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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Wednesday, December 2, 2009**

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**Chair**

**Mr. Ed Fast**



## Standing Committee on Justice and Human Rights

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• (1535)

[English]

**The Chair (Mr. Ed Fast (Abbotsford, CPC)):** I call the meeting to order.

This is meeting 51 of the Standing Committee on Justice and Human Rights. Today is Wednesday, December 2, 2009. Because the minister is not here and we don't want to waste any time, we have a little bit of committee business that we could deal with.

You have before you the agenda for today. We are going to have Minister Nicholson here for most of the next two hours, but there was one item that I wanted to address concerning committee business.

Madam Clerk, do you have the list of the witnesses that we still have appearing?

You may recall that we had scheduled some RCMP witnesses. Unfortunately, we didn't get a chance to hear from them, so we've had to reschedule them.

I believe we have two more meetings left, on December 7 and December 9, and then we're done for this year. What we have scheduled for December 7 is witnesses Al Rosen by videoconference, the Canadian Bar Association, the Department of Finance, and Jean-Paul Brodeur. Then in the second hour on December 7 we have the RCMP—we missed having them the last two times—and we have the Attorney General of New Brunswick, by special request of Mr. Murphy.

That's on December 7. Then on December 9 we presently have scheduled Joey Davis and Janet Watson, Jenn Lofgren, Mike Miles, and Melanie Johannink. I understand they are all victims or family members of victims. Thereafter we would be proposing to go to clause-by-clause.

Is that a schedule you can live with?

Monsieur Lemay.

[Translation]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Mr. Chair, I am looking at the list of witnesses, and with respect, I would make the seventh a priority, the representatives from the RCMP. We must not make fun of them; we have to be serious. They will probably be here with other people. It will be hard to have that many people on the seventh. There are a lot of witnesses. I have questions for the RCMP, and I think it is important to have the RCMP representatives here with us. We told them earlier that we would give them an hour. There will be three of them here plus the Attorney General of New

Brunswick. I don't know how we can arrange it, but if it can be done, I would like to hear them at 3:30 p.m. to be sure that they have time to give us the information they wanted to give us and so that there are no surprises in the meantime.

[English]

**The Chair:** Monsieur Lemay, you should know that we had the RCMP scheduled on their own for one hour. At the very last minute, we heard that the Attorney General for New Brunswick was going to be in town, and a special request was made that we leave room for him.

Could I suggest to the committee that, based on Mr. Lemay's request, we flip those two panels; that we set up the RCMP and the AG for New Brunswick for the first hour, to ensure that they have the full hour, and then deal with the other witnesses in the second half of that meeting?

Would that be acceptable to you, Monsieur Lemay?

[Translation]

**Mr. Marc Lemay:** Yes. For the 7th, that is fine.

[English]

**The Chair:** All right.

If there's no one who takes issue with that, we'll move forward on that basis.

[Translation]

**Mr. Marc Lemay:** Can I talk about the December 9 meeting?

[English]

**The Chair:** Yes, you may.

[Translation]

**Mr. Marc Lemay:** Mr. Chair, I was wondering if we could postpone our clause-by-clause study of Bill C-52 until we come back on January 25. Is there an urgent need for us to proceed with the clause-by-clause study on December 9? That would mean that if we wanted to propose amendments to the bill, we would have to table them tomorrow. We cannot work miracles. It becomes very difficult. Is there an urgent need? Can we put the study of to January 25?

[English]

**The Chair:** Monsieur Lemay, what we're proposing to do is start clause-by-clause on that day. The only people we'll have will be the families of victims represented. So I'm suggesting that we leave clause-by-clause as is. If we don't have time to finish it, that's fine, we can put it off.

[*Translation*]

**Mr. Marc Lemay:** Yes.

[*English*]

**The Chair:** I believe I asked some time ago at this committee that those proposing to have amendments here for clause-by-clause do so right away. I still haven't had a response from anyone at the table. So I have to assume that there aren't any amendments coming forward.

Now, committee members have the right to present amendments right to the last minute. I understand that. But I think out of courtesy to our clerks, and to some of the other adjunct staff who are required to be here during clause-by-clause, we should do our best to have amendments presented to the committee and at least delivered to the clerk well in advance.

I'm not chiding you for that, Monsieur Lemay. I know you do still have some time to get ready for that. What I don't want to do is allow these bills to be bogged down.

What we've done is allow the second half of December 9 to be available for clause-by-clause. If we don't get through it, that's fine. We can always put it off until the new year.

Mr. Comartin, did you have a point to make?

• (1540)

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** I think the problem with that strategy, Mr. Chair, is that we need to hear from the witnesses before we finalize our thinking on what amendments we want. I do intend to move some amendments. I don't think this bill is strong enough in terms of protecting victims of white collar crime. So I do intend to move at least a series of amendments in one area, and perhaps more. But I'm going to need to hear from the witnesses, on December 7 in particular.

I don't really have a problem with leaving clause-by-clause there, but I suppose I'm just advising the committee that I'm not likely to have.... I'll basically only have Tuesday of next week to get them done and translated after we hear the witnesses on Monday. So I'll put the committee on notice of that.

The other point, with regard to the Department of Finance, is that I assume this is people coming from FINTRAC specifically. That was the request I had made.

**The Chair:** Yes, I believe that was the case.

The request was put to FINTRAC. FINTRAC suggested other officials within the Department of Finance.

So the request has been made to FINTRAC.

**Mr. Joe Comartin:** Do we know who the people are?

Quite frankly, Mr. Chair, the only people I've been able to identify who seem to have some information on the incidence of white collar crime—particularly the incidence of white collar crime involving large amounts of money as opposed to smaller amounts—would be them. I don't know where the Department of Finance would have that. Now they may, but I just haven't identified them as a possible source.

**The Chair:** Apparently FINTRAC has identified specific individuals in the department. But what I'll do is have the clerk

provide you with the names of the individuals and you're free to contact them to find out exactly what kind of expertise they'll be bringing to the table.

**Mr. Joe Comartin:** I'd like the names of the people we talked to at FINTRAC as well.

**The Chair:** All right. I've taken note of that.

Hearing no further comments, we'll then move ahead with the schedule as we've agreed.

Minister Nicholson, it's good to have you back. You're here for the first hour on Bill C-42, which is An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act).

I understand you have with you the acting director general and senior general counsel, Catherine Kane, as well as Matthias Villetorte, who is counsel with the criminal law policy branch.

I welcome all three of you.

Minister, you know the drill. You have ten minutes and then we'll open the floor to questions.

Monsieur Lemay.

[*Translation*]

**Mr. Marc Lemay:** Excuse me, Mr. Minister.

I would like some information. Since we have the minister for two hours, until around 5:30 p.m., and we have to study the Supplementary Estimates, should we not give the Minister — this is just a suggestion — the opportunity to talk about Bill C-42 as well as the Supplementary Estimates so that we do not have to go back. We could ask questions about the Supplementary Estimates or Bill C-42. I don't know if that would be acceptable to the Committee members, but it might save us some time.

[*English*]

**The Chair:** No. First of all, the agenda spells out what he'll be addressing, in order. The other thing is that he has brought counsel on Bill C-42 with him, whereas counsel on the supplementary estimates will be here later in the meeting.

• (1545)

[*Translation*]

**Mr. Marc Lemay:** Okay.

[*English*]

**The Chair:** Minister, you have the floor.

**Hon. Rob Nicholson (Minister of Justice):** Thank you very much, Mr. Chairman. I'm pleased to be with you once again, this time on Bill C-42, An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act). This bill will contribute to people's confidence in the criminal justice system by proposing additional restrictions to the use of conditional sentences of imprisonment.

I know this committee is quite familiar with the issue, given the amendments that took place in 2007. To understand why we're pursuing other reforms, I'd like to say this. Conditional sentences became a sentencing option over 13 years ago with the proclamation in September 1996 of the sentencing reform bill. Conditional sentences were to provide an intermediate sentencing option between probation and incarceration to permit less serious offenders to remain in the community under strict conditions: their sentence was less than two years; the court was satisfied that allowing the offender to serve the sentence of imprisonment in the community would not endanger the safety of the community; and the offence was not punishable by a mandatory term of imprisonment.

In 2000, the Supreme Court of Canada held in *Regina v. Proulx* that a sentencing court must first find that a sentence of imprisonment of less than two years is appropriate, before considering whether the sentence can be served in the community under a conditional sentence order. In other words, a court must be of the opinion that a probation order and/or a fine would not adequately address the seriousness of the offence; a penitentiary term would not be necessary to do so; and a sentence of less than two years would be appropriate. Once this decision is made, a court would then determine whether the sentence of imprisonment of less than two years may be served in the community, bearing in mind the other prerequisites in section 742.

