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• (1305)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order. Welcome to meeting number 13 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of Thursday, March 31, the committee is meeting to study Bill C-5, an act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Today's meeting is taking place in a hybrid format pursuant to the House order of November 25, 2021. Members are attending in person in the room and remotely using the Zoom application. The proceedings will be made available via the House of Commons website.

I would now like to welcome our witnesses, but first, I just want to let each group know that they will have five minutes to make their opening statements, and then members will have questions.

I don't have a time card, but when you have 30 seconds left, I'll wave an envelope to give you a heads-up that you have about 30 seconds. I will have to interrupt you when your time is up.

We have three witnesses in the first round. We have Michael Spratt, criminal and appeal lawyer and partner at AGP LLP. We have, from the London Abused Women's Centre, Jennifer Dunn. From Saskatoon Tribal Council, we have Chief Mark Arcand, tribal chief.

I will begin by inviting Michael Spratt to speak for five minutes.

Mr. Michael Spratt (Partner, AGP LLP Criminal Trial and Appeal Lawyers, As an Individual): Thank you very much for the invitation. It's a pleasure to be back before the committee.

My name is Michael Spratt. I'm a lawyer. I'm certified as a criminal law specialist by the Law Society of Ontario, and I'm a partner at the criminal law firm of AGP LLP here in Ottawa. I've served on the board of the Criminal Lawyers' Association. I've acted as vice-president of the Defence Counsel Association of Ottawa, and I've been practising in the trenches of our courts for about 15 years now.

I'd like to touch briefly on the three main features of the bill. I'll start with minimum sentences. In criminal justice policy, the embrace of mandatory minimum penalties is a sentencing tool that is the hobgoblin of small minds. The evidence is clear. MMPs are an ineffective and dangerous tool. They don't deter crime. They don't increase public safety. They disproportionately impact indigenous and other racialized Canadians, and they're incredibly expensive.

In 2005, the Department of Justice found evidence that minimum sentences are not effective at deterring crime. In 2007, the parliamentary information and research service cited numerous studies that came to the same conclusion. In 2017, a federal government report concluded:

Research in Canada and the United States has found no evidence that MMPs have deterred crime; rather, some studies suggest that MMPs can result in overly harsh penalties and disparities, that they increase costs to the criminal justice system as a result of higher levels of incarceration, and that lengthier sentencing may actually increase recidivism.

Expensive, racist, ineffective, unfair and cruel: that's why time and time again, minimum sentences have been declared unconstitutional by our courts.

It is a very positive step that Bill C-5 removes this corrosive sentencing policy from the Criminal Code, but of course, Bill C-5 does not remove all minimum sentences. We need to eliminate every single minimum sentence in the Criminal Code. I'll answer the question in advance: yes, including for murder, which is a particular concern for women who have killed their abusers.

Here's your history lesson. The only reason the minimum sentence for murder was found to be constitutional by the Supreme Court in the case of Luxton was that there was a possibility of review through the faint hope clause, which of course has now been repealed.

At the very least, this bill should be amended to allow an escape valve for the rest of the MMPs that aren't explicitly eliminated, and there should be a requirement that all reasonable sentencing alternatives be explored and considered before mandatory minimum penalties are imposed.

I'll move on to conditional sentences. This is one of the best parts of the bill. The amendment to the conditional sentence regime here is desperately needed. The amendment is going to bring consistency in the application of the criminal law across Canada. Different provinces now have different conditional sentence rules because of different court findings. On the ground, we see that conditional sentences bring efficiency and fairness to the justice system.

Some people—and I'll be blunt because I normally am, members of the Conservative Party—have said that conditional sentences are too lax. Now, just because a conditional sentence is available doesn't mean it is going to be imposed. Conditional sentences can be imposed only for sentences that fall under two years and only when there's no danger to the safety of the community. Conditional sentences provide significant restrictions, denunciation and deterrence.

If you thought that mask mandates were an oppressive restriction that deserved and called out for massive protests, wait until you hear about conditional sentences, because they can be more restrictive and more punitive, but they can also be rehabilitative. Unlike traditional jail, conditional sentences come with strings attached, such as house arrest. Offenders can be required to take counselling, seek employment, perform community service and make reparations to the victims of their offences. This is one of the best parts of the bill.

Very briefly, in the time that I have left, I'm going to deal with the drug amendments. Canada is in the grip of a deadly overdose epidemic. In 2020, more people died in British Columbia of drug overdoses than car crashes, homicides and suicides all combined. Since 2016, more than 20,000 Canadians have died of opioid overdoses. Incrementalism is not enough here. People do not lead incremental lives, and they're not dying incremental deaths. The harms of continued criminalization are real.

• (1310)

This legislation as it pertains to this drug issue is window dressing. It's the same type of window dressing we saw in 2018, with legislation that sought to divert administration of justice defences through police diversion. That power has been used four times by the police in Ottawa.

The real solution here is not to give more power to the police but to take it back. We need decriminalization and safe supply legislation.

The Chair: Thank you, Mr. Spratt.

I'll now go to Jennifer Dunn of the London Abused Women's Centre for five minutes.

Ms. Jennifer Dunn (Executive Director, London Abused Women's Centre): Thank you, Chair.

Thank you to the committee for inviting me here today. It is nice to see you all again.

My name is Jennifer Dunn. I am the executive director of the London Abused Women's Centre, or LAWC, here in London, Ontario.

LAWC is a feminist organization that supports and advocates for personal, social and systemic change directed at ending male violence against women and girls. Our centre is non-residential. We are an agency that provides women and girls over the age of 12 who have been abused, assaulted, exploited, trafficked or experienced non-state torture with immediate access to long-term woman-centred counselling, advocacy and support.

On April 8, the Honourable David Lametti said, "Community safety is what we want. These reforms will...make [it] happen." We do partially agree with the honourable minister. Community safety is what we want. However, we do not believe Bill C-5 is what will make it happen, the way it is. There are two issues that I want to address today. One is conditional sentencing. The other is mandatory minimum penalties. I'll start with conditional sentencing.

With Bill C-5, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community. Some of the offences listed in Bill C-5 are sexual assault, criminal harassment, kidnapping, trafficking in persons, material benefit and abduction of a person under 14. Women and girls are five times more likely than men to be victims of sexual assault, and sexual assault is a violent crime on the rise in Canada. With conditional sentencing, many women will be stuck in the community with the offender, which places them at even higher risk.

A conditional sentence does nothing to stop an offender from continuing to commit violence. Women need the courts to see this. A conditional sentence for these offences undermines the seriousness of these crimes.

I have a quote here from a woman I am proud to work with. Her name is Caroline. She is a peer support worker and a survivor. She said:

I know a case where two men got 4 years and for trafficking, that's nothing when women face a lifetime sentence after being trafficked, many women will never get over it and at minimum those women face years and years of counselling and constantly watching their back.

We know from our work that the best predictor of future behaviour is past behaviour. Victims and perpetrators live in the same communities. An offender being placed back into the community with a conditional sentence is not always the answer.

The second issue I want to address with you today is the repeal of mandatory minimum penalties for some offences in the Criminal Code. I urge the committee to think about the most marginalized individuals when considering if this is good enough. Repealing some mandatory minimum penalties over others does not help with public safety. Women are not protected by the law unless all mandatory minimum penalties are considered.

For example, a mandatory life sentence for women who end up convicted of murder in situations where they were reacting to male violence is inappropriate. Each year 40% to 50% of women sentenced to life in prison are indigenous, and 91% of them have histories of physical and sexual abuse.

Canada's longest mandatory minimum penalty, the mandatory life sentence for murder, has resulted in countless miscarriages of justice for women. It has been proven time and time again that there is not a full understanding of the impact of violence against women in the criminal justice system.

When listening to the previous sessions of the study, I also heard more than once that there are cost savings with Bill C-5. I would ask if cost savings should actually be a point of concern when we are discussing the lives of women. We need systemic change. We need to protect women. Women deserve to live free from violence. The courts need to see that women are easily placed at more risk.

On Wednesday in the Senate, while speaking about a different bill, Bill S-205, Senator Pate said the following:

...let's ensure that we address the issues, attitudes and ideas that fuel misogynist violence in society and our criminal, legal and penal systems, while simultaneously implementing the sorts of robust social, health and economic support systems that can truly assist women to avoid and escape violence.

This could not be more true for Bill C-5 as well.

In conclusion, we know that Bill C-5 is an attempt to tackle systemic racism in Canada's criminal justice system, but the committee must remember that many of the victims of these offences are also part of the most marginalized and vulnerable. The government has a responsibility to make decisions based on the best interests of all.

Thank you.

• (1315)

The Chair: Thank you, Ms. Dunn.

We will now go to the Saskatoon Tribal Council's Chief Mark Arcand.

Chief Mark Arcand (Tribal Chief, Saskatoon Tribal Council): *Tansi. Nanaskomin, kâhkîyaw.*

My name is Mark Arcand. I'm the tribal chief of the Saskatoon Tribal Council. I'm taking this call on Treaty 6 territory in the city of Saskatoon.

With regard to Bill C-5, I want to be very clear—mass incarceration of indigenous peoples, period. It's a strong statement, but it's an accurate statement. As of December 2021, 32% of people incarcerated in federal prisons were indigenous, a new historic high. Over the last decade, the number of federally sentenced indigenous women increased by 60%, rising from 168 in March 2009 to 270 in March 2018. Indigenous women account for nearly half of the women in federal prisons yet represent fewer than 4% of Canadian women. Those numbers are astonishing. They are repulsive and unacceptable.

Then we can look at youth incarceration. In the city of Saskatoon, 98% of the female youth in one youth facility are indigenous. That leads to the correctional system, the provincial correctional system and then the federal penitentiary.

When you talk about Bill C-5, I agree with your previous speakers who talked about the violence against women. That's never taken into consideration in the MMPs. When we look at all of these things, Bill C-5 fully repeals only 13 out of 73 MMPs. That's less than one in five MMPs. It fully or partially repeals only 20 out of

73 MMPs. That's less than one in three MMPs. It addresses only 10 out of 28 MMPs that courts have found unconstitutional. That's only about one in three MMPs found unconstitutional.

