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Monday, February 14, 2011

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Chair

Mr. Ed Fast

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• (1530)

[Translation]

The Vice-Chair (Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.)): Good afternoon everyone. This is the 48th meeting of the Standing Committee on Justice and Human Rights. Today we have witnesses on Bill C-54, An Act to amend the Criminal Code (sexual offences against children).

[English]

We're very pleased this afternoon to have in our first hour two witnesses as individuals. The first is Vernon Quinsey, professor emeritus of psychology from Queen's University; and the second is Hubert Van Gijsegem, who is a psychologist and a retired professor, formerly of the University of Montreal.

Gentlemen, professors, we generally allow an opening statement of about ten minutes, followed by a round of questions from all of the parties represented here.

We'd like to start with you, Professor Quinsey, for ten minutes.

Dr. Vernon Quinsey (Professor Emeritus of Psychology, Queen's University, As an Individual): Thank you very much. It's a pleasure to be here.

I have a few remarks to make. I tried to think of things that would serve as an appropriate background for consideration of sex offender sentencing and sexual crimes against children.

The first point I want to make, and the one that's most important in this area and in dealing with sex offenders, is that sex offenders vary enormously in their likelihood of reoffending. This is the central datum that has to be dealt with in any kind of sentencing policy. That being said, there are certain categories of sex offenders who are relatively unlikely to commit subsequent "hands-on" or contact sex offences. Among these are incest offenders and Internet offenders without a history of contact offences.

At the individual level, a sex offender's risk of reoffending can be estimated with a fair degree of accuracy using actuarial methods. Our predictive abilities are good, but they're not perfect.

Sexual predators are those who are very likely to commit new "hands-on" sexual offences, especially violent sex offences. It is critically important to identify and to incapacitate these individuals. Given this, I think that criminal justice policies should seek to balance offenders' civil liberties and community protection by maximizing the incarceration of sexual predators and minimizing the incarceration of low-risk offenders. In this view, sentences should reflect both the gravity of the instant offence and the risk the

individual presents to the community. We have to realize in this area that no sentencing policy can lead to the incapacitation of all sex offenders who are sexual predators without the lifetime incarceration of virtually all sex offenders. There will always be some missed. The issue is one of striking a proper balance.

The solution to this policy conundrum involves carefully appraising the risk of identified sex offenders and adjusting the amount and intensity of supervision and the duration of incarceration on the basis of risk.

I want to switch gears a little bit now and talk about the historical context within which we find ourselves contemplating changes in sentencing policy.

Throughout North America, the rates of homicide, rape, and a variety of other crimes have declined over recent years, sometimes substantially. These changes, reflected in both survey and official records, parallel drops in a variety of other risk-related behaviours and outcomes, including industrial accidents, driving without a seat belt, having sex before age 13, smoking, dropping out of school, and so forth. So there's a wide variety of indicators that are related to risky behaviours, some of them criminal, some of them not. They're all showing the same welcome trends.

We are doubly fortunate, I believe, that the rate of sexual offending against children has also markedly decreased in recent years. This is a North-America-wide phenomenon. We're doubly fortunate, because sexual offenders against children are more likely to have been sexually victimized themselves as children. It is likely, therefore, that the drop in sexual offences against children will lead to a further drop in the number of sexual offences against children.

That concludes my opening remarks.

• (1535)

The Chair (Mr. Ed Fast (Abbotsford, CPC)): Thank you.

We'll move to Mr. Van Gijsegem.

[Translation]

Dr. Hubert Van Gijsegem (Psychologist and Professor (retired), University of Montreal, As an Individual): I will briefly start by introducing myself for credibility purposes. My name is Hubert Van Gijsegem. I have been a psychologist since 1963. I got my PHD in psychology in 1970. I have had two parallel careers: one as an academic at the University of Montreal and one as a practitioner.

As a university professor, I obviously have the opportunity to teach and do research. Most of my research has been on sexual abuse, on victims and the consequences for victims, as well as on offenders. As a practitioner, my entire life, I have mainly been a clinician. As a clinician, I have had the opportunity to provide treatment, once again to victims as well as to sex offenders.

However, over the last 15 or 20 years of my career as a practitioner, I have focused solely on forensic examinations, in other words expertise for a number of courts in various jurisdictions. Like my colleagues who are here today, I have published some papers and books on the subject of sexual abuse.

I have been asked to say something intelligent on Bill C-54 regarding the protection of children against sexual predators and also to address whether or not mandatory minimum sentences are necessary or useful.

I read the legislative summary and was somewhat shocked by some passages. When I read arguments in favour of these types of prison sentences and read the arguments against them, I found myself in favour of almost all arguments. That is probably compatible with the type of doubt inherent in the scientific mind.

I am not a lawyer. I have little or no understanding of legislation, even existing legislation. Furthermore, I have little knowledge of case law on sexual abuse. So I do have some difficulty providing an opinion on the need for or use usefulness of mandatory minimum sentences.

However, I am a psychologist and I do believe that I have some knowledge, to a certain extent, of the sex offender population. I also know certain things about their dangerousness, the risk of recidivism, and the actuarial and other tools my colleague just referred to. That is within my area of expertise.

The first thing I would like to point out, from the outset, is that the sex offender population is not homogeneous. There are different types of offenders. All those who have tried to come up with a typology of abusers realized that there are in fact a number of sub-categories that are not necessarily comparable.

Given the heterogeneous nature of this group it is difficult to devise automatic or standardized measures. If we look at evaluative research, because at the end of the day that is what brings clarity to the issue of dangerousness or risk of recidivism, there are two types of evaluative research. One is the type carried out by those who promote therapy. Quite often, their results indicate that therapy works and has a certain rate of success. However, when you look at evaluative research conducted by independent researchers, results are far less optimistic.

As Dr. Quinsey mentioned, specifically for extra-familial abusers, not much rehabilitation is possible before a given age, in other words before aging itself has had an effect.

• (1540)

This evaluative research, and I am thinking of some research conducted by my colleague Dr. Quinsey and his team or other research done by my colleague Dr. Hanson, who is also here with his team, has effectively shown that, especially in the case of extra-familial abusers, there is no great improvement in the area of risk of

recidivism or dangerousness, regardless of whether or not the individual has had psychotherapy. If there was psychotherapy, the type of therapy matters little.

This leads us to believe that therapy or an order given by a judge for a course of therapy, even though it may be seen as good news by all, cannot be perceived as an alternative to incarceration nor a substitute for punishment.

When we speak of therapy or when individuals get therapy and we feel as though everyone is pacified, the good news is often illusory. For instance, it is a fact that real pedophiles account for only 20% of sexual abusers. If we know that pedophiles are not simply people who commit a small offence from time to time but rather are grappling with what is equivalent to a sexual orientation just like another individual may be grappling with heterosexuality or even homosexuality, and if we agree on the fact that true pedophiles have an exclusive preference for children, which is the same as having a sexual orientation, everyone knows that there is no such thing as real therapy. You cannot change this person's sexual orientation. He may however remain abstinent.

Now, if we think of psychopaths, who, according to my own samples account for 15% of the sexual offender population, it might be worthwhile to point out that we have been trying for hundreds if not thousands of years to rehabilitate them, all for naught, at least for the time being.

Of course, everything I have just said also points to the fact that there probably are sexual offenders or types of sexual offenders who can be rehabilitated. Which ones? Is it the majority? I am not sure it will be the majority, but because some abusers can certainly not be rehabilitated and others can, it means that sooner or later we will have to come up with a careful differential diagnosis to determine which ones can be rehabilitated.

Is this feasible? Is it too expensive in terms of time, effort, or money? I do not know. There might be something to be done in the area of the presentence report. I have seen many presentence reports and I personally have often remained dissatisfied. Can a country afford far more in-depth and elaborate presentence assessments? That is probably up to you to decide.

• (1545)

[English]

The Chair: Thank you very much.

We're going to go to questions from our members. We'll start off with Mr. Murphy, for seven minutes.

Mr. Brian Murphy: Thank you, Mr. Chair.

I thank both witnesses for your testimony today.

Bill C-54 imposes a number of mandatory minimums, or actually expands a number of mandatory minimums. I couldn't be more empathetic, Professor Van Gijsegem, because it's very clear that the mandatory minimums are in the code already, have been for a long time, and there have been a number of them introduced, but it's very much a matter of calibration as to whether people think they go overboard, go too far, or don't.