A number of observers, including some of my provincial and territorial colleagues, became increasingly concerned with the wide array of offences that received conditional sentences of imprisonment. By the time our government assumed power in 2006, it had become clear to us that further limits to the availability of conditional sentences were needed. We responded to those concerns when we tabled Bill C-9, An Act to amend the Criminal Code (conditional sentence of imprisonment) on May 4, 2006. It was referred to this committee a month later, in June. Bill C-9, in its original form, proposed to eliminate conditional sentences for offences prosecuted by indictment and punishable by a sentence of 10 years or more.

It was, and still is, the opinion of this government that offences prosecuted by indictment and punishable by a maximum term of imprisonment of 10, 14 years, or life are serious offences that should not result in a conditional sentence order. This is so, even if the court ultimately finds that a sentence of less than two years is proportionate to the circumstances of the offence. Bill C-9, as originally drafted, would have caught serious crime, such as weapon offences, offences committed against children, and serious property crimes. However, Bill C-9 was amended so it would only capture terrorism offences, organized crime offences, and serious personal injury offences as defined in section 752 of the Criminal Code—those that are punishable by a maximum of 10 years or more and prosecuted by indictment. This was similar to the approach taken in Bill C-70 that the previous government had tabled in the fall of 2005, but died on the order paper.

The amendments to Bill C-9 created some strange results. First, the amendment to Bill C-9 created a situation whereby offences punishable by a maximum of 14 years' imprisonment or life are not all considered to be serious crimes. I shouldn't have to remind the members of this committee that these are the highest maximum available in the code.

Second, as a result of the amendments to Bill C-9, offences contained in the Controlled Drugs and Substances Act are not excluded for eligibility for a conditional sentence unless they are committed as part of a criminal organization. Consequently, the production, importation, and trafficking of a schedule 1 drug, such as heroin, would not be caught and would still be eligible for a conditional sentence of imprisonment. As members of the committee know, our government has proposed mandatory penalties for serious drug offences in Bill C-15. I therefore expect that when that legislation is enacted, as I hope it soon will be, these offences will be ineligible for a conditional sentence.

• (1550)

Third, the use of the term "serious personal injury", as defined for dangerous and long-term offenders, was appropriated to serve as a limit to the availability of conditional sentences as a result of the amendments to Bill C-9. Up until that bill's coming into force on December 1, 2007, sentencing courts had only to interpret serious personal injury offence for the purpose of determining whether the threshold for a dangerous or long-term offender application had been met, because that term only applied to dangerous and long-term offenders. Since Bill C-9 came into force, courts have wrestled with the interpretation of serious personal injury offences in the context of conditional sentences.

A concern with the definition of serious personal injury offences is that serious property crimes such as fraud could still be eligible for a conditional sentence. We're all aware of the recent examples of the devastating impact of fraudulent conduct. Victims who have lost their life savings have called for strengthened sentences for these types of crime. It is difficult to disagree with their concerns, especially considering the fact that fraud, which is punishable by a maximum sentence of 14 years, would still be eligible for a conditional sentence, despite the reforms enacted in Bill C-9.

It's clear to me, and I suggest to many Canadians, that greater clarity and consistency are needed to eliminate the availability of conditional sentences for serious violent and serious property crimes. For these reasons, Bill C-42 proposes to remove the reference to serious personal injury offences in section 742.1 and make all offences that are punishable by 14 years or life ineligible for a conditional sentence. This would make the offence of fraud and many other crimes ineligible for a conditional sentence.

Bill C-42 would also clearly make offences that are prosecuted by indictment and punishable by 10 years and result in bodily harm, involve the import-export, trafficking, or production of drugs, or involve the use of a weapon ineligible for a conditional sentence. While these elements of the legislation will significantly limit the ambit of the conditional sentencing regime, the addition of these categories would not exclude all serious offences prosecuted by indictment and punishable by a maximum of 10 years. Therefore, Bill C-42 lists specific offences prosecuted by indictment and punishable by a maximum sentence of 10 years that would be ineligible for a conditional sentence. These include prison breach, luring a child, criminal harassment, sexual assault, kidnapping, trafficking in persons, abduction, theft over \$5,000, breaking and entering a place other than a dwelling house, being unlawfully in a dwelling house, and arson for fraudulent purposes. In addition, once Bill C-26 comes into force, conditional sentences will no longer be available for the proposed offence of auto theft. The bill is presently before the Senate.

Mr. Chairman, conditional sentences are an appropriate sentencing tool in many cases, but their use does need to be restricted when it comes to serious property and serious violent offences. A more prudent use of conditional sentence orders should strengthen confidence in the sanction and the administration of justice.

I'd like to conclude by saying, Mr. Chairman, that passage of Bill C-42 is an important step towards more just sentences that will protect our communities, our families, and respect our sense of justice. The use of conditional sentences for less serious offences and less serious offenders, as was intended when they were first created, will improve public confidence in criminal justice.

I hope this will receive quick consideration by this committee and we'll get this matter back into the House soon.

Thank you very much, Mr. Chairman.

**The Chair:** Thank you, Minister.

We'll move now to questions

Mr. Murphy and Mr. LeBlanc, you're going to split your first question.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Yes, just very briefly.

Thank you for coming, Minister.

I haven't been involved with Bill C-9, but I do have a concern about fraud—I'll call it white collar crime—crimes that result in economic loss to persons, often elderly people, people without other resources. What we hear in that bill quite often is the lack of effective restitution instruments. One of the arguments, for Bill C-9 anyway, that seemed compelling is that certain persons convicted in the fraud area would be better off after a while, after denunciation was served, I guess, in getting out there and having means to make restitution to their victims. I guess in a general sense we've been hearing from provinces that they're going to take their own steps with respect to restitutionary efforts. What is your perspective on meeting the dual needs of punishment and making sure victims of fraud get restitution?

•(1555)

**Hon. Rob Nicholson:** First of all, with respect to serious fraud, as you know, the maximum penalty, the maximum sentence as it exists now, quite apart from the bill we've introduced on white collar crime, is 14 years. I think people in this country have a real problem with the idea that these individuals are eligible to be sent home after their conviction. I think they have a problem with that, and I agree with those Canadians who have a problem with that.

You can say, for the most part, that they're not going to get two years less a day, and in the majority of the cases I'm pleased to say they don't get off very easily. But on the idea that you could be eligible to go home after you've committed a serious white collar crime, I think a lot of people have problems with that. So that is taken care of in this bill. This is one of the reasons I'm urging its quick passage.

In addition, with the passage of our white collar crime bill, it would become ineligible in any case, quite frankly, because with mandatory prison terms in the other bill, again it would be ineligible. Either way, we have to get rid of house arrest or conditional sentencing for these individuals.

Now, with respect to restitution, you quite correctly pointed out that there is some very good work being done at the provincial level with respect to assistance, as much as property-related issues, for the most part, are within provincial jurisdiction, so of course they have been taking steps in that direction. But you were here when I testified—I believe you were—on the white collar crime bill, and as I pointed out in that particular bill, there are specific provisions that relate directly to people making a claim and, as I say, making the judicial system more user-friendly for people who find themselves as victims of fraud.

So there is a role to play, of course, for the federal government, and I'm pleased that this particular legislation takes direct aim at assisting victims and making the system a little bit better for them. But again, you're quite correct to say that provincial governments have made substantial progress in this area as well.

**Hon. Dominic LeBlanc (Beauséjour, Lib.):** Thank you, Mr. Chairman.

Minister, I wanted to ask you about two specific areas. Obviously, these changes in restricting conditional sentences will lead to a higher rate of incarceration, which puts additional pressure on the Correctional Service of Canada, and I know you're going to say you have great confidence in your colleague, the Minister of Public Safety. But I'm wondering, in your discussions with him or your discussions with your provincial counterparts, whether you've looked at additional resources that would be needed both in the provincial jails, where the vast majority of people who are incarcerated serve time, and in the Correctional Service of Canada, because of the increased population that will face prison time. So it's a question of resources. And I worry about aboriginal inmates increasingly being incarcerated as a result of limiting these conditional sentences.

