

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

UNREVISED EVIDENCE

OTTAWA, Wednesday, June 17, 2009

The Standing Senate Committee on Legal and Constitutional Affairs, to which were referred Bill C-39, An Act to amend the Judges Act; and Bill C-14, An Act to amend the Criminal Code (organized crime and protection of justice system participants), met this day at 4 p.m. to give consideration to the bills.

Senator Joan Fraser (*Chair*) in the chair.

The Chair: Welcome to the meeting of the Standing Senate Committee on Legal and Constitutional Affairs. We shall begin with consideration of Bill C-39, An Act to amend the Judges Act. We have the particular pleasure of welcoming as our witnesses two ministers of the Crown, the Honourable Chuck Strahl, P.C., M.P., Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians; and a familiar witness before this committee, the Honourable Rob Nicholson, P.C., M.P., Minister of Justice and Attorney General of Canada.

Ministers, have you decided who will go first?

The Honourable Rob Nicholson, P.C., M.P., Minister of Justice and Attorney General of Canada: We have. I will make opening remarks and then turn it over to my colleague.

I am pleased to be here today to discuss an amendment to the Judges Act. You will see that we are proposing to amend a single provision of the Judges Act, section 16 (d), which authorizes the appointment of judges to be appointed to the Manitoba Queen's Bench. Presently, this section provides for the appointment of 30 judges to the court. Our amendment would increase by one the number of judges that may be appointed to the Queen's Bench of Manitoba. We are bringing forward this single-provision amendment specifically to support the implementation the Truth and Reconciliation Commission.

As Minister Strahl will explain, a sitting judge of the Manitoba Queen's Bench has been recommended for appointment as chairperson of the Truth and Reconciliation Commission. The judge could take a leave of absence from his judicial duties pursuant to section 56 of the Judges Act in order to take on the role. However, a leave of absence does not create a vacancy on the court. His appointment would, therefore, leave the Manitoba Queen's Bench one judge short for the duration of his term, with no possibility of replacing him. This would have a corresponding detrimental impact on the court's daily operations.

The proposed amendment to increase the complement of the Manitoba Queen's Bench by one judge will permit the government to appoint a new judge to the Queen's Bench to ensure that the court remains at full capacity during the absence of the chairperson.

(French follows, The Honourable Chuck Strahl, P.C., M.P., Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis: je vous remercie)

(après anglais)

L'honorable Chuck Strahl, C.P., député, ministre des Affaires indiennes et du Nord et interlocuteur fédéral auprès des Métis et des Indiens non inscrits : Madame la présidente, je vous remercie de m'offrir l'occasion de me présenter devant le comité avec le ministre de la Justice pour discuter du projet de loi C-39.

(Mr. Strahl : I appreciate the committee's willingness...)

(anglais suit)

(Following French, Mr. Strahl continuing -- projet de loi C-39.)

I appreciate the committee's willingness to review the proposed legislation swiftly and thoroughly. Before I begin my remarks, I should introduce the officials with me at the table today. They are Caroline Davis, Assistant Deputy Minister, Resolution and Individual Affairs; and Aideen Nabigon, Acting Executive Director, Truth and Reconciliation Commission Secretariat. I thank them both for their work on this file.

Bill C-39 proposes what we think is an effective solution to a problem related to the Truth and Reconciliation Commission. As the members of this committee recognize, the commission got off to a difficult start. While the Truth and Reconciliation Commission is not mentioned directly in Bill C-39, the legislation will help get the commission back on track.

Bill C-39 proposes to amend the Judges Act to enable the appointment of an extra judge to the Court of Queen's Bench of Manitoba. This appointment would pave the way for the Honourable Justice Murray Sinclair to start work as the new chair of the Truth and Reconciliation Commission, and he can do this without disrupting the work of the Court of Queen's Bench of Manitoba.

All parties to the Indian Residential Schools Settlement Agreement have already endorsed the appointment of the Honourable Justice Sinclair. However, the appointment leaves the court with less than a full complement of judges, a circumstance that would compromise the interests of Manitobans. This is unacceptable. Bill C-39 will resolve the problem by facilitating the appointment of a replacement to the court. It would also mean that the Truth and Reconciliation Commission can start its vital work.

(French follows, Mr. Strahl continuing, le commission de verite et de la reconciliation)

(après anglais)(M. Strahl)

La Commission de vérité et de réconciliation est nécessaire pour aider les Canadiens à comprendre ce triste chapitre de notre histoire et comment il affecte toujours les Autochtones aujourd'hui.

(Mr. Strahl : The indian residential school...)

(anglais suit)

(Following French, Mr. Strahl continuing, autoctones aujourd'hui.)

The Indian Residential School system left an indelible stain on Canada's history. While we must never forget the past, we can lessen the negative impact it continues to have on all Canadians. By bringing the past to light, the commission will help Aboriginal peoples to deal with our past in an honest and caring way. What is more, the commission will help all Canadians focus on healing, compassion and a more positive future.

Madam Chair, this is precisely the purpose of Bill C-39. I encourage the committee to review the proposed legislation in a prompt and effective manner, as is your custom. I thank you for your attention to this in such a timely way. I believe it is in the best interests of all Canadians that we proceed as quickly as possible. Thank you.

The Chair: Thank you very much.

Senator Nolin: I have only one technical question. In principle, we all agree on finally having a judge who will chair the commission. Mr. Nicholson, will this be a temporary measure for the time of the commission, or will it be a permanent increase?

Mr. Nicholson: As it stands now, it would be a permanent increase. We can revisit the matter in five years, but there may be other pressures that we will reconsider at that time.

Senator Nolin: When Justice Sinclair finishes his responsibilities as chair of the commission, there will be a net increase of one judge on the bench.

Mr. Nicholson: Unless the matter is revisited at that time, but we will take it one step at a time, senator.

The Chair: Justice Sinclair is the second person to be appointed from the bench to preside over the commission. I understand that in the first appointment it was not necessary to present legislation like this. Could you explain why that is?

Mr. Nicholson: At the time Justice LaForme was appointed there were what is known as two pool positions, two extra positions at the Ontario Court of Appeal. Therefore it was possible to do that without making any amendments to the Judges Act. We do not have that ability. We do not have pool positions that we can add to the Queen's Bench of Manitoba.

Therefore we discussed this, my colleague and I, on a number of occasions and felt this was the most expeditious, frankly the only way we thought we could deal with this and have this individual appointed. It was different with Justice LaForme inasmuch as the pool positions allowed us to appoint up to two extra members of the Court of Appeal. Therefore we could appoint him, and we could have appointed another person to the Ontario Court of Appeal within the existing legislation.

Senator Milne: Ministers, Senator Nolin asked my question, but I am concerned about the internal misunderstandings that caused the previous difficulty and what steps the ministry is taking to ensure that everyone knows clearly what their role is this time around.

Mr. Strahl: That is a good question, and one we spent quite a bit of time to resolve from the time when the first commissioners had resigned and the appointments we put forward recently.

All the parties to the settlement agreed to sit together, with Justice Iacobucci as facilitator, to go through those issues, going through a selection and interview process where they gathered nominations for the positions of both chief commissioners and the other roles. They also agreed to go through the role of the chief commissioner and commissioners and their relationship with one another, with the secretariat, whether or not this person should maintain the role of deputy head, which is more of a technical role, and so on.

All those issues were discussed at length and codified under the facilitation of Justice Iacobucci. It was a good process. At our first iteration of the commission the language seemed straightforward. However, clearly when it came time to play out, when it came time to look at how it actually works, we needed more detail. That detail has been put forward and agreed to by all the parties to the settlement agreement.

That was explained during the interview process with the potential commissioners, and everyone seems very pleased with that degree of detail, which takes any of the question marks out of how the relationship between commissioners works and how the relationship works between the commissioners, the secretariat, the public service and me. That is all clearly described in a way that assures the Truth and Reconciliation Commission of independence, which is extremely important if we are going to get a report that is respected by all participants, but at the same time ensures that the nuts and bolts of it all -- administration, who answers to whom, all those sorts of details -- need to be sorted out in more detail.

I am convinced, as are the other participants who worked with Justice Iacobucci, that those details are now in place. The commissioners include Justice Murray Sinclair, who has experience as a commissioner of an inquiry, so he knew what he was looking for as well. Everyone seems satisfied that the work done has put those questions to rest.

Senator Milne: How long do you anticipate the whole process to last?

Mr. Strahl: The original agreement called for five years from the launch of the original commission, but of course a year has passed. There has been some work in the meantime. The secretariat has been set up; many of the frameworks for how meetings may take place and so on have been developed, as have many services to survivors.

What I expressed to the commissioners was a willingness to extend it to five years instead of four, but also to work with them as they go through this process. They may want to table their final report earlier. If they want to, that is up to them. They have a lot of independence, and we wanted to ensure that that independence was obvious from the start.

Certainly they have up to five years but, again, it is up to them and I do not want to be prescriptive. It will not be my commission to run; it will be up to the commissioners to table their final report when they feel the work is finished.

Senator Wallace: Mr. Strahl, this is not so much a question as a comment. I want to commend you for the Truth and Reconciliation Commission. The work is obviously very valuable and needed and, as you said, it is time to get the commission back on track. This is -- I am sure for us all here and you -- very good news, as was the apology made by the Prime Minister last year; both of those things together. It is time to get on with it, and I am sure you feel the urgency, as do we. Let us get moving and get things back on track, as you say.

Mr. Strahl: Absolutely. Thank you.

The Chair: That was a comment not a question.

Senator Wallace: I think it ended with a question mark.

Mr. Strahl: The only thing I would add is that it was not lost on many of us that this year, on the anniversary of the apology, that the Assembly of First Nations proposed that we have a day of reconciliation as opposed to a day of action or protest or whatever else might have been in works. That is significant.