If you look at the Library of Parliament's documents, you will read that those who like mandatory minimums say they act as deterrents and they perform an educational purpose by clearly communicating society's disapproval, and those who don't like them say that there's no deterrent effect and it's an inflexible penalty structure.

I'm going to ask you both your opinion on where your matrix is in this case. Do you think they're educational in purpose? Would they reduce sentence disparity across Canada? For instance, you might have some people getting lighter sentences in parts of the country for the same offence. But I want to ask you about the context here. When I look at this Criminal Code, it's like a textbook, and we try to order the offences by the degree of severity. Part 5 of our code is truly outdated, because it talks about very serious offences—sexual touching, invitation to sexual touching, sexual assaults, and so on, very serious—and we go down to around section 170, public nudity, which I'm not suggesting is good or permitted or whatever, but clearly is not as egregious as sexual touching. But there's an interim part under “Corrupting morals” that now contains our child pornography offences. And this is really the battle here: we realize in this day and age that there's a proliferation of child pornography. And child pornography is even a title that's out of date. It's the capturing on film or in media of an abusive act towards a child who is defenceless and cannot consent to that act. That's a crime of the highest order in this whole section, I would say, this part.

If you take it that we feel the child pornography aspects, the child abuse images, are the worst parts of the crimes in this section, do you not think it might be appropriate under these aims for mandatory minimums to torque them up a bit? That is what this bill does in large regard. It moves things from 14 days, minimum, to 90 days in some of these very serious offences. It creates new offences about the reality of people procuring meetings with minors and so on. As academics, do you see a balance there? That's the first question.

Secondly, you talk about a pedophile as having a preference. I'm not sure if I understood that; perhaps you want to expand. Is it a condition that can be treated, can be cured, or is it as varied as any answer might be in that regard: it depends on the patient and it depends on the client?

Those are the two questions for each of you. I think you'd each have about a minute and a half or so.

• (1550)

The Chair: Yes.

Mr. Brian Murphy: A minute and a half each.

Dr. Vernon Quinsey: You ask a number of questions within your question. I'll try to address them all as best as my memory will allow me to.

The first issue you raised was one of proportionate sentencing—how serious are these crimes, and are these mandatory minimums an appropriate response to such a crime? I don't know if I'm the right person to answer that question, but I'll give you my views anyway.

What I worry about, with respect to mandatory minimum sentencing, is the potential of having a whole bunch of new offenders in the system. That's a potential, a very negative outcome, I think, of increasing the penalties for say possession of Internet child pornography. I'm not so sure that we want to go that way.

The reason I say that is because in the United States this is the fastest-growing category of offenders in their system. When you think about how available this material is.... I mean, after all, child pornography is defined as images of anybody up to the age of 18. It's unfortunate that it's called child pornography, because these people are minors; they're young, the majority of them, but they're not what, in my language, I would call a child. Certainly they're not prepubertal.

On the other hand, I think you raise a very serious and important issue. What we seek to address is the exploitation of children. You can imagine all kinds of unhappy scenarios where someone is coerced or tricked into doing stuff that's filmed. Certainly I think those offences should be penalized quite heavily. At the level of possession, I'm not so sure. I fear that it's so common that it will lead to problems in administering justice.

You raise the issue of pedophilia. Let me just make some distinctions for you.

First of all, pedophiles are people who prefer prepubescent children. They're not interested in 15-year-olds who have an adult body shape or anything like that. They're not interested in those kinds of people. They have quite a restricted area of sexual interests in terms of the kinds of body types that their victims have. There is no evidence that this sort of preference can be changed through treatment or through anything else.

Treatment for those offenders shades into management, where you essentially have to teach someone to live within their sexual preference structure. They have to find other kinds of outlets. They have to avoid high-risk situations. They have to do all those sorts of things. But I think that most people would agree that this kind of sexual preference pattern—an actual preference for prepubertal children—is not alterable by any kinds of current treatments.

The Chair: I'm going to have to cut you off there.

Monsieur Ménard, for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Gijsegem, I think the questions that have been asked are for you. Can you respond?

Dr. Hubert Van Gijseghem: My response will not be vastly different from that of my colleague Vernon Quinsey. Indeed, I am equally uncomfortable with the idea of having the possession of pornographic material included as a sexual offence. In that regard, it seems to me that there is a big difference between possession and creation of this material. Obviously, the argument is always that individuals interested in this type of material, who own some and download it, are encouraging producers and in so doing are essentially part of a production line of child pornography. At the very least it is said they are accomplices in the exploitation of children for sexual purposes. I know this argument, and it is true. However, there is such a high prevalence of possession of child pornography that I wonder, honestly, whether it is realistic to include that among the offences.

Further, research has shown that only a small proportion of individuals possessing pornographic materials act out. That is another point I wanted to raise. With respect to pedophilia, as I believe Dr. Quinsey just explained, in other words and perhaps better than I, as I have already said, it is a sexual orientation. Of course, even an individual whose sexual orientation involves a quasi-exclusive preference for prepubescent children can remain chaste or abstinent. In fact, this has been seen among some members of the Catholic clergy. Chastity exists, but for the vast majority of pedophiles, the risk of acting out is far higher than for other sexual offenders. And in this case I would refer to intrafamilial abusers as an example, as my colleague has done.

• (1555)

Mr. Serge Ménard: Generally speaking, among criminal lawyers there is the view that child abusers are very poorly received when they get to jail. Other offenders assault them and most often, they must be isolated. One might think therefore that sexual offenders are quite fearful of jail. Would the fear of an automatic sentence, perhaps even a long one, put a stop to their sexual conduct?

Dr. Hubert Van Gijseghem: Yes, obviously, sexual offenders are very poorly received. It is a fact. It is a bit of a national sport, maybe an international one. When sexual offenders get to jail, they get beaten. Sometimes, guards turn a blind eye. It is well known. Would the fear of such a thing occurring inhibit sexual offenders? I am not sure. At first glance, I am not in favour of mandatory minimum sentences, but I do not think the “bashing” sex offenders get in jail can serve as an argument not to impose minimum sentences. I do not see it as an argument.

Mr. Serge Ménard: If I understand correctly, over the course of your career you have often testified. Canada-wide, you are among those who have testified the most, with the most professionalism.

Could you give us an idea of the time required to do a reliable assessment of the dangerousness of a sex offender, compared to that of another offender, and tell us approximately how much this assessment will cost?

• (1600)

Dr. Hubert Van Gijseghem: Obviously, opinions vary among experts. I personally am regularly asked to give an opinion on an offender, determine who he is and assess his degree of dangerousness and risk of recidivism. I believe an in-depth interview with the individual is necessary. One or two objective personality tests must be administered to know how this person reacts, with respect to

personality structure or, in some cases, pathology. We also need actuarial tools, and possibly qualitative tools like those Dr. Quinsey was referring to earlier. I am thinking here of a tool, quite advanced, which was developed by Dr. Quinsey himself as well as by others, including Dr. Hanson, who is also here. We have actuarial tools, the predictive success of which is eminently higher than that of clinical intuition. All of these tools must be used.

I do not believe such an assessment would cost \$1,000 or \$2,000. The cost would certainly be around \$3,000 to \$3,500. I am talking here about an in-depth assessment along with a report that is sufficiently reliable, so decision-makers can rely upon it.

[English]

The Chair: Thank you.

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

Mr. Joe Comartin (Windsor—Tecumseh, NDP): First I want to apologize to both of you. *Je m'excuse d'être en retard.* I was caught in the House.

Professor Quinsey, would you also answer that last question? Because I would like to know the same answer as we got from...

Dr. Vernon Quinsey: Yes. I think the cost of an assessment depends upon the infrastructure that exists. If you look at an organization like the Correctional Services of Canada, you see that they have a structured system of assessing risk and also of gathering information that other assessments of risk are based on.

If that kind of system is in place... It involves probation and parole officers and getting court records and social work input, those sorts of things where you have a very good history of the person, both a behavioural history and a criminal history. If that stuff is all documented and easily accessible, it markedly speeds up assessments and makes them more reliable.

An assessment can only be as good as the quality of the data that it's based upon. If you have an organization that's dealing with offenders, it's critically important that they have a kind of a standardized method of gathering and recording information that professionals can then use in making risk assessments.

