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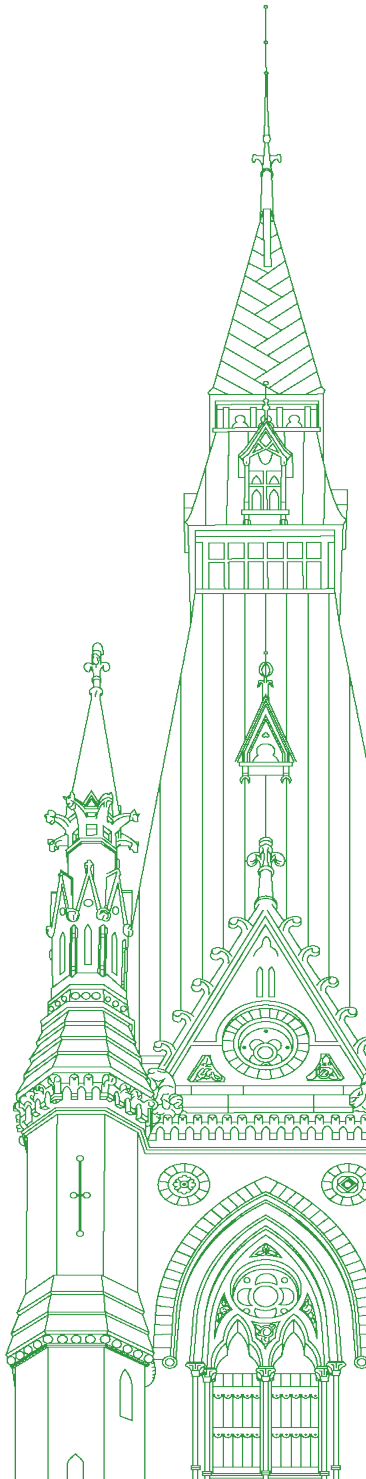

Chair: James Maloney

Standing Committee on Justice and Human Rights

Monday, March 23, 2026

● (1105)

[*English*]

The Chair (James Maloney (Etobicoke—Lakeshore, Lib.)): Good morning, everybody. Welcome back.

It's good to see everybody. It's a new day, a new week, a new piece of legislation and a new level of enthusiasm. Let's get under way.

I call the meeting to order. Welcome to meeting number 21 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of February 2, 2026, the committee is meeting to begin its study of Bill C-16, an act to amend certain acts in relation to criminal and correctional matters regarding child protection, gender-based violence, delays and other measures.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application.

I would like to confirm that the sound tests were done successfully. Everybody knows the guidelines that are in front of them on the desks.

I would like to make a few comments for the benefit of witnesses and members. Please wait until I recognize you by name before speaking. As for those participating by video conference, Mr. Housefather, you know the routine. I don't think I need to go through all of the details, so I will skip that.

I will jump to welcoming our witnesses.

First of all, we have the Honourable Sean Fraser, Minister of Justice and Attorney General of Canada.

Welcome, Minister. Thank you for attending today.

The minister will be with us for the first hour. He's joined today by Department of Justice officials Owen Ripley, senior assistant deputy minister, policy sector; Matthew Taylor, senior general counsel and director general, criminal law policy section; and Nathalie Levman, senior counsel, criminal law policy section.

Minister, I will turn the floor over to you for your opening comments. Thank you for being here.

Hon. Sean Fraser (Minister of Justice and Attorney General of Canada): Mr. Chair, how long do I have for opening comments?

The Chair: You have a maximum of 10 minutes.

Hon. Sean Fraser: I will endeavour to be shorter than that to leave more time for questions.

Thank you, Mr. Chair and colleagues, for being here at committee to discuss Bill C-16, the protecting victims act. This is an important piece of legislation that I believe is going to improve safety outcomes in a number of different contexts, including gender-based violence and the protection of kids online, in addition to making certain other changes that will, in my view, strengthen the capacity of the justice system to respond to pressing social challenges.

[*Translation*]

That said, before I get to the bill itself, I think it would be helpful to talk about the context for the committee's examination of Bill C-16.

We have a strategy to protect the public and to strengthen public safety. The strategy has three pillars.

[*English*]

The first is to strengthen criminal law reforms to ensure we have laws in the Criminal Code that are designed to enhance public safety and ensure that serious crimes are met with serious punishments.

The second pillar of this strategy is focused on supporting the front line. This includes 1,000 new RCMP officers and 1,000 new border officials, but it also includes giving law enforcement the tools they need, whether that is, more recently, Bill C-22 or other authorities that will help them investigate and prosecute and help them protect the public from crime through prevention efforts.

The final pillar of the strategy is making the upstream investments to help build healthier communities and healthier people in the long term. This is where we're talking about investments in mental health and addictions, in affordable housing and in programs that target at-risk youth, to ensure that as we build healthier people in healthier communities, we have a long-term opportunity to reduce violent crime in Canada.

Today's bill really falls under the first pillar: strengthening criminal laws in this country.

There are a number of different themes that I hope to draw your attention to. Of course, there are several dozen different measures in this bill—we have 83 distinct changes—but I'm going to focus on a few key ones.

[*Translation*]

First, I want to discuss the importance of addressing the femicides that are occurring around the country. I've seen the stories in the news. This year, Quebec alone has had seven femicides, and that is a shame. We need to take action to stop femicides, not just in Quebec, but also across the country.

[*English*]

There is a gross injustice taking place in this country when it comes to the murder of women, often at the hands of their intimate partners. We have an opportunity to respond by creating a constructive first-degree murder charge in cases of femicide. This will include murders that are committed in different contexts, including hatred-motivated murders, where someone is targeting a victim, for example, on the basis of their gender. It will include murders that are committed in the context of a coercive and controlling relationship. It will also include murders that are committed in the context of the commission of a sexual offence.

