Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs

Issue 13 - Evidence for February 23, 2012

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The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts, met this day at 8:30 a.m. to give consideration to the bill.

[*English*]

Senator John D. Wallace (*Chair*) in the chair.

The Chair: Good morning, honourable senators and invited guests. I am John Wallace, a New Brunswick senator, and I am chair of this Standing Senate Committee on Legal and Constitutional Affairs.

As my colleagues are well aware, we are continuing our detailed study of Bill C-10, the proposed Safe Streets and Communities Act. We have been conducting this study over the last three weeks. During this past week we have continued with all-day sessions. We are considering each of the components of the bill separately each day. As you may be aware, Bill C-10 brings together nine previous bills that were presented to Parliament and were not taken through to completion. They are consolidated and incorporated with some revisions within Bill C-10.

There are obviously numerous topics included within Bill C-10. We are choosing to approach each of them individually to ensure that we give all the matters involved in each of them a thorough consideration.

The matter that we will be considering today involves the issues of conditional sentencing and parole and pardons that are included within Bill C-10.

Parts 2 and 3 of Bill C-10 propose various amendments relating to sentencing and post-sentencing. Part 2 of Bill C- 10 proposes to amend the Criminal Code to restrict the availability of conditional sentences for certain offences. It would eliminate the reference in the conditional sentencing part of the Criminal Code to serious personal injury offences. It would also restrict the availability of conditional sentences for all offences for which the maximum term of imprisonment is 14 years or life and for specified offences prosecuted by way of indictment for which the maximum term of imprisonment is 10 years.

Part 3 of Bill C-10 proposes amendments to the Corrections and Conditional Release Act to increase offender accountability and tighten the rules governing conditional release, while promoting the interests and role of victims in the correctional process. Part 3 of Bill C-10 also proposes to amend the Criminal Records Act to substitute the term "record suspension " for the term "pardon. " These proposed amendments extend the ineligibility periods for applications for a record of suspension to five years for all summary conviction offences and to ten years for all indictable offences.

They would also result in those convicted of sexual offences against minors, with certain exceptions, and those who have been convicted of more than three indictable offences with a sentence of two or more years of imprisonment ineligible for a record suspension.

We are pleased to have with us today a distinguished panel, with representation from Correctional Service of Canada and the Parole Board of Canada.

From Correctional Service of Canada we have Commissioner Don Head, and Jan Looman, who is a psychologist and Program Director of the High Intensity Sex Offender Treatment Program.

From the Parole Board of Canada we have Chairperson Harvey Cenaiko and the Director General of Policy, Planning and Operations, Suzanne Brisebois, and as well, the Director of Clemency and Pardons, Denis Ladouceur.

Welcome, ladies and gentlemen. We are pleased to have you here. We are anxious to hear what you can add to the work we are undertaking. We will begin with opening statements. Commissioner Head, I will start with you.

Don Head, Commissioner, Correctional Service Canada: Good morning, Mr. Chair and members of the committee. I am pleased to have the opportunity to appear before you today to discuss Bill C-10 and how the Correctional Service of Canada will implement the relevant provisions of the bill.

As you are aware, on October 18, 2011, I appeared before the Standing Committee on Justice and Human Rights to discuss this bill and its various elements. Today I will focus on the areas I expect to have the greatest impact on my organization's operations; that is, those related to the former Bill C-39 and its proposed changes to the Corrections and Conditional Release Act.

I would also like to speak briefly to the issue of the anticipated cost of implementing the proposed bill.

In 2007, the external CSC review panel released its final report, entitled *A Roadmap to Strengthening Public Safety*. This report contained 109 recommendations to better prepare the service for a changing offender profile and to improve our public safety results in the institutions and the community.

Over the past four years, Correctional Service of Canada has been using this report as a basis for our transformation agenda. Bill C-10 incorporates the final key legislative components necessary for us to initiate the changes that will better support information-sharing with victims, enhance offender responsibility and accountability, and reinforce our obligations in relation to providing programs and interventions to offenders.

If I may, I would like to speak to the issue of offender responsibility and accountability. Due to its direct and significant impact on the daily operations of our institutions, our staff and ultimately our mandate, I feel it is important to address this important element of the proposed bill.

Rehabilitating and reintegrating offenders back into the community is a primary function of our organization. From the moment an offender enters one of our intake centres to the moment he or she is released, we at CSC are committed to providing them with opportunities to become responsible and law-abiding citizens. However, if rehabilitation is to occur and be sustained, it must be a collaborative process, with the offender responsible and held accountable for his or her decisions and actions. It cannot be a one-sided process but, rather, one where both parties are working together to achieve a common goal.

Mr. Chair, if Bill C-10 is passed, the Corrections and Conditional Release Act would now place a greater onus on offenders to follow and adhere to their correctional plan. This plan forms the foundation for all programming, education and employment skills development, as well as decisions related to transfer and conditional release.

Bill C-10 would also give me, as the Commissioner of the Correctional Service of Canada, the ability to establish an incentive-based approach to dealing with offenders who are able to follow their correctional plans but who have the capacity and choose not to do so during their term of incarceration as well. The proposed bill would also enhance the current disciplinary system by creating new and specific offences to more effectively address disrespectful and dangerous behaviour, such as the throwing of bodily fluids at my staff.

Mr. Chair, the offender responsibility and accountability element of the proposed Bill C-10, in conjunction with those of electronic monitoring and increased information sharing with victims, will contribute to a safer environment for the staff and offenders within our institutions, provide a stronger continuum of care when offenders transition to the community, and will ultimately improve public safety results for all Canadians.

Mr. Chair, as you are aware, the Ministers of Public Safety and Justice tabled a document last fall indicating that the federal cost of Bill C-10 is expected to be $78.6 million over five years. Of this amount, CSC has estimated that we will require approximately $34.1 million over five years in new funding to manage the impacts of the proposed legislation. This figure comprises operational costs associated with the projected increase in our offender population that will arise from imposing mandatory minimum sentences for sexual offences against children and for serious drug crimes.

In addition to the costs associated with housing more offenders, on the operational side, we will see an ongoing reliance on double bunking in the interim. However, we are working to address these pressures through various infrastructure renewal projects across the country. It should be noted that any increases in space or staff will be commensurate with actual population growth and pressures.

I should note that there are also financial implications to the Correctional Service of Canada regarding the enhanced services of providing information to victims and the implementation of electronic monitoring. We will be absorbing these costs internally.

Mr. Chair, the Correctional Service of Canada continues to transform its operations to respond to a more complex and diverse offender population, as well as legislative changes to the criminal justice system. We are continuously monitoring the impacts on our organization and offender population and making adjustments as needed. I am confident that the Correctional Service of Canada will continue to create safer communities for all Canadians by providing offenders with the opportunities they need to become productive, law-abiding citizens.

I welcome any questions you may have.

The Chair: Thank you very much, Mr. Head.

We will turn to the Chairperson of the Parole Board of Canada, Mr. Cenaiko, for his opening comments.

Harvey Cenaiko, Chairperson, Parole Board of Canada: Thank you for the invitation to speak to you today. I will focus my remarks on the parts of the bill that seek to amend the Corrections and Conditional Release Act and the Criminal Records Act.

The Parole Board of Canada, as part of the criminal justice system, makes independent, quality conditional release and pardon decisions and clemency recommendations. The board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders as law-abiding citizens. As a result, any change to criminal justice legislation that affects sentencing law, creates new categories of offences, or touches on parole or pardons would have an impact on the work we do in the community.

The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by facilitating the rehabilitation and reintegration of offenders, where the protection of society is our paramount consideration. Under Bill C-10, changes to the law would affect the number of files we see for conditional release decision making through either paper or administrative reviews, or hearings for some offenders. We anticipate that mandatory minimum penalties for drug and child sexual offences would lead to a slight increase in the number of cases we see for decisions each year.

Offences for which offenders would be subject to detention until the end of sentence would be expanded to include the convictions for child pornography, luring a child, and aggravated assault of a peace officer. With Bill C-10, offenders would be subject to detention review if they have committed a sexual offence against a child and if there are reasonable grounds to believe they will commit another sexual offence against a child or an offence causing death or serious harm. This would likely result in an increase in detention referrals to the board.

The bill would also increase from six months to one year the period that some offenders would be required to wait before being eligible to reapply for day or full parole after being denied initial release; it would introduce automatic suspension of parole or statutory release when an offender receives an additional sentence; and, lastly, the authority to impose a residency requirement on statutory release for offenders who are likely to commit a criminal organization offence could result in a slight increase in reviews by the board as well.

Bill C-10 also proposes further changes to the CRA that were originally part of a bill relating to pardons, formerly Bill C-23. For example, the term "pardon "

would be replaced by "record suspension, " and the term "grant " would be replaced by the term "ordered. " The waiting periods for a record suspension would be extended to five years for all summary offences and ten years for all indictable offences. The bill would make ineligible for a record suspension individuals convicted of a sexual offence against a child. It would also make ineligible individuals convicted of three or more indictable offences where the sentence was two years or more for each offence.

As you know, recent legislative changes to the CRA have increased the work and time required by the board to process a pardon application. To help the board respond to the workload, an increase in the pardon user fee was recently approved by the Minister of Public Safety and came into force today.

Finally, Mr. Chair, the board is firmly committed to greater inclusiveness for victims who have long played a meaningful role in the parole decision-making process. Bill C-10 would entrench in law existing board policy with respect to victims and victim statements.

Victim statements provide the board with risk-relevant information, which includes the nature of the offence and the harm done, and identifies the need for any special conditions that may ensure the protection of the victim and the safety of the public. Currently, victims may attend hearings with a support person, funded through the Minister of Justice, or they may submit a written statement and a video or audio recording if they cannot or do not wish to attend and participate in person. This practice would remain the same, however, entrenched in legislation.

The bill would authorize the board to proceed with a decision if an offender withdraws within 14 days before scheduled review, unless circumstances are beyond the offender's control. In addition, the board would be authorized to release to victims the reason why an offender waived a hearing.

Mr. Chair, the board has provided the government with estimates of its resource needs, as we anticipate there will be some cost implications. However, we will meet the challenges ahead and we will work with CSC and our criminal justice partners to ensure smooth implementation of changes resulting from the bill.

The Chair: We will proceed to questions from our committee members.

Senator Fraser: Good morning, everyone. It is nice to see you all again. Mr. Looman, I do not think you have been here before, but everyone else is a familiar face.

There are so many elements of this bill that we would want to ask you about, and I hope we will have time. Let me start by one that is perhaps easily segregated out from the rest, and that is the electronic monitoring proposals.

We heard from the Privacy Commissioner a few days ago, who said that in the pilot project, these devices were not reliable, that they gave false information from time to time. Is that the case?

Mr. Head: That is a good question, senator. When we implemented our pilot project with electronic monitoring, we implemented it for the sole purpose of understanding both the capabilities and the restrictions of the equipment, so that we could understand what kinds of practices and procedures we would need to put in place. We do know that there are varying issues with varying pieces of equipment, and issues such as drift. This is where you get a signal that would put you in a place where you are not supposed to be. This can vary with the equipment. The technology continues to advance. The technology that we were testing pointed out to us some of the restrictions. From our perspective, what we learned is that it allowed for more dialogue between the parole officer and the offender to ask, "Why were you even in this general area even if you were not exactly at the corner of walk and do not walk? " From our perspective, that leads to better public safety results as well. The more that our parole officers are engaging offenders who have geographical restrictions or restrictions to stay away from people is a good thing for all Canadians.

As we go forward, any proposal that we would be pursuing in relation to equipment would be looking for the most up-to-date, modern type of equipment, understanding that certain pieces of equipment have more concerns in relation to others.

Senator Fraser: Will there be public guidelines on conditions for the use of these things, particularly in light of sometimes iffy technology? I once had a GPS tell me to drive straight into a canal in the middle of the night. I am leery of GPS-based systems. Will there be an appeal mechanism for someone who believes they have a false reading and your folks do not believe that?

Mr. Head: In terms of future travel, I will be glad to be your navigator.

Senator Fraser: And drive me into the canal?

Mr. Head: No, to ensure that does not occur. You are a valued senator.

In terms of your specific questions, most definitely the pilot project allowed us to define specific practices and procedures that will guide our staff. I think as you are aware, the provisions for which we can use electronic monitoring are clearly defined in the bill. We could use this in cases. Again, it is an enabling clause, not a mandatory clause, for temporary absences, work releases, conditional releases and long-term supervision orders where there are restrictions of a geographical nature — that is, restrictions in relation to coming into the vicinity of a person or where they have to stay within the boundaries of a geographical area. Our guidelines would very much take that into account.

In terms of an appeal mechanism, any actions taken in relation to a signal would allow for the engagement with the offender, an explanation and discussion. We have to take that all into account before any decisions would be made, particularly for someone in the community, about suspending their conditional release and ultimately taking the case forward to the parole board. The proposed bill also provides a recourse mechanism for the offenders to make a representation either to myself or to my designate in relation to the duration of the period of time that they would be wearing whatever device that we ending up going with.

It is not an absolute guarantee that anyone who goes out with a bracelet, as they are commonly referred to, would have that for the entire time of supervision. Maybe the offender shows that they have built up the right level of responsibility and accountability and that device would be removed from them. The parole supervisor or officer would then manage them through other interactive means.

Senator Fraser: There has been some indication in the material that I have read that you hope to save money, but other indications have been that — not only here but also elsewhere — these programs end up costing a lot more money to administer, as so many things do. What is your primary motivation here, cost or what?

Mr. Head: That is a good question, senator. Our motivation has nothing to do with cost. It is not linked to a direct reduction in recidivism. It is about providing a tool to parole officers who have to supervise offenders in the community with some interesting conditions placed on them. Those conditions are put there, and, if they are not following those conditions, it will lead them back into criminal activity. For example, if individuals have a gambling problem, a

condition we often see is that they are not to go into gambling establishments. The device assists the parole officer in helping to monitor that condition.

Senator Fraser: It does not, I gather on other projects, reduce the rate of recidivism. It does not change the likelihood.

Mr. Head: No. What we know from the research — and this is one thing that we have always kept in the forefront of our minds — is that the use of electronic monitoring will have no impact on recidivism. If it is used inappropriately with certain types of offenders, it could have an adverse effect. We do know that if you use electronic monitoring, and if you have the right levels of engagement and intervention with parole officers and the right programs and interventions set up in the community, you are building a formula for success, one that Canadians expect us to have in place to ensure they are safe.

Senator Runciman: It will be difficult to touch on all the bases we would like today.

Mr. Head, I will speak to an element of the new bill, clause 54 of Bill C-10, which you did not reference in your opening statement. That is one of the new principles in the act addressing persons requiring mental health care. I personally am at a loss as to how you will achieve that.

Mary Campbell, Director General of the Corrections and Criminal Justice Directorate at Public Safety Canada was here before the committee a week or so ago. I talked to her about this issue and she said that this is a public statement about what is important in the system and how it operates, identifying mental health as a priority issue.

I am curious about how you will do that. We have heard fine words over the years about this, but we know there are significant challenges. We are hearing about it from witnesses on a daily basis, from a range of police and others, and about the problems they have to deal with in terms of mentally ill people coming into the system. I have cited some before in terms of treatment centres for individuals with serious mental illnesses. I will use the staffing measures in the federal system, namely, 80 per cent correctional staff; 20 per cent health care staff. In my view, that is a token therapeutic facility. I would like to use the St. Lawrence Valley provincial facility as another example. At that facility, 80 to 85 per cent are health care staff; the remainder are correctional staff. It is a maximum security facility.

It strikes me that there is institutional inertia with respect to this issue; real resistance to seeking help from outside the institutions. We will hear from the correctional investigator later today. He has talked about that. You have certainly heard it from me. This is help that could more effectively deal with hard-to-manage prisoners.

I would like to hear something about what you are doing in this area and why you seem to be so resistant to looking for outside help?

Mr. Head: I will take exception to that, senator, because we actually do reach out to outside centres to help us. As an example, we use an arrangement with the Institut Philippe Pinel, in Quebec, for addressing the needs of some of our cases. We have a case right now that we are working on with the Brockville facility, which you are familiar with. It is not a case of resistance where our capacities are not able to deal with some of the more significant cases. We very much do reach out to that kind of expertise that lies across the country. Can we do more of it? That is the question that we are debating right now.

Senator Runciman: You have been for a heck of a long time.

Mr. Head: To be honest, senator, a lot is driven by the reality of the finances. If my budget was larger than what it is in relation to mental health, I could obviously do a lot more.

As you can appreciate, placing all the expectations on the correctional system to resolve all the mental illness health problems when, actually, we are at the back end of a system, the recipient of individuals, makes it even more challenging.

In terms of what we have been doing over the last few years, the government has made a significant investment both in our community mental health strategy and our institutional mental health strategy. On the community mental health initiative, there has been an investment of just over $29 million over a five-year period, which was renewed again in 2010, and on the institutional mental health side an investment of $16 million a year. That has allowed us to do several things, including the —

Senator Runciman: Look, I have heard all of this before, and I would suggest that, at comparable cost to the system but significant reductions in cost to the provinces, policing, courts, society and victims, there are options out there that you are not prepared to consider. You talk about doing it, but you are doing it on a case-by-case basis rather than trying to deal with this in a system-wide approach. Let us talk about the situation that will lay this all out in the public later this year or early next year, which is the Ashley Smith inquest. We know about the percentages of women in the federal system, 30 to 50 per cent, and sometimes women with the most serious problems are not committed to even enter the prison psychiatric units because they are deemed too dangerous. They are held in isolation or subdued by restraints. Ashley Smith was transferred 17 times in the last year that she was in custody, held in isolation much of that time and committed suicide in the federal system. You have real problems there. This is real intransigence, and we get the same sort of explanations from you whenever you appear or are talking publicly about this or in meetings, but there does not seem to be a real interest in trying to find more meaningful, broader solutions and ways we can address this very serious problem.

The Chair: Mr. Head, is there anything further you wish to add?

Mr. Head: Well, I could, but I am not sure the senator wants to hear it.

Senator Runciman: I do not, really, because it is the same old story.

Thank you, chair. I will go over to a second round.

The Chair: To that point, and if there are other senators who have questions, one senator or another may not want to hear things, but all of us are here to understand how the system works, so do not feel restrained by the view of any one particular senator. If there is something that has to be said, we want to hear it. We want to understand how the system works and how it does not work.

Senator Cowan: Once again, I want to follow along on what Senator Runciman said because I think we are all disturbed by the huge percentages of people who are in the clutches of our criminal justice system and who require help for mental health reasons or for addiction or other kinds of issues. The annual report of the Office of the Correctional Investigator in 2010-11 said that, based on a sample of 1,300 incoming male offenders between February 2008 and April 2009, 38.4 per cent reported or were assessed at intake as showing symptoms associated with possible mental health problems that require follow-up assessment by a mental health professional.

There was a news report just about a year ago, a Postmedia report, and I will quote from it and ask you to comment on it. It reads:

> The Correctional Service of Canada will need to hire over 3,000 employees to handle an influx of 4,000 new federal inmates anticipated under the Conservative's tough-on-crime strategy
>
> But while CSC will by some estimates spend hundreds of millions of dollars hiring correctional officers, parole officers and administrators, the internal CSC report obtained by Postmedia News says that only 35 of those new employees will be health professionals.

Is that correct?

Mr. Head: No, that is not correct at all.

Senator Cowan: What are the correct numbers?

Mr. Head: In terms of our hiring in relation to the institutional mental health initiative, we hired 107 health care professionals.

Senator Cowan: Out of how many?

Mr. Head: Out of the total number of hirings?

Senator Cowan: This refers to an internal report, which may have been a draft report, but it talks about hiring 3,000 employees, 35 of whom were to be health professionals. What is the number you anticipate now hiring?

Mr. Head: In terms of that number, senator, I am not sure where the 35 came from. As a matter of fact, in terms of previous testimony that I gave in terms of the original hiring projection, which was 4,119, there were 1,599 that were going to be correctional officers, 410 were going to be nurses, 123 psychologists, 82 social workers, and then other staff.

Senator Cowan: That is the current estimate?

Mr. Head: That was the estimate based on the projections that we saw for the numbers that you cited coming into the system. Our projections in terms of offenders coming into the system have not been realized. The actual count is significantly less.

Senator Cowan: We are assuming that Bill C-10 passes, and we are looking in the future. Assuming that that happens, what is your anticipated requirement for hirings, not just in terms of numbers? As Senator Runciman was saying, you have a certain amount you will spend because there will be increased demands on your system. How much of that will be devoted to health, and mental health in particular, expenditures?

Mr. Head: In terms of that actual breakdown, in terms of the influx as it relates to Bill C-10, I do not —

Senator Cowan: I am talking about the approach. You have Bill C-10, and you had Tackling Violent Crime several years ago, and there were other pieces of legislation. I am talking about your projections in the next few years for increased expenditures that come out of your budget.

Mr. Head: Yes. Again, the numbers we are talking about in terms of the health care side, I still need approximately 400 nurses, 123 psychologists and 82 social workers.

Senator Cowan: Do you have the funding for that?

Mr. Head: For that, yes, I do.

The Chair: On that point, how much would that equate to? What would be the amount of money required?

Mr. Head: I would have to pull out a calculator and work it out.

Senator Cowan: Will you do that and provide that to the committee?

Mr. Head: Yes, definitely.

Senator Cowan: Mr. Cenaiko, in your statement, you said the board has provided the government with estimates of its resource needs. What are those? What is your cost?

Mr. Cenaiko: The majority of the funding that we are requiring from government in relation to the new mandatory minimum sentences is roughly $1.7 million.

Senator Cowan: Annually?

Mr. Cenaiko: Yes.

Senator Cowan: That would be an increase to your base budget.

Mr. Cenaiko: That is right.

Senator Angus: Mr. Head, I had a very pleasant breakfast this morning. You said Bill C-10 would also give you, as the Commissioner of the Correctional Service of Canada, the ability to establish an incentive-based approach to dealing with offenders who are able to follow their correctional plans but who have the capacity and choose not to do so during their term of incarceration. Could you explain what you would do? Have you already drawn up a plan? I would like to get a sense of the specifics.

Mr. Head: We are still working through the actual details of that. We have to engage our legal services. To give a sense of what that is all about, if we have two offenders right now who are both appropriately classified at a certain level, say medium security offenders, and we have one individual who chooses to follow their correctional plan, to participate in programs, to follow all the rules and is truly preparing themselves for eventual release and return to the community in a law-abiding way, and the other offender is not necessarily following their correctional plan as it relates to their programs but is not causing any problems, meets the definition in for medium security, right now, in terms of incentives or entitlements, those offenders are entitled to exactly the same thing under the current legislation.

This provision would allow us to differentiate between those two and provide some form of incentive to individuals who are more engaged in their correctional plan and addressing their needs. These are the details we are still working out.

Senator Angus: What are these incentives?

Mr. Head: These may includes things such as more access to the recreation yard after programs and education time. It may mean access to leisure clothing after work hours and after programming hours. Those are the kinds of things we are working through now.

The bill is enabling language, so it does not mean I have to go that route, but it gives me the ability. We are taking the time to get this right because we know we will be challenged if we do not define this properly in terms of distinguishing between rights and privileges.

Senator Angus: You are speaking, at least as I see it, in rather general terms. I would like to hear specific examples. Prisoner A is following all the rules, showing the desire to be rehabilitated and get back in the community; another prisoner is pretty good. However, are they just trying to put a spanner in the works? Are these people who are just not cooperating? Could you give an example or two?

Mr. Head: Of the types of offenders?

Senator Angus: Yes.

Mr. Head: For example, offenders who may be affiliated with gangs, who do not necessarily get into trouble themselves but use others to get into trouble, their behaviour is just enough to keep them in the kinds of facilities or at the security level they are at. They do not necessarily follow their programs or participate in program activities. These are the types of individuals. They are the ones who are usually somehow involved in getting into trouble in the institution, but not necessarily enough for us to increase their security level and send them to a higher level facility.

Under the current rules, they have the same entitlements as the offender pursuing his correctional plan and trying to make a difference for themselves.

Senator Angus: In the next paragraph, you say the bill also enhances the current disciplinary system. In other words, at the present time, you have whatever you can do to deal with these disobedient or whatever prisoners, new and specific offences. You are telling us that the bill is actually delineating specific forms of acting out, I imagine. Could you give us a couple of examples of that and what you would do in these cases?

Mr. Head: Yes. With respect to the two specific examples that are included in the bill, one is offenders who file false claims against the Crown, and these are situations where offenders will claim that some of their personal effects have gone missing under our watch. Because of the current responsibility split, we have more responsibility for that, and if we cannot prove that we followed the procedures we have laid down, they end up getting some kind of remuneration in the form of a claim against the Crown.

We do have individuals who subsequently, a few years later, will file another claim and try to run the same scheme again. Other than just denying the claim, there is not much we can do from a disciplinary perspective to deal with them. Now there is a new disciplinary offence to deal with those cases.

Another one that is more specific, which I mentioned, is the situation where offenders are throwing bodily substances at my staff. As you can imagine, that is a very dangerous and disgusting situation. In the scheme of internal disciplinary offences, we had nothing that carried any significant weight to deal with those situations. This will now allow us to tackle that situation more head on.

Senator Angus: That struck me as strange, that they could do that under the current setup and you do not have any remedy. That is what you are saying. The law will give you stronger sanctions?

Mr. Head: That is right, yes. That will be a very specific offence, which will then allow us to use the available sanctions that we have that include at the lowest end a reprimand — which is obviously not fitting in that situation — up to placement into segregation for that kind of behaviour.

Senator Chaput: On a supplementary question, how many of those cases would you have in a year approximately, the ones that you cannot currently do anything about but you can with Bill C-10?

Mr. Head: Currently, it seems almost on a daily basis — I am not exaggerating — there is at least one situation across the country where an inmate is throwing bodily substances at a staff member, 300 to 500 per year. We have cases Mr. Looman can speak specifically about, of which he experiences at his own institution.

Senator Chaput: Is there nothing you can do about that?

Mr. Head: No. There have been a few cases in the past where we have been able to pursue a criminal sanction, but most prosecutors and police are busy doing other things. We would have to rely on internal sanctions, and the ones that were defined in 1992 never anticipated this kind of behaviour from offenders. Now it is a very specific offence in which we can use the sanctions defined in the act.

Senator Jaffer: I have two questions.

First, Commissioner Head, I was interested in what you said. One of my concerns is prison overcrowding and what this bill will do for that. In your introductory presentation, you said that "we are working to address these pressures through various infrastructure renewal projects across the country. "

From the research I have done, I understand many of our prisons are 137.5 per cent overcrowded, and I am concerned about a Charter challenge against cruel and unusual punishment. That is not what I want you to comment on; that is not your issue.

For example, in B.C. there is 170 per cent overcrowding in prisons and in Saskatchewan over 200 per cent. Alberta is very overcrowded, Manitoba has 600 more inmates than they have room for, and Quebec is so overcrowded that they are putting mattresses in gymnasiums. New Brunswick has 200 people over limit.

Something that left a real impression on this committee is when the Minister of Justice from Nunavut was here and spoke about such tremendous overcrowding in Nunavut, where a prison that was designed for 48 people is now housing 102. They are looking at sending further prisoners down south, which will affect all the good programs that you were talking about.

In your remarks, you said there will be more. Obviously, this bill will create more people going to jail. How long will it take you to reach some kind of a balance? You said you will have various infrastructure renewal projects. How long will that take?

Mr. Head: I have a couple of comments, one in relation to the statistics that you cited. Those statistics are specific to the provincial correctional systems.

Senator Jaffer: I understand that.

Mr. Head: Yes. With respect to our level of double bunking — which is where two offenders are in the same cell with two beds — I think 15.6 per cent of our total population across the country is double bunked.

However, we have two levels of double bunking in key areas, one in Ontario and one in the Prairie region, which covers Alberta, Saskatchewan and Manitoba penitentiaries. The influx of offenders over the last two years has increased more in those two regions. The Pacific and Quebec regions have been relatively stable, with some increase. Our Atlantic region numbers have actually declined for reasons we are unsure about.

In terms of our own infrastructure renewal activities, we are building a series of new living units in existing institutions across the country. By 2014, we will have 2,700 new spaces across the country, and that includes spaces at minimum security, medium security, maximum security and at our women's facilities.

As I briefly mentioned previously, our projections in terms of what our population growth is going to be has not materialized at this point in time. If the growth does not jump up in the next two years, we will be looking at how we use that new space and either close down some of the less efficient space that we have in some older facilities or use that space for addressing some of the intermediary mental health needs that we have. We have put in place a couple of intermediary units now, and we will look at how we use that space that way. We will have space that will address our own pressures, but the numbers you cited are provincial correctional numbers.

Senator Jaffer: Overcrowding is an issue, but you very eloquently spoke about putting in place programs that give people incentives. For example, if there is good behaviour, you get an incentive such as more time outside. However, with overcrowding, how will you manage to implement these programs that you have spoken so eloquently about?

Mr. Head: That is a very good question, senator. We are looking at how we can maximize the hours in the day to have more opportunities to provide those programs so more offenders can access them.

We are expanding, for example, the employment skills development opportunities provided in institutions. In many of our institutions now we started to move towards opportunities where offenders are being trained in how to frame housing, and we are doing that in some cases in conjunction with First Nations communities who need the housing. Our offenders are getting the training and doing the framing, and the First Nations communities are getting the benefits of a house that is being built. A good relationship is being built there.

We have increased our capacity to deliver violence prevention programs and substance abuse programs with the investment that we received over the last few years for mental health. The mental health programs that we are offering are increasing, and the services and interventions are increasing. We continue to use the monies we receive to put in place those opportunities and to maximize the hours in the day, even to the point where a couple of our institutions now are looking at going into the early evening hours and using the classrooms to provide programs to give the opportunity for offenders to be out of their cells.

Senator Jaffer: What percentage of your population has mental challenges?

Mr. Head: The number that is most commonly used is 13 per cent for male offenders and 29 per cent for female offenders.

Senator Lang: I would like to turn the committee's attention back to the question of electronic monitoring, and I appreciated your answers to Senator Fraser in respect to the need for this type of technology to assist both the offender and, obviously, the staff in being able to proceed accordingly for the purposes of rehabilitation.

I know it is enabling legislation that allows you to order that. We had the Privacy Commissioner tell us that she felt that it should be voluntary. I would like to hear your comments as to whether such an order should be left to the offender to be voluntary or be mandatory and, if so, why.

Mr. Head: I believe that the decision should be that of my staff in terms of whether an offender requires that kind of technology. My staff, ultimately, is responsible for supervising offenders when they are in the community. My job is to find the practices, procedures and tools that will help them carry out the roles that we expect them to perform. If they have conditions placed on them such as, for a sex offender, staying away from schoolyards and places where young people gather and that is part of their crime cycle for that individual, the last thing I want is a sex offender telling me that he does not need to wear that and he gets to choose whether he wears that or not. I will rely on my professional staff to make the determination as to whether that tool is needed to help supervise those kinds of conditions. My perspective is one that that decision needs to rest with the agency.

Senator Lang: Thank you for your answer. That seems to be a common sense approach. I was quite surprised at the recommendation by the Privacy Commissioner, quite frankly.

I will move to the area of infrastructure because you never spoke to that in your presentation. It would seem to me that that would be one of the major important aspects of looking ahead at what we will provide in our institutions and how we will provide it. We had a witness last week tell us that it was very difficult to recruit professionals for any position within the system, and I would like to hear your comments. Is that true and to what degree? I would like to know if the amount of money being spent on upgrading these institutions will that make it easier and help to recruit staff?

Mr. Head: In certain parts across the country, we have difficulties recruiting professionals to work for us. Some of our more remote locations, such as Grande Cache, Alberta, Port Cartier, Quebec, and to some extent even places like Renous, New Brunswick, are difficult places to find professionals to come and work because they are away from mainstream cities and not necessarily consistent with people's lifestyles in living in some of those smaller communities. We do have some challenges there.

Another challenge that we have is at times the provinces, which have similar challenges, are able to offer incentives or different remuneration packages to draw people to work in the provincial systems. Just as an example, in Alberta, I lost a couple of psychologists — very committed individuals — who were enticed by the fact that they would get an increased salary by working for the province and I think it was something like a $20,000 signing bonus. Under the federal government rules, I cannot compete with that. Having said that, we are continually going to the various colleges of nursing and psychology, et cetera, to encourage people to work for us.

Regarding your question about the infrastructure, I am not sure the infrastructure itself will be the enticing piece in terms of drawing people to work for us. However, being able to work in an environment that is newer will be a factor that plays in the retention issue. As you are aware, most of my penitentiaries are, on average, 40 years old. The oldest, Kingston penitentiary, is 177 years old. You can imagine that place running 24 hours a day, 365 days a year. It is

not the most ideal facility or conditions to be working in, but the staff that are working there, such as Mr. Looman, who works in the treatment centre, are dedicated professionals who want to make a difference, and I am extremely proud of my staff who work in those conditions.

I do not think the infrastructure renewal will be the drawing card to work there. It will be the kinds of business that we are in, but having a newer infrastructure will help with the retention issue because it will not be a factor that gets in the way of people making a decision about whether to stay.

Senator Lang: Pursuing the question on infrastructure, I do not know the estimate of the final figure to renovate these prisons, but there are wild allegations going on that the government is building jails all over Canada in order to get ready for Bill C-10.

Senator Cowan: Who said that?

Senator Lang: Perhaps you did not say it today, but a few people have said it.

Can I just finish my question?

Senator Cowan: Absolutely.

Senator Lang: Perhaps you can outline what is being done with the money being put forward. I think it is important Canadians realize how old these institutions are, the fact that there has been very little money spent since they were built and the fact of where we are going because have the responsibility to put these people we incarcerate into prisons that are of at least a minimum standard.

Mr. Head: We are building living units within existing facilities, so there is no new penitentiary being built at all. That rumour is out there, and I do not know how many times I have had to confirm that is not the case. We are building new units within existing facilities. I think it is a total of something like 37 new units across the country. We are building 96- bed medium or maximum units in certain facilities. We are building 10-bed facilities in some minimum-security facilities and some women's facilities, some 40-bed minimum-security facilities, again units within the existing perimeter, within the existing institution. However, there is no approval, no plan to build a new penitentiary.

We will be going forward in the coming months with our overall long-term accommodation strategy for the future, and I will propose that to the minister in a few months and then onward to cabinet and we will see where that goes. Like I say, all we are building right now are living units in existing institutions.

The Chair: I would go to an issue raised by Senator Lang. Mr. Head referred to Mr. Looman and this whole issue around treatment, and certainly Senator Runciman zeroed in on it in terms of mental health.

Mr. Looman, I know that is an area specialty you have and you are providing treatment to high-risk sex offenders. Perhaps you could give us an idea of what you do? That might be helpful to us.

Jan Looman, Psychologist, Program Director, High Intensity Sex Offender Treatment Program, Correctional Service Canada: To clarify, I am not currently providing treatment to high-risk sex offenders. That was my job up until about a year ago. I was the clinical director for the High Intensity Sex Offender Program in Ontario. Right now I am the clinical manager of the treatment centre, so it is more focused on the mentally disordered offenders currently. Which do you want to hear about?

The Chair: The mental illness disorders issues. That is obviously topical.

Mr. Looman: The treatment centre in Ontario is a 148-bed unit. We provide acute and long-term care to mentally disordered offenders from within the Ontario region. With the institutional mental health program initiated a few years ago, the offenders are assessed on intake when they come into Millhaven Institution. People with mental disorders are identified and tracked through their stay in the prison system. If they go from Millhaven to Warkworth Institution, the institution mental health team there follows up with them.

We have what we call ambulatory care nurses who go out from the treatment centre to the institutions, and they interact with the mental health teams in the institutions and help to identify the people who are in need of a higher level of care, so those people would be referred to the treatment centre for admission. Sometimes they are admitted on an emergency basis but other times it is a planned admission. We bring them in, assess them and stabilize them. If we decide they need to stay in the treatment centre, we move them off the acute unit into another unit, or if we think they are able to return to their parent institution with the care of the mental health team in that institution, we will send them back and follow them from there.

The Chair: Thank you for that. I suspect there may be some other questions arising.

Senator Jaffer: How many psychiatrists and psychologists do you have?

Mr. Looman: Right now we have one actual employee who is a psychiatrist. The other psychiatric services are contracted. The treatment centre itself has three psychiatrists on contract, and each of the institutions has a psychiatrist on contract to provide services there.

Senator Chaput: Are there any staff psychologists in that program yet or have they been removed to be replaced by regular correction staff or other staff? That is what I read.

Mr. Looman: There are psychologists providing treatment to offenders. At the treatment centre where I work, there are five psychologists on staff right now, and each of the institutions, depending on the population, they have psychologists. If you are talking about correctional services, not mental health services, yes, I think there are still a couple of psychologists who are delivering programs, but for the most part the move is to correctional programs officers.

Senator Chaput: How are the officers being trained? Do you know how long the training is?

Mr. Looman: The sex offender program which I used to be involved in, the training is 10 days plus 3 days for risk assessment.

Senator Chaput: Can you tell us why that decision was made?

Mr. Looman: To remove psychologists?

Senator Chaput: Yes.

Mr. Looman: Well, part of it was standardization of practices. In the sex offender program, it was one the few that had clinical supervision of the program

delivery people, so in terms of a consistent program model in all the programs, the decision was made partly that way. I was not involved in the decision making, so I cannot really speak to it in any detail.

The Chair: Senators, we have about 55 minutes remaining with six senators left in first round and a number in second round. Please keep your questions as concise as possible. I know questions at times have to be put in context, but just to remind you, we are here to listen to the witnesses and not to each other. If we could make use of the time we have available, it would be appreciated.

[*Translation*]

Senator Boisvenu: Good morning, everyone. I think we are facing a very major challenge at present.

Since I came to the Senate, I have read the well-known 2007 report on reform of the prison system and social reintegration programs, both of which I consider to be failures.

In terms of social reintegration, it is clear that ultimately, such interventions have had only very little effect on the behaviour of offenders after they are released. We have to do some thinking.

Since I first became a senator, I have visited five penitentiaries, and I have observed that we actually have no choice but to revolutionize our penitentiary system in Canada and Quebec.

Mr. Cenaiko, I think we have to applaud the measures in Bill C-10 that relate to victims of crime, but we need to go further in terms of communicating with victims. When a criminal is released and the victims learn about it from the media, or because they run into the criminal on the street, that is unacceptable. Recently, we have seen cases where people learned from the media that a criminal had just been released. Notwithstanding Bill C-10, I invite the board to do a serious examination of this issue. I think it is better to be proactive in protecting victims rather than to put the onus on them to contact you to get information. That is a step in the right direction, however, and I congratulate you for that.

Mr. Head, we have met several times, and I would like you to talk about the abolition of the least restrictive measure. What effect will that have on discipline in penitentiaries? One of the major criticisms by the correctional officers' union is that criminals do not respect the staff; what will be the impact of abolishing this measure on discipline and on rehabilitation of criminals?

The reincarceration rate is nearly 70 per cent in our penitentiaries. That is unacceptable. We have to produce better results. I agree with Senator Runciman. We have to find better answers to our questions. Our system needs a major turnaround.

I would like to know, in relation to this measure, what is going to change in everyday life for the officers and in the rehabilitation of criminals?

[*English*]

Mr. Head: In terms of the issue of the least restrictive measures and moving to language that talks about necessary and appropriate, there is a whole history around the least restrictive measure piece. I believe senators have heard that from other witnesses.

One of the issues for us is that it is not necessarily proven to be the language that allows us to — the way it has unfolded, anyway — address the specific needs or behaviours of individuals the best way.

What seems to have happened over the years is that if you are faced with a situation and you have some options in front of you and one option is deemed to be less restrictive than another, you would have to default to the less- restrictive measure.

In terms of the discussions and dialogues that the review panel had with staff across the country — correctional officers, parole officers, nursing staff, et cetera — people all pointed to this as something that was not necessarily allowing them to deal with some of the other behaviours on a more individualized basis.

It can be debated whether this language is better than the current language of "least restrictive, " but the manner in which we are proposing to implement that is to reinforce very clearly throughout the organization that this is very much more an individualized approach to assessing the offender in determining what is necessary and appropriate, proportionate to what needs to be done in relation to that offender.

If I go back to the example I used before where you have someone who is following their correctional plan and following the rules and not causing any problem and someone else who is on the borderline, under the current approach for the most part we would have to, in a decision or approach, default to the same least-restrictive measure for both of them.

Under the new approach, with the language that is defined, we will be able individualize that more. We will, and staff will see that difference, be able to deal with those negative behaviours better than they have in the past.

This new language that is in the bill will place greater accountability on the offenders and provide more options to staff and decision makers other than just defaulting to a bottom line, least restrictive measure in a list of opportunities or options.