Mr. Joe Comartin: I want to take you back to an issue that was raised by Professor William Marshall when he was here last week. He was focusing in on the charge for incest, where we're now going to be imposing a mandatory minimum of five years.

He raised the issue that you have the situation where you have incest between siblings that may very well be consensual in the sense of them being adult—old enough to do it—or between adult parent and child, which may not have started until the adult...and then the more traditional stereotype of adult parent and a very young child.

Have you seen any statistics as to what the proportion would be? In effect, I'm asking how many adults we are exposing to a mandatory minimum of five years.

Dr. Vernon Quinsey: I haven't seen any statistics. I've never seen one in my practice—a case of that nature. First of all, I don't know how often it occurs and, if it occurs, how likely somebody might be to be apprehended. I don't think it would be a common occurrence.

Now, just to continue that line of thinking, five years, to my way of thinking, is a long minimum, because you wonder about even these other cases, where it's a biological father-daughter kind of incest, what sorts of extenuating circumstances there might exist. How extensive was the pattern of abuse? All those sorts of things.... It seems to me that if I were a trial judge, I'd want to make allowances for those sorts of things, but that's my view.

•(1605)

Mr. Joe Comartin: They're not allowed to in these circumstances.

Have you done any extensive work on treating children who are victims of sexual abuse?

Dr. Vernon Quinsey: I've never treated victims.

[*Translation*]

Dr. Hubert Van Gijseghem: I have been involved in therapy programs for victims. Again, I would be cautious. I do not believe that most of the programs we currently have on the market should be suggested for or imposed upon children in a standardized or automatic way. Here, as elsewhere, we have to approach the issue on a case-by-case basis, to see what the needs of a particular child may be.

I have done research in this area and I would say that some children need to discuss what happened or to “get therapy”, any therapy. However, other children do not need that. There are a certain number of children, rather a large number, who would be better served if we left them alone quite simply, who do better if they are not resubjected to the process of having to discuss their sexual assaults all over again.

That means, I think, that we need to take into account the individual and developmental needs of each child before we sign victims up for existing programs.

I would therefore advise the highest degree of caution in this case. I think a certain number of children have been re-abused through this automatic recruiting into the types of therapy that are currently available. One size does not fit all and we need to apply a differential, case-by-case diagnosis. That is my opinion.

Mr. Joe Comartin: Is it possible to determine whether victims feel differently if the adult abuser is a parent, a family member or a stranger? We are looking at putting them in jail, punishing them. Should they be more harshly punished if they are parents, or strangers?

Dr. Hubert Van Gijseghem: There is a paradox there. Everyone would agree. Well, let's not exaggerate. Rather, let's say that much research indicates that children who are abused within the family are more scarred than those who are abused by strangers. That said, intrafamilial abusers are less likely to reoffend than extrafamilial abusers.

That is a paradox. If the sentence is based on the impact on the child, we should punish those who have committed incest more

harshly; but if the sentence is based on the risk of reoffending, they should be less harshly punished. That is the paradox.

The Chair: Thank you.

[*English*]

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

[*Translation*]

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

Thank you to our witness for being here with us.

[*English*]

I've been favourably impressed by the manner in which you have testified. You have been professional and cautious, and you do not overstate. Many times we see witnesses who are here to pursue certain interests of their own, and they are less cautious. So I thank you for that.

I note that you have both been careful to qualify your evidence by saying you are not jurists. I assume that neither of you is a lawyer. You are psychologists, so I mean this question in the best sense, just to understand where you're coming from. Have you actually read the bill we are here to study, Bill C-54?

•(1610)

Dr. Vernon Quinsey: I read the briefing summary. I didn't read the whole thing, but I read excerpts.

Mr. Stephen Woodworth: Some of it.

And Professor Van Gijseghem?

Dr. Hubert Van Gijseghem: I also only read the briefing.

Mr. Stephen Woodworth: All right. I understood at least one of you to be raising concerns about mandatory minimum penalties with respect to the possession of pornographic material. I forget which one of you it was. Am I correct in understanding that you have some misgivings about mandatory minimum penalties for simple possession of pornographic material? You have to say yes or no for—

Dr. Hubert Van Gijseghem: Yes, that's what I said.

Mr. Stephen Woodworth: Merci.

I should say there is a time limit on me, so I will try to ask questions that can be answered simply. I myself am not a psychologist, so large psychological explanations will be of less use to me than legal explanations may be to you.

In this bill, for example, we have created a new offence, which would impose a mandatory minimum penalty on anyone who, through telecommunications, arranges with a second person to commit a sexual offence against a child—in other words, a kind of conspiracy. Would your concern about mandatory minimum penalties extend to that sort of offence?

Dr. Hubert Van Gijseghem: Personally, no.

[*Translation*]

Mr. Stephen Woodworth: Thank you.

And you, sir?

[English]

Dr. Vernon Quinsey: I don't have a concern about that if the mandatory minimum is short.

Mr. Stephen Woodworth: Yes, in this case 90 days, I believe. One year on indictment, 90 days on summary.

Also, we have created a new offence that would impose a mandatory minimum penalty upon anyone who provides sexually explicit material to a child for the purpose of facilitating a sexual offence against that child; in other words, to lure the child. Would your concern regarding mandatory minimum penalty exist with respect to such an offence?

Dr. Vernon Quinsey: I think I would have some reservations. My reason is, if the child is 16, 16 is the age of consent, so it would have to be somebody who is 15—

Mr. Stephen Woodworth: Correct.

Dr. Vernon Quinsey: —and if it excludes age mates and close—

Mr. Stephen Woodworth: Correct, only if it were an offence, that the facilitating is of an offence, so it would exclude close-in-age persons. Are you okay with that, then?

Dr. Vernon Quinsey: Okay with that.

Mr. Stephen Woodworth: Merci.

Then, of course, we have also now imposed a minimum mandatory penalty upon those who commit an aggravated sexual assault where the victim is under 16 years of age. Would either of you or both of you be okay with a mandatory minimum penalty in such a case?

Dr. Vernon Quinsey: Yes, I'm okay.

[Translation]

Mr. Stephen Woodworth: And you, Professor?

Dr. Hubert Van Gijsegheem: The same.

[English]

Mr. Stephen Woodworth: *Bien.*

There are a number of other sections in the act that you would see deal with serious sexual offences of this nature, which impose mandatory minimum penalties.

I was curious, I think it was Dr. Quinsey who mentioned that the incidence of child sexual assault is reducing. We heard evidence from the manager of the child sexual exploitation investigations section of the Ontario Provincial Police that in four years alone that unit has conducted 11,537 investigations; it has laid 3,897 charges against 1,303 individuals.

I don't know, Dr. Quinsey, whether those figures would surprise you or not, but I want to place that in the context of what I think I heard, in that someone said these offences are reducing. Has it been worse than that in the past?

• (1615)

Dr. Vernon Quinsey: Yes, necessarily so, if the rate is reducing.

Mr. Stephen Woodworth: So this is a good thing that we've got it down to these numbers. Is that what you're saying?

Dr. Vernon Quinsey: The argument is not that we shouldn't be concerned about offences against children, or that it's not a problem now, but the argument is that it's better—and it's considerably better—

Mr. Stephen Woodworth: And there's still some distance to go.

Dr. Vernon Quinsey: Yes, still some distance to go.

Mr. Stephen Woodworth: Another area in which I'm really very interested has to do with victims.

Dr. Quinsey, perhaps I could take it up with you, because you said that you haven't treated victims. My understanding is that many perpetrators in fact were once victims, so would it be correct to say that among those perpetrators who you've treated there would be some who had suffered victimization as children?

Dr. Vernon Quinsey: No, there definitely were, but I've never treated them for the victimization.

Mr. Stephen Woodworth: Right. So what I'm interested in is, from either or both of you, do you see from victims, particularly children, that they are satisfied with the manner in which the justice system has responded to their victimization, or do you see instead anger from them and further interior conflict as a result of their encounters with the justice system, if you are able to say?

Dr. Vernon Quinsey: I don't know, I'm not in a position to comment on that.

The Chair: You're out of time, unfortunately.

We're going with Ms. Jennings for five minutes.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): *Merci, Monsieur le président.*

Thank you both for your presentations here.

