper. I'm not worried about it."

Three days later, around the same time that I was there, there were two individuals who had a prior beef. It was two o'clock in the afternoon. The one who was inside the store picking up a pop or whatever came out, and immediately the offender was staring right at him, literally six feet away with a handgun. He pulled it out, and the victim pulled out another handgun. They both shot at each other. It was in broad daylight, 10 feet away from the front door of the very same variety store that I attended to pick up a newspaper.

● (2035)

Luckily, both were pretty good shooters, in the sense that they shot themselves and they didn't shoot any bystanders, but you can imagine the panic. You can imagine the fear and the confusion.

That's what section 244 talks about. This isn't the first-time offender. This isn't the first-time low-offence-related activity. Both of these individuals wanted to wound. Both of these individuals wanted to maim. Both of these individuals wanted to disfigure and endanger the life of the other.

Mr. Chair, the Greens feel that eliminating the mandatory minimum penalties will address the over-incarceration issue and promote some sense of responsibility in an offender. I don't know where the Greens are getting their talking points, but I can assure you that they need to spend a day in the life of a prosecutor who's on the street daily dealing with these serious crimes. They are completely out to lunch on their talking points. It's dangerous activity.

Not too long ago, members of this committee may have heard about the Just Desserts shooting in Toronto—or was it Scarborough? Gary would probably recognize that.

I'd like to spend time just informing the committee about the circumstances of the Just Desserts shooting, because this was a section 244 offence:

The Just Desserts shooting was a notable crime that occurred in Toronto on the evening of Tuesday, April 5, 1994. Just after 11:00 PM, a group of three men barged into the Just Desserts Café, a popular café on Davenport Road in Toronto's Yorkville neighbourhood.

It wasn't in Scarborough, Gary.

One of the men was armed with a shotgun. The armed robbers ordered the thirty staff and patrons to the back of the store and took their valuables.

One of the patrons that evening was 23-year-old hairdresser Georgina Leimonis...who was there with her boyfriend. A dispute broke out when two male patrons refused to hand over their wallets; they were punched by one of the robbers. Soon after, the man with the shotgun fired and hit [the victim] in the chest. The robbers fled the restaurant. [She] was rushed to hospital; after surgery she died at 2:45 on Wednesday morning.

A security camera in the restaurant filmed the entire scene, but its low quality and lack of audio made it difficult to make out events and hard to identify the murderers. The police began a search for four men, the three who had been involved in the robbery and another who had helped them case the restaurant earlier. The police were criticized when the descriptions released of the four men was that they were 6-foot-tall black men. Many felt that such a vague description would do nothing to help capture the perpetrators and would merely enhance stereotypes of black men being criminals.

A week after the shooting Lawrence Augustus Brown was identified as a suspect and he turned himself in to police. Another of the three, O'Neil Rohan Grant, was arrested soon after. That fall, Gary George Francis and Emile Mark Jones were arrested. Grant, Francis, and Jones were charged with manslaughter and robbery. Brown, who had fired the shotgun, was charged with first-degree murder. The charges against Jones, who was not involved in the robbery itself, were later dropped.

The already famous crime also became notable for being extensively mishandled. The move to trial was extremely slow, as the men sat in jail for years, being denied bail, but not being brought to trial. The case was marred by errors by police and prosecutors, but it was mainly lengthened by defence lawyers who were later accused of unprofessional conduct. While the new defence team argued the charges should be thrown out due to the long delay, this motion was rejected. By the time it came to trial, 40,000 pages of files related to the case had accumulated.

● (2040)

The trials finally got underway in May 1999, with Brown now acting as his own defence counsel. The trial itself became one of Canada's longest, with Brown extensively cross-examining each witness, often for up to two days.

Allegations of racism and discrimination—

Where have we heard that one before?

—were levelled from the very beginning. One of the lawyers—there were dozens hired, fired and removed—likened the preferred indictment to "the modern-day equivalent of a lynching." Moreover, in a letter written in 1995 to Ian Scott, then chief counsel for special investigations at the Crown Law Office, lawyers for the accused alleged that "this case has drawn a tremendous amount of publicity...not because of the nature of the crime itself, but because the defendants are all black, Ms. Leimonis—

—the victim—

—is white and the incident occurred in an upper-middle-class restaurant frequented primarily by white people."