[*Translation*]

Senator Boisvenu: The question I would ask you, Mr. Head, is the one I asked you last year. How are you going to get your managers, particularly the ones in Quebec, to sign on to this reform, where incarceration focuses on criminals being responsible for their own rehabilitation process? How are you going to ensure that your supervisory staff sign on to that reform?

[*English*]

Mr. Head: Very quickly, a couple of approaches. One is making it clear in terms of their mandate letters, in terms of what they have to do each year, and also in terms of assessing their performance every year. The expectations are high and the managers are going to be held to achieving those expectations. Over the years that has not necessarily been the case, but it is one where I am taking a harder stand in terms of defining those expectations in their performance agreements.

Senator Baker: I would like to congratulate the employees of the Parole Board of Canada and the correctional service for the great job they do every day.

With reference to a question asked by Senator Angus, a follow-up not concerning his pleasant breakfast that he said he had, but the answer you gave him

when he asked you if there was any other provision that provides for punishment for misbehaviour of persons held in prison. Your answer was basically that there was not, and that is why you needed the provision in this enactment.

A hearing is held within the prison facility and then punishment is meted out in that sense that you go in the hole if you are found to be guilty of any offence like that. You have your prison time extended because you are now out of your good behaviour in order to provide for early release, so your prison time is extended. Or, as usually happens, you end up as well with a charge of common assault. I would like to clarify that. Perhaps we misunderstood your answer that there were not any present provisions that enable you to punish that person.

My question relates to the electronic device that you described as having a drift at times. This device is used for house arrest; it is used regularly for monitoring purposes of persons who are convicted of serious crimes. You say that they are deficient in the drift and then you say, well, it allows the parole officer to go down and have a chat with this convict and to get an explanation.

Are you just buying the cheap machines or are all of these electronic monitoring devices the same, that they may have a drift?

Mr. Head: In response to your first question or comment, senator, in terms of the issue of punishment, as I mentioned, what is proposed in Bill C-10 are not sanctions but new internal disciplinary offences, which then allow staff, if that situation happens, to lay that specific offence against that offender for that behaviour. You are absolutely right, there is an internal process, either a minor or major court process where we use independent chair persons and they have a set of sanctions defined in the act that can be meted out.

The piece about adding time, I am not sure of the reference you are making there. We do not have an earned remission system.

Senator Baker: In provincial prisons they do.

Mr. Head: Yes.

Senator Baker: I did not want to give the impression to the general public that these people are not punished in jail.

Mr. Head: That is why I said there are sanctions that are there.

In terms of your question around electronic monitoring, no, we are not purchasing the cheap equipment. There are all kinds of pieces of equipment out there, both RF — radio frequency — based and GPS based. There are both active and passive systems. It is a technological discussion around them.

We were testing some equipment that was being used in the province of Nova Scotia at the time under their system. We were using that technology to do nothing more than to understand with a piece of equipment, this one being one of them, what were its capabilities and its restrictions. We do know, even since that pilot, that there is new technology that has been developed.

We also know that with almost every piece of technology there is some drift. The narrower the drift is the better off you are. That is obviously the kind of equipment we would want to purchase. We do not own any equipment right now. We did that through part of the contract, in terms of doing the pilot project, using the equipment that already existed, but we would be looking to get that equipment.

Even your personal equipment that you have now in your vehicles has drift. The ones that have the least amount of drift are those of military grade. From what we are told, there is built-in drift for all kinds of other national security type reasons, but there is some kind of drift.

What we are worried about is if we have drift of 20, 30, 60 feet, which is the kind of drift you get with most of the equipment you buy right now, that is also a signal for us. If we have a sex offender going to a playground and they get within 60 feet of that playground, even though they did not get there, it requires a conversation with that offender and it requires a response.

Early on, we were worried because there were early pieces of equipment that had drift of up to 60 kilometres. That was not the equipment that we were using, and we learned from the experience of other jurisdictions that had that equipment.

When I worked in the Yukon and the Saskatchewan systems, we had earlier versions of electronic monitoring, radio-frequency based, more passive-type systems where there is something connected to your telephone and the signal went out to the device to ensure you were in your house. There have been huge advances since those times. As we go forward with electronic monitoring, we will obviously be looking for the most current piece of technology, as well as the ability to continue to upgrade that if newer pieces come along.

The Chair: We will have to move along, senator.

Senator Baker: You only allowed me one question, but that is okay. The second round is good enough for me.

The Chair: I am not counting questions; I am counting time.

Senator Baker: So when the witness wisely goes on and on and on, then it is counted against me.

The Chair: And when the questioner extends his time a bit.

Senator Baker: Don Head is a wise man, I can tell you. He is used to court proceedings.

[*Translation*]

Senator Dagenais: My first question is for Mr. Head. If I go by your documents, you are saying it will take nearly $5 million a year to take in the additional offenders that will result from the use of mandatory minimum sentences.

Obviously, many of the new mandatory minimum sentences in Bill C-10 are for less than two years. And if I go by the history of sentences imposed by judges, that the public unfortunately does not think are harsh enough, they are often sentences that are served in provincial prisons. How do you arrive at the $5 million figure you are putting forward?

[*English*]

Mr. Head: That is a very good question, senator. For us, we have the responsibility — and Chairman Cenaiko can talk about this as well — for doing the case preparation and supervision of any provincial offenders where there is no provincial parole board. Right now, the only two provinces that have

provincial parole boards are Ontario and Quebec; all the other jurisdictions rely on the Parole Board of Canada.

Any provincial offender who is six months or more can apply for parole, six months to two years. If they apply for parole, it is our staff that has to do the case preparation work and then the supervision if that parole is granted. A portion of that money is attributed to the case preparation work and the parole supervision of provincial offenders who could possibly apply and be granted parole.

[*Translation*]

Senator Dagenais: Mr. Cenaiko, you have given us a brilliant description of the consequences of Bill C-10 for your work in terms of the needs you will have. We are aware that this is probably the price to be paid for guaranteeing the safety of our communities.

I did not get the impression from anything there that you agreed with the changes to sentencing or with Bill C-10. I would like to have the benefit of your knowledge and your unique contact with offenders and ask you whether you do not have the impression that sometimes individuals are released who are still a danger to the public.

Do you think that Bill C-10 will help you protect the public better?

[*English*]

Mr. Cenaiko: That is a very good question. In a previous question you mentioned replacing the term "least restrictive " with "necessary and proportionate to support the purpose of conditional release. " As I mentioned in my opening remarks, the purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by facilitating safe rehabilitation and reintegration of offenders back into the community.

Bill C-10 also adds and changes principles in relation to the fact that we have to take into account the nature and gravity of the offence, as well as the degree and responsibility of the offender. When we assess risk on offenders, this has always been taken into account. It is provided now in legislation, though, as well. We have to ensure that we are doing these things.

When we look at an offender's past behaviour and criminal history, this includes the nature and gravity of the offence. When we look at the offender's present, we look at the offender's behaviour within the institution and the degree of responsibility that he is taking toward reintegration back into the community. When we talk about the future, we review the release and correction plan that CSC develops and works on from that intake to his opportunity for a parole hearing, and then the supports in terms of supervision strategies that would be in the community for the offender as well.

There is strengthening in relation to principles in the legislation; however, when we assess risk on offenders, we look at a number of factors, including what I just mentioned as well.

[*Translation*]

Senator Chaput: My question is for Mr. Head. In your presentation, you say that rehabilitating and reintegrating offenders back into the community is a primary function of your organization.

That is very laudable and it needs to be said. But I think it is apparent that changes will have to be made because to date, as we are increasingly hearing, there are a lot of repeat offenders. We have to ask ourselves what should be changed in rehabilitation and social reintegration programs.

Have you done another impact assessment of these programs concerning changes in the behaviour of people who leave, who are no longer incarcerated? If so, have you identified points that might be corrected by the new programs you are going to put in place?

Some people will be incarcerated for much longer times, but if the programs do not work, that will simply delay the reoffending. What are the changes to be made that might make a difference?

[*English*]

Mr. Head: Thank you very much, senator. For us, that is definitely an ongoing discussion in our organization.

If I go back in time, when I first started in corrections 34 years ago, there was a plethora of programs available. Anything that basically occupied an offender's time was called a program. As to whether it was effective or whether it had any impact, there really was not much research in those early days.

As time went on, a lot of research went into developing some of the key programs we have now. Some of our core programs — our substance abuse, violence prevention, and living skills type programs — have been reviewed and subjected to research and to international panels over the years. They have actually become the model for many correctional jurisdictions around the world, who continue to come to us to be trained and to borrow our core programs, because the research continues to show the positive impact they can have, coupled with a lot of things. No one single program results in change.

That being said, through our research plan we are looking to do some more up-to-date research, because some of the research results are several years old. We want to make sure they are continuing to produce the kinds of effects the researchers support.

As well, we also know that we had some problems with the way some of our programs were being delivered, in that if an offender started a program on day one and for whatever reasons is moved to segregation, gets transferred to another institution, and did not complete that program, that individual then had to be put on a waiting list to start the program again. We came to the conclusion a couple of years ago that that is not a good way of doing business, nor does it allow the offender to build on the skills that he or she is starting to learn.

We implemented a pilot project that we called our integrated correctional program model, which looks to do several things. It looks to get offenders involved in program primers right at the time that they come into our intake assessment as opposed to waiting many months after they are placed into a penitentiary. We are getting them involved with their primers within the first 45 to 60 days. Before, individuals were waiting up to 200 days before they were starting that program. We are saying that we need to start right away. Through the integrated correctional pilot program that we are running, we are doing that.

We have also moved to an approach within that model that sees continuous intake of offenders. An offender that has to stop because of transfer, segregation, or going out to court for a week or so, can plug right back into the program when they come back as opposed to going on a waiting list and waiting months again before starting that program.

[*Translation*]

Senator Chaput: In these rehabilitation programs, are the victims involved? Are there discussions with them about the fact that the people who committed the crime have serious responsibilities to victims?

[*English*]

Mr. Head: In terms of the overall frame of the programs, one thing that offenders are being taught is how they go about making decisions and the impact of their decisions on others. That is the key component in almost every one of our cognitive behavioural-based programs. Without that, we will not change the behaviours that are needed.

Senator Frum: We have heard different things at this committee about the potential for rehabilitation for the most extreme sex offenders, pedophiles; that is obviously a focus of yours. Can you comment on that? I think we put a lot of faith in the possibilities of rehabilitation and maybe, in some cases, none exists.

Mr. Looman: The program that I used to oversee was the program that treated the highest risk sex offenders in Ontario. We had sadistic offenders, pedophiles; the full range. The research that we have from our program specifically over about a seven-year follow-up indicates a 17 per cent recidivism rate. If you were to look at the assessed risk levels of the offenders we are treating, you would be expecting more like a 40 per cent recidivism rate. The treatment is effective.

I was reading some of the testimony from previous days. One thing that was talked about was what, exactly, a pedophile is. For some few, select people, it is an ingrained sexual preference for children. However, for the vast majority of child molesters, that is not the case. For the vast majority, it is other factors that play into the offending. The guys who have the very ingrained preference are the ones who are more resistant to treatment. However, even those men can be taught to manage those urges.

We have guys who are heterosexual adults and who never have sex with adult females because of lifestyle choices, or whatever. You can do the same thing if you are a pedophile. Your choice of sexual partner is different, but you can still learn to manage those urges and decide not to act on them. If you look at the child pornography offenders, many of them never have sex with kids, but they would be pedophiles.

Senator Frum: Senator Angus asked a question on the subject to another witness about chemical therapy versus cognitive therapy. On which do you focus?

Mr. Looman: The initial focus is the cognitive therapy. That is, addressing thinking patterns, attitudes, all that sort of stuff. For some of the guys for whom it is a much more ingrained preference, some of them choose to go on anti- androgens or SSRIs to reduce their sex drive, but it has to be their choice. You cannot rely on it as the fall back for everyone. If they do not want to go on the medication, once their warrant has expired, we have no control over them. It has to be their choice.

We were treating about 30 men a year. Probably every year, there were five or so who at least gave it a try.

Senator Frum: Clause 55 obliges prisoners to take — and I guess they were always obliged to have some programming — a program. When Sheldon Kennedy was here, he said his offender opted not to take a program. How much volunteerism is there?

Mr. Looman: We had about a 30 per cent refusal rate over years of monitoring it.

Senator Frum: Does clause 55 change anything, this clause where they have to be part of the program? Does it change the voluntary nature of being with you?

Mr. Looman: They have always had sanctions. If an offender has it on his correctional plan that he is supposed to take a sex offender program and he refuses to do that, the way things are right now, he will have a pay sanction. People still refuse to do it. With the proposed incentive changes, it might increase some.

One thing about being a sex offender in prison is that you are at the very bottom of the rung. Many guys who come into the system as sex offenders do not want to be identified as such. Going into a sex offender program identifies them. There are other incentives not to get involved.

Senator Frum: The 17 per cent recidivism rate is for those who took treatment. How about those who did not take the treatment?

Mr. Looman: The research on that varies quite a bit. Some research says that people who refuse treatment are at higher risk to reoffend than those who do not. Other research says that there is no difference. The research that I personally have says that there is some difference but not a lot.

One thing that people kid themselves about it is that you have to have treatment to not reoffend. However, the vast majority of sex offenders do not reoffend. Something like 90 to 95 per cent of sex offences are committed by first timers and, even without treatment, most of them do not reoffend. If you are talking about affecting sex offender re-offence rates overall, for many people, just being detected and the embarrassment of going to court and people knowing what you did — all that, by itself — is often enough to make people change their behaviour.

Senator Frum: Deterrence and denunciation is effective?

Mr. Looman: I would not call it deterrence because deterrence prevents people from doing it in the first place. Research suggests that there is no deterrence effect. The effect is having been caught, having been sanctioned, having gone through the process and being forced to think about what you are doing.

I used to smoke and I smoked a pack a day for years; then I developed a cough. I was only 27. I said, "What am I doing to myself? " So I stopped. I tried stopping before, but that really motivated me and I stopped. Being forced to think about what you are doing and why you are doing it is often enough to stop yourself from doing it again.

The Chair: I have a couple of questions to finish the first round. We are anxious to get to second round. Senator Fraser is at the top of the list for that.

Mr. Cenaiko, could you comment on what impact Bill C-10 will have on the workload of the Parole Board of Canada, the practical implications of it.

Mr. Cenaiko: We will see an increase in the mandatory minimum penalties that will come with it, the drug offences and the child abuse cases. There will be an increase there. There will be a bit of a decrease in some other areas. Overall, I think we will see an increase of 1,000 or 1,200 additional hearings per

year. Depending where those are, there are the geographic costs related to them. In relation to the legislation with victims, I wanted to speak to Senator Boisvenu's comments in relation to victims. That is an extremely important piece of legislation in relation to victims being able to get information regarding those offenders of their institutional behaviour, including programs, but also information in relation to the waiver, if there was a waiver at that last minute. That is very important. We have to continue to look at providing services for victims.

Mr. Head and I started two years ago. We each have victim service units. Two years ago we worked together and now have a joint victim service, which is still fairly new. However, it does provide a seamless entry point for victims, so they are not getting lost within the system between the parole board or the CSC; so we are working together on that to provide additional services. As we move forward, we will maintain our communication and partner with the Ombudsman for Victims of Crime, Sue O'Sullivan, and her report that she tabled with the Minister of Justice. Obviously, there are some areas there.

I want to add to Senator Boisvenu's comments in relation to victims that we impact with regard to pardons. Again, this is not legislation, but in relation to pardons, if a victim wants to provide a statement in relation to an individual, because of course that is all private information, they can in fact send a statement to our clemency and pardon division, and that will remain on file until the division determines that we have this applicant and we will line up the application with the victim.

This is something that we began as well. That is not legislated. It is not personal information that can be disclosed to a victim as well, regarding the application for a pardon or application for a record suspension.

The Chair: Mr. Head, clause 55 of the bill makes changes to — and it has been referred to earlier — the correctional plan that is in place for all offenders. Of course, those plans are to facilitate the rehabilitation and reintegration of offenders back into society. There have been changes to those plans incorporated in the bill. Could you comment on what those changes are and what impact they will have on the work you do?

Mr. Head: More specifically, the changes in the bill formalize the correctional plan more than they were before. In the current act, the Corrections and Conditional Release Act, there is a passing mention of the correctional plan, but this now in a more formal way entrenches in the legislation the plan and the minimum requirements — minimum requirements in terms of following and obeying the rules of the institution, what programs, interventions, skills development and education the offenders should be following, and even issues in relation to restitution, if such orders exist that may have come down. Those will be entrenched in the correctional plan.

Although we have always had correction plans for offenders, it is much more formalized now in the legislation. That will become much more of a guiding document in decision-making, not only within CSC but also within the Parole Board of Canada. The chair of the PBC and I were talking about this the other day as to how those changes will impact recommendations going to parole board members and how parole board members assess all the factors they do in making a decision about a conditional release.

Mr. Cenaiko: The institutional behaviour of an offender is a critical component. When we look at the past, present and future of that offender, the present and, as is mentioned in the legislation, the degree and responsibility that that offender has towards his own reintegration has to be there. When we are reviewing and looking at the file, and of course we have looked at all the court documents, the police reports and everything else as we move through this individual's history, the institutional behaviour is a critical component of whether or not we can make the determination that this individual can be monitored safely in the community and whether there is a risk to the public if this offender is placed on a conditional release.

Senator Fraser: Mr. Head, I would like to come back to the integrated correctional program model. I was reading the correctional investigator's annual report on this and I know you are very familiar with it, but perhaps not all colleagues are. Mr. Sapers spoke about it as a pilot program, but it was being expanded even though it was still officially a pilot program and had not yet been evaluated. Obviously, in particular, improving timely access to programs is very important, and it is very important to have better links between institutional and community interventions and making program content more relevant and accessible. All that stuff is great, but Mr. Sapers said other things as well, as you know, and I will quote from his report. He said:

> . . . there are concerns regarding the pilot's emphasis on reducing/collapsing a number of previously separate and discrete programs (e.g., substance abuse, violence prevention or anger management — into a `one-size-fits-all' intervention).
>
> Consistent with the push to identify and eliminate program redundancies, the Service's *Violence Prevention Program* and its Aboriginal-specific *In-Search of Your Warrior Program* have been replaced in regions where the ICPM is being piloted. These `efficiencies' follow an earlier move that eliminated low intensity sex offender programming across the Service. Furthermore, under the ICPM model, time spent in programming is dramatically reduced — in some cases, by a factor of three.

We have already heard from Mr. Looman about how some sex offender programming is now being done by correctional service officers with two weeks of training rather than by professional psychologists. This all sounds quite alarming to me. The objective of programming is to ensure that when they get out, these people will be better able to function properly in society. As you said earlier, they are all individuals. Every one of these people is different from his or her neighbour, so I do not see how collapsing all these programs into a few one-size-fits-all models will work to the benefit of society at large, let alone the offender. Can you comment?

Mr. Head: I will try to be brief but, at the same time, meaningful.

This is not an issue of taking a bunch of programs and collapsing them. The approach that we have taken with programs over the years, which research has proven to be effective, has been based on a cognitive behavioural model. Many of the programs we had in place had, in terms of the front end of their programs or the beginning sessions, the same modules. These are what we call the primers. We have collapsed those primers, so instead of having a primer for substance abuse and a primer in violence prevention, which are basically the same primers, they are getting those primers at the intake assessment at the same time, so that when they move on to the more modern high intensity programs such as violence prevention or substance abuse, they are getting those programs but they have already had the basic primer cognitive learning modules delivered to them.

Again, by doing that earlier, we are achieving several things. We know from the research that if we take advantage of when an offender first comes into the system, they are more likely to be motivated to participate in a program at the beginning of their sentence as opposed to the longer period of time, because they become entrenched for all kinds of reasons, so by giving them the primers at the time of intake we are capturing their minds and hearts right at the beginning.

We then set the stage for when they move out of the intake assessments and are placed into the penitentiaries where they will be for a period of time, that they then can start the more intensive programs that will be identified in their correctional plan. This is not a case of just collapsing everything into something called one program and eliminating all the other pieces and the needs we have to address with the offender. This is about getting them motivated at the beginning, getting the primers dealt with, and once we have them placed in the institutions, getting them into the moderate and high intensity programs they need around violence prevention, around substance abuse, around family violence, and even around sex offending treatment.

Early indications are that this is a move in the right direction. It is still early for us to pronounce a victory here. We are doing this in the Pacific and Atlantic regions. In the three other regions, the normal range of programs are still being run and operated the way they have been. While the organization has wanted to expand right across the board, we only let the expansion go to the Atlantic because it was a smaller region and we could see if there were any other differences to be gauged through the pilot.

The early indications are that this is the right move. We have several other jurisdictions from around the world that are quite interested in what we are doing here because they have similar problems, such as getting offenders motivated to begin programs and the issue of when offenders are transferred, go to segregation or come out of a program for any reason, they then having to go back on a wait list and cannot get back in.

They see there are some opportunities in terms of the approach we are taking, and that is what we are trying to assess, whether this is going to be the right model for the long term.

The other approach we are taking now is not getting them into programs early enough. We are not taking advantage of people when they first come in, when their motivation levels are higher to get involved in a program.

Senator Runciman: I will not deal with the mental health issue again, but I do want to say that Senator Cowan raised the issue of staffing to deal with that issue.

I want to quote Mary Campbell again from Public Safety Canada when she appeared before us in terms of treatment programs: "We have a lot of difficulty attracting professionals to come and work in penitentiaries, trying to get professionals and trying to get them to stay. "

In terms of the ratios that I mentioned earlier, very inadequate ratios of health care staff to corrections staff, even those can be misleading because of the vacancy and the challenges in the system. It could be helpful to the committee at some point to visit the treatment centre in Kingston and the provincial treatment centre at St. Lawrence Valley to see how the systems are working. It could be enlightening.

Mr. Head, we had a witness yesterday, Justice Nunn, who is from Nova Scotia. He was expressing concern when talking about an individual who was the subject of his commission study, which is resulting in many of the Youth Criminal Justice Act changes in the bill. He indicated that he visited the individual in question in the youth facility. I am not sure how many times; we did not get a chance to pursue that, whether it was once or on more than one occasion. He said he felt he was being rehabilitated; he was reading Zane Grey and going down the right path in life. To complete his sentence, he was transferred to an adult facility. Justice Nunn implied, maybe it was even stronger than implied, that that once again led this person down the wrong path in life and he has reoffended a number of times since completing his original sentence.

Could you speak to us about what happens in those instances when someone is coming out of a youth facility and being transferred to an adult facility? How do you treat those situations? Are Justice Nunn's concerns ones you share?

Mr. Head: That is a very good question, senator. Having had experience on the front line in cases where youth have come in as a result of the way the sentence is administered, there are some significant challenges. These are cases that are always of concern to me because having gone through a youth facility, being managed and stable there and then going to a federal penitentiary is a major shift, as you well know. It is a concern.

We look at these cases very specifically as to the right placement for them, particularly given their youthfulness. We ensure to try to avoid putting them into an environment that will first cause them physical harm, and then we try to minimize any psychological harm or having them get caught up in other things.

One concern we have, particularly with those individuals who are coming in from the youth facility, the younger and the younger looking they are, they very quickly scooped up, for lack of a better phrase, by other offenders. As you can imagine, that is not a very good situation. These are things we are trying to prevent, and it is not always possible.

It is a very big concern for us in terms of those coming straight from the young offender facilities into a penitentiary as a result of the adult sentence. I understand the whole situation in relation to their crime and sentence and the way the laws line up, but these are very challenging cases.

Senator Runciman: Is it feasible to look at some sort of a transitional facility?

Mr. Head: Yes, I think that is an excellent idea. It is something we have been talking about over the years. One issue we have, though, like many other specific problems that come up, is the issue of mass. If you have one in Quebec today, two in Ontario and one in the Prairies and they are all spread out, it is difficult to try to justify a special unit for that. However, we do need to find a solution in order to ensure that we are addressing their safety and allowing them to basically either get back on the right path or continue on the good path they may have been following while in the youth facility.

Senator Lang: How many people per year on average are we dealing with across the country with respect to the situation where they come from a young offender facility to a penitentiary?

Mr. Head: It is less than a dozen per year, but the numbers accumulate. These are individuals coming to us at the age of 18.

Senator Lang: This is not new, so would you be able to report back to us next year as to what you have done so these young people cannot get scooped up?

Mr. Head: Yes, most definitely.

Senator Cowan: Commissioner Head, you said in your opening statement that your transformation agenda, which the CSC has been following for the last four years, is based on the review panel report released in 2007 entitled *A Roadmap to Strengthening Public Safety*.

The Canadian Bar Association has commented on that report and that roadmap, and they refer to, as they say, the only independent analysis of that roadmap prepared in 2009 entitled *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*. That review concludes that the roadmap is a flawed moral and legal compass; it points in the wrong direction with reference to the fundamental values and principles of human rights. The Canadian Bar Association questions whether that is a legitimate basis upon which to transform the correctional service.

Are you satisfied that you are on the right track and that that is a sound basis upon which you should be revamping and changing your system?

Mr. Head: I think that the short answer is yes. In terms of the elements that are in the roadmap, it talks about issues of offender accountability and responsibility. It talks about eliminating drugs that come into the institutions, which make it unsafe for my staff, for the offenders and for visitors. It talks about increasing program and employment skills development opportunities for offenders. It talks about renewing the infrastructure within which offenders

live and my staff work. It talks as well about increasing our capacities in community corrections areas so when offenders are transitioning from institutions to communities we have the right handover in terms of intervention, supervision and programs.

In our direct discussions with the authors of that report, we asked, "With that frame, you are telling me this is a bad correctional agenda? " They said, "No. " What they are saying, from their perspective — and I will let them speak for themselves — they are targeting a larger issue, which is what they perceive as the government agenda. That I will not comment on. My job is to implement the law the way it is.

In terms of that roadmap and those elements, those are key fundamental pieces to a good effective correctional organization: a safe environment for people who are sentenced there and staff to work in; a place that provides programs, intervention, education and employment skills development; a place where offenders have responsibilities and accountabilities and the organization has responsibilities and accountabilities as it relates to the mission of the law; a place that has an infrastructure that is viable, workable and supports the mandate; and an environment where we have good, strong effective community corrections. The long answer to your question, senator, is yes, I believe the framework of that roadmap is a sound one.

The Chair: That concludes our time with this panel. On behalf of honourable senators, I thank Mr. Head, Mr. Cenaiko and their colleagues. You were very helpful to us, and we very much appreciate your time.

Honourable senators, we will now continue with our study of Bill C-10 and in particular Part 2 and Part 3 of Bill C- 10 that relate to conditional sentencing, parole and pardons, and this is our second panel of the morning. We are pleased to have with us today from the Office of the Correctional Investigator Canada, Howard Sapers, Correctional Investigator, and Marie-France Kingsley, the Director of Investigations.

Mr. Sapers, I understand you have an opening statement?

Howard Sapers, Correctional Investigator, Office of the Correctional Investigator Canada: Yes, I do and thank you. I will try to keep my remarks brief. I certainly appreciate the opportunity to appear before your committee this morning.

I know that our time is short and I know that you have many witnesses to hear from. The bill, as you are aware, is very large and complex. I will restrict my comments to the best of my ability to those aspects of the bill that directly impact on the work of my office, and by that I mean directly impact on the manner in which the sentence is administered and impacts on federally sentenced offenders.

I would ask senators this morning as I make my remarks to consider some important questions that go to the purpose and principles of corrections in Canada. What do we want or expect of our correctional system? How do we intend to manage offenders in our federal penitentiaries and what is the impact of legal language on how punishment is dispensed?

Before going any further into these questions, I would like to introduce Marie-France Kingsley who is the director of investigations for my office. She will take a moment to refresh members of the committee regarding the role and function of the Office of the Correctional Investigator.

[*Translation*]

Marie-France Kingsley, Director of Investigations, National Parole Board of Canada: The Office of the Correctional Investigator was established in 1973 to function as an independent ombudsman for federally sentenced offenders. The office is mandated under Part III of the CCRA to conduct investigations into the problems of federal offenders related to decisions, recommendations, acts or omissions of the Correctional Service of Canada.

The office is an oversight, not an advocacy body; OCI staff members do not take sides when resolving complaints against the Correctional Service. The office independently investigates legitimate complaints and ensures that federal offenders are treated fairly and in compliance with legal and policy frameworks.

In 2010-11, the office received close to 6,000 offender complaints and inquires, responded to more than 20,000 calls on its toll-free number, spent 376 days in federal penitentiaries, interviewed more than 2,100 offenders, reviewed over 1,265 uses of force incidents in addition to over 100 incidents involving serious bodily injury and deaths in custody. These are significant achievements for an organization that averaged about 30 full-time employees.

[*English*]

Mr. Sapers: In previous testimony before the House of Commons Justice Committee, I raised three points of concerns. I will briefly revisit these points and provide some additional remarks regarding the role and status of victims in corrections, proposals to enhance offender accountability and the need for precision and clarity when considering amendments to the Corrections and Conditional Release Act.

With respect to my first concern raised before the house standing committee on November 2011, I stated that there are no compelling reasons or justification to amend or remove the key principle of "least restrictive " from the Corrections and Conditional Release Act. Bill C-10 would remove the onus on the Correctional Service of Canada to use the "least restrictive " measure to manage risk and replace it with a much less defined test of "necessary and proportionate. "

I am concerned by the messages and implications that are being delivered by this proposed change. In corrections, the "least restrictive " measure has very precise and consistent meaning. Use-of-force scenarios, security classifications of offenders, penitentiary placements, transfers of offenders, segregation decisions all legally require the correctional service to consider and use the least invasive, least intrusive and least impairing optional available. This is consistent with the Criminal Code provisions that guide the judiciary in the imposition of sentences.

In corrections, clear language means clear direction to staff. Ambiguity creates confusion and leads to gaps in accountability. Replacing the notion of the "least restrictive " option with "necessary and proportionate " measures effectively dilutes the primary legislation. This change appears contrary to maintaining a fair, safe and accountable correctional system. As I pointed out to the Justice Committee, it will be more difficult for my investigative staff to assess whether a particular action was "necessary and proportionate " in circumstances where the "least restrictive " standard was not considered by the correctional service.

On a similar point, I am not clear what the intent is behind changes to sections 4 and 101 of the CCRA which would require a prison sentence to be managed with "due regard for the nature and gravity of the offence. " There is an imperative to be explicit when directing correctional authorities in how a sentence of imprisonment is to be administered.

It is the judiciary not the correctional service who decides upon the length and severity of the prison sentence. In a free and democratic society, the rule of law means that individual offenders are sent to prison as punishment with the full knowledge that procedural fairness and retained rights do not stop at the prison gate. To be clear, my concern with the proposed change lies in its potential to lead to an abuse of authority. Remember, the conditions of

confinement are not meant to add consequences to the order of the court.

Now, I know this committee is interested in the ability of the Correctional Service of Canada to discipline offenders and maintain good order within penitentiaries. It may interest members to know that under current law and policy there were over 31,000 minor and major institutional charges filed against offenders for offences such as disobeying an order, disobeying a rule, disrespecting staff and causing a disturbance.

Second, while increases in the federal offender population have not materialized to the extent projected, the system is nonetheless facing serious capacity challenges that reach beyond the availability of cell space. CSC's declining effectiveness in moving offenders down through security levels, engaging them in programs and preparing them for safe and timely reintegration is reflected in historically low day and full parole grant rates. Inmates are spending more time in their cells as a result of an increasing number of lockdowns, exceptional searches and modified routines. From 2008-09 to fiscal year ending March 2011 the correctional service recorded a 38 per cent increase in lockdowns due to exceptional searches. There are mounting concerns regarding incompatible inmates and the influence of gangs, drugs, violence, crowding, unrest and victimization. More offenders are being housed long term in segregation cells which were meant for short-term confinement of the most high-risk offenders. A worrisome development on this front is the recent practice of double bunking in segregation cells where inmates are confined in close and unrelenting proximity for 23 hours per day.

Between February 2009 and today the federal incarcerated population increased by about 1,100 inmates or just over 8 per cent which is the equivalent of at least two large male medium-security institutions.

We are entering an unprecedented period in Canadian correctional history. As legislative reforms drive population growth, building additional capacity and replacing rusted-out capacity is necessary. CSC plans to add 2,700 new or renovated cells to more than 30 existing facilities at a cost of over $600 million over the next two or three years. Once built, it will cost Canadians an average of almost $110,000 per year to imprison a male offender in one of those cells. The service's total budget will exceed $3 billion for the first time ever and, for the first time ever, exceed the operating budget of the RCMP.

As of January 2012, 15.64 per cent of the incarcerated population is now accommodated in cells designed for one inmate, a phenomena that increased by more than 50 per cent in the past five years. As prisons become more crowded, building our way towards a solution while assisting inmates to lead a law-abiding life upon release is an increasingly challenging and expensive endeavour.

Beyond numbers and costs, parliamentarians may be concerned about who is ending up behind bars. The profile of the offender population is changing. They are getting older. They are more addicted and more mentally disordered. Visible minorities, Aboriginal people and women are entering federal penitentiaries in greater numbers than ever before. One in five federal inmates are aged 50 or older; 36 per cent are identified at admission as requiring some form of psychiatric or psychological service or follow-up intervention; 63 per cent of offenders report using either alcohol or drugs on the day of their current offence; 20 per cent is of Aboriginal descent; and 9 per cent of inmates are Black Canadians.

With this changing and complex profile the pressures to provide safe and secure accommodation in custody, meet growing mental and physical health care needs and respond to the special needs of aging, minority and Aboriginal and minority offenders are accumulating and intensifying.

I will make two final observations. With respect to the role of victims, I believe it is important that their needs be recognized, that they should be engaged, represented and heard throughout the correctional process.

However, enhancing victims' rights is not about putting one set of rights ahead of or in opposition to another set of rights. The rights of victims, those of offenders and the rights of correctional staff are not things that need to be balanced off against each other. Constitutional and legal rights serve us all equally.

Offenders do not have special rights. The Charter applies to all Canadians, including citizens who are temporarily deprived of liberty by the fact of incarceration.

The CCRA, enacted in 1992, reflects over 175 years of experience in federal corrections, the principles it expresses, the importance of public safety, the notion that offenders retain and not forfeit their rights at the prison gate, the concept of least restrictive measure, rest upon Charter provisions and a very well-developed history of prison case law. This statute expresses the finest traditions of Canadian values and beliefs. Indeed, it has helped ensure Canada is one of the safest countries in the world.

Of course, like all legislation, the CCRA could be improved. By all means, we should expect offenders to be held accountable for crimes and we need victims to be empowered and engaged. These are not separate or mutually exclusive aims.

Bill C-10 contains a number of measures to place greater emphasis on ensuring offenders adhere to their correctional plan. There are also provisions allowing for enhanced participation of victims in parole proceedings, and greater sharing of information with them.

My office supports the intent behind these provisions. Considered together, these measures should increase public confidence in the system.

I recognize that accountability and transparency are cornerstones of good corrections. Public safety is enhanced when all those involved in corrections are held responsible for their actions. That said, offender accountability for making progress against a correctional plan is a two-way street.

The office has repeatedly recommended that services and programs be adapted to the needs of a changing offender profile and must be improved, especially in the area of mental health, and be made more available to support timely, responsive and safe reintegration. It would be misplaced to hold an offender accountable for failing to meet his or her correctional plan if treatment or program interventions are simply not available.

Let me share a few examples of what I am referring to. On February 1, I took a snapshot of inmate involvement in programs. I found, for example, that at Kingston Penitentiary, which has a current count of 356 inmates, there were only 47 inmates currently involved in a core correctional program, yet there was a waiting list of 177.

On that same day, at Bowden Institution in Alberta, there were 579 inmates on count, 102 — less than 20 per cent — were involved in a core correctional program, with 163 on the waiting list. At Collins Bay, with a count of 466, less than 10 per cent — 42 offenders — engaged in a core correctional program with a waiting list of nearly 180.

Earlier there was a discussion regarding incentives for program participation and involvement. Let me assure committee members that powerful incentives currently exist, incentives such as positive assessment for parole release, paid allowance increases for successful program participation and completion, security level reclassification and reduction and access to escorted and unescorted temporary absences.

In summary, the CCRA directs how the correctional service manages offenders in its care and custody, what purposes incarceration is meant to serve and

how the sentence will be administered. It is only right and fair that the sentence be determined by the courts. The task of the National Parole Board and correctional authorities is to administer the sentence as it is handed down, respectful of legal policy requirements.

Thank you very much for inviting my office to appear today. I would be pleased to answer any of your questions.

The Chair: Thank you, Mr. Sapers. We will proceed to questions, beginning with the deputy chair, Senator Fraser.

Senator Fraser: Mr. Sapers, those numbers for waiting lists are staggering. This bill formalizes in law the requirement for a correctional plan and makes progress on that plan formally part of the consideration of the parole board, but the programs are not available. Often the mental health treatment needed is not available either. What will be the result? It seems to me there are two possibilities here: one is that the correctional plans will be "dumbed down, " if I may use that rather ugly phrase; and the other is that there will be less and less parole granted. Am I missing some possibilities here? Do you have predictions?

Mr. Sapers: It has been a constant challenge for the Correctional Service of Canada to build and then maintain the capacity to meet demand for correctional programs. It is not my experience that the majority of offenders would choose to sit in their cell and do nothing. In fact, it is quite the contrary.

The hardest thing about doing time is doing time. Offenders choose often to be engaged in something. As I say, there is a range of incentives that currently exist. The challenge is the infrastructure, the ability to recruit and retain staff, crowding and the complexity of managing the kind of population that I spoke of.

At the maximum-security Edmonton Institution, for example, has a daily count of just fewer than 300. On any given day we would be surprised to find more than 10 offenders engaged in a core correctional program because of the particular population challenges there.

We are, as I said, at historically low grant rates for day and full parole. The majority of offenders are being released on statutory release or at warrant expiry. This is not good for public safety. This is not good corrections.

There is currently in place a positive requirement to be engaged in a correctional plan. Every offender gets a correctional plan now, regardless of Bill C-10, and prescribed programs are to be made available. As I say, there is a mismatch between that demand for programs and the capacity of the service to deliver the programs.

Senator Fraser: Could we realistically expect rates to come even lower for granting of day parole?

Mr. Sapers: I am not anticipating a huge increase in either positive assessments or release decisions from the board.

Senator Runciman: I appreciate the concerns that you have outlined, but I do want to take this opportunity to discuss an amendment that I believe is quite important. Clause 54 of Bill C-10 amends section 4 of the Corrections and Conditional Release Act. This is dealing with the principles that guide correctional services. It indicates that the service will be responsive to the special needs of persons requiring mental health care. I would certainly like to hear your views with respect to how big this challenge is across the system and how Corrections Canada can meet what is clearly a laudable goal outlined in their principles.

Mr. Sapers: Thank you, senator. In fact, it is in subclause (*g*) of the proposed amendment of section 4 of the act where it specifies for the first time that the service will have to orient itself to meet the needs of persons requiring mental health care. That is a positive change to the principles of the CCRA.

Some would argue that the service already has that positive obligation through other legal requirements that the service meet all the essential health care needs of federally sentenced offenders. The reality is that we know that mental health care needs are not fully met. The service struggles to do that now.

Simply by changing the principles section will not build the capacity in the service to meet those needs. The service still does not have fully funded its intermediate care program. The service has still been slow to engage in alternative service delivery models, particularly through reciprocal arrangements with provincial and territorial governments.

The service still struggles to retain and recruit an array of health providers. We currently still do not have regionally based care units for offenders who chronically self harm. We only have one national facility to do that. The only acute in-patient beds for women who are federally sentenced, who suffer from significant or acute mental illness, is one unit within an otherwise male institution in Saskatoon, so women from all over the country are forced to travel there for that service.

While the principles change is positive, that, in and of itself, will not build the capacity that is necessary.

Senator Runciman: We had Mr. Head here earlier and I talked about what I perceive to be, rightly or wrongly, institutional inertia with respect to this issue, because we have heard the good words for a significant period of time.

What kind of experience have you had? I know you have expressed concern about this issue in report after report. What do you see happening? You have outlined some of these challenges, and especially the alternative service delivery. We can talk about all sorts of challenges here with respect to the ratio of health care providers versus correctional staff, and all those other issues, but I expressed my frustration earlier today with respect to if there is movement here, it is at a glacial pace. What has your experience been?

Mr. Sapers: I suppose I could say the good news is that the glacier is moving. We have, in fact, seen infusion of new funding. There is now a well-defined institutional mental health strategy, a community mental health strategy. We have that one comprehensive complex needs unit for chronic self harmers. These are positive changes.

However, the real question, I suppose, is how to deal with the fact that prisons are not hospitals, but some offenders are patients. It is about how to deal with the fact that you have chronically and acutely ill people in prison. Some will point their finger at law enforcement and say that at that point of intervention, a different decision should have been made; and some will point their finger at courts and say that when these mentally ill folks were brought before courts, the courts should have made different decisions.

