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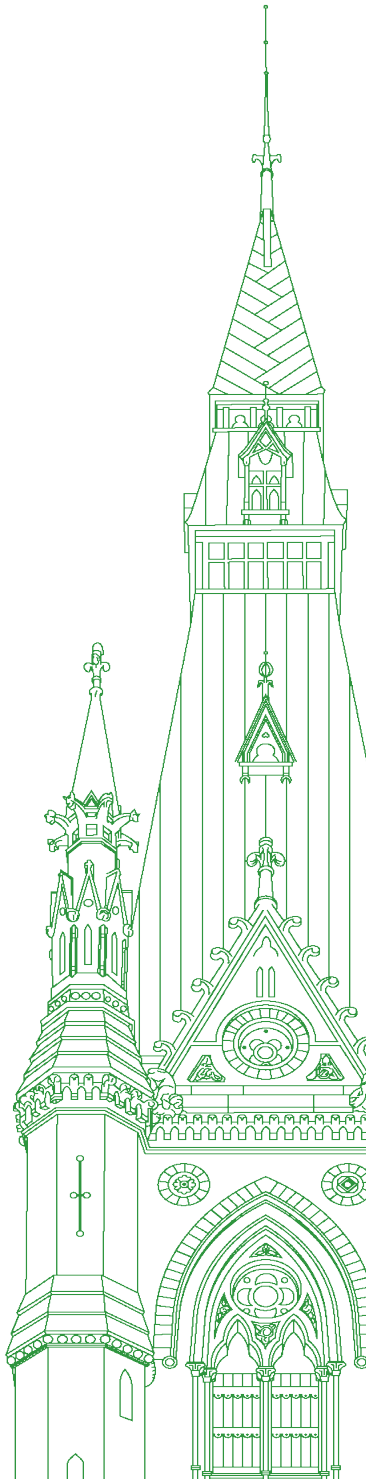

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 14 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 by using the Zoom application. The proceedings will be made available via the House of Commons website.

I'd now like to welcome our witnesses. Before I do, I just want to say that I use some really simple cue cards so that I won't have to rudely interrupt you. When you have 30 seconds left, either in your opening statement or in the questions, I'll raise this yellow card, and when you're out of time I'll raise the red card. Please be mindful of that and adjust your time accordingly.

Today, in our first round of witnesses, we have, as an individual, Dr. Julie Desrosiers, full professor of law at Université Laval; Anie Samson, a municipal affairs strategic adviser for the CBC; David Henry, executive director of the Association des services de réhabilitation sociale du Québec; and Raymond Contonnec, executive director of C.R.C. Curé-Labelle Inc.

I will begin with Dr. Julie Desrosiers, as an individual. Please go ahead for five minutes.

[*Translation*]

Dr. Julie Desrosiers (Full Professor, Faculty of Law, Université Laval, As an Individual): Good afternoon, everyone.

Thank you for inviting me to appear before the committee.

It is a pleasure to address you today.

My name is Julie Desrosiers. I am a professor of criminal law at Université Laval. I specialize in penology, that is, in sentencing.

I have written a lot about both minimum sentences and alternative measures. I am the co-author, with Hugues Parent, of a reference work on sentencing entitled *Traité de droit criminel: la peine* that is widely used by the courts and cited by courts at all levels.

More recently, I co-chaired the committee of experts on support for victims of sexual assault and spousal violence, which published a report entitled "Rebâtir la confiance", and so I am more well-known recently for those aspects of my professional career.

Today I am going to focus on minimum sentences and alternative measures, the subject of the bill before us. Because I don't have a lot of time, I'm going to focus on certain aspects of the bill. Of course, we can come back to the points that are of more interest to you during the question period.

What I would like to say, first, is that the bill proposes to abolish certain minimum sentences, but not all. Many more minimum sentences have been enacted in recent years than the ones covered by the bill. It is nonetheless a step in the right direction.

In general, abolishing minimum sentences has little impact on the case law, since the judgments that make it up involve crimes of average seriousness. Where it particularly presents problems is at the extremes. A judge who is dealing with a minimum sentence has their hands tied. To be clearer—which is what I generally do with my students—I invite you to look beyond the question of being for or against minimum sentences. We have to see the concrete problems that can arise.

Two situations have caused problems in the Quebec case law recently. The first concerns discharging a firearm with intent. We might think that this kind of offence is associated with street crime or organized crime, for example, but it applies in all situations where someone discharges a firearm.

I wanted to bring a case to your intention involving a suicidal indigenous man who was intoxicated and discharged his firearm in his home, over the head of a police officer who had come as backup, after the individual's wife called him. That man was liable to a minimum sentence of four years.

We also have to remember that minimum sentences apply to accomplices.

Another situation also raised a problem when a young woman aged 19 was given a minimum sentence when she was the driver for her spouse, who was the one who committed the robbery. The first sentence received by a 19-year-old woman with no criminal record was therefore a mandatory sentence of four years.

We can come back to these issues, but the decision to repeal certain minimum sentences is truly welcome, because it gives judges back their decision-making discretion in situations where the accused to not deserve long prison sentences.

I am very glad to see conditional sentences, that is, the opportunities to apply a conditional sentence, being expanded. This type of sentence has very strong penological potential that has not been exploited in Canada. Limiting the opportunities to use conditional sentences created a number of problems, in particular for indigenous individuals. We can also come back to this point in the question period.

The last subject I would like to talk about quickly is opportunities for diversion in drug cases, to stress that, here again, we must not be afraid of diversion, which in this case applies for both police and prosecutors. There are two possible cases where diversion applies. Here again, the possibility of diversion does not interfere in any way with the possibility of taking a case to court in situations where it is necessary to do so for public safety reasons.

I'm going to stop here, given that the time I have is very short. We can come back to these points during the question period.

Thank you for your attention.

● (1540)

[*English*]

The Chair: Thank you, and particularly for staying on time.

Next we have Anie Samson from the CBC.

[*Translation*]

Mrs. Anie Samson (Municipal Affairs Strategic Advisor and Political Analyst, Canadian Broadcasting Corporation, As an Individual): Thank you very much for inviting me today to testify before this committee.

I am addressing you as a former municipal councillor for almost 25 years. I represented the most multicultural neighbourhood in Montreal, where there is a relatively high crime rate. It is the birthplace of street gangs and one of the 10 poorest neighbourhoods in Canada. So you will understand that I know a bit about the problem of street gangs, and it is from that perspective that I want to talk to you about firearms.

I was also co-chair of the executive committee of the City of Montreal and responsible for public safety, and it is mainly in that capacity that I want to speak today.

Why do these changes need to be made to mandatory minimum penalties, or MMPs?

We are told: "These reforms would target MMPs that are associated with the overincarceration of Indigenous peoples as well as Black and marginalized Canadians."

I would first like to address this subject from a perspective that we don't talk about much: the perspective of victims. Big cities like Montreal, Toronto, Vancouver and Winnipeg have experienced a significant increase in crimes committed with a firearm in the last two years. In Winnipeg, there were 850 in the last year, making Winnipeg the city with the worst crime rate in 2021.

Young adolescents have lost their lives simply because young people had access to illegal firearms. Those weapons have destroyed families, friendships and lives. It is too easy today to obtain illegal weapons to commit crimes. The problem isn't limited to legally registered handguns. It involves firearms bought on the black market, including on the street. Knowing the source of the problem and where it gets into the country, it would be appropriate to legislate to improve controls at the borders and around indigenous reserves, because we know that's the source of the problem. We believe this is part of the solution.

What will be the consequences for offenders of reducing MMPs?

Street gangs, like criminals, are well aware of how to get around the current law. The older ones use the younger ones, often barely 12 or 13 years old, and pay them to do the dirty work. That may be shooting at houses, to send a message, or at young people, as a warning, something that happens regularly, or selling drugs. They know very well that they will get a light sentence if they're caught.

What does Bill C-5 do to protect our young people and deter them from taking this path?

It does absolutely nothing to deter them, in fact. Abolishing certain MMPs simply exacerbates impunity for these kinds of acts.

How do we tackle the rate of overincarceration?

In the summary of the amendments made by Bill C-5, it uses statistics to show that the population that is overrepresented in prisons, indigenous communities and black and marginalized Canadians, should be treated differently. But the fact is that a criminal who uses an illegal firearm, regardless of their origin, is still a criminal. It would be incomprehensible to let criminals use firearms to kill, rob or threaten people without worrying about having to face the same consequences as other criminals for the same crime.

Is that the solution proposed in Bill C-5 for reducing the prison population composed of those communities in order to balance the statistics?

Did you know that the victims of street gangs are also overrepresented and often, in a majority, come from the same communities?

I think the solution lies in working upstream. Is it reasonable that in 2022, our 12- and 13-year-olds have to pay for protection from older children in their school so they don't get beat up during the day?

Today, again, a young person was stabbed by a young criminal at lunchtime in the Saint-Michel neighbourhood.

Prevention programs have to be put in place targeting the problems that exist in the poorest neighbourhoods. By knowing the problem, we are able to put programs in place. I can tell you more during the question period, if you like.

This bill will decide what type of society we want to leave our children. Prevention and enforcement are solutions, and I am concerned about the consequences that these changes might make for reducing crime. There is concern about the fate of our criminals in prison, when at the same time there are hundreds of families mourning the loss of a loved one. Should the law not stand up for the interests of the public rather than the rights of criminals?

No one is born a criminal; they become one. Violence knows no colour, nor does death.

Thank you.

● (1545)

[*English*]

The Chair: Thank you, Ms. Samson.

Next is David Henry, from the association.

[*Translation*]

Mr. David Henry (Executive Director, Association des services de réhabilitation sociale du Québec): Good afternoon.

Thank you for having me here today.

I am a criminologist and the Executive Director of the ASRSQ, the Association des services de réhabilitation sociale du Québec, an umbrella group of over 70 community organizations that offer rehabilitation services to more than 35,000 people with criminal records a year, throughout Quebec.

