



House of Commons
CANADA

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

JUST • NUMBER 032 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, April 14, 2005

—
Chair

The Honourable Paul De Villers

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Thursday, April 14, 2005

• (0905)

[English]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I'd like to call this session to order, please.

It's a meeting of the Standing Committee on Justice, Human Rights, Public Safety, and Emergency Preparedness. We're continuing the study of Bill C-2, an act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.

For this session of the meeting we have two witnesses. From the Evangelical Fellowship of Canada we have Ms. Janet Epp Buckingham, director of law and public policy; and from the Canadian Professional Police Association we have Mr. David Griffin, executive officer. I'd ask for approximately a 10-minute submission from each of you, starting with Ms. Epp Buckingham.

Ms. Janet Epp Buckingham (Director, Law and Public Policy, Evangelical Fellowship of Canada): Thank you very much for the opportunity to appear in relation to this bill. It is an important one.

While I appear on behalf of the Evangelical Fellowship of Canada, I also appear as a parent. My children are 10 and 13, at that very vulnerable age.

It's important to keep in mind that Canadians feel very strongly about this kind of legislation. They've signed many petitions and written letters on it, because it's not just theoretical about children, or even about protection of children or artists. These are our children. They're our grandchildren. They're our nieces and nephews. I think Canadians want to feel their children are protected by the law. I know I certainly do, and I'm sure many of you around the table do as well.

The Evangelical Fellowship of Canada has long been concerned with the protection of the vulnerable, particularly children. We were intervenors before the Supreme Court of Canada in the B.C. child pornography case of *Regina v. Sharpe*. We've made submissions to the standing committee on justice on Bill C-20, as well as to the Department of Justice Canada and the justice minister on matters of child pornography, child prostitution, and the age of consent.

Children are among society's most vulnerable persons. They need adults to protect, guide, and provide for them. Children's size and impressionable nature make them vulnerable to abuse. Children's trust is violated when they are abused by adults.

Child pornography exploits the vulnerable, violates human dignity, and is harmful not only to its participants but to Canadian society as a whole. It has become clear across the country that Canadians are overwhelmingly in favour of strict, clear, and strong legislation on matters of child protection. It is crucial that this government invest the time and energy and apply the courage and wisdom necessary to enact comprehensive legislation that ensures the total and uncompromised protection of children under Canadian law. Children deserve nothing less than full protection from all forms of exploitation.

A number of aspects of this bill are worthwhile. We applaud the broadening of the definition of child pornography to include audio formats and written material that describe "prohibited sexual activity with children where that description is the predominant characteristic of the work and is done for a sexual purpose". We applaud the bill's creation of a new prohibition against advertising child pornography. We also commend the government for and offer our support for the bill's provision that would make the intent to profit in commission of any child pornography offence an aggravating factor for sentencing purposes.

There are, however, a number of areas in which the bill falls far short of providing children with the legal protection they need. Child pornography is inherently harmful to children, not only in its production but also in its consumption. For this reason, fighting the proliferation of child pornography should not be seen as censorship, but rather as the regulation of a potentially hazardous product. There is no merit whatever in the depiction of children in a way that so degrades and dehumanizes them. Thus, it is our position that Parliament must adopt a policy of zero tolerance for production and personal possession of child pornography.

We commend the government's efforts to narrow and clarify the test for child pornography defences and to focus on legitimate purpose rather than public good or artistic merit. However, the bill's inclusion of a form of an artistic merit defence leaves a substantial loophole in the legislation that prevents it from providing children with the protection they deserve.

If a case fits within the clearly defined boundaries of the possession offences laid out in the Criminal Code, and thus passes that first test, there can be no justification for including a second test that would validate personal possession of child pornography. We propose that the only possible defences that should be included in the Criminal Code—and thus the only second test that should be applied—relate to cases of possession within a professional context for the pursuit or administration of justice, medicine, or science and education, for the express purpose of preventing and/or fighting child pornography. Thus, we propose amending the bill to remove “or art” in subclause 7(7), which amends paragraph 163.1(6)(a) of the Criminal Code.

On the problem of sentencing, Bill C-2 proposes amending the Criminal Code to increase maximum penalties for child pornography convictions from 6 to 18 months in jail.

When maximum sentences are increased, we rarely see a corresponding increase in actual sentences meted out by judges. We propose that establishing mandatory minimum sentences would be a far more effective and in fact necessary measure to change actual sentencing practices. This has been done in the United Kingdom and the United States, for example.

As was the case with Bill C-12 and Bill C-20, predecessor bills to Bill C-2, Bill C-2 fails to raise the age of consent for sexual contact between children and adults, standing in sharp contrast to the views of the majority of Canadians.

● (0910)

In 1997, in their submission to the standing committee on justice and legal affairs, during consideration of Bill C-27, the Canadian Association of Chiefs of Police lobbied for legislation to define 18 years and over as the age of consent for sexual encounters with adults. In a 2002 Pollara poll, 80% of Canadians said they want to see the age of consent increased to at least 16 years of age. Despite the strong, widespread support for raising the age of consent, the federal government continues to fail in its duty to provide such protection to Canadian children.

The current low age of consent makes Canada more open to problems related to child prostitution and child abuse. Pedophiles continue to lure vulnerable children. Cross-border pedophile activity into Canada is rampant and is enhanced by the fact that Canada's age of consent for sex is only 14 years—one of the lowest of all western nations. This offers pedophiles greater opportunity to lure and abuse vulnerable children in Canada, as well as greater room to justify and legally defend their abusive actions, and parents can do nothing about it. Effective child protection legislation must provide the absolute maximum protection to Canadian children.

I'll just summarize our recommendations.

At this time, we call on this committee to recommend elimination of the art defence for possession of child pornography offences, leaving exceptions only for possession within a professional context for the pursuit of justice or medicine or science or education for the express end of preventing or fighting child pornography.

The second recommendation is to establish minimum mandatory sentences for child pornography possession convictions, as has been done in the United Kingdom and the United States, and to raise the

age of consent for adult-child sexual contact from 14 years to 18 years.

Thank you very much.

● (0915)

The Chair: Thank you very much.

Now, for Mr. Griffin, for approximately 10 minutes.

Mr. David Griffin (Executive Officer, Canadian Professional Police Association): Thank you, Mr. Chairman.

Good morning, honourable members, ladies and gentlemen. The Canadian Professional Police Association welcomes the opportunity to appear today before the committee concerning this important legislation. The CPPA is the national voice for 54,000 police personnel serving across Canada. Through our 225 member associations, CPPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services, and members of the RCMP.

Children are the most vulnerable group in society and are in need of protection from those who would prey on them. The growth of the Internet has significantly increased the availability of child pornography. The Canadian Professional Police Association has called for a strategic national response by government in response to the growing problem of child exploitation and the Internet. We need laws that protect our children from exploitation by older persons and we need to make greater use of technology to address crimes against children.

We are pleased to have the opportunity today to comment on the provisions found in Bill C-2. I should mention that our association did take a position and were intervenors in the infamous case of *Regina v. Sharpe* before the Supreme Court of Canada, and we also testified concerning the predecessor bill, Bill C-20. We are pleased by the progress that has been made since that time and the revisions contained in Bill C-2. We applaud the Deputy Prime Minister's commitments to nationally expand Cybertip.ca and to expand the RCMP's National Child Exploitation Coordination Centre. These are important initiatives supported by the police community in our efforts to protect children from exploitation.

There are several points with respect to the bill that I would like to address this morning. The first is young persons' consent to sexual activity. There are presently inconsistencies between various provisions to the Criminal Code relating to age of consent. For example, the age of consent for children to have sex with older persons is currently lower than the age that applies for child prostitution and child pornography. A 2001 resolution of provincial ministers of justice urged the federal ministers to raise the age at which a young person under the age of 18 but over the age of 14 can validly consent to sexual activity with an adult.

The CPPA has consistently advocated increasing the age of consent for children to have sexual relations with older persons to at least age 16. In almost all U.S. states, Britain, and Australia, the age of consent is 16.