I want to pause on the issue of coercive control for a moment, because in addition to it being a qualifier for a constructive first-degree charge in cases of femicide, we've made the decision in this bill to move forward with the criminalization of coercive control as a stand-alone offence. We want to do this because we have an opportunity to have the justice system intervene before a relationship becomes violent and before violence becomes fatal.

Through our engagement in the preparation of this bill, time and time again we saw those who have spent their lives and careers studying the issue citing coercive and controlling behaviour as being predictive of future violence that may take place in the household. We are not talking about ordinary facets of a healthy relationship. We are not talking about arguments over who's going to manage the household finances. We are talking about behaviours that would reasonably cause a person to fear for their physical or psychological safety.

In addition, this bill makes changes to the charge of criminal harassment, ensuring that it's modernized for new technologies, but also ensuring that we've shifted the test towards an objective standard rather than a subjective standard, given the feedback we heard about how difficult it can be for victims of criminal harassment to demonstrate what they in fact felt, rather than what a reasonable person would feel in the circumstances.

There are a number of other issues in this bill that I want to draw your attention to, including the creation of a number of new sexual offences. In particular, I'll direct you to portions of the bill that speak to changes with regard to Canada's criminal laws insofar as they impact the distribution of intimate images. I'd like to focus on the two key ways in which we are changing the law.

The first is to ensure that criminalization applies to not only the distribution of these intimate images without consent, but also the threatened distribution of images.

There's one other feature that has found itself in the news, perhaps for obvious reasons. Our laws need to be able to keep pace with changing technologies in this country. We've seen a preponderance of cases making their way through our communities, into the newspapers and occasionally into our courts involving the use of artificial intelligence to create deepfakes of intimate images, which bear the likeness of a person known to the prospective offender. I say prospective because the Criminal Code today does not necessarily recognize the use of AI deepfakes the same way that it would recognize intimate images that are captured through other technologies.

In my home province of Nova Scotia, very recently we saw a judge dismiss charges against an accused person. It was not that the act was not heinous or morally culpable; it was because the definition of intimate images in the Criminal Code does not include those that are created through the use of artificial intelligence. This bill proposes to change that and deliver justice to victims who are having their likeness used for such an inappropriate and morally culpable reason. With the modernization of the Criminal Code, we will be able to ensure that these behaviours are captured and that wrongdoers are punished for their actions.

In addition to certain new sexual offences that are being established, we are going to be increasing the penalties for certain sexual crimes, including voyeurism and summary sexual assault. We will be looking at a number of other matters when it comes to sentencing as well. By and large, these changes are made to provide equity between existing provisions within the code and to align the maximum sentences in some charges with the maximum sentences that pertain to other charges that take place in a sexual context.

While we're on the subject of expanding maximum penalties, this bill also takes significant steps to restore mandatory minimum penalties for a wide variety of crimes where a mandatory minimum penalty either has been struck down or maintains its place within the Criminal Code today but carries with it constitutional vulnerability as a result of the treatment by the court of mandatory minimums that existed previously.

This is a response, very directly, to the Senneville decision from the Supreme Court. We made the decision to restore these mandatory minimums, but took the court's direction by creating a safety valve for only those circumstances where the mandatory minimum would be grossly disproportionate.

It's important to ensure that the constitutionality of these provisions is protected if we want the provisions to be useful. The provisions that exist today are offering no protection to anyone, because the court has indicated that they will be struck down when challenged. We have found a way forward that reflects the feedback included in decisions of the Supreme Court.

Part of the reason we chose this particular approach was the public statements we've seen in the House of Commons and elsewhere from members of both the Conservative Party of Canada and the Bloc Québécois. Our desire was to find a path forward that would gain multipartisan support to ensure that we could address this particular issue professionally and in a way that would stand the test of time.

There were other strategies we looked at, for reasons that I'm happy to get into during questions. We've chosen to move forward with the strategy outlined in the bill.

There are other changes we made, particularly to protect kids against exploitation, including in an online environment. This includes changes to sextortion, including not only the distribution but also, as I mentioned in the context of intimate images, the threatened distribution of child sexual abuse material. It also involves changes to child-luring provisions within the code, to ensure that they are incorporated within the definition of sextortion for the purpose of this bill. A series of other penalties range from depicting bestiality to inviting exposure, and a series of other measures impact mandatory reporting and other facets. Suffice it to say, we've taken feedback from stakeholders who have made it their life's work to protect victims.

I have one item I'd like to complete before I finish with the time I've been allotted. It's on the issue of delays and the court process.

Over the last number of years, according to news reports, we've seen nearly 10,000 cases dismissed for delay. It's not because trials have come to their conclusion and had a not-guilty verdict rendered, but because stays of proceedings have been issued. This often comes up in complex drug investigations. It also often comes up in sexual assault contexts.

● (1110)

It's never felt like justice to me that the potential perpetrator of a crime would benefit from a stay allowing them to live in the same community where the victim resides. This bill proposes to address that challenge in a number of different ways. One is addressing delays directly by seeking to streamline procedure. Another is encouraging the court to use a lengthened timeline for complex cases and, when that time is hit, to consider remedies other than a stay of proceedings.

● (1115)

[*Translation*]

Mr. Chair, I think my time is up, so I am ready to answer the committee members' questions.

Thank you.

[*English*]

The Chair: Thank you very much, Minister.

We'll start the first six-minute round with Mr. Brock.

Larry Brock (Brantford—Brant South—Six Nations, CPC): Thank you, Chair.

Thank you, Minister, for your attendance, and thank you to your officials from the department.

Minister, after a decade of catch-and-release Liberal bail, repealing mandatory minimum penalties and other hug-a-thug laws, Canadians are understandably scared. Since 2015, human trafficking has increased by 84%, sex assaults are up almost 76% and violent crime is up almost 55%.

Bill C-16 egregiously continues the Liberal soft-on-crime agenda by empowering judges to ignore literally every mandatory prison sentence in the Criminal Code other than for murder and treason. Liberals are now trying to allow judges to ignore them for aggravated assault with a gun, human trafficking and multiple firearm offences, including extortion with a firearm, weapons trafficking, drive-by shootings with a restricted or prohibited firearm and more.