This is not in line with the call of the federal government to repeal all restrictions on the use of conditional sentences and MMPs in line with the TRC calls to action 30 and 32, calls for justice 5.14 and 5.21 of the National Inquiry into Missing and Murdered Indigenous Women and Girls, and countless other sentencing and law commission reports. In particular, paragraph 718.2(e) of the Criminal Code mandatorily requires judges to consider an individual's indigenous history and consider all reasonable alternatives to prison when determining a sentence, including options for treatment in the community. MMPs can prevent judges from carrying out this duty to acknowledge and redress racism and colonialism.

When we talk about all of these things, it's very important that we also look at the fact that the National Inquiry into Missing and Murdered Indigenous Women and Girls stressed that mandatory minimum sentences are especially harsh for indigenous women and girls. The TRC said that the failure to provide sufficient and stable resources for the community and treatment programs that are necessary to implement Gladue and Ipeelee helps explain why those decisions have not slowed increasing aboriginal overrepresentation in prisons.

Bill C-5 is a baby step in the right direction, but it must be amended to be a good step forward. For any MMPs that are not repealed by Bill C-5, an amendment could be added to the bill to ensure that judges have the discretion to not apply MMPs if doing so would result in injustice. In appropriate exceptional cases, judges would have to be able to consider lesser sentences, including such alternatives to prison as community-based and culturally appropriate treatment options.

I apologize for not wearing a shirt and tie for the House of Commons, but I had to make a statement about residential schools, with the orange shirt that I'm wearing, and about all the harms that have been done to indigenous people. When we talk about MMPs, these are things that have to be really considered in regard to the sentencing of individuals for minor crimes to major crimes like murder. A lot of our indigenous women who were in self-defence mode will end up serving a life sentence because of the abuse they endured in their relationship. It's unacceptable. Judges have to have the ability to make those decisions by hearing the evidence, not by following MMPs all the time. Moving forward, it's not acceptable.

Even when we look at simple drug charges, we should be asking that our people be sent to treatment based on the residential school system and the intergenerational trauma that has led to all the negative impacts on people. I've talked about the young women, but in the city of Saskatoon, where I work, out of 450 men in one correctional system, 80% are indigenous. That's a high number.

• (1320)

They then graduate to the federal penitentiary, where we have a higher number. This is just in the province of Saskatchewan. Imagine those numbers across Canada. We have the lowest percentage.

Thank you very much.

Nanaskomowin.

The Chair: Thank you, Chief Arcand, for your testimony.

I'm now going to the first round of questions.

Our first questions will be from Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair, and thank you to our witnesses for taking part in the study of Bill C-5, formerly Bill C-22.

Many good points have been raised. I will encourage you, Mr. Spratt, since you mentioned Conservatives, to take the time to research the origins of most of the mandatory minimum penalties that are being repealed here. You'll find direct links back to previous Liberal governments, including the government of the current Prime Minister's father.

By no means are the mandatory minimum penalties in the Criminal Code there just by virtue of Conservative governments, although having been part of the former Conservative government, I'm very proud of the measures we took when it came to conditional sentencing. One of the key responsibilities for us as parliamentarians is to put in place legislation that creates balance and has a justice system that's balanced and protects rights, not only of the accused but protects society, protects victims and respects victims and their families.

What we were finding with conditional sentences in the past was that too often, for something very serious in the community, the punishment being meted out to offenders was to serve their time in the community. There are times when that's appropriate, but there are times when that is certainly not appropriate.

My question is for you, Ms. Dunn. I appreciated your testimony. Section 718 of the Criminal Code cites that one of the main objectives of sentencing is to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and the community.

You mentioned victims in your testimony. Bill C-5 expands conditional sentencing, like house arrest, to individuals who are found to have benefited financially from human trafficking. We have spoken a lot about human trafficking. It's a scourge on our nation and internationally. We've heard very compelling testimony at this committee of the tragedy that is human trafficking. What message do you feel it sends to Canadians, particularly to the women and girls that you mentioned, that people benefiting from human trafficking

would be allowed to serve their sentences home in their community?

Ms. Jennifer Dunn: When we consider human trafficking as a conditional sentence based on the section of the Criminal Code you mentioned, it really undermines the seriousness of this particular crime. We know that in London, Ontario, for example, we are considered a hub for human trafficking. A lot of human trafficking happens right here in our city, and up and down the 401 corridor, the highway that goes from Windsor all the way to northern Ontario. The problem is that when you have an individual who has a conditional sentence and is put back into the community, oftentimes women are faced with having to face the offender as well, and that is very harmful.

We see time and time again women coming into our centre, and they can't even use their real names. We have to meet them outside of our centre. They can't be seen in our parking lot with our signage, because of the very dangerous situation that it puts them in when an offender is not maybe in jail, or is left back in the community. It really puts women at a higher risk, and it makes women have to watch their backs wherever they go. The quote I gave from my colleague, Caroline, speaks to that exactly. Women are left to pick up the pieces. Women are left to come to a centre like ours and seek counselling.

• (1325)

Hon. Rob Moore: Thank you. I appreciate that statistic you mentioned. I referenced a report published by Statistics Canada, which said "women were violently victimized at a rate nearly double that of men in 2019". The report goes on to say that the discrepancy between male and female victims was largely due to the fact that "women were five times more likely than men to be a victim of sexual assault".

I know that you deal in your organization with the fallout of these statistics, and you are able to put a name to the stat. Sometimes when we're in these committees, I think we hear stats, but we forget that there's a person behind them.

Could you tell us, in the consultations you've had with the people who you work with, how Bill C-5 could, in fact, fail Canadian women? What should we do instead to make a community safer rather than eliminating the inability of offenders to get conditional sentences and now being able to serve their sentence from home for some of these various serious offences against women?

Ms. Jennifer Dunn: When we're talking about sexual assault, the first thing that comes to my mind is how dangerous it is for a woman to even get to the point where she's ready to report a sexual assault. It takes so much courage on her part to even get to that point, knowing that she's going to be wrapped up in the criminal justice system for a long period of time, having to potentially face her accuser in court, having to have her voice there for testimony, and the list goes on and on. There are so many reasons—

The Chair: Thank you, Ms. Dunn, but the time is up.

Thank you, Mr. Moore.

We'll go over to you, Mr. Naqvi, for six minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Mr. Chair.

Mr. Spratt, welcome to the committee. It's good to see you. I was hoping you'd make it here in person from just down the street.

You called MMPs—I'm just recalling your words—ineffective, expensive and racist, I believe. I think you wrote an article back in June or July of 2020. Lawyers magazines are along the same lines as well.

Can we talk about the ineffectiveness first? Can you share with the committee what you mean by MMPs being ineffective? I recall reading in the article that you had spoken about how they increase crime rates as opposed to reducing crime rates.

Mr. Michael Spratt: That's right. The proponents of minimum sentences say that they deter crime, that the main good they do is they show how serious we're taking the offence, and it will stop people. Of course, with punishment after the fact, the harm has already been done.

The main thing about minimum sentences is, yes, it increases prison populations. Yes, it's expensive and it takes time in court, and it will stop people from committing crimes, but that's not how deterrence works. That's not how people are deterred. If you are committing crimes because you don't care or because you have a mental health issue or an addiction issue, deterrence does not work. Just jacking up the penalty doesn't stop people from committing crimes. A sentence like that, in addition to unfairness, can result in cruel punishment in some of those more unusual cases.

For some cases that may fall outside the norm and have compelling facts behind them, the increase in sentence can cut people off from communities and can crush an individual. That is part of the reason we see rates of recidivism. The rate of people committing crimes again goes up when we see sentences imposed under the minimum sentence regime.

• (1330)

Mr. Yasir Naqvi: You've written in the past, and I think you spoke to it today as well, calling MMPs a racist policy. Can you elaborate on that and explain how you have arrived at that conclusion?

Mr. Michael Spratt: There are a number of systemic issues. We certainly have seen the mass incarceration of indigenous individuals and racialized individuals. There are a number of reasons for that with minimum sentences. Number one, it sometimes relies on prosecutorial discretion as to whether minimum sentences are followed through with or not. If you are a white, upper-class individual, you're much more likely to escape the minimum sentence by having the prosecution, in a non-reviewable, non-transparent situation, not proceed in that sentence.

We often see people induced to pleading guilty when there are minimum sentences. That often falls on those who can't afford lawyers and those who have more contact with the police. A lot of these minimum sentences, especially for drug offences, fall disproportionately on individuals who are in over-policed communities. It's not because those communities necessarily have more quote-unquote "criminals" in them. It's that the police are there. They're not in Rockcliffe or Rosedale looking for the same offences. It's for a

number of those systemic reasons that minimum sentences operate in a systemically racist and discriminatory way.

Mr. Yasir Naqvi: I want to turn to conditional sentence orders, CSOs. The way I see it, they are restoring discretion to a judge as one of the tools in sentencing.

Number one, do you agree with that? Number two, in what circumstances do you see CSOs being used in a criminal manner?

Mr. Michael Spratt: I'll give you one example. Mr. Moore talked about balance. Having hard and fast rules that prevent something isn't balanced. It's unbalanced. That's why the restrictions on conditional sentences have been found unconstitutional.

In one of my cases I represented a very young Black man. He was found with a gun. He wouldn't have been eligible for a conditional sentence under the old legislation, but he was because it was found to be unconstitutional. He had a minor record. He was on bail for over two years on house arrest. He had engaged in a community. He had made contacts with culturally appropriate rehabilitation efforts. He had taken responsibility. He had done everything you would want someone who has made a mistake to do, recognizing the harm that he had caused on his community.

Also taking into account his cultural background—we had an enhanced pre-sentence report that dealt specifically with systemic discrimination in the community that he was from. He was granted a conditional sentence with house arrest, reporting to a judge, constant monitoring and making sure he followed through on programming. It is a harsh sentence and maybe even a longer sentence than if he would have just gotten a jail sentence. This is a man who now is going to be able to contribute and be reintegrated, rather than a man who's going to spend two years or longer in jail, learning the exact skills we do not want to teach young men who have made a very tragic mistake.

Mr. Yasir Naqvi: Is it perhaps in situations or circumstances where there are few to no public safety concerns where you perceive CSOs to be used?

Mr. Michael Spratt: That's right. That's statutory. There can't be any public safety concerns. It has to be a sentence under two years. You cannot think of the most heinous crime and say that person might be released on a conditional sentence, because that is not what is prescribed in the legislation. That is not what a court would do.

The Chair: Thank you, Mr. Naqvi and Mr. Spratt.

Next we'll go to Monsieur Fortin for six minutes.