Bill C-2 introduces a new category of sexual exploitation to protect young persons between 14 and 18 years of age. Under the proposed scheme, courts may infer that a relationship is exploitative of the young person based on its nature and circumstances, including the age of the young person, any difference of age, the evolution of the relationship, and the degree of control or influence exercised over the young person. This new category is intended to focus the court's determination on the conduct or behaviour of the accused older person rather than on the consent of the young person to the sexual activity.

The proposal will also remove the defence of consent for accused persons under the age of 16 where the relationship is exploitative of the complainant. We're generally pleased with this change from the definition we saw previously. Ultimately, it will be a responsibility of the judiciary to determine whether or not this criteria is adequate to protect children from exploitation by older persons. Parliament should consider a review of this provision and other sections of this bill after five years.

With respect to penalties, while Bill C-2 props up maximum sentences for several existing offences and introduces new aggravating factors for sentencing purposes, the reality is that the courts are frequently issuing light and even non-custodial sentences for sex offences against children. Surely crimes of sexual exploitation against children and vulnerable persons warrant a much stronger approach than that which is presented in Bill C-2.

If the Minister of Justice intends to get serious about crimes against children and vulnerable people, we contend that he must be prepared to attack the systemic bias that exists against minimum sentences. Minister Cotler and his officials have indicated that the minister is open to proposals from the committee with respect to sentencing issues, and we would welcome your attention to this concern.

Concerning the new offence of voyeurism, in response to a 2002 resolution by provincial and territorial justice ministers, Bill C-2 creates a new offence of voyeurism. Voyeurism is a serious invasion of personal privacy, and modern technology can be exploited for voyeuristic purposes, enabling offenders to secretly record and monitor the activities of others. Many persons who commit voyeuristic crimes graduate to more serious sexual offences. We believe these provisions of Bill C-2 are appropriate and required.

I would also like to comment on prohibited activities under section 161 of the Criminal Code. Bill C-2 expands the list of offences for which convicted offenders may be prohibited from attending schools, playgrounds, etc., or from seeking paid or volunteer employment in situations where they would be working with children. We recommend that this section be amended to apply to victims up to the age of 18 and to include the offence of voyeurism. In addition, the Crown should have the ability to seek such a prohibition at the time a convicted offender is to be released into the community, not only at the time of sentence.

Concerning the definition and defences for child pornography, we are pleased that the Minister of Justice is taking steps to tighten the definitions of child pornography to address recent court challenges, thereby broadening the application of the law and limiting available defences.

While there has been considerable public debate over the artistic merit defence, police officers responsible for child pornography investigations are not normally confronted with this defence as a consequence of their investigations. The stark reality is that the nature of the materials seized by police officers is so voluminous, vile, and graphic in nature that an offence of this nature is not plausible. Parliament should also consider a review of this provision, along with other sections of the bill, after five years.

I've included in our submissions a list of suggested changes or additions concerning complainant and witness accommodation, and to summarize those, essentially we'd like to see victims have the ability to make application to the court to address these types of requests, such as to deal with the issue of video recordings or exclusion of the public. We also think the victim should have the ability to make their views known on the issue of a publication ban. Sometimes victims in fact don't want a publication ban, and that should be a consideration the courts should be obliged to hear.

In conclusion, Bill C-2 addresses a number of concerns that have been raised by police organizations with respect to child pornography and child exploitation. There remain opportunities to enhance investigative support. We would like to see a national child pornography photo image database created, and we would like to see the scope of offences established under the Criminal Code of Canada expanded to enable effective and efficient utilization of forensic DNA analysis.

Thank you for the opportunity.

● (0920)

The Chair: Thank you very much to both witnesses.

Now to the questions for the members. We'll start with Mr. Thompson, for five minutes.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, Mr. Chairman.

I thank you both for being here today.

I have one question for each. I'll ask both questions and you'll probably use up the time for your answers. First of all, it's very refreshing to hear your testimony, particularly as I have two private member's bills in place.

Ms. Buckingham, your recommendations fit my bills to a T. You could have written the bills I presented on raising the age of consent and dealing with child pornography. So thank you for your future support, if it's ever drawn to be considered, because that's exactly what I'm proposing there.

My question for you, however, is this. I'd like you to respond to some testimony we've heard in the past few weeks saying it's important if child pornography is talking about real children, but not so important if it alludes to fictitious children in writings in particular. That's a general picture of what I've heard too many times. I'd like both of you to respond to that.

As well, to Mr. Griffin, thank you. In my tours of penitentiaries, when I was doing critical work for penitentiaries, I visited personally with a number of inmates who were in for child sexual offences—and I also talked with many case workers and psychologists—and learned from them practically to the person, a very high percentage, that child pornography was definitely a precursor to the crimes they committed. However, there are no studies that I'm aware of, and I've been trying to find someone who may have some information about any studies, but apparently there is no study to indicate that. Yet that's the testimony I've heard from individuals, that it is definitely a precursor. I'd like your comments on that.

I'll leave it at that for now, and if I have any time left I might work in another question. How's that?

The Chair: Ms. Buckingham.

Ms. Janet Epp Buckingham: I think these are important issues to raise, and of course this came up at the Supreme Court of Canada as well. There is at least some evidence that even child pornography that is of fictitious children is used to fuel potential crimes against children, and it's also used in the grooming process to lure children into inappropriate and illegal sexual relationships with adults.

We did have the fairly outspoken testimony from the man who killed Holly Jones that he had been fueled and encouraged in what he did to Holly by viewing child pornography. While there may not be scientific studies, there certainly is considerable evidence out there that child pornography of fictitious children—created child pornography—is a problem, and it's a problem for children and a danger to children.

The Chair: Mr. Griffin.

Mr. David Griffin: Thank you.

Actually, with respect to both, I think they are excellent questions. With respect to the first issue of real or imagined, the first concern is being able to tell that in fact an image is a work of the imagination. With computer enhancements and that type of thing, sometimes it may be difficult to distinguish between whether it's a real victim or something that's been enhanced through computer technology.

Ms. Epp Buckingham has addressed certainly the points that I wanted to raise with respect to grooming and the sexualization of children.

Essentially the people who are involved in this type of trade have a sexual preference for children, and their actions fall upon a continuum of behaviour. Often for people who ultimately will commit sexual crimes against children, the child pornography is an initial step along that continuum of behaviour. You are going to hear expert evidence from medical people who are far more qualified than I am, but anecdotally, police investigators will tell you that people who commit sexual acts against children are likely to also have engaged in viewing or exchanging child pornography.

On the concept of whether or not works of the imagination are art, the type of material we saw going before the Supreme Court of Canada, as I said in my comments, was disgustingly vile. For example, one publication was entitled *Boiled Angel*, and it showed a child, literally an infant, being the subject of sexual assault, being decapitated, sexually abused afterwards, and then being boiled. That type of work of the imagination, from my perspective, does not fall within the definition of art, and police officers are generally finding that while there may be some small amounts of personal creations or whatever in collections, generally these people are collecting hundreds, if not tens of thousands, of images, and the artistic merit defence is not something that concerns those types of investigations.

• (0925)

Mr. Myron Thompson: I have one short last question, if I have time, and it's a short one.

The Chair: Because you're so good, I will....

Mr. Myron Thompson: With my private member's bills I've been pre-warned by a number of legal minds that there's a likely chance that neither one would pass the charter test, and that disturbs me to no end.

I'd like your comments on that.

Mr. David Griffin: Certainly we were concerned when the Sharpe case was before the Supreme Court of Canada that had a case come down in such a way that we could no longer adequately enforce these types of laws and protect children from this type of sexualization, as a society we would have to re-evaluate the protections afforded by the charter. I would contend on today's date that we do not suffer that difficulty; that we're still able to prosecute these offences; that while we'd like to see the types of enhancements that are being discussed here today—and certainly we have concerns more on the sentencing side—within the charter, as it currently exists, a balance has been struck between the rights of the individual and protecting children from exploitation.

The Chair: Ms. Epp Buckingham, would you like to comment?

Ms. Janet Epp Buckingham: One of our recommendations concerned the age of consent between adults and children. It would be more likely to pass the charter if the age of consent was raised across the board. If you create something separate and say children can consent to this kind of sexual activity but not with people that age, that may be more problematic, but certainly to raise the age of consent across the board to age 16 would not be a problem for the charter.

The Chair: Thank you.

Thank you, Mr. Thompson.