The fact is that either people with chronic conditions end up in prison or people become ill once they are incarcerated. The Correctional Service of Canada will always have an important role to play in the provision of those services.

One thing they have to put more effort into is recognizing that for some federally sentenced inmates, their health needs have to be addressed before any correctional need can be positively achieved. That means getting people out of segregation cells and maximum security prisons and into more therapeutic

and health-focused environments.

Senator Cowan: Again, back to the same issue, the statistics you quoted today about the percentage of people who are in treatment are staggering. Have you noticed any improvement in those statistics over the last three or four years?

Mr. Sapers: The numbers I quoted were of offenders engaged in core correctional programs, not specifically therapeutic involvements with mental health staff. I just want to make that distinction.

Senator Cowan: The numbers there would be even less.

Mr. Sapers: Yes, and much of that has to do, as I say, with the capacity. When you have 148 beds at the Regional Psychiatric Centre in the bowels of Kingston Penitentiary in Ontario, dealing with some of the most acutely mentally disordered offenders in the Canadian system, and you have one full-time psychiatrist and five full-time psychologists not just doing treatment but also renewing prescriptions, in the case of the psychiatrist, and doing risk assessments, on the part of the psychologist, I think you understand the challenge and the enormity of that caseload for those health professionals.

Please do not hear my comments as in any way being disrespectful of the hard work that is being done.

Senator Cowan: No, and I did not take it that way at all. My concern, which I think all of us have, is that clearly there will be a greater prison population as a result of the measures that will come into law. Whether that is a good thing or a bad thing is beside the point for the moment. The fact is that there will be more Canadian citizens in our prisons for longer periods of time.

Mr. Sapers: Yes.

Senator Cowan: The fact is, as you quoted, the demographics of that prison population are changing and have changed over the last few years. Chairman Head referred earlier to the road map, and he said that was a good basis for correctional policy and that the transformational plans of the CSC are following that. However, if you accept that as a premise — and you may not — and that the road map is the right basis and the transformation plan is the right plan to move to that, the irrefutable fact is that the service cannot seem to recruit and retain sufficient numbers of health professionals to deal with the current situation, which will only become more acute.

Is it simply a question of putting more money into the system? Is there some fundamental change in the approach that needs to be taken? How do we get out of this?

Mr. Sapers: In some ways, that goes back to the point I was making about least restrictive. I will give you an example.

Currently, if you are dealing with a suicidal offender, that suicidal offender may identify his suicidal ideation to a psychologist, and the psychologist may make a note. That information, in a limited way, may be shared with security staff and a decision may be made to put that offender into an observation cell, increase the frequency of visits, the rounds, and there may even be direct observation with a camera or 24-hour surveillance outside the cell door. Also, that offender may be given reduced access to personal cell effects and may be given special clothing, all based on the degree of risk that that offender is presenting for self harm or suicide. However, all of that is guided not just by medical or ethical principles about how to intervene with someone who is expressing suicidal ideation, but also the notion of least restrictive. In other words, you cannot throw that offender into a cell, put him on a PINEL restraint bed, tie him down and then walk away. That would not be least restrictive.

It is the way that these principles become operationalized in terms of meeting that increased need, and the more you harden an environment in terms of it being a correctional centre, the more you are eroding your ability for it to be therapeutic in the cases where it needs to be therapeutic. This gap is growing, and it becomes particularly difficult for correctional staff to deal with that gap in the middle. Are the correctional officers there to be guards or are they there to be psychiatric social workers? What kind of training, support and backup do they have?

All of that goes into the extra capacity. It is not just building the extra cells or renovating the old ones; it is about what you are doing to support your staff. How is the physical infrastructure being designed? Is the same ratio of money going into new program capacity and therapeutic space?

Senator Cowan: That is the point Senator Runciman made repeatedly. It is not about the offender, although that is obviously important, but it is about the safety of the staff there. If we are looking at public safety, which is what we are trying to deal with here, at some point these people will be released into the communities. If they have not received appropriate treatment and care while they are in there, then we are worse off, as citizens and as communities, when they get out.

The Chair: Was that a question or a comment?

Senator Cowan: That was a question inviting a comment.

Mr. Sapers: The purpose of corrections, of course, is to prepare people for release. The purpose of corrections is not to make people into good inmates. The focus should always be on the earliest, safest, most timely release and reintegration. That includes those with mental health issues.

Senator Cowan: The purpose of the legislation that we are dealing with here is safety. The emphasis here is on public safety. I guess I find disconnect there.

Mr. Sapers: Right. Good correctional practice promotes public safety.

[*Translation*]

Senator Boisvenu: I would first like to congratulate you for the way you defend the quality of life of people who are incarcerated in Canada. You are doing a very good job.

We have to admit that there are some incarcerated criminals for whom initiating a rehabilitation process is not at all a part of their process of self-examination. To think that 100 per cent of criminals are going to try to rehabilitate themselves is completely utopian, I think.

We know that, according to the data we have, which may be debatable, the rate of drug use in prison is 80 per cent. We also know that there are two major barriers to initiating a rehabilitation process: the lack of discipline, and drug use. I think that even when we are rearing our children, if they are undisciplined and they use drugs, we are not going to make very strong adults of them.

Mr. Sapers, you seem to be opposed to greater control of drug use in prisons, when everyone acknowledges what a problem it is. I have here a court

judgment in which we read that a criminal went all the way to the Federal Court to challenge having his blood taken.

We can see that it is a very significant problem. I would like to know where you stand in terms of this type of control over criminals who use drugs and on the fact that drug use is a direct obstacle to their rehabilitation. Because taking that position means admitting that the rehabilitation rate in penitentiaries cannot be improved.

[*English*]

Mr. Sapers: Thank you for recognizing the work that the men and women in my office do. It is difficult work.

I am struggling to answer your question in one way because I am trying to recall when I have ever spoken out against controlling contraband drugs in prisons. In fact, it is just the contrary. What I have spoken of is the need to have a balanced approach. The balance is like a stool with three legs. You have to have interdiction.

[*Translation*]

Senator Boisvenu: I was talking about controlling the criminal, and not necessarily about controlling drugs getting in past the guards. I am talking about controlling the actual person of the criminal, to find out whether they have used drugs or not.

[*English*]

Mr. Sapers: Interdiction, then enforcement and then treatment. Within the part that is enforcement includes things like urinalysis testing, screening. We have seen the number of seizures of contraband drugs go up. However, we have not seen an increase in the treatment of capacity of the service. In fact, last fiscal year there was a decrease in the amount of money spent on addiction programs for federal offenders. In spite of an increased expenditure on urinalysis and a greater emphasis on the use of things like drug detector dogs and greater reliance urinalysis, we have seen the actual positive result, which means that the presence of drugs stays about the same. There has been more emphasis on interdiction, seizing contraband drugs; more emphasis on screening for drug use, but a decreased emphasis on treatment.

When we asked the correctional service for baseline information — that is, how much contraband drug use is there in prison; how many men and women start using injection drugs, for example, while they are incarcerated — the service really does not have answers to those questions. It is hard to evaluate the effectiveness of their programs because we have poor baseline information.

Senator Baker: I only have one question. It is good the chair does not recognize me for two questions because we would probably be here all day.

First, I would like to congratulate you and Ms. Kingsley for the great job you are doing. Mr. Sapers, perhaps the most frustrating part of being in the position we are in as senators, observing this bill and listening to the witnesses, is that sometimes you hear witnesses who believe something to be true when it is actually not true. However, you do not want to interfere to point out that what they believe is not true.

All of the sentences being imposed in this bill that involve sentences of a year mandatory minimum, 18 months mandatory minimum, or any other sentences that are given, when that person is sent to jail with a sentence, the person does not serve the sentence in the institution. I would like for you to verify the following. If you cannot, you cannot, but I imagine you know something about this subject, although it is provincial law. Under the federal acts, the province has a right to pass provincial legislation. For example, if it is Newfoundland, you are in an earned remission of your sentence when you go to a provincial institution. In other words, you get 18 months. After you serve 12 months, your sentence is automatically made 12 months, if you have been good boy or girl. Am I correct in the general assessment that I have made?

Mr. Sapers: In Newfoundland, for example, the provincial law allows for one day of earned remission for every three days served. It is a 90-day sentence, if you follow institutional rules and routine; after 60 days, the superintendent could direct that the remainder of your sentence be served in the community.

Senator Baker: I thought it was two days; you earn a day. The point is that no matter what law we pass here, when the person goes into the institution in St. John's, Newfoundland, Her Majesty's penitentiary or any other provincial penitentiary, the law applicable in that penitentiary is to serve the sentence at the time served. That is what applies. The law we are passing here does not trump provincial legislation as far as the serving of the time is concerned. When the judge lays down the judgment and says "I sentence you to 18 months in jail, " and that person goes to the provincial institution, then that person is brought within the rules that are laid down there, which, for the case that we just cited, there is earned remission.

Mr. Sapers: That is correct. There are conditional release provisions, of course.

Senator Baker: As well, yes.

Mr. Sapers: They affect federally sentenced offenders serving greater than two years. You have eligibility periods to apply for day parole or for full parole. Those eligibility calculations have gotten much more complex. In fact, we are seeing most offenders being released at statutory remission and not on a conditional release based on a decision of the parole board.

Senator Baker: I mainly wanted to point out that we should not give the impression that any of the sentences here are laid down and that is what the sentence is that they are going to serve. There are other matters that come into play when someone is in an institution.

Thank you very much.

The Chair: I am glad you clarified that.

[*Translation*]

Senator Dagenais: I would like to thank our witnesses for being here. Mr. Sapers, you said that inmates spend a lot of time in their cells. Obviously, we have to believe they can be rehabilitated and we have to think about their welfare. You say that they have committed serious crimes, but often those crimes were committed under the influence of alcohol, drugs or a mental illness and they need health care.

You have said that victims should not necessarily be put in the position of confronting inmates. A lot has been said about the rights of inmates.

What do you think about Bill C-10 on the question of minimum and other sentences?

[*English*]

Mr. Sapers: I am sorry, senator. I do not understand your question. Do you want just a general opinion on mandatory minimum sentences?

[*Translation*]

Senator Dagenais: You say that inmates are left to their own devices but I have not heard you speak a lot about victims. The only thing you have said about them is that the two groups should not be put in a position of confrontation.

Do you think Bill C-10 is too hard on inmates? Is that what you mean?

[*English*]

Mr. Sapers: My concerns around Bill C-10 are as I articulated in my opening statement. I am very concerned whenever we change the principles of a piece of legislation. In my opinion, removing the language of "least restrictive, " for example, is akin to removing a load-bearing wall out of a structure. It is a very important part of how we conduct ourselves in the criminal justice system.

My concern is not that offenders be made more accountable. My concern is not that correctional officers will be given more options in terms of imposing discipline. My concern is not that the mentally ill offenders will now be specifically referred to as requiring special attention. Those are not my concerns.

Frankly, it is beyond the scope of my mandate to even directly comment on mandatory minimums. It is a decision taken by the government to pursue that policy. It is about the capacity of the correctional system to adapt to that new legislation and that new policy. I have expressed serious concerns about the current capacity of the correctional service, let alone the additional demands that will be placed on the service once the new law is proclaimed. I hope that has been responsive to your question.

Senator Jaffer: I have found your presentation very interesting but also troubling. I think this quote will always be with me: Prisons are not hospitals, but some offenders are patients. I do have a great concern about people who are suffering from mental disorders, not those found not guilty by reason of insanity but people suffering from various mental disorders in prison. Do you know what percentage of prisoners is suffering from mental disorders?

Mr. Sapers: There are various estimates. The commissioner earlier used the numbers of 13 for male and 29 per cent for female. We know that, as a result of the new computerized screening process, somewhere between 35 and 40 per cent of offenders are screened into the need for follow-up assessment. We also know that that screening results in some false positives. In other words, if we just suspect you may have an issue, we are going to direct you into some follow-up and then that suspicion will either be confirmed or not.

We have seen the number increase. We know that there are about 600 to 650 acute care beds in the five regional psychiatric centres operated by the Correctional Service of Canada across the country. We know that there is no additional space in those beds. None of them are empty. We know there is a high demand to get people into those beds.

I think it is safe to say that the number that the commissioner shared with the committee, the 13 and 29 per cent, is a reasonable baseline. My experience suggests to me it is a bit low, particularly for male offenders. If we are dealing with a population of 15,000 men and women in custody today, then about 5,000 will need follow-up assessment at the very least.

Senator Jaffer: You spoke about women. I used to go to Prince Albert and Kingston and visit women's prisons there, and then visit men. I found such a difference in the prisons and what services were available for women. Women were not provided with the same educational services. The biggest thing is when you say that a woman is moved to the only place where there are mental services, she is moved away from her children and her family. What happens to those children? I know you are not part of that, but there are special needs for women that are not met when you move a prisoner away from her community, especially when she has children.

Mr. Sapers: There are special needs for women, and that is irrefutable. The Correctional Service of Canada recognizes that. To the service's credit, they have built this capacity, so there is this Churchill unit at the regional psychiatric centre in Saskatoon. They have built this capacity and staffed the centre and have special training. It is good that they have that capacity. The difficulty, of course, is one of numbers and economy of scale. If you have an acute needs woman outside of Halifax and another couple at the Grand Valley Institution outside of Kitchener and another at the Edmonton Institution for Women, how will you program for that?

It is particularly that population I was thinking of when I answered Senator Runciman in terms of alternative service delivery. The Correctional Service of Canada is legally required to ensure that the mental health needs of all their offenders are being met, but they are not legally required to be the provider of those services. There is an opportunity here to explore, as I said, alternative service models and to look at what provincial and territorial governments are doing and what capacities exist there and what opportunities exist for collaboration so that the service is not forced to consolidate all these women into one place and has an array of options more tailored to the specific needs of those women.

Senator Jaffer: In your introductory remarks, you spoke about 9 per cent of inmates being Black Canadians. We talk, and rightly so, of the overpopulation of the Aboriginal population in prisons, and sadly the Black Canadians are also increasing. Most of the services they need are the same as for all Canadians, but there are specific services around racism and other needs that people have. Are those being met?

Mr. Sapers: We are in the midst of doing a systemic review of the capacity of the correctional service to meet the ethnocultural diversity needs that are reflected in the current population, with a particular emphasis on Black offenders. I can tell you that we have just begun that work. I can also tell you that I am very impressed with how responsive the Correctional Service of Canada is as evidenced through the material they have shared with us but also their willingness to engage in this study with us.

Senator Jaffer: Will this study be public?

Mr. Sapers: Yes.

Senator Jaffer: Will you provide it to us when it is?

Mr. Sapers: Sure.

Senator Frum: You said in your presentation that parliamentarians should be concerned about who is ending up behind bars. Senator Jaffer just discussed some of the groups you mentioned. You mentioned also that one of five federal inmates is aged 50 and older. I am interested to know the reasons for this. Is that just a reflection of the demographics of Canada in general, or are there other reasons why there are older inmates?

Also, in terms of being concerned, what difference does age make? I thought people grew out of crime and became less violent as they got older. Maybe it is a good thing they are older.

Mr. Sapers: Let my start by saying that it is pretty well established in correctional literature internationally that age 50 becomes a milestone. You become an older offender at the age of 50 for many reasons, some of it with respect to pre-incarceration lifestyle. Offenders are typically not the healthiest people in the world and typically have not led the healthiest lifestyles in the world.

Also, there is the process or the impact of incarceration, where being in prison ages you. When you think about physical and mental functioning, you are in a total care environment where decisions are being made for you and you have limited movement, et cetera. Age 50 becomes a milestone.

Older offenders do have special needs, such as mobility needs. People's cognitive abilities deteriorate, their senses deteriorate, such as eyesight and hearing, physical strength deteriorates and ability to simply survive in an environment that is not designed for people with walkers, wheelchairs, canes and hearing aids. A typical prison is designed for a younger, more robust population.

There are many reasons why the population is aging. One is the reflection of Canadian demographics for sure. There is also a stacking or piling-on effect, including life 25 sentences, the number of mandatory minimums, reductions in eligibility for conditional release. Every time policies change that result in more people going into prison and staying longer, clearly there is an impact on the age distribution. We are seeing more people go to prison and stay longer. We now have three decades of experience with mandatory life sentences of 25 years. All of this has combined to change the demographics behind bars.

Senator Frum: Presumably that would also have implications for the emphasis on rehabilitation. I do not know the average age of the group of prisoners over 50, but I expect the focus on rehabilitation would be greatly diminished for that group.

Mr. Sapers: There are very different expectations. For example, currently the correctional services are putting tremendous emphasis on vocational training, which is good. I am not speaking against that. The object, of course, is to give people employable skills upon release.

However, if you are 75 years old coming out of prison, learning how to frame a house is not really going to do you very much good because you will not be competing in the job market upon release anyway. Whether it is rehabilitative or not, we need a different emphasis on the intergeneration preparation. An older or retirement-aged offender has very different needs in the community in order to survive and be law-abiding than a younger offender.

Senator Frum: People being released at the age of 75 must have been there for very serious crimes.

Mr. Sapers: Not necessarily. There are many offenders, as I say, that are aging in place because of things like first- degree murder convictions. I can get the exact number for you, but I think there is somewhere around 3,000 in the system right now doing life 25 sentences. There are other offenders being convicted for their first federal prison term at age 50 and above who may be there for two, three or four years.

Senator Runciman: This aging prison population situation as you raise it, is it feasible to look at a chronic care facility? I am looking at alternative service delivery for that population which would help the population pressures and costs, et cetera. Is that a feasible alternative?

Mr. Sapers: Absolutely. As you heard the commissioner say, he is open to and exploring special purpose-built centres or units for young offenders, and I think we have to do the same thing for older offenders. We may not be at the point where we need geriatric prisons, but they are being constructed in other places around the world.

Senator Runciman: In the United States.

Mr. Sapers: Yes.

The Chair: Mr. Sapers, in your presentation you said Bill C-10 would change the use of the least restrictive principle and replace it with necessary and proportionate in managing risk within the institution. As you point out, the "least restrictive " measure is something that is acknowledged in this part of the Criminal Code, so there is a consistency with that, and I would agree with you.

When I was thinking about what you said, that replacing that with this reference to what is necessary and proportionate, it strikes me that those principles are equally enshrined in the Criminal Code, in particular in the principles of sentencing. The issue of what is necessary in section 718(*c*) of the code, which deals with the fundamental principle of sentencing, speaks indeed to separate offenders where necessary, so that issue of necessity is certainly present.

In 718.1, which is the fundamental principle of sentencing and is obviously extremely important, a sentence must be proportionate to the gravity of the offence and to the degree of responsibility of the offender. Therefore, that concept of proportionality and gravity is ingrained in the principle of sentencing in the code.

When I refer to gravity, it reminds me of another point you made as well, that Bill C-10 would result in a change that would refer to "due regard for the nature and gravity of the offence. "

Do you not agree that those principles of necessity, proportionality and gravity are equally a fundamental part of the Criminal Code as is this issue of least restrictive measure? They are all there, so it is not a matter of these concepts coming out of the sky and having no basis.

Mr. Sapers: In fact, there are two comments I would like to make about that. Number one, of course, the sections of the Criminal Code you refer to speak to sentencing and they guide the court, so it is really up to a judge to look at issues to do with proportionality. It is up to a judge to deal with an accused, now a convicted person, and try to decide in the realm of all possible expressions of that crime how serious this particular transgression or this particular offence and offender was.

Of course, the issue then is once the court weighs all of that and a sentence is imposed, it then goes to the correctional authority to administer the sentence. It is no longer a question of how grave it is or trying to struggle with those issues of proportionality or necessity. It now has to do with what the legal framework is that empowers the state to interfere with the life of this person. The first question is that they committed a crime and so they are in prison. Subsequent to that, you have to have some rule in place to guide how the sentence is administered.

"Necessary and proportionate " is two thirds of the legal test of least restrictive. The last third is that you have eliminated all of the other options. For the life of me, I cannot figure out why in law Parliament would want to take that requirement away from the Correctional Service of Canada to eliminate all the other options. We expect our police officers to use the least amount of force necessary as they enforce laws. We say in the Criminal Code that we expect judges to use the least onerous sentence necessary to achieve all those purposes of sentencing. Why not expect exactly the same thing of our correctional

authority?

The Chair: You make your point very well, but with respect to what underlies the principles of sentencing, I do not think that ends when the sentence is over. It would seem to me it is logical that those underlying principles would continue and still have some relevance during incarceration. I will not debate that with you, but it is a complex issue that requires balance.

You made reference as well that the bill provides for enhanced incentives for offenders to participate in correctional plans. You commented that there already is provision for a certain degree of incentives, which is true.

Do I take it from your comment, then, that you disagree with the need for creating further incentives? Is that something you take exception with and should not be part of Bill C-10?

Mr. Sapers: I do not know what the new incentives would be. I listened carefully to the commissioner talk, and I think he mentioned the ability to wear street clothes. Senator, I am confused about what these incentives would accomplish and what the rewards schedule would be. Offenders who are engaged in their correctional plan now gained the benefit, first, of that intervention; second, they typically get more positive recommendations for conditional release; and third inmate allowances are scaled up. Nobody has explained to me yet what the additional incentives would be and, in fact, whether they would be real incentives as opposed to just something on paper.

I am not against incentives. I am just not sure what this legislation really contemplates.

The Chair: Colleagues, that concludes our time with Mr. Sapers and Ms. Kingsley. Thank you so much. It is always very good to have you before us, Mr. Sapers. You bring your points across clearly and forcefully.

We are very pleased to have as our next witness, from the Canadian Association of Police Boards, Derek Mombourquette, Vice-President.

Derek Mombourquette, Vice-President, Canadian Association of Police Boards: Thank you to the members of the committee for the opportunity to say a few words today on behalf of our organization. I appear before you today on behalf of the Canadian Association of Police Boards of which I am currently the vice-president. Thank you again for giving us an opportunity to offer comments on the legislation that is as important to our organization as it is to you and the government.

CAPB is the national voice of civilian oversight of municipal police. We represent more than 75 municipal police boards and commissions from different parts of Canada. Together, they employ in excess of 35,000 police personnel accounting for approximately three quarters of the municipal police personnel in Canada.

As Senator Runciman knows from his days as Ontario's solicitor general, these boards and commissions are responsible for managing police services of their municipalities, setting priorities, establishing policy and representing the public interest through civilian oversight.

For the past several years, our members have been concerned about delivering adequate and effective policing at a cost that the municipalities can afford and sustain. It is their shared view that an exclusive or even dominant focus on enforcement of the criminal law through investigation and prosecution is not helpful in achieving this objective. Prevention and rehabilitation are no less critical. It is their view, which I respectfully submit to your committee, that they need the support and partnership of all orders of government to pay significant attention also to programs and strategies that prevent crime, provide those in prison with opportunities to rehabilitate themselves and reduce recidivism.

Our response to Bill C-10 is based on these premises. We believe, and I am sure you know this already, that research has consistently supported the validity of this multipronged approach.

CAPB supports the principles underlying Bill C-10 and agrees with the comments made by the Honourable Rob Nicholson during his appearance before Parliament's Standing Committee on Justice and Human Rights on October 6, 2011. As the Minister of Justice said, the proposed legislation is intended to protect families, stand up for victims and hold individuals accountable. Our organization supports, in particular, the intent behind those parts of the bill that deal with trafficking, importing and exporting drugs or possession for the purpose of exporting all forms of child sexual abuse and the ability of victims of terrorism to seek redress for loss and damage that occurred as a result of a terrorist act committed anywhere in the world.

With respect to the rest of Bill C-10, we have some concerns that are consistent with the premises I mentioned earlier.

Mr. Chair, as you are aware, there is an overrepresentation in the prison system of young people who are Aboriginal, First Nations or Black Canadians. The Minister of Justice has said that the bill will affect only 5 per cent of youth engaged in serious or violent crimes. This is reassuring though we note the percentage has remained consistent, which suggests there is a continuous inflow of youth into the criminal justice system.

CAPB is particularly concerned that the legislation will have a disproportionate impact on even more young people from the backgrounds that I have mentioned will be incarcerated. CAPB has serious concerns as well about the potential for disproportionate impact on people with mental illness and children who end up in foster care when their mothers, especially those who are poor and single parents, receive mandatory sentences. We recognize and respect the government's commitment to move forward with the legislation virtually as proposed, and with great respect, we urge that the enactment of this bill needs to be accompanied by meaningful measures that provide for investments in prevention, full consideration of mental illness health in sentencing, better treatment of people with mental illness in prison and rehabilitation with a focus on enhancing the ability of local public safety agencies to prevent repeat offences by people leaving prisons after long periods of incarceration.

We are aware that these measures cannot be implemented by the federal government alone. Other orders of government, especially the provincial and territorial governments, have an important role to play. We would submit to you that the ability of our members to provide for adequate and effective policing services that are also affordable and sustainable has been seriously hampered by the compartmentalization that currently exists in the criminal justice system due to jurisdictional divisions.

Our final recommendation is that in tandem with the passage of Bill C-10 the Government of Canada take the initiative to work with its provincial and territorial partners, as well as other key stakeholders, to develop a seamless and comprehensive delivery system that combines strong enforcement and prosecution with meaningful programs for prevention and rehabilitation. Only then, we say to you with great respect, will our streets and communities truly be safe.

These are my general comments. Our submission includes detailed comments on four specific topics: youth justice in sentencing, the impact of Bill C-10 on Aboriginal communities, mental health strategy, and the international transfer of Canadian offenders back to Canada, criminal records and corrections and conditional release. Mr. Chair, I am glad to answer any questions or provide comments to the members of the committee.

The Chair: Thank you very much, Mr. Mombourquette. We will turn to questions from committee members.

Senator Fraser: Could you give us a little more detail on your views, and I expect there will be several questions on the various aspects, but start with the Youth Criminal Justice Act amendments?

Mr. Mombourquette: The premise of my comments today will be based on the role that I play as a commissioner of the police and the relationship that exists between the role the police play in our community and the role that the commission plays in civilian oversight.

Senator Fraser: What is your community?

Mr. Mombourquette: I am from the Cape Breton Regional Municipality. I will use examples from home as well. We agree that for serious crimes caused by young offenders, that appropriate measures are taken in regard to the penalties they pay, but the concern for us and what we want to place focus on, and what I believe that the police have taken on as a new role within their day-to-day duties, is trying to teach children what accountability actually is.

For our organization, we feel that that is very important moving forward. We cannot impose any kind of sentence without teaching youth about that role and that responsibility and what accountability actually means. We believe in the long run for those youth who find themselves in trouble, they will continue to find themselves in trouble, so for us, as we have said in the brief, with the passage of this bill there must be resources placed in teaching those children about the role of accountability and what accountability actually is. The police in the last number of years have done that and municipalities have been supportive, but again that comes at a cost. We are constantly evolving the service provided to the community.

Senator Fraser: I am sure you are familiar with the Nunn report. Being from Cape Breton, you would be more familiar than people not from Nova Scotia. An important amendment in this bill concerns this capacity to detain young people before trial and before sentencing. First, do you think it is well done, that particular scheme outlined for the detention of those young people? Second, you cannot give me statistics because there are none, but how many young offenders in your experience would be or should be captured by that provision, which exists essentially for the protection of the public?

Mr. Mombourquette: I am familiar with the report. I do not have a copy of the report in front of me.

Keeping youth detained before trial is such an important role, that role of teaching these children accountability measures. We want to ensure that, of course, depending on the severity of their crime, proper measures are in place that will reflect and the sentencing will reflect what they do, but the general concern is, and what I have heard from members of my own community is, that the youth have to be responsible for what they do but they have to learn about that responsibility. From my experience, that is what I have seen, heard and believe.

Senator Fraser: That is the core principle?

Mr. Mombourquette: Yes.

Senator Runciman: On the question of young offenders, you know of course that the chiefs' association and every police agency we have had before us today support the initiatives outlined in Bill C-10 that they believe are going to enhance public safety across this country. I think you are indicating here clearly that your association supports Bill C- 10 as well.

Mr. Mombourquette: We support some of the underlying principles that come with Bill C-10, as I mentioned in my brief. The role that we play is very supportive of the job that our police officers do in our communities. The role that the police officers play now is very different, in my experience. The role that they take on is not only the enforcement of the law but the community policing aspect, the involvement in the various community groups; it is really a different role and responsibility for them. Our role as commissioners is not to be involved with the day-to-day operations but to support them in any capacity we can. We support elements of the bill, but we also take into account the costs associated with some of the implementations of the bill.

In my review, and in reviewing the transcripts, the President of the Canadian Police Association gave a very detailed description of their support for it. We support many of their initiatives and we do support some aspects of this. The concerns we have with the bill as a police board and civilian oversight are the costs associated with the bill, and the relationship that currently exists now between the local municipalities and the programs implemented on the provincial and federal level.

Senator Runciman: Does your association take a position on elements of this bill, for example, mandatory minimum penalties dealing with individuals who sexually offend with children? Do you have a position on mandatory minimums in situations like that?

Mr. Mombourquette: As indicated in the brief here, the association is in support of some of those initiatives that you mentioned, specifically in response to any forms of child sexual abuse.

Senator Runciman: With respect to young offenders, you did express some concern, but this bill is targeted at repeat offenders. If you look at the statistics, they are responsible for a disproportionate volume of crime. That is the issue we are trying to target through this legislation, those repeat young offenders. If you look at the statistics, those are the people causing the significant problems.

Mr. Mombourquette: You are absolutely correct in your comments, when you look at the statistics. Again, we want to ensure that if the bill is specifically targeting repeat offenders, that we advocate that there still be an element of it about rehabilitation in the community. You are going to have repeat offenders. If you have them, it is still teaching that role of what accountability is and what their responsibilities are. Understanding that the goal of this is to target the repeat offenders, the rehabilitation mechanisms and the support services still have to be there for those people as well because eventually they will come back into the community.

Senator Runciman: The elements in terms of increasing judicial discretion with respect to young offenders and pretrial detention, and giving judges more latitude, especially to deal with individuals they deem as posing a public safety threat, what is your feeling and your association's position with respect to those?

Mr. Mombourquette: I go back to some of the comments made by the Canadian Bar Association and one of the ministers who came from Nunavut who talked about the issues they are dealing with and the discussions they had regarding their communities in Northern Canada.

Our stance is there is not one solution that fits all within the community. The minister's comments regarding his community in Northern Canada were very interesting in the sense of those First Nation communities having their own societal ways of trying to deal with any kind of issues that they face in the community when it comes to crime, and we believe, consistent with the Canadian Bar Association, that the flexibility should be there for the judges.

Senator Runciman: We are giving them the flexibility. This will be used on very rare occasions, I would suspect; and when a judge is concerned that an

individual poses a serious public safety threat, under this legislation he will have the ability to keep that individual incarcerated.

The Chair: Senator Cowan?

Senator Cowan: Could I drop down the list a bit?

The Chair: Yes, no problem.

Senator Cowan: Thank you.

The Chair: We will go next to Senator Angus.

Senator Angus: This board of oversight, or the Canadian Association of Police Boards, I suppose it is analogous to what we have as an oversight as it relates to security, CSIS. We have a thing called SIRC, which is the Security Intelligence Review Committee. Is that it? Your role is to be sure police do not abuse their authority and their functions?

Mr. Mombourquette: Our fundamental responsibility is a national organization that represents local, municipal police forces, boards that govern police forces as civilian oversight. We advocate for those municipal forces in regards to local, provincial or federal matters in regards to the roles and responsibilities of municipal police.

Senator Angus: You are from Cape Breton. Do you have a background as a police officer? What is your background?

Mr. Mombourquette: My personal background is that I am an elected representative of the community in the Cape Breton Regional Municipality. I was the former chair of the police commission for the last two years at home. I serve on the provincial police association, Nova Scotia Association of Police Boards; and I have been a board member for the Canadian Association of Police Boards for the last two years.

Senator Angus: Is this a full-time job or a volunteer position?

Mr. Mombourquette: This is volunteer work.

Senator Angus: What do you do in your real life?

Mr. Mombourquette: Aside from an elected representative, I was a small business operator and corporate sponsorship and project manager for marketing firms.

Senator Angus: Coming back to my beginning question, I now understand that these local commissions are elected, so the members of the Sydney police commission, or wherever you are in Cape Breton, provide civilian oversight of the local police force to ensure that they behave properly; is that it? It sounds like you are advocating for them, too?

Mr. Mombourquette: Absolutely. It is an interesting relationship, especially for me where I am an elected representative as well because you have a responsibility as an elected representative to set budgets and policies for your community as a whole. The commissioner's role is clearly outlined in Nova Scotia in the Nova Scotia Police Act. We are not involved with day-to-day operations, but we are there to set policy, to support our police in any capacity we can, but we also have that balance where we are also setting budgets for the community.

It has become more of a challenge for police boards across the country because of the significant costs that have been associated with policing, especially in the last decade. For example, if you look at the brief and at some of the things that have been discussed today by members of the committee when it comes to issues of crime dealing with children and you look at cyberbullying and cybercrime, all these issues, these are issues that police forces, in my experience, did not deal with 10 years ago. These are to the forefront now. It is a very interesting role that a local commission will play for their police, and that relationship is essentially the same for municipal forces across the country.

Senator Angus: Was there consultation with your association you are here representing today by the government as this bill was put together?

Mr. Mombourquette: I am here representing the president, so she would probably be a little more specific because she may have been involved with more conversations than I. There have been some ongoing conversations regarding the bill. There has been dialogue between the provinces, between the police boards; and for us we are raising some legitimate concerns, I believe, here in the bill, but my experience, in my capacity I have not been involved with any direct conversations but I know that the organization has.

Senator Angus: Senator Runciman was also questioning you about the extent to which you are supportive of the bill. As I heard you and as I read your brief, your group has concerns and I need to understand if these are well representative of the members of the different police commissions across Canada. Was there a process and not just the president's personal view?

Mr. Mombourquette: Absolutely not. This brief was prepared by the policing and justice committee which is representative of the national board which has representation from Nova Scotia to B.C. as well as representation from the First Nations community, so this brief has been developed by members of the national board that represent police boards right across the country.

Senator Cowan: I wanted to drop down the list because I had just received the detailed comments that were attached to the statement you read, and I wanted to have a quick scan through that before I asked a question.

First, congratulations on the excellence of this presentation. It was a very balanced and reasonable approach. You address concerns about the impact on youth and Aboriginal communities and other disadvantaged communities. Going back to the mental health component that we have been discussing with witnesses, particularly today, I wanted to read into the record a portion of the detailed comments dealing with the mental health strategy. It says:

> In 2012, we have a policing / mental health crucible in which police officers, trained in law enforcement, are the 24/7 first-line mental health care responders by default. At a time when communities are struggling to maintain a level of sustainable policing for safety and security, police resources are being diverted to issues that would be much better addressed within a health care system.

There is a good deal of interesting historical data about the evolution of mental health care and mental health programs in the country, but you go on to make the comment at the end:

In effect, correctional institutions regrettably have become the institutionalized care of the twenty-first century for those with mental illness.

The prelude to that of course is that many institutions we knew 40 or 50 years ago have been closed and treatment is or is supposed to be provided in the community, community-based. Can you give us a little more detail, a little more comment on that as it affects the day-to-day activity of the officers you oversee?

Mr. Mombourquette: Absolutely. You look at the role of police and how it has evolved. The past would dictate and the community would dictate police have always been there to uphold the law. They are the first responders and the ones who uphold the law in the community. In the last decade or so, that has drastically changed, and with mental health, police have really become first responders. People who are suffering with mental illness or a family member who has someone who is suffering with mental illness that is not diagnosed, their first response is to call the police; so the police are the ones who do go and respond to these calls, and they respond to the residents and the community and have to make a determination on how to proceed with that person.

Mental health absolutely, and we have indicated so in the brief, is recognized as an illness. The concern we have, moving forward with the passage of this bill, is that more has to be done at the local level. There has to be more dialogue amongst the provinces and territories with regard to supporting the municipalities in providing some of these much-needed services.

The municipalities are still functioning on the same budget they always have, and they continue to function on the concept that there is only one taxpayer. Absolutely, there is only one taxpayer. The issue that police forces are dealing with, and the biggest challenge for local boards — and the CAPB has been advocating this for a number of years — is that this cost is significant, and without the resources in place it will be very significant for the communities to address the many mental health issues.

Senator Cowan: As you rightly point out, this whole issue of health, corrections and safety is not neatly compartmentalized to say it is municipal, federal or provincial. There has to be a cooperative effort. You usefully pointed out in your brief that as this bill proceeds to become law, the federal government has a responsibility to engage with provincial and municipal governments to develop a strategy so that there is a seamless treatment and approach to these issues, not only of crime but also of mental health.

Mr. Mombourquette: Absolutely. The sad reality is that you never want to put a price tag on what we are trying to accomplish as communities. It is a sad reality, what municipalities are facing now, aside from the public safety aspect of it when it comes to infrastructure and other legislation that is coming down from the federal government. I will use my own community as an example. We have waste water regulations that we need to meet, which will cost our community $400 million. Those are some of the challenges, aside from the public safety aspect, that municipalities are dealing with.

For us, and for police boards across the country, we are setting budgets and going to our local governments. We are taking on more responsibilities when it comes to the evolution of crime, the Internet and port security. Some of the examples I use are from Atlantic Canada. In terms of mental health, these measures are needed, but the funding is also needed along with it.

Senator Cowan: One final point. It seems to me, then, that as federal legislators we have to recognize that what we do here has an economic and social impact at other levels.

Mr. Mombourquette: Absolutely. Much effort has been put in, and I commend the police for what they have done. These officers put themselves out there every day. They are out there representing the communities. They have taken many proactive measures with regard to community policing, and it has paid off. We can look at examples of police becoming involved with boys' and girls' clubs across the country and learning who the youth are in the communities and trying to address any issues before they become too serious. The police have been doing that.

With the passage of the bill, we encourage you to keep in mind that municipalities are facing some dire situations in terms of funding. Public safety is a big component of most municipalities, and the boards have some serious decisions to make.

There are some delicate partnerships that exist now between the provinces and territories. I use the example of Nova Scotia and its "Boots on the Street " program, which has provided officers for communities. We have been able to take those officers and place them in drug trafficking, cyberbullying, and mental health. We are trying to address those issues. However, with some of the key elements of this bill being passed, it will create more significant costs for those provinces and territories, and they, in turn, will start to have to make decisions on where they want to put their resources into the communities they represent.

This is just some food for thought for the committee. The challenge for municipalities is not getting any easier.

Senator Lang: I appreciate the witness coming and presenting the brief for us.

I want to follow up. You made a comment about Justice Nunn's report and that you were somewhat familiar with it. I want to go into the area of young offenders, which of course was the basis for his report.

Justice Nunn appeared before us yesterday. We spoke a bit about the possibility of speeding up the court system so that these repeat young offenders — and that is what this bill is about, repeat young offenders — can be dealt with quickly, as opposed to what drags on and on, to the point where A.B., whom he refers to, had 38 charges on what could well be five or six different occasions.

Has the court system been able to speed up? One of his recommendations is that that young individual be put before the court within a week of that infraction being committed. Has that happened?

Mr. Mombourquette: It is somewhat difficult for me to answer the question, because my role and the mandate I have here today is to represent municipal police boards. We support certain aspects of Bill C-10. To be honest, I am familiar with the Nunn report, although I have not read it. Could you elaborate a little more on what you are looking for?

Senator Lang: We have young offenders, those who are repeat offenders, who are causing a lot of grief in a community, creating many problems for themselves, and the story goes on. One of the threads coming out of all the testimony we have heard to date is that for those repeat offenders who know the system, they can go for a long period of time without ever facing the consequences of their actions, in other words, appearing before a court and a sentence being handed down.

The question was put to Justice Nunn: What can we do within the court procedures to expedite the procedures so that these young people are dealt with? It seems to be all about the process. We forget about the person who has caused the problems and who went before the court, or is supposed to be before the court. One of Justice Nunn's recommendations was that they be dealt with within a week of the infraction taking place. My question is whether, A, you

were able to; and B, has it been successful? Instead of having 38 charges, maybe that young person might only have 6 because it is one infraction, or 1.

Mr. Mombourquette: Again, my mandate is essentially the role we play as civilian oversight for the police and the role that the police play. In response to your question, there are elements of the bill that we do support. We understand and recognize that in the case of the young man who you are saying has had 38 charges, we understand and we respect the fact that that individual would need to be dealt with accordingly.

The Chair: In fairness to you, as you say, with the role you have here, you are not on the ground as a police officer. I think the question is probably a difficult one, and I know it is one that does not involve your mandate. Perhaps we could move along.

Senator Jaffer: Thank you for being here. I listened to you very carefully. I understood you to say that even though you are supportive of Bill C-10, you said: "This initiative has to work in partnership with provincial and territorial partners, as well as other stakeholders, to develop a seamless and comprehensive delivery system. "

I am sure you have reflected on what you mean by a "comprehensive delivery system. " Can you expand on that?