The other question would be around probation orders. I think what we're going to see is that judges are now going to choose between jail, incarceration, and probation orders with often restrictive conditions, one would hope, for serious offences. Yet convicting somebody of breaching a probation order is much more difficult than incarcerating somebody who breached a conditional sentence. Are you worried, or have you thought about what will happen in terms of discrediting an already overburdened probation system that may face increased pressure as a result of this bill as well?

**Hon. Rob Nicholson:** I don't agree with your conclusion that we have a discredited probation system in this country. Again, I would ask you specifically with respect to aboriginal Canadians, because you did raise that subject...that probation is one of the eligible sentences that can be handed down, and we have to have confidence, as we do, in the criminal justice system in this country that when it is appropriate, judges will order that.

But with respect to the federal penitentiary system, you're quite correct, and I'm glad you mentioned that. I'll vote my confidence in my colleague, the Minister of Public Safety, and all that he has done in that area. His stewardship of the Canadian penitentiary system has been impressive, and I would agree with all those who agree with me on that, as I'm sure many would.

I think this will be felt, though, within provincial correctional facilities. As I say, I've indicated to them on a number of occasions that this is a direction that governments move in. They've all looked at that. Again, over the years I've had people raise the issue that conditional sentences aren't always appropriate in very serious crimes. I think we've struck that balance between what the less serious crimes are within the criminal events and the more serious crimes for which conditional sentence shouldn't be an option.

• (1600)

**The Chair:** You have 20 seconds, Mr. LeBlanc.

**Hon. Dominic LeBlanc:** Minister, have you...or can your department, perhaps, undertake to provide some analysis with respect to the additional cost that this bill would represent for the Correctional Service of Canada?

**Hon. Rob Nicholson:** Ms. Kane.

**Ms. Catherine Kane (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** The Correctional Service of Canada does not anticipate a significant increase in costs, because one of the first steps in the

determination of whether a conditional sentence should be ordered is to determine that the sentence should be less than two years. Assuming that remains the first step, sentences of less than two years would have to be served in a provincial institution if incarceration is the sentence. Some of them would get probation, some of them would get other sentences, some of them might get provincial jail time. So it's hard to estimate that any people who would otherwise have had a conditional sentence might end up with a sentence of more than two years. It would be speculation only.

**The Chair:** Thank you.

We're going to move on to Monsieur Ménard.

You have seven minutes.

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Thank you.

Mr. Minister, I practised criminal law some time ago in the days before the provisions on house arrest were adopted.

When that came in, judges found it to be a really good middle ground when they were dealing with individuals who, for general collective disincentive reasons, needed to be punished by restrictions on their freedom. But as we often say — and I imagine the same saying goes outside Quebec — prison is often the best place to learn about crime. It is not a good idea to send first-time offenders to that school. Ultimately, the system could impose sentences that were punitive but also beneficial in other ways: allowing individuals to stay in school, keep their job, continue supporting their family, if they have one, improving their chances of getting a job, making reparations to victims of their crimes.

Why do you think all these goals cannot be pursued in cases where it is a first offence and the judges feel it is not a good idea to send the accused to crime school?

[*English*]

**Hon. Rob Nicholson:** I don't agree with your conclusion that our penal systems are crime schools, and I don't agree with your comment that it's not a good idea to send people who have committed their first offence to jail. It depends on what that first offence is, quite frankly. When people commit very serious crime, it may be only their first crime; nonetheless these are very serious matters.

Again, we want to reach out to individuals, we want to get them help, we want them to use their time constructively if they are in fact detained, if it becomes necessary to put them in jail. But there are many who say, me included, that people who commit sexual assault, people who are in the business of, for instance, burning down homes—people who commit these serious offences shouldn't be eligible to go home to their home afterwards. That's what we're saying in this bill, and I think it's a very reasonable compromise.

If you remember, towards the end of my comments, I said, yes, for less serious offences I can see where it is appropriate that some would be given a conditional sentence and sent home. I can understand that, where it works. But I think when the crime becomes a very serious crime, which is what we have identified—these are very serious crimes—they should not be eligible to be sent home. That's what we're saying, and I think that's reasonable.

• (1605)

[Translation]

**Mr. Serge Ménard:** Exactly. Do you not think that this assessment can vary a great deal depending on many factors, including the offender's involvement, for example, in a crime where he or she is not the instigator, but only an accomplice? There are all kinds of other factors. Do you not think it is better to do case-by-case assessments and thus leave it to judges, who are becoming experts in this area, to determine whether the case is serious enough to warrant prison?

[English]

**Hon. Rob Nicholson:** I guess it's striking a balance, Monsieur Ménard. I'm of the opinion—and I appreciate that you disagree with me—that when people lure children into the business of sexual assault or commit arson for fraudulent purposes, these are very serious offences for which they should be ineligible for conditional sentences. They should not be sent home after their convictions.

I appreciate that you and perhaps others disagree with that, and we'll have to agree to disagree. But some of these matters are very serious. It hurts the administration of justice—people lose confidence in criminal justice if they agree that these are very serious offences—if people see these individuals being sent home.

Having said that, I agree that there should be as wide a range as possible in discretion concerning probation. I indicated in my opening remarks my support for conditional sentences for less serious offences. I understand that. I understand our role in giving guidance to the court. For instance, we have maximum sentences right across the board. In a sense we're giving guidance. We're making that decision as parliamentarians about the seriousness with which we view certain criminal activities, and we act accordingly.

Again, I appreciate that not everybody agrees with that.

[Translation]

**Mr. Serge Ménard:** I like your expression "some of these matters are very serious", and I agree with you. But would you agree with me that

[English]

some of these matters are not so serious, and in these circumstances it is good that a judge has the discretion to apply a sentence at home?

**Hon. Rob Nicholson:** Again, I think that sexual assault, luring a child, and arson for the purposes of fraud are serious matters, and people committing these offences should be ineligible for house arrest.

**Mr. Serge Ménard:** There is a variety of these offences and the way they can be committed.

**Hon. Rob Nicholson:** Again we'll have to agree to disagree.

[Translation]

**Mr. Serge Ménard:** I think that your assistant was fully aware that these measures will not mean any additional expenditures for the federal corrections system, because they will be taken only in cases where the judge determines that the sentence must be less than two years. In any case, that will affect provincial jails. I think you know that provincial jails are currently overloaded and overcrowded.

Have you given any thought to compensation for the provinces that take these cases?

[English]

**The Chair:** Monsieur Ménard—

[Translation]

**Mr. Serge Ménard:** I recall that some of the studies of the previous bill concluded that about a third would go...

[English]

**The Chair:** Monsieur Ménard, please place your question.

[Translation]

**Mr. Serge Ménard:** I was going to do that, Mr. Chair. I am just asking if he made provision for transfers to the provinces whose share of the correctional system he increased.

[English]

**Hon. Rob Nicholson:** The provinces are aware of the changes we have made to the criminal justice system, and many of them were actually encouraged by the provinces. I know that you and your party have great difficulty getting rid of the double credit for time served and the implications that has for the provinces. Provincial attorneys general from all political parties are actually encouraging us to move forward on these issues, so it is not like we are taking them unaware or that these issues are coming as a surprise to them.

• (1610)

**The Chair:** Thank you.

Mr. Comartin, you have seven minutes.

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

Thank you, Mr. Minister and witnesses, for being here.



I'm always interested in hearing about the provincial level from an ideological standpoint. But my experience has generally been that when you ask how many additional people are going to be incarcerated as a result of this bill—as it was with Bill C-9—with probably 95% or 98% of them in provincial institutions, not one attorney general or solicitor general in the country can give me any numbers. Members of this committee dug out numbers based on some calculations when Bill C-9 was going through.

I'm wondering if it's any different this time. Do we have any sense of how many offences this is going to cover? You should be able to get that from *Juristat*. How many more people are we going to have in custody at the provincial level?

**Hon. Rob Nicholson:** You made a very interesting comment. You said that the last time this was before this committee you were unable to get precise estimates from provincial attorneys general.

**Mr. Joe Comartin:** Not just precise estimates, Mr. Minister; none at all.

**Hon. Rob Nicholson:** Fair enough. I can tell you generally what the attorneys general tell me, but I don't speak for them. But I will say this on their behalf: It's probably very difficult to quantify these things, because as Monsieur LeBlanc was pointing out, some of these people may now be eligible for probation under appropriate circumstances.

Again, going back to Monsieur Ménard's comments, some of these offences are ineligible for conditional sentencing when they're prosecuted by indictment. It may be the decision of the crown; it may be the decision of the court to prosecute them on summary conviction, in which case they may still be eligible.