[*Translation*]

Madam Bourgeois, you have five minutes.

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Ladies and gentlemen, good morning.

My first question is for Mr. Griffin but I would like Ms. Buckingham to jump in as well. You seem to say that the age of consent is a very important issue.

Mr. Griffin, in the brief you have submitted, you state, at page 2 of the French version, that there are inconsistencies between various provisions of the Criminal Code and that Bill C-20 attempted at the time to address those inconsistencies about the age of consent. You seem to say that Bill C-2 does not go far enough and allows those inconsistencies to stay on.

You both seem to place a great weight on the age of consent. I am not a lawyer but I understand that a young person of 14 years of age and one of 18 years do not have the same maturity or the same intellectual development. On the other hand, a pedophile does not bother with the age of his victim. So, should we give more importance to the pedophiles than to the inconsistencies in the law about the age of consent? This is my first question.

Secondly, what concerns me is the Internet. We talk very little about the Internet. The witnesses who mention it seem to say that there is a problem and that we need additional resources. But when we open our website, we are flooded, at certain times of the day, by those spams that present pornographic images. This is quite shocking. I tell myself that the young who surfs on the Internet sees the same images. I have not heard much about possible ways to solve this problem.

Third, there is education. I think society itself should educate parents and children about pornography, about pimps, about pedophiles. I have not heard many groups talk on that subject. On the other hand, I hear you talk a lot about the age of consent. I would like to get answers to these questions.

• (0930)

[*English*]

The Chair: Ms. Buckingham, to start.

Ms. Janet Epp Buckingham: Thank you for those questions. They are good and important.

One of the reasons we focus on the age of consent is because we have seen a lot of cross-border pedophile activity. Pedophiles are coming from the U.S., where the age of consent is higher—it's between 16 and 18. They're coming to Canada because they know

the age of consent is lower here and that they can have sexual activity with 14-year-olds, and it's not illegal because 14-year-olds can consent legally here. But we feel that 14-year-olds who are being lured by pedophiles really don't know what they're getting into. They are not old enough to appreciate the consequences of some of these activities. And it's in order to get the pedophiles that we talk about raising the age of consent—not to get the 14-year-olds, but to make it clear that pedophiles do not have a legal right to prey upon 14-year-old Canadian children.

The regulation of the Internet is very important, and I know it has been considered. I know the CRTC, for example, was considering how it is to be done or whether it can be done, and it is difficult because it's international. Much of the horrible spam we're all subjected to is originating from outside of Canada. I would very much support some more regulation. I know, even on a municipal level, there have been bylaws that make the Internet providers responsible for what comes across. The Internet providers respond that they don't know, they can't be responsible for it, but I think we do need to look very carefully at that. I have seen some studies that say that they actually put words like "Disney" and "Mickey Mouse" in some of this material so that it's targeted to children, and that is just completely unacceptable. It's a question of how you find those people and regulate them, but I would certainly support that.

It is a good point that education on these issues is necessary. There have been some attempts at streetproofing children, but Internet-proofing is definitely necessary. Children are spending more and more time on the Internet and they need to know how to protect themselves.

• (0935)

The Chair: Mr. Griffin, in response to Madame Bourgeois.

[*Translation*]

Mr. David Griffin: Thank you. I am still unable to answer in French, but...

Ms. Diane Bourgeois: It's okay. You may answer in English.

[*English*]

Mr. David Griffin: I'm not capable, either, of analyzing our translation, and it may even be ambiguous in English, but I tried to put forward in English an explanation of the history of our position in relation to the age of consent issue, and how we came to our conclusion that what we see in Bill C-2 is preferable to the current state. It may not be the age of 16, as we talked about, but we're not here to advocate criminalizing adolescent romance. Rather, our concern is the exploitation of young people or children by people who are much older.

As has been explained, the types of complaints we hear from parents involve situations where an older person—a much older person, somebody my age—makes contact with a 14- or 15-year-old via the Internet and ultimately seeks to have a consensual sexual relationship with that person. If the young person consents, it makes it difficult for the older person to be prosecuted. What I think we see in this legislation is the opportunity to charge and prosecute those types of individuals.

In terms of the Internet, I think you made some good comments. Speaking as a parent, I spent \$400 cleaning my computer as a result of some of the spam my son had generated from his visits to different websites, so I have a lot of personal interest in the whole issue of education and awareness. I think that's something we could do a better job of as a society.

Again, Ms. Buckingham has brought forward some of the challenges in terms of the scope of the Internet, trying to address that. Certainly we've advocated, without success, making the Internet suppliers more responsible for the type of conduct that comes over their networks. But from a criminal prosecutions standpoint, the majority of our focus with respect to this issue is on the distribution of child pornography and access to that, as well as the luring of young people over the Internet. Ultimately, those are the types of issues that we feel have had some legislative response in this bill. But we always seem to be in a catch-up position.

The Chair: Thank you, Mr. Griffin.

Merci, Madame Bourgeois.

Mr. Comartin, for five minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Griffin, I've been trying to get a handle on the actual victimization over the Internet in regard to Canadian children being used as subjects and victims. I haven't been able to ascertain how prevalent it is. I have to say that some of the material I've read suggests that very little of the material that's on the Internet originates in Canada. A fair amount originates in western Europe, but most of it comes from Asia.

Perhaps I can break this into two questions. First, have you any idea of how many charges there have actually been in Canada of people using children for material that ends up on the Internet? Second, just overall, even if there haven't been charges, do we have some kind of study or analysis to show how prevalent it is in Canada, where Canadian children are the victims?

Mr. David Griffin: Unfortunately, I can't answer that question directly, but I can say anecdotally that in Toronto, for example, they have been involved in a project with Microsoft, trying to link the images on a database, trying to identify where those offences have taken place and who the victims are. They have had success in identifying not only the location of where these images were taken but also the victims.

So I can't give you exact numbers, but I know that they have had cases in North America, cases in Toronto, where people in Toronto have been charged with creating or manufacturing child pornography that's been distributed worldwide. I believe Mr. Gillespie will be a witness before this committee next week. He has been spearheading that project, and I think he can give you a much more accurate picture.

Ultimately, whether it's a child in Singapore or a child in Buenos Aires or a child in Toronto, there is a victim, and I think we have an obligation to try to protect those children, regardless of where they come from.

● (0940)

Mr. Joe Comartin: I guess the response to that is how best do we do it? And our responsibility, our primary responsibility, is to protect Canadian children.

Ms. Epp Buckingham, with regard to the age of consent, one of the concerns we've heard, obviously, and you've already addressed, is the category of youths of roughly the same age. Although our target is the adult perpetrator, do we catch the literally hundreds of thousands of our youths between 14 and 16 who are engaged in consensual sexual relationships?

Mr. Griffin, you indicated in your paper that you felt that a two-year age difference would be enough to address that issue. Based on the statistics we have from the justice department, it's still going to catch relationships of several hundred thousand in Canada.

So I'd like some comments on our responsibility to protect those relationships as being.... Morally we may not agree with them, but do we criminalize them?

Ms. Epp Buckingham.

Ms. Janet Epp Buckingham: I think the way it's dealt with in the Criminal Code now is a good model, where you set the age and then you create the exceptions. Now it's 14, but it makes an exception for consensual relationships between a certain age group. I think that's a better way of dealing with it, and more in keeping with the charter.

Mr. Joe Comartin: I think the general consensus is that this is the way to address it, but I guess what I'm asking you—

Ms. Janet Epp Buckingham: Should it be within two years, or three years, or...?

Mr. Joe Comartin: Yes, three years or five years; those are the gaps we're looking at.

Ms. Janet Epp Buckingham: That's right.

I would still argue two years. When you look at, for example, a 16-year-old and a 13-year-old, there is a potential for exploitation simply because of the difference in maturity levels. If young people were made more aware of these situations, I think it would have an impact on their relationships.

That would be a good thing for the vulnerable younger age group, the 12- and 13-year-olds. We have to recognize that the early sexualization of children does have health consequences, because it puts young girls at much higher risk for all kinds of different diseases that can cause them a lot of problems later on.

So I think it would be appropriate to stay within the two-year age range.

Mr. David Griffin: Generally, I would concur with that. I think our challenge, which you've actually reflected, is that if it's two years and three months, is that more serious than one year and eleven months?