It does not mean we can delay -- we want to get on with reconciliation -- but it was significant to me and not lost on others that the National Chief and many others said reconciliation, and we must put the actual legs to this now. I thought it was significant that, on the anniversary, that the culture, if you will, was changed to: Let us talk about how to move toward reconciliation.

All Canadians need to put their minds to that, not just Aboriginal people. We all need to put our minds to what that might look like. That is why the commissioner's report is much anticipated, because it needs to find the truth of what went on during the residential school era but move to reconciliation, as you say, as a change of culture between two peoples.

The Chair: I have a couple of questions for you, Mr. Nicholson.

The first is purely technical. When a judge goes off to head a commission of inquiry, who pays the judge's salary at that point? Does the judge get to collect two salaries, or how does that work?

Mr. Nicholson: That is a good technical question. He does not get two salaries.

The Chair: That is helpful.

Mr. Nicholson: He does not get two. He is paid as judge. My understanding is it is the same as what he is getting paid now, as a member of the Queen's Bench. I think that is the way it works. It is of Governor-in-Council appointment.

The Chair: This is perhaps a little more speculative. Given that, as the legislation is written, this would be a permanent expansion of the bench in Manitoba, which you have noted could be revisited in five years' time, could we take it as a modest indication that, in your thinking, it is not a bad thing to have more judges available?

Mr. Nicholson: I was here on another amendment to the Judges Act where we increased the number of judges.

Generally, as the country expands in population and there is an increase in litigation, it makes sense to have more judges. You are correct; this is the second time I have been before this committee proposing legislation that increases the number of judges, and on both occasions, of course, I support that.

In terms of salary, he would be paid under the Judges Act as the head of this commission.

Senator Milne: In your presentation it says that once the new commission is appointed you will be ready to move forward with scheduling the first national event and other TRC mandate activities. I understand "other TRC mandate activities," but what do you mean by "the first national event"?

Mr. Strahl: The commissioner's mandate includes holding major events across the country and a series of other events as is seen fit.

Aideen Nabigon, Executive Director, Truth and Reconciliation Commission Secretariat Canada, Indian and Northern Affairs Canada: As the minister said, under the mandate of the settlement agreement the TRC is required to hold seven national events.

Senator Milne: Do you mean public meetings rather than national events?

Ms. Nabigon: Yes, public meetings with national and international media, and Aboriginal people and non-Aboriginal people. Survivors of residential schools will tell their stories. Other Canadians will hear them and be educated about what happened, which will start the process of reconciliation.

There is also a requirement to hold community events, which will be smaller but probably with less media. It could include one to four communities.

Senator Milne: You will probably get more feedback at smaller events rather than where there is a lot of hoopla and media.

Ms. Nabigon: Yes.

Senator Milne: These people are rather retiring about what happened to them.

Ms. Nabigon: That could be. The intention is that the national events will be big and a little splashier, with media. We must remember that this is also about reconciliation.

The community events may be more, as you say, about survivors telling their stories, always in a very safe and respectful manner. We are aware of the need for health supports and protection of survivors. That is a different issue when there may be national and international media, so the two fora will have a different flavour. They will all be about furthering the goal of reconciliation.

Senator Milne: Do you anticipate further help for survivors?

Ms. Nabigon: Further help in terms of support?

Senator Milne: Yes, helping them come to grips with their personal lingering problems.

Ms. Nabigon: Yes, that is extremely important. We are working with Health Canada and the Aboriginal Healing Foundation. Regional and community groups are already providing support of

that type to survivors, their families and their communities to ensure that they are well protected and that there is lots of health support in place when they tell their stories. It could be extremely traumatic. Some survivors will be doing this for the first time.

Some survivors have been telling their stories for a long time. Their stories are horrible, but they are at different places in the healing journey. Those are the people who we may try to get before national and international cameras, because they may be better prepared to do that than someone telling the story for the first time.

Mr. Strahl: The Aboriginal Healing Foundation has published their second book with some stories they have already gathered and some experiences on reconciliation. I spoke to the director the other day and he said that they had requests for 11,000 copies of the first edition of this book, I believe. The second edition came out only this week.

If people are interested in getting a flavour of what is possible in this journey of reconciliation, I recommend going to the website of the Aboriginal Healing Foundation to check out this book and possibly even order one. It is not an easy read in that it is a difficult issue, but it is well done. For those who want to get a jump start on the hearings, that is a good primer.

Senator Milne: Madam Chair, I apologize for taking us off the subject of the bill, but it is important to get some of these things on the record.

The Chair: It is important for us to understand why we are doing what we are doing, and this committee does not often get the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians as a witness.

Mr. Strahl: I have the biggest title in the cabinet.

The Chair: We are very grateful to you both, Ministers, and to the officials. Thank you very much. This has been most helpful.

Colleagues, is it agreed that the committee proceed to clause-by-clause consideration of Bill C-39, An Act to amend the Judges Act?

Hon. Senators: Agreed.

The Chair: Shall the title stand postponed?

Hon. Senators: Agreed.

The Chair: Agreed.

Shall clause 1 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall the title carry?

Hon. Senators: Agreed.

The Chair: Agreed.

Shall the bill carry?

Hon. Senators: Agreed.

The Chair: It is agreed.

Does the committee wish to consider appending observations to the report?

Hon. Senators: No.

The Chair: Therefore, is it agreed that I report this bill to the Senate?

Hon. Senators: Agreed.

The Chair: Thank you. I shall do so at the sitting tomorrow.

We suspend for another moment.

(French follows - The Chair continues)

(après anglais)

La présidente : Nous procédons maintenant à l'étude du projet de loi C-14, Loi modifiant le Code criminel (crime organisé et protection des personnes associées au système judiciaire).

Nous avons le grand plaisir de souhaiter à nouveau la bienvenue à l'honorable Rob Nicholson, député, ministre de la Justice et procureur général du Canada.

(Présidente: Welcome back, Minister.)

(anglais suit)

(Following French)

Welcome back, Minister. We are delighted to have you here. I believe that you have a statement to make before proceeding to questions.

The Honourable Rob Nicholson, P.C., M.P., Minister of Justice and Attorney General of Canada: I am pleased to be here with Matthew Taylor from the Department of Justice. I appreciate him appearing with me.

Thank you for the invitation to appear before you to discuss Bill C-14. As you know, the bill proposed important amendments to the Criminal Code to respond to the problems of violence and intimidation perpetrated by organized crime, including street gangs.

I appreciate the wide support that I have received from all parties on this bill combating the disregard that organized crime has for the safety and security of our citizens. The harm that such groups commit unites us in purpose and truly transcends partisan politics.

The support that this bill has enjoyed in the house mirrors the unanimous support that the proposals received from provincial and territorial counterparts as well as members of the law enforcement community.

Bill C-14 focuses on four main areas.

First, it proposes to make all murders linked to organized crime automatically first degree, regardless of whether they are planned and deliberate. Section 231 of the Criminal Code classifies murder as either first degree or second degree. Instances where murder is classified as first degree include murders that involve specific victims, for example, police officers; murders committed during offences of domination, such as sexual assault; and murders committed during the commission of specific explosive events, as on behalf of a criminal organization. Bill C-14 proposes to amend the classification provision pertaining to organized crime by broadening it to include all murders that can be linked to organized crime, thus making them all first degree murder.

The amendments focus on the link to organized crime and the inherent danger that organized crime activity poses to the public in two ways. First, if it can be established that the murder itself was committed directly for the benefit of or at the direction of or in association with a criminal organization, then it will be classified as first degree murder even if it cannot be shown that it was planned and deliberate. Thus, even if the murder is relatively spontaneous but was instigated or committed to benefit a criminal organization, it will be first degree. Second, if it can be established that the murder occurred while the person was committing or attempting to commit another indictable offence for the benefit of, at the direction of or in association with a criminal organization, then it will be classified as first degree murder.

It should be clear that we are not raising cases of manslaughter to murder or creating some sort of constructive murder provision. Rather, we are concerned only with those who have first been found guilty of murder. After all, these subsections are first and foremost sentencing provisions. The general trend we have observed is that the rates for gang homicides, including gang murders, continue to increase. Such violence poses a particular and deadly threat to those embroiled in gang activity, but also to the public more generally. We must denounce this activity in no uncertain terms.

The second proposed area of reform is focused on the issue of drive-by or other similarly reckless shootings. This offence is concerned with the criminal intent of the offender and not the specific consequences of their actions. It punishes those who deliberately turn their mind to the fact that their actions will put the lives of others at risk and, appreciating the risk, go ahead and shoot anyway. I find such disregard for others deeply disturbing, as I am sure you do.

Bill C-14 sets an appropriate punishment for this type of offence. The offence would be punishable by a mandatory penalty of at least four years imprisonment and a maximum penalty of 14 years imprisonment. The minimum increases to five years if the offence is committed for the benefit of or at the direction of or in association with a criminal organization. In addition, repeat offenders who have used a prohibited or restricted firearm or committed the offence for the benefit of organized crime would be subject to a mandatory seven year imprisonment. This penalty scheme is consistent with other serious offences involving the use of firearms in the Criminal Code and responds to this behaviour with appropriate penalties.

We are also taking steps to fortify the Criminal Code's treatment of attacks against police and other peace officers by adding two new specific offences to respond to very serious assaults. The first offence would address the assault of a police officer that involves a weapon or causes bodily harm. This would be a hybrid offence punishable by a maximum of 10 years imprisonment. The second offence would address the aggravated assault of a police officer or peace officer. This would be a straight indictable offence punishable by a maximum of 14 years imprisonment. Taken together, these two offences, along with the existing offences of common assault against a peace officer and first degree murder of a peace officer, would create a complete and separate scheme within the Criminal Code to respond to violence against peace officers carrying out their duties. It should be noted that these amendments would also address assaults on the entire class of peace officers, not just police officers, but including prison guards, wardens and border, Coast Guard and Fisheries officers, to name a few.