What I didn't mention is that she was not the only victim in that restaurant, Mr. Chair. There were probably another dozen victims, if not two dozen, who had to experience this random shooting designed to wound, maim, disfigure and, in the particular case of this victim, end a life.

A scathing 60-page summary ruling on the case by Mr. Justice Brian Trafford puts the police and the justice system in an unenviable light. The selective use of leg irons, belly chains and handcuffs on the three suspects displayed "cultural insensitivity towards black people," stated Judge Trafford. He also found that to this day Toronto police have "never comprehensively investigated allegations of abuse." Activists, angry at the use of shackles, have brought up the spectre of the slave trade. They have pointed out that Paul Bernardo was never shackled in court.

Here is the verdict:

The case continued to attract widespread public interest. On the day after the trial closed on December 6, 1999, *The Globe and Mail* published an unprecedented six-page section devoted to the murder and trial. The verdict was finally released on December 11: Brown and Francis were found guilty, and Grant was acquitted. Brown was given a life sentence with no chance of parole for twenty-five years. Francis was given fifteen years, and seven were knocked off for the years in jail during the trial. He was thus eligible for parole only three years later, but his 2002 application was rejected. He was released on parole in 2005. On February 24, 2008, Francis was found in possession of 33 grams of crack cocaine and in May 2008 sentenced to 7½ months in jail for several drug related offences—

I will eventually be talking about the drug component to Bill C-5, but certainly not in relation to this particular clause.

—Grant was deported from Canada to his native Jamaica where he was shot to death on October 29, 2007.

That's one example, Mr. Chair.

I have another. Does anyone remember the Boxing Day shooting in downtown Toronto, at Yonge Street and Dundas? It's one of the most heavily populated shopping areas in all of Canada. That was known as the Jane Creba case. That particular shooting:

was a Canadian gang-related shooting—

Again, it attracted section 244 considerations.

—which occurred on December 26, 2005, on Toronto's Yonge Street, resulting in the death of 15-year-old student Jane Creba.

She had the misfortune of taking her Christmas money that she got from her parents and relatives and travelling down the street because she wanted to go to the record store. Toronto actually had record stores on Yonge Street in 2005.

• (2045)

She never made it to the record store. She never used her Christmas money.

She wasn't the only victim, Mr. Chair. Six other bystanders—four men and two women—were wounded.

Again, I mean no disrespect to Mr. Morrice. I think he's a fine gentleman and a fine parliamentarian. I have a lot of respect for him. It's the position of his party that I'm criticizing, sir, not him.

With this particular incident and the amendment, really there is a disconnect as to what we're trying to do here. We're not trying to make it easier and softer for the types of individuals who decided on Boxing Day, in one of the busiest areas in the country, to wildly shoot.

Jane Creba, I might add, was not the intended victim. There was another gang-related person in her vicinity. Let's face it and let's be honest: Apart from the example I gave you of the two young men outside the variety store in Brantford who were good shooters, in the vast majority of gang-related activity and use of firearms, the firearms are mostly, if not all, illegal firearms. They're not the long rifles. You don't take a long firearm into a variety store and say, "Hey, I want to rob you." You want to conceal that weapon. You can't conceal a long firearm.

In this case, my point is that these criminals are not equipped. They don't have the training. They are not expert marksmen or markspeople. They just shoot wildly, hoping that one bullet perhaps may hit the intended target. It didn't in this case. It killed 15-year-

old Jane Creba. Six other bystanders—four men and two women—were wounded.

The story generated national news coverage in Canada and influenced the 2006 federal election campaign, which was then under way, on the issues of gun crime and street violence.

Police arrested two men on several gun charges at Castle Frank subway station within an hour after the shooting. Andre Thompson, 20, was on probation at the time, and Jorrell Simpson-Rowe was 17. Thompson had been released just before Christmas from Maplehurst prison near Milton, where he had served 30 days for his role in a convenience store robbery. He declined a bail hearing for his current charges. Police believe as many as 10 to 15 people were involved in the shooting and that more than one gun was fired.