I believe that the main problem with Bill C-5 is that it is aimed only at certain mandatory minimum sentences and not all of them that need to be abolished. It leaves in place the harshest mandatory minimum sentences, including the mandatory sentence of life imprisonment, which is contrary to a sentencing policy based in part on the principle of rehabilitation.

For most of Canada's history, there were ten mandatory minimum sentences in the Criminal Code. As we speak, there are now 73. Only 20 mandatory minimum sentences are identified by Bill C-5 for repeal, in whole or in part. I would also note that 28 mandatory minimum sentences have been found to be unconstitutional by at least one court over the years. I think it is absolutely necessary for judges to impose fair sentences based on the sentencing principles set out in the Criminal Code.

Abolishing mandatory minimum sentences doesn't mean making sentences lighter. It simply means giving judges back the discretion to impose an appropriate sentence based on the circumstances of the offence and the person who committed it. Mandatory minimum sentences are unfairly harsh, particularly for marginalized individuals, women, and indigenous people.

Personally, I find it hard to explain why elected members don't trust judges to impose an appropriate sentence. To my knowledge, there are no studies that would connect mandatory minimum sentences and crime rates. So mandatory minimum sentences don't protect our communities. A number of criminological studies have even shown the reverse: that when a sentence or parole conditions are too harsh, they may have a tendency, in some cases, to cause the recidivism rate to rise.

To summarize, I would say that the Association supports Bill C-5, but it should be amended so that judges have discretion not to apply the mandatory minimum sentences that are not repealed in the bill, if they might cause an injustice.

Thank you for your attention.

I am available to answer your questions.

● (1550)

[*English*]

The Chair: Thank you.

I think you are sharing your time with Mr. Cotonnec, so we will have Mr. Cotonnec for the remaining two and a half minutes.

[*Translation*]

Mr. Raymond Cotonnec (Executive Director, C.R.C. Curé-Labelle Inc.): Good afternoon.

My name is Raymond Cotonnec. I have a bachelor's degree in social sciences with a concentration in criminology and a bachelor's degree in social sciences with a concentration in sociology from the University of Ottawa, and I am the Executive Director of C.R.C. Curé-Labelle Inc., a federal and provincial halfway house located in Saint-Jérôme, in the Laurentians, that has been in existence since April 1993.

The changes proposed in Bill C-5 will give judges more discretion for imposing penalties or sentences on individuals convicted of certain firearms, weapons or substances offences by removing mandatory minimums for incarceration in those situations. Some individuals did not have criminal intent at the time of the offence or were not aware of the severity of their actions in relation to the potential legal consequences and impact on society.

The Criminal Code must not further restrict judges' sovereignty in sentencing. The federal government must trust that judges possess the requisite judgment and experience when determining the appropriate sentence. The justice system can no longer afford to convict people who do not deserve the harsh sentences imposed by mandatory minimums, especially when there is no real or direct victim. In these cases, there is no need for minimum sentences. We must consider the harm done to victims and the community.

The consequences of a criminal record are significant for offenders, and, in some cases, they become cruel and disproportionate to the real consequences to the potential victims of that same offence. Some individuals who have committed a crime pay for their actions for the rest of their lives, even if there was no actual victim. Having a criminal record can prevent them from getting a good job, a promotion, a loan and reasonably priced insurance, or being able to travel—in short, from becoming a citizen again. Where an offender re-offends, the sentences imposed by judges can be harsher, obviously.

On the question of diversion when an individual is arrested for simple possession of drugs, it would be appropriate to modify the current procedure so the offender is referred to a therapeutic resource, such as addiction treatment, rather than receiving a punitive sentence like prison. Otherwise, recidivism is almost inevitable.

Thank you for your attention.

[*English*]

The Chair: Thank you, Mr. Cotonnec.

Now we'll go to our first round of questions, beginning with six minutes for Mr. Moore from the Conservatives.

Hon. Rob Moore (Fundy Royal, CPC): Great. Thank you, Mr. Chair, and thank you to all of our witnesses.

As we deal with what is a very important bill, I do know, from some of the background, some of the rationale behind the imposition of mandatory minimum penalties. Some of these penalties have been with us for a very long time, including many that are being repealed whose origins trace back to the 1970s. Please know that at times it's our job as parliamentarians to put into place laws that we feel provide balance for the justice system, balancing the seriousness of the offence with the protection of our communities and the input from victims and their families.

Ms. Samson from municipal affairs, you're a strategic adviser, a former mayor in the Montreal area and former head of public security in Montreal, so you certainly can speak with a lot of experience. I don't know if you saw a certain recent article, but your testimony made me think of it. Recently, we saw that people were using drones to try to bring handguns into Canada. That's what we're hearing from our expert testimony—namely, that a lot of the firearms that are being used criminally are in fact illegal firearms brought in from outside the country.

Unfortunately, in an effort to deal with gang and gun crime, we see the government, number one, cracking down on law-abiding citizens, and then, number two, providing softer sentences for firearms crime. Some of these are serious weapons offences: weapons trafficking, extortion with a firearm and robbery with a firearm. I fail to see, as one of the witnesses just mentioned, how someone could without intent commit robbery or extortion with a firearm or traffic a firearm.

Be that as it may, you have called on the Prime Minister to take action to curb gun violence, and you mentioned the lack of respect for life, the feeling of impunity among street gang members, who are favoured among other things by the laxity of the laws in Canada. You've already, as someone with a lot of experience, found that there is an impunity. What do you think the criminal element will make of our weakening the laws when it comes to gun crime?

● (1555)

[*Translation*]

Mrs. Anie Samson: You have given a good summary of my thinking.

We have to say, most importantly, that actually, if the bill had been introduced five years ago, before the pandemic and before the rise in the number of crimes, when the numbers were falling, there would have been no problem, we would have said we were going in the right direction.

Registered firearms present no problems. In the last two years, unfortunately, illegal firearms are appearing on the streets. School-aged children can buy them on Instagram. They arrange to meet up and they go get one. These young people then pick on other young people in the park because they don't like them.

We have to stress the ease with which young people have access to violence, this desire to shoot everywhere you want without fear of getting caught. These young people say to themselves that because of their age, if they get arrested for the first time, they will just get a rap on the knuckles, and then they won't go back to it.

I have started prevention programs for five-year-olds. When I was elected mayor, some students in the elementary schools in my borough, or their brothers who were members of street gangs, were assigned to oversee activities and distribute drugs in the schoolyard. We're talking about children, some of them not yet five years old.

So then we said to ourselves that we had to solve this problem and get children to understand when they are young. We had to give these children access to programs and sports, make sure they eat properly, and make sure they can tell right from wrong. We have been succeeding in doing this for15 years. We have changed the lives of an entire generation.

We are now finding that these children have grown up. Some of them are crossing the line that separates them from crime, and that is often explained by poverty and the social environment where they are living.

I'll give you an example. A father came to see me to tell me he wanted his child to go to university. The child belonged to the Haitian community—all communities are represented in my borough. This father, a taxi driver, confided in me. He told me that since he and his family were now living in Canada, he wanted his child to go to university, to get a good job. But when he tried to persuade his son, the son said: "Dad, you know, on the weekend, I made the equivalent of what you make in a month. Why would I go to university?" The boy is a member of a street gang. For him, that was the easy solution.

When we ask these young people what they want to do in life, they tell us they just want to get through the day, because they don't know whether they will still be alive tomorrow. That is what life is like every day for some young people in the Saint-Michel neighbourhood.

[*English*]

Hon. Rob Moore: Thank you. That is powerful testimony indeed.

As you know as a former mayor, it's not only the individual who is sometimes victimized, but communities are also put at risk. What do you think is the message to our communities, both urban and rural, if we pass Bill C-5 when so many of these communities are struggling with gun violence?

The Chair: Unfortunately, we're out of time, but if you could submit that answer afterwards or, hopefully, answer it subsequently, that would be great.

We'll move next to Madame Brière for six minutes, please.

[*Translation*]

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

I'd like to thank all the witnesses for being with us this afternoon.

I'm going to address my question to Professor Desrosiers, or Mtre Desrosiers, if I'm not mistaken.

Ms. Desrosiers, in your testimony, you welcomed the expansion of conditional sentences. You said that limiting that practice had contributed to the overrepresentation of marginalized communities in prisons, particularly among indigenous people.

Can you give us more details about this?

I would also like you to talk about the perhaps overly simplistic equivalence drawn between imprisonment and the objectives of deterrence and denunciation.

● (1600)

Dr. Julie Desrosiers: Conditional sentences were created in 1996 in the hope of emptying prisons of inmates who had received short sentences. No one ever questioned imprisonment for serious crimes that were dangerous to public safety. That was never part of the discussions at the upper levels of the government of Canada.

However, there were a lot of doubts about using imprisonment for short sentences, because for them, the harmful effects of imprisonment are much more significant than the positive effects they might have. There is no debate about this. No one in criminology would question the fact that short prison terms are harmful.

In Canada, at present, the overwhelming majority of sentences are for less than six months' imprisonment. A majority of sentences even falls below three months' imprisonment; I think that is above 60 per cent. There are some sentences of less than one month in prison.

So that means that these sentences could have been avoided and another kind of sentence could have been used, but it had to be invented. There has to be something else that has punitive potential and is not just probation in the community. That was what we invented in 1996. That is why I said it had strong sentencing potential. We wanted to institute home imprisonment. There were already conditions that meant it had to be a crime that was not dangerous to the public, in the case of home imprisonment, conditional imprisonment and imprisonment in the community.

The rug was cut out from under judges' feet. Judges said to themselves that if they could not impose conditional sentences and they didn't want to send the offender to prison, they had to find a solution. So they decided to impose intermittent sentences. As a result, there was an increase in what's called "weekend sentences": intermittent sentences, short sentences of under 90 days, that the person serves only on weekends.

However, they could not be accessed by indigenous people, since the prisons are too far from their communities. So they have to serve their entire sentence in prison. That was strongly criticized by the Viens Commission.

There are also minimum 45-day sentences for some offences, and judges are required to impose them. They may not use conditional sentences. That again contributes to rising imprisonment. The reason why it specifically targets indigenous people is that in some communities, for example, there are more drug-related offences. So if there are minimum sentences for those, there will be more indigenous individuals ending up in prison.