We are also codifying a principle that when courts are sentencing an offender for any of the offences targeting assaults against peace officers, they must give primary consideration to the principles of denunciation and deterrence. This would apply to cases involving the intimidation of justice system participants, a class that includes judges, Crown attorneys, jurors and many others who play a role in the criminal justice system. This conduct is expressly designed to undermine the rule of law in the criminal justice system as a whole more broadly, and it must be strongly denounced.

Lastly, passage of Bill C-14 would strengthen the use of the gang recognizance provisions, or what is commonly referred to as the gang peace bond. A peace bond is a preventive tool aimed at preventing the commission of an offence. These amendments make it clear that judges issuing such an order can impose any reasonable conditions they feel are necessary to secure the good conduct of the defendant. The amendment would also extend the possible length of an order up to 24 months if the defendant had been previously convicted of a criminal organization offence. We anticipate that these amendments will help address the behaviour of those suspected of engaging in organized crime behaviour and hopefully assist in preventing this activity from occurring in the first place. Indeed, I am aware that the Toronto police have had success with the use of these orders in curtailing street gang activity, which enables them to monitor the activity of street gang members and charge with breaches of the orders when that becomes necessary.

I urge all honourable senators to continue to work in a spirit of collaboration and move these amendments to their enactment as law as soon as possible.

The Chair: Thank you, Mr. Minister.

Senator Nolin: Thank you for appearing before us, minister. If my memory serves me well, in the previous Parliament, in Bill C-2, you introduced, among other things, mandatory minimum penalties for serious gun crimes.

Mr. Nicholson: Yes, we did.

Senator Nolin: You are doing the same thing in Bill C-14. My first question would be, how will this array of serious gun crime criminal infractions work together?

Mr. Nicholson: These are additions to this. You are quite correct that in Bill C-2, the Tackling Violent Crime Act, there are specific provisions whereby people who are convicted of a list of serious gun crimes can expect to receive, quite apart from the maximum, a minimum of five years imprisonment if they are convicted for the first time. If they do not get the message the first time, they get again the benefit of seven years the second time as a minimum. The judges, in their discretion, can increase that depending upon the seriousness of the offence. We have here an addition to that, and these are what we call the drive-by, reckless shootings. They are in addition, but they complement the provisions we have already enacted with respect to gun crimes. In my opinion, they send out the right message to people that if you are reckless, if you try to use a firearm for illegal purposes or with disregard for the safety of others, there is now a whole wide range of penalties within the Criminal Code specifically directed towards that, and there are serious consequences.

Senator Nolin: You said in your opening remarks that you had extensive consultation with your colleagues from the provinces.

Mr. Nicholson: Yes.

Senator Nolin: Have they reported to you the occurrence of such situations, and how widespread is the problem?

Mr. Nicholson: The problem with gangs, which is what we are referring to, is increasing. While homicides have either levelled off or, in some years, actually decreased, the number of gang-related murders is up in this country, and now they account for approximately 20 per cent of the murders in this country. Believe me, I hear about it all the time. I do not have to tell you how challenging this is right now in British Columbia and about the problems they are having with gangs, drugs and guns. It has certainly been welcomed by my counterparts in British Columbia.

Again, we raise these matters in all my meetings with provincial and territorial Attorneys General, and they are very supportive.

Senator Nolin: My question was, of course, about gang crimes but was more specifically focused on the new section 244.2, to the extent that infraction is happening in Canada. That is the discharging firearm, recklessness.

Matthew Taylor, Counsel, Criminal Law Policy Section, Department of Justice Canada: One of the challenges that currently exists is with the drive-by shooting offence, or this type of activity. There are any number of different Criminal Code provisions that might be used to criminalize and punish those who would engage in drive-by shootings or reckless shootings. We have, for example, section 86, which is a negligence-based offence. It is not really appropriate for this kind of behaviour, because what you have there is the inadvertent discharge. That could cover a wide range of behaviour.

We are interested in, as the minister has pointed out, the person who intentionally shoots a firearm, appreciating the risk that they pose to the public.

We do not have those statistics. I can tell you, though, from an officials perspective, that just the other day a colleague from the government of Manitoba contacted us to indicate that they were again experiencing a wave of these types of shootings, so we do know they are happening.

Senator Nolin: Minister, this is not the first time; you are reintroducing minimum punishment. Are you convinced it will achieve the objective of protecting Canadians?

Mr. Nicholson: It is part of what we are trying to do. The administration of justice, as you know, for the most part is conducted at the provincial level so we are one component of this, but certainly we want to send out the right message.

When I introduced mandatory prison terms for people who commit serious gun crimes, I did have one member of the House of Commons point his finger at me and say that I did not appreciate that many of the people who commit these crimes do not appreciate the consequence of their actions. I told him that this is where we want to help. I want to help these individuals and make sure they get the message. Certainly whether an individual gets four, five or seven years, it gives that individual the opportunity to reflect on the seriousness of his or her actions.

I would be afraid of the individual who commits a serious crime and gets sent home. Unfortunately, that would send out the wrong message because ultimately we want these individuals to straighten around their lives; we want them to be rehabilitated and become productive members of society. At the same time, we want to send out the correct message to them that this is very serious activity.

We are one part of it at the Department of Justice, with respect to the Criminal Code changes you have before you, but I realize this is in a large context. This is why I always consult carefully with Attorneys General and I always welcome their input and that of law enforcement agencies, members of the legal community and members of the general public. I am pleased that, everywhere I go, people approach me and say, "Here is what you have to do. Here are my thoughts on this." I have welcomed that in the two and a half years I have been Minister of Justice.

Senator Campbell: I find myself on the horns of a dilemma in this committee. I am a police officer by training, so I hear the whistling of *Hang 'em High* in the back of my head, and I recognize the reality of the sentencing.

My first question is with respect to gang involvement. I have been involved in a number of conspiracy investigations and they are incredibly difficult. They are tough to get to court; they are tough to prove. I have never been involved in proving someone is in a gang. I wonder if that also will be a difficulty. The conspiracy is tough. Will it be tough to prove that these people are gang members?

Mr. Nicholson: Each case turns on its own particular facts, senator. Obviously, any time we convict anyone under the Criminal Code we have to be very careful. As you know, in our system there is a very high standard. Proving someone guilty beyond a reasonable doubt is a high standard, and appropriately so, because we are taking away the freedom of an individual and, quite frankly, stigmatizing an individual with a criminal record.

It is appropriate that there should be this high standard. That being said, we provide the tools within the Criminal Code. There have been provisions with respect to organized crime for quite some time. If it is ever raised with me that these are problematic, again I would look into these, but I believe these are appropriate and reasonable additions.

Senator Campbell: I certainly am not arguing with the appropriateness of that. My concern is on the ground. How tough will this be for me as a cop doing an investigation to prove? The crime is not bad, I can get that done; the problem is going to the next step.

Mr. Taylor: It is a difficult question, and it is one that does come up quite often first off. There are mixed opinions on what the appropriate response is.

Some have argued that proving a criminal organization is difficult. It is time-intensive, as the minister said; facts are complicated; these are lengthy cases. In other cases we have heard prosecutors explaining that they are comfortable with the definition of criminal organization. As all senators know, the amendments from 2002 modified the definition and in some respects it is still relatively new.

We are getting jurisprudence, including out of British Columbia, where Crown prosecutors are successfully establishing criminal organizations.

Senator Campbell: My second question is with regard to the charge of assault police officer. Assault police officer has always been considered very seriously by the courts. When I look at this, I am trying to come to grips with it. Why do you not just take out 270, which is the assault one, and replace it with 270.01, which you are putting in there? From my point of view, the only difference I can see is an actual increase in the penalty limit. When I look at the charges in that, certainly I do not see a large difference there. Could you explain that to me?

Mr. Nicholson: In my opinion, there was a gap in the Criminal Code. There was a specific provision of assaulting a police officer, and then the murder of a police officer. We wanted to have the aggravated assault provision, the two extra provisions so that there is a complete regime of the aggression that is directed toward a police officer, so with that we cover it all.

I will turn it over to Mr. Taylor as to why we did not take one section out and put in the other. It is a technical question, but from my point of view I supported the complete coverage of police officers in a separate regime to send out the message of how inappropriate and how disgusted society in general is when peace officers are attacked in this country.

With respect to your technical question as to why we did it that way, I will turn it over to Mr. Taylor.

Mr. Taylor: It is relatively straightforward, as Minister Nicholson has said. With the creation of the two new offences, the assault of a peace officer with a weapon or causing bodily harm or the aggravated assault were just, as the minister said, filling the gap. If we were to remove the existing provision, we would not have that low end assault provision addressing peace officers. We would have the general assault scheme, but that would not be reflected in law in terms of the simple assault of a peace officer.

In large part, it is just completing the scheme.

The Chair: For the information of those who may be trying to follow this on television, the existing section 270 refers to persons who assault “a public officer or peace officer engaged in the

execution of his duty or a person acting in aid of such an officer”; someone who “assaults a person with intent to resist or prevent the lawful arrest or detention of himself” or someone else, or who assaults a person “who is engaged in the lawful execution of a process against lands or goods”, et cetera, or “with intent to rescue anything taken under lawful process,” et cetera.

Mr. Nicholson: These are in addition to those.

Senator Wallace: Minister Nicholson, you were saying that there is widespread support for the bill, and that is encouraging as a sponsor. Being a personal sponsor of the bill in the Senate, I am encouraged to hear that as well. I have read recently where the Ottawa police services and the Crown prosecutors' office in Quebec are two examples of where there has been declared support for the bill.

In particular – one that is, I am sure, music to your ears – I see where Dominic LeBlanc, the Liberal justice critic when the matter was dealt with in the House, said the legislation seeks to assure the public and to send a clear message that Parliament will be very diligent with respect to the fight against organized crime. Coming from that side of the House, that is very encouraging.