That goes to what Monsieur Ménard was saying, about some of the lesser infractions of some, in my opinion, very serious offences. I'm guessing that is why it would be very difficult for provincial attorneys general to give you exact figures as to how many more people that would be. Again, I think this has been well received at the provincial level.

**Mr. Joe Comartin:** You made a point in your opening statement about consistency, but there are sections in the code that the researchers have pointed out—and I want to acknowledge the work they have done on this. Section 57, for instance, is about using a forged passport and section 450 is about possessing counterfeit money. In both cases—not for an individual who would actually have produced those documents, those pieces of paper—those have a 14-year maximum, so they'll be precluded. You can see any number of factual situations, I would suggest, Mr. Minister, where in fact house arrests or conditional sentencing would be the appropriate remedy. I think any objective judge would do that.

**Hon. Rob Nicholson:** Again, in terms of those sentences for which Parliament has issued a 14-year maximum—that's the maximum under our system other than life imprisonment—a determination has been made by Parliament, not specific to this particular bill, that those are very serious offences and it wants to make very clear the seriousness of them. I'm agreeing, quite frankly, with decisions that have been made by previous governments and other parliaments. Yes, those are serious offences, and as such, they should be ineligible for conditional sentencing.

Are there any other routes open? Again, there is discretion within. The crown can lay different charges. But if the most serious charges in the Criminal Code are laid against individuals, we'll be sending out the message to them that if they're eligible for life imprisonment, if they're eligible for 14 years, they won't be going home on conditional sentencing or house arrest.

**Mr. Joe Comartin:** But in cases like that, you're taking away a sentencing tool from our judiciary. You may in fact be restricting their hands in terms of judges looking at this and saying, "I'm not sending this person to any extensive incarceration at all, but I do want them to have a greater penalty than just probation." The conditional sentence is that tool to let them do that.

It puts greater restrictions on their liberty.

• (1615)

**Hon. Rob Nicholson:** I think the tool is still there. You pointed out some of the remarks I made in opening. In those remarks, yes, on some of the less serious offences, conditional sentencing is an appropriate tool. This is something we want to have. But it's our job, as you know, as parliamentarians to give guidance to the courts. That's why we put maximum sentences.

I remember one time somebody said, "Why bother having these maximums? We could just let the judge figure it out. The judges are in the best position." Well, we have a responsibility. That is why every time we bring in a piece of legislation—not this particular one because this deals with a specific sentencing tool—we put those maximum sentences in and we give guidance to the courts. That's our job. We'll have a look at it; we want to make sure it works well. We have changes of priority, changes of criminal activity. We have to respond to that, and that's what we've been doing, quite apart from this one, right across the board.

**Mr. Joe Comartin:** I don't have any further questions.

**The Chair:** Thank you.

We'll move on to Monsieur Petit for seven minutes.

[*Translation*]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Thank you, Mr. Chair.

Good morning, Mr. Minister.

Mr. Minister, I often reiterate that two or three months ago when you and the Prime Minister were here, we met people who had been scammed, robbed or bilked by what are known as white-collar criminals. They subsequently came to give evidence. They spoke to us and you greeted them. They then told us that they were almost insulted that those people had the charge stayed at some point, as is currently the case with one of them. They were genuinely shocked, and the retiree who spoke to us, Mr. Kube, said that he had lost his faith in the justice system. We have to restore people's trust in the justice system.

I think this is an important element. This is my first comment, and I am a bit disappointed, because Bill C-9, which I worked on with my colleagues, was completely gutted the last time. I could not believe it, and I remember that in Montreal around the same time, there were seven or eight home invasions for which people were given suspended sentences because it was their first offence and they did not hit anyone. Yet they entered someone's home at night. The people were afraid.

I would like to know if, in your opinion, Bill C-42 can restore the faith of those who in reality are good people but are literally being assaulted by these criminals, both economically and in their private home.

[English]

**Hon. Rob Nicholson:** You've touched on a very important point, Mr. Petit. That is the role of victims. People want to have confidence in our criminal justice system. If they believe that people who do terrible things to them...if they are the victims of kidnapping, forceable confinement, trafficking in people, sexual assault, criminal harassment, luring a child, and they hear that these people are eligible for house arrest, it hurts the criminal justice system. It hurts people's confidence in the criminal justice system. It's a bad idea to continue this.

What we have to do in the Criminal Code is respond to that. We have to respond to what we believe is our own good common sense as to what is serious and what is the appropriate measure to be taken with that, and it has to be reflected in the Criminal Code. You asked if people want to have confidence in the criminal justice system. Of course they do. They want to have that. And our job is to do that. Is this bill going to restore people's confidence? I say it's part of what it will.

I was actually careful in my opening comments. I said this will "help" on these things. We have about a dozen bills before this Parliament right now. All of them are moving in the same direction, to help restore people's confidence in the criminal justice system or help them to continue to have confidence in the criminal justice system. These are what we have to do. We know that criminals are becoming more sophisticated, and this particular one is not always directed at people who are into sophisticated crimes—some of it is. When people are into arson for fraudulent purposes, yes, you could get some sophisticated operations in there. But people want this to strike that balance. They want these individuals to get the help they need, but they want to send out the message that we take these matters very seriously in Canadian society and that there have to be meaningful consequences that these individuals are eligible for when they commit some of these terrible crimes.

Again, in an objective look at this bill that you have before you, I think people say that this is a reasonable compromise between less serious and more serious offences, and that yes, these are serious offences. When you start talking about a sexual assault prosecuted by indictment, we're talking about a very serious business, and people, I think right across this country—I'm completely confident—do not want to see these people eligible for house arrest under any circumstances.

So that is the job we have before us, striking that appropriate balance. I think this bill, among all the bills that this committee has

had a look at and introduced before Parliament, strikes that appropriate balance.

• (1620)

[Translation]

**Mr. Daniel Petit:** My question is a bit more specific, Mr. Minister.

You were asked how the provinces might react to jails versus federal penitentiaries. In my riding, there is a provincial jail, Orsainville. Prisoners are held in that jail in preventive custody while they await trial. In addition, the Act has been amended. For example, people who do not pay traffic tickets are held in jail if they have four or five tickets. They have also started seizing property. Imagine if in my riding people were sent to jail for a simple traffic violation because it's a provincial offence. On the other hand, people are given suspended sentences for serious crimes.

Can you tell me if you actually checked whether this would create a burden for the provincial system or whether you are going to stay with what already exists at the federal level, that is, two years or longer?

[English]

**Hon. Rob Nicholson:** Well again, there are implications, of course, at the provincial level. I can tell you that I was recently in Fredericton co-chairing, with the Attorney General of New Brunswick, a federal-provincial-territorial meeting of ministers of justice. It was interesting for me to hear that the Attorney General of New Brunswick would be in town Monday. He and I heard from our provincial colleagues about a number of areas of concern. And I can tell you that the mood at those meetings I had in Fredericton was very good in terms of what we are trying to do as a government.

I have to say it again. They were particularly pleased that we were moving to get rid of the double credit for time served. In terms of provincial resources—I was talking to Monsieur Ménard about provincial resources—they told me that a lot of their resources, their expenditures, are used for detaining individuals who don't want to be sentenced, because they can reduce their sentences because of double or triple credit for time served. I had a lot of sympathy for them. I understood when they were talking to me that the provincial courts are clogged up, their remand centres are clogged up, and their facilities are clogged up with people who want the double- or triple-credit bonus. I shouldn't say double credit. In some cases, you get three-for-one credit.

I told them that I had complete empathy for what they were trying to say. I understood what they were trying to say, and I told them I would continue to do my very best to get that bill and other bills through that are of concern to them. I was pleased to do that, because we're in this together, of course. The Criminal Code is administered by our provincial colleagues through their crown attorneys and police and so on.

Yes, we're doing our part. And I was very pleased with the mood and the cooperative atmosphere I found in Fredericton at that meeting.

**The Chair:** All right. Thank you.

We'll have one more round of four minutes apiece. We will get through three questioners.

We have Mr. Murphy for a question or two.

**Mr. Brian Murphy:** I agree with you that the attorneys general have never really been held back in speaking for themselves with respect to cost. Maybe when they get talking in a room about these issues—social justice versus incarceration—for denunciation purposes, there's a rah-rah attitude. But there's also financial responsibility, particularly in provinces like mine. Yesterday we introduced a budget with a fairly large deficit.