[Translation]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

Mr. Spratt, I understand your concern about the negative aspects of mandatory minimum sentences. Even if they were no longer in place, I think judges would probably, in many cases, come to the same conclusion and there would be significant prison sentences, where the crimes warranted it. So the problem I have is not so much with this question of whether we should have minimum sentences, but rather with the message we are sending.

Would you agree with me, Mr. Spratt, that the justice system is like the backbone of society? It's what keeps people from killing each other. When we have a problem, we go to court and we ask a third party, the judge, to fix the problem.

People are concerned about the rise in gun violence. I am thinking in particular of Ms. Dunn's testimony earlier. She obviously has concerns about the abolition of mandatory minimum sentences. Some people have concerns that may be irrational and some may be rational, but there are concerns. If the lawyer's job is to plead and the judge's job is to decide, the legislator's job is to respond to the needs of the population. It is to reassure the population and to strengthen the confidence that the population has in the backbone of society, which is the judicial system.

Are you not concerned that by abolishing mandatory minimum sentences we are sending a message to the public that these crimes are not that important?

We're not talking about just any crimes. You yourself, earlier on, gave the example of murder, a crime for which we should even abolish mandatory minimum sentences, in your opinion. I was simply referring to the issue of firearms, when someone commits a crime using a firearm. These are things that I find unacceptable.

Again, aren't you afraid, Mr. Spratt, of the message this would send to the public and the effect it would have on people's confidence in our justice system?

• (1335)

[English]

Mr. Michael Spratt: The criminal justice system in legislation like this is a very blunt tool to deliver a message to the public.

More concerning to me has been the politicization of criminal justice over the last number of years, the ignoring of evidence. A message is sent to the public by virtue of the fact that things are criminalized and, in most cases, even when there is no minimum sentence, or even when there is a minimum sentence, if there is a very serious crime, the sentence is usually in excess of that.

Quite frankly, dealing with firearms, the die has been cast. The Supreme Court has found the law to be unconstitutional, and it's unconstitutional for good reasons. While you look on the one hand at potential, speculative, possible harms about the public getting the wrong message, on the other hand there is the injustice that existed through the imposition of the mandatory minimum sentences.

The Canadian public is capable of understanding nuance if you speak to them like adults. We can take crime seriously without taking discretion away from judges, and we can make sure that, when appropriate, very lengthy sentences are imposed. At the end of the day, I hope you would be guided by the research, that whether it's a communications tool or not, increasing sentences through the use of

minimum sentences doesn't actually make the public safer. That's what you should be telling the public.

I would hope that if you accept that evidence, and I submit you should, given the decades of testimony that committees like this have heard on the topic—that the public not be lied to by saying they'll be safer with longer sentences—that you will engage in the harder work of ensuring the public is made safe through appropriate measures that are grounded in evidence and that actually work.

[Translation]

Mr. Rhéal Fortin: Mr. Spratt, at present, mothers are afraid to send their children to school because there are guns around. Bill C-5 provides for the removal of mandatory minimum sentences even for armed robberies.

I understand what you are telling me. Between lawyers, we can discuss many things. However, you, I, and everyone else here works for the population. You are telling the public that it has been decided that a robbery committed with a firearm is now less serious than it used to be and that we are removing the minimum sentences for these kinds of crimes.

You can explain that there are problems with minimum sentences and that the sentence would be the same anyway, but the message may not be the one we want to send.

Don't you think the timing is wrong?

Some minimum sentences can be abolished now without a problem, but in the case of serious crimes, for example robbery with a firearm, don't you think we should keep mandatory minimum sentences?

• (1340)

[English]

Mr. Michael Spratt: The problem with mandatory minimum sentences is that they are a one-size-fits-all solution.

Yes, armed robbery should be taken very seriously, and it is. I've represented dozens of individuals, if not hundreds, who have been charged with serious offences, including armed robbery. Those individuals all go to jail and usually for a lot longer than the mandatory minimum sentence.

The problem with the mandatory minimum sentence is that the hunter who has an unlicensed firearm, who is technically not in compliance with the law, can also be captured by that minimum sentence, and that's not a good situation.

The Chair: Thank you, Mr. Spratt.

Thank you, Monsieur Fortin.

Now we'll go to Mr. Garrison for six minutes.

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

I do want to thank all the witnesses for being with us this morning—my time.

The government says that one of the purposes of Bill C-5 is to address the problem of systemic racism in the justice system, so I want to extend particular thanks to Chief Arcand for being with us to stress the importance of indigenous voices and hearing indigenous voices in our considerations.

I want to thank you for bringing our attention to the facts about over-incarceration and the very shocking figures that you've cited from your community. Obviously it's an injustice, but could you tell us a bit more about the impacts of over-incarceration in terms of the connections to family, connections to community and connections to culture that result from this over-incarceration?

Chief Mark Arcand: Thank you very much for the question, Randall. I think this is probably the most important question. I was hoping somebody was going to ask it.

When everybody talks about MMPs, I'm going to be honest. It doesn't matter which government it is. For what happened to indigenous people through residential schools and everything else, through the federal government, through the churches, through everything, who is holding them accountable? The people we're talking about right now are the indigenous people who are being incarcerated through that system, and there are no MMPs and no accountability to that structure whatsoever.

I challenge the governments on this, both governments, and say, what is the responsibility? You look at the indigenous people and at what has been caused by all of these effects of what we just talked about, incarceration, breaking up families. Yes, I hear the questions about armed robberies. Those are severe, but what are the symptoms to that? Why are people doing those things? It's because of the way they've been treated by these systems imposed by government where there is no accountability of the federal government, of the churches. Nobody is being held accountable for the murders of those families, for taking our children away. We're wondering why mom and dad are so messed up because their children have been taken from their arms. There is no accountability. Let's be honest and start talking the truth here about how it destroyed the indigenous people of this country. Nobody is addressing that.

That's racism. That's systemic racism. People have to be challenged. It is the right thing to do, because when we talk about everything, this is why we have so many people incarcerated. Our families are destroyed. When you talk about people going to jail through MMPs, where is the rehabilitation? Show us the statistics on how many people, indigenous people, have been rehabilitated once they leave those MMPs.

The answer is probably a minimum. Right now, through the work that I do in the city of Saskatoon in the correctional system, we are trying to prevent people from going to federal prison by rehabilitation through education, through family unification, through employment, to get them a different way of doing things.

I want to thank you, Randall, for that question, because it's a very important question. There has to be some accountability here, because we're dealing with a crisis of indigenous people who are incarcerated—especially the women. The women are being abused

every day, and if you don't know a woman who has been in an abusive relationship, they don't want to speak the truth because they are afraid. Nobody is helping them. Where is the rehabilitation for that? They are led to violent crimes because they are protecting themselves and that's all defence.

Thank you for that question, Mr. Garrison.

Mr. Randall Garrison: Thank you, Chief Arcand.

Would it be fair to say what you're really telling us is that over-incarceration is the result of the residential school system and other pieces of systemic racism in society, but it also extends those impacts to another generation?

Chief Mark Arcand: Absolutely, 1,000% I agree with you because it's the trauma that's been affected. When you see people who have been taken away from your arms, and you have the RCMP back in the day supporting this and saying, "If you don't give us your children, we're going to send you to jail." There is no accountability. That's exactly what I'm talking about.

I only have six minutes to address this. It's a lot to say, but that leads to all this destruction. We talk about gang violence. Why are people in those situations? We talk about all these severe crimes. It's because of the impacts of residential schools. It has destroyed families. It's a really bad situation and now, as leaders, as communities, we're creating partnerships and relationships to deal with the trauma from all of these systemic racist situations. I say we have to change the systems in order to negate trauma and get treatment for people. We lack treatment facilities. If somebody is getting caught with drugs, why are we sending them to prison to be recruited? Why can't we send them to a treatment facility to deal with the underlying issues?

Nobody is addressing that. Maybe that person has ADHD or FASD. Those things have never been addressed. This is what I'm working on to actually address those situations, because we need to heal people. We don't wake up every day as indigenous people and say we're going to go kill somebody. That's not our thing. There are situations that happen to our people. They see violence every day. They see their mothers, their fathers; they see all of that domestic violence. The system has to change and we need this type of MMPs to be addressed.

• (1345)

Mr. Randall Garrison: Thank you once again, Chief Arcand.

Perhaps I could ask you very specifically about one of the things we pass over too quickly, and that is after being over-incarcerated, those who get out have criminal records. Could you talk about the obstacles that presents for people in terms of housing, employment and rehabilitation while having a criminal record?

The Chair: Respond very quickly, Chief Arcand.

Chief Mark Arcand: Thank you.

Randall, I wish that you and I could have a conversation, because we're on the same page.

Every day I deal with people who can't get jobs because of their criminal record. People aren't understanding why they made these choices. Now we try to rehabilitate them. When they get into the system of incarceration, there is no rehabilitation. It's more of a punishment—

The Chair: Thank you, Chief. Hopefully you'll be able to explore this in the next questions.

We're going into the next rounds, which are five minutes.

We'll go to Mr. Barrett for five minutes.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): It will be Mr. Cooper, please, Mr. Chair.

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

I will direct my questions to Ms. Dunn.

It has been asserted by this government, as well as other witnesses who appeared before our committee, specifically The Canadian Bar Association, that all the expansion of conditional sentencing orders will do is allow so-called non-violent offenders to serve time in the community rather than behind bars.

What do you say to that?

Ms. Jennifer Dunn: First of all, I don't particularly understand how an individual charged with trafficking for material benefit or an individual who is charged with sexual assault could be considered non-violent. It doesn't make sense to me.

Sexual assault and trafficking are public safety issues just by the nature of what they are. When you have individuals in the same communities as one another, especially if you think about the indigenous or Black communities where police response time is already a cause for concern, it's a very big red flag. It's not fair to the women and girls who we provide service to. It's not fair to women and girls who have not yet sought out our service.

Mr. Michael Cooper: Thank you for that.

You mentioned that, in terms of your centre, many women who are at risk seek help and are afraid as a result of a violent offender or someone who poses a risk to them being out in the community on a conditional sentencing order. However, under the Criminal Code, a judge must be satisfied that there isn't any public safety concern.

How do you square that in terms of what the law provides for and what is happening in reality?

• (1350)

Ms. Jennifer Dunn: Thank you again.

This is way bigger than today. It's much bigger than this bill by itself.

I think we need to talk about the issues and the systemic change that needs to happen before this hits the court and before we're talking about it in this situation here today.