From our perspective, I think we're venturing almost into the moral debate more so than the legal debate. Our primary goal is to address the concern of much older people, or adults, being with children and adolescents. I actually believe that what we have in front of us in Bill C-2 goes some distance toward addressing that. I think we need to review it in five years' time, but it does place a context around the conduct of the offender. So as opposed to the young person's consent being the issue, it's looking at the offender's actions. When there's clearly exploitation of the younger person, there's a remedy presented here that we may not presently have.

So I see that as an improvement, but I'm not sure it necessarily will stand the test of time, depending on how it's implemented by the courts.

● (0945)

The Chair: Thank you, Mr. Griffin, and thank you, Mr. Comartin.

Mr. Maloney, for five minutes.

Mr. John Maloney (Welland, Lib.): Mr. Griffin, in your presentation you recommended the establishment of a national child pornographic photo image database. How would that work?

Mr. David Griffin: Essentially, as I understand it, the concept is to have a clearing house for all of this. These images are maintained by law enforcement and then catalogued and put in.... I don't understand the technology, but essentially, linkages with projects that are occurring worldwide, and that Canada is involved in, will allow us to try to identify consistent patterns, whether it's the background of the picture or the individual child in the image. That way, an image found in Toronto may be linked with one in Calgary, or perhaps in Great Britain. Through that process, law enforcement can then identify potential victims or locations where these images are being created.

Mr. John Maloney: Have you any idea what the cost of that system would be?

Mr. David Griffin: No, but I do understand that the project is currently under way, but we see that as an added component to the work already being done.

Mr. John Maloney: Could you explain to me a little more about the National Child Exploitation Coordination Centre, which already exists?

Mr. David Griffin: Yes. Again, the Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness announced last year a substantial increase in funding for that. One of the projects the department is actually taking on, I understand, is to be the guardians of this new technology developed by Microsoft to assist in trying to make some of those connections. We see this as a positive step in the right direction.

Mr. John Maloney: Pornography on the Internet is a global problem now; it's just a huge problem. What is your success rate on obtaining convictions, and what are the barriers to those convictions?

Mr. David Griffin: Again, some of the witnesses you're going to hear from are investigators responsible for this directly. They're probably shooting fish in a barrel. Because of the technology, they're able to identify many of these cases. In fact, there have been investigations that have commenced in the United States through which they've identified hundreds of suspects, including many in Canada. Then it takes actual investigative time to follow up on each and every one of those cases.

Our former president, Grant Obst, is with the Saskatoon city police. He was involved in some of these investigations and training. He could go on the Internet on any given day and find people who were either producing or looking to distribute child pornography, or sell it, or find people who were attempting to lure young people through chat rooms and that type of thing. So I would say we're probably just scratching the surface.

But once those cases are coming to the attention of police, I think we're having success in terms of convicting those offenders. The problem is they're very time-consuming investigations as well, because in some cases they may seize 400,000 images. Each and every one of those images has to be catalogued, viewed, and provided in some format for disclosure as well. There is a considerable amount of effort that goes into those investigations, and that becomes a resource issue for the police services.

But my sense is that we're having success in terms of the investigative aspects, that we're only scratching the surface, and there's considerable frustration when these cases are going to court in terms of the types of sentences we're seeing.

● (0950)

Mr. John Maloney: Just turning to the subject of voyeurism, again, with the advances in technology, are we at the point where we should be licensing the use of some of this highly technical equipment that can surreptitiously observe or take photos of those scenes—even all these little phones now can take images, etc., and they are just spreading throughout the country and are obviously tools that could be used for this type of a crime.

So are we there yet? I don't want to get too much of a Big Brother aspect into it, but I'm just wondering if we may have to, if there are abuses of these items, so that only people who are authorized to have them should have them.

Mr. David Griffin: It's like every technology. There are legitimate, good purposes for that technology. A small percentage of our population will then exploit those advantages for corrupt or unlawful purposes. I think probably the technology is so pervasive, such as the cell phone example, that we're beyond ever being able to regulate or limit it, because there's a demand for those types of devices for perfectly legitimate purposes. It comes back more to being able to identify when it is being used inappropriately and then having the remedies in place to address that.

I don't think we can hope to regulate it, and if we even attempted to we wouldn't have the ability to enforce it.

The Chair: Thank you, Mr. Maloney.

Mr. Moore, you have five minutes.

Mr. Rob Moore (Fundy Royal, CPC): Thank you.

We've heard a lot of testimony from groups who are concerned about the legitimate purpose for art and about having to defend themselves. Mr. Griffin, you made mention of a particular item and you described it as disgustingly vile. I would probably agree with you, but that's your view on that particular item. That illustrates to me why we need some clearly defined parameters. We heard testimony from individuals who feel that only depictions of actual children being abused should be criminalized and that all written material—and I even asked some of our witnesses.... There already is, in law, “material...that advocates or counsels” that is criminalized, but Bill C-2 broadens that to material where the “dominant characteristic” is action that would be criminal.

My question is, what do both of you have to say about depictions that are not of actual children, or are written material? If anything is clear to me from a lot of the testimony we've heard, it's that one person's depiction of what should be illegal and should be characterized as child pornography can be another person's art. We know from the Sharpe decision that all defences of this nature are to be interpreted as broadly as possible. I'm wondering specifically, on the legitimate purpose pertaining to art, what concerns you may have where the depictions are not of an actual child.

Mr. David Griffin: From our perspective, works of the imagination should be captured in the scope of child pornography. I believe they are in this bill. I think the court was fairly clear that where an individual creates images for their own purpose and does not share those images, and those are the only images that person will ever possess, they're not likely to come to the attention of the police or ever be investigated. It's really a notional argument as opposed to a practical concern.

What I'm hearing from people investigating these types of crimes is that they don't go out every day worrying about the artistic merit defence. We're talking about people, because of the technology now, who have hundreds, if not thousands, if not hundreds of thousands of items. Within those, there may be some works of the imagination, there may be some cartoons, there may be some other forms, whether it's writing or stories, but ultimately the entire focus is on sexual activity with children.

I feel confident that this bill actually tightens the definition and does not provide the type of loophole where we would have difficulty prosecuting those offenders.

Even in the case of Sharpe, while some of the exhibits might not have met the test for prosecution, there was sufficient other material and activity for convictions to be brought against Mr. Sharpe. I think it's as much a notional debate as it is a real practical problem.

• (0955)

The Chair: Ms. Epp Buckingham.

Ms. Janet Epp Buckingham: Thank you.

We actually recommended that the art defence be removed altogether because we have seen the courts tending to broaden that defence. We've made the argument that child pornography is an inherently hazardous product because of the danger it poses to children, whether they're works of the imagination or not.

Mr. Griffin has made the point—and just to make it more plain—that you can take a picture of a child from the Sears catalogue and with technology make it into a child pornography picture. Is that an actual child or is it not an actual child? Well, it's a real child, but they weren't actually involved in the particular sexual conduct that might make up the child pornography. It's a danger to that child, and it's a danger to other children because of the way it is used.

We would really recommend that the art defence be removed altogether, because protection of children has to be paramount here.

The Chair: Thank you.

We have two minutes left and two interventions to make, so we're going to run on a bit.

We'll go to Ms. Neville and then to Mr. Warawa.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Mr. Chairman, I'll pass. My questions have been touched on.

The Chair: Mr. Warawa, you'll have the last intervention before we suspend this session.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being here. I found this very informative.

I just want to make a quick comment regarding the artistic merit defence. We had witnesses sharing their concern that this legislation, Bill C-2, would chill their abilities to have artistic expression. You've mentioned your opinion of *Boiled Angel* as being disgustingly vile. From what you've described, I would agree that it does sound vile. Some, though, may deem it to have artistic merit, and there's this chill. CBC was here sharing that they're concerned about a chill.

I'm going to be asking questions from that perspective. Where should the line be drawn? My colleague did ask a little bit about that. Now, the courts right now are deeming where the line is to be drawn. I'm not sure on what basis that line is drawn; they've defined that. Being a new parliamentarian, I believe it's Parliament who should be drawing that line.