You have obviously undertaken a considerable consultation process before the bill was tabled in the House. I wonder if you might provide us a bit of background so we have a better sense of the extent of that consultation process.

Mr. Nicholson: We get input all the time. You are quite correct; there has been widespread support for this. Other organizations such as the Canadian Association of Chiefs of Police, for instance, are unequivocal in their support of moving in these directions.

I do hear it all the time. I have been to British Columbia three times in the last several months and believe me, members of the law enforcement agencies, police chiefs and everyone involved with the challenges that they are having in Lower Mainland British Columbia, are very supportive of these. They say keep moving. I say I will keep moving as quickly as I can. It is a challenge to get legislation through, as you would be aware.

That being said, I thank you for your assistance in moving this justice legislation through the Senate and I appreciate your sponsorship. Again, I think these are all steps in the right direction; but yes, I hear about it all the time.

I was at a crime forum in Mississauga on Thursday night. Again, I hear from victims' groups, people who want the Criminal Code, to the extent it can, to respond to their concerns. I am very concerned about that.

The whole question of victims is what we are talking about. They were victims, and the interests of law-abiding Canadians are a priority with the government. I am pleased, for instance, that we have appointed the first federal ombudsman for victims of crime. These are steps in the right direction and sending out the right message. Thank you for your comments and your support, senator.

Senator Baker: I am told by a person who should know, who is watching legislation very closely here in the Commons and the Senate, that you have set a record in the number of bills that you have introduced as minister.

There are several questions concerning this bill, and I am sure we will have an opportunity to pursue others. However, my question is one that stands out, which is the section referenced by Senator Nolin a moment ago.

If I read this correctly, it concerns minimum sentence. Whenever I see something that commands a minimum sentence, I think about it and read the words and say, will this capture persons who it is not intended to capture? That is section 244.2; it is clause 8 in this bill.

It says, in one sentence:

Every person commits an offence who intentionally discharges a firearm into or at a place, knowing that or being reckless as to whether another person is present in the place.

Then it goes on with variations of the same, and it defines "place" as being a building or structure. Then the punishment section, subsection 3, says every person who commits an offence under section

1 is guilty of an indictable offence and is liable to imprisonment for a term, in every other case, of not more than 14 years and to a minimum punishment of imprisonment for a term of 4 years.

On a plain reading of it – I know take a technical matter, Mr. Minister, and perhaps Mr. Taylor can answer the question – that reads to me anyone who discharges a firearm, being reckless as to whether another person is present in the place. That is a very broad statement and it would cover the definition of "firearm" pursuant to section 2 of the code.

Do we, in this bill, change the definition of "firearm" in section 2 of the code?

Mr. Taylor: No.

Senator Baker: That leads us to a problem. You look at recent case law in Canada. You find many cases of persons convicted of an offence, using a BB gun or a pellet gun. As Mr. Taylor is aware, as defined under section 2 as a firearm, it is a barrelled weapon. It covers a BB gun. I have the cases here. You have them, I am sure.

In other words, a person who now discharges a BB gun or a pellet gun will be captured by this section if they discharge it in a place being reckless as to whether or not there is someone else present in that place. Is that correct?

Mr. Taylor: I actually cannot comment on that specific example that you have given, but what I will say is that the concept of recklessness as it is defined in law, as all senators are familiar, is a relatively high standard. The individual has to perceive a particular risk, and in the face of that risk go ahead and do the prohibited consequence anyway. As you have articulated the offence, the second subsection, the second way you can prove this test is a risk to life or safety of another person. They have to appreciate that what they are doing will put another person's safety at issue.

Senator Baker: I understand that, but that is separated by an "or."

Mr. Taylor: In the first context.

Senator Baker: In the first context, it says simply for discharging a firearm into a place, knowing that or being reckless as to whether another person is present in the place. Your qualification is after the word "or," which is a different offence altogether.

It is not the recklessness that is being questioned here on the face of it. It is the definition of a firearm.

The senator sitting next to me, Senator Watt from Northern Canada, knows all about firearms and the various regulations the government brings in. Normally, they define firearms as to the muzzle velocity and energy of the gun, as to whether certain regulations will apply. However, what you have done here is just taken a definition of firearm, applied it to a four-year minimum sentence if someone does something with it, knowing full well that it covers BB guns and pellet guns.

Mr. Taylor: What we have done with respect to subsection (a) in looking at how we craft a particular offence that is addressed. What we have heard – some of the motivations that have caused us to create this offence – are the use of drive-by or similarly reckless shootings by organized crime. Unlike section 244 – the specific intent to cause bodily harm – what they are doing is really about rival gang members intimidating the community at large.

They pull up to a house; they maybe spray into the house and drive off. They turn their mind to what they are about to do. The house may be occupied. In turn, the fact that it is occupied, in some respects, is standing in place of life or safety of another person.

This is what we are trying to do with subsection (a). Your specific question in terms of the case law and interpretation, I just cannot comment on today. I would be more than prepared to respond in subsequent correspondence with the committee.

Senator Baker: I will give you two references: *Cripps*, in Ontario, last year, a pellet gun defined under section 2 of the Criminal Code as a firearm.

Then you can go to *R. v. Siguenza* of the Ontario Superior Court again, defining a BB gun, so we have the pellet guns and BB guns. In those two cases, yes, the person committed an offence, but they received a discharge.

What you have done now is taken a giant step with a minimum. That is perhaps what we find objectionable about minimum sentences in that you leave the judge with no choice but to put someone in jail for four years. Perhaps it is something to think about, and use the muzzle velocity and muzzle energy definition of firearm and insert that under section 2 in order to justify this kind of extreme measure.

Mr. Taylor: As I say, I will take your question and respond with a more detailed response subsequently.

Senator Milne: Minister, you have said to this committee before that you are strongly in favour of mandatory minimum sentences, and you have brought them in several bills before. The department must have provided you with some evidence as to how effective they are, if they are effective at all.

Mr. Nicholson: We will be in a better position in a couple of years with the ones we have introduced. We will let you know, but again trying to guess or predict human behaviour, either in the future or exactly what motivates people in the past, is always very difficult and an inexact science.

Certainly I have said this before, that with those individuals off the street who should be off the street, there will be fewer victims, and we can all agree with that. Again, for those people who do not agree with the mandatory minimum, there is no amount of evidence or anecdotal evidence or rationale that will get them to support that; I accept that. However, I think it is appropriate and it sends out the right message.

Senator Milne: Minister, I am not talking about anecdotal evidence, but about evidence that has been collected in other jurisdictions where they have used them. I am certain that the department has had that and that the department has let you see what that evidence is.

Mr. Nicholson: It is always apples and oranges, trying to prove what is and some others.

Mr. Taylor, do you have any comments on that?

Mr. Taylor: We have some information on mandatory minimums available on the Justice website. The results, I think, are inconclusive.

Senator Milne: Whose position does it support?

Mr. Nicholson: He says they are inconclusive, because it is very difficult. You do not have the same system.

Senator Milne: Mr. Taylor?

Mr. Taylor: As I say, the results are inconclusive.

Senator Milne: One could not say very much else right now.

The Chair: I will ask you, Mr. Taylor, to give the clerk the precise reference on the rather large Justice website.

Mr. Taylor: I can read them in now or provide them after.

The Chair: If you do it tonight that will be great, because we will be able to give it to colleagues for tomorrow morning's proceedings.

Senator Nolin: Mr. Taylor, what you have on your website now is fine, but we would like to see that what was posted in the past and has been retired from the website as well.

Mr. Taylor: I can take that back.

Senator Nolin: Let us look back 10 years. You had previous documents on your website that did not exactly support the mandatory minimum sentences, but let us see what you have.

Mr. Nicholson: We will do our best.

Senator Milne: This is a technical question, because when I look at 244.2, this is clause 8(1)(a) and (b), those two clauses to me say exactly the same thing.

Mr. Taylor: They are very similar, absolutely very similar. In certain cases both provisions could apply.

Senator Milne: Or one provision would cover both.

Mr. Taylor: Or one could cover both, but not in all situations. Why we have designed it and separated it into two different places is a park, public space or open space -- a street, for example -- is difficult to articulate as being a place as we have defined it in the code. We are trying to get at those open spaces -- perhaps a school yard -- where someone is intentionally discharging their firearm reckless as to the consequences.

Why you see the wording different there, in terms of:

...as to the life or safety of another person.

If you are in an open space, it is going to be likely that you know the place is occupied. It is not quite the same as saying -- as we have done in subsection 8 -- where you have not deliberately or consciously confirmed that in fact this place is occupied. In the case of subsection 8 we are looking at the person who sees the lights on in the house and has turned their mind to the fact that someone will be there. It is a certain time of the day; I know someone will be there.

They do cover different things, and of course it will always depend on the particular facts of the case. We are trying to give Crown prosecutors at the provincial level a couple of ways to address a full range of behaviour.

Senator Milne: It is still reckless behaviour.

Mr. Taylor: It is still a reckless standard in both offences. In the context of subsection (a), they know where they are reckless, so you can prove they did know. Whereas in the case of subsection (b), if you prove they know, then obviously you have met a higher threshold than obviously you have made out the element in that context.

Senator Milne: It still says:

...knowing that or being reckless...

It still comes down to reckless use of the firearm.

The B.C. Attorney General and the Solicitor General both make the case that they need to target organized crime, and what they need is not in this bill.

Mr. Nicholson: One thing they asked for was getting rid of credit for time served, and I was happy to oblige them a couple of weeks later on that count.

Senator Milne: Maybe. That is still up in the air, I believe.

Senator Dickson: This question is for the Minister. I am a senator from Nova Scotia, and not a week goes by now in Nova Scotia without a shooting, sometimes unrelated to a person. It is very prevalent in Nova Scotia.

I note that chief of police, Frank Beazley, of the Halifax Regional Municipality, has said:

Bill C-14 sends the clear message that drive-by shootings, the reckless discharge of firearms in public places, and the use of firearms for intimidation by criminals will not be accepted by our society. It is long overdue.