Parliament sets mandatory minimums for these heinous crimes for a reason, but if your government allows judges to ignore them, there will be nothing mandatory about them, period. The passage of this provision would be a total abrogation of our duty as elected representatives to keep our communities safe. Conservatives will never vote for lighter sentences for serious offenders.

Will your government immediately split off this poison pill so we can all get back to work on making this bill better and keeping Canadians safe?

Hon. Sean Fraser: Respectfully, I have a different point of view from my honourable colleague on the value this bill is going to offer more broadly. I take the closing comment in his question as an endorsement of at least some measures within the bill, if not the provisions that apply to mandatory minimum penalties.

On the issue of mandatory minimum penalties, though, there's a particular piece of context we need to understand. I know the member asking the question believes the government should adopt laws to protect against the harms he's enumerated. I share that desire sincerely. We all want strong penalties for serious crimes, but we have to ask ourselves what the value is of a mandatory minimum that exists on paper but is not recognized by law after a decision by the court to strike down that mandatory minimum. If our laws written into the code are not enjoyed in our communities, then those laws are not worth the paper on which they are written.

Today, mandatory minimums, including those that were subject to the Senneville decision, offer no force of protection for Canadian victims. We might feel good about what the code says, but if the court is going to strike down those provisions and not incorporate them into the sentencing regime, we can't say there is a functioning mandatory minimum regime today. We made a decision to restore those mandatory minimums, taking the constitutional guidance from the court, so they will actually be put in place and will demand reasons from the court in circumstances where it deviates from the mandatory minimums.

Keep in mind that we're not dealing with some widespread discretion. We're dealing with circumstances that are “so excessive as to outrage standards of decency”, in the court's words, or that would be “intolerable” to society. We think we've found the right approach.

Larry Brock: A glaring omission in Bill C-16 is the lack of reintroduction of the 15 offences that your government removed, which you voted for, Minister, in the passage of Bill C-5 in the 44th Parliament. Will your government reintroduce all of those mandatory minimum penalties for the offences that were removed?

Hon. Sean Fraser: One historical development piece of this bill that's important to understand is that the Senneville decision arrived as we were preparing the content of the bill. We made the decision to respond, and we thought it best to address the issue of mandatory minimums that existed today that were baked into the code previously, including those that remain in the code and those that were struck down. We didn't do a full-blown consultation either about provisions that had been removed by Parliament or about those that could potentially be added or removed from a mandatory minimum regime.

If that's an issue this committee would like to study to provide guidance, I would welcome that guidance, but it would be important to actually conduct that consultation.

Larry Brock: The only reason I raise this is that your predecessor, David Lametti, was very proud of the fact that mandatory minimum penalties do not work. In fact, he was quoted numerous times, and the quotes have not aged well over time given the rise in crime levels in this country. I put to him the very possibility that the Supreme Court of Canada could be upholding mandatory minimum penalties that Bill C-5 removed. I raised that as an issue, and sure enough, after the royal assent of Bill C-5, the Supreme Court of Canada, in the Hills and Hilbach joint decision, upheld the mandatory minimum penalty that was removed by Bill C-5.

Given that the Supreme Court of Canada has upheld a number of mandatory minimum penalties that have been in existence in the Criminal Code since the late 1800s, and given that the 15 classes of offences that you removed in Bill C-5 are very significant and violent offences, including every single drug offence in the Controlled Drugs and Substances Act, why wouldn't this government take this opportunity to strengthen our criminal laws, as opposed to weakening them?

● (1120)

Hon. Sean Fraser: I don't view Bill C-16 as weakening Canada's criminal law, for the reasons that I articulated in my opening remarks. It strengthens it in a number of particular ways.

To go back to the question you asked, when we were moving forward with the decision to address the consequences of the Senneville decision, we were dealing with the umbrella analysis about the protection of mandatory minimum penalties across offences. We did not do the—

Larry Brock: Nobody [*Inaudible—Editor*] yourself, Minister.

The Chair: Mr. Brock, you're out of time. I was just allowing him an opportunity to answer your question.

Larry Brock: Thank you.

Hon. Sean Fraser: I'm happy to address it further, in response to—

The Chair: If you want to finish your answer, Minister, go ahead.

Hon. Sean Fraser: I will, only to say that if you're going to add or subtract particular offences from a regime that purports to impose mandatory minimum penalties, you should appropriately engage with stakeholders, experts and law enforcement to understand which provisions are going to have the most meaningful impact. That would be an excellent task for this committee to take on, should you wish, Mr. Brock, to make further recommendations.

Having not done that policy work, given that it was outside of the scope of the initial intended range of measures included in the bill, I don't think it would be appropriate to start adding new offences to that regime without the policy work being done in advance.

The Chair: Thank you, Minister.

Thank you, Mr. Brock.

Mr. Chang, you have six minutes.

Wade Chang (Burnaby Central, Lib.): Thank you, Mr. Chair.

Thank you, Minister, for being here and for your leadership on this important legislation.

Bill C-16, the protecting victims act, reflects our shared responsibility to ensure that victims are better protected and supported within our judicial systems. Canadians expect a system that's fair, compassionate and responsive to those who have been harmed.

In my riding of Burnaby Central, many of my constituents have shared their concerns about safety, accountability and the need to better protect vulnerable people, particularly in the face of evolving threats. I appreciate the work that has gone into this bill and the focus on strengthening public confidence while upholding the rule of law.

With that in mind, Minister, could you begin by outlining the main purpose of Bill C-16 and why the government believes reforms are necessary at this time to better protect victims and vulnerable people?

Hon. Sean Fraser: Certainly, and it's a bit of a complex question to unpack, because there are a number of different policy areas that this bill covers, and the motivation within each policy area may be slightly different.