I have two questions dealing with these vile pictures. What are the psychological effects on these investigators looking at these thousands and thousands and thousands of pictures? They have to look at these pictures to deal with charges and convictions. Has any study been done on the psychological effect of these pictures on people who deem them to be vile, yet they're having to deal with them all the time? Are these people being victimized?

The other one is on minimum sentences, which you were asking for, Ms. Buckingham. The courts now are often using conditional sentences, meaning the person can serve their sentence at home. If we have minimum sentences, are you suggesting that these not include conditional sentences?

In my riding of Langley, a young man in his early twenties sexually assaulted two girls living on either side of his home. He is serving a conditional sentence at home, so these young victims see the perpetrator on a daily basis, and the victimization continues.

Could you elaborate on minimum sentences and on the psychological effects of the pictures on investigators?

The Chair: Ms. Epp Buckingham.

Ms. Janet Epp Buckingham: We've made the argument in our brief that conditional sentences tend to give a very strong message to perpetrators that what they've done is okay. So our recommendations on minimum sentences would not allow conditional sentences to be a minimum sentence; there has to be something that gives a strong indication to perpetrators of crimes that this is not acceptable, and it has to give a message to others in society that this is not acceptable.

•(1000)

The Chair: Mr. Griffin, on the other point.

Mr. David Griffin: Very quickly, with respect to artistic merit, if there's a chilling effect from the depictions of adults having sex with prepubescent children, I think that's a good thing.

With respect to investigators who are involved in these types of offences, it's a very taxing investigation and it takes a very special type of person; there are officers who can't handle it for the long haul. We do have programs in place to try to support those investigators, but I think to have to go work every day and look at this stuff must be horrific.

From our perspective, as mentioned in our brief, the sentences are grossly inadequate when we consider that children are the victims of these crimes.

Mr. Mark Warawa: Thank you to both of you for being here today.

The Chair: Thank you.

Ms. Neville has reconsidered, so we will have one last question.

Ms. Anita Neville: I'll be brief. I'll take that prerogative.

Ms. Buckingham, I listened to you say you want to raise the age of consent to 18. I heard your comments on artistic merit. I'm wondering how you would patrol the sexual activity of young people, how you would enforce it. I understand you're talking about a two-year spread, but we often run into a situation where somebody has a birthday and the two-year spread is over. You're suggesting raising the age of consent to 18. Most groups that have come before us have suggested it be 16, so I wonder if you would comment on that.

I'm also not sure I understood your comments on artistic merit. What role do you see for artistic expression in a community?

I have one quick question for you, Mr. Griffin. You made the comment that we're always playing catch-up in the legislation. You talk about a review of the legislation every five years, which I think is a good suggestion. Do you have any other firm suggestions that would avoid us playing catch-up so we would get ahead of it, other than what you put in your presentation today?

•(1005)

The Chair: Ms. Epp Buckingham.

Ms. Janet Epp Buckingham: Thank you for that question. I would like to be able to clarify that when we are advocating for the age of 18, it is to protect them from exploitation from older adults. Why should 16-year-olds be protected from sexual predators and not 17-year-olds? We're not primarily looking to police adolescent sexual activity, although these things do send messages to children, young people, and adolescents as well. It does allow for a certain education process, because as I pointed out, early sexuality,

particularly for girls, poses certain health risks that I think a lot of girls aren't necessarily aware of. So there can be some education around that. But the age of 18 is for the protection from sexual exploitation by older adults. We're certainly open to the age of 16, or to a broader age range in there. But do 17-year-olds not deserve that kind of protection?

On the artistic merit defence, with a new definition of child pornography and what constitutes child pornography, we do not believe there is legitimate art that fits in there that is primarily for a sexual purpose. If it fits within the definition of child pornography, we do not believe it fits within the legitimate art defence. There's a lot of great art out there, but not for a sexual purpose.

The Chair: Mr. Griffin, on catch-up.

Mr. David Griffin: I think the process of creating legislation, which you people are much more familiar with than I am, is a thoughtful and deliberate process that goes through many steps before a bill is created. This legislation, in some form or another, has been the subject of analysis for probably three years at least. The potential exists now that it may be another couple of years before we see this bill get through Parliament.

The Chair: Do you know something we don't?

Mr. David Griffin: No, I just said there was the potential. So I think it's a systemic issue we may never be able to catch up on. The technology moves so fast sometimes that we don't anticipate how people are going to use it. But it would be nice if there were all-party support for this type of legislation or for addressing this problem and if there were some means to fast-track those solutions.

The Chair: Thank you, and thank you to both our witnesses for coming. Your evidence has been very helpful.

We now have appearing as an individual Mr. Ron Langevin, a forensic psychologist with Juniper Associates.

Mr. Langevin, if you can make your presentation approximately 10 minutes, then we'll go to questions from the members.

Dr. Ron Langevin (Forensic Psychologist, Juniper Associates, As an Individual): I should point out that I don't have a particular agenda to bring to you, but hopefully the information and ideas I present will be helpful to you.

I was asked to talk primarily about recidivism, but I also will talk about pornography in a little more detail than I've outlined. To give you an idea of who the people are you're dealing with who commit these types of crimes, I've divided this into six sections. If you follow the tables, I think that's probably the simplest way of indicating who they are.

Listening to the debate on artistic merit and so on, it's quite clear that many of the people who come to the criminal justice system have a sexual disorder. We estimate that over 80% do have a disorder. This is a lifetime sexual preference or some activity that's outside the norm of society, for example, sexual activity with a six-year-old child. There are a number of other features that are also important in evaluating these individuals. Fifty-two percent suffer from alcoholism as defined by World Health Organization criteria, and it's a significant part of the problem. Perhaps more importantly, this is a factor that feeds into violent behaviour. The more often alcohol is involved, the more likely the crime is to be violent.

Another dimension of these people has to do with the learning problems and difficulties. Fifty-two percent have failed grades in school and 38% were in special education classes. In Ontario, nobody fails a grade, I'm told by the Department of Education, and only 2% to 3% are in special education. So you see, we have a select group. From the literature and my own data, I know that 40% of these people have learning disabilities, often language-based or comprehension problems, and one-third suffer from ADHD, which is attention deficit hyperactivity disorder, a problem that's associated with impulsiveness and more often involved in the criminal justice system as anti-social behaviour.

Another interesting and important feature that is just starting to emerge in literature is that 22% of these people have suffered major brain injuries prior to committing their first sexual offence. We do not know at this time what role that plays, but of course brain injuries can disinhibit people. You can see the appearance of out-of-character behaviour, including sexually deviant behaviour, for the first time.

I guess of more concern are the lifetime recidivism rates shown in table 2. I should point out that many of the papers and maybe some of the other presenters will tell you a much lower rate, but the longer you follow sex offenders, the more likely you are to see a repeat sex crime. Fifty-eight percent of these people who were followed for 25 years or more have committed a second sex offence at a different time. Of course, as you are well aware, many sex offences are plea bargained, disguised, or can't be proven. A break and enter may be actually a disguised rape, and often plea bargaining to common assault from sexual assault is done in court. If you take an estimate of what we're missing and include all offences, 80% have re-offended or are recidivists. When we take that sex offence category and we add in undetected sex crimes, the rates jump to 88%. So you're seeing almost all of these people who will re-offend. They have a mean number of 3.6 convictions and their criminal history lasts at least 19 years.

I should point out that I think all of these are under-estimates because of the deficiencies in our records, which I'll talk about in a moment.

As for the question about incarceration, 44% of these people have spent no time whatsoever in jail; 14% have spent less than one year; and in total, 79% have spent less than five years incarcerated for an average of 3.6 convictions.

●(1010)

Part of the problem that we see, which I think is a concern, is the use of RCMP records in research studies and a lack of communication between the RCMP and provincial databases.

In table 3 you can see that of the total 2,000 cases of sex offenders that I examined, they are missing 46% of the cases, and they're missing a total of 22% of the convictions that occurred. The problematic concern is that of these total convictions missed—643 of them—599 or 93% of them were sex offence convictions at the provincial level.

I think we also need more broad-based cooperation in data collection, because we know of at least 60% of offenders who have committed crimes in cities other than Toronto, where my base of operations is, and we know that 26% have offended in other provinces. And we really don't have access...it's just fortuitous that we had access to that information.