As well, the general deterrent potential of imprisonment has never been demonstrated. In fact, it is recognized in law, it is not even being discussed, and it was recognized by the Supreme Court in Nur, which found that a minimum sentence for firearms offences was invalid.

I can't avoid using my speaking time to come back to the earlier discussion and recall the fact that minimum sentences can't be used for adolescents, in all cases. There is a real firearms and organized crime problem in Canada. The problems described by Ms. Samson are real problems. She identified some very important aspects of the problem when she talked about poverty, education and integration.

However, I wonder about the solutions she proposes, because imposing minimum sentences under the Criminal Code is not how we're going to hold adolescents accountable or deter them from committing other crimes, because, in any event, these minimum sentences can't be used for adolescents. There is every reason to believe that what will work for adolescents' are measures involving prevention, education, and rehabilitation.

The problem of firearms on the street is a lot broader and a lot more complex than what using the criminal law offers. I would say that as elected representatives, if you tell your fellow citizens that you are going to solve the problem of organized crime and illegal firearms on the street by increasing mandatory minimum sentences, you are leading them up the garden path, because raising minimum sentences isn't going to solve that problem.

● (1605)

Mrs. Élisabeth Brière: Thank you very much.

[*English*]

The Chair: You have 15 seconds.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

[*English*]

The Chair: Thank you.

Now I will go to Monsieur Fortin for six minutes.

[*Translation*]

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

To begin, I'd like to say that I'm happy to see that the witnesses in the group here today are francophones. Personally, I find that very refreshing and very pleasant. I am also pleased that my anglophone colleagues are getting a chance to hear a bit of French at this committee.

With that said, I thought the testimony was interesting on a number of points. Ms. Samson brought a very different perspective from Ms. Desrosiers', Mr. Cotonnec's and Mr. Henry's. It will certainly give us something to think about.

Ms. Desrosiers, my first question is for you.

Based on all the testimony, that is, the testimony we have heard today and from the witnesses who appeared earlier, there are many people who have major concerns.

As well, if we read the papers, we realize that the public as a whole has concerns about the increase in the number of crimes committed with firearms. Personally, I'm very worried about this increase.

I agree that instituting minimum sentences or increasing minimum prison terms is not the way to solve the problem; the opposite is true. I tend to agree with certain witnesses that it could even complicate things.

However, we are not here to judge; we are here as legislators. We have a responsibility to meet the public's needs.

Ms. Samson, a former mayor of the borough of Villeray—Saint-Michel—Parc-Extension in Montreal, shared her concerns about young people handling firearms and even being able to buy them on Instagram. It is also absolutely unbelievable that five-year-old children are mixed up in drug trafficking in schoolyards.

Yes, minimum sentences don't apply to them, but if we decide to abolish minimum sentences for certain offences, that sends the public a message that may not be the message we want to send.

In my opinion, no member wants to tell the public that handling firearms is no big deal. Everybody believes it's serious, particularly in the case of prohibited firearms.

Are there no alternatives?

Are we not a bit too locked into the reasoning that you have to be either for minimum sentences or against?

Is there no solution that would allow us to reassure the public, or at least confirm that we aren't indifferent and we are concerned about these types of offences, while allowing the courts the latitude they need to make the appropriate decisions?

Dr. Julie Desrosiers: My answer will have three parts.

First, the problems raised by Ms. Samson are truly matters of concern. Those problems worry me a lot. I think that as elected representatives, you have to take them on. What I'm saying is that reducing minimum sentences isn't going to solve the problem. I'm not just saying that; I'm convinced of it, because I base my opinion on studies. As elected representatives, you should do that more. Nothing is easier for politicians than to pass a law that prescribes a minimum sentence. It's a solution of convenience.

But this is a complex problem that calls for investments, public health measures, education measures, and negotiations with indigenous communities. This problem requires that we take concrete steps. It's an extremely complex problem and it calls for more than passing a law prescribing minimum sentences. Otherwise, the wrong message is being sent to the public.

Second, I'm going to talk about the idea that adopting a minimum sentence sends a message of deterrence and denunciation. In fact, in empirical terms, that has never been proved. Most people have no idea what minimum sentences are in force in Canada. When minimum sentences are enacted, people don't really know which one applies to what, and when it applies. So we really can't rely on that.

Third, I don't know what you are going to decide to do. As a professor, I give you the information I have and I'm sure of what I'm saying. Your role as legislators involves constraints that I am not subject to.

One thing for certain is that if you decide to keep minimum sentences in certain cases, you should also provide a possibility of making an exception to them in exceptional circumstances. In fact, that is what my colleague, Mr. Henry, suggests. In other words, you prescribe a minimum sentence, but you give discretion back to judges not to apply it in exceptional circumstances. Exceptional circumstances do exist. The reality is complex, and it isn't just hardened criminals who sell guns to children. The courts have to manage all sorts of situations, and sometimes it is not appropriate to apply a minimum sentence.

● (1610)

Mr. Rhéal Fortin: Are there places in the world where an exceptional circumstances scheme like you are telling us about has been established?

Dr. Julie Desrosiers: It's very common. In France, for example, there are several minimum sentences with the possibility of exemptions in exceptional circumstances.

If you read the Supreme Court decisions in *R. v. Nur* and *R. v. Lloyd*, you will see that the Court sent very clear signals in favour of creating possibilities for exemptions in exceptional circumstances.

Mr. Rhéal Fortin: Thank you very much, Ms. Desrosiers.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Now we will go to Mr. Garrison for six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair, and thank you to all the witnesses for being with us today.

I want to stay for the moment with Dr. Desrosiers on the question of restoring judicial discretion.

We've heard this suggestion from many people, and I guess we have a technical problem as legislators, in that we're dealing in this committee with a bill as drafted and so it's difficult for some of us to see how we can amend this bill to restore that judicial discretion.

I wonder if you have any suggestions, as a professor who is dealing with this, on how we might go about that, because this bill doesn't deal with all mandatory minimums but only with a select number of them.

[*Translation*]

Dr. Julie Desrosiers: I think you can ask for the bill to be reconsidered and to add items, in any event.

For now, there are two aspects that need to be considered.

First, there has to be a determination of what can be done concerning the sentences targeted in this bill. For some offences, the bill does not target all the minimum sentences provided for the same offence. For example, for discharging a firearm, various minimum sentences are provided, and the bill targets only discharging a firearm in cases other than prohibited firearm cases. Not all minimum sentences are targeted in the bill.

In this first discussion of the bill, you are already going to have discussions among parliamentarians, and I don't know whether you all agree on the objective of abolishing all these mandatory minimum sentences. One thing for sure is that it is always possible to amend the existing bill and say that the minimum sentence provided in clause 2 is applicable except in exceptional circumstances. That is the wording used in other countries. The key words "except in exceptional circumstances" give discretion back to judges who have to take exceptional situations into account. The judge can then decide not to apply the minimum sentence.

It would also be possible to add a general provision in the part dealing with sentences, without reiterating all the minimum sentences prescribed by the Code. The bill is being examined clause by clause, but, as my colleague Mr. Henry and numerous other people did, I would like to make a proposal. I am not bringing a completely innovative idea to the table. A number of people have already thought about this question. There is an entire part on sentencing that starts at section 718 in the Criminal Code. It is entirely possible to add a general provision stating that whenever the Code prescribes a minimum sentence, the judge can make an exception to it in exceptional circumstances.

It would therefore be wise to incorporate a general provision of that nature into the bill, and this would solve all aspects of the problem. General provisions are welcome in the Criminal Code, which resembles a kind of patchwork and has no general direction. If a message could be sent to all judges to say that when there is a minimum sentence, they may make an exception to it in exceptional circumstances, that would be excellent.

● (1615)

[*English*]

Mr. Randall Garrison: Thank you, Dr. Desrosiers.

I'd like to turn to Mr. Henry and the association for rehabilitation in Quebec.

Mr. Cotonnec made a reference to the effect of criminal records on the ability for people to be rehabilitated and reattached to society. Again, it's something that's not in the bill, but it's something that we will perhaps be able to add to the bill.

Mr. Henry, could you talk about the impact of criminal records for personal possession of drugs and the rehabilitation process?

[*Translation*]

Mr. David Henry: On the question of criminal records, there is currently no gradation in the Criminal Records Act. No matter the offence committed, whether it be murder, sexual assault, mischief, or theft under $5,000, the person will have a criminal record once they are convicted and as long as they have not been pardoned. Individuals who have committed any of these offences will therefore suffer the same consequences, since there are no different types of criminal record.

I don't know whether, as parliamentarians, you know that over 4.2 million Canadians have a criminal record. No matter the circumstances, a criminal record is never erased before it is 125 years old. It's possible to obtain what's called a criminal record suspension, but, as the term clearly says, the criminal record is suspended and it is never erased before it is 125 years old, regardless of the seriousness of the offence that was committed.

The problem in applying the Criminal Records Act at present is that criminal records discriminate against people long after they have finished serving their sentence. That has consequences for them in things like job searches, since more and more employers are doing searches on their potential future employees' criminal records in court dockets and registries.

An employer can check someone's criminal record without necessarily having their consent. All that is needed, to get that information, is the person's surname and date of birth. A lot of people make their date of birth public, for instance on Facebook. I can do checks on anyone, once I have their date of birth and surname, using computerized dockets and court registries. A lot of companies use those services to discriminate against hiring people with a criminal record, without actually going and seeing the details of the offence, when it was committed, and so on.

Having a criminal record has a lot of other consequences, such as...

[*English*]

The Chair: Thank you, Mr. Henry. You're out of time.

Next we have a five-minute round, beginning with Mr. Brock.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair.

I'm going to start by asking the same question that my colleague Rob Moore asked Ms. Samson.

Ms. Samson, the question again, to refresh your memory, was this: Can you share with the committee what message Bill C-5 sends to communities who are grieving due to gun violence?

[*Translation*]

Mrs. Anie Samson: The message being sent at present is that because certain mandatory minimum sentences have been abolished, a criminal can commit a crime and get a reduced sentence, while the victim may be traumatized for the rest of their life. Their life might even be completely disrupted. But we're going to look after rehabilitating the person who caused the victim and their family harm, and the problem will seem to be solved.

