House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 027 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Monday, June 1, 2009

Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

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

This is meeting number 27 of the Standing Committee on Justice and Human Rights. Today is Monday, June 1, 2009.

You have today's agenda before you. We have three items to deal with.

During the first hour, by order of reference of Monday, April 20, 2009, we will be considering, clause-by-clause, Bill C-25, An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody).

During the second hour, also by order of reference of Wednesday, April 22, 2009, we'll be hearing witnesses on the private member's bill, Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years).

After our regular meeting, we'll be meeting with a delegation of MPs from the Parliament of the Czech Republic. This will be an informal meeting with dinner, after we've adjourned the main meeting.

I want to remind you that this meeting is televised.

We'll move on to clause-by-clause on Bill C-25.

We'll postpone clause 1, which is the title, I believe, Madam Clerk, and move on to clause 2.

(On clause 2)

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chair, I have just one question about this bill.

I am sure members will recall that reducing the number of two-for-one credits is a measure that the Bloc Québécois has been calling for since 2006, so we support this bill. Clearly, the rule we wish to see applied is a sentence credit of one day for each day spent in custody. When the judge deems it appropriate, he or she will be able to grant a sentence credit of one and one-half days for each day spent in custody, but I would like to know why we would want it stated in the record. In the past, it was not stated in the record, and when parliamentarians requested data on how widespread the practice was of granting sentence credits—an approach suggested by Madam Justice Arbour in the Supreme Court decision's in Wust—they were not able to obtain that information.

Do you have any statistics on the extent to which sentence credits are used? Could you also explain what it means to have those credits stated in the record?

Since I have just the one question, you will enjoy peace and quiet from me, Mr. Chair, for the rest of the provisions.

[*English*]

The Chair: *Merci, monsieur Ménard.*

I just want to note, for committee members, that we have with us David Daubney, general counsel with the criminal law policy section of the Department of Justice.

Mr. Daubney.

Mr. David Daubney (General Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chair.

With respect to Mr. Ménard's first question, one of the things we wanted to capture is related to one of the elements of the bill and one of the government's platform commitments going back to the 2006 election. If one of the reasons the justice of the peace, or justice, declined to allow the accused to serve his time in the community was because of his record, we needed to capture that reason.

The problem is that in busy bail courts, the JPs—or justices in some provinces—rarely give detailed reasons. If they do, it's often only to refer to the grounds for judicial interim release in the Criminal Code, section 515. We felt we had to capture that so we could build a record going forward. If this was a primary reason for denying bail, then we had to get the justices to make a note of that, to indicate that. That's the reason for clause 2.

I should say that we've had some discussions with the provinces. I chair a federal-provincial working group on sentencing. I think provincial jurisdictions, where this would mostly play out, will recognize that they will need to do a bit of training of justices of the peace.

● (1535)

[*Translation*]

Mr. Réal Ménard: So, it happens when the individual appears in court. Usually, in the legal system, the rule is at the time of release, except as set out by section 515. The justice is the one who will have to indicate the reason he or she wants to make use of an exception authorizing a sentence credit ratio of 1.5. Therefore, it is the justice who will keep those statistics.

[*English*]

Mr. David Daubney: It's the justice of the peace who will make the decision as to whether or not the individual will be released. It's the sentencing judge who will deal with the credit issue if the person has been in custody until the trial and sentencing.

I may not have understood your question correctly.

So there are two different decisions that are made: one at the bail stage by the JP and the other by the sentencing judge at sentencing. He will need to know whether or not the reason the JP sent the person to remand custody was because of the matter of his record. The other matter that appeared in the government's platform and is covered in the bill relates to whether or not the individual breached a condition. That's dealt with by the amendment to section 524.

[*Translation*]

Mr. Réal Ménard: Justice Arbour suggested the sentence credits. If I understand correctly, the department does not have any statistics to give parliamentarians on these credits and the extent to which they have been used by the various courts.

[*English*]

Mr. David Daubney: Actually, we're in the process. Our research division is trying to get access to the court files that would indicate more precisely than sentencing decisions do the amount of credit that's awarded. So far, we have information from the Yukon Territory and also from the City of Winnipeg. We hope to get more coverage.

What we've seen to date shows that certainly two for one is the norm, but it actually, in those jurisdictions anyway, only worked out to about 75%, so judges are starting to award less than two for one, and occasionally—very rarely now—more than that if conditions are really deplorable. It's not uncommon in the Yukon, for example, to get one and a half for one, because the offenders are accommodated in the same facility. They have access, if they wish, to the same level of programming.

The Chair: Thank you, Mr. Ménard.

Do we have any further discussion? Seeing none, I'll call the question.

(Clause 2 agreed to)

(On clause 3)

The Chair: The NDP has two proposed amendments. Let's deal with NDP-1.

You have that before you. Mr. Comartin, you're presenting that.

● (1540)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

I'm assuming other people got this letter from the Canadian Council of Criminal Defence Lawyers, from Mr. Trudell, seeking from this committee a decision not to proceed with Bill C-25 at this time. I'm not expecting that to happen, given the government's political engagement in the bill. But what it does highlight and what I would like to highlight is that this bill was prepared in circumstances where clearly—it's clear to me anyway—the government did not understand the implications of the bill.

We saw that most clearly put forward in terms of its implications, still with a number of unresolved issues to my mind, but very clearly from the evidence we heard from Professor Doob, that in fact it had all sorts of anomalous consequences, and that chart he prepared showed various examples. I believe most members of this committee certainly did not understand that. And I say that in all humility because I didn't fully understand them until I heard that presentation.

As well, I think this bill was prepared on the basis that defence counsel regularly advise, and the accused regularly accept the advice, that it is better to run out pretrial custody, by way of adjournments, so that you end up with a shorter sentence at the end. Again, both from the evidence we had from Professor Doob and from the lawyers, that clearly is not the case. In fact, the government could not point to any empirical study to show that that in fact was happening. It's a myth, quite frankly, that this is the reality. It's simply not happening. But the government didn't seem to appreciate that. And I say that in light of understanding that I believe most of the attorneys general and solicitors general from the provinces also believe that. But there isn't one empirical study that shows that, in fact, that is happening.

We also know—and we heard it from one of the prosecutors—that in fact the system is controlled by the judges. So adjournments are not given lightly. In most cases, the adjournments are being given around disclosure problems, not around defence lawyers trying to prolong pretrial custodial periods.

It's one of these bills that have come forward, and I don't believe it should be here. But I don't expect this committee to adjourn without proceeding with it, so I've brought these amendments forward because I think it at least resolves some of the major glaring problems with the bill as it's presently composed.

It was quite clear from Professor Doob's evidence—and we also heard it from Mr. Head from Correctional Service Canada—about the impact this will have on increased time in the federal prisons. We have no estimate. We don't know that and nobody on this committee knows it, but the reality is that the impact at the provincial level is going to be even more severe. But it was fairly clear from Mr. Head's evidence that at the federal level we are going to see an approximate 10% increase in the level of incarceration on an annual basis.

We do not have the ability to cope with that. We are way oversubscribed in terms of residential settings in the federal prison system. If that's a problem with the federal system, we can only imagine how much worse it's going to be at the provincial level if this bill goes through as presented.

What I'm proposing in the first amendment, which is to proposed subsection 719(3.1), is that the one day, being the standard that we're now going to impose with minor exceptions—which come in the next section—be increased to one and a half days. That would then become the standard.

● (1545)

I think Professor Doob was being as honest as he could with regard to this, and I think we've just heard it again from Mr. Daubney, that this is closer to what the reality is on average in the country, that it's closer to one and a half days for each day in pre-sentencing custody. So I think we need to bring that in line with the reality of what happens in most cases, and that's what the first NDP amendment would do.

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I wanted to ask Mr. Comartin a question about his amendment, if I could.

Steer me clear, as you have now for three and a half years, if I'm wrong, but I think the effect of the amendment is to take the one-day discretion—there's no discretion, it's one for one—in proposed subsection (3) and give the judge a discretion up to 1.5. The judge still may order one. I'm curious as to what it does to proposed subsection (3.1), which by your amendment would stay. It was that escape valve in the legislation to go to one and a half days, as it says, in circumstances; let's put it that way.

To use your logic, why didn't you go to a higher number of days in proposed subsection (3.1)?

Mr. Joe Comartin: Because I expect what'll happen if the first amendment goes through is that one and a half would then be the standard imposed by this legislature. We then are reserving discretion to the judge, but only up to a maximum of two for one.

Mr. Brian Murphy: In the second amendment?