Twenty Toronto police detectives were assigned to Project Green Apple to work on the case. It was named Project Green Apple because that was Jane's favourite food. On June 13, 2006, Toronto police conducted multiple raids at 14 locations throughout Toronto in the early morning, arresting six men and two teenagers. Charges laid against them included manslaughter, second degree murder and attempted murder relating to the six other bystanders. All those arrested were members of two different street gangs.

In October 2007, a young man who had been rounded up by the initial arrests, Eric Boateng, was shot dead in a seemingly unconnected incident. Boateng was not charged with the shooting, but had been later charged with cocaine trafficking.

• (2050)

It's too bad, I guess, that didn't happen in 2022, because he might receive a conditional sentence. Again, I'll speak to that aspect of Bill C-5 in due course.

As of December 2007, 10 people had been charged with murder or manslaughter in the case, three of whom were youths. Those charged with second degree murder included Tyshaun Barnett and Louis Woodcock, both 19; Jeremiah Valentine, 24; and Jorrell Simpson-Rowe, who was 17 at the time of the shootings.

One of the teenagers who was arrested in June and charged with manslaughter was exonerated on October 25, 2007, after the preliminary hearing. The teenager charged with murder was committed to trial. On December 7, 2008, Jorrell Simpson-Rowe—previously known as JSR, because the Youth Criminal Justice Act forbids disclosure of identities of minors—was convicted by a jury of murder in the second degree. In April 2009, he was sentenced as an adult to life in prison with no chance of parole for seven years.

In November 2009, manslaughter charges against four individuals involved in the incident were dropped because the prosecutors felt there were no reasonable prospects for a conviction.

On that point, I really stress the whole concept of prosecutorial discretion, Mr. Chair, but in addition to that basic tenet, we are also bound by two rules. Every prosecutor who gets a case to prosecute has to ask himself or herself two questions.

Question number one is this: Is there a public interest in continuing the prosecution? That's generally a very low-threshold analysis, Mr. Chair. You just have to look at the size of the Criminal Code, which represents all of the laws in this country. When you take a look at the number of ways people can commit criminal offences, you can well imagine that there are extremely less serious charges all the way to the most serious of charges, which include murder. Quite often I had to exercise my discretion by questioning if there was a public interest in this prosecution and coming to the conclusion, Mr. Chair, that perhaps—capturing the language of the Liberal government—there are situations where good people make some pretty bad decisions on a particular bad day. Quite often, by reading the entire Crown brief, I was able to determine in the equation of spending all of this public resource money and time—my time and the judges' time and the police time to monitor and provide security and the time of clerks of the court and the other staff processing the paperwork—that there was not an interest in continuing that particular prosecution.

It didn't happen a lot, Mr. Chair. I can tell you I can probably count on both hands, over 18 years, the times I didn't answer that question in the affirmative, and again had the backing of Mr. Naqvi, as my ultimate boss at the time, as the attorney general, that I could justify the decision to pull that case, to withdraw that case from the criminal prosecution stream. That's the first question you ask yourself as a prosecutor.

The second question is really an important one, because you have to ask this question numerous times throughout the lifespan of a criminal charge.

• (2055)

As I've described to the committee, some cases can get wrapped up in very short order, perhaps two or three months. Others, with the advent of charter litigation—as you heard when I read out the story of the accused firing and rehiring and firing and rehiring defence counsel—can drag on for months, if not years, but through that entire process, at each pivotal point in that particular prosecution, we as prosecutors have to ask ourselves, “Is there a reasonable prospect of a conviction?”

I asked that question on the first day I get a Crown brief from the likes of my colleague Mr. Morrison, when he was actively engaged in law enforcement, to the time I receive further disclosure from Mr. Morrison and other like-minded law enforcement personnel. It's to the point where I'd now be engaging in discussions with defence counsel or perhaps engaging in thoughtful, productive discussions with my colleagues, because although we all have law degrees and we all have the same sort of legal training as far as working within the criminal justice field goes—particularly with the Attorney General, with numerous opportunities to engage in continuing legal education—some people retain more issues than others. On major cases, quite often I either would be paired up with another colleague or we would just share ideas. One might say, “I see

this as a case with a reasonable prospect of a conviction.” A colleague may not see it that way.