We need to talk about public awareness and education for children, boys and girls, as young as.... Goodness, I have twins who are

seven years old and I talk to them all the time about how to treat other people. It needs to start that young.

We need to look at what is best for all and at the systemic change that needs to take place before it gets to the point that we're talking about today.

Mr. Michael Cooper: I appreciate that. I think that is absolutely valid, but we have before us a very specific piece of legislation that we are studying, which expands conditional sentencing orders for, as you appropriately noted, some very violent offences that surely are perpetrated by violent people.

Based upon your experience on the front lines, is it your view that this legislation is actually going to put vulnerable women at even greater risk?

Ms. Jennifer Dunn: I think that Bill C-5 needs to be broken down a little bit more.

I do believe that changing the conditional sentencing does put women at greater risk. It puts them in harm's way. It puts them in the communities where the offenders are going to be. Just because somebody is convicted of a crime doesn't mean it's going to stop the violence from happening.

Mr. Michael Cooper: How much time do I have, Mr. Chair?

The Chair: You have 30 seconds.

Mr. Michael Cooper: I will just ask you, Ms. Dunn, if you have any concerns with the rolling back of the mandatory jail sentences relating to some very serious firearms offences. You seemed, in your testimony, to indicate some level of support, but I find that a bit confusing in light of some of the other testimony that you have provided.

Ms. Jennifer Dunn: Yes, I understand how that would be confusing.

What we would present is that the committee needs to look at this with a lens of violence against women—

The Chair: Unfortunately, Ms. Dunn, we're over time. Hopefully you can expand on that in the next question.

Next, for five minutes, we have Madam Diab.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thanks very much, Mr. Chair.

Thank you very much to all of the witnesses.

Chief Arcand, let me go back to you. You were interrupted because of time in the last questions. I really appreciated it when you said that we need to heal people. You ended with people who have criminal records coming to you.

Could you go back to those two in light of the mandatory minimum sentences and in light of the non-discretionary effects that they have on judges in sentencing indigenous people and, quite frankly, all people? Regardless of....

We have it on the record that offences that carry more than two years would still carry two years plus. The discretion of the judge is still there. They can give people way more than two years or more than the minimum mandatory sentences. Could you go back to where you were trying to take us?

Chief Mark Arcand: Thank you for that question.

This is real stuff. For people who don't understand and who don't do this work every day, seeing the rehabilitation of the trauma enforced, it's all because of a system of systemic racism that has been dealt to indigenous people.

There are two key cases that highlight when we talk about fairness between a non-indigenous person and an indigenous person when we're going through the court system.

Colten Boushie was killed by a non-indigenous farmer. What happened to him? He was acquitted by an all-white jury. Even the first nations people couldn't become jurors. It's a system that has to change. Yes, we're doing our best to do that, but why does it cost the life of an indigenous person?

Look at the Neil Stonechild inquiry of the Saskatoon city police back in the day, 20 years ago. We are being targeted as indigenous people.

Those sentences should be carried as life sentences, but because they have the money and the power, they are not carried out. However, if you look at an indigenous person who gets charged, they're sent to jail, sent to prison, because they can't afford the best lawyer. They can't pay for this kind of stuff.

Michael Spratt hit the nail on the head. This is the reality. Where is the fairness in justice? When you talk about rehabilitation, the reason our people are committing these crimes as indigenous people is that they've been tortured and traumatized by a system. That system was residential schools and it leads to incarceration.

I say this honestly and openly. When you haven't dealt with people sitting in an office like we are, being out there inside that correctional centre and at the federal prison, and talking to these individuals who are saying they want to change because they don't like this life.... They're not waking up and doing this every day. It's because they have been traumatized and nobody's supporting their trauma to stop them from doing this.

Imagine if we took the 80% away from the incarceration system. There would be no work for CSOs inside the facilities. Take out 98% of female youth. We wouldn't have a female youth jail.

Doesn't that make sense to anybody?

• (1355)

Ms. Lena Metlege Diab: Chief, thank you. I hear you.

I have a question for you, Mr. Spratt. If we have time, I'll also ask the chief the same question. It is in regard to the faint hope clause.

Would you recommend or support reinstating that, or would you suggest any changes from the previous faint hope clause that was repealed by the previous government?

Could you give us a bit of insight on that?

Mr. Michael Spratt: Yes, it's something that most definitely should be reinstated. The weight of the legal community—academics, scholars and people who practised—recognized the impor-

tance of that clause, as did the Supreme Court in finding the parole eligibility periods for murder constitutional.

It is a faint hope, but hope is important. When governments take the perspective that we need to build more jails, lock people up for longer and throw away the key, it is a damning admission of failure. It is something that I would urge the government to readdress.

Ms. Lena Metlege Diab: Chief, do you have anything to say on that particular point?

Chief Mark Arcand: I would agree just because I think the system has to change, and when you talk about that, let's focus on rehabilitation or prevention. How do we prevent somebody from being charged? If it leads to that hope clause, then so be it.

If people are convicted, what's the rehabilitation mechanism? We have to have those investments in there to really focus on these situations, because all I keep hearing about is the serious crimes. Well, how did we get to those serious crimes? If that hope clause is something that's going to do all that, I'm in full support.

The Chair: Thank you, Chief Arcand, and thank you, Madam Diab.

Next we'll have two rounds of two and half minutes, and that will conclude this panel.

We'll begin with Mr. Fortin for two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Ms. Dunn, I understand the concern you expressed in your testimony, and I would like to ask your opinion on one aspect Mr. Spratt addressed. He said that even in murder cases, mandatory minimum sentences should be abolished and the judge should be allowed to decide on the appropriate sentence. That may make sense. Mr. Spratt gave us the example of a woman who was charged with murder for killing her abusive partner and he told us about other situations like that. According to Mr. Spratt, in such a case, the mandatory minimum sentence could be detrimental to the woman who, in the circumstances, is also a victim. I would appreciate your comments on this.

Should we indeed abolish the mandatory minimum sentence for certain lesser crimes? I don't like to call them lesser crimes, because in my opinion, when someone commits a crime, it's always important. However, I am thinking of robbery with a firearm, extortion with a firearm and trafficking in firearms. These crimes seem to me to be serious enough that the mandatory minimum sentence should be maintained so that the public has confidence in the justice system.

As for you, given what Mr. Spratt has told us about situations such as a woman accused of killing an abusive spouse, don't you think we should abolish mandatory minimum sentences in certain circumstances?

• (1400)

[English]

Ms. Jennifer Dunn: There are no simple answers for this, to be able to answer this in two minutes, but what I do believe is that it needs to be looked at from the lens of violence against women. I urge the committee to look at the case of Helen Naslund. That might provide you with some answers to your question.

I believe repealing some mandatory minimum penalties over others does nothing for public safety. I believe all of the mandatory minimum penalties should be considered with the lens of violence against women.

[Translation]

Mr. Rhéal Fortin: So...

[English]

The Chair: Thank you.

You have five seconds left.

[Translation]

Mr. Rhéal Fortin: Thank you, Ms. Dunn.

[English]

The Chair: Thank you, Monsieur Fortin.

Now we'll go to Mr. Garrison for two and a half minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to return to Chief Arcand and ask somewhat of a leading question.

Chief Arcand, I think there's a popular opinion that criminal records somehow keep the public safe. This bill doesn't have a provision which I think might be quite useful, and that's for the automatic expungement of criminal records for personal possession of drugs so that, say, after a year, those criminal records would be erased.

What kind of impacts would a provision such as this have in your community?

Chief Mark Arcand: If we focus people on sending them to treatment as their punishment, it's going to help them deal with their trauma. When you talk about expunging their criminal charge after one year, they should be able to complete that sentence and follow the guidelines that are going to make them better at making better choices so they don't get into that situation.

You'll see more success in people. It's like a second chance for those kinds of charges that will stop them from simply crossing the border to take their family into the United States, right? Things like that will really benefit the program, but sentencing them to try to get help with that addiction is going to really benefit our society and our communities.

Mr. Randall Garrison: Again, thank you very much for your testimony.

I want to take the last minute I have here with Mr. Spratt.

Mr. Spratt, I think you told us at the beginning that Bill C-5 is not a real response to the opioid crisis and that you're looking to see

the government do something more comprehensive when it comes to addressing that. Is that correct?

Mr. Michael Spratt: That is right. We have seen that giving the police more discretion doesn't work. We've seen that through the 2018 legislation meant to deal with administration of justice offences, and I have talked to individuals.

On her podcast, I talked to a young woman who had lost her brother. He was charged. That charge may have been diverted, but because he was charged and it was dealt with through the criminal justice system, he wasn't able to get into treatment. He later died of an overdose.

The act of criminalization, even if there is a diversion option down the road, is a harm in and of itself. We need to move toward decriminalization and safe supply. Too many people have died.

Mr. Randall Garrison: We will, of course, as members of the House of Commons, have a chance to address decriminalization and safe supply in a private member's bill. Gord Johns' bill is going to come to a vote in about three weeks in the House of Commons.

In the last 30 seconds we have here, can I ask you—

The Chair: We're past that. I'm sorry, Mr. Garrison.

Mr. Randall Garrison: Okay. Thank you.

• (1405)

The Chair: You're welcome. Thank you, Mr. Garrison.

Witnesses, I want to thank all of you for your invaluable testimony and your time and commitment to show up and give your thoughts and your insight.

I will now ask the clerk to suspend for a few minutes to do sound checks.

The witnesses are dismissed. You are more than welcome to stay and watch, but I think from this video presentation you will be dismissed and we'll welcome the other ones.

We'll give it a minute or so until the clerk lets me know that we're good to go. Thank you.

• (1405)

(Pause)

• (1405)

The Chair: Thank you, Clerk.

Welcome back.

I want to welcome the next round of witnesses. We have André Gélinas, retired detective, from the intelligence division of the Service de police de la Ville de Montréal. We also have, from the Canadian Association of Black Lawyers, Raphael Tachie, president, and Jacqueline Beckles, secretary. We also have, from the HIV Legal Network, Sandra Ka Hon Chu, co-executive director.

Each group will have five minutes to give an opening statement and then there'll be rounds of questioning. I'll raise a green folder when there are 30 seconds left in your time, just to give you a warning to wrap it up. If not, I will unfortunately have to interject at the end.

We'll begin with André Gélinas for five minutes, please.