If I could boil it down for the purpose of simplification, a significant portion of the energy that's been dedicated to this bill is focused on the problems we're seeing with intimate partner violence in this country. It's egregious to me the level of violence facing Canadian women, as is the routine nature of the stories we see in our newspapers in which that violence is too often perpetrated by a man who is in a relationship with the victim.

When we hear calls for the government to take action to address femicide more squarely, we're not dealing with a philosophical issue; we're dealing with cries for help from family members who are dealing with the years that will not be lived of their most closely held loved ones. When we're dealing with coercive control, we are hearing from women who may have escaped violence, hoping that they can offer protection to other women in similar circumstances. When we hear about the need to change the laws around criminal harassment, we're responding to very real calls for action, where people have gone through the process but have been unable to meet an evidentiary standard, notwithstanding that they've not been able to live safely in their communities.

Similarly, we want the mandatory minimum penalty regime to deal with the world that we actually live in, not some hypothetical version of it where we can ignore the decisions that were taken by the courts, which we have an obligation to respect as elected officials. We wanted to ensure that we had mandatory minimums in place to say that there will be serious consequences for serious crimes, while we respect the nature of the court's decisions with respect to safety valves for circumstances that would result in a consequence the public would find intolerable.

There are other changes that were motivated by shifting technology, again for criminal harassment and AI deepfakes. This is to make sure our motivation is to offer protections that we always thought would exist, recognizing that laws need to be updated to reflect the modern tools being used to commit morally culpable behaviour that may be outside the definition of a crime.

Finally, because I don't want to eat up all of your time, Mr. Chang, the prevalence and expanding rate of exploitation of children online is something we needed to address. As a parent, I have grave concerns about the ability of people who would do harm to engage with kids who are the age of mine. We have to adopt protections that will recognize that these heinous behaviours take place in our communities, and offer protections against them.

We can't lose sight of the fact that this bill is one part of a larger, broader strategy that will seek to end violent crime in our communities. Those are the kinds of motivations that justified the introduction of this bill.

● (1125)

Wade Chang: Thank you, Minister.

As technology continues to evolve, we have been seeing new forms of harm emerge. Could you outline how Bill C-16 updates the Criminal Code to respond to crimes such as sextortion and the creation and distribution of sexual deepfakes?

Hon. Sean Fraser: Let's dig in on this issue.

A couple of decisions rendered by courts point to the fact that the use of AI deepfakes to create an intimate image without the consent of the subject of that image is a horrible behaviour that demands action. It's rare that the courts will so clearly point out the need for legislative change to address a particular social harm that they witness and agree is bad but cannot do anything about, because courts recognize that their jurisdiction does not extend to rewriting the offences included in the Criminal Code.

We have an obligation to respond when people are using new technologies to commit old crimes. We have to update our laws to reflect the changing nature of technology. It's not just present, by the way, in the use of AI deepfakes when it comes to intimate images. It's also present when you're looking at criminal harassment, such as when people are increasingly using cellphones to track the whereabouts of their partner without their knowledge, potentially. You also see people threatening to distribute, through online means, child sexual exploitation and abuse material.

If we don't update our laws to reflect the changing nature of technology, we might feel very good about ourselves for what's written on paper until we learn about the severe harm that's befalling innocent Canadians that could have otherwise been prevented.

Wade Chang: Many stakeholders and community organizations have called for stronger tools to deal with intimate partner violence and coercive control. Could you speak to how Bill C-16 responds to those calls and why the measures are so important?

Hon. Sean Fraser: I addressed in my opening remarks some of the changes we're making to femicide. We are creating a constructive first-degree murder charge to demonstrate that we will take hate-motivated murder as seriously as any other crime in the Criminal Code. We will deal with murder committed in the context of a sexual offence as seriously as any other crime in the Criminal Code. We want to demonstrate to Canadians that we will not tolerate this most heinous version of murder that exists. We also want to focus on not just punishing crime after it takes place, but potentially having the justice system intervene earlier in the process. This is where changes to the new offence of coercive control come in.

When we know there are certain behaviours that are predictive of violence, potentially predictive of fatal violence, we have an opportunity to intervene. That could lead to criminal charges for the offensive behaviours that we know often precede violence and often precede murder. When we have an opportunity to address these kinds of needs, we must take that chance.

I should take this opportunity to offer my thanks for the collaboration of Mr. Caputo and his private member's bill, which complements some of the measures included in Bill C-16, in response to a horrific tragedy that came out of British Columbia, the case of Bailey McCourt. When we work together across party lines to address a problem of common concern, we can offer more protections for vulnerable people.

The Chair: Thank you.

Mr. Fortin, you have six minutes.

[*Translation*]

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

Good morning, Minister.

We in the Bloc Québécois have looked at your bill and we are fairly supportive of it. We may want to propose amendments, but it's a step in the right direction.

That said, I'd like to get some clarification from you, starting with the calculation of court delays. I think the Supreme Court was right to say that two years for a Court of Quebec or provincial court trial and three years for a superior court trial are reasonable time frames. It should be possible to conduct trials within those time frames. However, outrageous things have happened: individuals accused of violent crimes against others, crimes the public as a whole considers appalling, were released because their trial couldn't be held within a reasonable time frame. We add our voice to the many voices who find this unacceptable and want something to be done. You are the justice minister, so obviously, this concerns you directly.

In the previous Parliament, the Bloc Québécois introduced a bill that would have made it possible to deviate from those deadlines in cases involving crimes of violence against the person, or primary designated offences. Obviously, the deadlines would have been incorporated into the Criminal Code, but a companion provision would have made it possible to deviate from the time frames in certain circumstances, such as in cases involving primary designated offences. Unfortunately, the bill died on the Order Paper, when Parliament was dissolved last spring.

Now we're examining a bill that tackles the problem by reworking the way the time limits are calculated. Although it's a step in the right direction, it seems to me a rather timid approach.