Both of you have expressed agreement that in certain cases sexual offenders should be subject to minimum mandatory penalties. In the Criminal Code there are three categories of sexual offences. There are those that have a maximum penalty, but no minimum. There's a second category that already has minimum mandatory penalties and of course a maximum penalty. Then there are the two new offences that the government, through this legislation, hopes to create and that would also have minimum mandatories.

Given the amount of research that has been done on sex offenders, on the rates of recidivism, on the effectiveness or lack of effectiveness of minimum mandatory penalties, are you aware of any studies that actually looked at the criminal offences currently in the Criminal Code, for which there are already minimum mandatory sentences, to determine how effective those have been?

Dr. Vernon Quinsey: I looked, and I didn't see anything. There are no empirical studies I'm aware of that address those variations in criminal sanctions.

Hon. Marlene Jennings: You, sir?

[Translation]

Dr. Hubert Van Gijsegheem: I could not provide a better answer. Your question makes me somewhat uncomfortable in that I do not have a clear answer for you. Perhaps I may digress a bit.

Hon. Marlene Jennings: Yes, go ahead.

Dr. Hubert Van Gijsegheem: In response to a question that was asked a moment ago, there was reference to the fact that therapy for the abuser could to some extent help him heal his own victimization. On this point, I would like to refer to the results from some studies.

I am thinking, for instance, of studies done in Washington a number of years ago. These studies indicate that abuser victimization, or the fact that an adult offender has himself been abused during his childhood, what is referred to as the cycle of abuse, has been largely exaggerated. An American researcher from Washington, Hindley I believe, demonstrated, through very original methodology, that most often, adult abusers questioned on their own childhood will say that they themselves were sexually assaulted. They lie because it is a societal excuse that...

• (1620)

Hon. Marlene Jennings: ... lessens the negative impact.

Dr. Hubert Van Gijsegheem: Exactly.

So, I would like to emphasize this point. It is not an opinion. It is based on research from the United States that has been repeated, in fact.

Hon. Marlene Jennings: Thank you very much for this explanation. I think it supports the comments made by a number of parole board members, at the provincial level or at the National Parole Board, to the effect that sex offenders can be manipulative. It is a way for them to justify their actions. So, I am not surprised.

I have another question regarding mandatory minimum sentences. As everyone here has said, there are already mandatory minimum sentences within the Criminal Code that were brought in by a previous government. However, these sentences are quite short: 14 days in some cases, and 30 days in others.

I would like to know your opinion on this. If we create a system of mandatory minimum sentences for criminal offences of a sexual nature, specifically those against our children, should mandatory minimum penalties be harsher or more lenient? I am calling on your expertise in this area.

[English]

The Chair: Please give a very quick response, Mr. Van Gijsegheem.

[Translation]

Dr. Hubert Van Gijsegheem: The logical basis for this bill rests on the notion of a sliding scale, in other words, proportionality.

I think that for a series of offences or crimes, mandatory minimum sentences can be light, because, it would seem to me that they are rather symbolic in nature and their harshness or length is of secondary importance. I believe in symbolic measures and that is why I have a bias in favour of short mandatory minimums.

The Chair: Thank you.

Mr. Lemay, you have five minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I will try to focus on this subject. I have to admit that I was not expecting, on this Valentine's Day, to be talking about this inappropriate type of love. It is not really love. It has more to do with violence and control.

I am concerned, Professor Van Gijsegheem—and I know you well as I have heard you testify on a number of other subjects—because you say, if I am not mistaken, that pedophilia is a sexual orientation.

Dr. Hubert Van Gijsegheem: That is what I said.

Mr. Marc Lemay: Should it therefore be compared to homosexuality?

Dr. Hubert Van Gijsegheem: Yes, or heterosexuality. If, for instance, you were living in a society where heterosexuality is proscribed or prohibited and you were told that you had to get therapy to change your sexual orientation, you would probably say that that is slightly crazy. In other words, you would not accept that at all.

I use this analogy to say that, yes indeed, pedophiles do not change their sexual orientation.

Mr. Marc Lemay: Even if mandatory minimum sentences were longer?

Dr. Hubert Van Gijsegheem: That is correct.

Mr. Marc Lemay: In my opinion, society and no one around this table will accept pedophilia, even if it is a sexual orientation.

I recall a period, not too long ago, when homosexuality was treated as an illness. It is now accepted, society has accepted it, and even if some refuse to recognize it, it is accepted.

However, I cannot imagine pedophilia being accepted in 2011. You are telling me that even if we were to impose a five-year minimum on people it would not solve the problem. Once they get out of jail, they reoffend. That is worrisome.

• (1625)

Dr. Hubert Van Gijsegheem: Yes, the risk is high, and the best factor to predict that a person will not reoffend is age. My colleagues will probably agree with that, at least one of them will. For a number, or a category of offenders—when we refer to pedophiles we are talking of only 20% of the abuser population—we hardly have any other choice but to wait for the passage of time before we can feel comfortable with their release.

Mr. Marc Lemay: I agree with you. There are a number of aspects to the bill, but let us focus on pedophilia. Would you go so far as to say the same thing in the case of incest?

Dr. Hubert Van Gijsegheem: No, no. In fact I precisely drew a distinction between extrafamilial sex offenders, and that includes pedophiles, and intrafamilial offenders. I drew a very clear distinction there.

Mr. Marc Lemay: You are telling us that pedophiles, and I was carefully listening to what you said, attack prepubescent children. The problem is that if they are 20 or 30 years old—you have seen pedophiles and so have I—we are going to be keeping them in jail.

What can we do to reassure society? What you are telling us today, with all due respect, is frightening. Regardless of what we do, it is aging, or time, that will make it so that... So, there is no treatment for this?

Dr. Hubert Van Gijsegem: I think that Canada at one point took a good decision on this subject by creating the long-term offender or dangerous offender designation. I think that this decision was probably based to some extent on this type of observation.

[English]

Dr. Vernon Quinsey: I just want to say that you can manage the risk that sex offenders present—even pedophiles. It's a matter of supervision. So it's not necessarily that they need to change their sexual orientation; they need to learn to control themselves, with our help.

Pedophiles are not usually the highest-risk offenders. Sometimes they are, but there are other characteristics in addition to sexual preference that make people extremely dangerous. One of them is their anti-social tendencies—things like psychopathy, and their propensity for risk. Those things in combination with sexual deviance make people particularly risky.

The Chair: I want to thank both professors for appearing here today. Your evidence has been helpful and will form part of the record. Thanks to both of you.

We will suspend briefly, as we excuse these witnesses and allow the next panel to take their place.

•(1625) _____ (Pause) _____

•(1630)

The Chair: I'll reconvene the meeting.

We have with us a new panel to speak on Bill C-54.

First of all, representing the John Howard Society, we have Ed McIsaac, who is their interim director of policy. From the Department of Public Safety and Emergency Preparedness, we have Mr. R. Karl Hanson, senior research scientist, corrections and criminal justice.

You are here representing the department, correct?

Dr. R. Karl Hanson (Senior Research Scientist, Corrections and Criminal Justice, Department of Public Safety and Emergency Preparedness): Yes, I'm a content expert representing the information we developed from the department.

The Chair: Okay.

And then we have also the Church Council on Justice and Corrections. We have Lorraine Berzins, the community chair of justice, and Richard Haughian, board member.

Welcome to both of you.

We will begin with Mr. McIsaac.

Mr. Ed McIsaac (Interim Director, Policy, John Howard Society of Canada): Thank you.

I'll begin by thanking the committee, on behalf of the John Howard Society of Canada, for the invitation to appear. We appreciate the opportunity to meet with you today to discuss Bill C-54.

For those of you who don't know, the John Howard Society of Canada is a non-profit organization whose mission is to support effective, just, and humane responses to the causes and the

consequences of crime. The society has 65 front-line offices across the country, which deliver programs and services to support the safe reintegration of offenders into our communities.

Everyone in this room is supportive of protecting our children from sexual predators and promoting safer communities. Where our concern lies with this legislation is in the vehicle chosen to accomplish this goal. The introduction of mandatory minimum sentences and the corresponding elimination of conditional sentences proposed by this legislation will, in our opinion, not move us forward on these issues.

The John Howard Society of Canada has been on record for a decade as opposing mandatory minimum sentences. One of the cornerstones of our sentencing policy is proportionality. We sentence the offender, not the offence. The ability of the judiciary after having heard all of the evidence to pass sentence consistent with that evidence is central to ensuring proportionality and effective interventions.