[*Translation*]

Mr. André Gélinas (As an Individual): Good afternoon, Mr. Chair.

The current stance of this bill is an admission of failure by successive governments and a failure of our country's social services. It is also an incoherent attempt to camouflage the criminal reality by trying to make it disappear. It is an attempt to shift the responsibility for reducing the numbers of people from black, indigenous and marginalized communities onto the judges by encouraging them to be lax. This is certainly not an appropriate way to reduce the number of members of these communities in the prison population.

The role of the courts is to ensure that the law applies equally to all. That is why the statue representing justice wears a blindfold: it judges the facts, and it must do so straightforwardly. It is not her role to drive down statistics, costs or proportions, or even to care.

For the police and society, a criminal is a person who does not respect the minimum rules we have given ourselves and who compromises the security, development, and well-being of his fellow citizens. The criminal is not a patient or a client as he may be for other entities.

The Criminal Code does not make you a good or nice person. It is the absolute minimum that one must abide by to function in society. It prohibits, as they say in Latin, *malum in se*, or evil in itself.

This bill is nothing more than a race to the bottom. It conveys the message that if you cannot meet the minimum requirements, they will simply be lowered to avoid your being held accountable for your actions, actions that put citizens' lives at risk. Again, we are talking about gun crimes.

As we all know, particularly the police, the number of illegal firearms is skyrocketing. It is virtually only these weapons that we find in seizures, at crime scenes or in the possession of criminals. The more illegal guns there are, the more they will be used for crimes that are covered by this bill and committed by members of criminal organizations, including street gangs.

Violence and the use of firearms are the basis for controlling an illicit territory or activity, such as prostitution or the sale, production or importation of drugs. This is exactly what the various criminal groups and their members do in perpetrating the criminal acts covered by this bill.

It must be understood that it is the users of illegal weapons who are at the heart of the problem. It is not hunters or marksmen, but members of street gangs or other strains of organized crime. These people are particularly resistant to attempts at social reintegration because of the intrinsic workings of their criminal organizations. It is totally false and naive to believe that a criminal can absolve him-

self of any connection to biker gangs, street gangs or different types of mafias.

The crimes covered by the bill allow individuals to advance in a criminal organization, climb the ranks and position themselves as violent leaders in their groups, neighbourhoods or communities. In short, it is the preferred way to promote oneself in the underworld using firearms. For them, violence is everything.

Reintegration is possible for some criminals with particular problems. This is not the case for those who use in the commission of their crimes, as they do so for criminal organizations in order to protect or further their illegal and highly lucrative activities. If we are to have any hope of countering this problem, it is imperative that we act upstream, because once we get into the operations, it is usually too late.

I seriously encourage you to listen to what the police will have to say about the total lack of coherence and deterrence in this bill. The police have the big picture, and contrary to what some may think, they are very clear-eyed.

We deal with the criminals and the victims. We see with our own eyes the devastating result of these illicit activities committed with, among other things, illegal firearms. Sometimes we walk in the blood of their victims, whose complaints we hear when they are frightened, injured or dying. We console their families and loved ones. Our 360-degree view is the most complete that can exist. No other profession has such an insightful and broad view of the criminal landscape.

It's interesting to note that the groups calling for relaxation of the laws are usually those furthest from the commission of the crime, from the victims, from the actual violence and its consequences. I'm talking about the violence we witness first hand because of our mission and interventions, not the violence we can read about in a report or see on TV.

It is paradoxical and totally dichotomous to think that abolishing mandatory minimum sentences that apply to criminal offences involving firearms will have a beneficial effect on our communities. We are seeing a significant increase in the number of shootings in major cities such as Montreal and Toronto. The answer proposed in this bill is to abolish mandatory minimum sentences to satisfy the wishes of certain ideologues. This will only increase the arrogance already present in the criminals who commit the very acts the bill wants to target.

There will be no deterrence. It is as if, faced with a significant increase in school dropout rates and a decline in graduation rates, the strategy would be to lower the passing grade on final exams. This is a concept that defies logic.

The message this sends to the police who confront these criminals will only fuel discouragement and disengagement from these police officers. The same assumption could be made for Crown prosecutors, who are also bulwarks of justice.

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

• (1410)

Finally, I would like to point out that nowhere in this bill is the word “victim” mentioned.

Thank you, Mr. Chair.

[*English*]

The Chair: We'll go to Mr. Tachie or Ms. Beckles.

Mr. Raphael Tachie (President, Canadian Association of Black Lawyers): Good afternoon, Chair and honourable members. Thank you for inviting the Canadian Association of Black Lawyers to share our views on the bill.

My name is Raphael Tachie. I'm the president of the Canadian Association of Black Lawyers. I'm here with my colleague Jacqueline Beckles, the secretary of the association. I want to highlight that a lot of the comments I'm about to give have been the result of the impressive work of Ms. Beckles and our criminal justice reform committee. More importantly, they are a reflection of our lived experiences as Black people in Canada. When I hear about removing minimum mandatory sentences, the request to remove those is made by people who are further from the crimes. I'd like to highlight that many victims of crimes tend to be people from the same communities that are faced with overrepresentation in the criminal justice system.

We appreciate the opportunity to speak to you today. Our comments around Bill C-5 are really structured around three issues.

Generally our comments focus on the request that when considering criminal justice reform, we encourage the government to look at the status prior to sentencing. At the sentencing stage, the competing priorities need to be balanced, including community safety. There are significant strides that can be made much earlier, such as in diversion, which lead to the ultimate over-incarceration of members of the Black community in the criminal justice system.

Our comments are focused in three areas: mandatory minimum sentences, conditional sentence orders and evidence-based diversion.

With respect to mandatory minimums, Bill C-5 proposes to repeal a number of mandatory minimum sentences, especially the four-year mandatory minimums. While those are really laudable goals and we are encouraged by them, the five-year minimum sentences will remain where a restricted or prohibited firearm is used or where the offence is committed in connection with a criminal organization. This includes cases in which an offender is the subject of party liability, whether or not the weapon was in that particular offender's possession. As a result of that, the only avenue available to an offender in order to avoid a minimum sentence is that a prosecutor will act with their prosecutorial discretion and agree to resolve the charges by accepting a plea of a lesser offence. What this really means is that a Black person who is accused has to plead guilty in order to avail themselves of the opportunity to avoid a minimum sentence.

In order to address this possibility and in order to uphold judiciary discretion, CABL recommends eliminating all mandatory minimums for drug and weapons offences.

I heard Chief Arcand and the other panellists earlier speak about how mandatory minimum sentences restrict judges from imposing appropriate sentences on individuals and can prevent judges from really taking relevant factors, like systemic anti-Black racism, into consideration. Judges have been elevated to perform an essential function within the criminal justice system and they should be afforded the full discretion to perform that function, especially as we work really hard to make sure that the judiciary reflects the community in which they serve.

Mandatory minimum sentences often hamper real justice from being done. When they're included in legislation, the justification is usually that they are a deterrent, but much research has shown that these sentences do not often achieve that result and do not impact crime rates.

The second issue I would like to talk about is conditional sentencing orders. They are essential tools for combatting recidivism as they can allow for offenders to maintain familial ties, employment and school commitments. Chief Arcand spoke about being holistic in our approach. We agree entirely with that, and with the focus on keeping these ties really as a focus to promote the social determinants of justice, making sure that offenders have the ability to recover from what might be a one-time mistake. Removing the limit formerly found at paragraph 742.1(c) and expanding the application of conditional sentence orders are very good steps in the right direction.

However, we are mindful that, given the historical application of CSOs, it is important to reinforce that a CSO can be imposed where the court is satisfied that service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing.

• (1415)

Including and enforcing this language with respect to the bill will reduce the arbitrary limits on their use, such as requiring an offender to have an employment in order to be considered suitable for a CSO.

The Chair: Thank you, Mr. Tachie. I'm going to have to stop you there, but hopefully you'll be able to answer in one of the questions.

Next we have, from the HIV Legal Network, Sandra Ka Hon Chu for five minutes.

Ms. Sandra Ka Hon Chu (Co-Executive Director, HIV Legal Network): Thank you to the members of the committee for inviting us to speak about Bill C-5. I'm the co-executive director of the HIV Legal Network and I'm presenting today on behalf of my organization and the Centre on Drug Policy Evaluation.

Today I'm going to focus my remarks on the section of Bill C-5 that pertains to evidence-based diversion measures. Before I begin I'd like to endorse the recommendations made by the previous speakers calling for the restoration of conditional sentences and the repeal of all mandatory minimum sentences, or, in the alternative, an amendment to Bill C-5 that ensures that judges retain discretion to not apply mandatory minimum sentences if doing so would result in injustice.

I'll turn to the evidence-based diversion measures. Despite acknowledging in its declaration of principles the need to "protect the health, dignity and human rights" of people who use drugs, the stigma associated with the criminalization, and that "judicial resources are more appropriately used in relation to offences that pose a risk to public safety", Bill C-5 stops short of repealing section 4 of the Controlled Drugs and Substances Act. This failure to eliminate criminal sanctions for drug possession completely undermines the principles underpinning the bill.

From 2014 to 2020, police in Canada made more than 600,000 arrests for drug offences. Two-thirds of those were for simple drug possession, yet more than a century of drug prohibition in Canada has not had an impact on the levels of drug consumption. As the Canadian Mental Health Association has concluded, contrary to the logic of criminalization, incarceration does not result in a cessation of substance use nor does it prevent harm.

As we outline in more detail in our submission, drug prohibition fuels stigma and discrimination against people who use drugs. Criminal records limit employment and housing opportunities. They affect child custody and restrict travel. The frequent contact the police have with people who use drugs leads to syringe sharing, rushed injection and isolation while using drugs. It creates barriers to accessing health services and contributes to epidemics of preventable HIV and hepatitis C infection as well as overdoses, which have resulted in nearly 27,000 deaths in Canada between January 2016 and September 2021.

Considering the ample evidence demonstrating the harms associated with criminalizing simple drug possession, and consistent with Bill C-5's declaration of principles, Bill C-5 should include a full repeal of section 4 of the Controlled Drugs and Substances Act.

Short of such a repeal, we recommend some amendments to the bill, in particular, in proposed section 10.1 regarding the declaration of principles.

We recommend that this section explicitly centre human rights and not frame drug use as primarily a health issue. It should acknowledge that most cases of drug use do not pose problems for the individual and that pathologizing drug use actually contributes to stigma.