Minister, don't you think the bill needs a provision like the one we had proposed in our bill? Through the notwithstanding clause under section 33 of the charter, the courts would have been exempted from the judicial deadlines in the Jordan decision, on a very rare basis—only in extreme cases where it was unfortunately necessary. Would that not have been a good idea?

● (1130)

Hon. Sean Fraser: I have a different approach, but I agree that we need to examine the circumstances in cases where charges are thrown out before the court has a chance to rule on them.

The bill has two strategies. The first deals with the problem of delays in general. The decisions in Jordan and other cases have complicated the problem, and it's had consequences. However, court delays have the effect of denying victims justice in our society, and we have put forward new rules to reduce delays and remedy that.

[*English*]

That will address the underlying problem of delay.

Separately, we're also trying to deal with the consequence not only by calculating time in a particular way or by excluding certain applications but also by directing the court to consider remedies other than a stay. I prefer this approach to using section 33. I think it is cleaner and has an opportunity to address the situation.

If the committee has an opportunity to engage on the best way to address the delay issue, I would welcome your feedback, and the feedback of those in the Senate who may be watching. I really believe in the process of Parliament and would welcome testimony, supported by expert witnesses, as to the best way to address delays, but the approach laid out in Bill C-16 is my preferred strategy.

[*Translation*]

Rhéal Éloi Fortin: I admit that I do like the idea of tightening the rules first and finding a way to calculate the time limits to avoid, if possible, trials collapsing, especially in the most serious cases.

The fact remains that it won't be possible to keep that from happening in some cases. Holding a trial within a reasonable time frame is in the interest of not only the victim, but also the accused. If the person is innocent and has to wait five years to be found innocent, that is unacceptable. If the person is guilty and it takes five years for them to be sentenced, that is unacceptable to the victim, and it also affects how the length of the sentence is calculated. No one wins, and delays are costly.

With that in mind, I ask you this again: In an extreme case, when there is no possible way to hold a trial within a reasonable time frame or to calculate the time frame such that it would be considered reasonable, shouldn't we make an exception and choose the lesser of two evils? While a case like that might not come up but once every two years, it could prevent a woman from being murdered by her new partner or a rapist from killing the woman next door.

Minister, in those extreme cases where it's not possible to hold a trial within a reasonable time frame, isn't it appropriate to invoke section 33 to override the charter provisions so that the accused still stands trial?

● (1135)

[*English*]

Hon. Sean Fraser: Before I go to that particular remedy, I have to ask myself.... It's very serious when you invoke the notwithstanding clause. It's a decision to say that we're going beyond what is reasonably justifiable in a free and democratic society, and I don't take that lightly.

There are components of this bill that would address the issue in a slightly different way. They would address the problem in a way that I believe would be effective. Time will tell.

Specifically, we didn't look at just the seriousness of a crime, but also the complexity of the nature of a charge before the court. It's often the complexity, not the seriousness, of a charge that brings the delay to a standard that is unacceptable according to the timelines in the Jordan decision. We tend to see them in cases involving organized crime or complex drug trafficking where there's a preponderance of evidence from different sources, often of a digital nature. Increasingly, we're seeing them in sexual assault cases, which have a very complicated evidentiary regime that we're also trying to address with this legislation.

By extending the permissible timeline for those complex cases, I think we can solve the problem without necessarily resorting to reliance on the notwithstanding clause to address a problem that you and I agree is a very serious one.

The Chair: Thank you, Mr. Fortin.

Mr. Baber, we'll move over to you for five minutes.

Roman Baber (York Centre, CPC): Thank you, Mr. Chair.

Attorney General, welcome back.

I want to leave politics aside for a second and have a legal chat. I think you went to Dalhousie law school. Is that correct?

Hon. Sean Fraser: That's correct.

Roman Baber: I went to Western. I have a very vague recollection of first-year constitutional law, so I hope your memory is better than mine.

Here's what I remember about how the charter was born. Attorney General Jean Chrétien sealed the deal of the notwithstanding clause with section 33. He agreed that in our Westminster parliamentary system, Parliament is supreme. Because Chrétien was a gentleman, he had faith that section 33 would not be used willy-nilly and only used in the most extreme cases.

Are you with me so far?

Hon. Sean Fraser: I'm with you, yes.

Roman Baber: To start, would you agree that you and I could come up with a scenario where the invocation of the notwithstanding clause would be appropriate?

Hon. Sean Fraser: I would like to see what that scenario is before I agree in the abstract.

Roman Baber: You would not say that you would never invoke the notwithstanding clause. There could be an extreme scenario—such as the one Chrétien contemplated—that would make you invoke the notwithstanding clause.

Hon. Sean Fraser: I don't like to deal with these things in the abstract. Perhaps that's the legal training you referred to, but I've not seen an example where I believe it was necessary.

Roman Baber: Let's talk about Jean Chrétien's example, then.

Jean Chrétien's example was this. If the Supreme Court were to say that possession of child pornography is protected by freedom of expression, that would lead to absurdity—an absurdity of the type that should be struck down by the Supreme Court. If they were to say that, it would be absurd. Is that correct?

Hon. Sean Fraser: I feel like what you're trying to do is engage in a philosophical debate about the notwithstanding clause in the abstract.

Roman Baber: We're having a legal chat.

Hon. Sean Fraser: What's important is that we have an opportunity with a bill that's designed to combat intimate partner violence and the exploitation of kids online right now, and I feel, frankly and with respect, like we're wasting our time on an issue that's not actually going to advance the cause of the legislation.

Roman Baber: I'm sorry, Minister, but if I may, I'm talking about Senneville. I'm talking about the reason that prompted.... You specifically said that you've considered Senneville in Bill C-16.

Hon. Sean Fraser: Certainly.

Roman Baber: Let's look at what happened with the co-accused, Mathieu Naud, who pleaded guilty to possession of more than 250 videos involving the rape of children aged five to 10. The Supreme Court struck down the mandatory minimum sentence for Naud and agreed to maintain and not interfere with the nine-month sentence that the court below, the court of first instance, had imposed.