Again, the Crown prosecution service is constantly evaluating, re-evaluating and welcoming and receiving further information from law enforcement and from defence counsel, who is often charged with the responsibility of putting the very best case forward for his or her client. Particularly within the context of an indigenous offender or a marginalized offender, it's to talk about the upbringing of that particular offender in the hopes that perhaps I can look at abandoning in its entirety that prosecution, which was a very bitter pill for me to digest and, quite frankly, was contrary to Ontario Crown policy, because our policy was very clear that if there was a reasonable prospect of a conviction, every firearm offence had to be prosecuted, and only and when if you ever got permission from your Crown manager could you deviate from that policy.

Mr. Chair, it did happen, and it happened to me on a couple of occasions with indigenous offenders. As I told you, Brantford has a Gladue court, the Indigenous People's Court, and I can remember the case very well. It involved an individual who had a significant criminal record, not only in Canada but also in the United States, and who had all of the Gladue factors that you can think of: unstable family, no employment, lack of education, food insecurity and ties to the residential school system. Every single marker was checked off.

He found himself, Mr. Chair, in possession of a loaded firearm. He didn't discharge it, but it was captured by the language in Bill C-5. It attracted a mandatory minimum penalty, but in that particular case, we engaged in a deep discussion, not only about the offence but also about the offender and how I think the indigenous peoples courts, Gladue courts, operate. We certainly don't have enough Gladue courts in this country. Quite frankly, I think the government should be looking at mandating them. I know they'll have to work with the provinces in terms of rolling that out with various ministries. There are advantages to these offenders, Mr. Chair, and Bill C-5 on its own only scratches the surface.

• (2100)

In this particular case, I heard his story. It was one of those opportunities that you really never get as a Crown prosecutor. In fact, I had prosecuted that same individual for a different offence probably two or three years prior to that. I didn't remember him; he certainly remembered me.

How the indigenous peoples court operated is that you wouldn't force the offender to be arraigned. Being arraigned means the charge is read out and they have to make an election of pleading guilty or not guilty. The presumption of anyone who entered into the indigenous peoples court was that there was a willingness and acceptance of responsibility. They had to ultimately plead guilty, but we would thoroughly examine the circumstances of the offence and the offender to determine the best sentencing outcome for that particular offender. In this case, he wasn't arraigned. We were all in a circle, because the whole concept of indigenous peoples court is to break down barriers.

We heard from witnesses in this committee that there is a lack of trust that indigenous peoples have with the criminal justice system. They have their great law. We have our Criminal Code. The two systems could not be more diametrically opposed to each other, but because they are, there is an inherent mistrust.

The two pioneers of the indigenous peoples court in the Brantford jurisdiction were Justice Colette Good, a former Crown attorney in Brantford, and another judge whose name escapes me right now. It'll come to me. They are also indigenous. The whole concept was born from an idea to deliver justice differently to our indigenous offenders.

The Brantford Indigenous People's Court, Mr. Chair, has been operating for over 10 years in the Brantford jurisdiction. We knew a decade ago, if not longer, that over-incarceration was an issue. The judiciary in Brantford took immediate steps to address that.

Part of the composition of the indigenous people's court is that the judges would not appear inside that courtroom with their gown. They would take the black gown off. They would take their red sash off. They would take their judicial tabs off and appear in business attire.

We're all familiar with the composition of a criminal court. You walk in and see rows of seats. You'll see what we call the legal bar. The bar separates lawyers and staff from the public. We have the bar, an opening, chairs for defence and Crown counsel, tables, the court clerk and the court reporter. Then we have an upper area known as the judicial dais. That's where our judges sit.

Gary knows that, because he's lawyer.

Mr. Gary Anandasangaree: I did not know that.

Mr. Larry Brock: Okay, I'm glad you're enjoying this. It's good stuff, isn't it?

That dais, Mr. Chair, is probably—I don't know—10 feet above the main floor. It creates a psychological barrier. It creates a barrier that the judges of this particular court wanted to break down. They've insisted that when they come into the court, they move directly into a circle.

• (2105)

The circle was designed to be respectful and mindful of indigenous traditions. When important decisions are being made with elders, family members and outside individuals, you want to have a circle so that there is an understanding and there is a chain of communication that will not be broken by having various members displaced within the courtroom.