It should reference the harms of criminalizing necessity trafficking. It is common for people to sell drugs to others in their network as a means of livelihood to support their own use and to avoid withdrawal or to provide a safe supply.

Finally, it should acknowledge the disproportionate impact of criminal sanctions for drug possession on Black, indigenous and other racialized communities, given the racist roots of Canada's drug control framework and the fact that Black and indigenous

communities in Canada continue to be disproportionately charged, prosecuted and incarcerated for drug offences.

In proposed section 10.2(1), which outlines options for a peace officer who encounters someone in simple possession of drugs, an officer is required to "consider whether whether it be preferable, having regard to the principles set out in [the bill], to take no further action, to warn the individual or, with the consent of the individual, to refer the individual to an agency or service provider in the community".

Despite this requirement, the subsequent section indicates that subsequent charges are not invalidated if a peace officer fails to consider these options. We recommend deleting this paragraph altogether as, in practice, it will completely undermine the purpose of the bill.

In proposed section 10.3, a prosecutor could, instead of laying criminal charges, opt for "alternative measures as defined in section 716 of the Criminal Code". In the context of drug offences, this typically includes drug treatment courts, but such courts have been critiqued for being coercive, ineffective and posing numerous human rights concerns. They should not be presented as an alternative to decriminalization.

In proposed section 10.4 regarding a record of warning or referral, the police force "may keep a record of any warnings or referrals relating to individuals alleged to have committed an offence under subsection 4(1)", which is the section that criminalizes simple drug possession.

This provision is contrary to the spirit of Bill C-5 and the declaration of principles. Police record-keeping would negatively affect the privacy of people who use drugs, could be used as a tool of surveillance and could undermine the potential to improve the quality of drug users' encounters with police. It is imperative that police not engage in monitoring, surveillance and record-keeping under the guise of reform of public safety. Therefore, we suggest replacing "may" with "must not keep records".

I want to conclude by urging this committee to reject incrementalism and take bolder steps with respect to Bill C-5 that will more meaningfully address systemic racism and the harms of drug prohibition, including a full repeal of section 4 of the Controlled Drugs and Substances Act.

Thank you.

• (1420)

The Chair: Thank you, Ms. Ka Hon Chu.

Now I'll go to the first round of questions, beginning with Mr. Morrison for six minutes.

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

Thank you to the witnesses for being here. We especially appreciate the diverse knowledge that's here.

My question is for Mr. Gélinas.

Thank you for helping us focus. Sometimes we get the victims, and we also get the offenders. Sometimes the victims are not as vocal because they've been involved in some heinous crimes and they just don't feel comfortable talking about it. Thanks for bringing that up.

In law enforcement, I know that you're there, right front and centre, having to deal with the victims and dealing with the aftermath of serious and violent crime. It is interesting that you brought up the fact that in organized crime and gang activity, almost always, I believe—and you can correct me if I'm wrong—are illegal guns, yet here we are in the middle of not only this Bill C-5 that we are reviewing, but some other legislation that coming up for the seizure of what some people have called “weapons” or “guns that look like assault weapons”, and they don't specify or actually define that kind of gun.

I know that now in Vancouver, which is an area I'm more familiar with, ghost guns are quite popular. They're 3-D printed and used just one or two times. In your experience in dealing with organized crime and gang activity, do you deal with many people who have PALs or RPALs, who actually have legal guns, or are you almost exclusively dealing with illegal guns?

• (1425)

[*Translation*]

Mr. André Gélinas: Yes, organized crime and street gang members, as well as bikers and mafia members, use illegal weapons almost exclusively, if not 99% of the time. In fact, it is not attractive for organized crime members to use legal weapons because they are generally unlicensed and it is too risky for them to go to a legal place to obtain a weapon that would be legal in Canada.

The seizures that have been made and the experience prove that. I can say, based on the contacts I have with my colleagues who are still active, that the weapons that kill and those that injure, especially on the streets of Montreal—I used to work for the Service de police de la Ville de Montréal, or SPVM—are illegal weapons. It's very rare that we see legally acquired weapons or stolen weapons from legal gun owners.

[*English*]

Mr. Rob Morrison: Would you agree, sir, that if we're spending millions or billions of dollars on seizing legal guns from legal gun owners that this funding might be more effective if it were put towards law enforcement? I'm talking about serious organized crime and serious gang activity, about enforcement for that and for the illegal guns that are transported into Canada.

[*Translation*]

Mr. André Gélinas: Yes, I completely agree with that.

In my opinion, the debate is in the wrong place. In fact, gun control in Canada is very effective with respect to legal weapons. However, where the problem lies is in situations where there is an influx of illegal weapons, particularly from the United States. The border between Canada and the United States is the longest in the world. However, our neighbours to the south have a very liberal approach to the possession of weapons.

So I think that if we assume that illegal weapons are the problem, the money spent on other projects should be used to deal with that problem. Indeed, experience has shown that weapons seized as a result of crime, both now and over the years—particularly those criminals have in their possession or those found at crime scenes—are illegal weapons.

[*English*]

Mr. Rob Morrison: How do you feel that Bill C-5 is going to have an effect on future crime reduction, or crime prevention even, for the illegal behaviour of gangs and organized crime?

[*Translation*]

Mr. André Gélinas: What we know is that criminals are increasingly arrogant when it comes to firearms. In the past, criminals, particularly the heads of biker gangs, did not carry their weapons. They had them carried by bodyguards. It was the same for street gangs, who had their women carry them.

Today, this is no longer the case. One might think that it is because minimum sentences no longer scare them, but that is not the case. In fact, we have reached a point where criminals are becoming so arrogant that the use of firearms is becoming almost routine. To control their illegal activities or their territories, they resort to violence and firearms because their opponents also have them. This is the only way to establish power when one is part of a criminal organization, when violence is lord and master and when leaders are defined by their extreme violence in relation to others.

[*English*]

The Chair: Thank you, Mr. Morrison and Mr. Gélinas.

Next, for the six-minute round, we'll go over to Madam Brière.

[*Translation*]

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

I thank all the witnesses for joining us this afternoon.

Mr. Tachie, I would first like to give you the opportunity to add to your comments. When you talked about abolishing mandatory minimum sentences, you said that this could be commendable, and even promising, but that the accused must plead guilty. I'd like you to elaborate on that a little bit.

• (1430)

[English]

Mr. Raphael Tachie: The last piece of my comments, for the most part, focused on diversion. Ms. Ka Hon Chu spoke eloquently on that issue, so I won't repeat myself on that. It was actually a really great dovetail in terms of where I was going.

I apologize. I didn't quite get the second question.

[Translation]

Mrs. Élisabeth Brière: You said that the abolition of mandatory minimum sentences was commendable, even promising, but that the accused had to plead guilty. I was asking you to clarify your thoughts on this subject.

[English]

Mr. Raphael Tachie: I'm sorry. I'm not sure what happened. On my end, there's a weird issue happening with the sound.

What I was saying to that point was that in certain instances you have to plead guilty before you can avail yourself of potential avoidance of the mandatory minimum. In requiring that, in putting that discretion with the prosecutor and not with the judges, what you're doing is really criminalizing the individual. They don't have the option of even pleading guilty, because that bars access to avoiding the mandatory minimum.

With respect to abolishing all mandatory minimums, that really related to drug offences and substance offences. Jackie is probably the best person to speak to that. In those instances, what we're arguing for is that it gives the ability to really impose a conditional sentence and keep the familial ties, keep less....

That approach focuses on a similar holistic approach to how we deal with these issues and the individuals who find themselves here. Let's keep them in the community to the extent possible.

[Translation]

Mrs. Élisabeth Brière: What else should be done to combat systemic racism in the justice systems and to care for people with mental health problems?

[English]

Mr. Raphael Tachie: I completely agree.

Jackie, I will defer to you. You are much more the expert on this topic than I am.

Ms. Jacqueline Beckles (Secretary, Canadian Association of Black Lawyers): Ultimately, the systemic racism we're seeing endemic in Canada has to do with both the level of interactions within the Black community, as well as once individuals are brought before the courts. What we propose with respect to Bill C-5, in particular, as my colleague Mr. Tachie has said, is the absolute repeal of mandatory minimums, because they don't serve the purpose for which they're intended.

Within the Black community, because our communities tend to be over-policed, because we have seen carding in some areas, because we have seen there is almost a circular logic that is applied to criminality within the Black community, our communities are policed and therefore, offences and offenders are located within the

communities. They are disproportionately policed and therefore, we are seeing that a disproportionate number of Blacks and indigenous individuals are being brought before the courts.

We have seen that the discretion that is usually exercised by both police or prosecutors is not exercised in favour of the offenders. Where there is discretion to issue warnings, for example, or to divert cases, we are not seeing that being exercised in favour of first-time offenders within the Black community. They are then brought before the courts. When in court, the prosecutor is similarly not exercising the same discretion to divert cases to give individuals the opportunity to experience diversion, or to plead guilty to lesser included offences, for example. They are facing prosecution for the most serious crimes.

The circular logic I spoke of is as a result of this. Let's put a number to it. If you have 100 offenders, of those 100 offenders in the white community, there would be a diversion of 63%, let's say. These numbers are accurate, because our studies have shown that within the Black community, you don't divert as many as in other communities, and the numbers are quite significant. For the Black community, the diversion numbers are around one-third of individuals who are confronted by police, whereas in other communities, it's two-thirds of the individuals who will be diverted. Out of 100 offenders, you might see 60 offenders diverted in other communities. In the Black community, you'll see 30, which means you're bringing the other 70 offenders before the courts.

What that does for judges and other members within the criminal justice system is it brings the perception that Black people are committing more crimes. That is not, in fact, the case. It is simply that they are not being treated in the same way when they're intercepted or when they're interviewed.

• (1435)

The Chair: Thank you, Ms. Beckles.

Thank you, Madam Brière.

Next we have Monsieur Fortin for six minutes.

[Translation]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Mr. Gélinas, you spoke earlier about the increase in the number of shootings in Montreal and Toronto, among others. I have also heard a number of testimonies that point in the same direction. You only have to listen to the news sporadically to realize that.

Bill C-5, in its current version, proposes to abolish mandatory minimum sentences for several offences, including one involving firearms trafficking. Not all firearms trafficking offences are included, but some would no longer be subject to a mandatory minimum sentence.

Is this illogical and does it only encourage criminals, as you said earlier?