On the other hand, the person who was assaulted and injured, as the case may be, will have to live with that trauma all their life. That situation can change the course of their life and can even ruin it. They may become depressed, drop out of school, and so on. A person who had a great future in front of them will no longer be able to count on that, because they have been a victim of rape or assault. A lot of things will have happened, but the criminal may be liable to a sentence of one year in prison, maybe even home imprisonment. The victim will feel imprisoned all their life.

I wanted to explain this view of crime, which has negative, long-term effects on victims. These are the effects we don't see and we don't hear about.

Following all the gunfire that went on in Montreal, we created a group called Communauté de citoyens en action contre les criminels violents. We started the group because we said to ourselves that we could provide solutions. We wrote letters to the government in which we proposed solutions and amendments that could be made to the rules at the provincial, federal and municipal levels.

We got a lot of calls from parents of victims who had nowhere to go to be heard and be respected. We met two parents, on three occasions, who had lost their sons tragically. Their children, who had absolutely nothing to do with the facts, were killed by gunfire for some obscure reason. The mother of one of the victims, who is a physician, fell into a serious depression. The father lost his job and his twin daughters dropped out of school. This tragic incident completely destroyed that family, who are living in a state of deep mourning and have been given no answers. When the criminal, an adult who was in possession of an illegal firearm, is charged, he will probably get a sentence if the law is passed. But that will never relieve the distress of this family, who have suffered such an ordeal.

We have seen a number of similar cases and we get numerous emails about this. We thought this was a good way to try to help people, but it became virtually a full-time job. We also get calls from teachers who ask us to come and tell the children what to do in these circumstances and help them recognize the signs of violence. We are really trying to find ways of relieving the pain these parents feel.

There may be good reasons for a project like that, there may be exceptional cases, there may be things to improve, but it's going to take some teaching to persuade these victims to get help, because they feel they have been abandoned by the system. That is what causes problems for these people.

Another of our colleagues will be coming to testify before you next week, on Friday, I think. He will also tell you about facts associated with these phenomena. The group was created by members of the police and myself. The police on the ground enforce the law, and I'm on the other side to try to help our young people cope.

As you said, Ms. Desrosiers, there are certainly measures that could be taken to help young people cope. That is why I said just now that enforcement and prevention go hand in hand. When we put significant prevention measures in place and agree to invest the necessary funds to find the source of the problem and solve it, we will be enabling young people to feel safe and not afraid to go to school, combating dropping out, and preventing them from making bad choices, by offering them opportunities. We may even succeed in creating a better society that way, or at least fewer crimes will be committed.

I hope I have answered your question.

● (1620)

[*English*]

The Chair: Thank you, Mr. Brock and Ms. Samson.

Next we will go to Madam Shanahan for five minutes.

Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.): Thank you, Chair.

[*Translation*]

I'd like to thank all the witnesses for being with us today.

We have had some really very interesting discussions about a problem that concerns us all.

Mr. Henry and Mr. Cotonnec, Ms. Desrosiers and Ms. Samson have told us about some terrible situations.

Can you give us your comments in this regard?

Mr. David Henry: I think Professor Desrosiers summarized my opinion on mandatory minimum sentences really very well. But I would like to come back to what Ms. Samson said, if I may. I have the impression that the rights of victims of crime and the rights of people in prison are being systematically juxtaposed, and some things being getting mixed up. Personally, I would really like to know how mandatory minimum sentences are going to bring comfort to victims of crime.

Working in rehabilitation doesn't mean that we aren't sensitive to victims; the opposite is true. I think we have to stop seeing things in terms of that juxtaposition. Like the organizations that belong to the Association, I try to rehabilitate offenders. That doesn't mean that we are working against victims; the opposite is true. We work in restorative justice services, for example, and these are growing and specifically bring together the people who committed an assault and the victims, to resolve the conflict.

Victims need support services, but people who have committed an assault also need support services so they don't reoffend. Mandatory minimum sentences don't help anybody, in reality. They don't help victims, given that they have already been assaulted. I don't see how imposing a minimum sentence of a year or three months, whatever, can give the victim any comfort and help them overcome what they have experienced.

For a person who has committed an assault, as Professor Desrosiers says, the reality is complex. Exceptional circumstances mean that mandatory minimum sentences don't always apply. The judge's discretion is important. Abolishing mandatory minimum sentences doesn't mean that sentences will be lighter. That has to be clear in your minds. The judge will make an appropriate decision, and in some circumstances it will be lighter than what the mandatory minimum sentence provided. In exceptional circumstances, it may be lighter.

In any event, it isn't a matter of making the system less strict. I simply wanted to clarify that point, because, to my mind, these are two completely different things.

● (1625)

Mrs. Brenda Shanahan: Thank you very much.

I would now like to address Mr. Cotonnec.

Mr. Cotonnec, can you tell us about the harms that mandatory minimum sentences cause to individuals, in particularly people dealing with drug addiction, and to families and communities?

I would like to know more about the negative effects that mandatory minimum sentences have on families, and more specifically on the children of people who are incarcerated.

Mr. Raymond Cotonnec: In a halfway house, our clients have already served part of their sentence in prison, be it a sixth or a third, for example. They are often disconnected from their children's everyday lives when they return to their community, given that it is often their wife who has looked after them for all that time, for months, sometimes even years.

Resuming their place in parental authority, but also in the family home, is very difficult. The children feel like there is a stranger in their home. It may also be the case, initially, that the father has lost all credibility in the eyes of his own children. That is very difficult to go through.

Mr. Henry said, in a way, and I agree with him, that in cases of relatively less serious crimes, whether or not there are mandatory minimum sentences, we have to trust judges. Sentences will certainly be harsh in situations where they should be. In my opinion, we must not think that if there are no mandatory minimum sentences, lenient sentences are going to be imposed. That will not be the case at all.

[*English*]

The Chair: Thank you, Mr. Cotonnec. Thank you, Ms. Shanahan.

Now we'll go for two quick rounds of two and a half minutes each. The first is with Monsieur Fortin.

[*Translation*]

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

Mr. Cotonnec, as I understand it, you work in the rehabilitation field with people who have already done time in a penitentiary, who are living at your facility. I would like to discuss the question of recidivism with you.

In the field of rehabilitation, how can the success rate, as compared with the recidivism rate, be determined?

In addition, don't you sometimes get the impression that among your clientele, if I can use that term, not everyone realizes the seriousness of their wrongdoing? Or do you rather get the impression that after finishing the process, they have understood and they won't be coming back?

● (1630)

Mr. Raymond Cotonnec: First, I would like to reassure some people about our mission, which I believe in, obviously. Everyone thinks that the mission of a halfway house is reintegration into the community. Yes, that is part of it, but beyond that, our priority is to protect society.

Recidivism is virtually nil while offenders stay with us. In the 27 and a half years I have been working at the halfway house where I am the director, I have not seen anyone reoffend. What I do occasionally see are breaches of conditions, but they are victimless. For example, someone may use alcohol one night and get caught. There will be internal consequences and a risk of being returned to prison, but there is no recidivism.

With respect to recidivism after their time there, there are statistics on that. Ms. Desrosiers may have more than I do. Since 2006, we have kept statistics on the success rate for offenders who stay with us, which is between 87 per cent and 94 per cent. That means that out of a group of 100 residents, between 87 and 94 of them will complete their stay with a job and accommodation and will have started or completed therapy, depending on their situation.

Mr. Rhéal Fortin: Thank you.

I would like to ask another question, briefly.

The Chair: I'm sorry, but your speaking time is up.

Mr. Rhéal Fortin: Right.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Next we go to Mr. Garrison for two and a half minutes.

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

I want to continue talking about the idea of rehabilitation. I'll pose this question to either Mr. Henry or Mr. Cotonnec.

If we didn't pass this bill, most of the mandatory minimums we're talking about eliminating would remain in place for one or two years. If people are being sent to institutions for less than two years, what access do they actually have to rehabilitation in those cases?

[*Translation*]

Mr. David Henry: Sentences of less than two years are managed by the provincial correctional system. In Quebec, it's Quebec's correctional services that handle people who are sentenced to less than two years. The system operates a bit like the federal system, that is, there are day passes in preparation for parole, or PSPLCs.

To summarize, in very rare cases, it is possible to get out after one sixth of the sentence. The sentence continues, but the person gets out of prison after serving one sixth of their sentence. However, that is very rare, it is seldom applied, and it happens by decision of the CQLC, the Commission des libérations conditionnelles du Québec. Otherwise, people incarcerated for less than two years are eligible for parole at one third of their sentence. Again, the decision as to whether to grant the person parole is made by the members of the Commission des libérations conditionnelles du Québec based on the person's profile, their potential for social reintegration, and their release plan. Often, these are the people who are also going to be in a halfway house and will be monitored for the other two thirds of their sentence in the community.

There are very clear figures about this. As well, studies have shown that people who are released on parole and are supervised until the very end of their sentence reoffend less than people who get out at the equivalent of two thirds of their sentence, the point at which release is virtually mandatory at the provincial level. A person who gets out after serving the equivalent of two thirds of their sentence, for sentences of two years or less, will be released without any form of support or supervision. Those individuals reoffend more than people who get out earlier but are supervised.

In my opinion, rehabilitation involves a number of supervisory and support services and programs offered to people when they return to the community.

[*English*]

The Chair: Thank you.

[*Translation*]

Mr. David Henry: Certainly programs can be offered in prison, but, as Professor Desrosiers did a good job of explaining, sentences are very short on the provincial side, 60 days on average.

[*English*]

The Chair: Thank you, Mr. Henry. Thank you, Mr. Garrison.

That concludes our first panel. These panellists are dismissed.

I'm going to suspend for a minute to do some quick sound checks for the next panellists.

You're more than welcome, by the way, to stay on and listen, but in the interim we'll get our new panellists set up. We'll resume with the second panel.

● (1635)

I will remind the second panel that you'll have five minutes each to make your opening statements. Please be mindful of your time. If you miss anything, you can get it out in your responses to the questions when they're asked to you.