Mr. Mombourquette: Not to sound repetitive, but the role that municipal police boards play is a delicate relationship. We are advocates for the communities. We are responsible for the oversight of our municipal boards, but we are also advocates for the communities. We have seen the role that police have played over last number of years and how the evolution as protectors of public peace has changed the role that they play. Aside from just being the enforcers of our law, they are now our community ambassadors when it comes to both crime prevention and the concept of community policing. We support that as police boards and will always do so and celebrate that.

There are elements of this bill that we have indicated in our brief that we support, but it does have to be a multi- pronged approach because it is that role of accountability that we need to teach youth. There will be cases where you will do that and it will not work, but as community ambassadors — and ourselves as police commissioners — who understand the dilemma that municipalities are facing right across the country when it comes to resources, a multi-pronged approach with all three levels of government is necessary.

Provinces are trying to do that. They have taken on many different initiatives across the country. Again, I use here the example from home, with some of the supports that they have put in place for the communities, which have allowed us to address issues of cybercrime and issues of sexual abuse and drug trafficking. They are doing that. The multipronged approach argument is, essentially, that the passage of this bill will increase costs to the provinces and the territories. We do not want to see the provinces and the territories in the position of having to make some difficult decisions on some of the very positive programs that are in place now and that are starting to bear fruit.

I hope that answers your question. That is what I believe as the multipronged approach. There are supports in place now; they are working. The cost of policing is not getting any less expensive. As we move forward, it is almost to an unsustainable level now. This board and other national organizations have talked about that. Regarding the passage of this bill, there needs to be a multi-pronged approach.

Senator Jaffer: I would not want to put words in your mouth, but in the multi-prong approach, and you mentioned it in your brief on issues of dealing with people with mental disorders, and more so than anyone else, the municipal police really have to deal firsthand with people who have mental health issues. Would you agree that your concern is that this bill should not affect the programs that exist for people with mental disorders?

Mr. Mombourquette: First, that it does not affect the programs, but the second part is establishing more programs in regard to it. Municipalities are training officers in the area of mental illness now. We want to ensure that training continues, but, again, resources are always an issue. We talk about the multi-prong approach in our brief because police have become the first responders. In the brief, they are called psychiatrists and that reference is used.

Senator Jaffer: Most people with mental disorders do not belong in jail.

Mr. Mombourquette: Absolutely not. As the brief indicated, and other reports have said, there are a number of issues that cause mental illness, for example, substance abuse, stress, age, et cetera. It is important to recognize that and to ensure that people get the help they need. We heard from the previous speaker this morning that more needs to be done. From the municipalities' point of view, we want to ensure the safety of all the members of our communities, but we are also very cognizant of ensuring that the support is coming from the other levels of government because of the cost.

[*Translation*]

Senator Dagenais: I have read your brief, and I can tell you it is misleading because you would make a very good police officer. You have what it takes to be a police officer.

That said, you and the members of your association have a privileged position in smaller municipalities. You have spoken a lot about the role of the police. Could you give us some examples of other organizations in municipalities that could assist offenders? One thing you mentioned was mental health. Are there organizations apart from the role of the police?

[*English*]

Mr. Mombourquette: Thank you for the question. There are a number of organizations throughout communities across the country to help the police with this issue. In Nova Scotia, we have seen partnerships in funding come down from the province to create partnerships and memorandums of understanding in regard to issues with the local health authority. That, generally at home, is where that relationship exists. Those organizations do exist. Police themselves, in my experience and in what I have seen, have created their own partnerships within the organizations. Regarding mental health and mental illness, our police service took the initiative to start that relationship and dialogue with the Cape Breton District Health Authority. The police have also looked at other partnerships with addressing crime and talking about local boys and girls clubs. For example, with the First Nation community of Membertou at home, we started policing that community a few years ago. We have set up our boys and girls clubs with them and with various stakeholder groups, Parents Against Drugs, et cetera. We have put resources into that and they have paid off large dividends for our community. They do exist.

Those are some examples of what the police in my jurisdiction are involved with today.

[*Translation*]

Senator Chaput: My first question is about people with mental illnesses. You have just answered a number of questions. There is no doubt that these people need to be treated rather than punished. A witness this morning spoke to us, in English, about alternate facilities.

Since it would seem that we will have to construct new buildings or at least renovate the ones we have, would it be desirable to have a section in those

buildings, or a portion devoted solely to incarcerated individuals who have a mental illness, as there is for older individuals with special needs?

[*English*]

Mr. Mombourquette: Thank you for the question. It is difficult for me to answer whether or not, from a logistics point of view specifically, you would add any addition to a current facility. For me it is not just about the facility, it is about integration into the community.

I am kind of getting off topic from the brief that we have here, but in my experience, I have seen some serious infrastructure issues with some of the facilities. It is, time over time, deferred maintenance, et cetera. It is something that I would suggest that the committee consider in your deliberation. Our response is that the support mechanisms need to be there in the community for inmates with mental illness because eventually people will move back into their communities.

[*Translation*]

Senator Chaput: Let us talk about young offenders and Aboriginal people in terms of rehabilitation programs. Do you think it is important that rehabilitation programs take a community-based approach for young offenders and Aboriginal people?

[*English*]

Mr. Mombourquette: Absolutely. This is taking place in many communities across the country now. I use the example of home and the role that the police have played in establishing many community organizations that help youth at risk. Look at the examples of the boys and girls clubs. It goes back to some of the statements made by the police associations as well and the work that they do in the community, which the boards support 100 per cent.

Those relationships have been established in the last number of years, and they have produced significant results for our community, not only dealing with youth at risk but the perception that the police officer, in my opinion, has become one of the primary ambassadors for the community.

Aside from the role and responsibility that we all play as members of our council or the police commission, what the public has seen in a police officer from just the person who is responsible for law enforcement to that ambassador for the community, these community programs are being driven by police and police officers and people who have given up their own free time after their duties to do it. They are critically important and need to continue. That is what we need to invest in because that is where we will get our best results.

The Chair: Colleagues, we have 10 minutes remaining for the second round, beginning with Senator Fraser.

Senator Fraser: I pass. I should stress that I passed not because you have not been a very good witness but because you have covered a lot of ground in your brief and the detailed appendices in your brief are very clear and helpful. I want to thank you for that.

Mr. Mombourquette: If I can comment on that as well, it is a delicate relationship, in my experience, that the police boards play in the role and responsibilities that we have by the legislation that governs us as police boards and what we do to help and support our police officers across the country.

One thing to keep in mind, and I will say this again if there are no other questions: The cost of policing is something that will not get easier. You are looking at mental illness health issues now. We indicated some of these items in our brief. In your deliberations and when the decision comes down, it is important to remember that the municipalities of this country are facing dire financial situations when it comes to infrastructure. These policies, and in particular with Bill C-10 there are some good components, but cost is a huge issue for us. We are building those relationships now with the provinces and the territories in regard to resources they are giving to us. There is not one solution that will fit all for the communities and the police boards we represent. Cost is going to be a significant factor.

I want to thank you, Mr. Chair. It has been an honour to represent the board here.

The Chair: Senator Cowan has a question.

Senator Cowan: Everybody has heard of the Marshall inquiry and the difficulties that had to do with the interaction between Aboriginals and the police, in particular in Cape Breton. I know a lot of work has been done in re-establishing the trust between the police force in now Cape Breton Regional Municipality and the Aboriginal communities there. I think that clearly impacts on the points you have made about the special concerns about Aboriginals in our criminal justice system. I know you have worked hard in the Cape Breton Regional Municipality particularly to re-establish that relationship and the trust. You have some good experience and some failures. Perhaps you can speak about that?

Mr. Mombourquette: I have been involved as chair of the local commission for the last two years. Our police service home has done an outstanding job of re-establishing that relationship, not only the Cape Breton regional police but the RCMP too. In the First Nations community of Eskasoni, there is a strong partnership there too as well. We have seen a significant increase in the partnerships between our First Nations community of Membertou and our regional police. It is an excellent relationship.

We also see throughout these programs that the children are comfortable approaching the officers about any issues that arise. The police are able to help the children. They know who the children are. The children are very engaged in the community, and so are the police, and you cannot put a price tag on that partnership.

I believe from what I have seen that communities are getting their best return on that relationship. Not to tie in the issue of cost, but it is important to talk about it. The CBRN funds 169 officers. We have 205 officers through provincially funded programs and through our contracts were Membertou First Nations, and the cost is something we talk about. When you go back to your deliberations on this, municipalities is always something top of mind.

To finish my comments on Membertou and the relationship between the regional police, it has been excellent, and it is starting to become a benchmark for communities across the country to utilize. We have significant results in our relationships in safety in the community, and I am sure that will continue well into the future.

Senator Cowan: I make that point because often there are incidents that arise and get front-page news, and the day- to-day good work that has been done, particularly in that troubled community, is deserving, so I wanted to give you an opportunity to talk about that.

The Chair: I am glad you did, senator.

Mr. Mombourquette, that concludes our questions. Thank you very much. You did an effective job of delivering your association's key messages. We heard

them loud and clear, and your contribution is very important to us.

We now have before us Ms. Diane Tremblay, Ms. Sandra Dion and Ms. Nicole Latour. Welcome. I will not take time to explain your backgrounds and why you are here but will leave that to each of you to explain in your own words.

Do you have an opening statement to make, Ms. Tremblay?

[*Translation*]

Diane (Shamane) Tremblay, as an individual: Good afternoon, everyone. My name is Diane Shamane Tremblay. I am appearing before the committee today with conviction and dignity, as a victim of the multiple repeat offender Michel Hamelin.

From 2003 to 2007, my attacker inflicted psychological, verbal, physical, sexual and economic violence on me. I am still today getting over the financial problems this multiple repeat criminal offender left me with. I support Bill C-10 without hesitation. I thank the government for staying the course in spite of the opposition from certain lobby groups.

I have come to talk about the debate regarding rehabilitation and the abolition of conditional sentences, which I support in the case of violent criminals. I hope that our testimony will make a difference and that your decisions, as legislators, will enable us to live in a free and safe country by enacting effective laws and requiring respect for the right to life.

I want to talk to you about my views on the rehabilitation of inmates. A number of lobby groups say that this bill is opposed to rehabilitation. If we examine the actual facts, we can see that treatment for behaviour and drug addiction already exists inside the walls. No matter how many treatments are used, the fact remains that some criminals will never change and will never accept the fact that they have problems. I have paid the price for this.

Michel Hamelin is a multiple repeat offender who was convicted of assaulting me and other crimes in 2007. He received a conditional sentence. At his trial in the fall of 2011, after he had assaulted his new spouse, he was sentenced to one year in prison and to probation for two years. When he was first convicted in 2007, Michel Hamelin received treatment. However, that did not prevent him from assaulting another spouse four years later.

At his trial in 2011, the attacker told the court that he had started a treatment program and he was having no behavioural problems. Conditional sentences of imprisonment have been a sentencing option for over 16 years. At the time, Parliament thought that conditional sentences of imprisonment would reduce our dependence on prisons and would increase our use of restorative justice measures.

The reference is to the *Brief to the Standing Committee on Justice and Human Rights*, House of Commons, presented by the Canadian Criminal Justice Association, Ottawa.

That is not what happened. Figures on sentencing for the 2003-04 fiscal year show that conditional sentences of imprisonment represented 5.2 per cent of all sentences, or 257 of 127 cases. Of all conditional sentences of imprisonment, 27 per cent were for crimes against the person, and I am part of that 27 per cent.

One of the legislative goals of conditional sentences of imprisonment was to reduce the rising rate of incarceration in Canada and save money. Clearly, the various conditional sentences that have been imposed since they were created have helped to reduce the burden on prisons. However, I am the one who has paid the cost of those savings. There have been no savings, because the repeat offender reoffended and that created costs that I have to pay.

There are programs in federal penitentiaries where prisoners work and earn income and gain experience. I will mention one of them: the CORCAN program. It would be wrong to say that this Conservative government is disregarding rehabilitation. For example, inmates are paid to follow their rehabilitation programs. In the case of people who follow the CORCAN program, they are allowed $6.90 per day, even more.

For you and me, that may not be much, but they do not have to pay for anything, not even their rent. All they have to do is follow the rehabilitation program and straighten themselves out. However, some criminals do not want to straighten themselves out. In the words of Sheldon Kennedy, who testified yesterday, and I quote:

[*English*]

> There is a difference between receiving rehab treatments and wanting it.

[*Translation*]

I support the provisions of Bill C-10 under which some offences will no longer be eligible for conditional sentences. Those offences include prison breaks, luring a child, criminal harassment, sexual assault, child abduction, human trafficking, kidnapping, theft over $5,000, breaking and entering a place other than a dwelling house, being unlawfully in a dwelling house and arson for fraudulent purpose.

Bill C-10, the safe streets and communities act, lives up to its name. Its goal is to ensure that dangerous people do not return to our streets and neighbourhoods to harm us and threaten us again.

We, the victims, are calling for a justice system that is sound and balanced for everyone. I want to thank the government for staying the course and keeping its election promise. I would ask you this: I hope that the Department of Justice will treat us like victims and stop treating us like witnesses when we appear in court.

Thank you for allowing me to testify as a victim and for this opportunity to participate in trying to make our society a better world with Bill C-10.

Sandra Dion, as an individual: I would like to thank the people who have invited me to participate at this committee. My testimony will deal more specifically with the amendments to the Corrections and Conditional Release Act.

Speaking as a victim, Bill C-10 is one more small step toward restoring victims' confidence in the judicial system, since the objective of the bill is to enhance public safety. To me, that represents the dawn of a new era, for striking a balance between the rights of inmates and victims.

I agree that social reintegration has to start with holding offenders accountable for their actions. The change in behaviour and the acknowledgement first has to begin on the inside before we can hope that they will apply those changes in the community itself. That is why I agree with clause 55 of the bill.

For some years, people have had less and less respect for authority and for police. I have seen this myself in the course of my work as a police officer, and there are also statistics that prove that there has been a rise in assaults on police.

In 2011, Statistics Canada said there was a 45 per cent increase in assaults on police in 2009-10. If people no longer respect the police, who will be responsible for maintaining public peace, order and safety? That is why I agree with clause 103 of the bill.

Bill C-10 also has the interests of victims at heart, and I think that is very important. I have definitely had to arrest offenders who have breached their recognizances or their conditions. In the course of my duties, I have arrested a number of them.

Between April 1975 and April 2008, 557 homicides were committed by 508 offenders on conditional release. From 2005 to 2010, 60 per cent of murders were committed by individuals on statutory release. Some committed other crimes while they were on conditional release.

A recent example, in April 2011, was Richard Lavoie, aged 49, who lived in a halfway house in Quebec that was higher security because he was under a long-term supervision order. He kidnapped a 30-year-old woman, beat her and threatened to kill her, on the same street where the halfway house was located.

The police cannot be following these offenders 24 hours a day, monitoring their comings and goings. Unfortunately, it is often the case that the police come along after the fact, and it is too late. That is why I agree with clauses 92 and 64.

As a victim, it is important for me to have certain information concerning my attacker, in order to be better able to survive the tragic event that has affected my life forever. To regain faith in the justice system, my opinion as a victim has to be considered and carry weight at hearings about the possibility of conditional release or about the transfer of an offender to another halfway house.

Situations have to be avoided where the attacker could end up less than a kilometre from their victim's home, as in my case at present. This is what I am fighting, to avoid that situation; otherwise, I, and my family, of course, will have to pull up our roots in our neighbourhood and move. That is why I agree with clauses 57 and 96.

To summarize, Bill C-10 is intended to be a bill that will improve public safety, improve the protection of our society, by making changes to the correctional system and also by giving greater consideration to victims of crime.

Nicole Latour, as an individual: Good afternoon, I would like to thank the Subcommittee on Agenda and Procedure for allowing me to participate, and thank you, honourable senators, for listening.

My name is Nicole Latour. I am a family member of three victims of crimes against the person. As Sandra has just said, those events affect us for life.

My brother, Louis-Marie Poisson, who was 33 years old, was a victim of a pointless murder committed by Pasha Partridge, aged 27, on September 11, 1992. She received a reduced sentence of seven years for manslaughter. That offender did not comply with her conditions when she was granted unescorted absences, which had to be cancelled by the NPB (National Parole Board), or PBC now, in the new bill, in July 1996.

Her statutory release was ordered on September 12, 1997, with no special conditions, in spite of evidence of criminal tendencies and the request I made in the proper manner for her to be prohibited from contacting my family members. That request was recorded in the official victims registry of the Correctional Service and the National Parole Board. As Sandra mentioned, I am referring to clause 96, for those who might want to check that provision.

My daughter, Céline Latour, who was seven months pregnant at the time, and my daughter-in-law, Marguerite Cardinal, were victims of a robbery in 1994 committed by Daniel Poirier, a repeat offender unlawfully at large who was on his third federal term. That crime got him a total sentence of five years because I had to make submissions myself at the courthouse. The victims were left completely out.

In 2008, Daniel Poirier was identified as being responsible for four second-degree murders between 1990 and 1999. I am happy that my daughter is alive today. He is currently serving a life sentence for those four murders. This is an example of 30 years of effort wasted by the case management teams and the need to strengthen oversight as proposed by Bill C-10 in order to protect society better.

I have been retired since January 31, 2007, after a long, 30-year career with the Correctional Service of Canada. I started as secretary to the management of a maximum security penitentiary. That institution included the special detention unit where the most dangerous inmates in Canada were held, in what is called maximum security.

For three years and three months between 1994 and 1997, I held the position of hearing officer at the NPB. Between 1999 and 2007, I held the position of inmate affairs analyst in the regional office. From 1997 to 2007, I was also assigned special duties relating to the management of notorious offenders such as Valery Fabrikant, Robert Clifford Olson, Karla Homolka and others, in the light of my great sensitivity towards victims of crime and my professional experience.

It goes without saying that the 11 children murdered by the late Clifford Olson, the murders of Olivier and Anne- Sophie and of Emmanuelle and Laurie Phaneuf, of Valérie Leblanc and of so many other victims in our society must never be forgotten by people who work or make decisions about justice in correctional institutions or on the PBC.

Protecting our society is an important concern and I have a really hard time understanding the reluctance of individuals or organizations to support Bill C-10. The statistics showing that the crime rate is declining have to be seen in context and we have to take into account many cases where diversion is used or the fact that criminals who are getting on in years commit fewer crimes. I suspect that those opponents mistakenly believe that the situation for offenders who are or may be incarcerated would be unacceptable under the proposed legislation.

I am going to talk about assessment of offenders in the Correctional Service of Canada. They are always admitted to the Regional Reception Centre when they are sentenced to more than two years. That is a penitentiary that admits them and assesses them in order to meet their physical and psychological health needs and their educational and occupational needs, and all measures that are required for their protection. The administrative segregation areas and appropriate cell blocks there are suitable for this and are subject to the Corrections and Conditional Release Act. There are regulations, policies and standing orders. So we can be sure there is no torture in penitentiaries.

I would like to tell you that in order to meet all these needs, and in particular in relation to the factors that led to them committing their crimes, the administration of carefully designed correctional programs contributes significantly to the reintegration of offenders into the community when they are released. Once they are assessed, these offenders are able to participate actively in their correctional plan in accordance with the new provisions of Bill C-10. The range of correctional service programs meets all the needs of offenders in order to correct their criminal attitude and also includes the CORCAN

industries program — I did not consult Ms. Tremblay beforehand — that may be able to develop employability skills. The CSC has a number of penitentiary facilities in every province of Canada and offenders are managed there based on their needs. There are also skills maintenance programs to foster their success. Responsibility for the safe reintegration of offenders into the community requires, first and foremost, that they participate actively in their correctional plan during their incarceration and remedy the behaviour and the factors relating to their criminal activity. As well, they are able to benefit from the rehabilitation programs made available to them by the CSC.

Offenders have a number of specialized resources to meet their needs while ensuring that their safety and the safety of the staff and members of society are protected. Correctional program development also takes into account the specific needs of members of various groups such as Aboriginal people, in terms of their spirituality, women with special needs, and men or women dealing with a mental health problem or physical disability. However, we must not engage in wishful thinking and believe that all offenders will be motivated to achieve the objectives in their correctional plan.

In fact, some have demonstrated for years that they will never become law-abiding citizens. To achieve that goal, they have to demonstrate a desire to straighten themselves out. In that regard, I would like to quote Sheldon Kennedy, who stated to your committee on February 21:

[*English*]

> There is a difference between receiving rehab treatment and wanting it.

[*Translation*]

The provisions of sections 15.1(1), 15.1(2), 15.1(3) and 15.2 in clause 55 of Bill C-10 will make it possible to strengthen the correctional plan and encourage the people involved in offenders' case management to change the plan immediately when a situation calls for it. Those provisions are referred to in my brief, but I do not think it will be necessary to reiterate them. They are part of Bill C-10.

You should know that there are rehabilitation programs in penitentiaries, but the success rate is sometimes very disappointing. According to a report published in 2007 entitled *Roadmap for Strengthening Public Safety*, a report of the CSC Review Panel, (appendices B and C), the program completion rates for offenders were as follows: female offender programs, 28 per cent; Aboriginal initiative programs, 29 per cent; violence prevention, 65 per cent; sex offender program, 63 per cent; substance abuse, 66 per cent; family violence prevention, 74 per cent; living skills, 79 per cent; community correctional program, 55 per cent; special needs program, 53 per cent.

There are also educational programs in the correctional service that are part of the basic training for illiterate persons. These outcomes are even more disappointing. I will not list all the courses, but it starts with ABE I to ABE IV: general training. The outcomes are 14 per cent, 16 per cent, 22 per cent, 20 per cent, 39 per cent to 70 per cent. There is a problem. There are inmates who do not want to learn.

When it comes to safe interventions, the CSC has the tools and resources it needs to combat the clandestine activities from which the problem of drugs in the prisons arises. It has dog handlers available in its facilities to detect drugs, other measures such as taking samples for urinalysis, searching visitors' cars, and seizing material in cells or other areas to restore order and maintain a healthy environment. These approaches also encourage abstinence, and accordingly increase the potential for success in achieving the objectives of the correctional plan of an offender dealing with substance abuse problems.

As well, I applaud the abolition of pardons in the case of serious crimes for offenders convicted of a sex offence or a violent offence as set out in Bill C-10. The same is true for new sections 4.1(1)(*a*), 4.1(1)(*b*) and 4.1(2) in clause 116(1), which establish the restrictions on an application, for which the onus is on the applicant.

It is worth noting that the reference to the least restrictive measure has been replaced by the term "necessary and proportionate " in new paragraph 4(*c*) in clause 54 of Bill C-10, as well as the concept of privilege in new paragraph 4(*d*). Those provisions could be very useful, from what I experienced in my career.

The expression "least restrictive measure " is very important. Bill C-10, like the previous Corrections and Conditional Release Act, provides that an offender may have access to a complaints and grievances system. Given the much too extreme demands made by Valery Fabrikant, who submitted multiple grievances that plainly abused the correctional system, it would be desirable for the appropriate authorities to limit tricks like these being played with the correctional system. It would be a wise decision to make it possible to mitigate the effects of vexatious litigation by that inmate. Because it is in the legislation, it is almost impossible to change things for an inmate like that.

As well, some people wrongly believe that inmates in the CSC may be released after one-sixth of their sentence in our federal penitentiaries. Really, it is two-thirds for statutory release for an inmate who is sentenced to two years or more.

I applaud the provisions of the bill that eliminate accelerated review; in that case, it was one-sixth, but it was required that the crime not have been violent. Statutory release for offenders under federal jurisdiction is available only after two-thirds of their sentence, and other possibilities for release exist at various stages of their incarceration, but with certain limits.

The provisions of Bill C-10 set out the foregoing clearly. I also applaud new subsection 122(6) in clause 78(2) dealing with the impossibility of cancelling a study by the PBC less than 14 days before the review, which will cut down a lot on costs.

I have two main recommendations; they are substantial, but I would like to make them.

My recommendation for managing correctional programs is as follows: I think it is unacceptable that offenders are paid for participating in their correctional programs, because the programs have been designed to eliminate the factors that led to their criminal activity. This is like giving them a pat on the shoulder and a handshake and telling them we are pleased to hand out this gift for the crimes they have committed. In my opinion, this is nonsense, and Bill C-10 is not the only thing that prompts these thoughts, which I have had for a very long time. Instead, we should be thinking about an incentive that could keep an offender motivated. For example, paying graduated remuneration based on the commitment demonstrated by an inmate, and their prospects for success. I wonder whether offenders would participate as much in their correctional plan if they were not paid. I think that eliminating remuneration would do more to encourage sincere offenders who truly want to be rehabilitated by showing a capacity for introspection and empathy for their victims. If an offender succeeds in their correctional plan, they could then enter a skills maintenance program after being released. This is my final recommendation for managing victims.

Because our testimony will be heard by representatives of the judiciary, I would also like to send them my message here as a spokesperson for a number of victims of violence. It is high time that they be given more consideration by the actors in our courts. We have the clear impression that these victims are not in their minds.

I have a recent example to illustrate this. Recently, the mother of a victim who was murdered barely a year earlier learned, not having receive a notice to appear at the Montreal courthouse, that a guilty plea had been suggested to her daughter's killer by the Crown and the defence.

Confidence in our justice system has been stripped away. It is urgent that it be restored, by taking the necessary measures. I would like to point out that the directives require us to share with offenders any information that might lead to a decision about them. Why would that ideology not be applied to the victims of their crimes?

Although there are excellent resources in the Correctional Service of Canada and the National Parole Board for coordinating services to victims, we need to consider designing a program specifically directed to victims when an offender is first incarcerated. Preferably, the program should be under federal jurisdiction, even though victim assistance centres are under provincial authority.

Some victims have to deal with immeasurable torment as a result of their tragedies. Their torment may be legal, judicial, social, familial, economic, psychological or medical. Some victims do not have enough knowledge about the courts or the prisons to enable them to exercise their rights, limited as those rights may be.

To supplement the compensation paid by the province to assist victims, we should perhaps consider financial compensation, however small, that offenders might pay to victims. After all, they are already required to reimburse the government when they destroy Crown property in the place where they are incarcerated.

Is it not important to start holding them accountable from when they are first incarcerated, to compensate the victims they have injured, physically or psychologically, and in the case of murder victims, to compensate their families, as provided in the definition of "victim " found in proposed paragraphs 2(1)(*a*), (*b*), (*c*) and (*d*) in clause 52(1) of Bill C-10?

It would be wise for judges to be made aware of the practice of accountability for criminals, some of whom often remain unaware of the consequences of their actions.

In his judgment dated May 14, 2010, regarding Daniel Poirier, the murderer I mentioned at the beginning of my presentation, the Honourable James L. Brunton, a Superior Court judge — I am omitting the citations for the two cases — considered this kind of measure, since he concluded his judgment by saying: ". . . exempt Daniel Poirier from paying a victim surcharge, in view of the length of the prison term. "

It would be worthwhile for the victim ombudsman to be sensitized to the idea of distributing an updated photograph of a victim's attacker when their appearance has changed. That option still falls within the preventive framework of victim safety.

Thank you, and I am prepared to answer your questions.

[*English*]

The Chair: Thank you very much for those statements. We will proceed to questions and begin with our deputy chair Senator Fraser.

[*Translation*]

Senator Fraser: Please excuse me for being late. I do not like to make people wait, especially not people who have come to give us testimony that must be as wrenching in many ways for you as it is for us.

Ms. Dion, can you tell me where you were a police officer?

Ms. Dion: In the Quebec City police service.

Senator Fraser: You said that you support clause 92 of the bill, which gives police the power to "arrest without warrant an offender who has committed a breach of a condition of their parole. " Can you explain what you mean?

I think police may already arrest someone who has committed a crime or disturbed the peace. If, for example, you observe a person who has not committed a crime, are you not able to say to them that even though they have not committed a theft or committed a physical crime, you know that they have committed a breach of their parole conditions, and accordingly you may place them under arrest? You do not have that power?

Ms. Dion: There are several types of breach. There are breaches of recognizances, breaches of conditions, breaches of conditional sentences and breaches of conditional release. Breaches of conditional release are restrictions that were imposed by the correctional service and not by a judge.

That is why the officer in question has to be asked to obtain a warrant from the court in order to be able to arrest that individual. Those are conditions that are not imposed by judges.

Senator Fraser: That is a distinction I had not grasped.

Ms. Dion: This lets us skip a step. We could get there directly instead of going through the officer.

Senator Fraser: Obviously, that immediately raises the question of how far we should go in giving the authorities the ability to arrest without warrant. That is the question that a person in the street might ask.

Ms. Dion: Certainly, as soon as there is a possibility of reoffending, depending on the conditions, if we are talking about keeping the peace, the person may be released immediately if they do not present a danger.

But it is case by case; depending on whether it is a breach of probation or a breach of a conditional sentence, there is an automatic arrest because it is as if the person is incarcerated, but in society. So the conditions imposed are more restrictive; when there is a breach, there is an immediate arrest.

A breach of probation is an undertaking based on a verdict that an individual is guilty, and then there may be somewhat lesser restrictions, if you will.

That is why it is sometimes dealt with case by case. And certainly, as soon as there is a danger to the public, there is an immediate arrest.

But there are cases where an individual can be released immediately, but still there will be a case, that will take its course. Then the case goes before the court as a breach of probation. Certainly if there are multiple breaches, it is all combined. Take, for example, someone who is required to keep the peace.

The case of an individual who starts shouting is different from someone who must not come into contact with their former spouse, for example.

Senator Fraser: Thank you. I congratulate you, Ms. Latour. You must be a very strong person.

Ms. Latour: I advocate for victims as well. I have a keen sense of justice. I am the kind of person who can advocate for an inmate in a penitentiary if they have been a victim of injustice.

Senator Fraser: If you worked with Olson.

Ms. Latour: I did not really work with him directly. But he was so complex. And I suffered so much with that inmate, thinking about the families of his victims. I know that the mother of one of the victims has testified here.

The first time I met her, I hugged her. Because while I was managing sensitive situations for those inmates, I made sure I did not do anything, but now, I have been released because I am retired and nobody can stop me from acting.

Senator Fraser: I wanted to ask you a question about the figures you quoted, the completion rate for programs for offenders. Those figures are impressive but not necessarily in a positive way.

You undoubtedly know that this morning we heard the testimony of Mr. Head from Correctional Service Canada.

Ms. Latour: I did not hear him.

Senator Fraser: Mr. Head, Mr. Cenaiko and other witnesses testified for an hour and a half. It was fairly intense and very interesting.

Ms. Latour: I would have liked to meet him to get more recent statistics.

Senator Fraser: He did not provide any statistics in those cases, but he talked to us about what seems to be a chronic problem, which may have contributed to the figures you quoted. If we take the example of an inmate who arrives in a penitentiary and who is sent a little later to another penitentiary where they are put in segregation because they did something. Each time, it interrupts their program.

Ms. Latour: Not entirely. In segregation, they continue to have access to certain programs. It depends on the security risk.

Senator Fraser: They do? Not systematically, but generally, would those interruptions have contributed to these very low success rates?

Ms. Latour: No, I do not think so. You know that the outcomes for women are different. Female criminals are very different from male criminals, because they have enormous needs. The first times I was with female criminals at hearings, I was overwhelmed, I did not imagine that women had so many needs. In marriage breakdowns, however, the woman often finds herself responsible for the children, with the husband gone, and it is easier to understand those enormous needs; it is very realistic.

So I was not surprised to see the isolation that Aboriginal people suffer when they arrive in a penitentiary. That may also be seen in the programs. I am not a program specialist.

Senator Fraser: However, you come from a perspective that is unique, for us. This is the first time we have heard from a witness who held your position, who has your experience.

Ms. Latour: Before coming to testify, I asked myself precisely whether I was not putting myself in a conflict of interest by appearing here.

Senator Fraser: The figures you quote are public.

Ms. Latour: When I was in the correctional service, I even protected my employer when my brother died. I suffered so much from that. Instead of going to the courthouse to stand up for my brother, I withdrew. I regretted that. I am getting a little better today.

You are right, everything I have said is public. Valery Fabrikant, that has been public for years.

Senator Fraser: I am from Montreal; I am familiar with the case.

Ms. Latour: I can tell you something I still have on my mind. When I met the Crown prosecutor a year after my brother was murdered — I did not know Valery Fabrikant at the time — the prosecutor, believe it or not, told me to forget about my brother's murderer. I said to him: you are asking me to forget it? He had a pile of files in his office, the files involving Valery Fabrikant who was suing everybody in sight in the Federal Court. Imagine, saying that to the family member of a victim! That is unacceptable. That is why I was assigned to Olson, Fabrikant, Homolka — because I had a sensitivity for the victims, because they often put the service in a quandary: the House of Commons, the National Assembly, listen, we had political pressure with these cases. I can talk about it today. And I will be responsible for any legal action.

[*English*]

Senator Runciman: I thank all three of you for being here. You are all victims of crime. It is very important that not just this committee hear from you but that Canadians hear from you with respect to this legislation and any future legislation we might contemplate that recognizes the challenges that victims of crime have to cope with on a daily basis.

One of the initiatives in this legislation is removal of house arrest, also called conditional sentencing. It will no longer be possible for criminal harassment, sexual assault, kidnapping, trafficking in persons, abduction of a minor, motor vehicle theft, theft over 5,000, being unlawfully in a dwelling house and arson. Are you supportive of that initiative? Do you think it is a wise approach on the part of the government to deal with these very serious issues and to remove the ability for the courts to send someone to their home to serve out a sentence rather than be incarcerated? Are you all in support of that initiative of the government under Bill C-10?

[*Translation*]

Ms. Tremblay: I agree with those provisions, from having lived through it myself. My former spouse was my attacker; he had been incarcerated and he almost killed me on March 26, 2007. If it had not been for my neighbours, I would not be here talking to you today. He was serving a conditional sentence at home. If he had been incarcerated, I would not have had to endure his violence. And I am also speaking for the other victim, who was also virtually left

for dead last June. Both of us had the same attacker, since both of us had the same spouse.

I find it deplorable that conditional sentences are still accepted here in Canada. That absolutely has to be revised. If you really want to keep your people alive, living in a balanced, healthy society, I think attackers and criminals must absolutely stay where they should be: in prison.

[*English*]

Senator Runciman: The vast majority of sexual assaults go unreported. In fact, the incidence of unreported crime is way up, according to Statistics Canada. We know there is a certain amount of risk in making an accusation and risk that is even higher if the offender is right back out on the street, on probation or whatever it might be.

Do you have any views with respect to the reluctance or unwillingness of victims and witnesses to come forward because they are concerned that this individual could be right back out in the neighbourhood the next day? That is an element, again, that this legislation is attempting to address.

[*Translation*]

Ms. Dion: On the question of sexual assault, I personally believe that Bill C-10 shows that this is a question of society tolerating it; by strengthening the penalty, we are sending the message that it has to stop. In other words, a little tap on the back does not work. Criminals take the right to be released after two-thirds of sentence for granted if their conduct in prison is exemplary. I think it is important that society decide what crimes are intolerable in their country, for example, offences relating to children, child pornography, luring a child. Offenders have to understand that there are consequences for their actions.

For the moment, when we consider social reintegration, the pendulum is all the way to one side. Yes, we can consider social reintegration, but there are extreme cases that where we cannot, particularly when they are cases involving people with mental illnesses, paraphilia or a sexual problem. There are some cases where, psychologically, we cannot contemplate social reintegration, except for medication and making sure they take their medication. Bill C-10 speaks for itself.

[*English*]

The Chair: Ms. Latour, are you fine with that? Do you have anything to add?

[*Translation*]

Ms. Latour: Yes, I support what they have said, but I would like to mention the responsibility hospitals have had since diversion, and the Privacy Act, which is a hindrance to public safety. A drug addict in a psychotic state can become very dangerous to society, but when the police take the person to hospital, the hospital sends them back to the vulnerable person's home.

There is something to be done in society as well. I have seen judges, in court, chew out police officers because a mother reported an assault on someone who had assaulted her while on drugs.

Measures should be taken, not just in the penitentiaries, but in society. I am not going to be the one to change the situation, because I am not a legislator.

Senator Chaput: I would like to note your last comment, Ms. Latour, before asking my question. Will you allow changes?

Ms. Latour: That is why we are here.

Senator Chaput: So you must not say that you will not change the situation. The mere fact of coming to share your experience, as a number of others have done, may change the situation.

Ms. Latour: If you knew how difficult things sometimes are. You become a crusader because everyone prevents you from doing things. I know what I am talking about. My mother was unfit. If you knew what we had to do to protect her.

Senator Chaput: My question is about the table that appears in appendix B to your document, Ms. Latour. You talked about the outcomes of programs for offenders. We see women offender programs and Aboriginal initiative programs in the last table. Have those two programs not had very good outcomes?

Ms. Latour: I am not surprised. I was a liaison officer, in the penitentiary, for receiving Aboriginal people. They are very closed people. They were not comfortable in that penitentiary, in view of their culture. I never went to Frobisher Bay. That is why we have resources designed to respect their culture.

Senator Chaput: I am asking the question in view of your broad experience. Should institutions not have different programs, or programs that are presented differently, for those two clienteles?

Ms. Latour: They already have programs.

Senator Chaput: Different from the others?

Ms. Latour: Absolutely.

Senator Chaput: And things do not work better?

Ms. Latour: There are programs for all groups of people. You know, the legislation provides that cultures must be respected.

Senator Chaput: I understand.

Ms. Latour: The Aboriginal people had certain rituals. The correctional service took responsibility for filling those needs, as for all the other categories of male and female offenders.

Senator Chaput: Again, in your experience, you have seen no changes that should have been made to those programs? The goal is always to prevent recidivism.

Ms. Latour: Some inmates succeed in their social reintegration. However, I do not believe they are a majority.

Senator Chaput: It is not possible?

Ms. Latour: I did not say it was not possible because I believe in social reintegration. I do not believe in it in some cases, like Fabrikant's, or the person who robbed my daughter, who became a virtual serial killer. If we stopped paying them, in some programs, we might be better able to identify who is really motivated to be rehabilitated. Unfortunately, I cannot give you a very intelligent answer.

Senator Chaput: You are sharing your experience and that is very much appreciated.

Ms. Latour: Thank you.

Senator Chaput: Do you have anything to add?

Ms. Tremblay: I do have something to add to my testimony, if you would not mind. It was very important for me to come here to testify today. I was at the women's centre and I said to myself, four years ago, that I am going to go all the way to the government to testify, and that is what I am doing today. I am very proud.

I am here to denounce the violence that is committed, mainly, against women, and to achieve progress in the laws. We can no longer keep on pretending that everything is fine. It very much is not. We have to live in our country safely, respectably and with dignity. I want to stress that sentence, which I wrote. You do not have it because it was in my questions.

Out of dignity and respect for the women who have been murdered, and the men who have been murdered too, for your brother, and who do not have the opportunity I have today, that we have today, as survivors, to make ourselves heard, I would like to pay tribute to those families and those people.

Senator Boisvenu: Thank you very much for being here, ladies. Bravo!

I would like to note that there are people in the audience who provide a lot of support for victims. I am thinking of the president of the association, Ms. Pousoulidis, Bruno Serre whose daughter was murdered, Mr. Carretta whose daughter was murdered, and Michel Surprenant, whom everyone knows, whose daughter disappeared. You see these three men, who are also founding fathers of the association I created. That is why we wanted to give a male voice to violence against women. I want to salute them for being here today. Ladies, say to yourselves that you have partners in the battle you are fighting.

I have two questions. My first is for Ms. Dion. To leave time for the other senators, I would ask that you be brief in your answers.

Recently, you held a press conference, after your meeting with the Department of Public Safety concerning your case. You said that when a criminal who is still considered by the board to be dangerous is released, more thought is given to the criminal's rights than to the victims' right to be protected. You then outlined an important change that should be made when these people are to be released: the idea of distance between the victim and the criminal. Can you quickly tell us about that?

Ms. Dion: When you are the victim of someone who has tried to kill you, knowing that the attacker could be living less than a kilometre from your home is unimaginable. That decision is completely absurd. Unfortunately, at present, what the victim thinks is simply not taken into consideration.

This week, I met with the director of the correctional service. Our interview lasted more than an hour and a quarter. The discussion revolved around the attacker, Laurent Minier. She talked to me about his program and the fact that it was preferable, for some reason, that he be at the Centre Caron. She said the decision about his transfer had not yet been made. However, when Laurent Minier is at the Centre Marcel Caron, "we can draw a quadrangle for you, Ms. Dion. " At no time, however, did she ask me whether that situation was liveable for me.

You will understand that I have lived in that location for years, it is my neighbourhood, those are my roots. He will be transferred because he has asked to be transferred to Quebec City, and I am the one who will have to move.

There is really a lack of balance and consideration. I even wondered whether, when someone works with these people, they see only one side of the coin. Do they see one side and not see the other? I was completely thrown by that.

Senator Boisvenu: Ms. Latour?