However, can this be acceptable in certain cases, in terms of firearms trafficking?

Mr. André Gélinas: That is obviously unacceptable. In my opinion, anything remotely related to firearms trafficking must continue to be subject to mandatory minimum sentences.

The gun dealer may not use the gun to cause irreparable harm, but that person will enable other organizations or individuals to do so. When criminals walk around with a gun, they still do it with an intention. These people do not carry or possess a firearm just for fun. They know that they might have to use it in certain situations. For example, they might use it against rival groups or against the police, as the police are trying to prevent illegal activities. This is obviously very serious.

In my opinion, and that of many of my colleagues, people who facilitate the acquisition of a firearm are obviously as guilty as those who use them, because they enable them to cause irreparable harm by giving them the opportunity to do so. We must never forget that, at the end of the day, a person who owns a firearm can injure or kill someone. When a firearm is used, there is no turning back.

Mr. Rhéal Fortin: Thank you.

As I said earlier, I do not like to say that some crimes are not serious. In my opinion, a crime is a crime. A crime is always serious. But some crimes have more disastrous consequences than others. I am thinking, for example, of extortion with a firearm, theft with a firearm, discharging a firearm with intent, not accidentally, and arms trafficking. These offences seem to me to be a little more serious. I think it would be a mistake at this time to eliminate the mandatory minimum sentences for these offences.

However, some of the other offences in the Criminal Code are perhaps less serious in nature. I am thinking, for example, of recklessly discharging a firearm or possessing a prohibited firearm without the intent to traffic in it.

In some cases, would you consider it acceptable for us to eliminate mandatory minimum sentences or should we maintain them in all cases?

What is your opinion on that?

• (1440)

Mr. André Gélinas: As you mentioned earlier, you only have to listen to the news to see that the number of shootings is increasing in Montreal and Toronto. The danger is increasing. More and more innocent people are being shot and killed.

Some very serious offences are indeed covered by the provision repealing mandatory minimum sentences, such as robbery with a firearm, extortion with a firearm and discharging a firearm with intent. As for the rest, one thing must be understood: it is a whole. Someone who recklessly discharges a firearm may not have been aiming at a person. However, this brings me to the notion of public safety and the feeling of public safety.

People who live in neighbourhoods where gangs and organized groups are very active feel totally abandoned by Bill C-5. They feel that, even if you didn't intend to hit someone with your gun, the result is the same. Fear sets in. Afterwards, people want to leave their neighbourhoods at all costs. In some neighbourhoods there is an exodus. Unfortunately, people who cannot afford to move become captives and cannot escape the hold that these criminals have on these neighbourhoods.

I repeat that the use of a firearm is not a selfless act. When a criminal is in possession of an illegal weapon, it is not just for fun. There is an intention behind it. The person intends to use it and is very likely to do so.

Mr. Rhéal Fortin: Thank you.

You said earlier that the firearms used to commit crimes are usually illegal firearms. You also talked about the importance of fighting firearms trafficking.

In your opinion, the creation of a joint squad that would bring together police officers from the Royal Canadian Mounted Police, or RCMP, the Ontario Provincial Police, the Sûreté du Québec, peacekeepers, the—

[English]

The Chair: Unfortunately, Monsieur Fortin—

[Translation]

Mr. Rhéal Fortin: Could this be a useful exercise in the fight against firearms trafficking?

Mr. André Gélinas: Obviously, all—

[English]

The Chair: I'm sorry. I'm going to have to end it there. Maybe you can answer that in a subsequent round, but you're up for time.

Next I'm going to Mr. Garrison for six minutes, please.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Once again, I want to draw us back to the fact that we're dealing with a bill that is supposed to be attacking systemic racism in the criminal justice system.

I'd like to direct my questions to the Association of Black Lawyers, questions similar to those asked of Chief Arcand. Certainly, it's clear that over-incarceration is an injustice, but I'd like to give the association a chance to talk about the impacts on Black families and Black communities of over-incarceration.

This is for either Ms. Beckles or Mr. Tachie.

Mr. Raphael Tachie: Maybe I will start and then, Ms. Beckles, I'll leave you some time.

In responding to that, I want to share my own personal story because of the comment Mr. Gélinas was making earlier.

My family immigrated to Vancouver when I was 13. When I turned 15, I was on a date in a movie theatre on Granville Street. Granville Street used to have two small movie theatres. At the end of the movie, I walked out with my date and saw maybe 10 Black kids. Half of them I knew and half of them I didn't know. I walked over to say hi to them and within 30 seconds of my being there, we were all detained by the police. It was the first time I had ever encountered a police officer in Canada: handcuffed and seated on the corner of the street on Granville, with people walking by.

Now, later on I came to understand that some of the boys I had seen were involved in some crimes and things like that, and some of them might have even had guns. Some of them might have even been part of gangs, but concepts such as party liability, mandatory minimum sentences and things like that swoop in kids who have bright futures and snuff them out.

In my case, the only reason I was able to avoid any connection to that was that the person I was on a date with had privilege. Her father interceded on my behalf to say to the Vancouver Police at the time that I wasn't part of that group and was some kid who had just come out of a date at the movie theatre with his daughter.

Fifteen years after that day, I'm now the president of the Canadian Association of Black Lawyers. I now am a partner at a large national firm. I now lead a practice group. I now go out and motivate kids to tell them that law is an opportunity for them.

What these kinds of laws—mandatory minimum sentencing laws—and grand statements about gang activities, neighbourhoods and things like that do is to sweep up all kids, regardless of potential, regardless of ability and regardless of what the future holds for them. I'm here today because of that. It's because of that encounter on that street corner on Granville that day. It reminded me that my potential could have easily been snuffed out because I happened to have crossed the street to say hi to somebody I knew.

I want to stop there and give Ms. Beckles a chance to speak to the law, but narratives are powerful, and I wanted to show you my narrative and my personal story. I'm a Christian and I grew up in a Christian faith, and, but for the sheer grace of God, I would be the person you're labelling as a criminal and I would now be the person you labelled as a gangster—and my potential was so much more.

• (1445)

Ms. Jacqueline Beckles: If I may, I won't echo what my colleague Mr. Tachie has said, but what I will say in response to the honourable member's question is that I come from much of the same communities that Monsieur Gélinas is speaking of. I grew up in Pierrefonds. There was a shooting in Pierrefonds just this week or last week, which I was watching on the news. What I can say is that mandatory minimums do not make a community feel safe. I know this because I'm a member of the community.

What we are proposing with the repeal of mandatory minimums will not remove the ability for judges to impose what is a just and fair sentence. Let's keep in mind that where you have organized crime, where you have gangs and where you have crimes of a very serious violent nature, judges have the discretion to impose what is a reasonable and fit sentence in the circumstances.

All we are proposing is that there not be a basement to what those reasonable and just sentences are, and that the judges not be hamstrung, in appropriate circumstances, by imposing what is a reasonable sentence. As the honourable member mentioned, there are certain of the offences where mandatory minimums just are not reasonable: where there might be crimes of inadvertence and where there might be situations where the judge, in all of their wisdom, authority and discretion, sees that the mandatory minimum is simply too high for the circumstances. These are people who are appointed to this position, and we urge you to give them the authority

to implement what is just and fair under the same laws that would see justice done.

Mr. Randall Garrison: I think also what your testimony here today reinforces is the cruel irony that not only is over-policing and over-incarceration caused by racism, but it also reinforces racism. Would it be fair to say that?

Mr. Raphael Tachie: We completely agree. It's what leads to over-surveillance. Then when you arrest more people, it's now the justification for saying why we need to over-surveil and keep people in jail. Ms. Beckles spoke to it. It's a vicious cycle that just repeats itself.

Mr. Randall Garrison: Thank you very much.

The Chair: Thank you, Mr. Garrison.

Next will be a round of five minutes.

I believe it's Mr. Cooper for five minutes.

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

Thank you to the witnesses.

Ms. Beckles, in your last answer in the exchange you had with Madam Brière, you cited a number of statistics. Would you be able to provide the committee with the studies or documents that those statistics are based upon?

Ms. Jacqueline Beckles: Yes, absolutely. I'm happy to provide it in writing to the honourable members of this committee.

Mr. Michael Cooper: That would be very helpful. Thank you very much for that.

Mr. Gélinas, we've heard from several witnesses today and in a previous hearing who say to get rid of mandatory jail terms. They say that they don't work, that they increase recidivism, so why not just let a judge fashion a reasonable and fair sentence. Somehow mandatory jail time provisions prevent judges from doing so. Ms. Beckles just said that a few moments ago.

I was wondering, given your extensive experience in law enforcement what you would say in response.

• (1450)

[Translation]

Mr. André Gélinas: I would simply say that using a firearm is a very serious offence. As a society, we have to send a very strong message, particularly to the judiciary, that this is unacceptable. If someone is caught with a firearm, whether the person used it or not, as I explained earlier, that person has an intention, whether it is latent or not. In fact, this is what constitutes a serious danger.

Just imagine how you would feel if you were the victim of an assault with a firearm, even if the person was just pointing the gun at you while you were peacefully going about your business. I don't think you would feel any safer in your community knowing that this person would not be subject to a minimum of sanctions.

I have every confidence in the judges' judgment. However, at some point, the legislator must also convey society's message to the judiciary. The moment someone crosses a threshold by using a firearm in the context of criminal activity, a line has been crossed.

Judgments obviously evolve over time, either through doctrine or through decisions arising from case law that bind the courts together. However, I believe that, as legislators, you have the power to send the message to the judiciary and to the public that this is unacceptable.

We are currently seeing an increase in the number of shootings everywhere and the use of weapons is becoming more and more commonplace. We see on social networks that people are no longer afraid to show off with illegal weapons. Once again, this affects several sectors of society. We must not forget one thing, and that is that the first victims of gun traffickers from aboriginal reserves are aboriginal people themselves. Once again, having worked in the intelligence division to combat street gangs, I can tell you one thing: the majority of victims of street gangs are often people who live in the same community.

As legislators, you have a duty to protect all these citizens.

[English]

Mr. Michael Cooper: Thank you for that.

You're quite right that Parliament, not judges, makes laws. You cited victims at the end of your last comments. At the end of your testimony you noted that nowhere in Bill C-5 is the word "victim" mentioned. Nowhere in the Bill C-5 backgrounder on the Department of Justice website is the word "victim" mentioned. Indeed, it's [*Technical difficulty—Editor*] that we ever hear members on that side utter the word "victim". In the six and a half years that I've been a member of Parliament I've talked to many victims. Almost all of them have been very disappointed with the approach that this government has taken in terms of their disregard for the rights of victims.