My general comment is this. At the federal level, with every justice bill that deals with eventual incarceration, should we not have a rough costing? Often you come here with very good intentions and very good legislation, and we work on it; we work together. But quite often, because of the bifurcation of public safety and justice, you don't have the figures, really, to tell us how much these bills will cost. Shouldn't we, as a committee, get together and say that it would be a really desirable result to have those costing figures for each bill brought in?

• (1625)

**Hon. Rob Nicholson:** I guess they would only be the roughest of estimates; that's all I could tell you, Mr. Murphy. As Mr. Comartin said, he was unable to get from provincial attorneys general what their estimates are of the cost. He said he didn't get any estimates from them. They're aware that this has implications for the provinces. They are prepared to have a look at those, investigate those costs, and generally agree with the legislative effort.

Ms. Kane indicated to you that any costs of this would be negligible to the federal penitentiary system. But at the provincial level, again, according to Mr. Comartin, they were unable to provide you with any. Again, I think our job on this is to be as cooperative as possible.

You mentioned my colleague, the Minister of Public Safety. Well, I don't have to tell you about the hundreds of millions of dollars that, through his ministry, he is putting into more policing in this country.

So yes, we'll do our part, and it's appropriate that we do our part. But again, we try to be as supportive as possible.

One of the things they really emphasized about reducing their costs was getting rid of that double credit for time served. So we're on the right track by bringing that one in, I know for sure.

**The Chair:** Thank you.

We'll move on to Monsieur Lemay for four minutes.

[*Translation*]

**Mr. Marc Lemay:** You see, I, too, was a litigator for a long time. I argued for a suspended sentence many times, and I was often successful, because there is one fundamental thing, Mr. Minister: the judicial discretion of judges. It seems to me that what you are trying to do with this bill is take away judges' discretion. I heard you say, Mr. Minister, that it is not normal for a person who has committed sexual assault or sexual touching to be sent home. Obviously. No judge has ordered that; I am not aware of any. If you are aware of

such a case, I would like to know. That is clearly unacceptable. It is clear that judges have much better judgment than that.

I am worried, and the figures we have been given cannot lie. Each year, between 13,000 and 15,000 criminals are given a suspended sentence. According to staff in your department, a third of those criminals, which, if I know how to count, is between 3,000 and 5,000, would no longer qualify. And because it is a provincial matter, it will be up to the provinces to take an additional 3,000 to 5,000 offenders. Speaking proportionally, Quebec alone would expect to have an extra 1,000 to 1,200 offenders. I would like you to tell me that the Solicitor General of Quebec told you that he agrees with Bill C-42, but I have not read that anywhere. I don't know if you have a document on that subject somewhere. If you do, I would like to have it, because I do not have it. I have nothing from Quebec which tells me that anyone agrees that Bill C-42 should be passed. Yes, there have to be restrictions, but on December 16, 2005, Statistics Canada released figures showing that judges were clamping down on people who violated the conditions of their suspended sentence.

I am asking myself this question. Mr. Minister, is it not too soon to review legislation that provides for suspended sentences and has been in force since 1996? Could we not give it 15 or 20 years at least to see if the courts have adjusted to sentencing before we go back and amend these sections of the Criminal Code yet again?

• (1630)

[*English*]

**Hon. Rob Nicholson:** Monsieur Lemay, I'm always happy any time you and I can agree on something. You made a very interesting point. You said that for individuals who are charged with sexual assault who have been prosecuted by way of indictment, there is no judge who will give them a conditional sentence. Well then, that's great; then there won't be any problem with this one. That's good, and this is good news because that's what we have here.

We're just stating something that you believe is obvious, and I think you're quite correct. I think it's obvious to many people that these more serious... And that's what we have done. With the most serious offences, we have made them ineligible for conditional sentencing or house arrest. That's what we've done. If no judge will give somebody house arrest, then we have nothing to worry about in any case, do we? So in a sense we're changing the Criminal Code just to reflect the reality of what's taking place.

**The Chair:** Monsieur Lemay, we're out of time.

[*Translation*]

**Mr. Marc Lemay:** Mr. Chair, I will talk about it again in the next round. I am going to ask questions about Bill C-42.

[*English*]

**The Chair:** We're focusing then on supplementary estimates.

**Hon. Rob Nicholson:** For the estimates, I'll keep my notes for Bill C-42. Did you want me to make the speech again on Bill C-42?

**The Chair:** No, I think we'll stick to the supplementary estimates.

**Hon. Rob Nicholson:** Fair enough.

**The Chair:** We'll, move on to Mr. Rathgeber, for four minutes.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair, and thank you, Minister, for your attendance here today. Again, let me thank you for your hard work on this and all the other bills that form part of your very aggressive safe street and safe community agenda.

With respect to this bill, we've had some interesting discussion today on how it affects offenders. Mr. Ménard referred to prison as a crime school, and we've heard some interesting questions regarding provincial attorneys general and solicitors general and their positions. But as you know, I take a different position. I'm always interested in victims and victims groups and their position. I think our criminal justice system needs to be more victim focused. I know you meet from time to time with victims groups and victims advocates, as do I. Recently this committee heard from the National Pensioners and Senior Citizens Federation. I'm curious to know if you've met with them or other victims groups, and how they feel about Bill C-42 and how this important piece of legislation will protect them and their interests and rights.

**Hon. Rob Nicholson:** It's interesting, Mr. Rathgeber. You talked about victims groups, and I've met with a lot of them over the last three years as justice minister. A group that I very recently met with were people who were victims of white collar crime, or people who advocate for tougher sentences against white collar crime. I pointed out to them that these people who are convicted of white collar crime, serious fraud, are eligible for conditional sentences, and to a person they disagreed with that. I guess that's the point we're making here.

It's recognized by just about everybody that these are very serious offences, the most serious offences, quite frankly, in the Criminal Code—the ones for life, 14 years, 10 years. We were specific. Criminal harassment, sexual assault, kidnapping, forceable confinement, trafficking in persons.... We can argue about it, but I think most people would say if you're proceeding by indictment against these very serious offences, these people should be ineligible to be sent home afterwards.

Now, Monsieur Lemay says don't worry about them, nobody will send them home. Well great, then we're all agreed, if these people aren't going to be sent home. The Criminal Code will be just stating the obvious, and what I think is apparent to everybody is that if you get convicted of the most serious crimes in Canada within Canada's Criminal Code, you shouldn't be eligible to be sent home. And that's great; then we can move on. Let's get to other constructive things we can do to try to rehabilitate these individuals.

But as you say, we have to reach out to these victims who are looking to Parliament to recognize their legitimate concerns. I have every sympathy with them. And you're quite correct that I, my parliamentary secretary Rob Moore, Monsieur Petit, and you and others have taken a very active interest in reaching out to these victims. I commend you for that, and I thank you for the question.

• (1635)

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Thank you.

Thank you, Minister, and Ms. Kane and Mr. Villettorte.

We'll just suspend for a moment. Minister, you'll be staying here. We'll reconvene in two minutes.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** I call the meeting to order.

Before we move on to the supplementary estimates, further to our study of Bill C-42, I'll ask committee members to begin to think about who you'll want to have here as witnesses so we can compile the list. At this time we have three witnesses on the clerk's list, and I'm sure there will be many more. If I could ask you to provide the clerk with those names, that would be very helpful.

• (1640)

[*Translation*]

**Mr. Serge Ménard:** Mr. Chair, I have something to say before we begin.

[*English*]

**The Chair:** That's Bill C-42.

[*Translation*]

**Mr. Serge Ménard:** We are talking about votes. At first glance, I am having trouble reconciling the English and French versions.

[*English*]

**The Chair:** I was just reminding members of the committee to provide us with the names of those you'd like to have here as witnesses on Bill C-42.

We'll now move to the supplementary estimates.

We have the Minister of Justice with us, and accompanying him, in support of the minister, we have Deputy Minister John Sims. Welcome, Mr. Sims.

Minister, the floor is yours.

**Hon. Rob Nicholson:** Thank you very much, Mr. Chair.

I'm pleased to be here before the members of the standing committee to answer questions or hear comments concerning supplementary estimates (B) for the Department of Justice.

As you know, Mr. Chairman, our government was elected on a promise to tackle crime, and we're unwavering in our commitment to fighting crime and protecting Canadians so that our communities are safe places for people to live, raise their families, and do business. To help us fulfill that commitment, I've relied on the advice and the tireless efforts of the employees of the Department of Justice, and I deeply appreciate their support as our government moves forward with its crime agenda.