Let me talk about pornography, which I realize is also of concern to you. There is certainly a problem of definition, and I'm sure many people have talked about that. I'm willing to address that, if you want to, in your questions.

The question arises whether pornography causes the development of sexual disorders. I think that's very unlikely.

The second question that arises is how often pornography is used in hands-on sex crimes. In the study noted in table 4, which is one of the largest studies in the world literature, unfortunately, 17% have done so. You'll notice that this increased slightly in crimes with children to 21%, and when the crime occurs with somebody outside the family, the extra-familial, it jumps to 26%. Most of the crimes involve children when pornography is involved. It would be impractical, if you think about the circumstances of somebody attempting to rape an adult female, that they would open up a *Playboy* centrefold and show it to them at the time they're attempting to sexually assault them. So this is a fairly rare phenomenon. The groups we're seeing are people who have sexually assaulted strippers whom they've watched in strip houses.

The purpose of the pornography, the major factor, is to groom the child. Fifty-five per cent have shown these pictures, and they have primarily been adult heterosexual pornography, the *Playboy* and *Penthouse* variety, where they're trying to interest the child, get them aroused, and induce them into sexual behaviour with the offender.

However, I must say a great concern is the last group, the delayed gratification and monetary gain group, where 35% of the individuals who are involved with children and have used pornography—so that's 35% of the 17%—took pictures of these children. They're also a group that is of concern because of the amount of violence in their activity. We identify 27% of this group who are sadistic and have a deviant sexual preference for sexual sadism and 73% of them who are pedophiles and sexually prefer children. If we look at their criminal history—and this is not in your table—they average 14.4 convictions compared to 3.7 of the general stream, non-pornographic sex offender. So they are a much more deviant group. They're much more likely to be alcoholic, and one of the things that we see in this group also is the abuse of drugs.

Am I going too fast? I'm going to stop in a minute or two.

Almost one in three abuse drugs. Drug abuse is fairly uncommon among sex offenders—2% to 3% could be considered addicted or regular users—and we have almost a third of the picture-takers who are involved.

You also have another extreme group, the people who use the Internet. We must say we have very little data on this, and I'm telling you of a sample of 30 cases.

•(1015)

The majority of these people suffer from anxiety, depression. They're not drug abusers. They're not alcoholics. They are sexually deviant. About half of them are attracted to children, but the other 30-odd percent are voyeurs and derive gratification from looking. They have few hands-on crimes. They have 1.7% convictions for sex crimes compared with 14% for the picture-takers.

So we have two very different groups here that are encompassed under the use of pornography. About 1 in 10 of the picture-takers have been declared dangerous offenders. None of the Internet users is. About 2 in 100 of the non-pornographic users are dangerous offenders.

One of the concerns you will hear from contemporary practitioners is that no treatment works for sex offenders. However, only about half of them want treatment and only 14% get to complete treatment. So it's not so much that treatment doesn't work but that they don't get treatment.

It's also a concern that sexual disorders are a lifelong phenomenon, that they're not going to go away. The current practice of the Correctional Service of Canada of looking at the circle of support, where community volunteers are involved in the supervision and interaction with convicted sex offenders, may be a useful course of future intervention.

Finally, just so I don't sound totally pessimistic, let me say that I think there are possible venues for preventing sexual disorders. The abuse of alcohol by both the fathers and mothers of sex offenders, endocrine disease such as diabetes—the conditions occur at rates well above the national averages. They offer some means of looking at prevention.

My main concern in talking to you today is that the sexual disorders occur with a high rate of recidivism. They last a lifetime. Second, children are the major victims when it comes to the use of

pornography in both hands-on sex crimes and in Internet picture-taking. I think the most dangerous group are the picture-takers. They need to be pursued.

•(1020)

The Chair: Thank you, Dr. Langevin.

We'll go to questions.

Mr. Warawa, for five minutes.

Mr. Mark Warawa: Thank you, Mr. Chair.

I've had an interest in this for a number of years. I've heard that treatment is not successful, so I appreciate your comments and your evidence that only 14% complete treatment.

Have you followed up with the 14% to see if the treatment has been effective in any way?

Dr. Ron Langevin: I have not. As thorough as the statistics were in this study, there are still many holes—people can commit offences in other provinces and easily slip across the border into the U.S. I don't feel that I have a reliable number on recidivism rates. I think the numbers are under-estimates, as high as they are.

Mr. Mark Warawa: The people you're talking about, who your study is dealing with, are these people who have been convicted of all sexual offences or specific types of sexual offences?

Dr. Ron Langevin: These are all categories. They involve offences against both adults and children. They would include incest as well as extra-familial sexual assaults on children.

Mr. Mark Warawa: What is the risk these people present to our community, to Canadians? Do they present a significant risk of harm?

You've said that the recidivism rate, including undetected crimes, is 88%. So the vast majority are likely to reoffend, and reoffend more than once. It may be multiple offences.

Dr. Ron Langevin: Yes.

Mr. Mark Warawa: Okay.

And 44% of them were not incarcerated in any way.

Dr. Ron Langevin: Yes, that's correct.

Mr. Mark Warawa: —yet they present a significant risk of reoffending.

•(1025)

Dr. Ron Langevin: Yes, they would have fines and probation periods. Often there would be a probationary period with a treatment order and some other conditions; they might have an order not to drink or to stay away from children, and so on, but 44% spent absolutely zero time in jail.

Mr. Mark Warawa: Excuse me, as my blood is boiling here.

If they are incarcerated, Correctional Service Canada's responsibility is to reintegrate them back into the community as soon as possible. The purpose of incarceration is not punishment; it's to manage the person. So they are released back into the community with escorted absences and then unescorted ones, and then they are released. As you've said, their sentence may be for less than one year, so they'd be serving their time provincially in that case, and 79% of them serve for less than five years. Those people will then apply for parole and escorted absences within the first third of their sentence, so if they have a three-year sentence, it's likely they will be out within the first year, and they will be prepared for the first year of release with these unescorted absences to try to manage them and reintegrate them back into the community.

Is this circle of support in place now, or is this a concept that you're hoping will be there to keep an eye on and help deal with these people?

Dr. Ron Langevin: It is in place now.

Correctional Service Canada, I must say, has been a leader in providing treatments and treatment progress in the area of sex offenders, and they have an 8- to 10-year follow-up on a group of sex offenders generally and repeat offenders who were considered difficult cases. They've had a very low rate of reoffence.

There are two advantages to this. One is that it involves the community, which is concerned about sex offenders in their neighbourhood. Here is an opportunity for these people to keep an eye on them, rather than just receiving a notice that a person is in your neighbourhood and not be involved, other than to worry. It also gives that person an opportunity to interact and to enhance their lives; these people are often loners who have very little purpose in life, and with these other people involved with them they become an extended family of sorts. It has benefits for both the community and the offender in terms of prevention of crimes.

I'm aware of some of the cases and that some people in the circles of support had been offending on a yearly basis; they were no sooner out on the street than they were reoffending. But for them to go for 8 to 10 years without committing an offence is quite a remarkable achievement. So I think it is certainly the direction to go.

I think some of the traditional treatments are useful, but you just can't drop them after the parole period has ended, as is so often the case, and just leave them to their own devices, because that's why the majority have reoffended.

Mr. Mark Warawa: Thank you, Doctor.

[*Translation*]

The Chair: Madam Bourgeois, you have five minutes.

Ms. Diane Bourgeois: Good morning, Mr. Langevin. Your report is extremely interesting, I would even say explosive, in the sense that you give us information but that you induce us to question other departments about what we do with sexual offenders.

Can we say, based on the data you give us, there is not much that can be done with a sexual offender? At the time the Correctional Service of Canada treats him for alcohol abuse, he already has failed in school, attended special classes, had a brain injury. Poor thing, we

feel sorry for him. We feel so sorry that we want to give him a treatment but he doesn't want that. That's what I get from reading your report. I say he does not want a treatment since only 51 p. 100 wish to be treated. It means 49 p. 100 do not want to be treated. Moreover, only 14 p. cent of those treated finish their treatment. I have the feeling we kind of pamper those sexual offenders and that somewhere somebody doesn't take its responsibilities.