Do you have any comments on that? Would you wish to expand upon the comment you made at the close of your opening statement?

[Translation]

Mr. André Gélinas: Yes, I would like to add a few comments.

As I mentioned in my presentation, the Criminal Code sets out the minimum requirements for functioning in society. One of the reasons it was established was to protect people. It is a protection that the community has given itself. These are the ground rules. A person who complies with the Criminal Code can be quite unpleasant and rude, yet still function in society. This is important, because victims need to have confidence not only in the police, but also in the justice system and its democratic institutions.

I have spent evenings—

[English]

The Chair: Thank you, Mr. Gélinas.

Thank you, Mr. Cooper.

The last five minutes are for Mr. Naqvi, and then we have some committee business.

Mr. Yasir Naqvi: Thank you very much, Mr. Chair.

I want to go back to Mr. Tachie.

Thank you for sharing the story. I'm sure quite a few members may relate to the circumstances you described.

It reminded me of consultations that I was holding on the practice of carding in Ontario and hearing from 15- and 16-year-old Black boys who were stopped by police. Their school bags were checked and they were carded simply because they were walking home from school late in the afternoon, which we would expect any child to do. What you are sharing with us is real. That kind of racism is real and the impact is quite real as well.

I want to talk a bit about the conditional sentence orders that are part of this bill and your and Ms. Beckles' thoughts on that. What kind of impact could it have on the Black community, racialized communities and indigenous peoples if that discretion is restored within our criminal justice system?

• (1455)

Mr. Raphael Tachie: Thank you, Mr. Naqvi.

I think Ms. Beckles is the expert on that, so I'll defer to her.

My only comment would be to repeat what Chief Arcand said, because I'm really aligned with it. The extent to which our criminal justice system deals with first-time offenders, especially, by keeping them close to their families, keeping familial ties, access to education and giving someone the opportunity to recover from what might be a one-time mistake is important. That is the place we should start from.

If you put somebody in jail and the ultimate result is that they will return, their community is not safer, especially if they're coming back worse than they were.

Please, Ms. Beckles, go ahead.

Ms. Jacqueline Beckles: With respect to community sentence orders, the first thing that we would ask you to keep in mind is that CSOs are a form of imprisonment. Although CSOs allow an offender to serve their sentence within the community, there are strict conditions, some of which are statutorily required. They ensure that an offender complies with the order and they ensure that an offender is properly and adequately treated.

Expanding the use of CSOs is helpful to both the community and the offender, and it serves more of a rehabilitative aspect, as Mr. Tachie was just alluding to. We have to be mindful that since Black people are subject to hypersurveillance and over-incarceration, this can help serve the double objective of rehabilitation and punishment, where it is appropriate.

CSOs also leave Black offenders vulnerable to mandated state surveillance and ensured compliance with conditions. While we unreservedly advance and advocate for the position that an expanded use of CSOs is appropriate, we urge you to consider that it is still a punitive sentence, notwithstanding the fact that it's being served in the community.

If I can address for a moment the question that was posed by member Cooper, there is something to be said for what Monsieur Gélinas proposed. Often, these crimes are being committed in the community and the victims are from the community. There is something to be said for the fact that members of these same communities are coming to you, honourable members, to say, “We would like to see the lifting of mandatory minimums. We would like to see the imposition of CSOs, because our communities are the ones that are affected.” The Black community and the indigenous community have universally come to you to say, “We don't want these in place. We are the victims. We are not standing only on the side of the offender. We are considering the true victims of the crime, which is our community”. They are telling you, “This is important to us. This is what we want to see.”

The Chair: Thank you.

Witnesses, thank you for sharing your personal stories and experiences with everyone here today. That concludes this part of the meeting. You're more than welcome to log off.

We have some committee business, quick housekeeping. I want everybody to know that this study has about three more meetings for a total of six, then we move on to clause-by-clause consideration for—

• (1500)

[*Translation*]

Mr. Rhéal Fortin: Mr. Chair, while the witnesses are here, could we complete the round of questioning before we end the meeting? I had two and a half minutes left, as did Mr. Garrison.

[*English*]

The Chair: If I have the consent of the committee, I don't mind extending for another five minutes.

Do I have the consent of everyone?

Go ahead, Mr. Moore.

Hon. Rob Moore: We're at the end of our meeting. How long do you expect this committee business to last? I mean, we're introducing—

The Chair: I'm done. I just wanted to let you know about the meetings.

Hon. Rob Moore: Well, unfortunately, we're not done, because we never agreed we would only hear six days of witness testimony. There had been some proposal, I think by Mr. Fortin, that we have eight days of committee testimony on Bill C-5. I certainly supported that and spoke to that last time.

We did not come to a conclusion on how many meetings we would have. I would propose that we have eight, but this is something I would hope we would set aside time for as committee business, and we are at the end of our meeting.

The Chair: I'm more than open. I just wanted to let you know that's what I had so far. If you want, I can converse with you, and maybe on Tuesday, we can keep some time open for that, if you're okay with that, Mr. Moore.

Hon. Rob Moore: Yes, if it's time to discuss the total number of meetings, that sounds good.

My proposal would be that we have eight.

Thank you, Chair.

The Chair: I can't see the floor very well. I have no problem in extending for five minutes, but....

Ms. Lena Metlege Diab: Mr. Moore, I'm sorry, but I have another meeting to go to.

The Chair: Unfortunately, Mr. Fortin, I don't have consent to extend the meeting.

On my clock, it was 12 o'clock, so we're—

[*Translation*]

Mr. Rhéal Fortin: You are right, Mr. Chair.

However, I suggest that, at the next meeting, instead of giving two five-minute rounds to the first speakers, you give them two three-minute rounds so that Mr. Garrison and I have a minute and a half or two minutes left. Obviously, the allocation of time is not fair.

[*English*]

The Chair: I'll do my best, but I'm always very liberal with you, Monsieur Fortin.

Mr. Rhéal Fortin: You're always Liberal, I know.

Some hon. members: Oh, oh!

Ms. Lena Metlege Diab: Since the witnesses are still here, if it's only me, I'll stay for five minutes.

The Chair: Are we good? If I see nodding of heads, I'll do that really quickly.

Sure, let's continue.

Monsieur Fortin, you have two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Ms. Ka Hon Chu, I would like to ask you two brief questions.

During your testimony, I saw you reading notes. There were references to certain provisions of the Criminal Code or to other legislation. Would it be possible to obtain a copy of your notes or the brief you used to testify?

I'll ask you my second question right away.

You've talked a lot about decriminalization, whereas Bill C-5 is more about a diversionary process. In other words, drug offences are still criminal offences, but they can be treated alongside the judicial system as a health issue.

Can you tell me if you support diversion, or would you like to see decriminalization altogether?

[*English*]

The Chair: Monsieur Fortin, it looks like she's not on the screen.

Mr. Clerk, I don't know if you can....

Ms. Ka Hon Chu is not, I believe—

The Clerk of the Committee (Mr. Jean-François Pagé): No, she has disconnected. She's gone.

Mr. Rhéal Fortin: Okay, sir, I will take the last about a minute, I guess.

[*Translation*]

So I'm going to go to Mr. Tachie.

Mr. Tachie, you mentioned a young black boy who was arrested and forced to sit in the gravel in handcuffs. I obviously find that unacceptable. It is totally unreasonable. That is not the society we want to live in.

The question that comes to mind is this. Is this related to the issue of mandatory minimum sentences or is it because a police officer, perhaps because of racism or for some unknown reason, made an unnecessary and abusive arrest?

[*English*]

Mr. Raphael Tachie: It's both.

The first issue is if Black bodies are over-surveilled and over-policed, you're going to swoop in a number of people who are then going to be subject to the vagaries of the criminal justice system.

In my example, but for an intercession by somebody who got me out of that system, I was arrested as a gang member. If I'm labelled as a gang member and then if somebody in that group had a gun and we have concepts like party liability and things like that... What I'm trying to get at is you've just pulled somebody into criminal justice who, for all intents and purposes, probably has a bright future. Now you're adding labels to that person. That impacts them going forward.

You're impacting the trajectories of people, regardless of the potential they have and regardless of whether they have the ability to speak for themselves. As a 15- or 16-year-old, I didn't have the ability to articulate my position the same way I can today. I didn't understand what I was involved in.

● (1505)

The Chair: Thank you, Mr. Tachie.

Now we'll have two and half minutes with Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to return to the Association of Black Lawyers for a final question.

This bill is prospective. It talks about eliminating things in the future. Certainly in the community at large, and in particular in the

Black community, lots of people already have criminal records for personal possession of drugs. I wonder if either of our witnesses could speak to the role of the expungement of those records in promoting rehabilitation, preventing reoffending and keeping communities safe.

Ms. Jacqueline Beckles: Absolutely. Expunging a record gives an individual hope. It gives an individual opportunities for the future. I, for example, am a public servant. With a criminal record, that may be possible, but without one, it absolutely is. I have the ability to get security clearance and to travel freely. I have the ability to operate without scrutiny.

To a large extent, having a criminal record impedes individuals in their simple, basic efforts to maintain a life, to obtain proper housing and to maintain adequate employment. A criminal record is an incredible deterrent. Studies show that with a criminal record, a Black person is actually four times less likely to be selected for an interview, much less obtain employment, which is significant within the Black community.

Mr. Randall Garrison: Can I ask one quick question about diversion?

This bill offers more power to police to make decisions on diversion. Some concerns have been expressed that, in the absence of police reform, this may not have the intended impact.

Ms. Jacqueline Beckles: Yes, we share that concern. We would like to see, whenever there is discretion, parameters on how that discretion is to be utilized. We would like to see guidelines and appropriate training. The Canadian Association of Black Lawyers is very willing to stand with the government around how and what to train, and what issues and factors need to be considered in the exercise of discretion.

As I've said earlier, the exercise of discretion usually disfavours the Black community. Whenever something is discretionary, we want to see strict guidelines around how that discretion is exercised.

Mr. Randall Garrison: Thank you very much.

Thank you very much for the extra time, Mr. Chair.

The Chair: Thank you, Mr. Garrison.

Thank you to all the witnesses once again. Thank you to all the members in the House for patiently waiting a few minutes longer.

The meeting is now adjourned.

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