Our government firmly believes that the protection of society must remain the first priority of our criminal justice system and that sentences should reflect the severity of the crime. To that effect, we've succeeded in implementing legislation to ensure adequate sentences, such as our comprehensive Tackling Violent Crime Act, which legislated tougher jail time for serious gun crimes, increased the age of protection from 14 to 16 years to better protect our youth from adult sexual predators, and provided strong penalties for alcohol-impaired driving. In addition, we've also increased penalties for those convicted of street racing, ended conditional sentences for serious personal injury offences, and passed legislation to combat illegal copying of films in movie theatres.

In our fight against identity theft, we have succeeded in adding three new offences to the Criminal Code through Bill S-4, targeting the early stages of identity-related crime and giving the police the tools they had been lacking to move against this ever growing problem before the damage is done.

With regard to gangs and organized crime, we have passed Bill C-14, which will increase penalties for murders and reckless shootings connected to these activities. Once it comes into force, any murder connected to organized crime activity will automatically be considered first degree and subject to a mandatory sentence of life imprisonment without eligibility for parole for 25 years.

On October 22, our government succeeded in eliminating two-for-one credit for time spent in jail while waiting for trial, a practice that disproportionately reduced prison sentences for some violent offenders. Police associations, victim groups, and indeed all provinces and territories expressed their support for that bill.

Mr. Chairman, our government has made great strides, but there is more that we can be doing to protect Canadians. For example, in recent months I have spoken to victims of various fraud schemes and white collar crime, and they clearly attested to the gravity of those crimes. Fraud can have a devastating impact on the lives of its victims, not only as it affects their financial security but also through feelings of humiliation for having been deceived and voluntarily handing over their life savings. These schemes can be every bit as devastating as a physical assault.

The determination of these victims to call for action on fraud in the face of their emotional turmoil reaffirmed the need to act quickly and effectively against this type of crime. That's why I recently introduced Bill C-52, which cracks down on white collar crime and fraud and increases justice for victims.

[*Translation*]

These measures will allow victims to be heard and their concerns to be taken seriously by the courts.

[*English*]

We've also taken extremely seriously the many instances of child sexual exploitation facilitated by the Internet. The worldwide web provides new and easier means for offenders to make, view, and distribute child pornography, resulting in a significant increase not only in the availability and volume of pornography but also in the level of violence perpetrated against children.

Our government recently proposed a mandatory reporting regime across Canada that will require suppliers of Internet services to report certain information about Internet child pornography. This is one more step in our efforts to better protect children from sexual predators and help police rescue these young victims and prosecute the criminals responsible.

Our government has shown its concern for the victims of multiple murderers and their families. We firmly believe that the families of murder victims should not be made to feel that the life of their loved one doesn't count. This is why I tabled Bill C-36, which will permit judges to impose consecutive periods of parole ineligibility for multiple murderers.

● (1645)

While there can only be one life sentence for an offender who commits more than one murder, the parole ineligibility period, 25 years in the case of a first-degree murderer, could be imposed consecutively for each subsequent murder. In addition, we continue to seek elimination of the "faint hope" clause of the Criminal Code. By saying no to early parole for murderers, our government hopes to spare families the pain of attending repeated parole eligibility hearings and having to re-live these unspeakable losses over and over again.

Both of these pieces of legislation would acknowledge the value of every life taken by this most serious of crimes. It would ensure the criminals responsible serve a sentence that more adequately reflects the gravity of their crimes.

[*Translation*]

Mr. Chair, protecting people is a priority, not an afterthought. Our government remains committed to improving our justice system in order to properly address the problem of drug producers and traffickers.

[*English*]

Last spring I was in Vancouver to announce, alongside senior law enforcement officials, that our government was seeking to amend the Controlled Drugs and Substances Act by introducing Bill C-15.

This legislation would impose mandatory sentences on drug producers and traffickers, especially targeting the criminal enterprise of gangs and other violent criminal organizations, because we know that drugs are the currency of organized crime.

Having this legislation passed as quickly as possible would better protect our communities and send a clear message that if you produce and traffic in marijuana, if you're into the grow op business in residential neighbourhoods, if you threaten the safety of Canada's communities, you will serve jail time.

It's been six months since that bill was referred to the Senate. It's still not out of committee. I certainly urge all members of Parliament to do whatever we can to ensure and promote and push to get that important piece of legislation passed.

We are doing many things at the department. One of the things we are doing is investing some \$10 million in the guns, gangs, and drugs initiative, which funds community-based programs that seek to help youth resist the lure of gang involvement and illicit drug use.

The Department of Justice is also committed to continuing to play a leadership role in strengthening the justice system through non-legislative means. The department has requested some \$3 million in the main estimates for grants and contributions under the justice partnership and innovation program. This program contributes to policy development to ensure that justice remains accessible, efficient, effective, and that it reflects Canadian values.

We're also committed to helping victims better navigate and deal with the criminal justice and correctional systems. To that end, we have increased allocations to the victims fund to, among other things, provide greater financial assistance to those victims who wish to attend national parole board hearings, assist Canadians victimized abroad, provide additional funding to provincial and territorial governments to enhance or develop new services for underserved victims of crime, and provide resources to the territories to directly assist victims with emergency costs.

In total, we have increased the funding for the federal victim strategy by \$52 million over four years. We've also created the independent federal ombudsman for victims of crime to ensure that the federal government lives up to its commitments and obligations to victims of crime and to give victims a strong and effective voice in the criminal justice system.

We also recognize that aboriginal people enter our justice system in disproportionate numbers. As a result, we have renewed our commitment to the aboriginal justice strategy until 2012. We will make an additional investment of \$40 million, for a total of \$85 million over five years.

The strategy funds programs that provide justice services to more than 400 aboriginal communities across Canada, helping to hold offenders accountable for their actions, increase awareness of victims issues, and promote greater youth connection with aboriginal culture and traditions.

Mr. Chairman, ours is a busy agenda. I think we are doing important work. It's an important component of what we are here to do as members of Parliament.

I thank this committee for its work in moving forward on these justice initiatives. I look forward to more cooperation from this committee. Thank you again.

• (1650)

**The Chair:** Thank you, Minister.

We'll open the floor to questions.

Mr. Murphy, you have seven minutes.

**Mr. Brian Murphy:** Three or four years ago, when we did the estimates you had to talk about the actual figures. It later developed that you can pretty much ask anything. But I might actually try to ask some questions about money, programs, the future, or the past as it relates to some of the budget items.

I want to ask about public prosecutions, a relatively new animal. I remember sitting on Bill C-2 and the accountability act. We were a little time getting someone appointed. I suppose it's up and running now, and yet we don't hear too much about its operation. I suppose we should be happy that it's not on the front pages all the time, because that would mean there was a run on public misfeasance. But it's an investment of money, and it's something this government feels strongly about having established. It didn't meet much resistance from the opposition. I would like to know what DPP is doing, what it's supposed to do, how much it's costing, and whether you feel it has been effective.

I'll channel these questions—I have two or three and you can pick out the ones you want to answer.

I also wanted to ask about the Commissioner for Federal Judicial Affairs, who oversees all the federally appointed judges. There is a slight increase there. Do you feel, Minister, that because of your busy legislative agenda, there is some extra pressure on judicial expenses?

Finally, I wanted to ask about impaired driving. This committee had a study on impaired driving. It's pretty much the opinion of this committee that we wouldn't go to the lower limit that MADD was asking for. But there have been calls for mandatory jail sentences of seven days for impaired drivers. It's very arbitrary. But on these three items, would you care to give us some response?

**Hon. Rob Nicholson:** I would be glad to, Mr. Murphy.

The budget for the public prosecution service for this fiscal year is \$166.7 million. The public prosecutions were separated from the Department of Justice to make sure there was no suggestion of interference. The director of public prosecutions has responsibility for prosecutions under federal legislation. I think this was a step in the right direction. We wanted to make sure that, in the people's view, everything was completely above board and separate from political influence. I don't think anybody has suggested that there was a problem in the past. Nevertheless, I think most people see this as a step in the right direction.

I believe it has worked well. I would imagine that it would be possible for you, Mr. Chairman, to call Mr. Saunders before the committee to talk about the public prosecution service. It has been well received in Canada, it works well, and these are the budgetary requirements.

You spoke about the commissioner for judicial affairs. I enumerated a number of pieces of legislation that have been passed. We've increased the number of judges in Canada. These are steps in the right direction that meet the needs and challenges of our judicial system. As for the expenses for judges, I haven't had any problems brought to my attention. The system that we have in place seems to work well.