I agree wholeheartedly with Chief Beazley.

He goes on further to say:

I am also pleased that this bill will create two new offences designed to protect peace officers and other justice officials. Police officers today are being confronted more and more with weapons and violence.

That sure is true in Nova Scotia, particularly in the Halifax area.

He continues:

We must ensure that our laws address that violence, and these provisions speak to the level of violence and intimidation police face today.

This statistic is shocking really:

Assaults on police officers in Halifax this year over last year have risen in excess of 40%.

As a junior senator around this table, I fully support the quick implementation of this bill, and I would appreciate your comments as to how this bill will help us in the fight against organized crime, because definitely it is involved with drugs and whatever else.

Mr. Nicholson: That is an excellent question and a great quote. Could you see that a copy of that is distributed to all your colleagues with the other information they will be getting?

I feel strongly about upgrading the provisions with respect to assaults on peace officers and other people involved with the criminal justice system. We can never have a system in this country under which people feel that they can intimidate people who are involved with law enforcement at any level. You will see there is a fairly wide definition.

I remember an occasion when someone did something that could be interpreted as a threat to a public officer, and I thought how wrong it would be if people in our society targeted those who are there to protect us.

I make no apologies for the fact that we have upgraded the offences as they relate to individuals who are involved with enforcing the criminal justice system and including, as part of the sentencing provisions, deterrence and denunciation provisions. We want to send the message that people will not get away with intimidating the people who protect us.

I appreciate the comments of the chief of the regional municipality in Halifax. His focus on that section is very helpful. Although nothing is ever perfect, we have certainly been receiving good feedback on this legislation. In my opinion, it sends the right message, but it is only part of what we have to do.

I appreciate that we need a comprehensive approach on all aspects of tackling crime. This is why we have taken a very balanced approach. This is one section of it, and we must continuously focus on the Criminal Code to ensure that it is up to date. This will cover identity theft and auto theft. Again, we are trying to update the Criminal Code to ensure that it is responding to the challenges, which are changing all the time.

You alluded to what is happening in Halifax. We are not facing the same challenges there as we had 25 years ago. I am familiar with that.

When I introduced the identity theft bill, a reporter asked me if this was an attempt to get ahead of bad guys. I said that I just wanted to catch up with them. This is what we are dealing with.

Crime evolves. It is becoming more sophisticated and more dangerous. We have to respond, and this is part of the response.

The Chair: Minister, could I ask you to give someone, perhaps Mr. Taylor, some homework for the summer? There have been quite a number of bills presented since this government took office, but let us go back to what was Bill C-2, the tackling violent crime bill.

Could you produce for us, in tabular form, a list of all the changes in sentencing that have been either passed in legislation or are now proposed in bills before one or the other chamber of Parliament? This would include establishment of minimum sentences where there were none, or increasing them, but also, if you would, any changes in the criteria for sentencing and, in the final

column, what the previous sentence was in cases where we are not talking about a newly created offence but rather about a change in sentencing for an existing offence.

This may be a fairly voluminous document, but it would be of assistance to this committee as we go forward.

I ask for this as a tool.

Mr. Nicholson: We will do what we can to provide you with that information. In some cases, they are brand new offences that we have created. There is a separate offence for auto theft. It replaced the old theft over \$5,000, so it is a refinement.

The Chair: I am not asking you to give it to us this minute. I would simply like a document to which we can refer as we go forward.

Senator Joyal: I apologize for being late. I was caught in the chamber on another matter.

Have you measured the impact that this bill will have on plea bargains and the capacity for the Crown to bring many more criminals before the court?

Mr. Nicholson: It would be only a guess, senator. How do we measure something that has not yet taken place? Again, we want this bill to work well, and certainly to respond to the challenges that Crown attorneys and police officers across the country are having. We are making changes to the Criminal Code, and I am sure they will be well received.

Senator Joyal: I am wondering whether you have had an opportunity to measure, with Crown attorneys, what impact these changes might have on their day-to-day operations.

Mr. Taylor: That was not raised with the Crown prosecutors we spoke with in developing the bill. We can look to other examples in the code where the criminal organization element is present for possible guidance. We have heard some articulate that a criminal organization charge or another offence where there is an enhanced penalty because of the link to a criminal organization may prove effective in encouraging people to plea bargain.

I am not in a position to comment on whether that is appropriate or inappropriate. The decision is obviously one of a provincial Crown prosecutor or those involved in the prosecution of those cases. It was not raised to us when we were developing these specific proposals.

Senator Joyal: In other words, you have not measured how this might affect a Crown attorney's decision to proceed with a charge of first degree murder rather than manslaughter?

Mr. Taylor: With respect to the specific proposals around first degree murder, we are not talking about manslaughter at all. The amendments before you in Bill C-14 will only come into play after a person has been found guilty of murder, because we are looking at the sentencing provision.

It is not a consideration in the section 231 amendment. It is only after an individual has been found guilty that the question arises of whether it is murder in the first degree or murder in the second degree. We are proposing, with respect to organized crime, that it will be first degree in either of the two circumstances in Bill C-14.

Senator Joyal: You have had no representation from the Crown attorney on that specific --

Mr. Nicholson: We deal with the provincial attorneys general. These offences come within provincial jurisdiction. As I indicated in my opening comments, I have received excellent feedback on this, including from the former Attorney General and former Solicitor General of British Columbia. They were very supportive of this legislation, and they are representative of a number of others. They raised these matters with me and we have responded.

However, we do not go over their heads and ask Crown attorneys how they will like it. We rely on the provincial attorneys general in each province and territory.

Senator Joyal: It is not a question of going over the head of others; it is a matter of trying to understand the impact this measure will have on the administration of justice.

Mr. Nicholson: This is why I rely on provincial attorneys general. They have the responsibility for the administration of justice, and I put my trust in them. I meet with them regularly and hear from them regularly.

I am glad to get their input, and if you had any number of them here, they would say that the Conservative government in Ottawa is responding to what we wanted. This is not a list of random legislation we have presented to you. They come, for most part, from our constituents, our voters, as well as from provincial attorneys general and even the law enforcement. You heard a good example from Senator Dickson, namely, the chief of police of the regional municipality of Halifax. There is widespread support.

Mr. Taylor: As Minister Nicholson said, many of these proposals came from the provinces.

If I can focus again, for example, on the first degree murder amendments, those are based on a specific recommendation from the Minister of Justice from Manitoba. That recommendation was informed by an extensive consultation of provincial officials with experts in organized crime from across Canada. When they brought that proposal to the minister's table and then through down to officials, it was never something that was raised at that time as we developed the bill.

As I have indicated, in the discussions that we have had with our counterparts, the issue of whether it would have a negative or positive affect with respect to plea bargaining was never raised. We also consulted with expert Crown attorneys in organized crime prosecutions, specifically, and discussed some of the ideas that have informed this bill and, again, it was not raised.

As I said earlier, it might be viewed positively, or it might be viewed negatively. That will depend on the particular Crown, and I guess what you view as a positive outcome with respect to a conviction for a more serious offence or a lesser plea bargain offence.

Senator Milne: I would like to make a comment to the minister after his previous remark that we will have the identity theft bill before us. We have already had it, Minister, and I am sure you remember appearing before us on it.

The Chair: We sent it to your very own chamber.

Senator Bryden: Thank you for appearing before us. I want to start where Senator Baker started and then moved on.

Approximately how many bills to amend the Criminal Code that increase penalties has the Department of Justice introduced since the government was formed?

Mr. Nicholson: I could tell you that just in this Parliament we have Bill C-14, organized crime; Bill C-15, drug offences; Bill C-25, truth in sentencing; Bill C-26, auto theft; Bill C-31, criminal procedure; Bill C-36, repeal of faint hope; Bill C-39, Judges Act, which I shared with my colleague the Minister of Indian Affairs; Bill C-42, conditional sentences; and Bill S-4 that was introduced in the Senate on identity theft. Those are the ones we have introduced in this Parliament.

In the previous Parliament, we did changes such as criminalizing video piracy. We had the Tackling Violent Crime Act; there was another one for street racing. It has been an extensive list that covers many areas.

Senator Bryden: How many bills would that be?

Mr. Nicholson: I believe it is 10 or 11 in that Parliament. Some of ours in the previous Parliament never made it through, but we put them all together under the Tackling Violent Crime Act. I think we put five acts together there.

Senator Bryden: The number is at 15, 20 or 25.

Mr. Nicholson: It is in that neighbourhood. It has been busy.

Senator Bryden: Every one is primarily concentrated on increasing the penalties.

Mr. Nicholson: Many of them do, senator. Some of them are criminalizing behaviour that was not criminalized before. Certainly, you have that with identity theft. Some of them, like the Judges

Act, have nothing to do with penalties but come within the purview of the Justice Department. Certainly, we have upped the penalties on a number of offences, and, again, Senator Fraser gave us that homework for the summer. We will give you that in detail, either the new offences or the increases of penalties in existing offences.

Senator Bryden: In doing that, I go back to Bill C-2. What made me think of that is your saying that we do not know whether these do us any good or not.

Mr. Nicholson: I think they do good.

Senator Bryden: You think that, but you do not have any evidence of that because you said you do not have time. You have not had enough time.

Mr. Nicholson: I said that in reference to bills that we have before this Parliament. If you are asking me how it will affect things, we will know better as they come on line. Even with respect to the Tackling Violent Crime Act, I appreciate we were in office for two and a half years, but it has only come into effect within less than the last 12 months. It has to work its way through the system.

Senator Bryden: How long will that take? When you get to the end of it, if it turns out that this is wrongheaded, and, in fact, is not the way to make our streets safer, what do you do then? Do you just say, "Oops?"