I am unaware that we have experienced in this country a rash of unreasonable sentencing decisions that would cause us to limit the traditional discretion given our judges. Both experience and research tell us that mandatory minimum sentences, in addition to limiting the ability to ensure that sanctions imposed fit the crime, result in fewer guilty pleas, which results in more trials, with more offenders being sentenced to longer periods of incarceration. Our courts are currently backlogged, resulting in excessive delays in initiating corrective interventions. Our jails are currently overcrowded at both the provincial and the federal level, causing further delays in accessing treatment programs.

We know that mandatory minimum sentences neither act as a deterrent nor reduce crime rates. The protection of society is best served through the timely, supportive reintegration of offenders back into our communities. Mandatory minimum sentences do not facilitate that process.

•(1635)

The limitations placed on judicial discretion by this legislation will, in both the long and short term, act as barriers to achieving the legislative objective. As both our neighbours to the south and Great Britain retreat from decades of mandatory minimum sentencing policy, I urge this committee to take a step back and ensure that proportionality remains the cornerstone of our sentencing policies.

I thank you for your attention. I look forward to your comments and questions.

The Chair: Thank you.

We move to Mr. Hanson for ten minutes.

Dr. R. Karl Hanson: I'm Karl Hanson. I'm a senior research officer with Public Safety Canada. I was invited here today as a content expert. I've been doing research on sex offenders for a number of years and some of my work has been mentioned in previous testimony. What I will do today is basically introduce some summaries of some basic facts about sex offenders and open myself up for questions on the topics on which I have conducted research in our department, as stated positions.

In front of you are four separate pieces of paper. One of the pieces of paper is called "Sex Offender Recidivism". It's a basic summary of recidivism rates of sex offenders. We took a large group of sex offenders, followed them for a period of time, and looked at how many of them were caught for a new sex offence. What we find, on large studies, is that about 10% to 15% will be convicted of a new sex offence after about a five-year follow-up period of time. This is lower than many people anticipate, but it's not zero. Also, there is wide variability in the recidivism rates, with observed rates being as low as 1% or 2% in certain subgroups and being as high as 50% or 60% in other subgroups.

The second piece of paper, the research summary, is "Recidivism rates of female sex offenders". This is one of the subgroups of sex offenders who have very low recidivism rates. Their sexual recidivism rates are in the order of 1% or 2%, if you follow them for a period of time. We have updated this with larger samples with similar results.

The third piece of paper is something called "What Works For Sexual Offenders?" I'll pause here, since it says something a little bit more complicated. What we did was we looked at all the treatment programs out there that have been evaluated for sex offenders and compared the ones that were more likely to be effective and those that were less likely to be effective.

We found that, overall, for the offenders who received treatment, their recidivism rates were about 11% after a five- or six-year follow-up, and for those who did not receive treatment, it was about 19%—it was higher. Both numbers are not zero, but there is a significant reduction overall.

We also found that we could identify the programs that are most likely to be effective. Those are the ones that treat moderate-risk to higher-risk offenders—offenders who have at least a moderate chance of reoffending—and those that treat the aspects or psychological characteristics associated with offending risk, their criminogenic needs. And the third principle is if they are able to engage the offenders meaningfully in the therapy process—what we refer to as responsivity. For programs that follow these principles, we have much stronger effects than those that do not. Basically, there are treatments out there that can be effective, many of which are implemented across Canada in various places.

The fourth piece of paper is one abstract translated in a French and English version. It summarizes a research study that I conducted with my colleagues Michael Seto and Kelly Babchishin, which looks at the extent to which offenders who have been caught for Internet sex crimes are also involved in contact sex offences. What we found is that among those who have been caught for an Internet sex crime, about 12% have an official conviction or record of a prior contact

offence. About half of them will admit to a contact offence in the past.

• (1640)

If you look, then, at what happens to them after they're caught, you find that their recidivism rates are in the order of 3% to 5%. We observe a 4% to 5% recidivism rate after about three to five years, on average. About 2% are new contact offences, and about 3% are new Internet sex offences.

In summary, we believe there is a category of individuals who are involved with Internet sex offences who have a very low probability of becoming involved with contact sex offences. Some of the Internet sex offenders are just normal sex offenders who have Internet access, whereas there's another category, probably a smaller category, of individuals whose crimes are essentially restricted to Internet involvement.

Those are the major points I'd like to make today.

• (1645)

The Chair: Thank you.

I will move to Mr. Haughian.

Dr. Richard Haughian (Vice-President, Church Council on Justice and Corrections): Mr. Chair, honourable members, thank you for this opportunity to appear before you.

The Church Council on Justice and Corrections is a national faith-based coalition of 11 founding churches, incorporated in 1972. We promote community responsibility for justice, with an emphasis on addressing the needs of victims and offenders, mutual respect, healing, individual accountability, and crime prevention.

In December 2010 the CCJC sent a letter to the Prime Minister of Canada expressing our concern that in this time of financial cuts to important services, the Government of Canada is prepared to significantly increase investment in the building of new prisons: "Proposed new federal laws will ensure that more Canadians are sent to prison for longer periods, a strategy that has been repeatedly proven neither to reduce crime nor to assist victims".

Mr. Chair, Bill C-54 is one of the bills about which we have concern.

With me is Ms. Lorraine Berzins, CCJC's community chair of justice. Lorraine has had many years of experience working in the criminal justice system. She will speak in more detail about CCJC's position.

Ms. Lorraine Berzins (Community Chair of Justice, Church Council on Justice and Corrections): Good afternoon.

I've worked for CCJC for 27 years now, after working in prison for 14. I want to tell you, first of all, that CCJC takes very seriously the harm done to children by sexual offences and that we've a long track record of really trying to do everything we can to help break the silence about this in our churches and in our communities.

We have produced, over the years, several different resources that help people in churches talk about it, because we've known that so many victims were suffering in silence and that it was something that was condoned. We take responsibility for how that has affected and been contributed to by our own churches. We have done a lot to help victims find a voice and to help churches be candid and honest with each other and work toward prevention. We want to stop the behaviour and help people heal.

Those are very good goals, and I think those are the goals you have with this legislation too, but we are very concerned about the fact that mandatory minimum sentences, as a tool, are not effective and can do a lot of harm. Our concern is that your proposals cover a lot of different situations for a lot of victims in a lot of different situations and they cover them with the same blunt tool of mandatory minimums.

We know and we've encountered situations where the immediate safety of the victim in the community does require that someone be in prison, and we are absolutely confident that when it's the safest thing to do, it has to be done. But there are so many more where that is not the case. What we're concerned about are the proposals that are going to really make this something that has to be done even when it's not appropriate and that what is already bad for victims in the criminal justice system will become worse. I mean by that the adversarial system and the way that works.

The adversarial court room is not a safe place for victims to find support and tell their story. It's very frightening, especially for children. It makes them feel guilty when they are pushed by defence lawyers who are busy doing their job in our criminal justice system. It's very scary for them, and people who care about particular child victims would do anything not to put them through that. So proceeding in a way that is not going to require a prison sentence for safety but can avoid for the victim the kind of extra suffering is often a good thing to do. It's something we would not want to lose.

The increased penalties are going to raise the stakes in that and are going to make that battle even more so in our courts. Even the victim impact statement is a scary thing for victims, and I'm telling you this from my own direct experience with some victims and from what I've heard from many others who work with victims. Child victims don't want to feel that their entire life is ruined by what has happened. They need to feel that they can still have a good life and that the tools are there to help them do that.

A victim impact statement in an adversarial system really tends to make them stress all the worst things and the terrible prognosis of what's going to happen to them. That's not good for the victim. So for those of us who care about them as people, it makes a lot of sense to try to look at what could be avoided in order to give them what they need to find support but not put them through what is not necessary.

We have found one model that has worked very well and we would really like to recommend that. It's the child abuse teams that some crown attorneys' offices have established in some jurisdictions. In that kind of model, the crown, police, victims' services, children's aid, the parents, and the interviewer of the child—all of the people who have a piece of the puzzle—get together and carefully assess what would be the best way to respond as a criminal justice system

in this situation. Then they make a proposal that's put before the judge. Sometimes it includes a sentence of imprisonment, but often it doesn't.