Ms. Latour: May I add something?

Senator Boisvenu: I would like to ask my questions quickly to leave room for the others.

Ms. Latour: I suggested that there be a program at the federal level. Her question is directly for the National Parole Board. She would have to be registered as a victim.

Senator Boisvenu: We are going to work on that. Are you familiar with this document, Ms. Latour, entitled *Roadmap for Strengthening Public Safety*?

Ms. Latour: I have read excerpts, but I have not read it in full.

Senator Boisvenu: This document was disputed by some people who said that it did not reflect reality and that its approaches will not bring about a better penitentiary system in Canada. You undoubtedly have a good idea of the document. Does what it describes as the problem represent the reality?

Ms. Latour: I have not read through that document.

Senator Boisvenu: You have not read through it?

Ms. Latour: I have been retired since 2007. So I do not have as much literature.

Senator Boisvenu: Very well, I will ask someone else the question.

[*English*]

Senator Lang: I would like to thank the witnesses for coming. We have had a number of victims of crime before us and all I can say on behalf of our fellow Canadians is that we are very sorry about what happened.

I would like to put this question to you: You have all studied the legislation. In one manner or another you have experienced what the present legislation has done or has not done in the past. If the legislation does not pass, then what implications do you feel it has to the justice system and to the confidence of Canadians and, in your case, Quebecers in the criminal system?

[*Translation*]

Ms. Tremblay: I am going to be very disappointed for the whole country, and for Quebec as well. I think, sincerely, that the bill absolutely has to pass. We cannot go on being victims of violent criminals. As you saw in the statistics, the crime rate has risen significantly and as citizens, we are asking you, as legislators, to please take the time to listen to us and consider everything we are saying to you today, and I am also talking about the people who came before us here. That is essential. This bill absolutely has to pass; otherwise, we are moving completely toward a country that is going to sink into crime, much more than we have today. And your children, your daughters, your mothers and your grandchildren are going to die as well. We also cannot educate a society with the law we have at present.

I think that Bill C-10 is a bill that is meant to enable our society, our children and our families to live in a country that provides safety and dignity.

Ms. Dion: I am going to summarize it this way: to me, Bill C-10 is a new era. It is the pendulum swinging back. We went to the other extreme, we thought only about offenders and we completely forgot about victims. To me, the way I look at Bill C-10 is that it is the beginning of the pendulum swinging back and of a balance between the rights of victims and the rights of offenders.

Ms. Tremblay: Absolutely.

Ms. Latour: Ms. Dion took the words right out of my mouth. I have nothing to add.

[*English*]

The Chair: Ms. Dion, you talk about the balance between the rights of offenders and the rights of victims. The ultimate objective is to reduce victimization by doing everything we can with the rules and laws that we have to reduce those opportunities for offenders. I am sure you would agree that there is more to the balance. Our focus is what we can do to improve the system and reduce opportunities for further victimization.

[*Translation*]

Ms. Latour: That is very much appreciated, thank you.

Ms. Tremblay: Those are healing words.

Ms. Latour: Absolutely. And I truly think that Bill C-10 is going to change things.

Senator Dagenais: Thank you for being here today, ladies. I applaud your courage, because obviously, when we talk about the events you have experienced, it has to open those wounds.

My first question is for Ms. Tremblay. You stated that there were rehabilitation programs in penitentiaries that will remain after Bill C-10 is enacted. To better understand your comments, which I would describe as courageous, starting with your own case, I would like you to explain, concerning the case of Michel Hamelin, what was the flaw in the system?

Ms. Tremblay: I was not heard by the court. I was not believed until he victimized someone else. The flaw was quite simply that the justice system did not have its feet on the ground. You do not just rap someone who has committed a crime like that on the knuckles. I was also raped by that individual. I went through hell. The fact that he got just a two- year conditional sentence to serve at home is inconceivable. I was not heard, I was not respected, and I think the law was made in such a way that the police, from what I was told, had their hands tied. I was told: "We do what we can for you, but we cannot go beyond the laws. "

The flaw was in the laws, and conditional sentences should not exist anymore. If that provision had been removed completely, Ms. Coutu would not have been attacked by Mr. Hamelin. We both had the same attacker. I really think that conditional sentences should be revised and even abolished.

Senator Dagenais: I have a brief question for Ms. Dion. Do you believe that your attacker, Mr. Minier, has been rehabilitated even slightly or is he still simply dangerous?

Ms. Dion: I will tell you that I have followed his case since he was incarcerated. Report after report, the National Parole Board said that the individual was at high risk of reoffending. And when I received the decision, on January 10, once again the psychiatrist said that his dangerousness was controlled by the medication he is receiving by injection and that they are making sure he takes. It talked about superficial improvement in this individual, in particular because of the entire team that surrounds him; in other words, he is controlled. But before taking his medication, while he was incarcerated, he wrote and said that he would kill another policewoman, and that the next time it would be by firearm. This individual will be free as the air in 2017, like you and me, when he will have been controlled for practically 14 years.

There is also a problem there: his mental health condition is so serious that he absolutely has to be supervised. In reality, he is not a criminal, he is an individual who has very serious mental health problems, so he is currently incarcerated. And in 2017, no one is going to be looking after him anymore and he is going to be free as the air. His condition has reached a "plateau, " but that is because of the medication he is required to take because he is controlled. What is he going to do when he is allowed to go free, with everything we know in the psychological report? I am not going to list all his problems, in scientific terms, but he has a paraphilia focused on policewomen in uniform, he has sexual obsessions and fixations on policewomen.

[*English*]

Senator Jaffer: I want to thank all three of you. This takes a lot of courage. Ms. Tremblay, we are honoured that you are presenting to us. We really appreciate it.

You have told us about many things that did not work for you. For women who come after you, could you tell us one thing that would have helped you had it been in place?

[*Translation*]

Ms. Tremblay: Change the laws, continue to do what you are doing today, and especially continue to listen to victims. They have a lot to tell you. We are

not talking about something we know nothing about. We are talking about something we have experienced, and we will have to live with the psychological, physical and financial consequences for the rest of our lives. With respect to the initiative taken today, I want to thank you. I am the one who is honoured to be here today. Thank you on behalf of victims.

Ms. Latour: I would like to thank everyone too, for your attention.

[*English*]

The Chair: The honour is all ours. Thank you for sharing your very painful experiences for the benefit of society. It helps us do our job. These are messages we have to hear. You have shown tremendous strength to share them with us and we deeply appreciate that.

We are continuing our study of Bill C-10 and, in particular, the portion of Bill C-10 we are considering today is contained in Parts 2 and 3 of the bill, and they concern conditional sentencing, parole and pardons.

We have with us today, and we are pleased to have them here, Ms. Christa Big Canoe, Legal Advocacy Director from Aboriginal Legal Services of Toronto; and from the University of the Fraser Valley, we have Professor John Martin, Criminologist.

Ms. Big Canoe, I understand you have a statement for us.

Christa Big Canoe, Legal Advocacy Director, Aboriginal Legal Services of Toronto: Thank you. I am Christa Big Canoe, the Legal Advocacy Director of Aboriginal Legal Services of Toronto, also commonly referred to as ALST. We would like to thank the members of the Legal and Constitutional Affairs Committee for inviting us to make submissions regarding the Safe Streets and Communities Act, particularly in regard to Parts 1 and 3.

ALST has an interest in vocalizing objection to the passing of the Safe Streets and Communities Act because of the acute Aboriginal over-representation in the criminal justice and penal systems and the overall impact this bill, specifically the two parts being discussed today, will have on Aboriginal people as a whole.

I will not read directly from my brief, but I would indicate that ALST is a multi-service legal agency serving Toronto's Aboriginal community, and we have also done a number of interventions at all levels of court as well as coroner inquests on a national scale. We also have in-house programming that focuses on restorative justice and has diversion programs, the main goal of which is to reduce recidivism and re-offence of both Aboriginal youth and adults. We have been before the courts, particularly the Supreme Court and the Court of Appeal, a number of times specifically on *Gladue*-related issues or to speak to the systemic issues that Aboriginal people face within the justice system. I have noted that in my brief, and I will not necessarily go through all of that.

I would like to focus, given the limited time today, on Part 2. Having said that, I am open to answering questions with respect to Part 3 as well, as it applies under the YCJA. I would like to highlight our major concerns as an Aboriginal legal service provider to Aboriginal people with respect to mandatory minimum sentences and conditional sentences.

Our largest concern with the passing of the act is that there will be an undermining of the principles of sentencing as set out in section 718.2 of the Criminal Code of Canada. When I say that, I mean the entire section, not just *(e)*.

It is also our position that progress made in respect of the application of *Gladue* principles for Aboriginal people in sentencing and beyond — because the courts throughout the country, and particularly in Ontario, have started applying *Gladue* principles beyond simple sentencing, and the Supreme Court recently in October looked at it in the context of long-term offenders. It is integral that the *Gladue* principles themselves be upheld.

We believe that the Safe Streets and Communities Act will make the problem of Aboriginal over-representation in prison even worse, while at the same time not actually addressing the legitimate safety concerns of Aboriginal and non- Aboriginal people in this country.

I will not spend a lot of time here because there have been a number of expert witnesses and great witness who have identified and spoken to specific statistics, but I do have a strong statement because it is something we deal with on a day-to-day basis in every area of law we practice in, this concept of overrepresentation of Aboriginal people, both in the criminal and penal systems, as well as victims of crime. We do work in that through the Criminal Injuries Compensation Board, through the IAP which is the Independent Assessment Process. I do not think necessarily in this statement that they are mutually exclusive, victimization and criminality.

When Aboriginal people only represent 4 per cent of the Canadian population but are one quarter of the people incarcerated in this country, there are obvious problems and failures within the justice system, both historically and currently. Courts have recognized the Canadian justice system has failed Aboriginal people in this country. We provide services to Aboriginal people to stave off or minimize the impact of those failures. We see this act, particularly in relation to mandatory minimum sentences and the prohibition of conditional sentences, has potential to cause further harm.

Specifically, the increased reliance on minimum sentences means less opportunity for conditional sentences. This is problematic because it prevents the judge from considering them as a sentencing option. It is our position that there are appropriate circumstances for conditional sentences. Minimum sentences of 90 days — when you look at the proposed legislation, you can see that some of the minimums have been increased from 14 to 45 to 90 days to 1 year — cannot seriously be justified for their ability to deter crime or lead to rehabilitation or correction in behaviours of offenders while incarcerated. Particularly for Aboriginal populations, the deterrence principle does not have the same effect, as shown by the continued historical and ongoing overrepresentation of Aboriginal people within the penal systems. I understand that the national chief testified earlier this week, and one of his comments was, when you are an Aboriginal male in this country and you have a higher chance of being incarcerated than completing your high school education, deterrence simply based on a minimum is not high.

For those incarcerated in the penitentiary system, realistically they come out worse than when they went in, sometimes having exposure to drugs and reliance on substances that they never had access to prior to being put in custody. We see this in our day-to-day practice, particularly in youth groups and in representing victims. There are people who never had anything more than certain types of alcohol or marijuana, then find themselves within correctional institutes and all of a sudden have their hands on a host of more illicit and detrimental drugs and become addicted while incarcerated.

For Aboriginal offenders, they experience higher rates of racial discrimination — Mr. Sapers discussed that and it is in the reports I have cited as well — and a higher risk of becoming gang affiliated. Youth or young adults that come from remote communities who find themselves serving penitentiary time are now in larger centres and are exposed to gang affiliations or coercion to become a part of gangs that they otherwise might not have been.

The act proposes to replace 742.1 and rely on maximum terms of imprisonment as well as the list of offences that will prohibit use of conditional sentences.

We are of the opinion that conditional sentences are currently only available when legislation allows, when a judge is satisfied that the sentence would not

endanger the community and are consistent with the fundamental purposes of principles in sentencing. There are offenders who will be captured by the proposed legislation, and I heard one of the senators with the last set of witnesses refer to a couple of them, including things like theft over $5,000 and car theft. These might actually be people who are first-time offenders captured by this legislation who receive a mandatory minimum when really they would benefit and it would do society better if they had received a conditional sentence. Conditional sentences can allow for judicial overview or probation overview for up to five years. Ninety days may be accompanied with probation but maybe only for two years, so you do not necessarily always have the same oversight.

When conditions are built into a conditional sentence that are appropriate, that allow for supervision and have a rehabilitative and restorative focus, you see people make strides and gains. We see this in our program side on a daily basis when people access our programs, whether it be anger management or particular types of culturally appropriate programming.

My final note is to touch on the prosecutorial safety valve versus a legislative and judicial safety valve. You know that we do not support the bill, but we recommend that if the act is going to be passed that there are amendments giving judges an option not to impose a minimum sentence in exceptional circumstances. Such a provision is often referred to as a safety valve. There have been submissions on behalf of the Canadian Bar Association and other witnesses who have discussed the safety valve. We believe it would go a long way to meeting objections that the law is unconstitutional and allow judges to consider other sentencing provisions, specifically sentencing provisions and considerations in 718.2*(e)* in situations where to impose a minimum sentence would be clearly unjust in the circumstances.

Our biggest point here is that we agree and truly believe that the lack of judicial discretion, removing the judge's discretion, particularly in the context of 718.2, where sentences should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. When you start discussing minimums and removing conditional sentences, you are looking only at the offence, not at the offender or the circumstances of the offender. You are not giving effect to 718.2, particularly not in relation to *(e)* which requires that the least sanction is given for all offenders, not just Aboriginal offenders, with particular attention to the circumstance of Aboriginal offenders, which includes those historical harms and victimizations that are actually the root causes of why they have offending behaviour.

In my submission we cite *R. v. Smickle* to point to the fact that we will see a whole host of litigation if the bill goes through, without an exception, on constitutional grounds, and this is a prime example where the Crown who acted in good faith with all the information before them decided to proceed on indictment, and the facts did not marry. A three- year minimum in this particular case is seen as cruel and unusual punishment and it strikes down the legislation. I think we will see a lot more litigation. It will particularly happen and occur with Aboriginal people, as well as other people who have constitutional and Charter rights not to have cruel and unusual punishment or to have more appropriate and fit sentences.

The principles found in section 718.2 were legislated as remedial recourse and recognition of the dramatic overrepresentation to the disadvantages that historic abuse and poverty posed for many Aboriginal people in Canada. The evolving case law that comes from these provisions and the sentencing principles outlined in *Gladue* are a measured and appropriate response to the dramatic overrepresentation of Aboriginal Canadians in the penal and Canadian justice system.

I put this to you because as a First Nations woman who works in Canadian law representing Aboriginal people, the dream would be that one day there would be no need to have a provision in the Canadian Criminal Code that specifically asks us to pay special attention to Aboriginal people because the hope would be that the remedial nature of when the legislators put this in would come to fruition, that there would not be the continuing and systemic issues that Aboriginal people face. The reality is we are not there. In fact, reports and statistics demonstrate that Aboriginal incarceration is only increasing, not lessening. The mandatory minimum and the removal of certain types of conditional sentences on certain offences will only compound this and make it worse.

The act will only assist to create continued overrepresentation, and I would predict that it will likely increase it. Now is not the time to repeal this provision of the Criminal Code. The work that is required has not yet been done.

It would seem, from where we stand as Aboriginal legal service providers, that the Safe Streets and Communities Act attempts to repeal 718.2 by stealth, taking the legs out from underneath these principles without actually repealing it. We would urge the Senate not to let that happen, or at least to make amendments to ensure fit and appropriate sentences that will benefit the safety of all of our streets and communities, Aboriginal and non-Aboriginal. *Meegwetch*. Thank you in for your time and consideration.

John Martin, Criminologist, University of the Fraser Valley, as an individual: I cannot begin to express how honoured and humbled I am to be invited here today. This is a historic turning point in criminal justice in this country. In my career in criminology over 30 years, nothing has been introduced that will have as significant a positive impact as Bill C-10.

I support this legislation, however imperfect it may be. I have gone on record in the media numerous times voicing my support. I think it is long overdue.

I would like to speak generally about the bill itself and then I will specifically address a couple of things regarding sentencing provisions.

In my lifetime, beyond my career, I am not aware of anything that has been introduced into the criminal justice process that more directly addresses the needs and protection of the public than this piece of legislation. For far too long, reforms in criminal justice have all been in favour of the offender and public safety, particularly the needs of victims: not only have they been secondary but often absent in the dialogue. I am absolutely thrilled that this legislation has come as far as it has, and I am looking forward to it being passed.

The rhetoric that surrounded this debate, as we all know, has been nothing short of toxic. We expect a certain amount of partisanship and activism, some criticism of the legislation. What we did not expect, though, was my colleagues, academics and fellow criminologists, to be as reckless as they have with their selective cherry-picking of facts and statistics.

For instance, we know there have been profound, positive impacts from mandatory minimums in various jurisdictions in the United States. Those are not identified in the literature or in introductory criminology textbooks.

I did a fact-finding mission a couple of times down in New York. I talked with public officials and front-line police officers who were part of the process of cleaning up New York under Mayor Giuliani and the chief of police. The academics did not like it, the lawyers and civil libertarians did not like it.

However, when you talked to the people who lived in those boroughs, for the first time in decades after dark they could walk down to the Jewish deli at the end of the street, go have a sandwich and a glass of wine and walk back without any fear of being disrupted, robbed, mugged, threatened or harassed in their neighbourhood. They were ecstatic. I think too often the critics of this legislation do not give the public any consideration.

This particular piece of legislation, Bill C-10, addresses so many of the shortcomings in criminal justice. It could do more. It could more specifically be

focused on victims of crime, and I am hopeful that something along those lines will happen in the very near future.

One of the major criticisms that has been passed around — again, I make no apologies for using the word "reckless " — they are saying this legislation is pushing us toward an American justice system. I do not know that I am aware of anything more irresponsible than that statement. It is like adding a dash of pepper to your plate and being accused of trying to fire up a dish for a Texas chili competition or something. These are baby steps in the right direction.

As a specific example, several of my colleagues have criticized the government and the bill for wanting to construct mega, U.S.-style prisons. A mega prison, go down California, Folsom Prison, we are talking about inmate populations of 4,500. Most institutions in this country have about 300 inmates or more. The only prison construction I am aware of, correct me if I am wrong, are the additional living units in the neighbourhood of 40, 50, 60 or 80 more beds, possibly.

If you take the time to go into some of these institutions that were built 50, 80 or 100 years ago, they look like the Gothic set of an old Vincent Price movie. They are not fit to live in, let alone work in.

If the federal government is going to allocate funds to upgrade and modernize these facilities, then all the power to them. No other public employees have to work in those types of conditions.

I have been in facilities where you have moss growing on damp cement on the inside, and we are sending public sector employees and offenders to live in those conditions. If those are being overhauled, retrofitted and modernized, that is a good thing. There is nothing even approaching a mega prison in the works in this country that I am aware of. I am sure it would have been brought to my attention.

I will speak specifically on some of the aspects around the sentencing provision. The conditional sentence, I would prefer it absolutely be stricken. There was no need for it in the first place. We already had probation. It is really just another type of probation, and it satisfied some requests from higher courts and the Law Reform Commission to add additional alternatives to incarceration. There is no need for it. This was brought in very deceptively.

I recall teaching introductory criminology classes when it was brought in and I had talking points from the minister responsible and I got a copy of the legislation. There were all these assurances that it was for first-time, low-risk, non- violent offenders. I was naive, in hindsight, but I took the minister at his word at the time, and that is basically how I conveyed what this legislation was to my students. Soon enough, we find out that was not the case. It is being granted to sex offenders, people even convicted of manslaughter and serious drug crimes. That was never in the cards. Canadians were told this was going to be used for low-profile, low-risk, non-violent offenders.

Senator Runciman mentioned a couple days ago a very disturbing case in Nanaimo, British Columbia. A 43-year- old man was convicted of five counts of sexual assault against four different children, including an 11-year-old, mentally challenged girl. He was given a conditional sentence.

If we were talking about a 20-year-old man with one victim, that could be a one-off. That could be something that can be dealt with. When dealing with a 43-year-old man with multiple victims, when you talk to anyone who works with sex offenders, that is a terrifying profile. This person was given a conditional sentence to be spent in his home. That home is where all those sex offences took place against children.

I welcome the fact that that type of offender would be prohibited from being granted a conditional sentence. My preference would be that it be taken out of the cards altogether, but so be it.

One last thing, speaking to mandatory minimums, one of the big problems we have in this system is, as we all know, this revolving door. People come in, tie up the system, tie up resources, in and out, 10, 20, 30, 40 or 50 convictions. The thing I like in particular about mandatory minimums is you have someone on a leash. Someone gets three years. If they play by the rules and go through the hoops, they can be out within six or eight months on day parole. If they mess up when they are out there, you can yank them back. You do not need new charges, you do not have to get duty counsel and you do not have to deal with trying to book a hearing or anything. You can yank this person back in.

However, almost every offender has an opportunity to get day parole about one sixth into their sentence. By giving these mandatory minimums, you have this person on a short leash. They mess up or do something sideways, you yank them back in without tying up the extended, exhausted resources in the justice system.

I could go on for a lot longer.

The Chair: Perhaps you will have the opportunity with questions.

Mr. Martin: I would prefer to move on to questions, yes.

The Chair: Professor, you referred to the U.S. where studies show perhaps a different result from mandatory minimum sentencing. If there are any of those reports that you could refer us to — not now, but perhaps when you leave — that would be useful for us.

Mr. Martin: I will send those to you, yes.

Senator Fraser: Thank you both for being here. Welcome to the Senate. I want to ask each of you a question about conditional sentences.

It has been said, Ms. Big Canoe, quite often, I think, that conditional sentences are the lifeblood of *Gladue*. Removing lifeblood usually has a dramatic effect.

To what extent — and it is a serious question, not a rhetorical, leading question — is it possible to preserve the spirit, the essence, the drive of *Gladue* in circumstances where there are mandatory minimum imprisonment sentences?

Ms. Big Canoe: I agree in some respects that conditional sentences seem to be the lifeblood of *Gladue* and that they are fit and appropriate in a number of circumstances. One thing I would like to remind the senators in the room is that the application of the *Gladue* principles does not mean that someone will not be incarcerated; in fact, often they will receive incarceration, followed by a stiff probation or time after.

However, when we see conditional sentences put into place, we see an opportunity for offenders to rehabilitate and to actually take into account the principles, by looking at the factors and circumstances and addressing the root causes of the offending behaviour. If you put someone on a mandatory minimum, they will serve their time; they may or may not have probation following; and then they will return to their communities; and they will return to their communities without necessary follow-up, which is also part of the lifeblood that forms the *Gladue* principles, or where you see it successful.

Senator Fraser: We know that the correctional services have tried — and this is, of course, in the federal system — to implement at least some Aboriginal programming to compensate for the obvious difficulties. How successful do you think that is?

Ms. Big Canoe: I would have to take the position that it is a good attempt, and I would rely on Michelle Mann's report, *Good Intentions, Disappointing Results*. There may be good intentions and good projects. Earlier this week, at the AFN National Justice Forum, I saw the CSC give a presentation. They gave a listing of all the current Aboriginal offenders being held, and about one tenth of them actually get to access Aboriginal programming while serving time in the penitentiary.

I think they are taking legitimate time and effort to try to make that happen, but I do not think the reality is that you go and serve hard time and actually receive culturally appropriate or rehabilitative programming that assists you to reintegrate into the community. There is legislation as well for reintegration purposes that assists with the community. However, again, the problem is the acute overrepresentation. The sheer numbers of Aboriginal people who are in both the provincial and federal systems means that the programming is just not available.

Senator Fraser: It just gets swamped.

Professor Martin, I am not quite sure how to phrase this, but it seemed to me that a listener to your presentation might have concluded — and I want you to confirm that this is erroneous — that if you have been incarcerated and then you are out on parole and you do something wrong, you can be hauled back. However, as I understand it, when you have a conditional sentence, it is conditional; there are conditions, and if you break the conditions you get hauled back. Is that not the case?

Mr. Martin: That is the case, yes.

Senator Fraser: Then I am not quite sure I can actually follow the particular logic. You seemed to me to be saying that it was possible to have better supervision of people not while they are behind bars — everyone can understand that — but when they are out on parole or statutory release, if they have already been behind bars than if they are on conditional sentence. Did I misunderstand you?

Mr. Martin: Slightly. We were speaking about two different issues. The first was the conditional sentence. When I spoke about someone being on a short leash, this was with regard to the mandatory minimums, where if someone is incarcerated and they get early parole, day parole, you have the ability to pull them back into custody. That was a separate commentary from what I had to say about conditional sentences.

Senator Fraser: There, you would be contrasting mandatory minimums with much shorter sentences, where the leash would be expired sooner?

Mr. Martin: No. I get frustrated with seeing the justice system spinning its wheels without any benefit, and tying up resources, prosecuting and convicting the same person over and over, and they are out on the street, committing more offences.

No one is calling for "three strikes, you're out. " We Canadianize that. How about "30 strikes, you're out "? At some point you are incarcerated. If people go through the motions, do as they are asked to in terms of programming and behaviour, they are eligible for day parole; they are allowed to seek early freedom. Because they are still under sentence, we have the ability to monitor them and to pull them back in if they sidestep, as opposed to giving people what we do now — 3 days, 30 days, 8 days, 11 days, 6 days.

When we talk how we supposedly overuse incarceration, the bulk of those are people serving 30 days or less. We have to keep that in mind. A typical sentence in the province is eight days. It is not someone going for two years less a day.

I do not think that is sustainable. In every province, the systems are under enormous stress, and prosecuting the same people over and over, the chronic, incorrigible offenders, is benefiting no one, including themselves.

Senator Runciman: I have to tell you, professor, it is refreshing to have a common-sense witness from academia.

Mr. Martin: I do not have a lot of friends at work.

Senator Runciman: You were talking about criticism of this bill being toxic, and I would go further and say that much of it has been irresponsible and some of it dishonest.

You talked about the U.S. comparison, and that bogeyman was raised again yesterday in news stories and so on. I think some of it, to a degree, perhaps a significant degree, has been fed by the CBC, on the taxpayers' bill, sending reporters to Texas to try to suggest this is the case.

I want to follow on with what you said with respect to this and the legislation here, Bill C-10. The sentences in the bill bear no relationship to the sentences in the United States.

Someone with 100 marijuana plants found guilty of production for the purposes of trafficking in Canada will be subject to a minimum sentence of six months under Bill C-10. Under current federal law in the United States, they would face a sentence of five to forty years.

This bill raises the mandatory minimum for possessing and accessing child pornography from 14 days to 90 days. A maximum, when proceeding by indictment, is five years. Last year, a Florida man with no previous criminal record was sentenced to life without parole for the same offence.

According to the International Centre for Prison Studies, the incarceration rate in the United States is 743 per 100,000 population, compared to Canada's 117 per 100,000 population.

This notion that a few new mandatory minimum sentences represents Americanization of the justice system is ludicrous, and any honest comparison would tell us that.

Mr. Martin: Absolutely.

Senator Runciman: I am not sure whether you have looked at this issue, but a Department of Justice study done in 2008 pegged the cost of crime at $99.6 billion. Aside from that we have a basic obligation to protect citizens, there is an economic argument here with respect to getting these habitual chronic offenders off the street. Do you have any views on that?

Mr. Martin: I have spoken about this in the past. When critics of criminal justice reform engage the subject matter, they often talk about the price, how much it costs to incarcerate someone per year. However, what is not taken into account is all the costs associated with victimization in terms of insurance. Every single thing we purchase from any retailer has been upped in price to account for shrinkage from employee theft and shoplifters.

None of the medical bills, counselling and social services brought into play when someone is a victim of crime is ever taken into account as the cost of crime. We simply are told how much it costs to incarcerate a person and that is the end of it, as though that is the only cost there.

Look at the police that are constantly arresting and re-arresting the same people over and over. They tie up court for a few hours and are back out on the street. That is a cost we do not calculate.

You remarked about the comparison between American and Canadian scenarios. In British Columbia, we have a huge marijuana grow op problem. Go to Washington State. If you have a serious operation, you are busted and you lose your home. If you have children under 16, they are probably taken into care. You are looking at five years. In B.C., you lose you are light bulbs and you are back in business the next day. We are not moving toward an American justice system by any stretch of the imagination.

Senator Runciman: Despite the proliferation of grow ops in British Columbia to supply that need south of the border.

Ms. Big Canoe, you expressed your concern about the abuse of the Gladue principle. I am assuming you are familiar with *R. v. Wells*. As you said, the sentences of imprisonment for Aboriginal offenders will automatically be reduced. The sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Generally, Aboriginal and non-Aboriginal offenders who commit violent and serious offences are likely to receive similar terms of imprisonment. I think it is important to note that Aboriginal people are also overrepresented in the criminal justice system as victims. Bill C-10 will help all victims.

In your opening statement, you said that, "When Aboriginal people only represent 4 per cent of the Canadian population but are one quarter of people incarcerated in the country, there are obvious problems and failures in the justice system. " I do not think any of us deny that there are problems and failures. However, it seems to me that you are laying all the responsibility for the situation at the door step of the justice system and I wonder if that is fair?

Ms. Big Canoe: I will start with your first question.

Your quotation from *Wells* is the most often-cited case, that particular paragraph, from Crown prosecutors when they are talking about serious offences or sometimes not even serious offences before the courts. That is true in terms of practical reality and it is also required within the other sentencing principles that are found in our Criminal Code. However, despite the practical reality, that particular statement is not a law or rule of general application. There is a requirement that the judge and the lawyers actually address the factors. There will be circumstances, and you see that in cases like *R. v. Kakekagumick*, where the actual end sentence does not change, but there are other principles enunciated in that case. That is not a rule of general application; it is a practical reality in some circumstances.

In relation to your second question, I do not think it is my intent to place blame on the Canadian justice system alone. I think that is somewhat unfair. My statement recognizes what has been recognized in about 30 years worth of academic literature in relation to Aboriginal people, royal commissions by federal and provincial governments, as well as case law within Canada. Specifically, Gladue states that the Canadian criminal justice system has been a failure in respect of Aboriginal people.

My statement reiterates what we already know in Canadian law. It is not necessarily intended to place blame specifically on the criminal justice system, but this actually a good point and I am glad you asked me this. It is not the justice system that will correct a number of the issues that lead to offending behaviour or to criminalization of Aboriginal people. It is the acute poverty, the lack of clean drinking water and not being able to access Aboriginal and treaty rights. The justice system is not in the best position to address the systemic or base roots.

It has been recognized in Canadian law, by legislation, by reports and by a whole host of academic reports, that the criminal justice system has done harm and has been used as a tool of oppression in terms of institutionalizing, in a more historical context, Aboriginal people.

The Chair: We will have to move along, senator. I know these are interesting comments and there is a lot to follow up on there.

Colleagues, we always seem to be pressed for time. Please keep your questions as concise as you can, similarly for the responses, because there is so much we want to hear from you.

Senator Cowan: Welcome. I appreciate you coming here today. My questions are for Professor Martin. I like to get a sense of context about where people come from. That is the context in which they provide their evidence.

Your evidence with respect to Bill C-10 is — and Senator Runciman referred to it as refreshing — different from the evidence we heard from other criminologists and your colleagues. I was intrigued as to why that would be. I understand you ran to be a candidate in the British Columbia election recently?

Mr. Martin: I haven't run.

Senator Cowan: You are running for a nomination?

Mr. Martin: Yes.

Senator Cowan: There were some views there that I would like to put to you because it sets the context.

You were reported as saying, with respect to the health care system — and health care is relevant to what we are dealing with here — that:

> It's the same story with our health care system. . . . Any talk of a complete reformation of health care is completely off the table. If it were a car, you would scrap it in a heartbeat. If it were a dog, you'd take it for that one last drive to the vet.

Is that your current view of the health care system?

Mr. Martin: No. I was addressing this actual piece of legislation and the justice system. We suffer from this hands- off approach where we are so reluctant to tamper with something, even if the evidence is overwhelm that it is not working. That is why I find this legislation so refreshing because we are moving forward in justice.

I have been critical of the health care system in that it refuses to modernize. If you were going to build a health care system today, it would not probably look like what we have now.

Senator Cowan: You have also argued —

The Chair: I know there are many issues that we can discuss, but the health care system is not one of them.

Senator Cowan: No, but we talked a lot about health care.

The Chair: I understand. I am saying that if we could restrict ourselves to Bill C-10, it would be appreciated.

Senator Cowan: As I understand it as well, you are arguing here in favour of tougher legislation.

Mr. Martin: No, smarter legislation.

Senator Cowan: You are also arguing against tougher drinking and driving laws; is that correct?

Mr. Martin: The law in British Columbia, 0.05, which has been partially struck down by the courts, is problematic. In British Columbia you have more rights to contest a parking ticket than you do to contest the conviction under the new legislation.

Senator Cowan: You are not generally in favour of tougher, it is a specific —

Mr. Martin: No, it is not about being tougher on crime; it is about being smart on crime.

Senator Cowan: How do you explain the fact that the evidence that you are giving to us today is totally contrary to the evidence that has been presented by, I think, every other expert in the field of criminal justice who has presented to this committee?

Mr. Martin: Criminology is —

Senator Cowan: I am not talking about individuals. I do not know whether the minister would be considered an expert. Can I have an answer to that question?

The Chair: To your point, you are suggesting that Professor Martin's evidence is "different, " I thought you said, than that of all other criminologists who have appeared before us.

Senator Cowan: That is right.

The Chair: I am not sure how many we have had before us. I am wondering to whom we are comparing his evidence.

Senator Cowan: To those criminologists who have presented to the committee.

The Chair: Other witnesses?

Senator Cowan: I would like his comment. I am entitled to ask him how he explains that his views are different from others. That is all I am asking.

The Chair: If there are experiments in criminology that we are talking about, I just want to understand the comparison. I am not trying to debate it with you. Are we comparing him to other criminologists or to any other witness that has appeared here?

Senator Cowan: Other people who profess to be expert in the field of criminology and criminal justice.

You referred earlier to the fact that you had been offended or surprised or shocked by the evidence you read. I am asking you to square that circle.

Mr. Martin: Criminology is like any other discipline. There is a variety of competing paradigms, different views, different perspectives. It is very much a multidisciplinary area of study. People come from an economic background, a statistical background; most come from a sociological background, some from psychological. The background helps to shape the type of research that people engage in.

Senator Cowan: Let me be specific. Can you point us to any academic studies that indicate that mandatory minimum sentences are effective in deterring criminal activity?

Mr. Martin: Let me address that. We hear this notion that mandatory minimums do not work, prison does not work. What do you mean by "does not work "? I ask these people and my colleagues all the time. It takes them a little bit of time to respond to it. They say it does not deter. Let us say it does not deter, but that is only one objective of many of sentencing.

Other objectives include closure for victims, a sense by the community that justice has been done. That is a very valid and legitimate objective.

Maybe it does not deter the next person to commit an offence. Maybe it does not even deter this individual from reoffending, but with that mandatory minimum, for three years when they are doing time, they are not doing crime. We all benefit from that. That is three years they are not breaking into my car or house. I do not think that that is frivolous and we should ignore it.

Senator Runciman: With respect to what Senator Cowan was alleging, to my knowledge the only other criminologist who appeared before us was Darryl Plecas from British Columbia. He shared Professor Martin's perspective.

The Chair: Senator Cowan, lawyers tend to have different opinions. We are accustomed to hearing different opinions. For this committee, our role is to bring all the opinions to the table and we will weigh the merits of all of them.

Senator Cowan: It is important to hear from Professor Martin.

The Chair: Exactly. I know you agree with that.

Senator Cowan: I do.

Senator Angus: Ms. Big Canoe, and I believe my friend and colleague Senator Runciman would agree, I do not find your testimony to be toxic or false, but on the contrary, an articulate and well-reasoned argument on behalf of the people you represent.

I would like to ask you about the safety valve issue, which interests me greatly.

In your brief, abridged as you presented it orally, you talked about the two kinds. You referred to one as a judicial safety valve and the other as a prosecutorial.

Can you explain the difference to me and tell me which one you favour and then, so I can get it all out here before I lose the opportunity, after you have explained the two, would it be fair to other people in the system if the government or if Parliament decided to amend this bill to insert "for Aboriginal folks only, " a measure that would basically provide for those people a safety valve?

Ms. Big Canoe: Thank you for your questions. I will answer the first one.

The reference to the prosecutorial valve is one that comes from the case recently decided in Ontario. It is not a unique concept to that case, but it is discussed very well in that case. Essentially, the prosecutorial valve or safety valve is that when discretion is left to the prosecutor, they can choose to elect by summary or indictment. They do so with knowledge of the facts.

The issue that arises in *Smickle* is that the Crown, with all the facts before them, in good faith, decides to go by indictment. Essentially, the court is left in this particular circumstance — and it is a mandatory minimum and a gun offence — with three years, but the facts do not marry. The person has still committed the offence. It is not his gun, the facts do not marry, and there is really no escape.

Interestingly, one thing that American federal jurisdiction has is an escape clause. The CBA in its submissions to the committee back in October 2011 included good detailed information. In *Smickle*, Justice Molloy goes through the safety valves used in the U.K. and in South Africa, but the safety valve is determined by the judge's discretion in deciding the appropriate circumstances. Again, it is similar to our 718.2, particularly 718.2(*a*), which requires us to look at the offender, the offence and the circumstance. It does not just say we will only look at one of these things; we will only look at the offence and the offence itself and make a determination from there. It says we will look at the offender and the circumstances of the offender. That is very similar to what is occurring, except that in these other jurisdictions, the United States, the U.K. and South Africa, there is a specific provision — and I will use the example from the U.K. — that the court shall impose an appropriate custodial sentence or order for detention for a term of at least the required minimum term with or without fine unless the court is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify doing so.

In my brief, I also had made the suggestion that if you had a judge as part of a requirement, one of the safety valves, produce written reasons for the exceptions within the sentencing principles already in the Criminal Code in Canada, then that is a reviewable decision. When a prosecutor makes a decision, it does not have the same reviewability. In my opinion, it may result in the worst kind of plea bargaining, when an Aboriginal person who might be the first person to plead guilty, whether they have criminal culpability or not, will do so with the promise of only going by summary versus indictment. It puts the decision behind, into the back rooms where there is no judicial reviewability. When a judge makes a decision, it is reviewable at the next level of court.

You will see a whole new host of litigation around this.

Senator Angus: You prefer the judicial?

Ms. Big Canoe: Definitely.

Senator Angus: Would it be appropriate, in your opinion, and I realize who you represent and I think you have given good testimony about the reasons you think the way you do, to have this provision applicable only, as *Gladue*, in the case of Aboriginal folks only, as opposed to the whole population? Would it be okay?

Ms. Big Canoe: That is not an easy question because, although I do represent Aboriginal people, I would tell you that the current context of law applies to all offenders with particular attention so that the provisions are already in the Criminal Code. It would be about giving effect to the entirety of 718.2 and not just 718.2(*e*).

I do not think I could advocate that it would be great, but when you are talking about fundamental justice principles, the ones we have in place on the sentencing principles are already adequate, and if that concept of "with particular attention to the circumstances of an Aboriginal offender " are included in that but do not exclude others, you are relying on the judicial discretion. I would love to say "yes " to you, but I want to keep it in context of 718.2(*e*), which is for all offenders. The *Gladue* principles have already been well defined and are continuing to be defined by Canadian courts. Those should be considerations.

[*Translation*]

Senator Boisvenu: Thank you very much for your very informative testimony. My question is for Professor Martin. How long have you been teaching criminology?

[*English*]

Mr. Martin: I have been teaching for 25 years.

[*Translation*]

Senator Boisvenu: So you are very familiar with the subject. I have been defending the bill in Quebec for six months, and there are three arguments that often come up: first, we are going to be putting children in prison; second, we are building an American-style system; and third, rehabilitation will no longer be a priority in the Canadian prison system.

At one point, I had to attend a CBC broadcast where a team had been sent to Texas to compare the prisons with prisons in Canada. They said that Quebec was essentially comparable to Texas, or Canada.

Texas, with a population of 24 million people, has 150,000 people in prison. Canada, with a population of 34 million people, has about 40,000 people incarcerated in federal and provincial prisons. In Canada, one person out of 1,000 is incarcerated, while in Texas, it is one person out of 200. So that means that we are comparing apples and tomatoes, and that makes no sense.

Professor Martin, in terms of balance, how can we compare Canada, when it comes to rehabilitation and incarceration? Where does Canada stand when it is compared to the United States or some of the European countries?

Mr. Martin: The people who put the legislation together were not nearly as aggressive in defending it as the critics were in attacking it. Once that misinformation got out there, it became very difficult to stop ringing that bell.

For instance, I have looked at the legislation from beginning to end several times. There is nothing in there that takes away from rehabilitation. Nothing is being taken off the table that would have been described as a rehabilitative effort or initiative that is already out there. I spoke earlier about the mega-prison. That is already out there.