What we were able to establish in analyzing Bill C-2 was that the United States, Australia and many other countries – but the U.S. in particular -- brought in the mandatory minimums, to use my colleague's terms, the "hang 'em high" line. Not only did I spend a lot of time, but I also spent a lot of my office money in researching this. We had expert after expert appear before us, and we had no evidence whatsoever that mandatory minimum penalties reduced the amount of crime and made our streets any safer.

It turned out in the U.S. that it filled up many jails, so that a whole industry has made a huge amount of money building new jails to fill them up. The African Americans and the Latinos who are in there are in automatically under this.

We found that when you looked in Canada, it was the Aboriginals. They make up a small percentage of the Canadian population, but they make up 70 per cent of the people who are in the jails, as I believe the number was then.

If mandatory minimums come in, they are the ones who get hit. We found it was so bad in Australia that the Australians did away with the mandatory minimums. Not only was it not helping, they came to the conclusion it was making it worse.

Other than this magical thing, that if we could just lock everyone up, then everyone else who causes a crime will look around and say, "I am not going to cause a crime because that is what happens to you." The evidence is very clear that the criminal does not act on that basis.

Do you have, other than "lock 'em up," a program to minimize the impact of crime on our communities? There are such programs.

Mr. Nicholson: There is no question, senator, and I appreciate the comment. The peace bond provisions are an encouragement for people, to prevent them from committing crime. We are giving these conditions to a certain type of behaviour to prevent criminal activity.

I was very proud and pleased to be part of the National Anti-Drug Strategy, joining with my colleagues the Minister of Health and the Minister of Public Safety and putting on a program to help people. I like the idea of the drug courts in this country. That too is part of the Tackling Violent Crime Act and the provisions of this government and the financing so that we help an individual who has been charged with a drug offence. That is not about the people in organized crime, and I do not want people to get mixed up. It is not about the people bringing drugs into this country trying to destroy it, but the person who becomes an addict. I want that individual to get help, and I support the drug courts across this country so that we can give them an alternative, not to have a criminal record.

If my colleague the Minister of Public Safety were here, you would have a long list of all the different organizations that we support. Why? We understand that we need to have a complete package. This is not something that I dreamed up last Saturday night and brought forward. As

Mr. Taylor and others have indicated to you, we have heard from provincial Attorneys General, the people involved in the front line, law enforcement agencies and my own constituents, all the people we hear from on a regular basis. They want us to move forward on these, senator. They say we are on the right track.

Senator Bryden: Do you give comparable time to the social workers and the people in the areas where they are really trying to make a difference? What do you say to the cynics who see this list and, unfair as it might be, take the position, "Well, that is what is expected of this party by the people who support them. They are the people who are interested in crime and punishment." There is a concern from ordinary Canadians about continuing in this direction. We talk to the police a lot, we talk to victims a lot, but we do not talk an awful lot to the people who just use the streets and use my farm and things of that nature. We could very easily fall into a situation that would be close to a police state or something like that.

Mr. Nicholson: I have no worry about that, senator. I really think these are balanced approaches. These are appropriate sentences for the type of activity that we are taking aim at. I hope I mentioned some victims' groups. I talk with them as well. The people who are the victims have strong views on this and what is needed. I tell them the truth. I appreciate hearing them. When we deal with people under the National Anti-Drug Strategy or the National Crime Prevention programs, the guns, gangs, and drugs initiatives, we are working with people who are working with people on the front line to help them. I want them to get the message that this is not the way to go, that Canada does not tolerate this behaviour, that there are certain consequences, and that we want you them to live that productive life and we want to help them do that.

Senator Bryden: I will make one comment and then be quiet. The Book says that if your hand should fail you, chop it off. If your foot does, do the same. An eye for an eye, and a tooth for a tooth. That is the sort of message that I find coming out of this almost total approach, saying, "We need to do is to punish, and punish directly, and if we do that, then that will solve our problems."

Mr. Nicholson: I disagree with your analogy, senator, about the eye for an eye. I have spoken with victims groups, and I can tell you that there is not a penalty here in any of these that will ever compensate for or equal the pain that victims across this country experience because of the crime that has been committed to them and their family. I could never agree that it is an eye for an eye or equal/equal, because it is not even close. That is something that comes across again and again when I visit with victims or they meet with me.

Senator Bryden: It is a false position to say that that now that we have these wonderful penalties and we can lock people up for four years, five years, ten years, you will now be safer. There is no validity in that. You have no evidence of that.

Mr. Nicholson: It is like getting rid of the "faint hope clause." The people I met know that the individual who murdered a family member will still have the benefit of the "faint hope clause" and that they will continue to be victimized every time that person comes up for a parole hearing. We have taken some steps to try to minimize that, they all said to me that at least people in the future will not be victimized again and again, as they have been after the conviction of the person who took away a loved one. That is what they tell me. It is not even for themselves. It is for people in the future. They understand that, and they thank us for doing it.

Senator Bryden: The unfortunate thing is, he really believes it.

Senator Angus: We have had Criminology 201.

The Chair: Senator Bryden, we have had a schedule wonderful set of arguments advanced. Minister, thank you.

Mr. Nicholson: Thank you. I am sure I will be back again.

The Chair: It seems likely, does it not?

We are fortunate to have with us, representing the Criminal Lawyers' Association, Michael Spratt, who is a defence lawyer and a CLA Designate.

Welcome, Mr. Spratt. Do you have a statement to give us?

Michael Spratt, Defense Lawyer, CLA Designate, Criminal Lawyers' Association: I have prepared brief opening remarks.

Thank you for the introduction. I am a criminal lawyer here in Ottawa with the firm of Webber Schroeder Goldstein Abergel. I am a member of the CLA, the Criminal Lawyers' Association. I am here on their behalf.

Very briefly, the CLA supports legislation that is modest, fair, constitutional and necessary. We are here today to talk about Bill C-14. From my view, there are some problems with this bill that should be considered. I would like to concentrate specifically on the new section 244.2.

Of course, this section creates a new offence, to discharge a firearm knowing or being reckless as to whether another person is present in a place, or to discharge a firearm being reckless as to the life or safety of another person.

This section also creates a minimum sentence, if a restricted or a prohibited firearm is used. That provision specifically is very concerning to me.

This is yet another minimum sentence that is being proposed. Sentencing has long been an individualized process. Rehabilitation and specific deterrence are important principles of sentencing and, in my submission, should not be discarded to focus mainly on general deterrence and denunciation. This is especially true, I would suggest, given some empirical data I will be referring to about rates of crime.

Currently, the CLA's position is that experienced judges, who are privy not only to the specific individualized facts of the case but also to the individualized information about an offender, are best situated to craft a just and appropriate sentence.

Of course, it should be remembered that these judges' decisions are always subject to judicial review, but it is CLA's position that it is the judges themselves, with their experience and their detailed knowledge of those specific facts that I referred to, who are in the best position to craft an appropriate and just sentence.

I see that Bill C-14 as proposed also expands some peace bond provisions. It is apt to look at some statements made in that regard. I note that the committee just heard from the Honourable Mr. Nicholson, the Justice Minister. In speaking about those expanded peace bond provisions in the code the minister said: Specifically, we are making changes to clarify that when imposing conditions as part of the order a judge has very broad discretion to order any reasonable conditions that are desirable in order to secure the good conduct of the person before the court. This flexibility is extremely important, because it provides those dealing with these persons with the framework they need to craft the most appropriate response to address the particular facts and circumstances of the case at hand. This helps avoid a cookie-cutter approach and will result in more effective conditions being ordered.

I agree with that statement entirely. That reasoning is equally applicable not only to the imposition of potential peace bond convictions that may follow a sentence but to the sentence itself. A wealth of literature has been presented I believe before this committee on different bills, and these include reports from the Department of Justice that show that mandatory minimum sentences are simply not effective. I echo the minister's position. A cookie-cutter approach, however politically attractive, does not advance the cause of justice or result in a fair and appropriate sentence being imposed on a specific offender.

The proposed cookie-cutter approach, and that is what minimum sentences are, will result in more litigation, increased prison population at the taxpayers' expense, and most important, in potential unfairness to the individual being sentenced.

Through minimum sentences we turn our back on a fair and individualized sentencing process that until recently has been the enviable characteristic of the Canadian system.

I made mention earlier in my submissions to some crime statistics and data. I think they support the position. Statistics Canada has recently compiled a new index for spotting trends in criminal occurrence rates. That has produced results that are certainly at odds with the current federal government's mantra that crime is on the increase and can only be stopped by longer sentences, no bail and the creation of more and more offences.

The new crime index is the Police-reported Crime Severity Index. Of course, it has an acronym: the PRCSI. This differs from previous indexes -- for example, the Police-reported Crime Rates, that compiles any report of a crime. The Police-reported Crime Severity Index actually indexes it to the severity of the crime. It is based on the seriousness of the offence.

What Statistics Canada found was that, over the last decade, crime severity has fallen by about 20 per cent.

One must ask: Are minimum sentences, more punitive measures, this new legislation, really necessary? Is there really as large a problem as we are sometimes led to believe in the media and through the statements of the government?

In my submission, there is not. This minimum sentence and this legislation are not necessary; they remove an important function from our judiciary, which has been historically trusted to impose just and fair sentences that again are always subject to appellate review.

There is another aspect of the legislation and this section specifically that I would like to discuss. This section 244.2 I view as a companion section to section 244, which of course is to discharge a firearm with the intent to maim or wound someone. Of course, that section has mandatory minimum sentences as well -- in fact, the same mandatory minimum sentences being proposed in this legislation.

What we are left with, if this legislation passes as drafted, are two sections with very different intent elements: one, an intent to wound or maim and one mere recklessness, but we are looking at the exact same minimum sentence that would be imposed on those two offenders.

That disparity is uncalled for. It has long been held that sentencing must reflect one's moral culpability, and certainly there would be a difference in someone's moral culpability between discharging a firearm with the intent to maim and wound someone and discharging a firearm recklessly.