On page 3 of the French version of your report, under the title "Record of criminal activity", you say: "the absence of records in RCMP files of known sex offenders [...]" and you refer to a study funded by the Solicitor General of Canada in 1994. I want to know if it is still the case in 2005.

The majority of sex offenders are men. Do they mostly prey on women and young girls? I will now make a deduction which may not be quite right. If it is the case, please correct me. I was last week at a conference about femicide. Do you know what is femicide? It means serial murders or violent assaults against women. I ask myself this question. How do you explain that a member of the RCMP who has received a special training is incapable of maintaining criminal records on sex offenders? How do you explain that these people are not on a list maintained by the RCMP? Should we draw the following conclusion: a man in the RCMP is a man and an offender is a man, therefore it is not important that women are victimized? I am only asking the question: should we draw the conclusion that sexual delinquency against children is not a serious problem because most victims are little girls?

I will stop here but I would have a lot of questions to ask.

• (1030)

The Chair: You have a minute and a half to answer four questions.

Ms. Diane Bourgeois: Yes, but I wanted to make my point.

[*English*]

Dr. Ron Langevin: I think the matter for the RCMP is not that they're not keeping a record but that there's a lack of communication with the provinces. There is no integrated database for provinces and the RCMP. If somebody has a federal offence, and they've been through the fingerprint service, the FPS, the RCMP is aware of 80% of them. A correction needs to be made in the system for a link between all of the provinces and the federal database the RCMP keeps. If they're informed, they do have the records. If somebody has both a provincial and a federal charge, the RCMP is most likely to know about all of them. It's when they don't have federal charges that they're out. With high-speed computers, linking all of these is certainly a distinct possibility.

In terms of the victims of sexual offences, certainly females are more likely to be victimized by males, but males victimizing other adult males is a hidden crime. As you are aware, consenting relations between two adult men was only legal in 1969, but even today, if a homosexual man is raped and beaten up, he will not report it to the system. It's an unknown element.

In terms of boys and girls, I think equal numbers of boys and girls are victimized. Again, the male is less likely to report this until he's much older, or not at all. So many of my clients, not necessarily criminals, will tell me that somebody abused them as a child as well.

Going back to the treatment question, I think there's a whole number of factors involved in this. The data I presented to you came from the 1960s to the early 1970s, a time of great optimism, an era when we thought we could cure everything and anything. I think the patients had faith in us, the sex offenders had faith in us, the courts did, and the police did. The police might bring somebody to us and say, "If you'll treat this guy, we'll drop the charges", which doesn't happen now. It was a time of perhaps foolish optimism.

In the 1980s there was a change in terms of the reporting laws, which required us to report children who were abused, and also in terms of the confidence of the treatment providers. That took a serious dive. We no longer talked about curing these people, we talked about managing them, with relapse prevention. They're still a great concern, and that's why I think the circle of support is an important idea. It doesn't put more financial burden on the criminal justice system, but at the same time it keeps a record of these individuals.

Did I answer all your questions?

• (1035)

The Chair: Merci, Madame Bourgeois.

Ms. Neville, for five minutes.

Ms. Anita Neville: Thank you, Mr. Chair.

Thank you very much for coming. I have lots of questions and not enough time. You certainly paint a not very optimistic picture in terms of what one can do through legislation.

First, in your report, you don't refer to perpetrators in terms of whether they had been abused as children themselves. I'm interested in knowing whether you've done any research on that. As well, you talk extensively about the use of alcohol by the parents of perpetrators and by the perpetrators themselves, but you don't make any comments about fetal alcohol syndrome. I'm wondering if you could do so now.

I was struck by your comments that ongoing work by authors suggests that the picture-takers are the most dangerous, commit more crimes, and are more likely to be sexually deviant, etc., than the Internet users and perpetrators. I'm wondering if you have any concrete recommendations on what we as legislators can do, in light of that statement.

Finally, going back to your earlier comment, you talk about the school system. I'm not familiar with the Ontario one, but I am very familiar with the Manitoba one. You talk about the children who have learning disabilities and ADHD. Again, that often is interrelated with FAS, fetal alcohol syndrome, or fetal alcohol effect. Do you have any recommendations—this is probably beyond our purview—on what the school system might possibly be doing in terms of identification of and support to potential serious perpetrators of child abuse and pornography?

Dr. Ron Langevin: My goodness, that's a lot of questions.

Let me start with—

The Chair: No one told you this was an IQ test, did they?

Dr. Ron Langevin: No, they didn't, and my short-term memory is being tested.

The school system has a lot of challenges in front of it at the present time. Certainly, the early identification of children with special learning needs is a problem. Often the parents do not want their children to go in. So we see, for example, 50% who have failed a grade. They don't overlap greatly with the children who are in special education.

If the child is failing and the teacher or the principal says, "I think your child should be in special ed", there's often resistance to that. So there may be a delay. There may be a gap in time. It's not their place, I guess, to tell the parents what they should and shouldn't do, but certainly better education of parents in this respect in placing children earlier is important.

They certainly could test the children much earlier. Many of these grade failures occur in Grades 1, 2, and 3. So we know of these people very early on as potential cases. I think they can certainly do that.

I think, too, when there are sexual problems that these people show in school, they should be better documented. The counsellors could be trained to recognize these as the early signs of some sexual disorder that should be investigated.

I'm going back to the issue about alcohol—

Ms. Anita Neville: Before we discuss alcohol, I wanted to know whether many of the perpetrators are themselves victims of abuse. I want to know about FAS and how we translate this into legislation.

Dr. Ron Langevin: Okay.

About one-quarter of the offenders have been sexually abused themselves as children. This is no different from criminals in general. So you see 25%, 27% in the studies, have been subjected to hands-on sexual contact as children. These people tend to be much more disturbed emotionally. They have more difficulties adjusting to life. They are more likely to commit suicide than people who haven't been abused among the sex offender population. So it is a factor there.

FAS is recognized as one of the features that occur. Both alcohol and diabetes, as well as thyroid disorders, all of which may be induced by alcohol abuse, can lead to damage of both the egg or the ovum and the sperm, and cause subtle abnormalities, even with modern treatment. Prior to the discovery of insulin, for example, a pregnancy was a death sentence for a diabetic woman and her child. Sixty-five percent of them died. Others children were stillborn, and many of them had defects. That has been curbed to a large extent, but there are still subtle abnormalities.

I believe that particularly alcohol abuse is a factor that leads not just to fetal alcohol syndrome, but to other abnormalities in the brain that are likely associated with the development of these deviant sexual preferences.

•(1040)

Ms. Anita Neville: My last question, Doctor, was about the sex offenders you talked about who are picture-takers as opposed to Internet users. Do you have any recommendation—if you don't today, you could think about it—about how we as legislators can make some accommodation to impact on this?

Dr. Ron Langevin: I think the picture-takers should be dealt with much more seriously, and the courts have done so. As you can see, almost 10% of the sample that I have—and there were only 65 of them in the sample—have been declared dangerous offenders. I think that when pictures are taken of a child, it is much more traumatic for the child. There is often violence.

These are the people, too, who also get linked into organized crime and syndicating these materials on the Internet. I think the penalties should be far more severe for their crimes when there are pictures taken of children in sexual acts.

Now, the people who consume this material are different, more passive types of individuals who need psychiatric treatment. They're often under extreme stress. They have anxiety and depression problems. They have difficulty coping with normal interactions with other people. That's the predominant type of person I'm seeing.

I think certainly they should be punished. I don't think they should be partaking in the abuse of a child, which you're doing when you use child pornography. I think a different channel of intervention and perhaps less severe sentences are warranted for that group.

Ms. Anita Neville: Thank you.

The Chair: Thank you.

We have fifteen minutes left. I have four people on the list, so I'm going to suggest going to three-minute rounds to try to give everyone the opportunity to get on.

So for three minutes then, Mr. Moore.

Mr. Rob Moore: I'll be as quick as possible.