You can go down to Texas and find a couple of Texas legislators who say, "Don't do it; it's a bad idea. " You can go anywhere and find people like that. The detractors of the legislation were very aggressive, very organized and very proactive in trying to demonize it and they did so to a certain extent. They brought activists, academics and a lot of media on board. To defend the bill is a lot tougher now because that misinformation is out there. All I can suggest is speak loud and speak the facts. This is responsible, moderate legislation. There is absolutely nothing in this bill that is over the top or cause for alarmist reaction. That voice of moderation needs to be expressed in support of the bill.

Senator Chaput: As you know, we have heard from many witnesses for the past week, and many of them have found positive aspects in Bill C-10. They are waiting for it. They see it as another tool for the police, the victims, public safety, et cetera. Each factor also needs to be carefully weighed.

Ms. Big Canoe, we have also heard witnesses who have told us what you said today: Bill C-10 will have an adverse effect on Aboriginals.

My question is for Mr. Martin. Have you seen or would you agree that there is quite a bit of evidence, if not overwhelming evidence, that Bill C-10 will have a negative effect on Aboriginals?

Mr. Martin: There is no evidence about something that has not yet happened. We are speculating and some of that speculation is very well-informed.

I would remind members of the committee that criminal justice is a back end process. It is something that kicks in when pretty well everything else has failed, including the family, the school, the community, social services and family services. People come to the criminal justice system after a number of other institutions have not been able to deal with the problem. By the time something comes to criminal justice, you are often in an unenviable situation. You are dealing with a problem that is years or decades in the making. It is somewhat naive when the public and other commentators expect the criminal justice system to fix this problem that has been around, in some cases, for hundreds of years. It is not the fault of the criminal justice system that people with a lot of trauma, tragedy and tragic personal circumstances in their background get arrested.

Senator Chaput: Should that not be taken into consideration by the justice system?

Mr. Martin: It already is and it always has been. There is nothing in this legislation that will prohibit that from taking place.

Senator Lang: I would like to point out for the record and for Senator Cowan, the new member of Parliament for Yukon has an honours degree in criminology, was RCMP, was a superintendent in the local correctional institute and he voted for this legislation. There are some criminologists who support this legislation.

Senator Cowan: I did not say there were not. He did not give evidence. That is all I am saying.

Senator Lang: I will direct a question to Ms. Big Canoe.

I would like to have you tell us in more detail why you are opposed to the mandatory minimum sentences for those First Nation communities in rural Canada. For example, for sexual exploitation it is a year and it is for those individuals who have taken advantage of a situation, in most cases with a young girl, and obviously caused harm that is very difficult to remedy. It seems to me that if I was in one of those small communities, which I have been, and I had a sexual predator across the street who was going to be put on a conditional sentence in my community, I would be feeling very unsettled and victimized by the fact that there was no consequence to that action.

If you look at the mandatory minimum sentences for the number of offences, they are not that great compared to what is already in effect. There are already some 40 odd mandatory minimum sentences already in place.

Senator Angus: By the Liberal government.

Senator Lang: Right now what is happening, and we have heard evidence day after day, especially in the area of sexual offences, more and more individuals, those who would offend, are looking at conditional sentences and there is no mandatory minimum sentence they face.

Why would you oppose that when you know this individual is in that community and that young girl would feel threatened?

Ms. Big Canoe: I have also spent time in the Far North, in Inuvik, as a clerk in the court and in the court system there as an administrative justice of the peace, as well as being a First Nation individual my whole life. The presumption is that I would oppose every single mandatory minimum sentence or I would be the one supporting the sexual offender. That is not necessarily true. It is the sentencing principles that are important. When we are talking about the mandatory minimum or the conditional sentence, again, it is about leaving some judicial discretion so a judge can actually take the time.

Being from the Yukon, you would understand that judges who are aware of their local environments and the circumstances of the offenders in those environments are often in the best situation to be able to make determinations and use their discretion in crafting sentences.

Again, not every person should receive a conditional sentence. There are obvious cases where people will need to be incarcerated. However, the biggest concern is that when you impose a mandatory minimum and that is the follow-up and there is no conditional sentence, there are no other rehabilitative functions because 90 days to one year in custody will not bring any rehabilitation and it will not give accountability back to the community. It just means they will serve their time and they will come back probably an even better offender, who has not addressed their guilt, who has now been exposed to gangs, drugs and other issues while in custody. They will come back and potentially harm the community again. A conditional sentence is a more holistic approach.

The objection is not specifically to the mandatory minimums in relation to the sexual offences against children. As has been stated by a number of senators, and experts and me, Aboriginal people are also overrepresented as victims. Particularly in the mandatory minimums around drug issues and substance abuse and addiction, there is also a problem for many Aboriginal communities. There seems to be some that are not appropriate or fair in that context. That is why, if there is a safety valve, it would be left up to a judge in the appropriate circumstance to determine what is a fit and appropriate

sentence, taking into account that person's background, because that person may have been exposed to sexual assault and abuse for generations.

The Chair: Just to clarify, Ms. Big Canoe, you are suggesting we should consider an exception within Bill C-10 so that mandatory minimums would not automatically apply to Aboriginals. Are you suggesting that exception would relate only to Aboriginals and not to all Canadians? Am I correct that you want the 718.2 exemption to continue and not be subject to mandatory minimums?

Ms. Big Canoe: Yes.

The Chair: Are you suggesting that the safety valve of judicial discretion would apply to all Canadians or only to the Aboriginal community?

Ms. Big Canoe: It would apply to all Canadians, but with the same concept of what is in 718.2, which is particular circumstance to Aboriginal people.

Senator Frum: My question is a corollary to Senator Lang's with regard to mandatory minimum sentences for drug offences. His question contained the idea that, even in the context of *Gladue*, all of the new mandatory minimum sentences for sexual crimes against children are in respect of serious crimes. *Gladue* does not apply to serious or violent crimes. The sexual offences for which there are to be mandatory minimum sentences are serious crimes.

For drug offences to be subject to mandatory minimums, there must be a serious amount of drug trafficking and it must be connected to organized crime or use of a weapon. Again, these are not frivolous charges.

We heard from a police officer who said that six plants can produce three kilograms of marijuana, which is worth $25,000. These are serious offences. The mandatory minimum sentences that this bill introduces only apply to serious and/or violent crimes.

Ms. Big Canoe: I respectfully disagree that *Gladue* does not apply to serious offences. That would be in line with the Canadian court decisions. In fact, the *Gladue* principles only applies when there is a risk of incarceration, which immediately means it is a serious crime. The principles of *Gladue* are most important when talking about 718.2 and the need to limit incarceration only for the most serious offences. It is when you cannot find other alternatives.

I am not sure that I can answer your question better than that, but I thank you for it and I obviously have a different opinion on it.

The Chair: Thank you, Ms. Big Canoe and Professor Martin. This was an interesting discussion. You obviously understand that there are many different views on this subject, and that was certainly highlighted in the evidence you gave us today. It was very helpful and we appreciate it.

We are very pleased, for our sixth panel of the day, to have with us, from the Royal Ottawa Health Care Group, Dr. John Bradford, Professor of Psychiatry at the University of Ottawa; and by two separate video conference connections, we have with us Dr. Joël Watts, a psychiatrist from the Institut Philippe Pinel in Montreal; and from the Centre for Addiction and Mental Health, forensic psychiatrist Dr. Scott Woodside.

We have run over the time that we were to have begun this. We appreciate your patience and are anxious to hear from you. Dr. Bradford, we would be pleased to hear your opening statement.

Dr. John M. W. Bradford, Professor of Psychiatry, University of Ottawa, Royal Ottawa Health Care Group: Let me express my gratitude for the opportunity to come and address you. I am a professor in forensic psychiatry at the University of Ottawa in criminology. Mentally abnormal offenders and how they are treated within the correctional system is something that is very important to me and my colleagues. I have spent most of my career dealing with mentally abnormal offenders, and the criminalization of the mentally ill has reached epidemic proportions.

As we sit here, just a few kilometres away, at the Ottawa Carleton Detention Centre, there are many individuals with serious mental illness, many of whom would need to be in a hospital setting, most of whom have no chance of getting anywhere near a hospital setting, and this is an unfortunate product of where we are today. They have a serious mental illness, and it is a medical condition. If they had a cardiac condition or some other condition, then they probably would be removed to the Ottawa hospital where they would receive the appropriate treatment. That simply does not happen in the province of Ontario, at least, mostly because, at times past, there were beds in forensic psychiatry where this might happen. The forensic psychiatry system is under pressure. It has been increasing by probably about 10 to 15 or 20 per cent a year and simply cannot accommodate this. The problem is not a new problem. Criminalization is a worldwide problem. It was first described in 1939 by Penrose.

In the handouts I have given you, I have talked a bit about some of these issues. For example, 38 per cent of men assessed at a federal prison show symptoms of mental health problems, and 78 per cent of them in some studies show a severe dependence on alcohol. If you look at women and their difficulties in the correctional system, it is certainly a much more difficult reality. In the handout I gave you, which is this one here, if you look at the page that is part of a large report, I would refer you to table 46 at the bottom. This was done in 2004 and was the Canadian public health study on the health care needs of federal inmates in Canada. This is taken from the mental health section. If you cast your eyes down, you will see there are descriptions of substance abuse and various mental health difficulties. You will see it is broken down into males and females, minimum, medium and maximum. If you look at some of the percentages, for example, in maximum security for women, 78 per cent of them have drug problems and 70 per cent or close to it have problems that relate to alcohol. If you go down, the degree of mental disorder or previous suicide attempts is extremely high, at 41 per cent.

Part of the difficulty is what has happened with the criminalization of the mentally ill, which was first described in 1939 where Penrose described that if there were changes in the mental health system, this might have to do with lack of facilities or changes in legislation, then the population of the mentally ill would go up in the prisons. This has been shown over and over to be the case. If you look today at this phenomenon, which is a worldwide problem, there are mental disorders in higher rates in prisons compared to the general population, depending on what you look at, but overall the rates are higher.

Also of serious concern is that the suicide rate is much higher in prisons. The suicide rate of male prisoners when you compare it to the general population on an age basis, for example, is five times higher. When you look at women, it is probably 20 times higher. This should be no surprise necessarily. I think the problem has to do with prisons being developed as coercive environments for social control. They are not therapeutic environments. It is basic that if you have a serious mental illness and there is considerable stress put on you in your environment, you will likely get an exacerbation of that illness.

This graph shows the trend towards deinstitutionalization. What has happened essentially is that the general mental health system has failed in the deinstitutionalization where people have come out of facilities, gone into the general population and there has not been enough follow-up, and they become homeless, get involved in crime, and the next thing they end up in the correctional system.

What has happened — it is true in Ontario, Canada, the United Kingdom, Australia, wherever you look — is that the correctional system has become saddled with mental health problems that it was not designed to handle. This problem is not going away. In fact, the problem is increasing. If you cannot provide treatment for these individuals, we know that it incurs difficulties in correctional facility. It puts staff at risk and creates all kinds of difficulties for the persons incarcerated. Individuals with a serious mental disorder within a correctional system are targeted themselves. Again, that increases their stress.

Going from the general to the more specific, a number of years ago, in Brockville, Ontario, we had designed over a number of years a Secure Treatment Unit in partnership with the Ministry of Community Safety and Correctional Services where we could provide mental health services for persons serving a provincial sentence at the same level and standard of care that anyone else in the province of Ontario would get. One of the big advantages of this is that the treatment has been a great success in the sense that things like the recidivism rate has dropped substantially, by 40 per cent, and much of it has to do with the fact that people are getting medical and psychiatric treatment, sometimes for the first time, and substance abuse treatment or whatever treatment they do need. One of the problems in this whole equation is that the mental health needs of women in corrections are much higher than that of men.

In Ontario, there is no facility for women equivalent to the Secure Treatment Unit. Given the fact that women are more at risk and higher levels, this is really quite sad. The Royal Ottawa Health Care Group looked at an economic study. With partners in the community from eastern Ontario, we looked at some of the economic benefits if we developed a facility for women. If you follow these PowerPoint slides, you will see that what happens is that the economic benefits are substantial. For every dollar spent, for example, there are about $3 of benefits to the economy. It would generate savings to taxpayers totalling $297 million, or $12 million annually. If you take from what we already know from St. Laurence Valley, there would be a distinct reduction in recidivism of about 30 per cent for incidents involving reincarceration and 22 per cent for those involving recontacted recidivism.

This showed the intensive treatment of women is cost effective and contributes substantially to not only a betterment of their life but also to help the population generally.

The majority of the benefits is reduced prison and justice administration costs with about $520 million grossly undiscounted, and much of this is related to improved prison health and safety and reduced prison incidence in prison suicides which I have I already said occur at a high level. The presence of mentally ill persons in correctional facilities also causes a lot of stress for staff in corrections, and it causes their own stress, difficulties and burnout.

If you use this as an opportunity to get people into a situation where they are treated, a lot of their future health care needs are also dealt with. These are both physical and mental health needs, and with extensive discharge planning, the savings in cost to the future health care costs, generally speaking, would be about $119 million.

Many women have children and family responsibilities, and of course, if they are not well or if they are incarcerated or not properly rehabilitated, you then have the effects on the children and families. Things such as children going into care are also part of this whole equation. I do not think it is a secret that there is a high level of acuity of serious mental illness amongst women certainly in the federal correctional system and to a lesser extent but proportionately the same in the provincial system. I know on a single snapshot survey, for example, on any given day there were five women in serious difficulty similar to what unfortunately the presentation of Ashley Smith was a number of years ago.

A number of requests have come to us to try to help with women that are suffering from serious mental illness and to help set up a program for them. There is a model that I think can work. There is a model that I think is important to provide health care for women caught up in the correctional system. I think that there is a significant cost benefit to this, and I also, quite frankly, believe that if you are in a First World country like Canada and we have seriously mentally ill people in corrections, we should be able to provide them with the expected standard of care. Again, I go back to this analogy: if you had a person in a cardiac condition, they would get the appropriate medical care at the same standard as anyone around this table. It is unfortunate that the truth is that for people with a mental disorder it often does not happen. It is too easy to overlook, or something, where it is too much trouble to deal with.

It is important not to blame corrections necessarily for what has happened. I am not sure there is an easy solution to the general mental health system. That is a much more problematic issue.

The forensic psychiatric beds in Ontario are carefully monitored. We divert large numbers of people away from those beds, and the beds are well controlled and monitored. The problem is that the people we divert away are in theory going back into the general mental health system. That often does not happen. Many of them end up in detention centres across the province and I would argue across the country. If you look at the level of mental disorder in detention centres, this is probably higher than people serving a sentence.

In summary, we have a serious problem. I am concerned about it in general terms. I am certainly very concerned about women and what is happening to them in the correctional system both at a federal and provincial level.

I do not think there is an easy fix around the general mental health system. One difficulty that is a problem is the ownership of this problem is very difficult to pin down. For example, I think you have silos at a federal level and silos at a provincial level and no one takes the responsibility. For 10 years or so I have been lobbying and arguing about trying to improve the system, and it is always, "We will speak to our colleagues in the province, " and the colleagues say they will speak to their colleagues in Correctional Service of Canada or nationally, and I think the problem is nothing happens.

The problem is getting worse, and here we sit with a serious problem. This bill points out that there are special needs offenders. It includes women and people with mental health needs, so I hope we can pay attention to that. Thank you for listening.

The Chair: Thank you, Dr. Bradford. Those thoughts are very refreshing.

We will turn to a representative from the Institut Philippe Pinel of Montreal, psychiatrist Dr. Joël Watts. If you have an opening statement, Dr. Watts, we would like to hear it.

Dr. Joël Watts, Psychiatrist, Institut Philippe Pinel of Montreal: I would like to echo the comments of Dr. Bradford and thank the members of the Senate for inviting me to speak. I will speak on behalf of the Institut Philippe Pinel of Montréal. As some context, our institute is a maximum-security forensic hospital which services the entire province of Quebec. This is a forensic psychiatric population servicing a very large portion of the Canadian population.

I would like to direct my comments specifically regarding the impact that this proposed legislation may have on the mentally ill, and I think my comments will echo a lot what Dr. Bradford has had to say.

It would be important for the government and for the members considering this legislation to consider the impacts that changes in minimum mandatory sentences and reduction of access to non-custodial sentences will have on the populations of the mentally ill in our jails and prisons.

It is pretty obvious, given the media reports, that the goal is to try and protect the public from recidivists, but I think what has not been heard so far is the down-the-stream impacts this will have on very vulnerable peoples within the correctional system.

When I was looking at the proposed legislation, it seemed to me in some sense that from a mental health standpoint we are casting a large net, and much like dragnet fishing, we may be catching individuals we want to catch, but we will also catch some of the individuals that maybe we would perhaps not want to have clogging up our criminal justice system.

Dr. Bradford mentioned there is a very high proportion of mentally ill individuals already in our jails and prisons and that this has been a problem for decades. In addition to that, we know that the rate of co-morbidity of drug and alcohol problems amongst the mentally ill are extremely high; and in particular, they are high amongst individuals who are found in our correctional institutions, so it is not surprising that we have such an effect of dragging in individuals who have serious mental health problems if we increase mandatory minimums for offences relating to substances.

This issue particularly concerns I know many of my colleagues across the country. My two colleagues who are sitting here I am sure will echo this as well. I know that in the province of Quebec this is an issue amongst my colleagues who practice in the forensic psychiatry realm. This is particularly worrisome because those of us who do practice inside jails and prisons know that it is extremely difficult to provide adequate care and safe care, care for these individuals in jails and prisons. It is probably, as Dr. Bradford mentioned, worse so in detention centres or remand centres.

The effects of this have already been mentioned. There are serious safety issues in being able to provide adequate care due to the fact that jails and prisons are not set up to be psychiatric hospitals. Staff are not trained to deal with these individuals. We worry about the coercive nature of the setting, and therefore it is difficult to convince individuals who need medications to take them. There are not adequate environmental provisions to be able to see these people safely. The rate of suicide is extremely high, which means that it is extremely difficult for physicians practising in jails and prisons providing health care to do so in a way that is safe for them.

I think that if the government wants to consider increasing mandatory minimums for drug offences and reduce the access to non-custodial sentences, I would strongly encourage that there be mechanisms in place to monitor the impacts that this will have down the road, particularly on mentally ill populations in our jails and federal prisons. This would not only be to track the numbers, but to track the true recidivism rates that may actually occur because of the institution of these measures, not only amongst the non-mentally ill, but the mentally ill.

I will leave my comments there.

The Chair: Thank you, Dr. Watts. For our final opening statement we will turn to Dr. Woodside.

Dr. Scott Woodside, Forensic Psychiatrist, Centre for Addiction and Mental Health: Thank you to the committee for agreeing to have me testify this afternoon and provide information to you regarding the proposed changes to the legislation.

I join my colleagues in their comments. There is nothing that they have said that I disagree with, so I can keep my comments mercifully brief for the committee.

There are four points I wish to make, and will stop after those.

The first is how much retribution society wishes to mete out is really a question for the citizens. This a moral question for our citizens and our elected representatives. I do not think mental health experts have anything to contribute to that. We can contribute, in terms of understanding the impact of retribution or of increasing sentencing on those with serious mental illnesses.

One of the first things we know is that for low level or less serious offending, mandatory minimums and harsher sentencing actually increases overall rates of recidivism. If the intent is to reduce recidivism rates, we will go a little in the opposite direction that we intend.

We also know from many studies that once you increase the number of individuals detained above a level of 320 to 450 per 100,000, recidivism rates also increase. By incarcerating more people you end up increasing the rates of recidivism overall.

While Canada's overall rate of incarceration is only around 116 to 117 per 100,000, we exceed that rate of 320 to 450 per 100,000 if you consider indigenous communities. We are already at a level in some communities, our Aboriginal communities for instance, where we are expecting that we will increase recidivism when we increase length of sentence for those individuals.

For individuals with serious mental illnesses and ongoing disability, we know the effects of incarceration are disproportionately large for them. These are individuals who already have limited or tenuous social supports available to them, they have great trouble rebuilding those networks after they have undergone a period of incarceration.

In my view, and I speak for CAMH in this regard, sentencing should be informed by the needs of the individual, especially those with major mental illnesses. Imposing mandatory minimum sentences will reduce the discretion to take into account the very things that will improve outcome and reduce recidivism in the long term.

Should the legislation pass, I think you can anticipate that we will increase the numbers of individuals with serious mental illnesses in prison, and they will require expensive and extensive treatment, both while they are in prison and upon release. That will increase the already high cost associated with incarceration generally. Those individuals can be treated more effectively and at lower cost in the community.

I will add that both my colleagues have focused a little bit more on drug-related offences and mandatory minimums associated with them. I would note that the increased mandatory minimum sentences for sex offending also do affect at least a small portion of individuals with serious mental illnesses where the behaviour that they have been involved in is actually a function of their mental illness rather than reflecting some deviant sexual preference. In those cases, treating the underlying psychotic illness will be more effective in reducing recidivism. If we have a mandatory minimum sentence, again we do not have the ability to take that into account as well, or to treat that individual as effectively as we can in the community.

I will stop there so there is lots of time for questions.

The Chair: Thank you very much. All the comments were extremely helpful.

Senator Fraser: Thank you all very much indeed. This is very important testimony about a problem that, as you have all made plain, has been growing and will go on growing. We are very grateful to you.

Dr. Bradford, let me be crassly commercial or something here. You gave some interesting estimates about costs and cost savings.

Were the numbers that you gave here just for Ontario or were they for the federal system when you talked about total savings to taxpayers?

Dr. Bradford: We got a consulting company that does economic consulting and we got them to look at an equivalent unit for women as a model compared to the secured treatment unit for men. The numbers were different. I think it would be a 40-bed unit as opposed to 100.

We went beyond that because the question had always come up, when we talked about this, it seems as though it is expensive and taxpayers do not have money. It seemed to be important to look at a bigger economic impact. This was what the study was done on.

Senator Fraser: For Ontario or the whole country?

Dr. Bradford: It would be for Ontario, and would be limited to the similar model we have for men.

Senator Fraser: Those are impressive numbers. I know Ontario is the centre of the universe and the largest province, but they are still impressive numbers.

Which costs more, to keep somebody in a maximum security prison or in a maximum security psychiatric institution?

Dr. Bradford: It depends; you have to be careful. Part of what that economic statement looks at is not only the per diem cost, which is the cost of somebody being in a facility and whatever the numbers are per diem. If you look at per diem costs in a maximum security and compared them to a maximum security psychiatric hospital, the hospital would probably be more expensive but it would be easier to measure the costs because they are more controlled.

When you move into the economics of maximum security prisons it is the per diem costs that are looked but not some of the spinoff costs. Part of that study was looking at all of those things. That is why economic projections are a better way of looking at it.

Senator Runciman: I want to touch on the concerns about the mandatory minimums, because I do find them somewhat curious. We are talking about protecting children and youth from sexual predators. You indicated that one of the witnesses suggested even there mandatory minimums are not appropriate. I would personally prefer to see effective treatment available in the prison system rather than putting an individual out into the community again, perhaps in the face of the victim or victims. I think that is personally a perspective I would like to see.

When you talk about drug offences, again this bill focuses on serious drug offences. I am not sure how many individuals suffering from mental illness are involved in drug trafficking. Perhaps you could respond to both those issues, the two gentlemen who expressed concern about mandatory minimums. I would like to have an opportunity to hear from Dr. Bradford as well.

The Chair: Do you care to respond, Dr. Woodside or Dr. Watts?

Dr. Woodside: I am happy to start. There is an extraordinarily high co-morbidity among individuals with serious major mental illness and substance abuse. Many of those individuals go on to become involved in trafficking or engaging in property offences to support their drug habits. There is a clear connection between those two, and I would expect that a substantial portion of patients with serious mental illnesses would be affected by mandatory minimums relating to drug-related offences.

Senator Runciman: — treatment while they are off the streets and not endangering the communities to additional cost and the victims incurring the results of those activities.

Dr. Bradford, we had a witness here earlier, Mr. Head, from the Correctional Service of Canada. I raised an issue with respect to women, which you have talked about here, and the most serious problems they have to deal with. They are not permitted to enter prison psychiatric units in some instances because they are considered dangerous, and they are held in isolation or subdued by restraints. You referenced Ashley Smith. That is a situation where she was transferred 17 times during the last year of her life and held in isolation much of that time.

Could you talk a bit about the impact on women when they are treated like that?

Dr. Bradford: One of the problems may be obvious, but I will spell it out anyway. A correctional facility is mostly geared to controlling behaviour, so that if the person is breaking the rules, they would be punished, and punishment is often isolation. Isolation, for a person who has a serious mental illness, usually makes things worse; it increases the stress and difficulties.

There is a dramatic contrast — and it does not matter whether it is men or women — between how someone who is suicidal, say, in a forensic psychiatric hospital, such as my colleagues have, and they could be in a maximum setting, how they would be dealt with as opposed to in a correctional setting. In a maximum-security psychiatric hospital, the push would be to have someone close to them, to talk to them, and their environment would be caring, as opposed to in a correctional facility, where they may be in a room with a light on all night, and isolated. One is directed towards behaviour; one is a more a therapeutic environment. There really is a stark contrast.

For example, in St. Lawrence Valley, when we work closely with our colleagues in corrections to set up a system where we would look at behaviour as to whether it was driven by mental illness or whether it was something that was breaching the correctional rules of the institution, we were able to very easily come across a compromise that allowed us to punish, if you like, the individuals who were breaking the rules; but the ones whose behaviour is related to mental illness, we could deal with them in a mental illness capacity.

Women, I think, are much more vulnerable than men to the problems of isolation and putting them in a cell on their own with a light on. Unfortunately, what happens is they wear special clothes that they cannot use to hang themselves. If you see it, it is actually quite degrading, to be honest. A person who is depressed, despondent, suicidal and has no self-esteem, you can imagine, if you were in that situation, what it would be like. This controls behaviour; this is therapeutic and sympathetic; and there is a big gap between those two extremes.

Senator Runciman: I do not know if you can speak to this. I am somewhat familiar, but not completely familiar, with an example of a female inmate in the federal system costing the system hundreds of thousands of dollars on an annual basis that could not be appropriately dealt with. I believe St. Lawrence Valley took that one on, if you will. Am I right on this? It is some time ago that I heard about this. Could you perhaps relay, without getting into specifics, what the results were?

Dr. Bradford: There are some privacy and confidentiality issues, so I will keep it at a certain level. Yes, you are right. It was not in St. Lawrence Valley particularly but in the forensic treatment unit, so into a forensic bed. One of the things that had happened previously was that both men and women, who were both in a provincial and federal system out of control from a serious mental illness, they were transferred at times in the past to forensic beds. There are a lot of things that are in common, and we were able to manage people from all kinds of correctional systems. We do not have the beds, and the forensic system is under pressure.

In this particular case, we took a young woman who essentially had some very serious difficulties in terms of suicidal behaviour. I do not know the exact numbers in the federal system, but certainly this was very expensive in terms of managing in the federal system. Quite honestly, in our environment,

although there have been some management difficulties, it has not been anything extraordinary compared to what we are usually dealing with. On occasions there may be one-to-one nursing. In the community, we have been getting into a group home and working quite well. Of course, the other advantage is that it is a hospital setting, so we have whatever medications or anything else at our disposal, whereas in a correctional setting you are very limited in terms of what you can do.

Senator Jaffer: Dr. Bradford, Senator Runciman spoke about having the person out of the community and not in front of the victim if they are in the prison. When they are in your facilities, they are not in the community either, right; they would be in your facility?

Dr. Bradford: It depends. The difference between the forensic system — and all of us are caught up in that system — is that we take people who were found not criminally responsible, which of course is a legal filter — many of them have committed homicide and serious acts of violence — and we then treat them and rehabilitate them with a view to putting them back in the community. Actually, if you look at the recidivism rate in this group, it is extremely low, very structured and very treatment and rehabilitation oriented. There is no magic.

Senator Jaffer: While you are treating them, they are in a facility, right?

Dr. Bradford: Yes, they are in a facility, with a view to moving from high levels of security to lower.

Senator Baker: Let me continue along that line. I would first like to thank the three doctors for appearing before the committee and providing some very valuable evidence to us.

It was not long ago that we thought we had solved this problem as a Parliament. I think it was in mid-2005 when we brought in the mental disorder provisions of the Criminal Code. It is not long ago, Senator Angus; you remember quite well.

Under those provisions, I thought — and everyone else thought, I think, who passed those provisions — that upon someone being charged, if the judge has a reasonable belief that the person has a mental disorder that would affect his standing at trial, or if he had perhaps a disorder when he or she committed the offence, or the prosecutor can bring forward an application, or the defence can bring forward an application for an assessment. The assessment would be done on the basis of section 16(1) of the Criminal Code — do you remember that, Senator Angus? — the *mens rea* section. Then, at that point, that person is in a mental institution, basically, being assessed. Then there is an NCR board set up. There is usually a chief judge on the board and people from the community.

This entire process was established in law. A stay of proceedings on that offence is possible if a conclusion is made by the board, when the person is under psychiatric assistance, that a stay should be necessary in that the person is not fit to stand trial or the person did not have the *mens rea* to commit the offence at the time. On a balance of probabilities, that assessment is done. It is not the criminal standard; that is the civil standard.

What I am wondering is, logically, what has happened along the way? We thought this would solve the problem. What happened?

Dr. Bradford: I think my colleagues may have some comments. You are absolutely right. I agree with everything you have said. The one area that I think makes a difference is that it is a legal filter. It is not a person who has a serious chronic mental illness, schizophrenia at a severe level; it is whether they fit the legal test to move through it.

In Ontario, as I said earlier in my comments, the system is very well regulated. It is a central program that reports directly to the Minister of Health. At 10 o'clock every day we know who is in every bed. There is lots of cooperation between Toronto and Ottawa, and on and on. That is only part of the problem. It is the people who do not fit that filter that go to the detention centre. They are probably just as ill as these people that have gone through the filter, but they then sit in the detention centre where, in some of them, there is not even 24-hour nursing coverage. It is hard to treat them. There is no chance of getting into a hospital, at least in Ontario. It goes on and on.

It is an imperfect filter. We are doing okay on this one; we are also diverting people away. That system in Ontario is growing in terms of absolute beds and needs of 35 per year. That is how it is going up, but it is a small part of the problem. There is a large part of the problem over here. Maybe my colleagues have comments.

Dr. Woodside: I would chime in with Dr. Bradford. The changes that were made have worked reasonably well, perhaps too well. We have year over year increases of about 10 per cent in bed usage for forensic beds at the Centre for Addiction and Mental Health. We have seen explosive growth and use of the very portions of the Criminal Code you are discussing in terms of individuals being found unfit to stand trial or not criminally responsible. I think we do a good job managing those individuals and helping to return them to the community in a safe manner because safety of the public is a key portion of what determines someone's access to the community or whether they remain under the purview of the Ontario Review Board.

As Dr. Bradford mentioned, it is only a small part of the problem. There are many individuals continuing to be incarcerated and criminalized as part of their mental illness. Between 1999 and 2008, there was about a 35 per cent increase in the number of individuals with serious major mental illnesses incarcerated. We are growing in both areas. We are seeing increasing use of legal measures, both as part of the Ontario Review Board and through use of incarceration to deal with serious mental illness. That is, in part, of course, a failure of resources and a failure for the general psychiatric system in terms of dealing with these individuals effectively and getting them the treatment that they need.

The Chair: Dr. Watts, do you wish to respond?

Dr. Watts: Yes. Again, I will keep it brief because I agree with both Dr. Bradford and Dr. Woodside.

Just to clarify, as Dr. Bradford mentioned, only individuals who fulfill the legal criteria for section 16 or for being considered unfit to stand trial are going to be those who will benefit from the forensic psychiatric system and the review boards that are then set up. There are individuals who will not meet those criteria but still have serious mental health issues who will then end up in our jails and prisons.

Although there have been some good changes made, we will still be left with this problem because, as was mentioned by my colleagues, there is an ever-increasing demand because we do not have resources elsewhere. By instituting these kinds of changes in the Criminal Code, we will be scooping up these mentally ill people and possibly plunking more of them into our jails and prisons. I think that is what we need to consider.

[*Translation*]

Senator Boisvenu: This subject is fascinating and the stakes are enormous for our society, both in Quebec and in Canada, for the years to come. This subject has interested me for seven years. The association I am president of has provided support for a lot of families who have had a member murdered. In Quebec, since 2001, there have been nearly 100 intra-family murders, largely committed by people whose behaviour was defective.

There are indicators that tell us the situation is more terrible than we think. From 1992 to 2012, the number of people found to be not criminally responsible because of their mental status has risen sixty-fold in Canada. From the 20 cases we had in 1992, the number rose this year to a projected 1,200 cases. According to Montreal police, two out of three people who are apprehended have behavioural problems, intellectual deficiencies or mental health problems.

Dr. Bradford, this descending curve that we see here for the United States indicates that deinstitutionalization and reinstitutionalization, of people who were in hospitals, is proportional or inversely proportional to the rising curve in the prisons. If we drew the same curve for Canada, would we have the same situation?

[*English*]

Dr. Bradford: Absolutely. In fact, the trend is worldwide. If you look at Australia, the United States, Sweden or anywhere else, it is all the same. The solutions or potential solutions are kind of different. I worked as a consultant for the Government of Holland. They had interesting institutions where they would have the seriously mentally ill serving a federal sentence in a maximum security facility with people found not criminally responsible, the common measure being that they have a serious mental illness in need of a certain standard of treatment. We do not have anything like that, but the trend is clear. It has been all over the world.

In fact, one of the interesting things for me was an Australian who was here. He was a community psychiatrist, not a forensic psychiatrist like myself and my colleagues. He was going around giving talks in Canada and saying that he believed in about 10 years there would be no psychiatric beds in Australia. I just about fell off my chair. I asked him, "Do you realize what the criminalization rate of the mentally ill is in Australia? " He did not know what I was talking about. That is the difficulty. There are people in general psychiatry not understanding the graph of what I just showed you and going around making statements like this, and then me and my colleagues, and people in correctional psychiatry, are faced with a serious difficulty on a day-to-day basis as our numbers increase.

[*Translation*]

Senator Boisvenu: I will put my final question to the three witnesses. We see that this curve is related to deinstitutionalization, and it was fair to say that we had to give institutionalized individuals a degree of autonomy. The safeguards we should have had at the time, to deinstitutionalize those individuals, were not all in place. There should be some thought put into this, how to treat individuals who have serious mental problems whom we would like to give a degree of autonomy. How should they be supported? How should the families be supported? Because that responsibility is often handed back to the families.

[*English*]

Dr. Bradford: I agree with you. One of the problems with deinstitutionalization started with the introduction of successful treatment for psychosis, schizophrenia. People moved out of hospitals, which was great, and into the community.

Where it started to get into difficulty was that the supervision in the community was not there; the structure to supervise people was not there. They could refuse their medication. If you look at the studies, about 90 per cent of people with illnesses such as schizophrenia relapse within a two-year period, if the diagnosis is correct to begin with. Once that happens, they drift away from families, they become homeless, they commit crimes and they are in the correctional system.

There have been attempts to rectify it. In Ontario we have community treatment orders, which provide a structure. It is like outpatient certification. Most of these things do not have the teeth to provide the structure that even probation or the condition of treatment does or the not criminally responsible system.

Going back to Penrose, if you look at the civil mental health system, as it runs into difficulties, resources or legislative problems, you get a shift to the correctional criminal justice side, and that is exactly what has happened.

One of the jokes that goes on when I talk about forensic psychiatry, for example, to the Schizophrenia Society of Canada, they talk about it as a platinum health care for people with a serious illness. In many ways it is, because we take responsibility. We have the structure to make sure people get treated. We help the families to deal with the serious problems. Remember, most of the violence of the mentally ill is directed to family members.

There is a serious problem, which is legislative and a whole lot of other things. I am simplifying it, which I apologize, but I think you hit the nail on the head by bringing it up.

Senator Cowan: I had two questions, one of which was largely covered by Senator Boisvenu. As someone heavily involved in mental health planning in Nova Scotia in the 1970s and 1980s, when I see that graph it strikes home. We thought we were doing the right thing in closing psychiatric institutions, and there was community. Certainly, from my own lay experience, I would tend to think that what you say is correct, that for some types of persons within those institutions there were and are community services, but for many others there are not. I think that is a major issue, which is probably outside of Bill C-10, but is something that clearly needs to be addressed.

I was looking at the presentations. In yours, Dr. Bradford, you said 38 per cent of men were assessed as having mental health issues and 31 per cent of women. Those are roughly equivalent. Looking at the other document, which is entitled "A health care needs assessment of federal inmates in Canada, " and table 46, to which you referred, I may be misinterpreting it, there is a much higher percentage of women. Am I reading that correctly? If so, is there an explanation that would be helpful to us as to why there would be more women who would have psychiatric needs or be assessed with psychiatric problems on intake than men?

Dr. Bradford: You got the numbers right, and I will give the explanation behind them.

What you are looking at in terms of this graph and that graphic is at intake, and it is intake of men and women. Then it looks at them when they were obviously in minimum, medium and maximum. It speaks for itself. Women had the highest mental disorder, highest suicide risk, whatever.

The problem with any of these studies is when and how they are done. If you look at the rate of schizophrenia in correctional facilities in Sweden and compared them with the U.K., the United States and Canada, the rates would be much higher than the general population, three, four or five times. It depends. We know it is higher. It is how the numbers are counted.

Some of the numbers here, in the power point slides, are taken from surveys, for example, that CSC have done of their population across the board. This was taken from a study also done by CSC but through public health. It depends on how the numbers are.

The trend, however, if you look at a worldwide trend, is that incarcerated women have higher rates of mental disorder, much higher risk of suicide, 20 times

the equivalent age-related population in the general population, and on and on. There is a problem, and it is much worse for women.

Senator Angus: You have all expressed that there is an issue, obviously a big issue that our society has with putting people who have a mental illness in jail. That is a general problem we have been discussing here now for the last half an hour.

In terms of Bill C-10, I think what you are saying is that it is not creating a new problem; to the extent it will result in more mentally ill people being put in jail, it will aggravate the problem. Is that fair?

Dr. Bradford: I personally think it is fair and I think my colleagues brought that up specifically. I think that is one issue.

The other issue is that as the numbers increase, you are right, the net will go out. There is another problem as I see it, and this is just my opinion, that if you are putting your resources into serious problems and you are spreading your resources out where there are some minor problems, I do not think you do a good job anywhere. That is my worry.

Bill C-10's perspective, as I see it, as I understood, the sensitivity in Bill C-10 specifically talks about women and mental health needs as special needs populations. I may have the wording wrong, but when I read it, it is wording to that effect. My concern is if Bill C-10 will do that, it is time to highlight these difficulties, which I think we are trying to do with you. I do not know how much wiggle room there is in the bill but, at the very least, you need to be aware of it. I think the MPs need to be aware of it. Like it or not, it is a serious problem. There are people suffering on a day-to-day basis.

Senator Angus: Do Dr. Watts or Dr. Woodside want to comment? Have we got it correct so far?

Dr. Watts: I agree with Dr. Bradford. Again, I think the public needs to be informed about what the consequences of this really and truly will be. I would encourage that at least measures be put in place to monitor what the impacts of this will be. The decision, as Dr. Woodside said, is rightly up to lawmakers and is not up to psychiatrists to moralize about what is appropriate in terms of minimum sentences or not. From our standpoint, it is important you understand that if you do this, you need to know what the consequences could be and steps should be put in place to monitor it so decisions can be made down the road about whether or not you went in the right direction or the wrong direction and what the consequences are.

Senator Angus: Dr. Watts, you have described the Pinel Institute as a maximum security custodial psychiatric institute, correct?

Dr. Watts: That is right.

Senator Angus: If a judge in Montreal convicts a person who is clearly mentally ill, do you have individuals serving their sentences at Pinel Institute?

Dr. Watts: In general, people are not sent to Pinel Institute to serve their sentences. That being said, we have several programs at Pinel that are actually funded through the Correctional Service of Canada. One in particular is a unit I run for sex offenders, in fact, which is the only program in Canada for that. There is also a unit that treats women who have very difficult, impulsive and dangerous behaviours within the correctional system, and that is also the unique program in Canada for that. We do deal with individuals who are serving their sentences because they present serious mental problems, but we do not accept patients sent to us directly just to serve out their time.

Senator Angus: The Toronto one, Dr. Woodside, is the Centre for Addiction and Mental Health?

Dr. Woodside: Yes.

Senator Angus: The Honourable Michael Wilson has been involved in setting that up. Do you have some beds that are maximum security and are similar to what Dr. Watts has described at Pinel?

Dr. Woodside: No, we do not. The highest level of security we have is our forensic beds, which are for those who have been found unfit, not criminally responsible or what would be referred to as medium secure beds, or just secure beds now. We do not accept clients at our facility who have been sent from jail to serve part of their sentence or for a specialized program at this point in time.

Senator Angus: At the Royal Ottawa, what is the situation there along these lines? How many beds have you got?