Our first panellist is Elspeth Kaiser-Derrick, Ph.D. candidate. You have five minutes.

Ms. Elspeth Kaiser-Derrick (PhD Candidate, As an Individual): Good afternoon.

First, thank you so much for inviting me to appear before this committee. I feel very honoured and grateful to be here with you.

At the second reading stage, Bill C-5 is framed in relation to the overrepresentation of indigenous peoples in the system, alongside Black people and those from other marginalized communities. I will focus specifically on this issue of indigenous overrepresentation.

For some context, my research draws upon feminist theories to explore how the criminal justice system interprets and characterizes information about women processed through it, and particularly indigenous women.

In my book, I reviewed 175 decisions sentencing indigenous women, spanning from 1999 to 2015, beginning when the Supreme Court of Canada issued R. v. Gladue, which interpreted Criminal Code section 718.2(e) and set out a different methodology for the sentencing of indigenous peoples.

That court affirmed and clarified this in R. v. Ipeelee in 2012. In Gladue, the Supreme Court finds that indigenous peoples are overrepresented throughout the system, cites systemic discrimination and declares that this is a crisis. The court determined section 718.2(e) represents a direction by Parliament to the judiciary to strive to remedy this situation. The court outlines that judges are required on a mandatory basis by section 718.2(e) to consider all options other than imprisonment.

The Truth and Reconciliation Commission, the TRC, in its call to action number 30, directs all levels of government to commit to eliminating the overrepresentation of indigenous peoples in custody within what remains now as the next three years. In its call for justice 5.21, the National Inquiry into Missing and Murdered Indigenous Women and Girls calls upon the federal government to fully implement this and other recommendations by the TRC and other bodies pertaining to the overrepresentation of indigenous women in the system.

In both Gladue and Ipeelee, the Supreme Court of Canada acknowledges the limits of the sentencing process to remedy the injustice of indigenous overrepresentation in the system. Each decision finds a measure of optimism.

In Gladue, that optimism rests in that judges determine most directly whether an indigenous person goes to prison. In Ipeelee, there is some residual optimism in its clarification of how judges should apply section 718.2(e). However, Gladue was decided over 20 years ago, and Ipeelee was decided a decade ago. In the most recent annual report, from 2020-2021, the Office of the Correctional Investigator indicates that the population of indigenous women who are federally sentenced has increased by 73.8% over 30 years, representing 43% of all federally sentenced women. I also note that because CSOs, conditional sentence orders, are only available for provincial sentences of under two years, that particular element of Bill C-5 will not apply to indigenous overrepresentation at the federal level.

In my book, I explore the sentencing of indigenous women through the lens of a feminist theory called the victimization-criminalization continuum. This theory provides a way to understand women's trajectories into the criminal justice system as connected to their experiences of victimization and constrained options arising from that context. I use this framework broadly, including to encompass colonial harms within the concept of victimization.

Among many other cases, my research includes cases in which indigenous women's criminalization or incarceration led to the apprehension of their children by the child welfare system, and also the inverse situation, in which indigenous women did not contact police or medical authorities when necessary because they feared that their children would be apprehended, and then became criminalized as a result. I believe that these and related junctures where colonial systems and institutions intersect contribute to the entrenchment of indigenous overrepresentation in the criminal justice system.

I also note that approximately 80% of the women in my research are mothers, and indigenous children and youth remain highly overrepresented in child welfare systems. I offer these examples of some indigenous women's criminalization because any legislative amendments to mandatory minimums and CSOs that are positioned to respond to systemic overrepresentation must provide judges with flexibility to account for these and other colonial complexities.

Over 30 years ago, the aboriginal justice inquiry of Manitoba examined indigenous over-incarceration in that province, recommending that trial judges must be more creative and flexible in sentencing and that appellate courts must encourage this. The Supreme Court of Canada in Ipeelee also points to the need for innovative sentencing. However, greater judicial discretion is necessary to fulfill this need, to craft just sentences generally, and specifically per section 718.2(e). In my research, some judges explicitly stated that they could not order the community sentences that would otherwise be fit due to legislative restrictions, and other judges made comments signalling a need and desire for more creative sentencing reasoning and practices for the indigenous women before them.

● (1640)

In my work, I argued for an expansion of the availability of CSOs and suggested a legislative way forward through this through judicial discretion, such as to decline to impose mandatory minimum sentences when appropriate. Indeed, the TRC's call to action number 32 directs this.

I have a bit left, but I've run out of time.

The Chair: Thank you, Ms. Kaiser-Derrick. Hopefully you'll be able to finish that off with one of the questions.

Next we have Mr. Maki, from the Council on Criminal Justice. You have five minutes.

Mr. John Maki (Director, Task Force on Long Sentences, Council on Criminal Justice): Thank you very much. I want to thank you all for inviting me to appear before the Standing Committee on Justice and Human Rights to present testimony on Bill C-5.

As you noted, I am the director of a task force on long sentences at the Council on Criminal Justice. The task force is a new initiative dedicated to assessing the impact of long sentences in the United States and making recommendations that advance safety and justice.

The Council on Criminal Justice is an independent non-partisan think tank. We're dedicated to advancing the understanding of criminal justice policy choices and building consensus that will enhance safety and justice. To be clear, the council itself does not take policy positions; instead it forms working groups, task forces and commissions to study and make recommendations.

As a task force, it's just begun its work. We have not yet come to the recommendation phase, so while I am unable to speak in support of Bill C-5, I can talk to you about the research findings around mandatory minimums. To be clear, most of these research findings come from the United States, but I'm not aware of anything outside the United States that would be inconsistent with them.

Let me summarize these research findings in very general terms, and then I'll unpack three aspects that I think are relevant to Bill C-5.

Mandatory minimums are often extremely popular, particularly in the United States, but there is almost no evidence that they deter criminal behaviour. There's also substantial evidence that they cause significant dysfunction in the courts and produce unwarranted disparities.

Let me talk quickly about three findings to consider.

First, “mandatory minimums” is really a misnomer. Mandatory minimums are not truly minimum. Michael Tonry, the international authority on sentencing, makes this argument. What he's getting at is that research findings are very clear that mandatory minimums lead justice system actors, from police to prosecutors and judges, to take actions to evade decisions that they believe would be unfair or unjust.

It's also clear that these kinds of decisions have disparate impacts on particular groups, including racial and ethnic minorities. This really points to one of the structural problems of mandatory minimums: They're based on the assumption that through mandate, you can make discretion go away. This is the assumption, but what research shows is that mandatory minimums actually take away discretion, which is transparent and reviewable, from judges. They invest it into actors and moments that usually lack transparency and are often unreviewable and therefore unaccountable.

This leads to all kinds of system dysfunction. Associated with this, we see an increase in dismissals at the early stages of trials but an increase in sentences for defendants who are convicted. Associated with this outcome, research shows that mandatory minimums increase courtroom work, lengths of trials and also court appeals.

A very common finding in this research is that mandatory minimums produce disparities. Research has consistently shown that mandatory minimums generate unwarranted disparities by region, by courtroom, and as the U.S. Sentencing Commission found, also by race.

Finally, research is pretty clear that mandatory minimums do not produce a meaningful crime reduction benefit. I want to be clear that no one really disputes the fact that criminal penalties in themselves certainly produce some deterrent effect, but research suggests that the certainty of apprehension is what's really important. Increasing severity is not how you get deterrence, and as minimums try to use severity to get to apprehension, they probably undermine one of the core drivers of crime reduction.

While there is some evidence, mainly from economists, that maybe there's a very marginal impact, the overwhelming body of empirical evidence suggests there's no meaningful public safety benefit that comes from mandatory minimums.

That's my brief overview of the findings.

Let me just conclude that I am very honoured to be before you and happy to answer any questions you have.

● (1645)

The Chair: Thank you, Mr. Maki.

I now go over to Mr. Cooper for six minutes.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair, and thank you to the witnesses.

Ms. Kaiser-Derrick, in your testimony you rightly noted an overrepresentation of indigenous persons caught up in the criminal justice system. You also acknowledge that there's an overrepresentation of indigenous victims.

Ms. Elspeth Kaiser-Derrick: Absolutely, and that's at the core of my work.

I'm sorry. I rushed through my statement. My work examined the sentencing of indigenous women, and at the heart of my work was a feminist theory called the victimization-criminalization continuum, which recognizes the relationship between experiences of victimization and then the criminalization and ways they are interrelated. It's not a linear connection from one to the other, but there's an enmeshment there.

With regard to indigenous women whose sentencing decisions I reviewed in my own research, at the sentencing stage their experiences of victimization might appear before the judge in the form of a pre-sentence report, a Gladue report or counsel submissions. They're not life stories—they're written by institutional actors for institutional purposes—but they detail experiences of victimization that are all interconnected with colonization.

A central part of my own work is to try to define victimization broadly such that it encompasses harms caused by state institutions. For indigenous women, that occurs over time in their own individual lives, as well as collectively and intergenerationally. Victimization manifests along that continuum, including—and this is the part that is really important to me—harms caused by the criminal justice system. Those can be by the experience of being incarcerated or by experiences associated with the criminal justice system. Some women in my research had their children apprehended in ways related to their being criminalized. Others feared losing, or lost, their homes or employment when criminalized. The experience of victimization is at the centre of my concern.

I want to note that in a report that the Department of Justice issued in 2018, they said that indigenous women have lost confidence in system that fails to believe their experiences and that there was insufficient information about the specifically gendered experiences of women in the system, particularly in the context of entrenched oppression for indigenous women. They suggested that the government should require actors in the system, including judges, to consider underlying factors related to victimization and criminalization.

For the indigenous women sentenced within the criminal justice system, there's an interrelationship there with victimization—

● (1650)

Mr. Michael Cooper: Thank you for that. I wanted to give you a bit of time to carry on where you were unable to finish off.