We also had the benefit of an eagle feather. An eagle feather is very important for indigenous men, women and children because it represents their connection to Mother Earth. It binds their conscience and allows them to speak freely on an issue without prejudice, without fear, without criticism. The only way these indigenous circles can work is if you break down the traditional norms of a traditional criminal setting.

We would start these circles with an indigenous knowledge keeper. In the Six Nations of the Grand River, there were probably a half-dozen indigenous knowledge keepers who would regularly at-

tend the Indigenous People's Court. We would run these courts, Mr. Chair, roughly twice or maybe three times a month. The indigenous knowledge keepers would attend and they would open the ceremony by speaking in their indigenous tongue. They would then translate that for the non-indigenous members of the circle. Quite often it was along the lines of opening up your soul, your mind and your ears to accept the information that you were about to receive, to abandon your traditional legal role, to be part of the circle and to have a clarity of understanding.

After they gave the opening, they would pass the eagle feather in a counter-clockwise fashion—I don't know the significance of that, but there is a significance—and you would be allowed to speak only when it was your turn and you had the eagle feather in your hand. We would do various rounds, Mr. Chair, and the first round was simply to introduce yourself to the offender. The offender quite often would have family there and sometimes they would have nobody there. We would also have representatives of social agencies that deal with indigenous offenders in the Brantford criminal justice system.

When it came time for me to hold onto the feather in round number one, I would identify myself, indicate what my professional role was, and inform the offender that this was a non-judgmental format and that I was not there to criticize. I was there to listen and learn, and I wanted to be in a position, Mr. Chair, in which I was armed with all the necessary tools to discharge my responsibility and to exercise discretion if it was appropriate. I would explain that to the offender.

I just gave you an overview of the Indigenous People's Court. In this particular first round, I'll get more specific to this case that I'm referencing. In this particular case, this offender whom I referenced—

• (2110)

The Chair: I think there's a point of order.

No. I'm sorry.

Mr. Larry Brock: This particular offender, who had a criminal record both here and in America, was facing a serious charge. He asked me if I remembered him. I said that I didn't and asked if I should.

He said that I had prosecuted him. He said that I hadn't given a damn about him two years ago. His exact words were that I didn't give a damn about him two years ago, so why should he listen to me now?

That's a fair comment. Nine times out of 10, if not 99% of the time, they have a lawyer and that lawyer is their representative. There are rules of conduct, Mr. Chair, that you are aware of as a lawyer, as mandated by the law society of your particular province. As Crown counsel, I couldn't just walk up to an offender and force him to engage in conversation. He remembered that. His point was that I didn't care, when I didn't have the ability to question him or talk to him. Maybe he didn't know that I had ethical obligations on my part not to do that.

Quite frankly, to any of the lawyers on this committee who have had any sort of experience in a busy criminal court, you know you don't have that opportunity. In a given day, Mr. Chair, I was prosecuting anywhere from 30 to 40 cases. You don't have an opportunity to get to know your offender. I told him it was a fair comment, but that this format was vastly different. I explained why it was different.

In the second round, for the first time in my life I was now talking directly to the offender and pointing at him and asking what the hell he was thinking. What caused him on that particular day to pick up that loaded weapon? What were the circumstances?

Again, I'd never, ever, had an opportunity like that as a Crown prosecutor, with the exception of a trial format. If he wished an opportunity to testify, he's not constitutionally required to do that. At all times, it's the Crown attorney's onus and burden to prove a case against an individual beyond a reasonable doubt. Until there is a finding by a judge, accused persons have the luxury of presumption of innocence. They're not compelled to provide a defence. They don't have to disprove anything. They can sit in the weeds and determine whether or not Mr. Brock, the Crown, or any other Crown has proven all the essential elements of the offence.

This was different, and he recognized the difference. Slowly it progressed, like peeling the layers of an onion. There were my questions. The judge and the offender's own lawyer were asking similar questions. The knowledge keeper was trying to draw in why he was engaging, as a proud member of an indigenous clan, in this type of criminal behaviour. The family members were there.