• (1650)

The problem with a mandatory minimum sentence is that it doesn't allow you that flexibility. As other people have told you, it goes against all the research we have. There's no positive reason to do it, and it takes away something that is so key to working more effectively. It also goes against the international trends right now.

So why is the government doing this? Have you found from research that the sentences are too low? I haven't seen anything like that put forward. Have you found that when they were too low crowns didn't appeal when they could have? What is the reason that is pushing you to think this is necessary? I haven't seen any.

The terrible thing is that there will be collateral damage from this. There will be a lot of unintended consequences, because these proposals are designed by people who don't understand how the system really works. I would like you to think very seriously before you move ahead with something that's going to do so much harm.

It appears to have been done to reassure the media and the public, but uninformed people are not the people to rely on to guide you in what you should be doing on something as important as this.

We're not the first country to experience this. I'm going to leave you with a quote by Lord Auld in the U.K., who faced the same situation. He said:

it is one thing to rely on uninformed views of the public as a guide to what may be necessary to engender public confidence, and another to rely on such views as an argument for fashioning the system to meet them. Public confidence is not an end in itself; it is or should be an outcome of a fair and efficient system. The proper approach is to make the system fair and efficient and, if public ignorance stands in the way of public confidence, take steps adequately to demonstrate to the public that it is so.

These proposals will not do that; they will do the opposite. They will make the system worse, and they will reduce public confidence as a result of that.

I make three recommendations. First, there should be no mandatory minimums. At the very least, could you make it presumptive rather than mandatory?

Second, have child abuse teams in more jurisdictions. I would really recommend that you consider this as an important direction to pursue.

Third, couldn't future proposals be more evidence-based? They need to be designed by people who understand how the system really works. You could begin as a government to consult with people who can give you that kind of recommendation so what you do doesn't do more damage.

Thank you.

• (1655)

The Chair: Thank you very much.

We will open the floor to questions and move to Mr. Murphy for seven minutes.

Mr. Brian Murphy: Thank you, Mr. Chair, and thank you, witnesses.

This has been an extremely interesting panel of witnesses. I'll get right into some questions.

We've had some research here that is very interesting. I think a lot of us are shocked about what the actual degree of recidivism is.

I have some short snappers, Mr. Hanson, because I have all kinds of questions that are more philosophical in nature. In the documents you gave us in the research summary it makes no distinction between a sex offender and a pedophile, if I got it right.

Dr. R. Karl Hanson: No. Pedophilia is a—

Mr. Brian Murphy: Are there any statistics that break it down?

Dr. R. Karl Hanson: In that report we divide them by their victim type. We look at offenders against extra-familial boy victims, of which a significant proportion would be pedophiles, by the other term. They have rates that are substantially higher. But after five years it would be 30%, or something like that.

Mr. Brian Murphy: What you're telling me exists somewhere?

Dr. R. Karl Hanson: That exists.

Mr. Brian Murphy: Could you provide it to the clerk for us?

Dr. R. Karl Hanson: Sure. That research summary has been translated, it is on the web, and it is referenced at the end of this report.

Mr. Brian Murphy: All right. Well, thank you for that. It's very interesting to me.

You mentioned the principles RNR.

Mr. McIsaac, are you familiar with the three principles—risk, need, and responsivity—in the John Howard world? Are those recognized principles?

Mr. Ed McIsaac: Yes.

Mr. Brian Murphy: Okay. And if this answer could be short as well, because I really want to get over to the churches, is RNR—if that's the shorthand for it—being adequately funded and used in our corrections facilities in Canada? Does it work?

Mr. Ed McIsaac: Well—

Mr. Brian Murphy: Do you agree, in other words, with your neighbour Mr. Hanson that it works

Mr. Ed McIsaac: Given the level of funding, it is not working. If that funding were increased, intuitively I expect it would work, but I suggest there would need to be a review.

Mr. Brian Murphy: Not to attack you, Mr. McIsaac, but you said we don't know that mandatory minimum sentences work, and I'm guessing you don't have any evidence they don't work.

Can I suggest that drug treatment court, which we've reviewed in other legislation, is a form of a mandatory supervision or sentence that does work, and that you agree with it?

Mr. Ed McIsaac: I would say there is a difference there.

First, there is a great deal of evidence to indicate that mandatory minimums do not reduce the level of crime within communities and that they are not seen as a deterrent to the individual offender.

Mr. Brian Murphy: Well, with respect to the offences we're dealing with, do you have any studies or evidence on these?

The problem for all of us here is that we already have mandatory minimum sentences and now we're moving the bar. That's the problem.

Some of these statistics seem to indicate that with the right treatment, recidivism, and therefore the problem to the community, is less than we thought. That's with mandatory minimums already in place. They've existed for some time.

I think it's hard for all of us to say, as lawmakers, that they don't work at all, because I assume from most of the arguments here—citing the statistics fellow—that it's not bad. I mean, it's not great; there are problems out there, but it's working as it is. We don't need to increase it.

Isn't that an argument that they are working partly because there are mandatory minimums?

Did you want to respond to that?

• (1700)

Ms. Lorraine Berzins: Yes. I believe the research shows that treatment is more effective than prison alone. But treatment and community are more effective than treatment and prison.

I think there's a strong body of knowledge around that. I could get you the references if you want; I think they're pretty conclusive. It's certainly worth pursuing and paying attention to that kind of evidence.

Mr. Brian Murphy: I know that notice is an issue, but we very much appreciate your being here. If there is information you want to forward to the clerk for dissemination to us—it will be translated, etc.—that would be very appreciated.

I want to ask a couple of questions to the CCJC.

I've been on this committee for almost five years. I've missed the odd meeting to be home or somewhere else, but have you appeared before us on the justice agenda of this government before? How many times?

Ms. Lorraine Berzins: Yes, many times.

Mr. Brian Murphy: I mean against mandatory minimums.

Ms. Lorraine Berzins: I'm sorry...?

Mr. Brian Murphy: In a capacity opposing mandatory minimums.

Ms. Lorraine Berzins: Yes, we have. I think the last time was in 2007.

Mr. Brian Murphy: Right.

Ms. Lorraine Berzins: I don't have it here with me. We also appeared before the Senate committee on the same issue. It was on the mandatory minimums as well as the conditional sentencing issues: Bills C-10 and C-9, back then.

Mr. Brian Murphy: I remember Bill C-10 very well.

Ms. Lorraine Berzins: Our analysis and our conclusion is nothing new; it's something we've been working on for 39 years. We've made the statements many times over the years, with the last time being 2007.

Mr. Brian Murphy: Sorry, refresh my memory. How is it that you speak for the churches? There are 11 faith-based groups. What's the connection?

I'll give you an analogy, and it may be alpha-omega to go from church groups to lawyers, but....

Ms. Lorraine Berzins: That one.

Mr. Brian Murphy: The Canadian Bar Association comes forward. They have a system where the criminal law section selects someone, usually a criminal defence lawyer, and he or she comes and speaks for the Canadian Bar Association, of which most of us are members. Generally, their comments are not in favour of most of the legislation. But that's because they're criminal defence lawyers. Now, you can't say that they speak for Mr. Dechert, who is a corporate lawyer. I mean, they don't speak for him in his practice or me in my civil litigation practice.

Is it similar to that, or do you have marching orders from, for instance, the Canadian Conference of Catholic Bishops, etc.? How do you form an opinion?

Ms. Lorraine Berzins: We don't speak on behalf of the churches. We were founded 39 years ago because the churches realized, through the chaplains of the denominations who were working in prison and also working with victims they were encountering, that it wasn't enough to just minister them through chaplaincy, that there was something flawed in the system that they were picking up, and the churches needed to learn more about this.

We were mandated to use the best of our experience and knowledge, and help the churches reflect on the implications for our communities of having a justice system that does so much injustice. We produced resources that helped them reflect on that and we assessed the situation.

In conjunction with representatives of the churches and very much a collegial process of discernment, we are able to arrive at some conclusions and directions of what we think would be better for communities, so we share that with them.

But each church takes their own position. We don't take positions on their behalf. We give them the resources with which they can take their own position.

• (1705)

The Chair: Thank you.

Ms. Lorraine Berzins: I'd just like to say one more thing that I forgot to say earlier.

The Chair: You can say that maybe in the next round. You'll get another chance.

Monsieur Ménard.

[Translation]

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

I thank the witnesses for appearing before the committee. It will be of great use to us.