When we look at Bill C-5, what we see is a rollback of a number of mandatory minimum jail sentences for some pretty serious offences. There's robbery with a firearm, for example, and weapons trafficking, extortion with a firearm and so on. Of all of the mandatory jail terms, it seems to be a strange way of addressing some of the issues that you have noted exist among indigenous Canadians, who are overrepresented both in the system and as victims. It's saying that the solution to that is to remove mandatory jail times for some very serious offences.

Ms. Elspeth Kaiser-Derrick: I think it's a very complex context, of course. The part of my statement that I really rushed in the beginning was that number 32 of the Truth and Reconciliation Commission of Canada's calls to action directs the federal government to amend the code to allow judges to depart from both mandatory minimums and restrictions on CSOs when reasons are provided.

I hear what you're saying, but at the same time, because the bill is framed as trying to ameliorate the indigenous overrepresentation in the system, my concern is that if Bill C-5 is not expanded to include that call to action by the Truth and Reconciliation Commission to allow judges to depart from mandatory minimums and restrictions on CSOs, the proposed amendments won't have the capacity to meaningfully address the scope of indigenous overrepresentation in the system because of some of the things that I mentioned about interrelationships between child welfare systems and—

The Chair: Thank you, Ms. Kaiser-Derrick. I apologize.

Next we go to Ms. Diab for six minutes.

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

Welcome, witnesses, as we continue to study Bill C-5.

Ms. Kaiser-Derrick, I want to give you an opportunity to finish your thought, but I also want you to talk about conditional sentencing a little bit.

With the earlier panel, we talked about mandatory minimum sentences, but I'd like to turn at this time to conditional sentences and the provisions that would allow those of under two years to be served in the community.

Based on your work with indigenous women who have received conditional sentences, would you say that these sentences allowed the women to reintegrate into their communities while also preserving the safety of the communities? Also, based on your studies, what would you say to those who think conditional sentences are soft or light punishment?

● (1655)

Ms. Elspeth Kaiser-Derrick: My research did seek to highlight conditional sentence orders where possible, because, given legislative amendments, conditional sentences—and I'm sure you've already canvassed this in the previous session—were introduced with code amendments in 1996. Then in 2007 and 2012, there were incursions into judicial discretion for issuing conditional sentences. My work in part was examining how judges go through the Gladue analysis, which means looking at systemic and background factors of indigenous people before the courts and how those relate to the sanctions that are ordered.

In my research I was trying to look at how, through that Gladue framework, judges can look to alternatives to incarceration specifically for indigenous women before the courts, if there really aren't other options. In my research, there certainly were indigenous women who received conditional sentence orders and who, following the 2012 amendments, would no longer have been eligible for conditional sentences. Essentially, if a conditional sentence order is not available, then a judge would probably order a prison term instead, because a conditional sentence order most readily replaces a prison term of under two years, but some judges, in my research, also tried to construct probation orders that would approximate a conditional sentence order—

Ms. Lena Metlege Diab: Ms. Kaiser-Derrick, let me just ask another question. You continue to talk about the flexibility to have judges consider other options and consider innovative and more creative alternatives to prison and incarceration. Why should they do that? Why is that a good thing when somebody's committed a crime? Can you tell me?

Ms. Elspeth Kaiser-Derrick: Sure. As seen in my own work and other substantial bodies of work, the experience of incarceration has profoundly damaging effects. That can manifest itself in specific ways for indigenous people generally, and for indigenous women, the focus of my work, in ways that I sort of rushed through before.

There have been modes of colonial control over time, first with residential schools, then the child welfare system and now indigenous overincarceration in the criminal justice system broadly, and prisons specifically. The fracturing of indigenous families is a feature of each of those instalments and carries reverberating impacts on the lives of indigenous individuals, families, communities and—

Ms. Lena Metlege Diab: Would you agree that when somebody is incarcerated and in jail, at some point the expectation is that they're ultimately going to go back to the community? Talk to me about access for these indigenous women to have cultural counselling opportunities and how they are going to be integrated back into their community when they're simply in jail without the ability to have conditional sentences that can take into account their cultural backgrounds.

Ms. Elspeth Kaiser-Derrick: My belief—and it's consistent with what I uncovered in my own research—is that indigenous women need to be in their communities, in our communities, and that severing those bonds is just going to perpetuate the overincarceration and overrepresentation of indigenous people in the system. It's going to maintain this colonial construct. In terms of resources, I think that's a funding issue as well.

● (1700)

The Chair: Thank you, Ms. Kaiser-Derrick. Thank you, Ms. Diab.

Now we have Monsieur Fortin for six minutes.

[*Translation*]

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

I'd like to thank the witnesses who are here today.

I would like to address Ms. Kaiser-Derrick, because I want to let her continue what she was saying.

Ms. Kaiser-Derrick, I find your testimony interesting on the aspect relating to indigenous women, who are, if I understand correctly, overrepresented in our Canadian prisons. This is an important aspect of the subject.

While I am not an expert on the subject of crime in indigenous reserves, I understand that the concern must be substantially the same as outside the reserves, that is, that we have to find middle ground. We want to reassure the public, who are worried about the violent crimes being committed, and particularly about the rise in firearm crimes that we have seen in recent months and recent years. We have to reassure the public and show that we are concerned about this situation and that we are going to make efforts to propose solutions for solving it, while being aware that rehabilitating violent offenders, or accused persons, could, in some cases, involve a process other than incarceration.

I am concerned about this issue, so I say to myself that Bill C-5 is about decriminalization. I'm going to talk only about firearms, if I may. There are other aspects, but that is the one that concerns me most. For example, we are going to decriminalize extortion using a firearm, armed robbery, and trafficking in firearms. These things worry many members of communities in Quebec, among others, including Montrealers, and I think it must also worry people in indigenous reserves.

Rather than simply decriminalize these aspects, could we not find middle-ground solutions, between mandatory minimum sentences and abolishing mandatory minimum sentences? For example, we could allow judges to depart from the obligation to impose a mandatory minimum sentence in certain cases.

Do you think this possibility could be valid and could it meet this need to blow hot and cold?

[*English*]

Ms. Elspeth Kaiser-Derrick: Thank you for that context and question. I'll say just a few things that popped to mind while you were speaking.

First, the Truth and Reconciliation Commission's call to action 32 that I mentioned earlier directs the federal government to amend the Criminal Code to allow judges to depart from both mandatory minimum sentences and restrictions on CSOs, with reasons. I think that would be a really valuable balance among some of the elements that you're describing, in the sense that it does place a lot of trust in judges. There can be public education associated with that in terms of helping to instill trust in judges in the broader community as well. With regard to that Truth and Reconciliation Commission call to action to expand the ambit of judicial discretion in cases where judges choose to apply it with reasons, the provision of reasons there would allow judges to engage with some of the issues that you're describing.

In specific reference to indigenous overincarceration, which is my primary concern in attending here today, there is one case in my work in which the judge noted that with regard to the method of analysis that was mandated by the Supreme Court of Canada in the Gladue decision and the sentencing framework that applies to the sentencing of indigenous people, performing that sentencing analysis will only have real meaning if in appropriate cases I, the judge, choose not to send someone to jail for a serious crime. Therefore—

● (1705)

[*Translation*]

Mr. Rhéal Fortin: Ms. Kaiser-Derrick, I'm sorry to interrupt you, but we really don't have much time.

I'd like to hear you say more on this point. Since the decision in *R. v. Gladue*, Gladue reports are supposed to be filed at the time of sentencing in criminal cases in indigenous reserves.

Has that not greatly improved the problem that existed before, in terms of the length of sentences?

If not, could you explain why that is the case? What is missing? Why are Gladue reports not sufficient?

[*English*]

Ms. Elspeth Kaiser-Derrick: I'm not sure whether I understood your question fully, so I'm sorry if this doesn't answer it.

I heard you ask at the end of your question why the Gladue report may not be sufficient. I don't know if you were referring to what I just mentioned about the Truth and Reconciliation Commission saying in its call to action that judges should be legislatively permitted to depart from mandatory minimums and CSO restrictions with the provision of reasons, but those are separate—

[*Translation*]

Mr. Rhéal Fortin: Does that solve the problem? Do we have to do more?

[*English*]

The Chair: I'm sorry. I'm going to have to let you answer those maybe in his next round. Thank you, Mr. Fortin.

We'll go to Mr. Garrison for six minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair. I thank Mr. Fortin for raising what I'd rather be talking about, and that's the decriminalization of personal possession of drugs. I'll just remind everyone that there's a separate process and that a private member's bill is working its way through the House in parallel.

I want to take a moment to let Mr. Maki know he hasn't been forgotten. I want to ask him a question about all the rage that was going on in the United States for mandatory minimums for a number of years. Some of those jurisdictions, I think including Texas, have really backed away from the mandatory minimums. I think there has been a move in quite a few states to start doing what we're considering here, which is eliminating mandatory minimums.

Can you say a bit about that experience in the U.S.?

Mr. John Maki: Yes, and no worries whatsoever; I'm happy just to listen.

I've not seen anything quite like Bill C-5. There has been some reconsideration at the federal level and throughout the country on a general obsession with mandatory minimums, but in the United States, they're still pretty locked in to them.

That's how I would look at this, in somewhat even sympathetic terms. It's a great idea. If it worked, it would be really great. I think the experience in the United States shows it has real problems. Therefore, again, while we're tinkering—and recently in this current crime increase, I believe a lot of those discussions have really stalled—I'd be very interested to see how this plays out in your country.

Mr. Randall Garrison: In part of your presentation, you talked about there being no crime reduction benefit and no public safety benefit and increased expenses. That's based on the actual experience in a number of states. Is that correct?

Mr. John Maki: That's based on the research. The biggest disconnect between research and evaluation and policy is probably in mandatory minimums, at least in the criminal justice system. That research is pretty clear. It's often not super-clear, and many times findings are mixed, but in terms of what I told you in my testimony, there is a consistent finding in research over several decades. This is where policy-makers in the United States have generally not listened to the research.

Mr. Randall Garrison: Thanks very much, Mr. Maki.

I want to turn to Ms. Kaiser-Derrick on a question about Gladue.

Perhaps we passed over it too quickly, so I want to give you a chance to state the obvious to all of us: that mandatory minimums prevent the application of the Gladue principle and achieving more positive outcomes for indigenous people.