Recklessness is a very low standard in criminal law and that should be reflected in the sentence. Ultimately, it should be reflected in a sentence that is imposed by a judge who is aware of all of the circumstances and not merely a number printed in the Criminal Code.

Again, this section is broad and it may capture a range of activities that perhaps were not contemplated -- for example, children who discover a firearm in a parent's home and use it. One could imagine a young Aboriginal child who is passed down a family heirloom that was used at some point and perhaps discharges that in a manner that is captured by this code.

Certainly, that firearm could be a restricted or prohibited weapon; and in that situation a judge should have the discretion to take all factors into account before simply passing a sentence.

The Chair: For a young child?

Mr. Spratt: When I say a young child, I mean a young child that would be captured by this. Perhaps it shows my age, which may be a good thing, if I think of anyone younger than me as being a young child. I could be turning into my parents; I am losing my hair.

To come back to the point, this section is broad and the Criminal Code should not repeat itself. This new section, in my submission, may not be necessary, given the crime data; but also given that there are many sections of the Criminal Code that may address the problem or perceived problem.

If you look at section 86 of the Criminal Code and following, there are many charges that deal with weapons offences, including section 86, which is careless use of a firearm -- a section that in itself has a minimum sentence and no maximum sentence.

A judge using their discretion under that piece of legislation -- or what discretion they may have, given that there is a minimum sentence -- would be able to capture any conduct that is intended to be captured by this new piece of legislation.

As I said, duplication in the Criminal Code is not advantageous. In my experience, it leads to overcharging, laying of multiple charges for one act, which leads to more complex trials, potential unfairness in negotiation in pre-trial conferences with the Crown and, ultimately, protracted litigation.

One must ask, given the existing sections of the Criminal Code and the crime data indicating that there has not been a rise in serious crime, is this new legislation really necessary? It is my submission that the answer to that is no.

As drafted, it is my position that apart from being unnecessary, this section could lead to much unfairness in the sentencing of individual offenders; unfairness that unlike some other jurisdictions around the world, Canada has largely been able to avoid up until this point.

Senator Nolin: Mr. Spratt, thank you for taking the time to study with us.

Mr. Spratt: It is always a pleasure.

Senator Nolin: Did you testify in front of the House of Commons committee?

Mr. Spratt: I have not had the pleasure.

Senator Nolin: Have you read or listened to transcripts of proceedings of the Justice Committee in the House of Commons?

Mr. Spratt: I have. I do not expect I have read all of them, but I have tried to make myself aware of them prior to coming here today.

Senator Nolin: Are you aware if the argument you are raising today has been raised over there?

Mr. Spratt: I expect it has been.

Senator Nolin: I am asking you if you read it – I think it is an important argument.

Mr. Spratt: I know the argument has been raised. I have not read the details, but I believe it is a very important argument and one that needs to be considered at all levels.

Senator Nolin: You have referred in your remarks to a document – and you were questioning its origin, you mentioned the Department of Justice – to the effect that those sentences do not work. Do you still have that document?

Mr. Spratt: I do not have it with me. I know there was a Justice Department report in 2002 and 2005. It dealt primarily with narcotics offences. I would submit that their analysis of minimum offences is quite apt in this case as well.

Senator Nolin: I do not want to depend on hearsay on the document. Could you check in your notes, in your library, to see if you still have that document? I am sure we will be glad to see it.

The Chair: I think we can actually find it. We have all these wonderful researchers.

Senator Nolin: I do not think it is on the website anymore.

The Chair: However, I think it is available to our staff through their resources.

Senator Nolin: Just to make sure we are talking about the same document, could you look at your papers and maybe forward to the clerk a copy of the document you have?

Mr. Spratt: I will do my best, senator.

Senator Nolin: Thank you. Maybe it will help in future studies.

The Chair: This is not the last bill that will come before this committee on these matters.

Senator Watt: You have already raised the issue I was very concerned about, but I will raise it again. For an Aboriginal child that happens to know where the rifles are stocked, even though they were locked up, there is a good possibility they could find the key and access those rifles. There is no age limit in this piece of legislation, and you mention it is very broad; I do agree with that.

Let us say in the case of a child that is under the age of 14, as an example, if that child happens to use pellet or BB guns – which they use pretty heavily in the North when they are beginning to use

rifles; we even use those as a way of teaching our youngsters how to handle rifles – and the child happens to hit someone or wound someone, is it your opinion that the child will be charged?

Mr. Spratt: The child would have to be of an age to be charged under the Youth Criminal Justice Act, of course. To be honest, I am not sure how the Youth Criminal Justice Act would intersect with this piece of legislation when it comes down to sentencing. It is something that I would need to look into, but there could definitely be issues there. However, I expect if the child is of age, he would be charged.

Senator Watt: It is your opinion the person would be charged, regardless of the age, under the minimum sentence?

Mr. Spratt: Yes; and if the child is not charged, what we are really doing is removing discretion from the hands of judges and putting discretion in the hands of police officers as to when to charge and when not to charge, which could be problematic as well.

Senator Watt: At the same time, I do not think we have facilities in the North, even in the sub-Arctic, to take care of those young people who are breaking the law.

Senator Angus: Are you basically a defence attorney?

Mr. Spratt: I practice exclusively criminal defence.

Senator Angus: Is the Criminal Lawyers' Association a grouping of defence attorneys?

Mr. Spratt: That is correct, yes.

Senator Angus: In the views you are expressing here, you said you are speaking on behalf of the defence bar, is that correct?

Mr. Spratt: That is correct.

Senator Angus: Would you have had a meeting to put together your submission, or are you coming because you are here in Ottawa and you have that personal view?

Mr. Spratt: The association is headed by Mr. Frank Addario. Also, I have spoken to a number of members of the criminal defence bar – a number of members of the Criminal Lawyers' Association, including Mr. Matthew Weber, a senior partner at my firm who has practiced criminal law for a lot longer than I have.

The CLA is comprised of many senior lawyers, including Mr. Joe De Luca, who is currently doing a murder trial in Barrie. Through that trial, in fact, the jury vetting problem came to light. There are a number of very senior lawyers on the board.

Senator Angus: This is the prevailing view of those individuals at the bar who are defending people charged with crime, is that correct?

Mr. Spratt: Yes. I do not think I have met a member of the criminal defence bar who is in favour of minimum sentences.

Senator Angus: I wanted to have that point on the record. Were you in the room when Minister Nicholson was having an interchange with my colleague, Senator Bryden?

Mr. Spratt: Yes. I had the pleasure of catching the end of his testimony, and I think I did see that interaction.

Senator Angus: Did you agree with the minister's responses?

Mr. Spratt: Could you remind me precisely what the issue was? There was a wide ranging conversation.

Senator Angus: The issue was a standard academic argument in criminology, namely, whether mandatory minimum sentences are a deterrent. My colleague was making the case, after doing substantial study, that they are not a deterrent at all and, in fact, may have the reverse effect. The minister put up a spirited contrary position.

I thought I had seen you sitting there. I do not want to put you on the spot.

Mr. Spratt: I heard the comments. The material I have reviewed, which I think has been presented to this committee on other bills, has said that it is not effective. In fact, I found an article on the Internet today from the *National Post* that said so.

Senator Angus: That is a great law journal.

I will conclude with a question. Your position was clear, and I expected it to be that.

We are told about and read about every day about a rampant crime wave with drive-by shootings and reckless killings. In Montreal there were four shootings last Sunday and Saturday. I believe that three of the four were fatal. It is a huge problem.

Have you a better suggestion to deal with that than what is in these bills?

Mr. Spratt: I may have to disagree with you on the point of it being a rampant problem. I do not know if there is empirical data to suggest that. In fact, the opposite may be true. However, I would submit that the current provisions under the Criminal Code are adequate to deal with the problem. To be honest, I have not seen a lenient sentence for homicide committed with a gun since I have been practising. I think the current legislation is adequate to deal with whatever problem there may be.

Senator Angus: That is fine. Thank you.

Senator Baker: Senator Joyal asked several questions of the minister, one of which pertained to the effect on prosecutions, to which the minister responded that prosecutions were done under the provincial attorneys general and ministers of justice. I think he forgot that we have a director of public prosecutions, and it is federal prosecutors who prosecute everything under the Controlled Drugs and Substances Act and under the Fisheries Act, and in many cases there is an interspersing of charges with the Criminal Code, so Senator Joyal's question was legitimate.

I would like to ask the witness about the effect of minimum sentences on plea bargaining. Would the fact that a convicted person would face enhanced sentences lead to an increase in the number of plea bargains, such as pleading guilty to included offence or other offences under the same indictment, which would also lead to increased numbers of prisoners in Canada?

Mr. Spratt: I believe that minimum sentences do two things, neither of which is particularly advantageous. The first is that they remove discretion from the hands of judges and put it in the hands of prosecutors, who have the discretion to withdraw some charges and proceed on others. As a result, there is a great incentive for an accused who is facing a charge that carries a mandatory minimum to bargain with the Crown to avoid a trial or adjudication of the charge and plead guilty to an included offence. That is problematic because it is a misplacement of discretion. A judge should have that discretion. If we are worried about the exercise of discretion, a member of the judiciary who is accountable to appellate review is a safe place to put that discretion.

Conversely, mandatory minimum sentences may also result in more charges making their way to trial. If one is faced with a charge which carries a mandatory minimum sentence, especially if your criminal conduct is toward the lower end of the spectrum, there is no incentive to plea bargain because you know what sentence you will get. There is actually an incentive to proceed to trial, because after trial, if convicted, you will not face any more than the mandatory minimum because your conduct is on the lower end of the spectrum.

Therefore, we have this plea bargaining problem as well as a potential backlog in the courts through charges that could have been resolved earlier but simply are not because of the mandatory minimum sentence.