Mr. Joe Comartin: In the second amendment.

Mr. Brian Murphy: So you would see no logic in supporting the second amendment if you didn't support the first one?

Mr. Joe Comartin: Well, no, you could still do the second amendment.

Mr. Brian Murphy: That you'd have one and two.

Mr. Joe Comartin: Then you'd have one and two.

Mr. Brian Murphy: All right. On this amendment, I have just this brief comment.

I think Canadians, the public, want to know that one means one, and I think when a judge sees that and orders that, that's what they want the judge to say. There's a lot of talk around here about judges and their accountability and their discretion, and there are different points of view on that. However, this is a very clear message to judges that one shall mean one. The only footnote I would put to it—I'm not sure I'm supporting these amendments—is that the evidence appears to be that in all sentences given, close to all, over 98% of sentences, whether in remand facilities, provincial or federal facilities, the statistics seems to be that two-thirds of that time in all of those sentences is served.

It would be a bit disturbing to me as a lawmaker, as this rolls out, which is why I think the Department of Justice and the government must monitor this bill carefully, that the person on remand would possibly, if one equalled one, serve more time at the end of a sentence if he or she were remanded for almost the entirety of that sentence, as given, than a person who, on the first day available, pled guilty and would receive, according to the statistics, two-thirds of the time.

Mr. Daubney, I don't know if you have any evidence to counter what Dr. Doob presented last time by way of that analogy, but the glaring inconsistency of having someone on remand serve more time than a person normally convicted of an offence troubles me. Do you have anything to offer on that?

Mr. David Daubney: Not really. That is one of the problems. The jurisprudence points to three factors that justify some enhancement of the time spent. One is this one that you bring up, which is going to apply universally to all these offenders now, and that is that there is this loss of remission in the case of provincially sentenced offenders and loss of parole in the case of federally sentenced offenders who have been on remand. That is the one reason; the other relates to conditions, and the other relates to a lack of programming, and so on. Some of the conditions are pretty harsh.

So I don't dispute the evidence you heard the other day.

● (1550)

Mr. Brian Murphy: Okay. That's all I had.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I also have reservations about this amendment. Clearly, I understand that defence lawyers are generally against it, which comes as no surprise. Not to mention any names, of course, I am talking about defence lawyers, those of today and yesterday.

I have two questions for the Department of Justice official. Why is there a one-to-one ratio? What was the rationale for suggesting that ratio?

However, if we pass Mr. Comartin's amendment, realistically, what effects can we expect to see?

[*English*]

Mr. David Daubney: The direction we had from our minister and from the government generally was to prepare a bill based on one to one, with an opportunity to go up to 1.5 if the circumstances justified it. Frankly, its impact will be that courts trying to do justice will find that in many cases the circumstances do justify something between one to one and 1.5 to one, but we'll have to see how that plays out.

Were you to adopt Mr. Comartin's suggestion and change the starting point to 1.5 to one, it's pure speculation on my part, but it might end up being the actual credit granted. At least courts would know that the parole remission issue was dealt with. That can actually be dealt with arithmetically. I think Dr. Doob suggested a different figure, but sometimes courts will give 1.3 to one where their only concern is lack of parole. So 1.33 to one would be the more accurate number arithmetically.

I think judges will try to the right thing. Another possibility is that they will lower the sentence they would have given in order to somehow take into account any unfairness.

[*Translation*]

Mr. Réal Ménard: Can the parliamentary secretary tell us whether the government supports this amendment?

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks for the question.

No, we don't. We brought in this initiative so people would know that someone would serve each day they were sentenced. That's why it's one to one. We've explained the benefits of that. That's why the bill is supported by many groups as it is.

As was pointed out, there is provision, if the judge feels it's warranted, to increase that amount. But the standard default, barring some circumstance that would warrant it, would now be one day for each day sentenced. We brought it in for that certainty—so people would know the type of sentences individuals were going to get, and that they would serve the sentences they got.

Mr. Norlock pointed out a couple of fairly egregious cases to me just a few minutes ago, where someone served very little or no time at all after being sentenced because of the two-for-one or more credits. So that's what we're trying to move away from.

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): The good thing about our system is that the courts and the judges try to act dispassionately when they take into account serious things that have happened. But when we listen to the defence, the bar association, etc., and look for more statistics that are very difficult to obtain because of the way the court system is, I think it's necessary—even though they're anecdotal—to bring a couple of specific references so we can get our heads around the issue.

In this case the accused's surname was Nakpamgi. He was convicted of child sex trafficking. He made $360,000 by using and abusing a girl. He bought himself a nice home and a car. This is the important part to remember here: he was sentenced by Justice Atwood in Brampton to three years on the count, but when his pretrial custody factor is taken into consideration, he will spend less time in jail for this conviction than he spent exploiting this vulnerable girl.

In another case of human trafficking, when the two-for-one credit was taken into account the person served only a single week in prison after his conviction.

These are some of the reasons why people in our constituencies want us to bring in legislation like this. It isn't that judges aren't doing what they're supposed to; they're doing what the law says they're permitted to do in jurisprudence. But based on these issues and what our constituents are telling us, we want to give everyone some direction, because we're responsive to the will of our constituents.

● (1555)

The Chair: Is there any further discussion? We're dealing with NDP amendment 1.

Mr. Joe Comartin: Am I entitled to summarize?

The Chair: Yes, please.

Mr. Joe Comartin: This is on both what we heard from Mr. Daubney but specifically from Mr. Norlock.

We are supposed to be here from a dispassionate point of view. But I have to say that if you want to take that into account, think about what's going to happen as the judges look at this legislation, see their discretion curtailed, and still see all the problems of people being in pretrial custody in situations that are inhumane. Think about the number of cases we're going to have in which people are not going to be sentenced to any time at all once the conviction is entered and the sentence is given—because the court is, and the judges are, in fact, I believe, going to look at this. They understand both the provincial law and the federal law about remission and eligibility for parole. They understand the comparative between somebody who has been remanded into custody and somebody who has been out on bail. And they're going to take that into account. They're going to, in effect, work their way around this legislation. But then what is going to happen is that I'm going to have constituents, and Mr. Norlock is going to have constituents, and all of you are going to have constituents, who are going to say, "How could this possibly happen? How could this person, committing that offence, not get any jail time at all?"

That's how they're going to see it. That's going to be the consequence. I think that's the way our judges will work it out. Both provincial court judges and superior court judges will work it out that way. It does not leave us, as policy-makers, as lawmakers, or as representatives of our people, in any better position to answer the question of how that could have happened.

The Chair: Thank you.

Monsieur Lemay, Mr. Comartin was wrapping up.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I want to come back to the other amendment.

[*English*]

The Chair: I'm going to give you enough time so we can do this properly. At the same time, we do want to move ahead with this.

Go ahead, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: As a defence lawyer, I am a bit worried by what Mr. Comartin just said, and I would like some reassurance from Mr. Daubney.

Mr. Norlock just gave us a theoretical example of a case. Pursuant to clause 3 of the bill, which replaces subsection 719(3), the judge could decide that an individual should receive a sentence of two years' imprisonment for the crime committed, but since that person is in pre-sentencing custody, the judge just sends him on his way. That happened in a mob boss case. I will not name names, but the person was in custody, and the judge said that if it were strictly up to him, he would give the individual a three-year sentence, but since the person had been in pre-sentencing custody for three years, the judge sent him on his way. It happens.

● (1600)

Mr. David Daubney: Yes, it happens.

Mr. Marc Lemay: Yeah.

[*English*]

The Chair: All right. Is there any further discussion?

I will call the question on amendment NDP-1.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Comartin, you also have a second amendment. Would you like to introduce that?

Mr. Joe Comartin: This one, in addition to increasing with the current amendment, within the judge's discretion, up to 1.5 to one, increases it to two to one. It also removes the provision that is contained on page 2 of the bill. It was "detained in custody under subsection 524(4) or (8)". It's removing that provision as well.

We again heard evidence, on the final day that we had testimony, of the fairly substantial grossly unfair results if that provision were left in. In situations where a person was in custody, pretrial, was charged again, but then got acquitted of the first offence, it was going to have a very negative impact. It just wasn't logical. Again, it's the kind of thing that I believe should be in the discretion of the judiciary as to whether they're going to take into account the subsequent charge. That will vary, depending on whether the person is convicted of the first one, how relevant it is, all sorts of considerations. It's not the kind of thing that we as legislators can do with any kind of certainty that we will have justice coming out of it. That's really one of the areas we have to leave to judicial discretion. That's why my amendment removes that particular provision.