These were very emotional events, Mr. Chair. Numerous times my eyes welled up because you really got to the heart of the matter that you would never get in a trial. You would never get that by simply reading a Gladue report. You would never get that by simply listening to defence counsel talk about the circumstances of the client's background.

After you have that sort of...awakening, I call it, and a challenging of why they found themselves in conflict with the law, then you go to the next round and look at ways the offender wishes to learn from this particular exercise.

● (2115)

Again, it's a concept foreign to the traditional criminal justice format. If you're successful as a prosecutor in securing a conviction or presenting a guilty plea, after trial you don't question why. You don't question the steps they're going to take for their own rehabilitation.

While I know that rehabilitation is an important sentencing feature in any given case, in a traditional criminal format system it sometimes doesn't play as much of a factor as the other sentencing principles, particularly in these areas I referenced in earlier interventions tonight—several hours ago now—when I talked about how judges repeatedly cried out for sentencing principles that apply denunciatory sentences for gun offences and send a very strong deterrent message to the offender and to the community: If you engage in activities like this, you will expect to receive a jail sentence, and it's not only in Canada. I've done case law research on other larger cases across this country.

Going full circle back to the indigenous circle, I was able to listen to what the plan was that this offender had for his life. He was very candid. I think he was a grandfather many times over. I think he was in his sixties at this point. He suffered just horrible, horrible examples of abuse, physical and sexual, outside of the criminal justice system and inside as an offender. It predominantly was much worse in the United States. He found himself in a carjacking situation in Buffalo as a young offender—I think he said he was 14 or 15 at the time—with two adult friends who were 18. He was tried as an adult and he was sentenced as an adult. He did some hard time. I forget the institution he was in, but you can well imagine the horrors he experienced as a young boy in an adult male population. He had no problems recounting that and sharing that terrible chapter in his life, but he'd had enough. He'd had enough.

If I had a dollar, Mr. Chair, for every offender who said, "This time it's going to be different, Judge; I've learned my lesson, Judge; you're never going to see me here again, Judge", I'd probably be long retired. They're hollow words.

It's much the same sort of insincere rhetoric I used to hear daily in bail court, where they would promise the justice of the peace, "Oh, throw on as many conditions as you want. I'll comply with everything. I'll comply with house arrest. I'll stay away from the alcohol. I'll stay away from the drugs. I won't harass my girlfriend, even though I've done it 10 times over." They'll promise the sun and the moon and the stars just to secure their release, but it's hollow. It's a hollow promise. I experienced that in the criminal justice field as well.

It was different in the Indigenous People's Court. I listened to him. I'm not going to mention the offender's name, out of respect. I said to him, "You'll have to forgive me if I don't believe you. You'll have to forgive me if I have my doubt." I explained why I had my doubt, but I said, "You appear to be sincere, so I'm going to give you a challenge. You talked about upgrading your education. You talked about getting some counselling for your addictions." I think he was addicted to crystal meth or something—a harder drug. I said to him, "You talked about securing a job. You talked about being a role model to your grandchildren. You recognize that to be a role model, you're going to have to have some stable housing."

He made a commitment to that.

● (2120)

This particular case probably lasted the better part of two years. Ordinarily, someone accepting responsibility for something like that would have been in and out of the criminal justice system in two or three months and would have been serving a sentence in some institution long before this particular case ended.

He did everything he set out to do, and not only did he show me certificates of attendance, but he showed me certificates of putting a 110% effort into everything he said he was going to do. He came armed with character reference letters from the institution and the organizations he was involved in. He found himself a job. He was earning a regular paycheque. He had turned a significant page.

It came to the point, Mr. Chair, that I had to ask myself, “I have all this discretion. I’ve now seen an offender who was sincere in everything he said he wanted to do to change his life. Do I believe there is more than a reasonable prospect that I will never see him again in the criminal justice system?” I concluded that was the case. Through my discussion with my Crown manager and other colleagues, we were able to craft a sentence that still held the offender responsible but prevented the traditional brick and mortar institution.

To all the members of this committee who feel that Bill C-5, which we are currently debating, is the answer to all of these issues, I’ve given you an example of steps Crown prosecutors take daily, and they take the job very seriously. There are other ways to address the over-incarceration issue without compromising community safety. That was the example I wanted to share with you.