Your testimony draws you to certain conclusions, and basically, from what I'm reading from your evidence, when we release one of these individuals, or when, as you say, half the time they serve no time whatsoever, there's almost a complete certainty that they're going to re-offend. That's what it looks like to me. I'm wondering, if the treatment is not even desired in half these cases, what is the solution? We're dealing with the protection of children. If someone is a child sex offender, and we know that, and has committed an offence, now we're looking at what we do with this person. You just mentioned, in the last question, that we need to treat some more severely. But if they're always going to re-offend, what's the difference if we let them out the next day or let them out in five years, unless they're going to get that treatment and they're not going to re-offend? What is the solution to prevent them from re-offending and knowing with certainty that they're not going to re-offend?

Then I'll just ask the other question very quickly. Regarding child pornography, did they get into the types of child pornography they're

looking at? Are any of these virtual images or written works, or is it mostly pictures of actual children, or is it a mixture of all types?

The Chair: Please answer as quickly as possible.

Dr. Ron Langevin: It's predominately visual images with no artistic merit whatsoever. Talking about punishment and whether it's going to make a difference, I think the people who are the picture-takers, if you look at their profiles, are all sexual deviants. A quarter of them are sadistic. A third of them are alcoholics. A third of them are drug abusers. They have 14 previous sexual offence convictions—how they ever got away with that is a question—before they're finally caught. They're a different group, and the difference is in the degree of harm that is being done to the child.

•(1045)

Mr. Rob Moore: Can I ask quickly then, should those types of people, picture-takers, just simply be locked up? Is the risk that they're going to victimize another child too great? Should they simply be taken out of society altogether and locked up?

Dr. Ron Langevin: Yes, I think it should be considered. Again, you're going to have to look at each of the circumstances, but if somebody shows that profile, then yes. The courts have declared them dangerous offenders, and they're very unlikely to be rehabilitated.

The Chair: Thank you.

Mr. Cullen, for three minutes.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Dr. Langevin. Thank you, Mr. Chair. I have more questions than time.

I was interested in your presentation. I should point out that there is a national sex offender registry, which was implemented with the cooperation of the provinces and territories last year. I know there was some issue around retroactivity, but to suggest that the RCMP isn't interested in sex offences because they're mostly committed against women I think does a disservice to the RCMP.

But regarding your table here, Doctor, I will follow up with the RCMP and see if I can get some answers.

I have two questions. I was interested that a number of these sex offenders have brain injuries. That was something that was totally surprising to me. Perhaps it shouldn't have been. In terms of therapy for sex offenders, what kind of therapy—without becoming an instant psychiatrist, which I would never become or have a capacity to—do they end up learning to cope with the signals of their bodies or their minds—a coping mechanism? Do they sort of reach into their souls and come to grips with this problem and wipe it out over time, or is it a physiological treatment? How does the treatment proceed?

Dr. Ron Langevin: Most commonly, relapse prevention is used. Recognize that the sexual tendencies will always be there. They don't just disappear with time. The treatment is teaching them to avoid high-risk situations and also to look at their own internal needs. What will trigger them acting out? Is it an argument with family or difficulties on the job? And most important, it is recognizing their sexual needs and how they might meet these in socially acceptable ways or suppress them altogether with drugs—sex-drive-reducing drugs. Those are really the alternatives that are available today for treatment.

Hon. Roy Cullen: Can I ask a quick one?

The Chair: You have one more minute.

Hon. Roy Cullen: Thank you.

Do you have any research or evidence on the linkage or otherwise between the private viewing of pornographic material in one's home or residence and sexual deviancy or sexual offences?

Dr. Ron Langevin: Yes. I don't think viewing pornography creates sexual deviance. It's a preference that appears around the time of puberty and lasts throughout your lifetime. I don't think we know how to control it. You certainly won't change it by viewing pornography.

Now, on whether it would stimulate somebody to act in a crime, the results are mixed. But for the most part it's not being used in hands-on sex crimes involving children or adults.

The Chair: Thank you, Mr. Cullen.

Mr. Thompson is next for three minutes.

Mr. Myron Thompson: Did Karla Homolka ever receive any treatment?

Dr. Ron Langevin: I don't know. I don't know if it would be of help.

Mr. Myron Thompson: You see, the reason I ask that question is I don't know either, but I find it difficult to understand, if we don't know, how you can include them in any statistics. I suggest she probably hasn't either.

What classification would she be under in table 1?

Dr. Ron Langevin: I haven't examined her personally.

Let me say that people involved in sex killings are very different from your mainstream sex offender who wants some sexual release. They have a very different attitude towards the rest of us. As one gentleman said, "You are like a farmer's cattle. I can do what I want with you." So there's that arrogant superiority that allows them to damage other people's bodies and do what they like. There's no known treatment for any of that.

She may have been a participant because of Paul Bernardo or she may possess those characteristics herself. She may be psychopathic and have very little conscience about anything. I can't say personally; that would be a guess. Certainly people like that cannot be rehabilitated. I think they have to be detained indefinitely.

• (1050)

Mr. Myron Thompson: You indicate that 51% refuse treatment. Are there any repercussions from the institution or the system for failing to cooperate?

Dr. Ron Langevin: There are, of course. If you're looking for parole, you're not likely to get it. If they say you need treatment and you say no, you're going to wait out your sentence. Some men prefer to do that.

If it's a provincial system, some of them may agree to get treatment and come for treatment. Once their sentence is over they disappear. So some of them use us. Some of them are sincere, get to the finish line, and try to use the materials we teach them about. But there are a number who abuse the system, even with those penalties.

Mr. Myron Thompson: I would suggest that number is quite high.

Dr. Ron Langevin: Yes.

Mr. Myron Thompson: That's what needs to be corrected. Do you have any suggestions on how we do that?

Dr. Ron Langevin: It's a difficult question. There's the whole issue of treatment being voluntary. On the system as it now stands, they're overloaded in the number of people who they could put in treatment. There are far more people than treatment spots available, so they're going to pick the people who say they want treatment, at least for starters.

I don't know how we can easily get around that. It's certainly an expensive financial operation. The nice thing about the circle of supports is that it involves the community and community volunteers. That can be started in the correctional system and then carried on into the community when they're released, so it doesn't create a tremendous financial demand on the correctional system.

The Chair: Thank you, Dr. Langevin.

Now we'll go to Mr. Maloney to conclude for three minutes, because we're obliged to clear the room before 11.

Mr. John Maloney: As Madame Bourgeois indicated, this report is very explosive. What was the number of case studies over what period of time on which you based your report? Are there any other studies in other jurisdictions or within Canada that corroborate your findings?

Dr. Ron Langevin: There are international studies that support it, but this is the largest study in Canada. Over 2,000 sex offenders were examined between 1966 and 1999. So follow-up was done as recently as six years ago. These statistics stand. I should point out that although this talks about the early sample, it is also true of the later sample that they missed as many cases from 1974 to 1999 as they did back then and for the same reason, that we just don't have a provincial-federal system intact.

Mr. John Maloney: Your recidivism rate is just pathetic, but you also qualify that with the comment that it's not necessarily a matter of treatment with a sex offender; the majority of the offenders are not securing complete treatment. So are there treatments out there that could be effective if they were used?

We have supervision of up to 10 years for sex offenders. Should we be looking at a longer period for this type of incident because of the information you've given us? Should we be utilizing the dangerous offender legislation to a greater extent?

Dr. Ron Langevin: I think there should be a longer supervision period. Even if they're amenable to treatment, there's a question of it lasting. It is analogous to the treatment for dieting, smoking, and alcohol. Some of us have experience with how difficult that is in some respects. You have a drive that is going to be there even until you're old. Some of these people are in their eighties and they're still sexually active. So it's not going to go away. Rather than having a dangerous offender application, requiring a long-term involvement in the community would be a more feasible solution, especially if this was applied to all sex offenders rather than the most violent, who should be detained.

• (1055)

The Chair: Thank you, Mr. Maloney.

We have one minute and I have one question, Dr. Langevin.

In your table 2 where you talk about repeat appearances, you have sex offences, all offences, and then undetected crimes. I thought when you were going over it you talked about factoring in estimates. If it's undetected, how do you estimate an undetected category?

Dr. Ron Langevin: They told us at the time they had committed an offence and were not caught.

The Chair: So these were admissions of the offenders.

Dr. Ron Langevin: Yes.

I should point out they were far more candid back then than they are now. They told us a lot and trusted us.

The Chair: Thank you very much, Dr. Langevin, for your attendance. We appreciate your time.

We'll now adjourn.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.