Mr. Hanson, it is the first time I am seeing these documents or even these types of documents. Is the government hiding them? How can we find out about these documents? You must certainly have many others which could be useful to us in our consideration of other criminal legislation.

Mr. R. Karl Hanson: In fact, this research has been on our Web site for a long time. It has also been published. If you would like, we could add your names to a distribution list.

Mr. Serge Ménard: Yes, but I would first like to go to a place where I can find the entire list and see...

Mr. R. Karl Hanson: Yes indeed, that is all available on the Public Safety Web site.

Mr. Serge Ménard: Thank you.

My question is for the Church Council on Justice and Corrections representatives.

I am the one who asked to have you appear. I had never heard of you before I learned about a letter you had sent to the Prime Minister on December 17. It was referred to in *Le Devoir*. That is how I discovered your existence. Now that I've heard from you, I think I will be asking you to appear again. Even if you are disappointed by this current bill, it has to be said we are dealing here with one of the worst possible crimes. That is certainly how the public in general sees things.

I read your letter dated December 17. Have you gotten a response?

Ms. Lorraine Berzins: I am not at the office every day, but I do not think so.

Mr. Serge Ménard: The Minister of Justice said... It is unclear. We do not know if he has heard about the letter, if he has read it or if he is vaguely aware of its contents. Regardless, it would seem that you have not received a response. When you deal with these matters, it would perhaps be a good idea to also send a copy of the letter you sent to the Prime Minister to the Minister of Justice.

Ms. Lorraine Berzins: Yes.

Mr. Serge Ménard: I am not sure he will read it, but it would help you make your point.

Ms. Lorraine Berzins: People from one of our churches wrote to the Minister of Justice instead of the Prime Minister. Moreover, we sent this letter to the heads of all political parties.

Mr. Serge Ménard: Oh, I see. Perhaps that is how I received it, but I first heard about it in *Le Devoir*.

I'd like to ask you a question. There are already some minimum sentences in the Criminal Code. Personally, I have a bias against minimums, but they do exist for the most serious crimes.

Do you have the same attitude about, for instance, minimum sentences for murder?

Ms. Lorraine Berzins: I think they have been established for a long time and that they are better than the death penalty.

Mr. Serge Ménard: Yes.

Ms. Lorraine Berzins: So, that is not my top concern at the moment.

I know why they are not needed. When the Crown feels that it is not appropriate, they may lay manslaughter charges. They do have choices. That is what happens.

Mr. Serge Ménard: I can tell you that in practice, I have seen crown attorneys bring murder charges against...

Ms. Lorraine Berzins: Yes.

Mr. Serge Ménard: ... people who, clearly, were only guilty of manslaughter, in order to get a guilty plea to manslaughter.

Ms. Lorraine Berzins: Actually, I will change my answer. No, I am not in favour of mandatory minimums, for anything. I think we have the tools we need so that when a life sentence is really required, we can impose one. That is what matters. However, if we are locked into a practice we cannot do without...

We have also seen the case... Oh Lord, I do not recall the name.

• (1710)

Mr. Serge Ménard: Are you referring to the Latimer case?

Ms. Lorraine Berzins: Yes, I think many Canadians find that rigidity excessive.

Mr. Serge Ménard: Now, at the other extreme, there are short minimums.

Ms. Lorraine Berzins: Yes.

Mr. Serge Ménard: That is the case for some types of recidivism, where the individual who is convicted the first time is given a warning that if there were to be a second offence, a minimum sentence would apply. I am referring, for instance, to impaired driving. I understand that criminology principles and studies have established that this type of well-targeted short minimums may, indeed, have an effect on the crime rate.

Ms. Lorraine Berzins: I am not sure if I understood everything. Sometimes I am a bit hard of hearing. However, I think all the research data suggest that the are not at all effective, be they short or long, 14 days or 90 days.

I think it has been years. The fact we have some does not mean we based them on research data.

Mr. Serge Ménard: I was misinterpreted. I can tell from your reaction.

There are some short minimums for reoffending, the most significant being impaired driving, a crime committed by people who are not necessarily criminals. Obviously, for a first offence, they do not know what the minimums are. However, if they are informed, after the first offence, that for a second offence, there will be jail time, it is generally believed that that has an effect on recidivism.

Ms. Lorraine Berzins: Again, everything I have learned from various research points to the fact that criminal minds do not work that way. People act in an impulsive way, without thinking. They do not consider that given that they will spend 90 days in jail, they will not do something. They are not aware of things to that extent. The simple fact that it is recidivism does not mean that the legislation has not changed since then. It is really not their motivation.

You are really not realistic as to human beings and people who get involved in crime like this. When you know the population that is there, you know that that is really not what it is all about.

The Chair: Thank you.

Mr. Comartin, you have seven minutes.

[English]

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

Thank you, witnesses, for being here.

Ms. Berzins, I don't think the letter that the churches sent to the Prime Minister and the Minister of Justice has been filed with this committee. Would you provide it to the clerk, so that it's part of the record with regard to this bill, please?

Ms. Lorraine Berzins: Certainly, yes.

Mr. Joe Comartin: Dr. Hanson, what is your academic background?

Dr. R. Karl Hanson: A PhD in psychology, clinical psychology.

Mr. Joe Comartin: Do you actually do clinical work?

Dr. R. Karl Hanson: I haven't done clinical work for a long time. I did do clinical work, I guess 20 years ago now.

Mr. Joe Comartin: Is it safe to say you basically are doing research at this point?

Dr. R. Karl Hanson: That's correct.

Mr. Joe Comartin: On the fourth item you referred to, the résumé, the abstract, I always think I was really lucky that I didn't have to take statistics as a prerequisite to getting a degree, because I don't think I would have passed it, but I do work hard on trying to understand numbers. Do I understand that individuals who are viewing child pornography, child-abusive material on the net, that a full one-third of them never commit any other crime? Is that the summary of what you've given us here?

Dr. R. Karl Hanson: It would be higher than that. From the information here, about half of them would not have any record of a previous sexual offence, and they would also not admit to having committed or describe any other sexual offences under, in most cases, conditions where they're very likely to disclose that—for example, during a polygraph examination or truly voluntary treatment. So this is somebody who comes for treatment from a mental health provider with no criminal justice sanctions attached and no reporting requirements. So these are situations where people have done child pornography and have been involved in largely treatment settings and have been asked if they have done anything else. About half of them say yes and about half of them say no.

• (1715)

Mr. Joe Comartin: So it would be close to 50%, then, rather than one-third who would not have committed another offence?

Dr. R. Karl Hanson: Yes, another sex offence, that's correct. They may have committed other offences, but we're just looking at sex offences here.

Mr. Joe Comartin: Yes. And again, the mandatory minimums are directed in that way.

Dr. Hanson, the material that you have here, the study, was done....

Dr. R. Karl Hanson: It's in press. It's available online now. The hard copy should be out next month.

Mr. Joe Comartin: Do you have any sense of whether the Department of Justice looked at this before they drafted this bill?

Dr. R. Karl Hanson: I have no opinion.

Mr. Joe Comartin: They didn't seek this information out from you?

Dr. R. Karl Hanson: The information available in this report is a summary of studies that are out there. It includes all that we were able to identify. I cannot comment directly on the process the Department of Justice was involved in.

Mr. Joe Comartin: When did it go up on the website?

Dr. R. Karl Hanson: Within a matter of months. The earlier draft of this report, the earlier findings, which some people at the previous committee referenced, was part of a G-8 meeting I was involved with in 2009. That preliminary version was put up on a website at that time, but it wasn't widely distributed.

Mr. Joe Comartin: So the G-8—would that have been the Minister of Justice or the Minister of Public Safety? That's one of those preliminary meetings that we have?

Dr. R. Karl Hanson: Yes. It was an experts meeting held in North Carolina on the topic of Internet sex crime, and it was experts meeting, collecting the information that was available at that time, and the policies that were applied in the G-8 countries. And that information was posted on the net in 2009.

Mr. Joe Comartin: Thank you.

You know, we saw it here with earlier witnesses who came before us, people who work directly with victims, and of course we get it from the Conservative Party and their right-wing pundits all the time, that every single sexual abuser is going to reoffend, that there's not one of them who doesn't.