The second part goes back to the same arguments I made on amendment NDP-1, the consequences of not allowing this discretion. Again, I recognize that I am putting limits on it so we'll no longer see the 2.5- or three-to-one ratios being granted. We're closing the door on that by this amendment if it were to pass, but it's still necessary for the courts to have that extra discretion. I put in here, as does not exist in the code at this point and didn't exist in the amendment that the government brought forward, that the negative impact on the person as a result of the detention in custody is one of the considerations, and any other considerations that are relevant—again giving the judge the discretion to look at issues.

Because of that, I would expect that some of the jurisprudence we already have would be looked at again, but we may see clearer jurisprudence evolve over the next number of years if this were to go through. Courts, appeal courts in particular, would be setting out clearer criteria that the trial judges should be taking into account when they're making a determination as to whether these circumstances justify extending the two to one to the particular accused.

The Chair: Thank you.

On the speaking roster, we have Mr. Murphy and then Mr. Rathgeber.

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

Maybe how this thing got off the rails is that subsection 719(3) as it was didn't have any reasons required. Other parts of the code do. Justices must give reasons for doing certain things.

This bill, in proposed subsection 719(3.2), says, "The court shall give reasons for any credit granted", and I think Mr. Comartin is right. In time, whatever happens, there'll be jurisprudence set out as to why judges are granting whatever credit they are.

What concerns me is the word "benchmark". I think we know now that the benchmark might be one. If we go with Mr. Comartin's amendment, it can be no more than two. I'm struck by what Mr. Daubney said as well. I doubt that the judgeometer would automatically go up to two. I think they'll reserve that with their discretion and calibrate what's going on in the institutions, the impact on the individual, and all that sort of thing, somewhere between one and two.

My concern in voting against Mr. Comartin's first amendment is, frankly, that the starting point becomes 1.5 days, if you legislate it. So I'm a little more amenable to the two days, but I'll ask Mr. Comartin if he thinks he has covered everything that's in proposed subclause 719(3.1). That talks about 1.5 days relating to individuals detained, stated under subsection 515(9.1), or detained in custody under subsections 524(4) or 524(8). Is this covered in your proposed subsection 719(3.1)?

● (1605)

Mr. Joe Comartin: No, I have removed the latter part of the existing government amendment.

Mr. Brian Murphy: Then refresh my memory about what subsections 524(4) and (8) and subsection 515(9.1) have to do with your new amendment.

Mr. Joe Comartin: I'm simply removing them, because we heard the impact they were going to have in situations in which you have two consecutive charges some distance apart, if the particular person were acquitted of the first offence.

Mr. Brian Murphy: Mr. Daubney, do you think that with this mix...? We now know that it is probably going to be one, as the starting point, because Mr. Comartin's first amendment was defeated. That becomes the starting point. Do you see this amendment of Mr. Comartin's as being the new benchmark, or do you see it as somewhat of a reserve for judges to use in egregious cases of bad conditions and all that sort of thing?

Mr. David Daubney: It creates a window, or I should really say a door—quite an open, wide door—for judicial discretion. I am concerned that it doesn't cover the long record of the person or the breach of conditions, something that the government would like to retain, for sure. And frankly, I have some technical problems with it.

I think in part, Mr. Comartin, what you're trying to do here is expand upon the words that we chose to use in drafting the bill: "if the circumstances justify". As you know, the more common expression in the Criminal Code is "in exceptional circumstances", but we deliberately didn't use that here because the circumstances won't be that exceptional; they'll be fairly common and, in the case of the parole loss and the remission loss, will be universal.

I'm just not sure that trying to expand on this works, because you have conditions specified in the order for the person's detention, so the decision the JP makes isn't necessarily going to speak to conditions, other than that he'll be sending him to the remand centre or to a remand centre in his community.

The second element you have is "any negative impact on the person as a result of that detention". Well, obviously for everyone detention has a negative impact. Also, you are making it personal to each individual offender. That's going to eat up a lot of court time. You're going to have to hear some kind of evidence as to what that impact was and whether it disproportionately affected a particular offender.

Then you have the basket clause, which is fine.

I can't really go further than that. It's really a policy decision.

The Chair: Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

I will be voting against this amendment. The purpose of Bill C-25, the Truth in Sentencing Act, is to set the benchmark for pretrial custody, from what we understand to be a standard two to one in most cases and in exceptional cases three to one—to reduce that standard or, to use my friend Mr. Murphy's terminology, benchmark to one to one.

There is still discretion left to the judiciary to satisfy Mr. Comartin's concern, in that in exceptional circumstances—if the sentencing judge believes the pretrial conditions were exceptionally overcrowded, or for some other extraordinary reason—the judiciary still has the discretion to grant a ratio of 1.5 to one. But the purpose of this bill is to reduce the in-practice standard, which we heard many times was two for one, to one for one.

So with all due respect to Mr. Comartin, I think this amendment, if it were to pass, would completely eviscerate the bill and its purposes. Certainly judges who are not deferential to Parliament's attempt to curtail their discretion would continue to routinely grant the"two for one, which they would legally be able to do if Mr. Comartin's amendment were to carry. So I will be voting against it.

Thank you.

● (1610)

The Chair: Thank you.

Is there anybody else? Seeing nobody, I will call the question on the second amendment, NDP-2.

Yes, Mr. Comartin. Would you like to wrap it up?

Mr. Joe Comartin: Yes.

Your predecessor usually would come back to the person moving the motion and give them the opportunity. So I was assuming I didn't have to signal to you that I wanted to do that.

The Chair: I'll ask you to signal me, just to remind me. Thank you.

Mr. Joe Comartin: Thank you. I will do so in the future.

I really want to respond to some of the points Mr. Daubney raised.

Certainly, having spent time with the person who helped draft this, I don't have any intention of changing the criteria. The government used the terms, "if the circumstances justify it", and I put it as "if it is justified by the circumstances". My intent is the same as the government's.

Flowing from that, and in terms of that intent, my reading of the proposed subsection, as it is, was that it was in fact going to impose on prosecutors a much greater burden to call evidence. Again, I don't see my wording as changing that.

If the amendment presented by the government passes, courts are going to have to take more evidence in order to justify that the circumstances exist to move it up to something close to or at 1.5. I don't think that's going to change.

On the final point about my personalizing this, it's part of the basic principles of sentencing that all criminal sentencing has to be done on a personal basis. So I'm not changing anything in terms of standard sentencing principles in this regard.

The Chair: All right. I'll call the amendment, then.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): I have a question on proposed subsection (3.4). I'm not very familiar with the principles of drafting, but this seems somewhat anachronistic to me.

First, you impose a mandatory obligation on the judge to provide reasons in those circumstances where the judge raises it to one and a half days. And then you allow the judge to ignore it, in a sense. Is that because the judiciary may have complained to the civil service that there might be too many reasons to write? Why is it being done that way? First you impose an obligation, and the government makes such a big thing out of it that they want judges to give reasons, and then you give them a loophole.

I'm not opposed to it. I just want to know what the rationale is.

Mr. David Daubney: Well, as you point out, we have a number of places in the code where reasons are requested. In fact, when Bill C-41 came into force in 1996, it imposed a general obligation on courts to give reasons for sentencing. But what we're trying to do—and we've done it in part XXIII of the code before—is not to make it overly burdensome for the courts. This will allow them to give the reasons, but to convey them by recording them on the court record, as opposed to necessarily providing a sentencing decision in detail.

But may I just take this opportunity to say that what we wanted to do in proposed subsection (3.3) was to make this step-by-step approach public, because one of the findings of research over the years in this area has been.... And it's really what started the public concern about it, I guess, in that the public and the police don't realize the gravity of offences if, as is the case now, they are only looking at the residual sentence, if you will. This was particularly important in CPIC records, so that a police officer....

The reason we wanted to make sure that the amount of credit they're given, and the amount the judge would have given had the person been in the community, is conveyed to police officers, prosecutors, and the general public was to ensure that in terms of future offending there's a more realistic statement of the nature of the offence.

● (1615)

Hon. Ujjal Dosanjh: If I understand you correctly, you're saying proposed subsection (3.3) actually alleviates some of the concerns. Then why say "shall" in the reasons?

Mr. David Daubney: This codifies an agreement we reached with the provinces years ago to do this. We just never had a vehicle to implement it until a decision was made to move on this general issue.

Hon. Ujjal Dosanjh: That's proposed subsection (3.3) you're talking about.

Mr. David Daubney: Yes.