Is that really your experience?

Ms. Elspeth Kaiser-Derrick: Thank you for that comment.

First, I should say that I have not studied mandatory minimums, so it's outside the scope of my research.

I can still respond, in a way. What you're describing is absolutely what happens. Judges are required....

The Gladue framework derived from the Supreme Court of Canada decision that interpreted paragraph 718.2(e) of the Criminal Code, which is the provision that indicates judges must consider alternatives to incarceration, especially for indigenous persons. In that framework, judges are mandated to look to alternatives to incarceration, especially for indigenous persons. The Supreme Court of Canada's Gladue decision contextualized that within the context of the overincarceration of indigenous people specifically, and the need to respond to that. In the case of mandatory minimums and restrictions on CSOs, judges may and do go through that Gladue analysis. There is, however, no alternative except incarceration, because of mandatory minimums and restrictions on CSOs. In that sense, the Gladue analysis, even when performed, can't take effect. If it's not able to meaningfully impact which sanction is ordered, then of course the problem of indigenous overincarceration is perpetuated.

● (1710)

Mr. Randall Garrison: In one of your last answers, you talked about severing community bonds. There's this idea that the system treats everyone equally, so if indigenous women are sentenced to incarceration, it's the same as someone else being sentenced to incarceration. Regarding rural, remote and northern communities, can you talk about the additional impacts that take place?

Ms. Elspeth Kaiser-Derrick: Absolutely.

Your comments remind me of one case in particular in my work. One judge, for example, noted that.... For the indigenous woman being sentenced in that case, the judge examined the potential impact of an institutional sentence on her family, including her children, because she would be incarcerated far away from them. The judge decided that it would be an excruciating punishment for this indigenous woman, above and beyond that faced by any man sentenced to jail or by any sentenced woman who would be able to serve a prison term nearer to family. The judge—

The Chair: I'm sorry; your time is up, Ms. Kaiser-Derrick. Thank you, Mr. Garrison.

Next up, we have Mr. Morrison. For the next rounds, I'm going to shave off one minute to make them four-minute rounds, and the last two will be two minutes instead of two and a half, so we'll have about six minutes at the end to discuss some committee business.

It's over to you, Mr. Morrison, for four minutes.

Mr. Rob Morrison (Kootenay—Columbia, CPC): Thank you, Mr. Chair, and thank you to the witnesses for coming.

I want to talk about the conditional sentencing. Ms. Kaiser-Derrick, I'll be asking you particularly about it.

I think there are a lot of Canadians who would be surprised that issues like sexual assault, kidnapping, trafficking in persons, abduction of a person under 14, assault causing bodily harm with a weapon, assaulting a police officer.... Causing bodily harm with a weapon—now, that was a real shock. To have some of the individuals given a CSO and go back right into the community or neighbourhood they came from...I'm not so sure that's a healthy environment.

I know you've done a lot of research on CSOs, but I'm really interested in your research on overrepresentation. It hasn't come up yet, but and I'm sure you're well aware of restorative justice.

We had a previous individual from Montreal, who brought up the fact that we need to have crime prevention, not necessarily reduction of crime by putting people in jail. Crime prevention and restorative justice go hand in hand, and I've worked a fair amount with restorative justice in the past.

It was interesting, too, that it was a 15-year project that Montreal did, on youth as young as five, to talk to them all the way through as they're growing up and to show them there's another way forward versus organized crime and gang activity.

I'm wondering if you can elaborate a bit on your success with restorative justice, especially with the overrepresentation of indigenous females, and how we could move forward without having to even talk about mandatory minimums or CSOs.

● (1715)

Ms. Elspeth Kaiser-Derrick: I haven't done direct work with rehabilitation myself.

I will say that in the cases that I studied, sometimes I noticed that judges would characterize prison as a source of treatment for rehabilitation needs of indigenous women. Other judges located these rehabilitative needs in the community. I think the former construction is problematic, as there is so much research to support that incarceration harms rather than rehabilitates.

In terms of indigenous women, something struck me when I was preparing to speak today. I was looking at the “Report of the Aboriginal Justice Inquiry” of Manitoba, which came out in 1991. It's a very extensive report, and that was over 30 years ago.

The commissioners write in that report that they were moved by the situation of indigenous women and noted that they “suffer double discrimination: as women and as [indigenous] people; as victims and as offenders.” When speaking with women in the system, the commissioners of this report write that they were “convinced by [the] arguments of [indigenous] women that a restoration of their traditional responsibility and position of equality in the family and community holds the key to resolving many of the problems [they] have identified.”

Mr. Rob Morrison: Would you agree, then, that restorative justice—I guess you're not familiar with that program—would probably be your first diversion, your first route to take when someone comes before you?

Ms. Elspeth Kaiser-Derrick: I absolutely would be supportive of restorative justice approaches, basically—

Mr. Rob Morrison: So we should put—

Ms. Elspeth Kaiser-Derrick: —anything that would keep indigenous women out of the system.

Mr. Rob Morrison: We should put more funding into those sorts of avenues, I guess.

Ms. Elspeth Kaiser-Derrick: I would certainly support that.

The Chair: Thank you, Mr. Morrison.

Next we will go to Ms. Dhillon for four minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair.

My first question is for Mr. Maki.

Could you please elaborate a little on the fact that you said mandatory minimum sentences are a misnomer? Could you explain to all of us what you meant by that? Thank you.

John Maki: Absolutely. I think it's the word “mandatory”. It sounds like it will automatically happen: Everyone who commits a crime under mandatory minimums will be mandated to serve a certain penalty. That's precisely what the decades of research on mandatory minimums shows does not happen. There are all kinds of evasions that occur in the system on a practice level, so mandatory minimums aren't actually mandatory. That's what I meant by that.

Ms. Anju Dhillon: Can you give us examples of evasion, please?

John Maki: Sure. For a lot of these penalties, research has been done on the varying lengths of time, from long sentences to shorter sentences. At the arrest level, if police feel that the penalty will be unjust and they don't want to do it, they just don't make the arrest. If it comes into court, whoever's in charge of charging can move the charge around. At the trial level, you will see more dismissals or pleading to offences that don't have the mandatory minimum. You'll see it like that.

You also see it used to coerce plea deals in some cases. People who make it through the prosecution phase and into the conviction phase tend to have longer sentences.

Again, I think the thought behind mandatory minimums is that we can kind of get rid of the complication of the hard work of dealing with crime and just kind of make it clean. What the research shows consistently is that mandatory minimums actually make things more uncertain and less predictable; they breed distrust within the system itself, with the people who are dealing with it, and in that sense too, they tend to perpetuate the same sorts of problems that generate mandatory minimums. People in the public, law enforcement and public officials see sentences that don't seem to match the crime.

I think, insofar as I understand the conversation today, it's not an issue of whether these are the kinds of crimes that someone can be sent to prison for. That's not what's at issue. The issue is whether judges can have reviewable discretion to make different kinds of choices.

● (1720)

Ms. Anju Dhillon: Thank you.

Something you just said just brought back to mind another point of yours. You spoke about racial and ethnic minorities experiencing more disparity when it comes to minimum sentencing. Can you talk about that as well, please?

Also, in your study, have you noticed that these mandatory minimum sentences are applied more to those people in financial difficulty, in cases where it's easier for them to just plead guilty? We've seen that happen; I practised as well, and I often saw these things.

If you could please talk about that, thank you.

John Maki: I think it's a pretty consistent finding in the research. Again, I think mandatory minimums are predicated on the idea of consistency and predictability, and it kind of breaks those mechanisms or at least challenges them in may ways. A pretty consistent finding is that there are lots of disparities by region and by courtroom, and also a higher concentration of people overrepresented.... In the United States, the U.S. sentencing commission found that African Americans were more likely to receive mandatory minimums.

I guess the way I would look at that isn't necessarily to accuse the system of being malign in some ways. I think it's the work of implicit bias, and that's also why you want to have reviewable discretion. You want to know how these kinds of decisions are being made so that you can fix them.

When you vest discretion in areas where you can't see that, where you don't have that kind of accountability, that is precisely what allows this kind of discretion to fester.

The Chair: Thank you, Ms. Dhillon, and Mr. Maki.

Next we have two short two-minute rounds, beginning with Mr. Fortin.

[*Translation*]

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

Mr. Maki, I'd like to know your opinion. I see that you have a law degree, but also a philosophy degree, and that your practice has you working with the public on the ground. Let's say, for a moment, that we assume that mandatory minimum sentences are bad.

So I ask myself a question. The message that Parliament sends to the public is of some importance. Don't you think there is reason to be concerned about this?

At present, there are a number of mandatory minimum sentences, including the ones about firearms. Earlier, my colleague, Mr. Morrison, listed a number of offences, including extortion and armed robbery. There is rising firearm violence more or less everywhere, particularly in Quebec, in the Montreal region, and the public is worried.

Should we not be making an effort to find a middle-ground solution while giving the courts some latitude? Should we not avoid giving the impression that we are somewhat indifferent, or somewhat uninterested, not about crimes, but about the public's concern about crimes?

As a middle-ground solution, we could, for certain more serious offences, allow judges to depart from the mandatory minimum sentence in exceptional circumstances.

Do you think that is a way of addressing the situation that is worth considering?

[*English*]

John Maki: I apologize. I only caught the last bit. I didn't realize there was translation, so I'm very sorry, but I think I got the gist of your question.

I hesitate to talk too much about the Canadian system, which I have read about but don't understand. I'm not an expert in it.

In the United States, I would say that the research really points to, at a legislative level, creating structures for discretion, the ability to depart downward and to have some “presumptive minimums”, which is a term that's often used.

That said, I think what you're talking about is the hard work that you all have as lawmakers. Your constituents ask you—

The Chair: Thank you, Mr. Maki. I appreciate that. Thank you, Monsieur Fortin.

It's over to you, Mr. Garrison, for two minutes.

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

In the last two minutes I want to go back to Ms. Kaiser-Derrick.

We have had the Conservatives again talking about criminals and non-criminals today, and listing the terrible crimes that we're going to exempt from mandatory minimums.