I’ve often asked myself when and where should I raise this issue, and I think, now that it’s on my mind right now, I don’t want to lose the train of thought.

We’ve heard numerous times in this committee, not only from witnesses but from committee members, the Attorney General, all other senior ministers, the back bench, the Greens, Ms. May and Mr. Morrice today that we should trust our judges, that judges know best and that judges need to have this discretion in their hands to do their job. I’ve been a proud member of the Ontario bar for 30-plus years, and when I say what I’m about to say, I mean absolutely no disrespect to the judiciary.

I appeared in front of many judges in my lifetime, Mr. Chair. They too, just like Crown attorneys, are not walking robots. They do not all think the same. They do not all pronounce judgements in much the same way. Hence, we have appellate courts, depending on the charge and depending on Crown election to proceed summarily. Sometimes the appellate route is to the Superior Court of Justice—the Court of Queen’s Bench for my western colleagues—the various provincial courts of appeal or ultimately the Supreme Court of Canada.

Judges, folks, do not think the same. They do not apply the law equally in the same respect. There are judges who have acquired reputations—soft, hard and all in between.

- (2125)

I’ll give you another example.

There was one particular judge in the lower court in Brantford—again, I’m not going to repeat her name, out of respect. I know you’d like me to, Gary, but I simply can’t, out of respect.

It was extremely frustrating to Crown attorneys, very frustrating to us, because it appeared that—it was a female justice—she just had a different perception on criminal justice and always placed the principles of rehabilitation paramount. She would mention, “This is an offence that attracts”—

Ms. Lena Metlege Diab: Only a woman would do that.

Mr. Larry Brock: Not necessarily. I have some great female judge examples I can share with you, Ms. Diab, and I will afterwards. They’re really good examples, but I think you’re going to

like this example. It goes to the narrative and it goes to Mr. Morrice’s comment that we should trust our judges.

Is there a point of order?

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, if this works the way it does in the House, I would ask you to look at the clock. I think you would find unanimous consent to say that it is 9:30 p.m. and that it is late enough to end the meeting.

[*English*]

The Chair: I received no translation of what Mr. Fortin said. However, seeing—

Mr. Rhéal Fortin: I bet you can find unanimous consent that the clock indicated 9:30 p.m., so we should finish.

The Chair: That’s a good point. I’m just going by my clock. I believe that’s a couple of minutes ahead, but if this is as good a time as ever, we will—

Mr. Mike Morrice: I have a point of order.

I would like to share three brief facts with respect to amendment PV-17.

The Chair: I can give you two minutes, if that would suffice, and then we have to suspend, as it’s 9:28 p.m.

Mr. Mike Morrice: I appreciate that.

With respect to Ms. May’s PV-17, Mr. Brock brought up the Nur decision. I would like to just share for the committee that in the Nur decision, in the Supreme Court of Canada’s summary with respect to mandatory minimum penalties, the quote is, “Empirical evidence suggests that mandatory minimum sentences do not, in fact, deter crimes.”

Second, Mr. Brock brought up his concern with the government not moving forward on the Truth and Reconciliation Commission of Canada’s calls to action. I’ll just share for the committee call to action number 32 from the Truth and Reconciliation Commission, which is the following:

We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

I believe Mr. Brock earlier was encouraging this committee to follow through on the calls to action of the TRC.

Finally, there was a question with respect to who else Greens are following with respect to amendments like PV-17.

I’ll just note that the Black Legal Action Centre, the Canadian Association of Elizabeth Fry Societies and the Women’s Legal Education and Action Fund have all also called for the removal of mandatory minimum penalties.

Thank you, Mr. Chair, for the opportunity.

Mr. Gary Anandasangaree: Mr. Chair, can I call the question on this motion so we can dispose of it?

The Chair: We have about 30 seconds.

Mr. Gary Anandasangaree: If there's no objection, we can dispose of it tonight. We're willing to [*Inaudible—Editor*]

• (2130)

The Chair: To do a vote on the—

Hon. Rob Moore: I still was going to speak to this motion, as well.

The Chair: Since we have more speakers to this amendment, Mr. Anandasangaree, we are going to end the meeting.

The meeting is adjourned.

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