Hon. Ujjal Dosanjh: But if it satisfies the concerns, why make it mandatory for them to give additional reasons? If you take proposed subsections (3.2) and (3.3) and add them together, they make formal reasons, and also the stating of the circumstances in proposed subsection (3.3).

It would have been okay to simply have proposed subsection (3.3), from what you're saying.

Mr. David Daubney: Actually, proposed subsection (3.3) won't deal with the circumstances so much as the arithmetic.

Hon. Ujjal Dosanjh: Exactly, but those other circumstances....

Mr. David Daubney: They first have to state what the offence is. Form 21, the warrant of committal, sets this out as well. It's attached to the bill to make it clear to judges how this will work.

So you state the offence, the amount of time a person has spent in pretrial custody, the sentence the judge feels would have been imposed had the person not been in pretrial custody—that's the particular thing we want to get out—and the amount of credit granted. Then there's the actual sentence. It's in the actual sentence that the residual amount of time for subsequent things are determined, like parole, and so on.

Hon. Ujjal Dosanjh: From my perspective proposed subsection (3.2) is politics, and proposed subsection (3.3) is the essence of what change you were looking for; therefore, proposed subsection (3.2) doesn't need to be here. But we want judges to give reasons, although you give them a loophole to not give reasons.

Mr. David Daubney: I guess we disagree on that, and I shouldn't comment.

Hon. Ujjal Dosanjh: I'm not asking you to answer.

Thank you.

(Clauses 4 to 6 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the formal title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

An hon. member: On division.

● (1620)

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: That's it. The bill is done. Thank you, gentlemen.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Did we adopt the last motion that the committee would order a reprint of the bill, as amended, for use by the House?

[*English*]

The Chair: It's not required, because we haven't amended the bill at all.

Thank you.

I'll suspend for a few minutes while we allow our one witness to leave.

● _____ (Pause) _____

●

● (1625)

The Chair: I reconvene the meeting.

By order of reference, we are now going to hear witnesses on a private member's bill, Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years).

We're pleased to welcome our three witnesses. We first of all have the sponsor of the bill, Joy Smith. We also have Natalie Levman, representing the Department of Justice; and Dianne Watts, representing REAL Women.

We will start with Joy Smith first, as the sponsor, and then we'll have the Department of Justice give a brief review of the bill; and then, Ms. Watts, you will have an opportunity to speak to the bill as well.

Ms. Smith, the floor is yours.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you, Mr. Chair.

I want to thank the members of the Standing Committee on Justice and Human Rights for allowing me to make this presentation. Indeed, it's an honour for me to be here in front of you people.

The trafficking of a person, ladies and gentlemen, is a horrific abuse of human rights. The trafficking of a child is even more severe. Canada remains one of the few developed countries that does not have enhanced penalties for the trafficking of children. Bill C-268 was drafted with one goal, to ensure the sentences of the traffickers of children reflect the gravity of the crime.

The first two sentences involving child trafficking in Canada resulted in approximately one and two years served after credited pretrial time served was factored in. As such, traffickers are currently able to continue making hundreds of thousands of dollars from the exploitation and rape of children without much threat of serious sanction.

I have put forward Bill C-268 to amend the Criminal Code to address the critical legal aspect of child trafficking and to bring parity between Canada's legislation and that of many other countries. I have commended the previous Liberal government for bringing the initial human trafficking legislation under section 279.01 of the Criminal Code. This legislation has provided important tools for our police officers, prosecutors, and judges. Yet this legislation, while allowing for sentences of up to 14 years, and life in some cases, also has a minimum of zero years. One would assume that for such a horrific crime as human trafficking, lenient sentences would not be an issue. However, Imani Nakpamgi, who was the first person in Canada convicted of human trafficking involving a minor—and I must commend the member of Parliament Rick Norlock for mentioning this in his previous presentation at this committee—received a three-year sentence for the trafficking of a 15-year-old girl but was credited 13 months for pretrial custody. He made over $350,000 sexually exploiting her over two years before she was able to escape. Essentially, he will spend less time in jail for this offence than he did exploiting her, and if you ever had a chance to read her impact statement, it's absolutely heart-rending.

Last year, Montreal resident Michael Lennox Mark received a two-year sentence, but with a two-for-one credit for the year served before his trial, the man who horrifically victimized a 17-year-old girl spent only a week in jail after his conviction. With precedent-setting convictions like these, one wonders what a trafficker would have to do to get 14 years or life.

Most recently, a third conviction has been obtained for trafficking involving minors. Last month a Gatineau women was given seven years for trafficking three girls from Ottawa to Gatineau.

Ladies and gentlemen, this is 10 minutes from Parliament Hill, the seat of government for Canada. They were drugged, beaten, raped, and tethered to objects during their captivity. Two of these girls were subjected to this for six months, and one for a whole year, before their rescue. What this conviction shows is that there is at least one judge who understands that serious crimes against minors require serious sentences, but this standard must be consistent all across Canada.

The courageous officers in the Peel Regional Police Department have taken human trafficking head-on since the implementation of Canada's human trafficking legislation. They were responsible for Canada's first trafficking conviction and are currently investigating almost a dozen cases involving minors. I have to say you can read the letter that the chief of the Peel Regional Police Department wrote to me in support of this bill. The chief of the Peel Regional Police has said, and I quote:

> Efforts by police officers across Canada to enforce this law are impressive, yet they are overshadowed by the disturbing number of occurrences that involve victims under the age of 18.
>
> Establishing minimum sentences, as proposed by Bill C-268 would raise the law's deterrent goal, and highlight society's abhorrence of crimes that involve child victims.

That is from the chief of Peel Regional Police.

● (1630)

Allow me to point to Canada's international legal obligations. In 2005 Canada ratified the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Article 3, subsection (3), states:

> Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

As I have noted, the sentences so far in Canada have not been consistent with this protocol.

Further, Dr. Mohamed Mattar, executive director of the Protection Project at the Johns Hopkins University School of Advanced International Studies, points out:

> Many states have specific provisions in their antitrafficking legislation or criminal codes guaranteeing enhanced penalties in cases of trafficking in persons committed under aggravated circumstances, including a crime committed against a child victim...

That is the purpose of this bill, ladies and gentlemen. Canada must have enhanced provisions for trafficking of persons when the victim is a minor.

In the U.S., the minimum is 15 years if the victim is under 14 years of age, and 10 years if the victim is under 18 years of age but over 14 years. In Thailand they have a minimum of five years for child trafficking. In the Dominican Republic, five years is added to the minimum of 15 to 20 years if the victim is a child.

The international community has also called for Canada to enact mandatory minimums for child trafficking. Last October the *Report of the Canada-United States Consultation in Preparation for World Congress III Against Sexual Exploitation of Children and Adolescents* urged that Canada enact a mandatory minimum penalty for child trafficking.

Also, the former director of the U.S. State Department's Office to Monitor and Combat Trafficking in Persons and current executive director of the Polaris Project, Ambassador Mark Lagon, has said,

> Protection requires both providing necessary support and assistance to these children and removing the most dangerous predators from the street for a very long time.

Bill C-268 will ensure that the sentencing process consistently recognizes the gravity of this violent crime.

I do appreciate the strong support I have received across party lines for this bill. Human trafficking must remain a non-partisan issue. This bill is jointly seconded by members from three parties and, as you know, during the vote on April 22 received near unanimous support from the Conservative, Liberal, and NDP parties. This support is encouraging. When it comes to the protection of our children, nothing should unite us more.

I am disappointed that the Bloc, with one honourable exception, has chosen to stand against this important legislation. They are the sole organization and entity in Canada that has voiced opposition to legislation that upholds our commitments to the UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This legislation has received strong support from all across Canada, from law enforcement, victims' service organizations, NGOs, and first nations. Strong support for this has especially come from Quebec, and as you know, a detective from Quebec presented to MPs and talked about the issue of human trafficking in Quebec, particularly around Montreal.

I also want to note that I am proposing an amendment to the bill. It was pointed out by the Bloc during second reading that there is no minimum sentence for aggravated offences under proposed paragraph 279.011(1)(a) in my bill. This paragraph provides for an individual to be sentenced to life imprisonment, which means that he or she would only be eligible for parole after seven years. I have had an amendment drafted that is within the scope of the bill, which would amend section 279.011, subsection 1(a), to ensure there is no question that this paragraph also provides for a minimum sentence of five years. It is my intention that this amendment be moved during the clause-by-clause review by the Standing Committee on Justice and Human Rights, which I understand and hope will be on Wednesday of this week.