Senator Baker: I have one further short question. You observed that we are increasing the numbers of offences in the Criminal Code that already cover, in part, the same delict. You mentioned 86.1, careless use of firearm; 221, criminal negligence; discharging a firearm recklessly, 244.2; section 87, possession of a weapon dangerous to the public peace; 267(1)(a), assault with a dangerous weapon, to wit, a sling shot.

The answer given in response to that argument was that the Crown would "Kienapple out" those offences and the person would go to trial not on all of these offences individually and that would not increase the number of offences. What do you say in response to that?

Mr. Spratt: In my experience, it is the court that would apply the Kienapple principle after convictions are entered, that is, the rule against multiple convictions. We often see someone charged with assault and assault with a weapon, for example. I have not seen one of those charges stayed or withdrawn prior to trial. The accused is arraigned on all and the trial takes place on all, so I have not seen the Crown use that discretion.

Senator Baker: You overlooked a section. You mentioned section 244 at the beginning and you said, and I think you misspoke, that this minimum sentence only applied to restricted firearms and prohibited firearms. That is in the subsection (a), but the subsection (b) says "in any other case."

Mr. Spratt: Yes.

Senator Baker: So this would apply not only to restricted firearms but to a BB gun, a pellet gun and a sling shot.

Senator Wallace: Mr. Spratt, hearing you speak about mandatory minimums I am almost left with the impression that this bill is introducing mandatory minimum sentencing for the first time to the Criminal Code, but of course that is not the case, is it?

Mr. Spratt: No. The code is replete these days with mandatory minimum sentences. This is yet another example of them.

Senator Wallace: Those mandatory minimums in the code today have been introduced in the past through a series of governments. It is certainly not only the current government that has introduced mandatory minimum sentences. Is that not correct?

Mr. Spratt: Many governments have supported mandatory minimum sentences in the past.

Senator Wallace: A series of governments have obviously felt they represent some value to society. They provide some value to law enforcement, I would have to assume. Would you not agree?

Mr. Spratt: Perhaps that, or perhaps it is politically advantageous. I do not know which one it may be.

Senator Wallace: Code provisions would be introduced because they are politically advantageous as opposed to serving the interests of justice. You as a legal counsel would suggest that?

Mr. Spratt: I say that not to be disrespectful.

Senator Wallace: There is a serious administration of justice issue. I would not agree, but I will not comment further on what you have to say.

Mr. Spratt: I say that not to be disrespectful, senator, but merely because I have not seen empirical evidence that would suggest that these minimum sentences have utility.

Senator Wallace: Have you researched that yourself in regards to the existing minimum sentences? Are you telling us the mandatory minimums in the code today have had no impact on creating a deterrence in regards to the commission of crime?

Mr. Spratt: I am saying that I have not seen that research.

Senator Wallace: You do not have the research? You do not know yourself?

Mr. Spratt: I have not seen that research. I do not know if the committee has been presented with it, but I know the Department of Justice, in regards to that --

Senator Wallace: You are giving the evidence. We have already heard from the Department of Justice. Your position is that you have nothing to offer to support your statement, or your

impression, I guess, that deterrence is not created from mandatory minimum sentences. You cannot comment on that.

Mr. Spratt: It is my position that it is not. I have not seen anything to change that position.

Senator Wallace: You have no evidence to present to us to support that.

Mr. Spratt: No. I think others would be in a better position to present that evidence.

Senator Wallace: You made a comment in your evidence in regard to the approach being taken not only by this bill but perhaps others. You boiled it down to a statement that, in your opinion, it seems that government is saying that crime can only be stopped by longer sentences. I hope that was a misstatement on your part. I hope you would agree there is far more to the administration of justice than simply longer sentences and that you would not boil it all down to that as being the sole thrust of the government's approach.

Mr. Spratt: In this legislation, to be fair, there are enhanced peace bond provisions. What I find troubling in this legislation is that discretion is deemed to be wise and valuable in certain circumstances, yet removed in other circumstances in potentially an unfair way.

Senator Wallace: You also said it would appear the government is turning its back on a fair and just sentencing system that exists today. I would suggest to you that the public and law enforcement officials would take serious exception with that and have serious doubts that the existing system is at all times a fair and just sentencing system. In part, that is this bill is being introduced. Would you not agree there is a wide divergence of opinion on that?

Mr. Spratt: I agree there is a wide diverse opinion on that, just as there are a wide diverse of offenders and types of offences, which is why discretion and paying attention to the differences among those are things that should be encouraged instead of discouraged.

Senator Wallace: As you said in response to Senator Angus' question, you do represent the accused. You represent defendants, and that is your perspective. Thank heavens you are there to do that important job, but that is your perspective.

The Chair: Senator Wallace, if we have time for a second round, you will be on it.

Mr. Spratt: I am a criminal defence attorney, and it is my job to ensure that the process is fair to accused people who are presumed innocent.

Senator Joyal: I remind honourable senators that that is the fundamental principle on which the criminal justice system of Canada is based.

Mr. Spratt, you have explained to us the impact that these amendments could have on plea bargaining. On the basis of your experience, how does it work when a Crown attorney discusses with you or another defence lawyer the grounds on which to choose negotiating with the lawyers? Is it based on the chances of success in court?

Mr. Spratt: I have not had experience with these provisions, but I have had experience with other provisions, some dealing with firearms. Quite often, there is a mandatory minimum sentence, and a good example perhaps is the impaired law. There is a mandatory 14-day minimum sentence upon a second conviction should the Crown attorney choose to file the notice of increased penalty. Quite often, if the circumstances are explained, if, for example, family situation, work situation, an offence on the minor end, the Crown may choose not to file the notice of increased penalty and therefore there would not be a mandatory minimum sentence. Similar things can occur for other offences where there are mandatory minimum sentences. Typically, in my experience, that is how the negotiation at that point would proceed.

There is always a risk that you are left with an accused who is facing a mandatory minimum sentence and may take a plea bargain. They may, in the face of what seems to be a strong Crown case, take a plea bargain where the mandatory minimum offence is withdrawn by the Crown and plead guilty for a custodial period in relation to an offence without a mandatory minimum. Of course, an accused at that point is in a very stressful position, and it is always difficult from my perspective to ensure that the accused should be pleading guilty. Sometimes it is against my advice,

and sometimes I have to remove myself from a case where an accused would want to do that because they are facing a long sentence, or a mandatory sentence, should they be found guilty.

Senator Joyal: In that context, could we not consider the situation where, for the sake of expediency of justice on the eve of a trial when there is a list of charges, they pick and choose which one they will agree on between the defence lawyer and the Crown attorney and try to skip the higher charges because, on the other one, the accused would accept a plea bargain?

Mr. Spratt: Yes. The short answer is yes.

Senator Joyal: When the minister was here, I counted 13 times that he said, “We have to send the right message.” It was a leitmotif of his presentation. It seems to that it does not send the right message if, at the trial level, they pick and choose the charge on which the accused will be brought before the court.

Mr. Spratt: The placement of the discretion in the Crown attorney's hands may be problematic, but also at that point, the meetings between defence counsel and Crown are not a matter of public record. They are not in open court. There may be a valid reason to come to that sort of agreement. There may be valid circumstances that would justify that sort of agreement. Since it is not in open court, victims of crime or members of the public might not be fully informed about why that decision was taken. It would be my preference not to have a mandatory minimum sentence, to air that in front a judge who is the subject of appellate review should a mistake be made, and matters be a public record. In my opinion, the public is more informed that way and might have an accurate picture of what happened in that specific case.

Senator Joyal: Thank you.

Senator Bryden: There is much that one could say. One thing I should make very clear is that I am not indicating that this government was the first to discover mandatory minimums, but they sure know how to pile them up. I was as much opposed to mandatory minimums when they first came in under, I believe, the Mulroney administration, but certainly there were mandatory minimums during Chrétien and also Martin.

In fairness to everyone, we do not live in a bubble here. I have only been here 15 years, although I have been involved with law for quite a long time. In many instances, it does come from political pressure from the police and from all kinds of different sources, including whoever your opposition is, in order to try to match. For God's sake, do not pretend that you are soft on crime, because if you do that, that is a terrible thing for a politician.

Whether it works or not, you have to appear to be hard on crime.

Senator Joyal: It is the right message.

Senator Bryden: We heard it today.

The Chair: This is a fabulous debate, but is there a question?

Senator Bryden: In any event, there is no evidence that indicates, from any jurisdiction we were able to check, that mandatory minimums acted as a deterrent and reduced crime.

I have two things to say. First, everyone probably knows this, but the Supreme Court has ruled that Parliament has the right and the ability to legislate minimum sentences. It is there. I do not know that they are recommending that they do it. It does not violate the Charter.

Senator Angus: Not recommending that they do not either.

Senator Bryden: No, but they are there. Whether they are as useless as I think they are, that is up to the people to make a decision on.

I will make the other point I was trying to make with the minister in one sentence. There has been evidence within the last three weeks that communities that have had a reduction of crime came from them allocating -- in one instance, \$1 per capita, and in another \$2 per capita -- for the purpose of crime prevention, particularly in young gangs. The result of that was a 30 per cent reduction in one instance, a 35 per cent in another community in a different area.

Right now there is no real evidence that part of the thrust of our Justice Department is to prevent crime. Those communities spent their money on making sure there were things for these people to do, ensuring there was an opportunity to go to university. There are other ways to make our communities safer besides simply locking people up and throwing away the key, at least for seven years.

The Chair: I was going to give Senator Wallace an occasion to make a corresponding debating contribution, but we have run out the clock.

Our interpreters must get to another building for another committee in five minutes.

Senator Joyal: Give him the opportunity tomorrow.

The Chair: We will do it tomorrow morning for you, Senator Wallace.

Colleagues, our next meeting will be tomorrow morning in this room at 10:45. Tomorrow morning we shall hear from the RCMP, from the Canadian Association of Chiefs of Police and from the Canadian Centre for Justice Statistics.

(The committee adjourned.)