Can you help us at all? How did we get to this stage? I don't want you to make political comments here, and I'm not asking you to do that, but is there something—I don't know—in the demographics of this? Are there other studies at some point that would take just the pedophilia, the hard-core pedophilia, and they'd say they couldn't work with them and then extrapolate from that? Are there studies like that? Is there some genesis for this gross misconception as to our ability to successfully deal with sexual abusers of children?

Dr. R. Karl Hanson: I can speculate. I've been around long enough to have perceived public opinion as not taking these things seriously enough. I have personally participated in trying to get people to pay attention to sexual abuse. And during that period of time, particularly the early eighties, many of my colleagues would be saying things such as "there's no cure for pedophilia", or "once a pedophile, always a pedophile". They were saying these things largely as an advocacy position to get people to take sex offending seriously.

Prior to the 1980s there was widespread disbelief that the rates of sex offending were as high as they actually are. You saw a major change in social values during the eighties and nineties where sex offending went from being an obscure crime to being a dominant

crime, including a significant portion of federal offenders. That could be part of the genesis of this.

The other genesis of it is the actual rates of sexual victimization. If you asked individuals, or individual women particularly, a large number of them have been sexually abused. The rates may be one in four. Sometimes it's a little higher, sometimes a little lower than that. So it's a big problem. So if you are around any women and ask them questions, you'll find rates of sexual abuse that are much higher than you want them to be.

So, yes, it's a problem, and in terms of the absolute recidivism rates, it is surprising that they're a lot lower than current public opinion would attribute.

• (1720)

The Chair: Thank you.

We'll go to Mr. Dechert, for seven minutes.

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

Thank you, ladies and gentlemen, for being here today.

Ms. Berzins, I was interested in what you had to say. Have you had an opportunity to read all the provisions of Bill C-54? Have you reviewed them?

Ms. Lorraine Berzins: Are you talking to me?

Mr. Bob Dechert: Yes, I am.

Ms. Lorraine Berzins: Yes, I have.

Mr. Bob Dechert: Okay. And did you survey the membership of any of the member churches that your organization represents on the provisions of Bill C-54?

Ms. Lorraine Berzins: No, we didn't, because that is not the way we work.

Mr. Bob Dechert: So did you—

Ms. Lorraine Berzins: We have a long track record of producing reports and consultations, and consultation often over the same issues with our members—

Mr. Bob Dechert: So you didn't survey them.

Ms. Lorraine Berzins: —so for 39 years there's a lot there.

Mr. Bob Dechert: Did you receive any submissions from any of the members of those churches on the provisions of Bill C-54?

Ms. Lorraine Berzins: Mr. Chair, I feel that I'm being asked a question that boxes me into an answer that would not accurately reflect how my organization works.

The Chair: Ms. Berzins, members of this committee are entitled to ask whatever questions they wish to, provided that they're done politely and with decorum.

Ms. Lorraine Berzins: I would just ask that people take into consideration that I would like it to be an accurate reflection of how we work, and a yes or no—

The Chair: Ms. Berzins, you're free to answer as you wish, but Mr. Dechert is entitled to ask questions.

Mr. Bob Dechert: I'll take it that the answer is that you didn't receive any submissions on the specific provisions in Bill C-54.

You mentioned in your opening remarks something I thought was quite interesting. You said that "uninformed people are not the people to rely on to guide you in what you should be doing on something as important as this". Would you consider the members of the churches that your organization represents uninformed, generally speaking, on something as important as this?

Ms. Lorraine Berzins: I think a lot of people in our churches are not well informed, which is why we are really trying to inform them. But I meant particularly—

Mr. Bob Dechert: Thank you for that.

Ms. Lorraine Berzins: —that the people who have designed the provisions have designed them with some.... There will be unintended consequences.

Mr. Bob Dechert: So your view is perhaps that the people who drafted this legislation may also be uninformed. I understand.

The reason I ask is I regularly survey my constituents on Bill C-54 and other bills that our government has put forth on criminal justice issues, and I have to tell you that I get overwhelming support for this legislation and for other legislation on our criminal justice agenda from my constituents. I checked the stats, and Statistics Canada tells me that 65% of my constituents are regular church attenders and attend many of the churches that your organization represents. So I'm just curious as to why there is such a disparity between what they tell me.... And of course I have to represent all of them and I have to be concerned about their perception of the efficacy of our criminal justice system and the integrity of our criminal justice system, and they tell me that this is something we should do.

Ms. Lorraine Berzins: My experience is that people do not understand how the criminal justice system works. People do have a moral reaction that is very appropriate to what they would like to see happen to take the problem seriously. But that's quite different from understanding how the criminal justice system works.

Mr. Bob Dechert: I understand that your view is that the general population is uninformed.

Ms. Lorraine Berzins: About how the criminal justice system works.

Mr. Bob Dechert: Right. And the members of the church organizations are uninformed about this criminal justice issue, Bill C-54, and what our criminal justice system response should be to people who sexually abuse children.

Did you review the transcript of this committee's hearings on January 31 of this year?

• (1725)

Ms. Lorraine Berzins: No, I didn't.

Mr. Bob Dechert: Okay. It's too bad you didn't, because if you had, you would have seen some very compelling testimony from people who themselves were child sex victims, and organizations that represent child sex victims, and organizations that run, for example, the child pornography alert system in Canada. They told us

very clearly that these provisions in Bill C-54 are important and necessary. I would recommend that testimony to you, and I hope you'll take the opportunity later today to go back and look at it; it's all on the Internet.

Specifically, they told us that the mandatory minimum penalties in these provisions are important and necessary. They're necessary to them for a lot of reasons, and one of the reasons is the victims say it's very difficult for a victim to come forward and tell these stories and go through this process, and they need to feel a sense of self-worth. When they see the person who sexually abused them go back home without any time in jail whatsoever, that tells them that society is saying to them that their life is not worth very much.

Are they uninformed, Ms. Berzins, those child sex victims? Would you call them part of the uninformed group of Canadian citizens who don't understand as you do why this legislation isn't necessary?

Ms. Lorraine Berzins: They have their experience, and for many of them that may very well be true. But there are others, and many others, who also have their experience and for whom it's not true. I think we do have the measures for those who really want and need this. It is possible to do it without having mandatory minimum sentences.

Mr. Bob Dechert: Did you know there are mandatory minimum penalties for many of these provisions currently?

Ms. Lorraine Berzins: Yes, I do, and two wrongs don't make a right.

Mr. Bob Dechert: Okay, so you're saying you disagree with the provisions that are currently there.

The Liberal justice critic told us earlier that some of those mandatory minimum penalties were imposed when her former party was in government a few years ago. Did your group attend before the justice committee at that time and oppose those mandatory minimum penalties?

Ms. Lorraine Berzins: Yes, we did.

Mr. Bob Dechert: Okay. And were they—

Ms. Lorraine Berzins: We don't win them all.

Mr. Bob Dechert: Would you say the members of the committee at that time were uninformed, that the members of Parliament who passed that legislation—

Ms. Lorraine Berzins: We're talking about information about how the criminal justice system works and how crown attorneys and defence counsel make decisions about these things that are quite different from some of the provisions here, and it's going to produce different results from what you were hoping for.

We're also extremely in favour of processes that hold people to account—never a process that just doesn't take seriously what happened.

Mr. Bob Dechert: Can I ask you about two specific new offences that are included in Bill C-54? One of the new provisions will prohibit anyone from providing sexually explicit material to a child for the purpose of facilitating the commission of a sexual offence against that child. That's a new criminal offence that's being created by Bill C-54. Do you think this offence should be created and should become part of the Criminal Code of Canada?

Ms. Lorraine Berzins: I have no big objection to that.

Mr. Bob Dechert: Okay, so you agree with that statement. You agree with that part of Bill C-54?

Ms. Lorraine Berzins: It probably is not necessary, but I don't think it does any harm.

Mr. Bob Dechert: Those people who testified on January 31, the people who represent child sex victims and who monitor the usage of child pornography on the Internet, said that was very important. In fact, most countries in the world already have that sort of legislation.

The Chair: Thank you. Your time's up.

Mr. Bob Dechert: All right, thank you, Mr. Chair.

The Chair: We've come to the end of our time. I want to thank all our witnesses for appearing here. Your testimony forms part of the record, and we'll take that into consideration as we continue a review of Bill C-54. Thank you to all of you.

The meeting is adjourned.

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