● (1635)

Thank you again for allowing me to speak about Bill C-268. It is my hope that members of all parties will support this important legislation and soundly denounce the trafficking of children. We know as members of Parliament that we have the power to move this bill forward or stall it. We are nearing the end of the session, and this bill must be returned to the House as quickly as possible. I intend to seek unanimous consent of the House to move the bill quickly through third reading if I feel it is possible that we have agreement on this committee.

With the upcoming Olympics and the uncertainty of a minority government, it is imperative that this amendment be successful. Canadians and the international community will take note whether Canada is unified against the exploitation of its children. Those who oppose it will not be forgotten.

Thank you.

The Chair: Thank you.

Nathalie Levman.

Ms. Nathalie Levman (Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the opportunity to provide the committee with some general information on the existing criminal law addressing trafficking of persons as well as the implication of Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), which proposes to impose a mandatory minimum penalty of five years for the offence of trafficking in children.

By way of background, and as the sponsor has already pointed out, trafficking in persons or human trafficking is often described as a modern-day form of slavery. It involves the recruitment, transportation, and/or harbouring of persons for the purpose of exploitation—generally sexual exploitation or forced labour. Traffickers use various methods to maintain control over their victims, including force, sexual assault, and threats of violence. Victims are forced to provide their services or labour in circumstances where they believe that their safety or the safety of a person known to them would be threatened if they failed to provide that labour or service. Victims suffer physical, sexual, and emotional abuse, including threats of violence or actual harm, which is compounded by their living and working conditions. Trafficking in persons may occur across or within borders and often involves extensive organized crime networks. Women and children are particularly vulnerable to sex trafficking and are by far its primary victims.

In 2005, three trafficking-specific indictable offences were added to the Criminal Code. Section 279.01 specifically prohibits trafficking in persons and imposes a maximum penalty of life imprisonment where kidnapping, aggravated assault, aggravated sexual assault, or death to the victim is involved, and 14 years in all other cases. Section 279.02 prohibits receiving a financial or other material benefit from the commission of the trafficking offence. This offence imposes a maximum penalty of 10 years imprisonment. Finally, section 279.03 prohibits the withholding or destroying of identity documents for the purpose of committing or facilitating the trafficking of a person. This offence imposes a maximum penalty of five years imprisonment.

In addition, numerous Criminal Code offences have always applied to trafficking cases, such as extortion, assault, sexual assault, forcible confinement, kidnapping, and prostitution-related offences, depending on the facts of the case in hand.

The Immigration and Refugee Protection Act also prohibits trafficking of persons into Canada.

As a result, today police and crown prosecutors can choose from a wide range of offences, as they deem appropriate in each case. They may choose to charge or prosecute under the new trafficking-specific offences and/or they may choose to use other trafficking-related offences that I've already mentioned. In fact, in most of the recent cases, we are seeing charges under both trafficking-specific and trafficking-related offences.

Regarding Bill C-268, its proposed reforms would create a new offence of trafficking in children that would mirror the existing main trafficking in persons offence in the code, that is, section 279.01. There is one exception: where the victim is under the age of 18, it would impose a mandatory minimum penalty of five years for the branch of the offence that carries a maximum penalty of 14 years, but not where the maximum penalty is life. The sponsor has already dealt with that and indicated what she proposes to do about it. The bill also proposes consequential amendments to ensure that, along with the main trafficking in persons offence, the proposed offence of trafficking in children is referenced in the provisions that deal with interception of communications, exclusion of the public from the court, publication bans, DNA, the sex offender registry, and dangerous offenders.

The effect of these proposed reforms would therefore include, first, treating the trafficking of any person under 18 years distinctly from the trafficking of an adult, in that the mandatory minimum penalty would not apply to the trafficking of an adult but would apply to the trafficking of a child; second, where the trafficking of the young person is for the purpose of sexual exploitation, for example, in the sex trade, the imposition of a mandatory minimum penalty would make the penalties for child trafficking more like the existing penalties that apply to the procurement of a person under the age of 18, which currently impose mandatory minimum penalties in three different circumstances.

● (1640)

First, the offence of living on the avails of child prostitution imposes a mandatory minimum penalty of two years and a maximum penalty of 14 years of imprisonment under subsection 212(2) of the Criminal Code.

Second is the offence of living on the avails of child prostitution where aggravating factors are present, such as violence, intimidation, and coercion. This offence imposes a mandatory minimum penalty of five years and a maximum penalty of 14 years of imprisonment under subsection 212(2.1).

Finally, there is the offence of obtaining, for consideration, the sexual services of a child or communicating for that purpose. This offence imposes a mandatory minimum penalty of six months and a maximum penalty of five years of imprisonment under subsection 212(4).

That brings us to Bill C-268 and its imposition of the mandatory minimum penalty for the lesser offence. As has been pointed out, this differs from the Criminal Code's usual approach to mandatory minimum penalties in two ways. First we'll take section 273, which is the aggravated sexual assault provision. It imposes a four-year mandatory minimum penalty when a firearm is used, and the maximum penalty is life. In a case where a firearm is not used, the maximum penalty is life and there is no mandatory minimum penalty.

In the case I just went over of a child prostitution offence, the more serious aggravated offence imposes a mandatory minimum penalty of five years, and a less serious offence imposes a lesser mandatory minimum penalty of two years. Police and the crown will still have the discretion to proceed under the charge or charges that are most appropriate to the facts of a given case, whether it be under trafficking-specific offences, including this new child trafficking offence, or others that I've already mentioned: child prostitution, forcible confinement, extortion, etc.

Recent cases have already been raised in the previous session and this one. The Gatineau case involved a woman who was charged with a specific trafficking in persons offence, assault, procuring, and living on the avails of prostitution, because as the sponsor has indicated, she forced three victims into prostitution, one of whom was under the age of 18. She pleaded guilty and received a global sentence of seven years.

The recent Nakpamgi case has already been referred to. It involved a man charged with a specific trafficking in persons offence, as well as living on the avails of the prostitution of a person under the age of 18. He pleaded guilty and received a sentence of five years: three years for trafficking in persons and two years for child prostitution, to be served consecutively.

I would like to thank you very much for taking the time to listen and for allowing me the opportunity to provide my comments.

● (1645)

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I rise on a point of order, Mr. Chair.

When the steering committee decided to fast-track the testimony of officials from the Department of Justice and other witnesses, contrary to the claim made by Ms. Smith—who told a white lie on camera by implying that this committee was going to block her bill—I do not recall the committee agreeing to hear from REAL Women of Canada. I do not understand why this organization is here today with witness status. Tradition dictates that witnesses be agreed upon by all committee members.

I would have liked to hear from the RCMP. I have nothing against REAL Women of Canada, but I fail to see how the sponsor of the bill decided.... I am a bit surprised, and I do not know what expert opinion this organization can bring to the table. If I had my way, I would have liked to hear from the RCMP. It seems to me that we are setting a dangerous precedent, if not a partisan one, and I would like to know when the committee decided to give REAL Women of Canada witness status.

[*English*]

The Chair: Monsieur Ménard, you may recall that some time ago the clerk sent out a request for witnesses on Bill C-268, as well as a couple of other bills we've been dealing with. Everyone at this committee table had an opportunity to present witnesses, and I think the understanding at this table was that we would hear witnesses on this bill.

Joy Smith, as the sponsor of this bill, is entitled to appear. You may recall that when I presented my private member's Bill C-277 a couple of years ago, I also had a representative of the Department of Justice here as a resource. That's why Ms. Levman is here. We also had a request to appear as a witness from Ms. Watts, representing REAL Women. We sent out a request for witnesses, so I don't believe it's inappropriate to hear witnesses on a bill that's very important to Canadians.

[*Translation*]

Mr. Réal Ménard: I suggested that we hear from the RCMP. I do not understand why REAL Women of Canada is here today, since the organization is not more knowledgeable in this area than the RCMP or other law enforcement agencies. Tomorrow, I am going to point out that I requested that the RCMP appear before the committee and that I do not understand why REAL Women of Canada is here today as a witness, when there are many other witnesses who should have been heard.

Let us proceed, but I will raise that point tomorrow at the steering committee, as I find this to be an extremely dangerous precedent.

[*English*]

The Chair: I don't see this as a dangerous precedent at all. I believe that it's entirely consistent with the process this committee and other committees use to address private members' bills.

[*Translation*]

Mr. Réal Ménard: What is happening with the RCMP?

[*English*]

The Chair: Monsieur Ménard, let me finish.