Dr. Bradford: All together, if you count the Secure Treatment Unit, there are 204 beds at the Royal Ottawa Health Care Group.

The situation in Ontario is that you now have, as a security classification, secure beds, forensic beds and general forensic beds. However, the way the system works in terms of being a central program in the province, in fact the beds are not to be used for persons serving a sentence. It is not a case of whether we want to or not. Generally, we are not allowed to do it. The mandate is something different.

That did not used to be the case. As I mentioned, 15 years ago it might have been very different, but a lot of that has to do with resources.

I would like to make one comment. Senator Baker talked about the mental disorder section and he reminded me of something. I was on the committee that worked on that in 1986 and was eventually passed, in 1991, I believe. I do not know if you remember that when it was passed there was a hospital order section that allowed a judge, if the person did not fit the criteria for not criminally responsible, the judge could make a hospital order where a person could go into a hospital for up to six months to get the appropriate treatment and then continue with their sentence. That was thought out quite carefully. It was modelled on other places in Europe, the U.K. and elsewhere as part of the solution, at least at the front part of the sentence, to get people stabilized with a serious and acute mental disorder before they went on provincially or federally to serve their sentence.

I bring that up because, although it was part of the legislation, it was eventually dropped because the provinces were concerned about resources. It was a solution but it fell apart.

Senator Angus: Thank you. It is a big problem.

Senator Jaffer: This morning we had Mr. Howard Sapers from the Office of the Correctional Investigator and he said something that was profound. He said that prisons are not hospitals, but we put some offenders who are patients into prison. The things you have said have caused that thought to keep coming back to me.

He also said, and my colleagues will correct me if my recollection is wrong, but I understood him to say that if women suffer from mental issues or disorders they are sent to only one place in Canada, which is Churchill. I am not sure if I remember that correctly.

My bigger concern is the evidence you gave about intensive specialized assessment and treatment for mentally ill women. You focus on that, yet we are

failing. We are sending people in general, men and women, to jail when they really should be in other facilities.

At the moment, there is a tendency to say if you commit a crime you go to jail. From the figures you have provided, I believe society pays a bigger price later because sooner or later they have to come out and they have not been treated. I would like you to expand on the fact that people come out and are not treated.

Earlier on you spoke about in the whole scheme of things; the treatment may be expensive but they come out somewhat healed. When they come out of the jail system, they are not healed.

Dr. Bradford: Right. First, Mr. Sapers has it right. I will not go into the whole of CSC and resources, but the Churchill unit has a very few number of beds to deal with women with serious mental illness.

Senator Jaffer: Is it for all across Canada?

Dr. Bradford: Yes. I will leave it at that.

Mr. Sapers is right that we put patients into hospitals, and of course we know the consequences.

I have some indelible impressions. First, before we were able to get the Secure Treatment Unit going I had gone around to detention centres in the province just to try to get a handle on what was happening. Most of the time, when I went into seclusion in detention centres, they were mostly but not always filled with people with serious mental illnesses, shouting, screaming and untreated. In fact, it was something almost from another century or more ago. That is one issue.

The big difference is that if you have the right facility and the people are treated — and I use the forensic model — I think we do a good job. However, in the correctional model for that, where you treat them, you re-establish the links with their families, you have a significant discharge plan, we have been able to show you can reduce recidivism alone by about 40 per cent. The number varies between 40 per cent and 60 per cent, but it is more than that. It relieves suffering, I would argue it is a public safety issue and on and on and on. It is many things and, yes, we are failing.

Senator Jaffer: The other thing Mr. Sapers said was that in the profile of the person going to jail there are more visible minorities, more Aboriginal people, women in greater numbers and they are getting older, more addicted and more mentally disordered. I want to speak to you on the issue of women from visible minority groups. There are cultural issues and more challenges when they go to prison. Can you expand on that?

Dr. Bradford: I am not an expert on it. I just argue from the principles that the greatest need for care is in women. I would argue if it is women from visible minorities where there is risk of prejudice and other things, it would simply cause more stress, more difficulties, make their whole passage through the system worse. Any increased stress will exacerbate their serious mental illness and make it that much more difficult to manage. That is important.

One of the things that is happening with the aging population, certainly in correctional facilities, is you have an aging population as well. You have people who would be in seniors' residences or in long-term care facilities who are now in penitentiaries. That is creating a whole other problem that we have not even talked about.

Senator Jaffer: Would Dr. Woodside or Dr. Watts want to comment on anything I have asked?

Dr. Woodside: I would agree with Dr. Bradford. We know that Aboriginal populations, for instance, are grossly overrepresented in prison populations. That is even more so with women. Incarceration is a stressful experience at the best of times. That is not conducive to helping people with their mental illnesses. Medication can stabilize people to some extent, but it is establishing those other aspects of treatment such as linking back to the community and linking with long-term care plans for discharge that are crucial and often do not happen. In fact, people lose more touch with their families. They lose their role as provider for their families, a mother for their families, and that is hard to re- establish when that already may have been quite tenuous when they first went into jail. It will certainly not be any better when they get out.

Dr. Watts: I do not have much to add other than what my colleagues have already said. I agree with them wholeheartedly.

I was just thinking of a comment made earlier concerning the questions around the economics of all this. As psychiatrists, it is pretty obvious we will advocate for not focusing just on economics but on the rights of individuals to get the kind of care they need and in the most humane way possible. We need to consider those things.

Senator Jaffer: Is there ever a time to send a person who has a mental disorder to prison?

Dr. Bradford: That is a tough question. I will go back to what I said earlier. The decision to go to prison or into the not criminally responsible is a legal filter. If I wanted to do it, I would say people diagnosed with schizophrenia with a certain score of psychopathology, but our society does not work that way. It all has to do with *mens rea* and such things. We talk about it as a common client that goes down different pathways depending on the legal filter.

Dr. Woodside: Regardless of whether someone ends up in prison, we have already all said they need to receive treatment. We have to be providing adequate treatment for those individuals and that simply is not happening at present.

Dr. Watts: I would agree with that and, again, reiterate that obviously forensic psychiatrists are not the ones who should be telling you what legal filters should or should not be in place. I can agree with my other colleagues that these individuals need to get adequate care, regardless of where they are.

[*Translation*]

Senator Dagenais: Gentlemen, I found your testimony to be very commendable. My question is for Dr. Watts.

I am particularly troubled by the number of victims who are killed in circumstances involving people who have mental health problems, particularly in the last six months in Quebec.

I would like to set aside the possible increase in your clientele and in costs for a moment, and let us perhaps think a little more about the safety of Canadians, including for Quebecers, in terms of what has happened in Quebec recently.

You will agree that each offender's case is different, and you have to experiment a little, I imagine, before finding the appropriate treatment. As well, the treatment chosen is not permanent, either, and it will be understood that it takes adjustments in the treatment along the way.

That being said, can we agree that each time you allow someone with a mental defect to go back to live in society, you are still taking a risk, not to say that this is going to endanger the safety of the community? And I would like to hear what you have to say on that, Dr. Watts.

[*English*]

Dr. Watts: Thank you for your question. This is a very topical issue, particularly in the province of Quebec lately.

Before I answer the question directly, I think that we need to not get overwhelmed with what is happening day to day. The reality is that very serious violent crimes committed by the mentally ill are very rare. It is an unfortunate result of our 24-hour news cycle that these kinds of incidents tend to be front page and the topic of the day. I want to make it very clear that the risk of an extremely serious violent offence being committed by mentally ill people is quite low.

That being said, if I can reassure you, this an issue that particularly interests forensic psychiatry. Obviously, if these individuals go through the filter of the forensic psychiatric system our ability to appropriately evaluate and manage that risk is much higher. It is a little less so for individuals for whom these acts have not yet been committed. They are in the general system and, therefore, it is very difficult to predict that they will commit these kinds of acts.

Again, they are extremely rare. Unfortunately, the media seems to portray that they are a lot more frequent than they really are.

[*Translation*]

Senator Dagenais: The reality, from what I see, is that supervision of some people who are returned to society, from what you say, is impossible for you to do. You then perhaps rely on someone else who is going to do it in your place, but without having any assurance of that. There again, to use your language, that is nonetheless called consequences that may turn out badly. As far as these being rare cases, we are still talking about five murders in the space of six months. That is my last comment, Mr. Chair.

[*English*]

The Chair: I have listened to everything that you have said and what comes across loud and clear — and I doubt that any of us would disagree with it — is that those suffering from mental illness or having mental problems should have the opportunity to receive proper care. If there is a physical problem, the facility would provide care for them. It makes sense that if there are mental issues care should be provided, whether inside or outside of the institution. However, as you said, there are significant resource issues and that is a difficulty.

Bill C-10 does create new mandatory minimum sentences, and you have all voiced an opinion on how that might impact those who suffer some form of mental illness or have behavioural problems. It has been suggested by some that we should be considering an exemption from mandatory minimums if offenders suffer a mental illness, have a behavioural problem. That is a very significant consequence of determining that there is such a mental illness or behavioural problem.

As you pointed out, Dr. Bradford, the whole issue of whether one has the *mens rea* to commit the crime is dealt with and there is a well established test for the threshold to prove that. I am struggling with what agreement there is among experts as to what degree of mental illness or behavioural problem would have to be present in order for an offender to be exempted from a mandatory minimum. Would there ever be agreement on that? Could it ever be determined what degree of mental illness or behavioural problem would have to exist to entitle one to that type of exemption?

Dr. Bradford: First, there is a process of diversion, the concept being that people with a serious mental illness would be diverted away from the criminal justice system into the general mental health system. This occurs at different stages. There is pre-arrest diversion. If someone is screaming on the road and walking around naked, the police will take them to the local psychiatric emergency and will not charge them.

In mental health courts such as exist in Ottawa, Toronto, Montreal and elsewhere, although unfortunately not in all places, there is a process of evaluation and diversion. They work closely with the Canadian Mental Health Association and divert people with serious mental illness, mostly those who have committed non-violent crimes. Of course, drug courts are another option. There is a sometimes a potential rub between minimum sentences and that, but if there is discretion I do not have a problem with it.

I have been thinking about something that Senator Dagenais said. He is technically correct that when you look at major mental illness, schizophrenia and psychosis, there is an increased risk of violence, including homicide, but the risk is enhanced by substance use. If you are using illegal substances and trafficking, that is good, but for people with a serious mental illness, in the right structure, such as we have in the forensic system, we do urine drug screens and monitor them closely, and that, of course, reduces the risk of violence.

There are strategies that can work. Diversion is important. I am not sure whether it will run up against minimum sentences. Diversion is in place in most provinces and I think it is probably compatible.

The Chair: Thank you for that.

Dr. Woodside and Dr. Watts, I suspect that you probably want to comment as well, but we have to conclude with this panel now. I say that with regret because this has been extremely interesting. You can tell from the questions that we have asked how much interest there was.

Thank you very much.

Colleagues, as our seventh panel of the day considering this matter, we are pleased to have before us, to provide us their thoughts on these issues, from the Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc., Ms. Yvonne Harvey, Chair; and from the Association des familles des personnes assassinées ou disparues, Ms. Elizabeth Pousoulidis, President. As well, we have Dr. Isabelle Gaston appearing as an individual.

If we could have your opening statements, we will appreciate it.

Yvonne Harvey, Chair, Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc.: Good afternoon, Mr. Chair and honourable senators. Thank you for give me the opportunity to address your committee today.

I am Yvonne Harvey, the Chair and Co-founder of Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc., which is a national, charitable organization formed in 2009 to provide ongoing emotional support, assistance and education to survivors of homicide victims.

In 2007, my daughter Chrissy Nadine Predham was brutally murdered at the age of 28 in St. John's, Newfoundland. As a parent and a survivor of a homicide victim, I have learned, much to my chagrin, how widely Canada's laws need to be strengthened to protect its citizens and instill a renewed sense

of confidence in public safety. I speak to you on behalf of those victims who cannot and on behalf of the parents and the family survivors of those victims. I am here on their behalf today in support of Bill C-10.

Bill C-10 represents a significant shift in how Canada's criminal justice system will view crime in Canada in the future. It will be a progressive step forward to improving Canada's criminal justice and correctional systems. It is a reformist step in addressing the imbalance in a judicial system where the rights and treatment of criminals trump public safety in this country, a trend that has been growing steadily since 1971 when the then Solicitor General on penal reform, the Honourable Jean-Pierre Goyer made the following statement in the House of Commons:

> . . . we have decided from now on to stress the rehabilitation of individuals rather than protection of society.

This was a statement made in our Parliament favouring the rehabilitation and rights of offenders over victims of crime and public safety. Is the statement true? Is it accurate? Yes. Is it questionable? Yes. Is it unbelievable? Absolutely yes.

However, it is neither our belief nor our position to negate the importance of rehabilitation, but it is equally important to ensure that responsible consideration be part of drafting laws that impact the protection of society. Bill C- 10 is a responsible step forward raising the bar of accountability for those who choose to commit crimes.

Canadian citizens have a fundamental expectation and a fundamental entitlement to live in safe communities. This legislation is in line with what the majority of Canadians want. Canadians have given the government a mandate, and we look to our legislators to follow through and deliver those promises.

Opponents of Bill C-10 criticize it as a flawed piece of legislation that will be counterproductive to public safety and will be extremely costly to Canadians. It has been argued that punishment is not necessarily a deterrent to criminal behaviour. I would argue that while violent offenders are in prison serving their minimum sentences, they are not in our communities committing more crimes and creating more victims.

Clifford Olson was arrested 94 times before launching his murder spree. If the justice system had worked and he had not been released early, there would be 11 children alive today. Just this week I spoke with two mothers whose children were recently murdered. Both of those victims were murdered by young offenders who had a history of violence and who were out on early parole.

This new legislation will have a price tag but so does the cost of crime. The cost of crime not only consists of taxpayers' dollars but the loss of human life. That is immeasurable. Loss of family, immeasurable; loss of law and order, immeasurable; loss of faith in the criminal justice system and in our governments to protect society is immeasurable. We all want safe streets and communities in which to raise our families, and the benefits of that are immeasurable.

For every crime there is an offender and for every offender there is a victim, and in the case of a murdered victim, there are multiple surviving victims. In my opinion, historically, we as victims of crime have been nothing more than collateral damage as perceived by the Canadian criminal justice system and corrections system. Bill C-10 is a step forward in shifting that trend to one that is more balanced and inclusive.

Honourable senators, thank you for your time.

Elizabeth Pousoulidis, President, Association des familles des personnes assassinées ou disparues: Thank you very much for inviting us here today. I am the president of AFPAD which is the association of families of people assassinated and criminally disappeared. I represent a little over 500 members who have suffered the tragic loss of their children, their loved ones, their brothers or sisters and/or criminal disappearances.

This is the third time we have testified for Bill C-10 and we strongly support Bill C-10. We also would like to take the opportunity to thank the government for honouring their promises to us, the people, the Canadians who live in this country, to make our lives, our streets and our communities safer.

Why do we support Bill C-10 and how do I and the association think that Bill C-10 will make us safer, will help us live healthier lives on our streets and communities? I will give some concrete examples and some of the bills we support. I would like to touch on the whole parole sharing of information law that will be amended. I will give you the example of Mr. Charlish, and I will read you the statement of his parole board before he was released free as a bird into the community. It is in French because I did not want to translate it. I will read it as is on the report.

[*Translation*]

> The board remains convinced that if Charlish is released, he will commit an offence causing death or serious injury to another person.

[*English*]

He was released after that report came from his psychiatrist that we as taxpayers pay for. He is lucky enough to have them. We released him into the community. He was released with conditions, I will grant you that. I believe for six months he is not supposed to leave the house, et cetera.

I ask: What have we done for the victim, his victim who is still alive? Just because someone is alive does not mean they are not victims. We should not wait until people die in order to consider them as victims. I asked what this woman and her family was offered by the government in comparison to what Charlish was offered by the government. I ask: Where is our responsibility as a country? When we get such a report, how can we let the criminal out knowing that he will commit another crime?

When it comes to paroles and appeals and sharing of information, I do strongly believe that victims are forgotten. You all understand that I do not think that anybody in here or anybody in the past or anyone who creates these laws intends to forget victims. I do not believe that. Our fight is to make sure people understand that there is another side to a crime, and it is the victim's side. That is why we speak up, no matter how hard it is for us.

When you are going for parole, for appeal, for anything that has to do with your case or your loved one's case, your loved one's trial, it does not finish when the person is murdered. It does not finish when there is a trial or when there is a sentence because we all know they all will go to appeal, and they do go to appeal. I grant you that we have had some improvements in that area and it is because victims have a louder voice, but we still have a lot of work to do.

I will also let you know that my brother's murderer went to appeal a year after he was sentenced as guilty, and a few months ago, which is five years later, I opened the newspaper and found out from opening the newspaper, after seeing my little brother's face and his murderer's face, that the appeal was denied. Thankfully it was denied, but no one prepared the family. I also have a mother, and that is her son, and I am also the sister. No one prepared the family or gave any consideration to the victims, to the other side, though I later found out that the criminal's parents were at court. The criminal's brother was at court to support him, and I can picture the appeals court, which I have been in many times, and I can see the left hand filled in support and the right side empty like this child belonged to no one, like he had no one who was there for him.

We all must understand that a murdered person does not necessarily belong to the government only. A murdered person also has a family and people who loved him and people it has affected.

When it comes to youth crimes, I heard a lot of that. I think it is the hottest topic on Bill C-10, correct me if I am wrong, when it comes to youth sentences. I have heard a lot about it in the news, written in the newspaper. I do come from the province of Quebec, and I do believe we have a gross misrepresentation of Bill C-10 in the media in my province. I cannot speak of the other provinces, just what I read and hear.

I will give you another concrete case. The victim's name is Dany Ouellette, whose murderers were charged with first degree murder and were given an adult sentence. I do not remember anyone in Quebec, I am speaking about the citizens of Quebec, revolting against the sentence. This is a kid who had previous brushes with the law, went out of a club, went to his house, picked up a kitchen knife, got four of his friends and waited outside the club until his victim came out. People were holding him and he was stabbed numerous times.

I ask you all, is that a crime that should not be punished and the sentence should not be an adult one?

When talking about youth sentences, we are not speaking about petty theft or the kid smoking marijuana. We are not speaking about that in Bill C-10. We are speaking about major crimes with a great possibility of it being repeated, a repeat offender.

My little brother's murderer had a file in the justice system that was sealed because he was a youth at the time. It was the fifth time he was in court. I still have the compassion to think about his family that is now facing not just a difficult child but a murderer as a child. I think about his family and what they dealt with, because I had asked and I informed myself, and I know the parents did their best and pleaded with the judge, as every parent would do, to make sure he got out of the country to get away from the gangs and his friends. Unfortunately, the parents lost that fight and the child ended up a murderer.

I was shocked and rattled when I found out — because, of course, this was not told to us before but during court, this is when we find out most of the information — there are reasons for that, which I respect. I realized then and there that my brother's life could have been saved if this youth offender, the first time he was caught, or maybe the second, third or fourth time, he was not given sentences and he was out of jail in two to three weeks. The crimes were drug related, the crimes were gang related and possession of illegal arms. My brother's death could have been avoided.

I ask myself and everyone in this room, who is responsible? Who is responsible for my brother's death? Is it the person who killed him? Yes, but how could we have avoided it? With Bill C-10 we see that once a criminal is deemed high risk and is put in jail, he is not being put in jail to become a criminal, as I have heard. He is being put in jail because he already is a criminal. We have to make sure we say the right things.

I have heard jails being referred to as a "school of crime. " I have not gone to jail because I have not committed a crime. Maybe I have not been caught, you do not know that. However, if I go to jail, it is because I committed a crime. Jail will not make me become a criminal.

I strongly advise, when we victims speak — I saw this in the media again with Bill C-10 being heavily discussed in Quebec — we are being considered as having vengeance. We are being told that we have hate. We are being told, "I feel so bad for you guys, but let us put you aside. You victims cannot think clearly because you are victims. "

I want to remind people that we are victims; we cannot become victims. We are already there: anything that Bill C- 10 changes will not apply to us. Again, we already are victims.

Our goal at AFPAD is not to grow the association. I like when people ask how many members we have, and I tell them and they think it is such an increase. That is not our goal. When AFPAD grows, it means there are more crimes out there. Our goal is to take care of victims.

The other thing that is heavily weighing on victims' minds, Bill C-10 touches on it a little bit but I think it is only the first step. I ask publicly, and I am sure all this is written down, we come here today and all of you consider us as victims. All three ladies here are considered victims. Unfortunately, in the eyes of the law, legally, we are not victims. We are relatives. In French we call it *les proches de la victime*. We are not victims in the eyes of the law.

When I know a criminal goes to jail and as soon as he puts his foot in there, he is followed by a psychiatrist, he is being given a medical exam, he is being fed, everything is being taken care of, I am okay with that. We are okay with that. No problem. We do not want to take away criminals' rights. Again, I ask you to think of the victims.

The Chair: Ms. Pousoulidis, we have to allow time for questions, so if you could finish your comments.

Ms. Pousoulidis: Absolutely. Thank you for listening, because I could go on and on.

I ask what we are doing for the victims. I had a call a couple days ago from a young man who called me in a panic because he is a victim; his girlfriend was killed by her family. He has no help because he is not considered a victim. I was so worried about him because he never showed up. I called the police myself because I was worried he committed suicide. Where are we when it comes to the victims? Why do we not give them the same treatment as we give criminals?

It is very easy, as a victim, to take the bad way. You can turn to alcohol, drugs, commit suicide or give up on life. It is very easy. The ones who do not, good for them. It takes a lot.

In closing, I want you to know that we are here, we are alive, we do matter and we ask you all to please take care of us. We carry a life sentence on our backs, with no possibility of parole, without the privilege of judge or jury. Thank you for listening to us and for the invitation.

The Chair: Thank you, Ms. Pousoulidis.

Colleagues, I will turn to Dr. Gaston in one second. We are running over time considerably, and I see Ms. Pate is here as part of the next panel. This is scheduled to end, and will end, at quarter after six, the one hour we have allotted.

[*Translation*]

Dr. Isabelle Gaston, as an individual: Good afternoon, members of the committee, and thank you for inviting me. I am here to support the amendments proposed in Bill C-10 in relation to sex offences against children.

In my testimony, I will attempt to persuade you that these apparently punitive provisions may be the starting point for improving or preserving the health of

some members of our society.

First, the extent of sex offences against children and the consequences are matters deserving of attention. According to Statistics Canada, there were over 3,600 sex offences against children and 2,000 child pornography offences in 2010. Those figures, impressive as they are, represent only the tip of the iceberg. They do not represent the real extent of sexual assaults in Canada. According to victimization studies taken from the General Social Survey, more than 9 out of 10 assaults are never reported to police.

Even if it is true that, according to the same statistics, crime is declining overall in Canada, it saddens us to see that crimes against children are on the rise.

In 2010, there was a 5 per cent increase in sexual assaults and a 36 per cent increase in child pornography offences. Confirming that this type of crime is on the rise, the report by the Federal Ombudsman for Victims of Crime, Sue O'Sullivan, noted that there are 750,000 pedophiles on line every day, at all times, and that thousands of photographs and videos on the net encourage the sexual exploitation of children. Because children are the most vulnerable members of our society, we have to protect them. This means that our policies and our laws have to work to ensure the dignity, security and safety of all children.

The measures proposed in Bill C-10 will help to combat criminals who attack children. In addition to the new minimum sentences for existing offences, the extension of some mandatory minimum sentences for other types of offences and the creation of two new offences will enable the justice system to adjust to this new criminal trend, child pornography.

I am here today because, in addition to my need to support the cause of children, I am concerned about the health of people who are abused. In the course of my work as an emergency physician, I treat sexual assault victims. I see the devastating effects of this type of crime: depression, self-mutilation, post-traumatic stress, suicide, suicide attempts and substance abuse. It saddens me when I hear people criticize the potential costs of adopting these measures, because I know they are forgetting to account for the disastrous social consequences of sex crimes against children.

Often, and I have heard this often, people complain that adopting mandatory minimum sentences violates the legal principle that a penalty must be proportionate to the gravity of the offence and the degree of responsibility of the offender, subsection 718(1).

For a child, no penalty will be proportionate to their stolen childhood and the disregard for their health. The victim will not be entitled to a second chance. They will forever bear the marks of the immoral acts committed against them. Is justice not a societal moral principle based on recognition of and respect for each person's rights? Toughening sentences and requiring that they be served in their entirety prevents the acts from being trivialized and ultimately represents a form of social recognition of the serious consequences inflicted on victims.

I would like to quote this passage from the Supreme Court of Canada, Justice Lawton in *R. v. Sargeant* (1974):

> The objective of denunciation mandates that a sentence should communicate society's condemnation of that particular offender's conduct. . . . [A] sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values.

I firmly believe, based on my experience, that the amendments proposing mandatory minimum sentences will promote rehabilitation and the conduct of the judicial process for some victims. For many victims, knowing that there will be a minimum sentence might be sufficient to give them the strength to make a complaint and submit to the examinations so that the evidence that will be used to convict the attackers can be collected.

I stressed the word "submit " because it is really necessary to work with victims to understand that when someone has been violated and assaulted and has waited several hours to see the emergency physician, the only thing they want to do is curl up in a ball, but they have to submit to a gynaecological examination and have samples taken from every part of their body that we cannot name here. You really have to want your attacker to be convicted in order to submit to all of those things. Some people do it out of altruism, to make sure that another person does not find themselves in the same situation, but there is a purpose in agreeing again to submit to assaults in order to bring someone to trial.

Unfortunately, at this time, when victims realize that the attackers are being given trivial sentences, some of them lose hope in our justice system. As for many Canadians, widespread cynicism toward our legal institutions sets in. That is when victims drop their complaints. The social worker at our facility, which is a designated centre and so specializes in dealing with sexually abused victims, has confirmed this trend.

In fact, the rape kits, the kits that are used to take DNA samples, are more often destroyed than sent to the police, because the victims are discouraged. In the judicial system at present, victims need a huge dose of courage to carry the process through to the end. The long-term consequences of a too lenient sentence are very frustrating for the victim and add to their distress.

It could take me all night to explain the consequences after two or three or four or five years, or 20 years. I would not have enough time, but those consequences are real.

In closing, in order for society to be the real winner in the final analysis, I think we have to focus more on the victim rather than the attacker, because we are not counting the costs that are engendered 20 years later when we see the victims as a result of a suicide attempt. The sentence has to become the starting point for rehabilitation for both parties. Unfortunately, at this time, there is a real imbalance between criminal and victim. The victim needs to be protected, to be heard, to be believed. They need to have room made for them in our justice system. We have to stop creating a dichotomy between rehabilitating and punishing the criminal. I sincerely believe that the best solution will draw on both options for the answer. Thank you for hearing me, and I am available to answer your questions.

[*English*]

The Chair: Thank you very much for each of your statements.

Colleagues, we have half an hour for questions. We have a lengthy number who wish to ask questions. If you could keep that in mind with the length of your questions of privilege, and perhaps with the responses, so that as many as possible will have a chance to ask questions, beginning with the deputy chair, Senator Fraser.

Senator Fraser: Thank you all very much for being here. I will try to be brief.

Ladies, do not ever think anyone around this table forgets about victims or dismisses victims. You can just set that idea aside. There will be vigorous debates about how to help, but we do not forget.

Ms. Pousoulidis: Thank you for saying that.

[*Translation*]

Senator Fraser: Dr. Gaston, you are an emergency physician, you treat both victims of sexual abuse, mainly children, which must be appalling, and patients who have major psychiatric problems.

Dr. Gaston: Yes.

Senator Fraser: In the case of children, everyone agrees. There will never be enough help, and these are crimes that must really be eliminated, if we can ever do that.

For the abusers, do you think that what there is for treatment in our penitentiary system is effective?

Dr. Gaston: To answer your question, I would have to be familiar with what happens in the penitentiary system. At present, when you do research on the Internet, it is very difficult to find out, at least from my perspective; I may not have looked in the right place or asked the right people. So it is hard for me to answer your question because I am not familiar with the programs there are for the people who have committed the abuse.

Senator Fraser: It was worth a try. Thank you.

[*English*]

Senator Runciman: Thank you all for being here. If you are not officially considered victims, we certainly recognize you as victims of crime; there is no question about that.

I think all of you have suggested this. Bill C-10 is starting to bring some balance back into the justice system in Canada. It may not answer all the concerns, but it is a great step forward. Hearing from individuals like yourselves, I cannot tell you how important it is, for all of us and for people viewing these proceedings, to hear from people who have had to endure the costs that you and your families have endured.

I was struck by your description about a life sentence, Ms. Pousoulidis, with no parole and no judge or jury. That is a situation that has not received the recognition that it should have in the past. I thank all of you.

Another challenge for victims is being heard. There are not enough victims' services across this country; hopefully, that will continue to improve. You are here as an individual, doctor, but the other two are representing organizations. We know that many offender advocates are funded. Many of them are, for example, traditional churches. Some of them are taxpayer funded like, I would suggest, the CBC. You talked about "The School of Crime. " I saw that CBC show following along with their visit to Texas trying to suggest that this was an Americanization of the Canadian justice system. Those are real challenges that victims have to confront on a regular basis. Again, I commend you for that.

I know you endorsed the components in this legislation that improve the system, especially for victims. Looking down the road for the future, are there additional measures that you think the government should be considering in the months and years ahead?

Ms. Harvey: I will speak to that. One thing we are lacking in this country is the rehabilitation of victims. I hear about the words "offender " and "rehabilitation " all the time. Very seldom, if ever, do I hear the words "victim " and "rehabilitation " in the same sentence. I can assure you that victims of serious crime need to be rehabilitated. Victims' services will talk about some of the disparities in this country. There are a lot of disparities interprovincially because they are mandated and run by provincial legislation. In my case, for example, I had absolutely no services and no assistance in the homicide of my daughter because she died in one province and I lived in another, so I did not qualify in either province.

We need to have some type of program, some type of sustainable funding to take care of the needs, the psychological problems and the economic problems that follow in the aftermath of murder. When the trial is over, when the offender is punished and is imprisoned, that does not end for the victim. The victim, then, in many cases, only begins to come to terms with what happened. That is when they need help. There is no sustainable funding in this country to help victims or to help organizations such as ours. We get out and we fundraise, literally hand to hand, to get what is necessary to provide services to those victims.

Ms. Pousoulidis: If I could add something, it is still very concerning to me when there are criminals who get out. I am not saying that they should not get out; if they are well and they are not a risk, they should get out. However, the number one job of parents is to protect their children. I would appreciate, and I think all Canadians would, that if there is a criminal, a sexual predator living next door to me, I should be aware. It would then be my choice to move and protect my children. That choice is being taken away from us, namely, to protect our children for the rights of the criminal to have an easier integration into society, at the expense of our children.

Senator Jaffer: I also want to thank all three of you for being here. It takes a lot of courage. You are always heard in the Senate.

I have asked this question of a number of witnesses who have appeared in front of us. I believe a lot more needs to be done to empower and support victims. Having gone through your experiences, what one or two things could have been in place that would have helped you? I will start with you, Ms. Harvey.

Ms. Harvey: There are so many things that I do not really know where to begin. What could be done to empower me; to help me. I just touched off the disparities interprovincially between the various services that are available. I think that would have been helpful. I would have had some information, knowledge and direction as to what was to unfold. I knew absolutely nothing about the criminal justice system. I learned everything on the Internet. I did not have much interaction with the police, so to speak, because we were in a separate province.

We are still without a trial, and I really cannot make any sense as to why we are not at trial yet. However, I am gradually discovering that there has been a lot of misinformation given to me. I have never been informed and, as the mother of a murdered child, I think I have a fundamental right to know — certainly not at the expense of compromising an investigation, but I think there should be more of a relationship between the investigation, the Crown's office and the families.

I think victims such as us have value to add to the system. We are not terribly irrational all the time. We may be emotional, but a lot of us keep that private. I think we need to be included in this whole process.

Dr. Gaston: I will try to speak in English.

Senator Jaffer: That is not necessary.

[*Translation*]

Dr. Gaston: I would like to follow up on Ms. Harvey's comments. I have experienced a difficult situation. However, the prosecutors and police kept me informed at every step of the process. I sincerely believe that the reason I am sane, in spite of the verdict, is that I was prepared at every one of those steps and I was treated with respect. You know, sometimes prosecutors bargain. The Crown makes a proposal; the defence follows with a different one. Those negotiations go on without the knowledge of the main persons concerned. So we have to consider the victims.

On a continuum, I think I got a lot of information and a lot of support. I am always surprised to see that this is not always the case. In an ideal world, our interests are represented well. I do not always like to talk about my situation, but it is easier when it is to highlight the good points. Since I am not thought of as a victim, there are fewer voices for establishing what is said in court. I think that being personally represented by someone can be just as good in a trial.

[*English*]

Ms. Pousoulidis: If I think about after we became victims, I think the question is what we would mostly need.

[*Translation*]

Dr. Gaston: During the process, you mean?

Ms. Pousoulidis: Yes. During the process.

[*English*]

Is it during trial or just in general?

Senator Jaffer: In general.

Dr. Gaston: During the process; sorry.

[*Translation*]

I had not understood the question.

[*English*]

Ms. Pousoulidis: I remember the first time you get that phone call. You are sleeping. You get a phone call. You live in another city and you find out someone who was very healthy was murdered. There was no reason; it was not a car accident. There is nothing you can do about it. You live alone. I cannot stress this enough. This covers 80 per cent: support. Do not let people who are alone find out things like this. If you are not a victim, you will not understand. Think about the worst situation and multiply it by a thousand. That is what it feels like. Your life crumbles. You cannot move. You cannot breathe. You cannot go home. You cannot call your mother.

After we become victims, I would like to see support. Someone go to these people. Someone please go and find them because they need help.

Senator Jaffer: You have already given a lot. All members on this committee acknowledge there is more work to be done. If you think of some other things, send them to our chair and maybe we can look at something in the future.

Dr. Gaston: When you are three months in a trial, food does not come by itself. You need the witness to testify at the trial. Would you imagine a doctor taking care of you while his or her children are in court for murder? That is nonsense.

We should support the witnesses when they are in court, not just give them $45 for the day. That is something that should be improved.

Ms. Pousoulidis: Parking is $20 a day, seriously.

Ms. Harvey: One of the important things that affected me initially was the notification process. There was no notification process. In this country, we need some kind of universal notification protocol in cases like this. I was notified by a relative of a relative of a relative. I was not notified by the police. When you are notified about the death of a child or the death of a loved one, that is your first contact with the justice system, with the criminal system, and that can make or break the journey that you have ahead of you. If there is a positive and constructive way to make notification, that is an important step right there.

[*Translation*]

Senator Boisvenu: Ms. Harvey, I am very pleased to see you again. Ms. Gaston, you have all my sympathy again. We know that your tragedy, losing your two children, is very recent. Working every day with children the same age as your own, that must ask —

Victims of crime are filled with two kinds of anger. The first is at seeing that someone has stolen your child. The second is at the system that was so lenient toward the criminal who could have been arrested and could have been given a very harsh sentence for their original crimes.

Then you say to yourself that it is not just the criminal who bears a share of the responsibility, it is also the system. But you never get an answer. Marc Bellemare said yesterday that Bill C-10 should go further.

When I hear the National Parole Board complete an assessment and say that there is a chance that an individual will commit a crime that takes someone's life in the next 12 months and say it has no responsibility to that individual because they have served their sentence, how do you think Bill C-10 should have addressed those problems, problems that in my opinion are unacceptable for victims?

Ms. Pousoulidis: We should not risk a human life on any pretext. When a psychological report states that this person will — not may, "will " — commit a crime, and if it had been your child, I say to the person who chooses to return them to society: "Will you be responsible for that future crime? "

[*English*]

I am sorry, but I cannot even be politically correct on this one. There is absolutely no reason that exists that will be sane enough or logical enough, and I hope I will never understand it because understanding a reason would be accepting it, that you would risk a human life. You are killing not only one person, you are destroying his environment, the people that surround him. You are making us enter a world we never wanted to enter. You are making us find out feelings of hate. We are entering into a criminal world. I never wanted to enter this world, ever. The five previous judges let my brother's murderer go free and then he killed my brother.

To Senator Boisvenu's point: Who is responsible for that crime?

[*Translation*]

Dr. Gaston: To answer your question, I would say there are things in life that cannot be bought. There is health, there are freedom and safety. In my opinion, conditional release is conditional on the duties that the criminal should comply with.

If I have conditions to comply with in order to be admitted to university or to college and I do not comply with them, I will be refused admission. I think that sometimes the conditional release analysis, for reasons I find it hard to understand, has been done solely for the benefit of the attacker. They have virtually no need to fulfil any duties, they have virtually no need to make any efforts, and when they have served their sentence, then they will be released.

I do not know a lot about the legal system, but I apply the reasoning that we all apply for getting a job or anything else. To get something, there is an effort that has to be made and I think that if the burden of effort were reversed, then it is not up to the system to make sure that the person no longer becomes dangerous, it is up to the individual to take steps not to be dangerous any more, then society as a whole would win.

[*English*]

Ms. Harvey: I will add that I believe this crime bill is a step in the right direction. I believe it is a beginning. Judges and lawyers claim to have a monopoly on understanding the justice system. What I understand about the justice system is that it has to work for the majority of Canadians. More often than not, it appears it is working against us.

When a person is to be released from a correctional institution, if there is any doubt that he may commit another crime, those people should err on the side of caution. I know that a crime is a crime against the state, but the state does not die. It is a human being that dies. I think that is what we are forgetting. We need to shift our thinking from it being a crime against the state to it being a human being who is affected as a result of that crime against the state. That is where we need to have our thoughts.

Senator Frum: We heard from a witness yesterday, Justice Nunn, who wrote a report where many of these recommendations, particularly for youth sentencing, come from. He said it was one of the areas of the most controversy. He wanted to distance himself from some of what he perceived as the more punitive areas of Bill C-10. His words were that it did not put the interests of the child first. By that, he meant the youth criminal.

I want to know what your reaction is to that idea, that that is the most important objective when talking about youth justice. I am looking at you because your brother was murdered by a youth offender.

Ms. Pousoulidis: He started as a youth offender and he graduated to federal.

Senator Frum: The interest of the child must come first. Can you react to that statement?

Ms. Pousoulidis: I have had beliefs in rehabilitation and in prevention. We speak with criminologists; we go to universities; we speak to police officers; we speak to anyone we can to prevent and to rehabilitate. We believe in that.

There are certain people who cannot be rehabilitated and their age does not make them able to be rehabilitated. It is not a matter of age. There are certain people who cannot be rehabilitated.

I say to those kids — because they are kids; they are under age; we can call them kids — who are criminals, that we keep them in jail before they commit the greatest act, which they never can turn back from. We are not only saving us pain and our loved ones; we are saving their lives.

I saw an interview on television of a person who had committed murder. He said it took him seven years to admit to himself that he was in the wrong. He was not a 13- or 14- or 17-year-old kid; he was a grown man. It took him seven years.

[*Translation*]

Ms. Harvey, my question is for you. You quoted the Honourable Jean-Pierre Goyer, who was a member of Pierre Elliott Trudeau's cabinet in the early 1970s.

You told us that was when Canada decided to place more importance on the rights of criminals than on the rights of victims. That was 40 years ago now — at the time, I was a very young police officer — and I can tell you that the police have also noticed and experienced the consequences of that shift.

For several days, witnesses from a variety of organizations have come to argue their case before us, in support of offenders and of maintaining all the programs developed for them.

If you had to identify what you find to be unacceptable at present for the family of a victim, what would you start with?

[*English*]

Ms. Harvey: Are we talking about the rehabilitation of criminals?

[*Translation*]

Senator Dagenais: If you like.

[*English*]

Ms. Harvey: I think that crime prevention is very important. Punishment and rehabilitation are very complex issues. I know that some offender groups would prefer to look at the money that will be used to implement Bill C-10 and they would like to look at using that in other ways, such as putting it into

social housing, mental health services, social services and rehabilitation programs.

We do need that. We do need a proactive approach to try to reduce the incidence of crime in this country, but the reality is that there are violent crimes in this country and the violent crimes are not going down. They are not declining. Therefore appropriate legislation is necessary. Prevention and education does work but it does not work for everyone. There are those who will continue to participate in criminal behaviour. However, I think what we need to do is not only look at that side but we also must look at what happens after the criminal behaviour has occurred and we need to look at what victims need.

Victims need social services. Victims need rehabilitation. Victims need to have mental health services and so forth, and they are not mandated like they are mandated for people who violate our lives. I think that would be a start.

[*Translation*]

Senator Dagenais: Ms. Gaston, you talked about sexual predators. Would you agree with me if I told you that people who report those crimes are just the tip of the iceberg? Because the predator may be a family friend, a friend or a hockey coach, for example, and often the victim does not dare to make a complaint for fear of being isolated or even judged by family and friends.