With respect to impaired driving, we made changes in the Tackling Violent Crime Act related to the impaired driving provisions. The report of your committee was well received by me. But because the administration of these items is within provincial jurisdiction and we share a responsibility in this area, I think there needs to be more consultation with the provinces. I'm pleased to have the recommendations of the committee. Our agenda has been very busy, but I don't close the door on future changes to the Criminal Code.

• (1655)

**The Chair:** We'll move on to Monsieur Ménard for seven minutes.

[*Translation*]

**Mr. Serge Ménard:** Thank you, Mr. Minister. I see that you have decided to talk about many other things than your department's Supplementary Estimates.

I will limit myself to a preliminary comment. I am beginning to understand what it is that separates us, because we agree to disagree. When a crime is committed, you always see the worst-case scenario. Personally...

[*English*]

**Hon. Rob Nicholson:** Monsieur Ménard, you....

**The Chair:** Monsieur Ménard, could you point the microphone toward you.

Thank you.

[*Translation*]

**Mr. Serge Ménard:** I'll start again.

Mr. Minister, since you have decided to talk about many other things than the things we wanted to deal with today, that is, the Supplementary Estimates, I would like to make a preliminary comment before I ask you a few questions.

I understand what it is that keeps us apart. I think we can agree to continue to disagree on many subjects. One of the main differences between you and me is that every time you see a crime, you always think of the worst way of committing it. I myself have learned from experience that there are a great many ways of committing a given crime.

Sexual assault is one of the best examples. Inappropriate behaviour after a Christmas party is properly described as sexual assault. But that is very different from acts committed by people who

roam the streets looking for young women on foot and using them to satisfy their desire for sex. If I were a judge, I swear to you that I would not impose the same sentence in those two cases. You would probably do the same. If you were a judge and had to judge many crimes, you would see the huge difference there can be in the accountability of people who commit the exact same crime. That is why they have to be able to get different sentences.

You talked about a wonderful project designed to help victims. Can you tell us how much is going to be allocated to this new project? I cannot find the answer in the documents you sent us.

• (1700)

[*English*]

**Hon. Rob Nicholson:** Thank you very much.

I have a couple of things to say, Monsieur Ménard. You said I'm looking at the worst way a number of these offences could happen.

You're experienced in the criminal justice system. When a crown proceeds by indictment, there's an acknowledgement that these crimes have been committed in the worst way. In terms of your case.... There are many cases that could be charged as summary conviction, but when offences are charged by indictment it's because a determination has been made by the crown and the police that it is a very serious matter. And that's what I have said, that when the most serious crimes in the Criminal Code have been committed and an individual has been convicted...my point under Bill C-42 is that these people should be ineligible for house arrest or conditional sentencing.

With respect to the costs, Ms. Kane who was here with me in the previous hour, indicated that there would be very little cost to the federal government in terms of its penitentiary system, because one of the criteria for having a look at whether it's appropriate, one of the very things they look at, is whether the person is likely to get a sentence of less than two years. Again, getting back to what Mr. Comartin said, while provincial attorneys general are aware that this is coming forward and there will be costs to provincial correctional institutes, she indicated there would be virtually no impact on the federal penitentiary system.

[*Translation*]

**Mr. Serge Ménard:** How much more do you allocate to victims? That is the question I asked.

[*English*]

**Hon. Rob Nicholson:** Again, one of the things we have done is to commit additional funding of \$52 million over the next four years for assisting victims, to the Office of the Federal Ombudsman for Victims of Crime. Again, in my opinion these are all steps in the right direction, more money for the victims fund, expanding the criteria for which an individual.... So yes, we are putting in more money, and I think appropriately so. We want to support victims through the changes in the criminal justice system, but I'm also very much in favour of the money the federal government is putting forward to assist them directly.

[Translation]

**Mr. Serge Ménard:** That is a good way of promising what the next government is going to do. However, since your government may not last another five years, we will not have to keep those promises.

You appeared to fully support the way judges' salaries are currently determined. The process is ongoing. I would like more details about the next time we will have to decide whether to increase, freeze or decrease judges' salaries.

[English]

**Hon. Rob Nicholson:** There's a quadrennial commission, as you know, Monsieur Ménard. That's where it stands right now, that unless any changes are made, a committee is struck, they make recommendations to the Government of Canada, and we respond to those.

In my career in this last couple of Parliaments, I've dealt with this on a couple of occasions. We dealt with it because it hadn't been dealt with previously, and then we dealt with it again. That system has worked, I think. It hasn't been perfect. I think it's better than in the days when I used to be on this committee in the 1980s, when we used to try to come up with a number as to what judges should be paid, and believe it or not, there was a certain amount of political gamesmanship. You may find that hard to believe. So I think the quadrennial commission is an improvement on that, but I wouldn't go so far as saying that's the last word on this.

[Translation]

**Mr. Serge Ménard:** Perhaps I mis...

[English]

**The Chair:** You're out of time, Monsieur Ménard.

Mr. Comartin, seven minutes.

**Mr. Joe Comartin:** I'll ask four questions to follow up with this, because I was going to raise the commission as well. I'd ask you, I think in the last estimates or the one before, whether there was any.... Since your government has, in the last two recommendations, substantially disagreed with the commission's recommendation, is there any discussion going on with the judicial council as to changing how the commission functions?

My second question is with regard to legal aid. Given the boycott that's going on in Ontario right now on the criminal bar side—serious crimes—is there any discussion of our increasing the amount to Ontario for that item?

Third, on the increase of \$3.3 million to public prosecutions, could you explain why that increased from the last one?

The final one is this. When you were here in the spring, I asked for information on youth funds for both the 2008-09 budget and the 2009-10 budget. If I'm reading this correctly, when these figures were prepared—and this is where I'm confused. I'm seeing a figure that would suggest that less than half the money has been allocated in the 2009-10 budget, and then another figure where it seems even substantially less than that has been allocated in the 2009-10 budget. So if I could have an explanation as to the allocation of those funds.... In the spring I think a number of news articles said only about 40% of the budgeted amount had been allocated.

● (1705)

**Hon. Rob Nicholson:** In the public prosecutions entirely?

**Mr. Joe Comartin:** No, these are for youth programs through the justice department. I don't think any of these include money from public safety. I think it's just your department.

Those are the four questions.

**Hon. Rob Nicholson:** Thank you very much.

With respect to the quadrennial commissions, my office is meeting with judges on the procedure and other possible improvements to the quadrennial commission judges, just so you know.

I think I indicated in my comments to Monsieur Ménard that the quadrennial commission is definitely an improvement over the way it was done 20 years ago in this country. But as I say, I leave the door open to improvements in that, and we're having discussions with them.

With respect to the \$3.3 million for the public prosecutions, the item is called a profiling. This is a process where funds approved for a department for a specific purpose during a fiscal year are reallocated to be used for the same purpose by the department in the following year, and this is with respect to accommodations, information management, and information technology. So it was money not used in one fiscal year moved over to another. That's what I have been told.

With respect to your question on legal aid, as you know, the base for legal aid is now permanent. We made that permanent with respect to criminal legal aid.

There are great responsibilities with respect to refugee determination, the Immigration Review Board, and we provide for that. Again, we'll have to see, of course, in the next budget, Monsieur Ménard, as to what, if any change—

**Mr. Joe Comartin:** I'm Mr. Comartin. Mr. Ménard is down there.

**Hon. Rob Nicholson:** I beg your pardon. I was thinking about that—

**Mr. Joe Comartin:** Mr. Ménard was going to be insulted if I didn't correct that, Mr. Minister.

**Hon. Rob Nicholson:** With respect to youth programs, I will undertake to give you a breakdown of exactly where we're at on that. I will ask if the deputy minister can give you any further....

**Mr. John Sims (Deputy Minister, Deputy Minister and Deputy Attorney General's Office, Department of Justice):** Mr. Comartin, you spoke to me just before the meeting began, and I'll look into updating the information that we provided after the last time we appeared. I'll have to verify this, but from memory, I think some of the spending that was lagging behind—there was money allocated that hadn't been spent—was largely for crime prevention money, which was Public Safety money, not the Department of Justice money. But I'll verify that for you and we'll write to the chairman with the updated information.



• (1710)

**Mr. Joe Comartin:** I want to follow that up, Mr. Sims.

I have a list of all of the projects that were funded. If there have been additional ones funded since you gave me this list at the end of May—I think I got it in June—could you give me the additional projects that have been funded? I'm just looking for the youth ones.