As I mentioned, we sent out a request for witnesses. I didn't receive anything from you formally asking the clerk. I've asked the clerk if she's received a formal request from you in writing, and there was nothing.

[*Translation*]

Mr. Réal Ménard: We can continue, but we asked that the RCMP appear as a witness.

[*English*]

The Chair: Monsieur Ménard, if in fact this committee wishes to call the RCMP to add additional information to this bill, we can always consider that. We'll have a steering committee meeting tomorrow. I hope we can resolve that. All right?

All right, we'll move on to the representative from REAL Women of Canada, Dianne Watts. You have 10 minutes.

Ms. Dianne L. Watts (Researcher, REAL Women of Canada): Thank you very much.

REAL Women of Canada is a national organization of women from all walks of life, occupations, and social and economic backgrounds. We recognize the family as the most important unit of Canadian society. We see the fragmentation of the family as one of the major causes of disorder in society today. We are cognizant of data that demonstrate that the stable family, especially within marriage, is the best environment for men, women, and children in terms of reducing poverty, fulfilling the social, health, and educational potential of children, and reducing crime and violence. We affirm the family as society's most important unit.

We promote the equality, advancement, and well-being of women. We support government and social policies that strengthen family life.

Considering human trafficking, which is unacceptable to Canadian families, we would like to add our support to Bill C-268. Human trafficking, which involves the recruitment, transportation, transfer, harbouring—

● (1650)

The Chair: Ms. Watts, could I get you to slow down a little bit? Our interpreters are having difficulty following.

Thank you.

Ms. Dianne L. Watts: We would like to add our support to Bill C-268. Human trafficking, which involves the recruitment, transportation, transfer, harbouring, or receipt of individuals for sexual or labour exploitation, is in our opinion modern-day slavery. The offence of human trafficking is one of the three most lucrative enterprises carried out worldwide by organized crime, outranked only by the trade in weapons and drugs.

According to the RCMP, 600 individuals annually are victims of human traffickers for sexual purposes in Canada; 800 individuals are victims for drug trafficking purposes, forced marriage, or domestic labour; and between 1,500 and 2,000 are transported across Canada for purposes of exploitation in other destinations, mostly the United States. The domestic trafficking of aboriginal and other women and youth from within Canada is a concern equal to that of the importation of individuals from abroad for the purposes of human trafficking.

Canada has made international commitments to oppose human trafficking. In the year 2000, Canada signed the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The state parties to the protocol state that they are "*Gravely concerned* at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography". The state parties believe the elimination of the sale of children, child prostitution, and child pornography will be facilitated by addressing, among other things, poverty, dysfunctioning families, and the trafficking of children.

I quote again from the protocol. States parties are "*Taking* due account of the importance of traditions and cultural values of each people for the protection and harmonious development of the child". As stated previously, the optional protocol, which Canada has signed, provides in article 3, section 3: "Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature".

In October 2008, the report of the Canada-U.S. consultation in preparation for the World Congress III against Sexual Exploitation of Children and Adolescents recommended that Canada "amend the Criminal Code to provide the mandatory minimum penalty for child trafficking and strengthen the sex offender registry".

In April 2009, the declaration of One is Too Many: A Citizens' Summit on Human Trafficking at the 2010 Olympics and Beyond called for "the effective prosecution of human traffickers, the protection of human trafficking victims, and the prevention of human trafficking in every instance". Summit participants advocated that Canada's Criminal Code reflect the fact that the crime of human trafficking should carry meaningful penalties. It is therefore urgent that Bill C-268 be enacted in order to be ready to offer protection in time for the 2010 Olympics in Vancouver.

Canada is a signatory to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, General Assembly resolution 55/25 of November 2000. This protocol approaches human trafficking in three specific areas: preventing trafficking, protecting the victims of trafficking, and prosecuting trafficking offenders.

As an NGO in consultative status with the Economic and Social Council of the United Nations, REAL Women of Canada is strongly supportive of Bill C-268, which would amend section 279.01 to provide for a minimum penalty. We support this for three main reasons.

First, we believe that a minimum sentence for trafficking will act to dissuade men and women from engaging in the exploitation and abuse of children. This would help to achieve the law's deterrent goals.

Second, the minimum sentence of five years for such a grave crime as trafficking of children will send a strong message that trafficking is not acceptable to Canadians. It will highlight society's abhorrence of this crime. This will help set standards of behaviour in keeping with our society's values of respect toward vulnerable children. And children are the future of Canada.

● (1655)

Third, without minimum standards and with wide-open discretion, sentencing often takes the form of a mild rebuke, which is out of proportion to the gravity of the offence and the horrendous suffering of the victims. This also fails to deter continued exploitation of the most vulnerable, who should receive our protection and not suffer from our neglect. We believe minimum sentencing should be even broader, to include all victims of trafficking regardless of age.

Regardless of political affiliation, we should do the right thing and join those around the world who are working to make a better world by preventing human trafficking, protecting victims, and effectively prosecuting those who would exploit and abuse children. This is a rare opportunity to protect vulnerable children, and Canadians across Canada, it seems to us, would want their legislators to adhere to the above protocols and build on past efforts at global consultations to reduce these atrocious crimes in Canada and throughout the world. It's a privilege for us to defend the most vulnerable members of our society.

We thank you for inviting us to present our views to the committee.

The Chair: Thank you.

We now have the opportunity to ask questions.

Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chair, and my thanks to the witnesses.

In particular, I want to thank Joy Smith for bringing this forward. You've crossed party boundaries and you've been very gracious and fair in seeking support and giving credit where credit is due. I remember your motion a couple of years ago. It was a motion and didn't have the force of law, but it was strong and well supported. It called for a national action plan with respect to this issue. I note in your letter, and I think we would all agree, that we need to address the factors that lead to exploitation—poverty and marginalization. These factors make aboriginal women and children especially vulnerable. There is not a person around here who wouldn't agree with that.

I am offering you my support for your bill. I want to move it up and get it exposed before we leave.

I might also ask you about the going-forward aspect. Are we any closer to having a national action plan on this issue? In addition, there are also issues of enforcement, which usually deal with the need for resources for enforcement. This is sometimes left on the table. Do you believe that your bill will call for more resources to be deployed? Do you think the government is willing to direct these forces toward a human trafficking national action plan and the enforcement of your bill?

Mrs. Joy Smith: Thank you so very much for your questions, and thank you for your support and your good work on this human trafficking issue here in Canada.

First of all, I must state very clearly that I never recommended one single witness to come today. I never did any of that. I thought I was going to be the only one here. I was hoping I was going to be the only one here, because I really wanted this to pass. And I referred not to the committee holding up my bill, but to the Bloc's not voting for my bill at second reading. That is why I brought out the detective from Montreal and invited everybody to come and listen to the human trafficking issue in Quebec, to try to persuade them that this is something that needed to be done.

So thank you for your comments about trying to be fair. I think I am very fair; I just cannot understand why anybody wouldn't support mandatory minimums for traffickers of children 18 years and under. Let's just get that cleared up.

The thing you asked about was national strategy. My motion number 153 was about the national strategy, calling for a national strategy. Ever since I came to Parliament, my wish and my hope and what I have worked toward is to make this non-partisan, so that all of us would work together to protect victims.

Those are very good questions. Speaking of police officers, my own son is RCMP, and it's more about training police officers. Many police officers don't understand what human trafficking is about, because they've never had special training. If you get trained in an ICE unit.... It's like being a teacher: if you're trained in math, you know math; if you're trained in language arts, you know language arts; if you were trained in French, you know French. You're expert in that area.

ICE units, or integrated child exploitation units, are made up of specially trained police officers, and that training is something that I think is mandatory. You always need more resources; the resources never end. I've always been a proponent of more resources because, my own son being a police officer, I see the wonderful work they do, the long hours, and some of these police officers are very disillusioned. When you're talking about child pornography and about the victims of human trafficking, it's the most heinous crime.

I want to make sure that I address all your questions. I'm hoping that has addressed some of them, Mr. Murphy.

● (1700)

Mr. Brian Murphy: That was not bad at all, really. As MPs, I suppose we're used to being on this end, so you're doing very well.

Are we any further towards having or seeing a national action plan? What is the government doing about your bill and your motion?

Mrs. Joy Smith: The bill has been supported very well. As for the national strategy, I think we need to all continue to work toward a national strategy. The law enforcement is one piece to it. The other piece is that if you've ever worked with victims of human trafficking, you know that they need to have shelter, they need to have counselling, they need to have education. It's a horrendous thing that they go through.