I would like to hear your thoughts on that. Would Bill C-10 help victims to report and so to feel less isolated?

Dr. Gaston: Certainly. In fact, there are not necessarily police reports for all assaults. This is a fairly sizeable phenomenon; it is said that two-thirds of victims are under the age of 18, 7 out of 10 victims were assaulted in a private home, and 8 out of 10 victims knew their attacker. It is difficult for them to report.

It may be difficult to get a child's testimony, but when we see them in emergency, a few hours after the tragic event, people have a general idea of the penalty. Then, after the organizations have explained to them how the judicial system works, the people are wondering whether they are going to embark on the process, which will be difficult, lengthy and expensive, for which they will not be compensated, and during which they will have to relive the stress, and ultimately get only a ridiculous sentence. Often, what was done was not trivial, and unfortunately it will follow the person for the rest of their life. And whether they make an effort or not, they will have to live with that trauma.

Certainly no plan is perfect. I think that mandatory minimum sentences have to reflect how our values, as a society, have changed. I think that by moving in this direction, Parliament has said aloud what we think to ourselves: that it is inexcusable, and that for children it is zero tolerance.

I have read the mandatory minimum sentences carefully. I have done my homework; I have spoken with Crown prosecutors and asked them what they thought. And contrary to what was said by the representatives of the Barreau — even though I did not question them at length — mandatory minimum sentences have facilitated their work greatly, and that meant that crimes against the person were not being trivialized to the same extent.

I believe in these sentences, but there will never be a perfect system. That is why I am here: because I believe in them. Otherwise, I would not be here.

[*English*]

Senator Lang: First, I would like to thank you for coming before us and having the courage to come up and bring your stories and your position on the legislation forward. One or two of you mentioned the fact that the legislation before us has been distorted in the media and it is not getting an honest, objective look for the public to see what it says and what it does. It is truly unfortunate. It has been an education for me to see how poorly it is reported.

For example, this morning we heard from the head of the Correctional Service of Canada. It has been reported in numerous media that the current government is going ahead and building a number of penitentiaries and increasing the size of the corrections. The reality is they are not building one penitentiary. That is a real problem from the point of view of communicating.

I have an important question to ask of you. What do you think would be the effect if this bill is not passed in the Senate and does not become law?

Ms. Harvey: I think it would be another example of governments making promises to Canadians, getting elected and then backtracking. I think it would be disastrous. Canadians want this. I speak to hundreds and hundreds and hundreds of parents and family members across Canada. They want this government to get tough on crime and I do not hear any of those people complaining about what is in this legislation. It is not perfect legislation. What legislation is? There are good things in this legislation. It is a good step forward and it is long overdue.

[*Translation*]

Dr. Gaston: When I look at the table showing the costs for each crime and I look at the table of minimum sentences in the legislative summary of Bill C-10, I see a double standard. Honestly, I am not an activist for any political party, and I will not state my allegiance. But I cannot believe that someone who reads the measures relating to children will think that the mandatory minimum sentences are nonsense.

I looked at a summary conviction charge and an ordinary indictment, and what kind of crime called for that kind of charge. In any event, for Crown prosecutors, the minimum is often obtained. There are rare cases where it does not happen, but when you look closely at the crime and consider what the definition of the crime is, I would be much harsher, and yet I describe myself as someone who is relatively self-controlled.

If the bill is not passed, I would have the impression that children are thought of as second-class citizens, that they are thought of as not being fully present today. They are vulnerable; they are not able to express themselves, to speak, to vote, to consent. All sorts of things are done to them, and we are not going to have minimum sentences.

That is why they are called minimum sentences, in fact. I would be very sad if this bill did not see the light of day.

Honestly, I think it will ultimately cost society a lot more if we do not seriously consider the consequences of sexual assaults on children.

[*English*]

Ms. Pousoulidis: If Bill C-10 does not go through, I honestly believe that we will have more crime in Canada; I honestly believe we will not have safe streets and communities.

The senator asked Dr. Gaston whether Bill C-10 would encourage victims to speak up. If this bill does not pass, we will be taking a huge leap backwards when it comes to victims standing up and speaking.

I truly believe that Canada will not be safer for us all if Bill C-10 does not pass.

The Chair: To each of you, the deepest of thanks. There are no words to express how we feel about the unfortunate twist of fate that you have each experienced that brings you here tonight.

We have work to do here. You have brought your message in the strongest terms, and I know that it will not be forgotten by any of us. We thank you ever so much for that.

We are pleased to have with us now as part of this last panel, and we thank them for waiting as we have run over and I know the night is a bit late, from the Canadian Association of Elizabeth Fry Societies, Ms. Kim Pate, Executive Director; and from the John Howard Society of Canada, Catherine Latimer, Executive Director.

Ms. Pate, if you have an opening statement, we would like to hear it.

Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies: Thank you very much for inviting us. We thank the senators, and we are glad that the Senate is taking some longer time to look at this bill. Having just had the opportunity to listen to most of the previous panel, I know you are looking at a number of facets, and we are pleased you are doing so.

As many of you know, because I have been here before and our organization has appeared before, our organization works with predominantly marginalized, victimized, criminalized and institutionalized women and girls. In some parts of the country, our members are the only victim services in their area. In some parts, they are working almost exclusively with women in prison and women exiting prison, children, that sort of thing. There is a whole range of services, depending on which part of the country they are in and whether it is a rural or urban setting as well.

I wanted to start by focusing on the name of the bill. Safer streets is certainly an objective that we would strongly support. The organization has worked for the better part of the century trying to achieve safety both for those in the system as victims and those who have been criminalized and also for the community. As you know, our boards of directors who govern us come from the community. They are community volunteers. Most of the work done in our organization is also done by community volunteers. The idea that we want to have safer communities is fundamental. We have some significant concerns, however, with Bill C-10 and its ability to achieve that safety, and we believe this is not the route to provide better protection for most Canadians.

We can certainly point to previous work that has been done. I believe you have had many witnesses talk about crime prevention, the realities of sentencing principles and things like the World Report on Violence and Health from the World Health Organization linking the fact that you are likely to have more safety and support when you have primary programs and services in the community, whether that be services for children, services for victims — services that are basically universal that encourage and provide supports for all people, not just those individuals who have been labeled one or the other within the legal system.

One of the concerns we have in terms of what will likely happen with this bill is that the focus on more mandatory minimum sentences and making conditional sentences more difficult to obtain in some circumstances is going to be borne predominantly by those who are already most marginalized in our communities — the poorest, the racialized, people with disabilities such as those with mental health issues and, in particular, women. We are seeing increased numbers of women in the system. I was interested to hear the comments of the commissioner earlier that there are not any new prisons per se being built. In fact, there is significant prison expansion happening, though, and significant overcrowding occurring, certainly in the women's prisons. I can certainly speak to that if you would like more information about that when we get to questions. We also know that the measures will disproportionately impact, as part of those marginalized groups, Aboriginal people in particular. We have seen that particularly with women and young people, and we are likely to see that exacerbated by these conditions.

We think that the idea of providing greater protection for those who are victimized is very important. However, we do not believe that the provisions in the bill will achieve those objectives, in large part because they are focused on punishment after the fact, not on the sorts of measures that need to be in place to protect and prevent those sorts of approaches.

In Canada, there have been many reports, particularly in terms of the over-representation of Aboriginal people who have first been victimized. Before this committee, I have mentioned previously that Corrections identifies that about 91 per cent of the women serving federal sentences have histories of abuse, and many of them may be in for defending themselves or reacting to violence. Yet, that is not differentiated once they get into the system and certainly does not assist them or others in terms of developing a method that will encourage more punitive reaction to their criminalization.

Just this week, Canada has in fact received critical commentary at the United Nations by the committee looking at the Convention on the Elimination of Racial Discrimination because of the disproportionate over-representation of indigenous women in our prisons. We will only likely see this get worse with these provisions.

In terms of the situation where most women end up in prison for mandatory minimum sentences currently, we also know that many of them have been involved in homicides. I point to the self-defence review done by the government, which looked at the number of women who have been jailed and who may plead guilty rather than have a trial and benefit from the defence because of the risk of a mandatory minimum. We will likely see that increase.

We know that for young people who have experienced rape or incest in their families, contrary to what the witnesses on the prior panel said, having worked with young people in those situations, young women and girls in incestuous situations, they are, from the very beginning, reluctant to come forward. When they do come forward, they get huge pressure to recant. If they now know their brother, father, uncle or grandfather may face a mandatory minimum sentence, I can only imagine the increased pressure that would come on those young people to not only then have been victimized and raped and have that kind of horrible experience, but also then to be called liars if they then recant because the pressure becomes so great that the breadwinner or someone in their family may be removed. While it is a laudable goal to try to protect more young people, we are extremely concerned that, in fact, it may not work to that advantage.

We are also concerned about the fact that these are being promoted as quick fixes to very long-standing problems. Much research and policy has been done by the government over the past several decades. The evidence shows that if you invest instead in early interventions, in more prophylactic services and more universal services, you are likely see far more people protected. We certainly think that is a better approach.

In short, our concern is that we will not see the interests of either those who are victimized or potentially could be victimized or those who are currently in the system, having been criminalized, being furthered by these approaches.

To add to that, certainly there has been some discussion by some members of the committee on the previous panel and in previous testimony, and we are amongst the groups that are extremely concerned about the social, human and fiscal costs of this bill and the fact that it will drain resources that could otherwise be used to support many more Canadians. We support the recommendations that have come from groups like the Canadian Bar Association,

and we ask the Senate, in particular this committee, to recommend to your fellow senators that, as the house of sober second thought, you actually look at one main amendment to be made to this bill. That main amendment is that, before this bill is brought into force, and it is very clear that it can be passed and the numbers are there for it to be passed, but before it is enacted and comes into force as law, we would like a full disclosure from every federal department that would be implicated, every provincial and territorial government, of what it will cost and what they will need in terms of human resources and fiscal resources to implement this bill, and what will be cut. We are hearing there will be cuts. What will be cut to accommodate these provisions?

Will it be more cuts to pensions or transfer payments that will impact social services, health care and educational services in the provinces and will also therefore impact the support services provided to prevent people from being victimized and to those who might be victimized? What we heard from the witnesses who appeared before us and what we hear and have experienced ourselves, whether it is murder or rape in our own families and experienced those realities, is you want services that will prevent you from ending up in that situation.

When it happens, you also want support, and what we are seeing in terms of the provisions that will be implemented is that those resources will be drained out of the provinces, out of the municipalities, out of our communities and will result in more people potentially being at risk of being marginalized, victimized, criminalized and institutionalized.

We urge senators to put that amendment in place. It does not mean the bill will not pass in the end; it means that you could ensure that a thorough analysis is made of how this will actually be implemented and what it will cost.

I thank you for your time and attention and for your study of the bill, and I urge you to please include that amendment in your considerations.

Catherine Latimer, Executive Director, John Howard Society of Canada: Thank you very much; it is a great pleasure to be here again. I am delighted to be able to share with you some of the concerns that the John Howard Society of Canada has about Bill C-10. Like Ms. Pate has indicated for the Canadian Association of Elizabeth Fry Societies, we too endorse the overall objective of wanting to see safer streets and safer communities, but we do not feel that the provisions of Bill C-10 will actually achieve those objectives. We are worried that we will see, in the long run, our communities being less safe while eroding rights and principles of justice and having a disproportionate impact on some of the most marginalized amongst us, whether it is the poor, the mentally disordered, the Aboriginals or the aged.

The board of the John Howard Society wrote a letter to senators dated February 15 that set out in detail some of their major concerns with the proposed legislation. I propose to simply to go through those very quickly and focus my comments on concerns about the cumulative impacts of this particular bill for the justice system across the country.

The first concern our membership had relates very much to what Ms. Pate was saying, that there are very high costs associated with this bill and those are yet to be disclosed and the bulk of those costs will be borne by the provinces. We have heard from some of the provinces recently, like Ontario with their Drummond report, that there will have to be reallocation to hit even their existing budget exercises, and they have indicated quite clearly that they do not have a billion dollars to spend on what they anticipate will be the costs of implementing this bill.

As an organization that values an evidentiary-based approach to justice and legal issues, we are concerned that the case has not been made out for these reforms. We have been in a period of declining crime rates for 20 years, and on a macro level, it is difficult to understand why we need to make these changes which will cost so much at this time. On a micro level, we have not seen the evidence of the problem and the likelihood that the legislative measures proposed will actually address those concerns.

There is also a very strong reliance on mandatory minimum penalties, and many organizations have presented to you their concerns about the effect of those mandatory minimum penalties. They will certainly be unfair, ineffective and often inhumane, and they will always be unfair to the person who deserved less than the mandatory minimum. We have recently seen the Ontario Superior Court strike one of the mandatory minimum penalties as being in violation of the Charter, and we expect there may be more of that.

Another set of concerns relate to the provisions that amend the Youth Criminal Justice Act. There is an introduction of adult legal concepts into the youth justice system which in and of itself is troubling. They are putting protection of the public as more important than rehabilitation, accountability and prevention as a way of achieving protection of the public in the long run. We are seeing increasing numbers in remand now, and the measures are intended to actually increase the numbers in remand.

This, by the way, is somewhat of a different approach than the U.K. House of Lords has recently taken in an omnibus bill before them where they have actually introduced a proposal that in order for a young person to be detained there must be a very real prospect that the child will be sentenced to a custodial sentence, which is exactly the provision that this bill hopes to remove from the existing Youth Criminal Justice Act. This is the third time that the government has come forward with proposed amendments around pre-trial detention, and we are not persuaded they have it right quite yet. I will get into more concerns about remand when I get into concerns about cumulative impact.

We are also concerned about the restrictions on effective community-based sentences for both youth and adults. There is also limited access to support and supervised reintegration back into the communities while offenders are under sentence. The points Mr. Conroy made about the international transfer of offenders changes are very telling. If people are not welcome back into the country while they are still under sentence, there is a very strong likelihood that they will be deported back from the country where they are serving their sentence and there will be no vehicle to exercise any kind of conditions or control or support for their reintegration back in Canada. At the end of the day, that makes Canada a less safe place.

Also, there are concerns about impediments to reintegration by extending periods when ex-offenders can be discriminated against because of spent records. They are extending the periods before we get a pardon or a record suspension, whatever we are calling it. This allows there to be further discrimination in terms of people who have completed their sentences getting access to human rights protection for employment, housing and other types of purposes. I will also point out that the House of Lords has also gone the other direction in terms of spent records and want to see those available more quickly to people in order to get them back into the workforce in a constructive way.

There are concerns about erosions of rights, including the least restrictive measure that you see as a proposed amendment to the Corrections and Conditional Release Act, and the Canadian Civil Liberties Association has also indicated concerns about many of the specific amendments and compliance with the Charter.

That takes us to other issues in terms of compliance with the Charter relating to the cumulative impacts of Bill C-10. We are concerned that there could be delays in processing. I think there are Crown attorneys who have appeared before the committees indicating that the system only operates if only 6 to 7 per cent of the charges laid go to trial. We are hearing that in British Columbia they have had to dismiss 500 charges against individuals because there were delays in the processing and there are another 1,500 that are marginal and they may lose the cause of action against them because of delays in the system. We know when you impose mandatory minimums in the sentences more people are prepared to contest those rather than pleading out to lesser

sentences. There will be more congestion in terms of getting people through the court process, and we can expect to see more *Askov*-based Charter challenges as a result of Bill C-10 coming into force.

We are also enormously concerned that already we are seeing serious crowding in many of the provincial correctional facilities. I notice that in earlier testimony there was concern about linking the Canadian and the American systems and that these are not comparable. I am glad that we maintain that Canada is a more compassionate, fairer, more just place and does not have the same problems as the American system does. However, the U.S. in a recent Supreme Court decision there found that the California system violated their eighth amendment protections against cruel and unusual punishment because their prison population base exceeded 137.5 per cent of the capacity of the prisons.

We know from what we are hearing from corrections unions and corrections investigators that many of the provincial correctional facilities are already in excess of the 137.5 per cent. The five adult provincial correctional facilities in Alberta are running at 200 per cent. We are hearing from B.C. that they are running between 150 to 200 per cent of capacity. This creates existing challenges within the system.

If there are to be more offenders coming into the system now, you can expect even greater crowding. We do, too, have constitutional protections against cruel and unusual punishment, and there is no reason to believe that our standards would be any less than those in the U.S. That in itself creates real problems for the justice system and the ability to be able to deal with the cumulative effects of this bill.

I agree with Ms. Pate, we can count, we know what the numbers look like and we know there is considerable amount of pressure to get this bill through, but we would urge that senators look at an amendment which would change the coming-into-force provisions so that the bill would not come into force until you were advised by the provinces that they could handle any increase in caseload or in offenders and not have that exceed 100 per cent of their prison capacity. Until then, I think you run some very serious risks if this bill is proclaimed in force before those safeguards are put in place.

Thank you.

The Chair: Thank you, Ms. Latimer.

Senator Fraser: Thank you to both of you for hanging in while we ran late. It is always very helpful and instructive to hear from you.

I will begin with a question for Ms. Latimer who, before she went to the John Howard Society, was a very senior member of the justice department. You have outlined a number of areas where you think Charter challenges might arise. Are there any others you did not mention? For example, I do not think you talked about the Youth Criminal Justice Act. Do you see Charter difficulties in there?

Ms. Latimer: I do see Charter difficulties with the proposed amendments to the Youth Criminal Justice Act, yes.

Senator Fraser: To wit?

Ms. Latimer: I think, for example, the redefinition of "violent offence " to include offences that were not violent, were not intended to be violent but could have been violent probably violates the Supreme Court's fundamental principles of justice that they articulated for youth in *R v. D.B.* that they have diminished moral blameworthiness and diminished moral competency. To put them at a higher standard, that they should have anticipated that something that could have been violent when it was not intended to be and did not turn out to be violent, is probably an extension of the term beyond which is likely to be acceptable.

There have been some changes they have brought in to the standard for adult penalties since the last bill, Bill C-4, before being reintroduced as part of Bill C-10. I think dropping "beyond reasonable doubt " as a standard that has to be met before getting an adult penalty runs afoul of *R v. D.B.* as well. I would also suggest that the addition of the tertiary grounds for pretrial detention, which was added between Bill C-4 and Bill C-10, is also probably a bit beyond —

Senator Fraser: Which were the tertiary grounds?

Ms. Latimer: The tertiary grounds for pretrial detention.

Senator Fraser: I do not remember which comes third. I do not remember the bill in order.

Ms. Latimer: The first two grounds for pretrial detention are —

Senator Fraser: A pattern or a violent offence?

Ms. Latimer: Yes. You are a flight risk or you are likely to commit another offence. There is a tertiary ground where, if you do not meet those two legitimate grounds for pretrial detention, but the administration of justice would be brought into disrepute, then the young person could be detained.

My argument would be that there is so much misinformation about the youth justice system, to deny them their reasonable right to bail on the basis of information or misinformation that may be out there about the justice system —

Senator Fraser: In my former trade, the journalists would be —

Ms. Latimer: Yes, but there is a lot of misinformation. I think the fact that more than half the young people behind bars in this country now are in pretrial detention would indicate that the existing test for pretrial detention is no significant impediment to getting young people behind bars. I do not think there is a legitimate, serious problem about pretrial detention. In fact, I would argue the other way, that we have too many people in pretrial detention.

Senator Fraser: Do I have time for a question to Ms. Pate?

The Chair: Yes.

Senator Fraser: I would like to go on with that one for at least an hour, but my colleagues will stage a revolution.

Ms. Pate, we heard today gripping testimony about the proportion of women in the penitentiary system who suffer from mental illness: significantly higher than men. You were also uttering warnings about double-bunking.

We heard about the impact of segregation, isolation, on women's mental health, which seems to be even worse than for men. What about double-bunking or, heaven help us, even triple-bunking? What does that do to people's mental health if they are already vulnerable?

Ms. Pate: The last two prisons I was in, the Edmonton Institution for Women and the Grand Valley Institution just this calendar year, were both overcrowded. When I was in the maximum security unit, not segregation, every unit was double bunked. These are women who are in segregated conditions because they are maximum security prisoners.

Unlike men, who would be in a whole separate institution, they are in a unit. They are locked in for sometimes, depending on what is happening in the institution, upwards of 15 hours or more per day in those settings. They have no choice, usually, of who they are bunked in with.

You already have people classified as higher security. You already have people who often have mental health issues. The overwhelming majority of women in the max units are classified as maximum security because of their institutional adjustment.

There are three ways you can be classified as maximum security in our prison system. One is the offence you committed. If you come in on a serious offence, you will be maxed for at least two or more years. Second is your risk to the public, if you were to escape or were released on the day you are assessed. Third is institutional adjustment. Most women are classified as higher security because they do not adjust well to the prison setting, a lot of prisoners in general, but particularly women. Many of them have significant mental health issues, so they are already in the situation.

On top of that, the private family visiting units are being used in both those institutions to house. These are institutions set up particularly for women to see their children. They are often described as conjugal visits, but for women it is predominantly their children they are seeing in those visits. Women have been denied access to visits in some circumstances.

When I went into the Edmonton Institution that day there was no one housed in the private family visiting unit, although they had had up to eight or nine woman in a two-bedroom house for a visiting unit.

In the Grand Valley Institution, there were six women in the day I went. I had asked to see the bunks they were putting in. When the commissioner talks about capacity, they are now calling Grand Valley Institution as having an almost 200-woman capacity. It was built for fewer than 100. They do not call it double bunking or overcapacity or overcrowding if they can fit a bunk and accommodate the women in there.

I had not seen the bunks and I wanted to see them. We went out to see the bunks. There were women sleeping on the floor because they could not climb up onto the bunk and there was no ladder because it was seen as a security risk because they have mental health issues.

When I went into the houses, there were six women crammed into there, some of them sleeping on the couches, some sleeping on the floor. I asked one woman if she would mind showing me how she got up on the bunk. I am pretty fit, and I could not figure out how I would easily get up on that bunk. She had to clamber onto the desk and then up, and the whole thing was shaking. The woman who sleeps below her says, "I wait until she is up there. " I should not laugh, but they tried to make light of it. She said, "I wait until she is up there to make sure it will not collapse on me before I get into my bunk. "

There was another woman who had a cane, who, by standards of prison etiquette, if you will, when they come in, normally would be the one on the top bunk, and everyone agreed she should be on the bottom bunk. Other women who were on top bunks were feeling unsafe, because there is no protective barrier, if you are someone who does not sleep in one place very much. There were women sleeping on the floor because they were afraid they would fall off. All that to say that, mental health-wise, there was huge anxiety and certainly increased tension.

In Edmonton, they were not able to accommodate all the requests for counselling and support. In Nova right now, there is no prison psychologist at all, not even to do assessments, which is what most of them are doing anyway. There is very little treatment happening.

The question was asked about what kind of treatment is available in the prison. Certainly in the women's prisons — and I know, from talking to people, in the men's prisons — there is very little treatment available at all, and mostly people are doing assessment.

I am sure Dr. Bradford could speak to that as well. He is one who is doing some treatment, but mostly they are bringing in outside people now on contracts to do assessments because they are behind on assessments.

Senator Fraser: Even on assessments?

Ms. Pate: Even on assessments. In Grand Valley, they now have virtually no public space. They are bringing in a big trailer and a mobile kitchen to try to accommodate the extra numbers. It is not considered new construction, even though they are building a new unit within the confines of that prison. It is true that there are no new prisons going up, but there are new units being developed all around the existing prisons.

The Chair: We will move on. The scheduled time we had allowed for this will end at 7:30, and it will end at 7:30, so you can keep that in mind with your questions; and again, keep your responses as tight as you can.

Senator Runciman: Thank you, witnesses, for being here.

Ms. Latimer, you mentioned a couple of things that I want to respond to. I am paraphrasing. You mentioned that you could not understand, with crime rates declining, why the government was moving forward with this initiative.

I just wanted to point out to you that this is based on the Canadian Centre for Justice Statistics, Canada, 2010. The crime rates for the offences that are targeted by this bill are increasing. Child pornography offences are up 36 per cent, up 123 per cent since 2002; firearm and drug offences, 10 per cent; criminal harassment, 5 per cent; sexual assault, 5 per cent.

I know there is this general view, and it has certainly been widely publicized, that because crime is going down, why is the government moving on this? However, the offences that are targeted by this legislation have been increasing.

The other thing that I think you both mentioned is a concern about unknown costs, and the costs with respect to the act are all posted on the Treasury Board website. You may disagree with them, but they are there for the public to be made aware of.

Ms. Pate, I think you said that legislation will most impact the marginalized and women. We have heard plenty of evidence that the drug trade is overwhelmingly organized crime, and the only other mandatory minimum penalties are for sex offences against children, committed mainly by men.

I am wondering about the claim that you made at the outset. It does not, on the surface, seem to square with the facts.

Ms. Pate: Oftentimes you may certainly see organized crime involved in the drug trade. It is not usually who is caught and who is pursued. Similarly in sex offences, we have seen increased numbers of women who have first been the victims of the men who they are involved with, who have then acted in

concert, and who are increasingly coming in.

It is also the overall issues of the focus on pardons and on getting rid of conditional sentences that will disproportionately impact women as well. We know that already, just the changes that happened in the last session, with the elimination of the accelerated parole condition and the changes to the judicial discretion around pretrial detention, I am told by corrections that that has already increased the numbers, impacted 150 women.

When you are talking about numbers of about 600 — it was about 500 women and we are now talking over 600 women — we are seeing exponential increases. It certainly is not whom most people are concerned about when they are concerned about those crimes, I agree, but it does tend to be who is more likely to get caught up in the system, and kept there, and not have a lot of community support.

Senator Runciman: I do not think we will agree on most aspects of this, but I think there may be an area where you could be supportive of the legislation, and that is the amendment with respect to the principles of the Corrections and Conditional Release Act, with the focus on dealing with the mental health challenges in the system. It is there, and I guess the question is: Will we see that translated into action?

You indicated — and I know this to be the case — that you travel and you have visited many of these institutions. We had Dr. Bradford here earlier today talking about the challenges and also, I think, outlining an option for the government to consider, namely, to provide a pilot treatment program for female inmates, which would produce significant savings to the taxpayers of this country, not to mention the costs saved in terms of victims and the justice system and so on.

My view is that you are aware of this challenge in the system and how it is being handled. I have this feeling there is institutional inertia with respect to the alternatives that are out there, alternative service delivery. However, there seems to be this ongoing resistance to looking at these kinds of meaningful and helpful options. What is your experience?

Ms. Pate: Within the system, you mean?

Senator Runciman: Yes.

Ms. Pate: Certainly, the initiative that you have been involved with and that we have been involved with, and one woman who was in a similar situation to that of Ashley Smith, has benefited significantly from being able to go to a provincial treatment centre. One of the challenges, though, is that in order to implement that more fully, it looks as though it will have to come under corrections, and we would urge that not to be the case.

To a woman — and I would say to a man, when I worked with men, and to a young people, when I worked with young people — they do far better in a system that is run by mental health. Even if, as in the Brockville situation, they have security that may be offered by or supplemented or contracted to corrections, it is a mental health facility first. That is why I would suggest that woman is doing far better there than she was doing in the prison setting.

Our concern is that the provisions do not clearly say or direct that there be provisions developed in health care within provincial health systems, hence the reason for our recommendation of a full costing, a human, social and financial cost. If you, in fact, develop those resources in the community — and I do not mean all in the community, not in a forensic unit, but in a forensic unit in a whole array of services — then you are likely to see more people in Justine's situation, in the situation that far too many women are in, and I think many men as well, although I am less familiar currently with the situation of the men.

We certainly support a move towards more appropriate mental health services for all concerned. We think that if you focused on the community and had the provinces directly involved in developing those as health services, including, if necessary, locked forensic units, then you will have greater likelihood of fewer people being victimized.

Senator Runciman: The Brockville facility is a corrections facility. It is designated as a Schedule 1 hospital, but they contract the health care services out to the Royal Ottawa. That is the only way it can work. I do not think it can work the way you are suggesting. It is pie in the sky if you think the provinces will take this on.

Ms. Pate: It can work that way, actually, with respect, senator.

Senator Runciman: I am telling you how Brockville works.

Ms. Pate: Yes, I know how Brockville works now, and it is part of the reason that we have not —

Senator Runciman: It is a corrections facility.

Ms. Pate: It is a corrections facility now, but it is required, in order to contract with federal corrections, to become more like the regional psychiatric centres, which are where we have seen security consistently trump mental health and the therapeutic staff.

Senator Runciman: I would disagree with that.

Senator Cowan: Welcome and thank you for your patience and for the good work that your societies do.

The title of this act is safe streets and communities act. I do not think there is a person anywhere in this room or in the country who would not want to do everything that they could reasonably do to make our streets and our communities safer.

What we are trying to struggle with as legislators is how to ensure — and it is not the be all and end all — that we are at least moving in the right direction towards making our streets and communities safer. We have to be careful not to overpromise and under deliver. We do not want to let people down by what we do. We may not be able to fix everything, but we do not want to make things worse.

There has been a lot of talk about rebalancing, and that we are paying too much attention to the care and feeding of the offenders and we do not care about the victims. I think, fairly, that is an incorrect way to look at it. I will make a statement and then ask you to comment on it.

It seems to me that certainly victims have rights and needs that need to be addressed and offenders have rights and needs that need to be addressed. We have to ensure that when they return to the community, as those who do not die in custody will, they will not reoffend. I do not see it as a balancing of the rights. Through a combination of the criminal justice system and health services, education and all kinds of other support systems, we are trying to ensure that, collectively and cooperatively, we produce safer streets and communities.

Can anyone comment on that rather convoluted statement?

Ms. Latimer: We absolutely agree that people who have been victims of crime should get the necessary services and information that they need.

The idea that there is a balancing of rights is a sort of peculiar one. We need to spend more time thinking about what the appropriate role of the victim is in the actual trial process or penalty process.

There is no doubt that before the criminal law emerged, it was the victim and the offender who would oppose each other. Criminal law emerged probably in 1495, with a notion that in order to create and keep peace, you needed an objective, impartial way of holding someone accountable for such a serious wrongdoing. It was understood as being a significant advance that the offence was against the state; that the state would use its coercive powers to hold that person accountable and punish the person. The victim was thought to be advanced at that time, not to go into torts, but it started as torts and moved into criminal law. That was understood as being a progressive step. Hegel, who is probably one of the greatest legal philosophers, says that the only person who cannot really give fair comment on what the quantum of the penalty should be is the victim because the victim is emotionally, and understandably, caught up in the activity. That is why you want an impartial, fair, objective justice system which renders the accountability measure.

I am not saying that victims should not get information and there should not be a variety of things, but the coercive punitive power of the state is not being borne against the victim in the criminal justice system. That is where the offender's rights kick in, namely, to protect them from state action and not to protect them from anything else. It is a complicated issue.

Ms. Pate: I would agree with that. I think that the notion that we have to take from one to give to the other creates a false dichotomy. It creates a sense that that is the way to achieve fairness, or equality, or justice. We know that is not true.

[*Translation*]

Senator Dagenais: My two brief questions are for Ms. Pate. You caught my ear when you said the bill is going to marginalize the poorest, minorities, and so on. In my opinion, some criminals come from very comfortable backgrounds, particularly when they are able to take advantage of their status, which often gives them the authority and power to abuse victims.

Are you saying that these people do not deserve a minimum sentence? I have always thought that rich or poor, everyone is equal before the law. I do not see how the bill could marginalize a particular social class.

[*English*]

Ms. Pate: In the nearly three decades that I have been going in and out of prisons, including when I worked with the RCMP briefly, I have yet to see a prison full of wealthy people.

The reality is that those people who end up in the prison system are overwhelmingly those who are the most marginalized in our communities. Yes, there are people who commit predatory offences. We know from self-report studies that there is virtually no one who reaches age of majority who hasn't done something for which they could be criminalized.

We also know that most sexual offences occur between people who are known to each other, with some exceptions. With the Internet now, there are exceptions. There is a proliferation of other kinds of sexual offences, but the reality is that is not who is being necessarily picked up, charged, prosecuted and ending up in the prison system — certainly not in my experience. I worked for a number of years with male sex offenders as well. We were dealing with predominantly indigenous, racialized and poor men. That is not to suggest that we do not take it seriously — quite the opposite, if I have not made that clear.

In some of our communities, we are the only victim services. We run shelters. Our newest member of the Canadian Association of Elizabeth Fry Societies is the Vernon Transition House, which works with battered and abused women. Certainly, it is not that we take this issue lightly, but violence against women and children has not been taken seriously for a long time for other reasons. Most who work in that area would agree that it is better served by enhancing social and educational services and supports that allow for greater quality, not those that rely on punitive responses alone.

[*Translation*]

Senator Dagenais: I note in passing that a lot of criminal bikers are in prison, in Quebec, for example, and they are not poor people.

That being said, and correct me if I am on the wrong track, you stated that because Bill C-10 may bring about costs associated with incarceration and with health and social services, we should abandon the measures developed to protect children from sexual assault and we should forget about toughening conditional release penalties for offenders who are dangerous to the public. Are we to think that everything is fine and the public does not want the amendments to the Criminal Code that might be proposed?

[*English*]

Ms. Pate: I am not sure I said that. If I did say that, then I would correct myself.

We do not support the increased mandatory minimums and the restrictions that are being proposed in large part because we already see a system that is fairly restrictive. If the Canadian public was significantly concerned about women as predators, I think we would all know that. The fact that it is women whose numbers have been the fastest growing prison population for some time now is indicative that it is not about who causes us the greatest risk and from whom we are at the greatest risk. That is what I was trying to communicate.

We know that the majority of women, men and young people who are in prison have also first been victimized. That does not in any way excuse behaviour, but it means that we have opportunities to intervene much earlier if we have better social services and more universal approaches, whether it is enhanced school programs and recreational programs, all the things we know that put children at less risk of ending up in a vulnerable situation either to be preyed upon or to become, themselves, involved in criminal activities.

That is what I was speaking to. I thank you for allowing me to clarify.

Senator Jaffer: Ms. Latimer, a number of times in your presentation you talked about grounds for Charter challenge, that there would be Charter challenges. Why would there be Charter challenges and how can we fix it so there will not be Charter challenges?

For the last week we have been hearing from many victims. One of the biggest fears I have is that we have raised all this expectation that when Bill C-10 is passed, all the things you were upset about will be fixed. We know it will not happen.

With Charter challenges and the backlog and the system clogging down, we have received a number of letters from the provinces about how much it will cost and it is not going to be possible.

Ms. Latimer: Your likely avenue for Charter challenge is under sections 11 and 12. Section 11 would deal with the delays, so if there is a problem there, you could see the charges being dropped against individuals because the delay in processing is too long.

Your other major set of challenges I think would be under section 12. Maybe this is because it is our fiftieth anniversary; I have been reading a lot about John Howard, who was one of the first, in 1795, to recommend single occupancy of cells. That is the way the prison system had emerged until then. The double occupancy in cells that are designed for one — and I can pass this around and give you an idea of what it looks like — constitutes or raises elements of cruel and unusual punishment.

You could have that proceed in two ways. I think the likelihood of a more successful challenge is greyer because the U.S. has given us a number of 137.5 per cent. You are looking at some definite numbers now, and we are in excess of that in certain places.

The Charter challenges could come from two places. One, you could have offenders in facilities, whether they be remand facilities, provincial custodial facilities or even certain areas within federal prisons, women's being one of them, intake being another area, where you are seeing crowding that is probably over that amount, and they would make the case that this is cruel and unusual. You would probably see some relief from the court asking that offenders be released or some measures be taken; or at sentencing you could have defence counsel say that this offender — and this happened in Massachusetts — ought not to receive custody because the custodial facility to which this person would be heading is crowded and it would cause cruel and unusual punishment for that to be visited upon him as a sentence.

There is no guarantee that those would be the offenders that we would consider to be low risk and we would want to see in the community. That is one of the reasons why we are asking for a bit of a delay.

We would like to see measures put in place that would keep the high-risk, more serious offenders in custody and find better community-based alternatives for some of the low-risk.

There may be efforts to try to build your way out of this problem, but with the fiscal situation across the country the way it is, I think this will be highly unlikely. There are very effective, less expensive program responses, whether it is bail alternatives or whether it is community-based.

One of the suggestions that came out of a discussion that we had last evening was, you can now not have the mandatory minimum penalty if the person agrees to drug treatment or drug therapy. Why not expand that and say, if they agree to any kind of therapeutic regime or a community-based alternative? The provinces would be looking for ways to try to control their inmate population so that they are only being left with the ones that are most serious and need to be contained.

The Chair: I realize you had a question for Ms. Pate but we will be out of time for Senator Lang. I regret that.

Senator Lang: Again, I apologize for the lateness of our starting. It has been a long day for all of us.

Ms. Pate, I am getting to think I know you fairly well. Sometimes I think you are a member of the committee.

I was looking forward to you coming because I thought your organization of all organizations would be supporting this legislation. I say that because over the course of the last number of days we have heard time in and time out about the fact that so many conditional sentences are being given out by the courts for that type of offence as opposed to any jail time for the offenders. In fact, that is the norm. The evidence we have been provided, especially in Toronto and some other parts of the country, is that it is really out of the ordinary for an individual charged with a sexual offence to be sentenced to any jail time at all. I would have thought that would be a major concern of yours primarily from the point of view of the fact that that woman had taken the time and the effort and gone through the step-by-step process through the courts, to find out that that individual would be back out on the street within days.

I have a basic question about your organizations. I looked through the lists of the minimums and I will give you a few as an example: sex exploitation of a young person, minimum one year if you are found guilty; incest, five years if the victim is less than 16 years.

Here is an example in another area: parent or guardian, procuring sexual activity where the person procured is under the age of 16, one year.

What I do not understand is why you would not be bringing us that message to ask us to do that, to have these individuals taken out of the community, put in a safe haven, a jail for them, and have the opportunity of taking the necessary courses for some treatment.

I want to ask you this. I find it amazing that you can stand in your place and say you are representing an organization and this is the position of all your members.

Was this information directly transmitted to them so they could look for themselves and see what actually these minimums were?

Ms. Pate: Absolutely, we send all the information out to our members.

I think I understand the concern you have. If in fact sentencing someone to prison solved the problem, if in fact all cases were taken seriously, if in fact everyone got treatment when they went in prison, we might have a different position.

That is not what happens, however. We know that the reality of mandatory minimum sentences can dissuade people from coming forward. There is a whole organization developed in the U.S. of Black women, because so many men who were going to prison when they got prison sentences, not community sentences, were Black, Chicano or racialized men. We have actually had them even telling people not to call the police. We do not want to get into that situation in Canada.

If someone goes for assistance and they are a woman, sometimes they are believed and sometimes not. I just came from a course at the law school where I teach a course on defending battered women on trial, because most often the state is not there to provide support and assistance to the individual when they are either at risk of being victimized or when they are, but do encourage them to be deputized to protect themselves and/or their children.

Yes, when conditional sentences were first introduced, we were one of the organizations, amongst many other women's groups, who said do not prioritize them for male sex offenders. We would like to see them for more women. That does not mean we want to get rid of conditional sentences, however. It does mean that the biases that exist within our communities against women and against dealing with violence against women and children seriously are very serious concerns. It is a blunt instrument to say, put in more mandatory minimum sentences and that would solve it. If it would, of course I would be here

saying that. All our members know that. The women working in the transition houses know that. What we really need is a means for women to escape violence, to be supported, to be able to support themselves and their children and to have it taken seriously.

There is an indigenous community near Barrie where they took an interesting approach that was not supported by the state, which is to say that when a man is being violent they will say that he has to go out of the family home, he is not permitted to be there anymore, and the women and the children will stay there because they did not have a transition house. Those kinds of measures were not supported because a man's name was on the lease or the deed.

There are other measures that can be considered. To say that the criminal law and mandatory minimum sentences will solve it is not borne out in reality for even those men who are picked up. In reality, if they got treatment in prison that solves the issue that would be another issue. In fact, our prison systems tend to enforce the very attitudes that assist men in ending up in those situations in the first place.

Senator Lang: We are on a different page, obviously.

The Chair: I do not think you will settle it in 5 minutes or 10 minutes.

Ms. Pate: Mr. Chair, on March 13, the YWCA and our association are co-hosting a discussion around the needs at 131 Queen Street. We are calling it "Housing for Women, Not Prisons for Women. " If anyone is interested in attending they are welcome. There should have been a place saver go around. In one of our case studies we will be talking about the very young woman whose issue was raised by Senator Runciman. There are a number of women who have been inside who are also coming to participate, as well as people who provide services in the community. If you are interested, we are talking about expanding the space and providing opportunities for people to be in their community safely. That is March 13, from 10 a.m. until 3 p.m.

The Chair: Ms. Pate and Ms. Latimer, thank you so much. You are well prepared and thoughtful in your presentations, as always, and it is very valuable to us. We thank you for that.

Honourable senators, we are now adjourned until eight o'clock tomorrow morning.

(The committee adjourned.)