**Mr. John Sims:** I'd be pleased to.

**Mr. Joe Comartin:** Going back to legal aid, Mr. Minister, can you tell me if—and I can't remember the name of the case, but it's a case that describes the judge making an order that compels the province to fund outside of legal aid defences for criminal charges—you are aware if there's been any substantial increase in those orders, particularly in Ontario?

**Hon. Rob Nicholson:** I can't say that. I do know there has been a new initiative by the Province of Ontario, and I believe.... And I should be careful when I'm trying to speak on behalf of the Ontario government, but I believe they've committed an additional \$50 million to legal aid in the province. My understanding is that of course it's been well received. As to the number of cases where there have been judicial orders with respect to that, I don't have any statistics on that.

**Mr. Joe Comartin:** Actually, the funds have been allocated over I think a three- or five-year period, but the boycott is continuing. Is the federal government ever faced with having to pay those expenses? I'm thinking in particular where there are federal offences, drug charges in particular, or are they always made against the provincial governments?

**Hon. Rob Nicholson:** That's a very interesting question, Mr. Comartin. I will look into that and let you know.

**Mr. Joe Comartin:** If there are, I would like to get some sense of quantity.

Those are all the questions I have. Thank you.

**The Chair:** Thank you. That was right on time.

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

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much. I don't know if I'll need all my time. I want to be sure that any information provided to Mr. Comartin will go to the whole committee. I am particularly interested in the information that was requested regarding youth justice programs, because I think there will be a lot of good news in that.

Could I get that clarified first? Then I have some other comments.

**The Chair:** It normally goes to the clerk first. Then it is circulated to committee members once it has been translated.

**Mr. Stephen Woodworth:** That's great. I noticed in 2008-09 documents that were tabled in the spring that there was \$1.84 million of funding, 22 projects on smart choices, another \$549,000 for 11 projects on youth with illicit substance abuse issues, and another \$800,000 in funding for 18 innovative youth justice projects. I am interested in that because I think the government is doing an excellent job. In particular, I'm very pleased with the national anti-drug strategy and the fact that it was coordinated to be consistent with the United Nations drug control policy.

Has a drug treatment court information system been initiated to better collect substance relapse data? In the spring that was not far enough along to determine anything. There was a pilot site and a recidivism study. Do we know when those things are likely to come to fruition so we have some data on how things are working?

**Hon. Rob Nicholson:** Thank you very much for your comments.

Of course we would be glad to provide you with any information we have on youth programming. You have the chairman's undertaking that it will be distributed.

I'm very pleased and proud of the national anti-drug strategy you talked about. It's a joint effort between the Department of Justice, Public Safety, and the health minister, because there's is a very important health component in educating people to stay away from drugs and give them the help they need. I can't help but notice that a number of ads that talk about children and their vocabulary, and all that, are running as we speak on the national news networks. So I think these are appropriate.

We have extended the life of drug treatment courts because we want to get more information on relapses. I was particularly interested in this project when I became justice minister, because I like the concept of giving people a second chance; giving people who aren't otherwise connected to organized crime or the violence that is many times associated with drugs, who have made a mistake and become addicted, the opportunity to turn their lives around.

We don't have the statistics I would like to see at this time, but I have no hesitation in recommending to my colleagues to extend those courts, because they are steps in the right direction in helping these individuals. The courts have been extended until the end of March 2012. I'm particularly pleased to have them and support them.

• (1715)

**Mr. Stephen Woodworth:** Thank you very much, Minister.

**The Chair:** Thank you.

We'll move to one more round of three minutes apiece.

Monsieur D'Amours.

[Translation]

**Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.):** Thank you, Mr. Chair.

Thank you, Mr. Minister.

Mr. Minister, I will make this short, I am from New Brunswick, which is an officially bilingual province. As you know, we voted for Bill C-232, the objective of which is to require Supreme Court of Canada justices to be bilingual.

Considering the position taken by parliamentarians in a free vote in the House of Commons, I would like to know what you have in mind. Do you see yourself agreeing to implement that bill?

[English]

**Hon. Rob Nicholson:** It hasn't been passed yet. We'd better not get ahead of ourselves, sir.

I made the point that being bilingual is an important factor, but the overriding consideration in appointments to the Supreme Court of Canada is merit based on legal excellence and personal suitability. So I don't think it's quite correct to say this is the law of Canada. As justice minister I know how difficult it is to get anything through, so I never get ahead of myself in saying something is the law.

I've made the point that legal excellence and suitability are the criteria, but being bilingual and having a facility in *des langues officielles* is very important. That of course has to be a consideration any time we're appointing people to the bench in this country.

[Translation]

**Mr. Jean-Claude D'Amours:** Mr. Minister, you say that judges must be appointed on merit. Will you agree that an important part of the decision should be based on bilingualism in order to ensure that when a Canadian citizen appears before a judge, he or she will be fully understood without having to go through a translation system, even though the translators do their best? You will understand that in court, a person's emotional state varies depending on whether the person is speaking directly or there is a translation.

[English]

**Hon. Rob Nicholson:** I understand what you're saying, but the analysis of most people on the Supreme Court is that it has been able to conduct its business in both official languages. I have never heard any suggestion that the quality of justice provided by the court was in any way compromised because of the language issue. I think it has worked very well in the past, and I believe it will continue to do so.

[Translation]

**Mr. Jean-Claude D'Amours:** If I understand correctly, Mr. Minister, you have no interest or desire to add bilingualism to merit as criteria for a person to become a judge of the highest court in the land. Is that right?

[English]

**Hon. Rob Nicholson:** I guess part of the problem we have is that it would severely limit the pool in certain areas of the country. But I've made the point that this is a considerable merit for anyone to have. Certainly in the Supreme Court of Canada this is one of the qualifications we should look at; it's not the only qualification. Legal excellence is our overriding concern. But I'm quite pleased with the way the Supreme Court of Canada has conducted its business in the past, and I think it will continue to do so in the future.

• (1720)

[Translation]

**Mr. Jean-Claude D'Amours:** Thank you.

[English]

**The Chair:** Thank you.

We are out of time.

Monsieur Lemay.

[Translation]

**Mr. Marc Lemay:** Mr. Minister, I would like you to speak to us about Aboriginal justice. You mentioned it in passing, and I would like to know more. What is the projected budget? I have some idea, but how is it allocated? There are almost 478 Aboriginal communities. Surely not all of these Aboriginal communities are going to get a share of the money. Is it because there is a justice system in those communities? How are these funds being allocated? I would like you to tell us about that aspect of the budget.

[English]

**Hon. Rob Nicholson:** That's a very good question, Monsieur Lemay. This is another one of those areas, like the drug courts, that has great merit and potential in assisting people who get involved with the criminal justice system.

To recap, in 2008 the Government of Canada announced that the aboriginal justice strategy had been renewed until 2012. The enhanced funding totals \$40 million, bringing our investment to \$85 million by 2012.

On the breakdown for individual communities, I will give you my undertaking to provide you with as much detail as possible, because these are initiatives that are very much worth pursuing. There are 104 community-based justice programs that service about 400 communities across Canada, along with 22 capacity-building projects. They deal with different aspects of the criminal justice system. There are aboriginal culture initiatives to make them accountable and take victims into consideration, but at the same time they are sensitive to the culture of aboriginal communities.

Within those 104 community-based projects...you have my undertaking that I will look into getting you the complete breakdown on them. We have some good examples here, but rather than take up all the time here, I will get them to you for the committee.

**The Chair:** Thank you.

We have five minutes left. I believe you have before you the breakdown of the votes required to carry the supplementary estimates. Is it the will of the committee to move forward and approve them?

**Some hon. members:** Agreed.

JUSTICE  
Department  
Vote 1b—Operating expenditures.....\$1  
Canadian Human Rights Commission  
Vote 10b—Program expenditures.....\$2,682  
Commissioner for Federal Judicial Affairs  
Vote 20b—Operating expenditures.....\$182,773  
Courts Administration Service  
Vote 30b—Program expenditures.....\$34,154  
Office of the Director of Public Prosecutions  
Vote 35b—Program expenditures.....\$3,326,396  
Supreme Court of Canada  
Vote 50b—Program expenditures.....\$2,564

(Votes 1b, 10b, 20b, 30b, 35b, and 50b agreed to on division)

**The Chair:** Shall I report the supplementary estimates (B) 2000-2010 to the House?

**Some hon. members:** Agreed.

Thank you, Mr. Minister, for attending.

**The Chair:** Thank you.

The meeting is adjourned.

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