This is like the tipping point, I believe. Mandatory minimums have been called on by the international community, and I think Canada will stand tall when we answer that call, because human trafficking is global. The next step would be for all of us to work on the national strategy and the other aspects of human trafficking that are so important.

Mr. Brian Murphy: Thank you.

The Chair: Monsieur Ménard, you have seven minutes.

[*Translation*]

Mr. Réal Ménard: Thank you, Mr. Chair.

Welcome, Ms. Smith. I am not suggesting that you decided to invite REAL Women of Canada. However, I saw the mischievous gleam in your eye directed at me when you said, in front of the television cameras, that the Bloc Québécois was against fast-tracking this bill in committee, when that is not true. Unfortunately, you told a white lie that did not hurt your cause one bit, but we have to set the record straight. The steering committee chair brought this bill before us in May....

[*English*]

The Chair: Do you have a point of order. Mr. Storseth?

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair.

My translation could be off, but I don't think it's parliamentary language to accuse a parliamentarian of lying; and second, I believe standing up and voting against this legislation in the House of Commons at second reading is opposing its coming forward to committee.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: That is not what I said, Mr. Chair.

[*English*]

Stop my time.

The Chair: Mr. Ménard, we want to preserve the stability and decorum of this committee. We've done a lot of good work already during this Parliament. And Mr. Storseth does make a point: you referred to a "white lie", and I think that we as MPs treat each other cordially and with respect. I don't think we use the word "lie".

● (1705)

[*Translation*]

Mr. Réal Ménard: Point of order. I suggest that you gently remind the witness that, in mid-May, you submitted a report to this committee, and in that report, we were asked to consider Ms. Smith's bill on June 1.

To say, in front of television cameras, that the committee spent time on this matter is not an accurate reflection of the truth. Mr. Storseth's motion was deferred so that yours could be heard first. I just wanted to set the record straight in terms of the sequence of events.

That being said, Mr. Chair, I voted in the House—as did the Bloc Québécois—in favour of Bill C-49, which the Liberals introduced and which does not include any minimum sentences. The Bloc Québécois is consistent in its actions. We do not support minimum sentences. I would like you to submit to this committee studies showing that minimum sentences are effective.

I will ask both you and the Department of Justice whether it is true that, to date, there have been only two convictions under section 279 of the Criminal Code. The opinion that sentences are not severe enough needs to be qualified. In fact, this section did not get much use. Perhaps they were not severe enough, but in those cases, an appeal should be filed. That is not a justification for minimum sentences.

Out of respect for the work you have done, on Tuesday, I will propose a motion asking the government to suspend all consideration of the bill. We will immediately try to take a balanced look at the briefs you submitted. We are talking about 15,000 victims of human trafficking in Canada, that is 2,000 people a year. I am a lot more worried by the fact that out of those 15,000 trafficking cases in Canada, there were only two convictions.

As parliamentarians, we will try to not play politics, but to understand why there were only two convictions. We will propose a motion to suspend all other consideration of the bill.

How do you explain the fact that there were only two trials and two convictions? That question is also for your colleague from the Department of Justice.

[*English*]

Mrs. Joy Smith: Thank you, Monsieur Ménard. I'm hoping today to persuade you to change your mind.

With all due respect, you're an intelligent man, and as you know, deterrence is one of the sentencing principles available to judges in the Canadian Criminal Code. Another one is denouncement. This is the principle also expressed in article 3 of the United Nations Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution, and pornography. It states—and this is the salient point, and this quote is not from me, but from this particular United Nations—

[*Translation*]

Mr. Réal Ménard: Ms. Smith, wait. That was not my question. I asked you whether you had in your possession studies proving that they have real merit, that they are effective. We asked the Minister of Justice. No one was able to submit studies on minimum sentences. It worries us that, out of 15,000 trafficking cases, there were only two convictions. How do you and your colleague from the Department of Justice explain that? This committee has to have a good understanding of the situation.

[*English*]

Mrs. Joy Smith: Mr. Ménard, I want you to hear me out and let me answer your question.

The United Nations protocol said: "Each state party shall make such offences punishable by appropriate penalties that take into account their grave nature."

This convention said that we need to have mandatory minimums. The world has mandatory minimums for traffickers of children. There are police forces, such as the Canadian Police Association and police forces in Quebec and Montreal, calling for mandatory minimums because they say that without mandatory minimums traffickers get away.

To answer your question, we don't get these convictions because we do not have the mandatory minimums. It is from the wisdom of the globe, the wisdom of the police officers, that I get this view.

[*Translation*]

Mr. Réal Ménard: Ms. Smith, you are not answering my question.

If 15,000 people were victims of human trafficking, why were there only two trials related to section 279? Does the committee not have an obligation, beyond all government bills, to understand that?

I am talking to you, Ms. Levman.

[*English*]

Ms. Nathalie Levman: Thank you for your questions. I will attempt to answer each one in turn.

First, regarding convictions, we have to remember that section 279.01 was enacted in 2005. As we all know, criminal laws do not apply retroactively.

Secondly, there have actually been five convictions so far under section 279.01, all as a result of guilty pleas. There have been other cases under trafficking-related offences in which we've also secured convictions. In the past reporting period, that brings us up to about 13 convictions, and we still have at least 12 cases before the—

● (1710)

[*Translation*]

Mr. Réal Ménard: Can you submit to the committee documentation on those 13 cases? Can you give us that information? The documents that Ms. Smith provided to all of the members mentioned two cases, and you are telling us there are 13. Why the difference?

[*English*]

Ms. Nathalie Levman: There are five convictions under the trafficking-specific offence—that is, under section 279.01.

In my opening remarks I discussed trafficking-related offences, offences that cover certain activities that are engaged in by traffickers. The other convictions fell under those provisions. What we have is, basically, a tool box for police and the crown—

[*Translation*]

Mr. Réal Ménard: What are the related offences? False pretence?

[*English*]

The Chair: Monsieur Ménard, I'd ask that you let the witness finish her answers.

In any event, you're out of time. She can very quickly finish up what she was saying, and then we're going to move on to the next questioner.

Monsieur Ménard, please, let her answer.

Mr. Réal Ménard: I decide my questions.

The Chair: Monsieur Ménard, please allow her to answer the question.

Ms. Nathalie Levman: Just to make it absolutely clear that I have presented the correct evidence before this committee, there are five convictions under section 279.01 to date, all the result of guilty pleas. The few number can partially be explained by the non-retroactivity of criminal laws. This law was enacted in November 2005.

Secondly, I'm not sure where this number of 15,000 victims came up. I would like to clarify for this committee that the estimates are very difficult to come by. This is a criminal activity that is basically clandestine in nature. We don't have hard and fast numbers. We do not know the extent of it. There are various estimates, depending on the body that you consult. Whether that be the United Nations or the ILO, they all have different estimates, and that will also be based on how the person or the entity making those estimates defines trafficking in persons. Not all people view trafficking in persons as the same thing, and it's often confused with smuggling.

I hope that addresses some of your concerns.

The Chair: Thank you.

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

Mr. Joe Comartin: We're hearing from Ms. Smith and others that we, Canada, are not in compliance with the international protocols on human trafficking. I think I've heard from the government that it in fact feels that it is in compliance. Are you able to shed any light on that?

Ms. Nathalie Levman: Yes. It is our view that we are in complete compliance with all of our international obligations—first and foremost, the UN protocol on trafficking in persons, especially women and children, which establishes various obligations, including criminalization. We do have, as I've referred to today, a solid body of criminal laws that address trafficking in persons.

Mr. Joe Comartin: Let me jump over to Ms. Smith.

Ms. Smith, if I understood you correctly, you feel that the non-compliance is on the sentencing side, not on the offence side. Is that fair?

Mrs. Joy Smith: Yes.

Mr. Joe Comartin: Okay, and there are international commentaries that would suggest that we should have mandatory minimums.

Mrs. Joy Smith: Yes. What I said was that if you look at the report of the Canada-U.S. consultation and preparation for the world congress against sexual exploitation of children, the report recommended on page 6 that Canada enact a mandatory minimum penalty for child trafficking. What I said in my literature was that those two cases were child trafficking.

Just to clarify, I wasn't talking about adults.

Mr. Joe Comartin: Ms. Levman, in terms of the point that Mr. Ménard was raising of the connected offences, in regard to the other eight within the thirteen, what are the connected offences?

● (1715)

Ms. Nathalie Levman: There are a variety of different trafficking-related offences. They include charges for child prostitution, procuring, living off the avails of prostitution, assault, uttering threats, and extortion.