This is what I suggest to you: Would you not agree that striking down the mandatory minimum sentence in a situation where you have 250 videos of children being raped is the type of absurdity that Chrétien potentially had in mind?

Hon. Sean Fraser: You and I agree on the heinous and unacceptable nature of the behaviour you've described, and I think we equally want to stamp that behaviour out of Canadian society.

Where I think we have a point of disagreement is on the correct way to address that problem. I believe the changes we're making in this law will address the issue you're dealing with, because the Supreme Court, as you will know, will strike down a provision based not on the facts before the court but on a reasonable hypothetical that could emerge under those rules.

With the changes we've made, I believe we have protected the mandatory minimum for the heinous acts that you've described. That person should face serious criminal penalties, and I have faith that after this bill is adopted into law, we won't see that same circumstance play out.

● (1140)

Roman Baber: Attorney General, I think you're doing the opposite. You're undermining the mandatory minimum sentence by allowing for judicial discretion—

Hon. Sean Fraser: The mandatory minimum doesn't apply. It's been struck down.

Roman Baber: If I may finish, you have the ultimate safety valve against absurdity, which is the notwithstanding clause, and I submit to you respectfully that protecting children from rape is your most important job. This is not just about children being raped in the videos that Naud was watching. It's about children who will be raped in the future because your government is failing to crack down on this heinous industry, which it can do through deterrence.

Why wouldn't you impose a mandatory minimum sentence for child pornography?

Hon. Sean Fraser: In this circumstance...this is very important. We agree equally that this behaviour needs to be addressed, including with stronger criminal penalties for people who would abuse and exploit our children, full stop.

The laws we are adopting in Bill C-16, should this committee and the two houses of Parliament adopt them, will offer the kind of protection you're looking for. The only difference that you and I don't share an opinion on is that where the penalty would be intolerable to society, there should be some discretion for the court.

Roman Baber: I have about 20 seconds.

The Chair: Actually, you're out of time, Mr. Baber.

Roman Baber: No, I believe I have another 20 seconds, Chair.

The Chair: You don't. I'm sorry.

Roman Baber: If you would not impose the clause here, you will never impose the clause. That's my point.

The Chair: Mr. Baber, you're out of time.

Ms. Dhillon, the floor is yours.

Roman Baber: If you would not impose the clause on this decision, you will never impose it.

The Chair: Mr. Baber, you're out of time.

Ms. Dhillon, it's over to you, please, for five minutes.

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

Thank you to the minister and officials for coming today to committee.

You spoke briefly, Minister, about technology and how it's rapidly changing. First, there was sextortion and the distribution of intimate images without consent. Now there are AI deepfakes. Technology is rapidly increasing.

We are addressing the current technological landscape of what happens online, but my question to you is this: Since technology is so rapidly changing, are there any safeguards in the legislation that would automatically address technology so that the law can keep up as well?

Hon. Sean Fraser: Yes. Let me build on my response to Mr. Chang's questioning.

There are obvious, very direct examples, including in this legislation, of how we can modernize Canada's criminal laws to better address emerging threats that have come to light as a result of shifts in technology. We've cited a few times during this committee the prevalence of AI deepfakes and the extraordinary phenomenon of courts proactively raising the prospective need for legislative change in order to criminalize the behaviour that is arriving before them.

In addition to that change, I have cited the changes to criminal harassment that will make it easier for courts to move forward with convictions if somebody has been using modern technology—GPS tracking, for example—in the context of criminal harassment. This comes up again in an increasingly digital space when it comes to the protection of children against child sexual exploitation and abuse material, including the threat of distribution of digitally held materials.

You have to remind yourself that this is part of the solution. There is no one change to the criminal law that will forever, on an evergreen basis, keep everyone safe from emerging technologies. You need to look at those other pillars of the strategy that I led with in my opening remarks.

Yes, stronger laws are an essential ingredient, but we also need to give law enforcement the tools they need, including lawful access to digitally held information, which is the subject of a bill that's going through Parliament now. We also need to make sure that law enforcement receives the training necessary to combat this troubling frontier of digital crime that exploits people in a sexual way.

In addition to those different pieces, we need to look at whether there are non-criminal legislative reforms that we need to put in place to ensure we're creating safe online environments for Canadian children. You have to look across society at the range of different policies you can advance to protect kids online. Some of them that pertain to changes to Canada's criminal law are included in this bill, but that's only part of the job.

This is not a “mission accomplished” meeting. This is a step in the right direction that is so sorely needed and needed as soon as possible.

● (1145)

Anju Dhillon: You also spoke about coercive control. You've met with experts and professionals in the field. You spoke about behaviours. Have they explained to you what kind of behaviours would fall under this category?

Hon. Sean Fraser: I'm sorry. Which category is that?

Anju Dhillon: I'm speaking of coercive control.

Hon. Sean Fraser: We're dealing with the kinds of circumstances that would involve violence in the home, including violence against pets in the home, which we know is predictive of violence against people who live in the home.

We are dealing with sexual coercion. We're dealing with a range of different behaviours, but perhaps, if I could encapsulate them simply, these are behaviours that would cause a person to reasonably fear for their physical or psychological safety. This is not someone who has a difference of opinion. This is not somebody who asks where a person went for coffee that day out of interest in how their day was going. This is a pattern of behaviours that we know are predictive towards violence, often fatal violence, in a relationship. It's very serious, and we need to take action.

We have made the decision to delay the coming-into-force date to give time for the system to become ready to deal with these new challenges in response to very real feedback. We heard about the potential weaponization of coercive control against the perpetrator of an abusive relationship. By enumerating sets of behaviours that would reasonably cause a person to fear for their safety, I think we've hit the right mark, as long as we combine that with training at a systems level to ensure that the courts and law enforcement have the ability to move forward with this offence in the way it was intended.

Anju Dhillon: Often we hear victims say how difficult it is to navigate the justice system. How will this legislation help provide them protection and a better way to go through this system while they are testifying or in any other event?