My question is about the nature of the indigenous women who are involved in crime. What proportion would you say were the major perpetrators themselves? What proportion were crimes dictated by their circumstances? What proportion of them were influenced to engage in criminal activity?

● (1725)

Ms. Elspeth Kaiser-Derrick: I would say it's difficult to categorize my research in those terms, other than to say that it was very apparent that the colonial context was completely embedded in their experiences of victimization and criminalization, and how their victimization and criminalization intersected.

I'm not sure if that fully responds to your question, but that's my primary observation.

Mr. Randall Garrison: I am a former academic at UBC myself. Are you saying that circumstantial factors often come into play with indigenous women when they come into conflict with the justice system?

Ms. Elspeth Kaiser-Derrick: Yes. Again, I'm not sure exactly how to respond to your question, but certainly there are gendered contexts that also intersect with this colonial context and are interrelated with women's offending and indigenous women's criminalization.

For example, I mentioned in my opening statement that some of the women in my research became criminalized because they were afraid of contacting police or medical authorities because they were afraid of their children being apprehended by the child welfare system. In that sense, their criminalization was entirely linked with their colonial experience.

The Chair: Thank you Ms. Kaiser-Derrick and Mr. Garrison.

That concludes the second panel. I want to thank all of the witnesses.

We have some committee business to do, so you're dismissed. You're more than welcome to log off. In the meantime, we will hopefully do this quickly.

Members, I think the main topic is the number of meetings we should have on this study. I think we hadn't reached a conclusion on that. I'm hoping that we keep the debate to a minimum and then vote.

Does anybody want to go first on how many meetings we should hold? We have done four, just for the record. This concludes the fourth meeting.

Go ahead, Mr. Moore.

Hon. Rob Moore: Thank you, Mr. Chair.

We have done four, and I would suggest that we do four more, as Mr. Fortin suggested, for a total of eight, and then, for a bill of this size, have two meetings set aside for clause-by-clause consideration if necessary. If we get through it in one day, then we're through, but I would think we would need two meetings to get through clause-by-clause study.

The Chair: Okay.

Go ahead, Monsieur Fortin.

[*Translation*]

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

We're discussing figures and the number of meetings we'll have. I quite agree, but I'm interested in what we're going to do with these meetings. I see there are already a number of witnesses listed who have not testified. Personally, I know that a witness I summoned to appear will be present on Friday this week or next week. At least, there are still witnesses to be heard.

I think the bill is important and we have to consider it properly. I don't want to repeat what I've already said, but we have to be aware that there are two bills. The Minister of Justice has dropped this in our lap, but there are two bills. The first is about diversion and the second about mandatory minimum sentences. We have to take the time to look at them properly.

Will other witnesses be appearing? Does anyone around the table want to summon other witnesses to appear? We need to know.

As well, how much time do we need to hear those people? That is more what is concerning me than whether we are going to do it in four or five or six meetings.

● (1730)

[*English*]

The Chair: Mr. Clerk has informed us, concerning the witnesses who have been suggested so far by everyone, that we would have them accommodated by May 13 to May 17. In that week, they should be done. That's assuming the following week....

[*Translation*]

Mr. Rhéal Fortin: How many meetings does that come to?

[*English*]

The Chair: There would be three more—this Friday, and—

[*Translation*]

Mr. Rhéal Fortin: Three meetings to finish our witness list, that's what you're telling us, Mr. Clerk?

[*English*]

The Chair: Yes, that's correct.

[*Translation*]

Mr. Rhéal Fortin: There seem to me to be a lot of witnesses.

The Clerk of the Committee (Mr. Jean-François Pagé): I have to take into account the division of the witnesses by party. I'm kind of bound by that. But it is up to the committee to decide.

Mr. Rhéal Fortin: I see that the list contains the names of 25 witnesses in white, which means they haven't yet appeared, if I understand correctly. Hearing that many witnesses in three meetings, doesn't that seem a little audacious to you? Could we not take the time to hear them a little better?

The idea isn't to have people testify just for the sake of saying they testified. We have to listen to what they have to say and then analyze it. There are 25 names on the witness list, unless anyone withdraws.

[*English*]

The Chair: I believe I'll get some more information. Based on the proportion from every party, I think the clerk is implying that we would be done by then.

Go ahead, Mr. Garrison.

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

I think we have to keep in mind that we have a private member's bill on the decriminalization of personal possession that might well end up in committee. Hearings on an appointment for new Supreme Court judge will most probably come to us within the next month. We have other government bills that are still on the order paper. I don't think we have unlimited time as a committee. I think we have to keep in mind that we have other things that may come to us.

I was happy with six. If we can exhaust the witness list at seven, I wouldn't be opposed to that, but I think we have to keep in mind that we have other things coming to the committee.

The Chair: That's fair enough.

Go ahead, Mr. Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you, Mr. Chair.

I think we're also content with six meetings. I know we've had a bit of a robust discussion. We've had a variety of witnesses with very different perspectives, and I think that provided the range of perspectives out there.

We would be satisfied with six, as I indicated at the last meeting. Again, if absolutely necessary, we are amenable to one more meeting, provided that we've exhausted all of the other witnesses with full panels for the meetings up to the sixth meeting.

The Chair: Go ahead, Mr. Cooper.

Mr. Michael Cooper: I'm fine, Mr. Chair, other than to say that there are 25 witnesses. I don't have the list right in front of me. It seems that we would need at least eight meetings. We've gone through an average of three witnesses per hour. I don't think it's possible to hear from any more witnesses and then have sufficient time for members to ask witnesses the necessary questions. Again, it would seem, on its face, based on that number, that six is completely inadequate, and likely seven isn't sufficient either.

I think we have to do our due diligence and hear from as many witnesses as possible so that we can put forward the appropriate amendments and do our due diligence and the work we've been called upon to do.

The Chair: You're next, Mr. Moore.

Hon. Rob Moore: Thank you, Mr. Chair.

I think we're all in a similar ballpark. We think of the numbers, and each party puts in their allocation. That's probably why the numbers don't exactly match up. I do think eight is preferable and reasonable.

I want to mention, though, that my suggestion for two meetings for clause-by-clause study is in no way to be interpreted as saying, "Well, if we're not done clause-by-clause...." We have to do our due diligence. We don't know how many amendments are going to come in from each of the parties. I suspect we will have some amendments.

I threw those two days out as a way of saying that we could probably budget for two days, not to say that it might take three. That's a point of clarification.

● (1735)

The Chair: Last is Mr. Anandasangaree.

Mr. Gary Anandasangaree: Mr. Chair, in the spirit of co-operation—I think this committee generally does work quite co-operatively—I'm going to vote for seven meetings. Of course, I think two days for clause-by-clause study is ample time, but obviously we'll know when we get to it.

If it's okay, and we can have consensus, then we can move forward to have the study on Bill C-5 completed on the 13th, with clause-by-clause consideration and amendments on the 17th and 20th. I don't know what the protocol is, but if it's 24 hours ahead—

The Clerk: It's 48 hours.

Mr. Gary Anandasangaree: What happens on the weekend?

The Clerk: It's more tricky there. I will have to check.

A voice: The sooner the better, right?

The Clerk: Yes.

Mr. Gary Anandasangaree: I guess the amendments would be submitted by the end of the day on the 13th.

The Chair: I think the clerk asked if we could get amendments by the 11th or 12th, but I guess it would be the 13th.

Do we have consensus for seven meetings?

I see some nods.

[*Translation*]

Mr. Rhéal Fortin: How many witnesses are we going to hear per meeting?

[*English*]

The Chair: If there are six per day times three, then it would be 18, or roughly 18.

[*Translation*]

Mr. Rhéal Fortin: So who are the six witnesses on the list we're going to tell we won't be hearing them? Have we already identified them?

The Clerk: It's done by invitation. I won't have to tell them they won't be appearing, since they haven't been invited. Obviously, that's not my decision. I do what the committee tells me to do.

Mr. Rhéal Fortin: I don't know how everybody does it, but the reason I put a witness on the list is that I have spoken to them and they are prepared to testify. So they're waiting for you to call them, since I'm not the one who issues the official summons, it's you. If the witnesses aren't waiting to be summoned, I imagine that's not as bad, but if that's the case, it's not an ideal solution.

I see that a number of witnesses have asked to be summoned. Maybe they are the ones we will decide not to invite, if that's the case.

The Clerk: I'll explain how I proceed. I always send you the list of people who are asking to appear and the list submitted by the parties. Sometimes, they don't match. There are people who are asking to appear, but their names aren't on any list. So those people aren't invited. I only invite the people whose name appears on the lists given to me by the parties.

Mr. Rhéal Fortin: Right.

[*English*]

The Chair: Monsieur Fortin, I think we have consensus—I saw nods—for seven. We'll do that.

Last, in regard to a trip, I think the deadline is Friday for me to submit. I had sent it out to the vice-chairs. I didn't hear back, but I spoke to both of them.

I'll send you details of a proposed trip, which we can amend. If we can agree to submitting that by Friday, that would be the other course of business. I'll submit that by the end of tonight, or in the morning, if I can, and then we'll go from there.

Go ahead, Mr. Anandasangaree.

Mr. Gary Anandasangaree: Just to clarify, maybe the clerk could give us the specific timeline for the amendments to be submitted.

The Clerk: I'm not sure. When will we begin the clause-by-clause study?

The Chair: We will go on until the 13th, I think.

The Clerk: With witnesses included?

The Chair: Yes. Then clause-by-clause will be—

The Clerk: It will be on the 17th.

The Chair: Yes.

A voice: Until the 20th.

Hon. Rob Moore: Again, just so we're clear, if we're not done on the 20th, then we're not—

The Chair: Then you will have to [*Inaudible—Editor*].

Hon. Rob Moore: [*Inaudible—Editor*] Yes—for the record.

The Chair: I'm hoping not to come back in the break week to do it, but we'll try to....

The Clerk: Let me clarify that. I will send an email first thing tomorrow morning to all members.

The Chair: Okay.

If there's nothing else, that concludes the meeting. We'll see you on Friday.

The meeting is adjourned.