Mr. Joe Comartin: Were the victims of those crimes under the age of 18?

Ms. Nathalie Levman: Some of them were. One has to remember that with case law these things aren't always noted. I can say that of the cases in the last period that we looked at—because we monitor these cases as best we can, so that would be spring of 2008 to spring of 2009—we are aware that at least nine of the victims were under the age of 18.

Mr. Joe Comartin: I just happened to be reading something, and I want to give you the scenario, because it gave me some cause for concern about the way this is drafted. I'm particularly concerned about the wording, the phraseology, of exploitation.

I know of a situation in England in which a person was convicted. A woman, who is the mother of three sons, arranged for brides, for arranged marriages, to come to England. Then she exploited their labour quite viciously. She was convicted of that and sentenced, but not for trafficking. The marriages actually did take place, although there was, from what I could tell, no relationship that existed after the technical marriage. In that kind of scenario, would exploitation apply? She was exploiting their labour, not paying them, and the rest of it.

Would this bill apply to that?

Ms. Nathalie Levman: Would this cover a scenario like that? It's impossible for me to say, based on a hypothetical set of facts. What I can say is what the law says, which is that where a person engages in conduct that basically requires the other person to offer up labour and services under circumstances in which they apprehend that their safety would be threatened if they failed to provide that labour or those services, then the provision in section 279.01 would cover that given situation.

Mr. Joe Comartin: That is as it is now.

Ms. Nathalie Levman: That is the legal test. Exploitation is defined in section 279.04, as I've just described.

Mr. Joe Comartin: Have there been any interpretations by our courts up to this point? I think you said that all of them up to this point have been guilty pleas.

Ms. Nathalie Levman: Unfortunately, no. That's why I stressed to the committee that they were all a result of guilty pleas. Of course, we're anxious to have judicial interpretation of this new provision.

Mr. Joe Comartin: Are there any outstanding challenges of the legislation—section 279—as it is?

Ms. Nathalie Levman: By challenges, do you mean the charter?

Mr. Joe Comartin: Yes.

Ms. Nathalie Levman: No, there are cases proceeding before the courts, but I am unaware of any charter challenges being brought in relation to either section 279.01 or the definition.

Mr. Joe Comartin: What about the more general rule that the section is not explicit enough, not clear enough to understand that interpretation, short of a charter challenge? Are you aware of any challenges like that?

Ms. Nathalie Levman: We are aware of none.

Mr. Joe Comartin: On the mandatory minimums in terms of what's in section 212, in order to have a mandatory minimum on Ms. Smith's Bill C-268 for sections 279.02 and 279.03, you would actually have to charge them under section 212 to get a mandatory minimum.

Ms. Nathalie Levman: Yes, there are mandatory minimums in subsections 212(2) and 212(2.1), and currently there are no mandatory minimums in any of the trafficking offences in the code. If, for example, you had a case involving a young person under the age of 18 who had been trafficked for the purposes of sexual exploitation, the crown and police would basically have an option of going with one or the other, potentially, depending on the facts, depending on what's provable in court.

Mr. Joe Comartin: Those are all the questions I have, Mr. Chair.

Thank you.

The Chair: Thank you, Mr. Comartin.

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

[*Translation*]

Mr. Daniel Petit: Good afternoon, Ms. Smith, Ms. Watts and Ms. Levman.

Allow me to introduce myself. I am Daniel Petit, the member for Charlesbourg—Haute-Saint-Charles in Quebec. I want you to know that not all Quebeckers oppose this bill. I have read it. I have been a lawyer for some 30 years. I have four children, who are all of full age, of course.

The issue you are raising has been a problem for a very long time, not only in Quebec and in Canada, but also worldwide. The trafficking of young girls and boys has been the focus of numerous movies and news stories. I can assure you that Quebeckers in the Conservative party support your bill.

We have had the chance to meet, as we sit on the same side of the House. I have followed your motion's progress. Way back when, you proposed a motion, and, if memory serves me correctly, we voted almost unanimously in favour of it.

The question I want to ask Ms. Levman is this. Very often, the general public does not distinguish between procuring and the trafficking of children for sexual or other purposes. In the Criminal Code, it says that if someone is found guilty of procuring, the minimum sentence is two years' imprisonment, and up to five years in the case of a more serious offence. We are talking about prostitution and procuring.

I read Ms. Mourani's book; she is a Bloc Québécois member who, in fact, voted in our favour. In her book, she writes that certain highly organized street gangs in Montreal sell one another young women, whom they then use. As one city of Montreal official told us during a presentation on human trafficking in the Montreal area, it is more profitable for a gang to have girls than drugs, because they have to buy more drugs once they sell the drugs they had, but a girl can be used over and over again, which brings in more money.

Ms. Levman, since people are watching us now, could you please explain the difference between section 212 and the new section that Ms. Smith is proposing with respect to minimum sentences for procuring and trafficking offences. Most people think that procuring is human trafficking. But they are not necessarily the same thing. Can you explain the difference from a legal perspective?

● (1720)

[*English*]

Ms. Nathalie Levman: For me, there are different elements of the offence that need to be proven by a crown in a court of law. That's not to say that a given situation, a given fact scenario, might not equally fit under section 279.01 and subsection 212(2) or 212(2.1). They might equally fit and you might see charges, in fact, under both of those provisions, as we did in the Nakpamgi case. I hope I am pronouncing his name properly.

So you have a situation where basically crown or law enforcement generally have a set of tools they can use to attack these serious cases, and in both of these offences, whether it's trafficking or child prostitution, we see very high maximum penalties. So we don't worry so much, I guess, which offence is used. We simply hope that crown and police will choose the one that's most easily provable, based on the facts that can be proven in a court of law beyond reasonable doubt, given the facts of the case that can be proven in court.

I hope that answers your question.

● (1725)

[*Translation*]

Mr. Daniel Petit: In Quebec, a man named Pierre-Hugues Boisvenu works with victims. One of his two daughters was killed in a serious accident, and the other was killed by a repeat offender released from prison. I had a chance to speak with Mr. Boisvenu about Ms. Smith's bill. He sees it as a good thing. I have never experienced anything like the situations that Ms. Smith is trying to prevent through her bill, and I hope the same goes for everyone at this table. Mr. Boisvenu, an expert in the field, supports this bill. He is a good Quebecker doing very good work. He is sometimes emotional given that his daughter was the victim of a serious crime.

Ms. Levman, in your opinion, would the minimum sentences that Ms. Smith is calling for go against any provision in the Constitution? Would it be valid from a constitutional standpoint? Is there anything strange about imposing minimum sentences? And I do not mean the fact that some do not like the idea and oppose the bill. Legally speaking, does imposing minimum sentences, as in section 212, for example, cause any problems?

[*English*]

Ms. Nathalie Levman: Well, I'm not a charter expert. I want to put that out there, so I'm not misleading anybody. But I'm sure the committee members are aware that mandatory minimum penalties do pose a risk of violating section 12 of the charter, which entrenches the right not to be subjected to cruel and unusual punishment. Now, this is quite a high test to meet, and the test is whether the punishment is “grossly disproportionate” for the offender, such that Canadians would find the punishment intolerable.

Now, it goes without saying that the lower the mandatory minimum penalty, the less risk of infringing section 12. And it also goes without saying that there should not be too much of a disproportion between a mandatory minimum penalty imposed for one offence and a mandatory minimum penalty imposed for another similar offence—if that makes sense. Where the disproportion is great, there is a higher risk of section 12 infringement. Where there is no disproportion, or they're similar, there is a lower risk.

I hope this helps the committee consider the issue.

The Chair: Thank you so much.

We're at the end of our time. I want to thank all three of you for providing testimony here today. We'll let you go.

I'm going to adjourn, and then we have a Czech delegation coming in on an informal basis.

Monsieur Lemay, did you have a question?

[*Translation*]

Mr. Marc Lemay: Yes, Mr. Chair.

I would like two documents submitted to the committee by tomorrow: the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and, especially, the Optional Protocol to the Convention on the Rights of the Child. These documents provide the basis for Ms. Smith's bill. I want to be able to read them to see whether they actually set out an obligation to impose minimum imprisonment sentences.

[*English*]

The Chair: Ms. Smith, are you able to provide those by, say, the close of business tomorrow?

Mrs. Joy Smith: It would be my pleasure.

The Chair: Okay, thank you. You can deliver them to the clerk.

Monsieur Lemay, you'll have those documents presumably tomorrow. Those documents will be distributed to all committee members.

We're adjourned.

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

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

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