Hon. Sean Fraser: There are a number of different ways, some of which directly impact a victim who's going through the system for a particular crime. Changes to the standard for criminal harassment would be one example, which I discussed earlier, as is dealing with new laws that courts currently don't consider and dealing with delays in the system, where we've seen cases thrown out because too much time has passed, not because the charges weren't made out.

In addition to these changes that will fundamentally shift the experience of the victim and that may lead to a conviction for the perpetrator, we're including reforms to the Victims Bill of Rights, which makes clear that there are certain entitlements to the victim in the process they should be able to take part in.

The changes include putting clarity around their right to testimonial aids, their right to receive info about the process, which will be shared proactively, and the ability to make complaints to the victims ombudsperson. There are a number of different reforms included when it comes to the Victims Bill of Rights. We've tried to make sure that victims understand that they have a role to play in the process, that they have a right to have their voices heard and that they have a right to certain procedural aspects that make it easier to have their voices heard.

Whether it's on the process side—

The Chair: Thank you, Minister.

Hon. Sean Fraser: —or substantive changes, we expect these changes will manifest in a way that will markedly improve a victim's experience going through the court system.

Anju Dhillon: Thank you, Minister.

The Chair: Mr. Fortin, we'll go over to you for two and a half minutes.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Minister, the issue of inciting minors to commit a crime is something we in the Bloc Québécois are very concerned about. I had actually worked on a bill to address that. Our approach may have been a bit tougher than what you're proposing in Bill C-16. When a person incites a minor to commit a crime on their behalf, I think it might be one of the most serious crimes out there. It's cowardly, it's criminal and, in addition to the harm caused by the crime, it potentially creates a new criminal who will continue down that path. It's completely unacceptable and it's a major problem that needs to be dealt with.

I had come up with a specific penalty for those cases. For example, if someone incites a minor to rob a bank, and it is obviously proven, they would automatically be convicted and receive double the sentence they would have had they committed the crime themselves. I thought that was an effective way of tackling the problem. I believe you are proposing a sentence of five years in those cases. It's better than nothing, of course. I'm not saying it's a bad idea, but I do find it a bit timid, as I said earlier.

Don't you think it's necessary to go further and crack down harder on this scourge: adults—often members of organized crime—who make minors commit crimes?

● (1150)

Hon. Sean Fraser: First, I want to say thank you for your idea. When we discussed this issue, which is a priority for you, you told me about the need to tackle the problem of young people being recruited into crime. That's why this change is in the bill, so my thanks to you and your colleague.

When I was considering the appropriate penalty for the change, I looked at a similar offence that already exists, the recruitment of young people by organized crime groups. The sentence for that offence is five years' imprisonment. It's the same thing. If, however, the committee feels there is another way to address the problem, it's fine to propose amendments and to work with the other members of the committee. My department can provide clarification as to why a given approach was chosen, but amendments can be proposed.

[*English*]

The Chair: Thank you, Mr. Fortin.

Mr. Lawton, we'll go over to you for five minutes.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Thank you, Minister, for being here.

When Mr. Baber was asking you about the notwithstanding clause, you said something I felt was quite interesting. You didn't think it was productive to engage in hypotheticals, yet the Senneville decision was the Supreme Court doing that very thing. It was the Supreme Court inventing a case that was not before it and using that to strike down mandatory minimum sentences that applied to the very heinous people who were at issue in that case, Mr. Senneville and Mr. Naud.

I'll begin there. Do you think it is reasonable for courts, for unelected judges, to use reasonable hypotheticals to override laws that parliamentarians have put in place?

Hon. Sean Fraser: It's interesting you should use my desire not to discuss things in the abstract while the courts use the hypothetical.

It's actually important that courts use reasonable hypotheticals that can and do in fact exist in reality when they're assessing the application of criminal law that could result in the person's incarceration. They need to consider whether we drafted good laws. When we're drafting good laws, we need to make sure we're trying to address real-world problems, not things that we think may exist. I think each body, as a function of the decisions we take as a government and a legal system, improves the quality over time of the decisions that are finally rendered and baked into our laws.

Andrew Lawton: But as the dissent in Senneville says, a reasonable hypothetical has to first and foremost be reasonable. The two cases that went to the Supreme Court involved two individual men who had between them thousands of images and videos of child sexual abuse and exploitation material, children as young as three and four years old being subjected to absolutely heinous acts. The scenario the Supreme Court invented did not exist in any of the laws before. It was not at issue, and pretty much every legal expert I've spoken to about this has said it likely would never end up in that situation because of safeguards in place that would have prevented most likely a charge from even being laid under child sexual exploitation and abuse material.

Why are we catering to this extreme case that does not exist in law and, in doing so, removing a very real and I would say very necessary mandatory minimum that is there to ensure that actual heinous predators are given a minimum of one year, which I think is far too low?

Hon. Sean Fraser: There are a couple of things I'll offer in response.

First, let me say that we agree on how heinous the behaviour was based on the underlying facts that went to the Supreme Court. I think every one of our colleagues, regardless of their party, feels the same way. We need strong laws to address such egregious behaviour.

The reasonable hypothetical they cited, involving somebody who aged out of a teenage relationship effectively, is the kind of thing that exists in our society. Since that case has come up, I've had a few people come to me from a coaching, cadet program or teaching environment and say these things do come up and that they hope we crack down on the bad actors, but the 18-year-old who innocently received a picture probably isn't who we're thinking of when we think about child sexual exploitation and abuse material.

From my perspective, the use of that reasonable hypothetical is important to ensure that our laws capture appropriately the kind of egregious conduct that was the subject of the offences committed in that decision.

● (1155)

Andrew Lawton: Do you think some judges are too lenient?

Hon. Sean Fraser: I would agree or disagree with an individual decision on a given basis.

Andrew Lawton: I'll ask it in a clearer way, Minister. Do you believe that mandatory minimums are an important tool to prevent decisions that are too lenient for the facts at hand?

Hon. Sean Fraser: I have a different view as to why they're important. You want some certainty that certain crimes will be met with serious penalties. You have the opportunity to demonstrate, as a society, that certain behaviours will not be tolerated, so I support the reintroduction of these mandatory minimums that protect those in the books.

Andrew Lawton: In the Senneville case, judges were ignoring existing mandatory minimums, even without a so-called safety valve. The Investigative Journalism Bureau analyzed 100 cases between 2020 and 2025, and they found that one in three sentences for possession of child sexual abuse material had not adhered to the previous sentencing minimum. Why, then, is the existing minimum, even prior to the Supreme Court weighing in, not keeping these offenders behind bars?

Hon. Sean Fraser: I can't speak to what might be in the head of an individual judge for an individual case. The reasons may have varied between those cases. Suffice it to say, my view is that the mandatory minimum should be upheld, with the exception of cases where it would be grossly disproportionate.

One of the changes that's being proposed in this legislation will help address the problem you've raised by saying that if you're going to deviate, you have to explain why. If you offer reasons as to why it would be grossly disproportionate or why society would be outraged, I can understand why you might see someone moving away. In an exercise of transparency, this bill is going to not only restore the mandatory minimums, but also give more clarity on the kinds of cases you've just raised with me.

The Chair: Thank you, Mr. Lawton.

The last round goes to Mr. Housefather for five minutes.

Anthony Housefather (Mount Royal, Lib.): Thank you, Mr. Chair.

Thank you, Sean. It's much appreciated that you're before the committee.

Before I get to my questions, I want to discuss the issue of the notwithstanding clause, because it sounds like our Conservative colleagues have been using their question time to argue that the notwithstanding clause should have been used.

Minister, the notwithstanding clause has never been used by the federal Parliament. Is that correct?

Hon. Sean Fraser: Yes.

Anthony Housefather: Jean Chrétien was the prime minister for 10 years during the time that the notwithstanding clause was part of the Charter of Rights. He never used the notwithstanding clause. Is that correct?

Hon. Sean Fraser: Yes, and he remains proud of that.

Anthony Housefather: In my recollection, there were cases during Jean Chrétien's time as prime minister that Chrétien himself said he had reservations about. Two examples are Marshall, on fishing rights, and the same-sex marriage case. Is that correct?

Hon. Sean Fraser: Certainly.

Anthony Housefather: Yet he still managed not to use it. Using the notwithstanding clause is essentially saying that we have a protected right under the charter and we're going to.... Say we're using it because we're not going to limit a right in a way that is reasonable in a free and democratic society. By using the notwithstanding clause, we're essentially acknowledging that. Is that correct?

Hon. Sean Fraser: That's right. You've articulated the limit that I think we should do everything we can to live within.

Anthony Housefather: There are alternatives to using the notwithstanding clause—to get around a case like Senneville, for example, rewriting the law to address the concerns expressed by the majority in a court decision, whether we agree with it or not, as you have done in the case of Bill C-16. Is that correct?

Hon. Sean Fraser: More specifically, it is not only to address concerns, but to achieve the same level of public safety that exists or a greater level of public safety, given the laws we have today. That's particularly in the context of mandatory minimums that are written in the code but have been struck down.

Anthony Housefather: Exactly. If we go to what exactly you have proposed in Bill C-16, you're essentially restoring the mandatory minimums, but you're giving the court flexibility in a case where one of these reasonable hypotheticals is brought before the court, because nobody can be sure, no matter how long someone has been a prosecutor, that no prosecutor would ever bring such a case. You're ensuring that the court will likely agree that the way the law is drafted is reasonable. It's a reasonable limit on a freedom that is subject to the notwithstanding clause because the court has the discretion in this rare case to impose a lesser sentence.

Hon. Sean Fraser: I expect that in fact far more mandatory minimums will be upheld in the real world as a result of these changes.

● (1200)

Anthony Housefather: I would agree with you.

Minister, one of the really important things that I don't think we've touched on is how much consultation you did to get us to this bill. Consultation is the key to making sure we have legislation that multiple stakeholders—and hopefully with a consensus in Parliament—will agree to.

Could you talk about the lengthy process of consultation that you, your parliamentary secretary and the department did with respect to this bill?

Hon. Sean Fraser: Certainly, and at the risk of running out of time.... I think we should all acknowledge that we don't make good decisions if elected officials sit among one another behind closed doors and come up with an idea. There are experts who have dedicated their lives or careers, or who are willing to loan their expertise earned through lived experience, to informing what changes cause problems in people's lives and what solutions will avoid those problems for people going forward.

We spoke with law enforcement, with victims advocates, with people who have been victimized by crimes, including sexual crimes, and with people who have lost their family members to violence. We want to respond to the very real-world phenomenon that too many people are being hurt, too many people are being abused and too many people are being killed. We want to breathe their voices into the laws we adopt so that we can offer protections for people who are living through circumstances that they continue to live with the consequences of every single day.

Anthony Housefather: Mr. Chair, do I have any time left?

The Chair: You have one minute.

Anthony Housefather: Mr. Minister, could you talk a bit about how you decided to move towards the principles illustrated in the law to deal with Jordan? What consultations did you do? I heard Mr. Fortin's comments, and I think it's important to talk about how much you consulted when you came up with the principles of what delays would be reduced and so forth. Could you talk about who you talked to?

Hon. Sean Fraser: Very quickly, it was lawyers with experience in prosecution and defence, those responsible for the courts, law enforcement frustrated with cases that they have poured themselves into, only to have the result be a stay of proceedings without coming to their natural conclusion, and, importantly, victims who have actually lived through this experience. These are the people who have seen a crime committed against them go unpunished as a result of delays, not as a result of an accused person defeating the charges and receiving a verdict of not guilty.

We tried to understand the experience. I'm sure that you as an MP have probably seen, as I have, this injustice play out over the course of your career in politics. When you sit down with somebody who tells you they were assaulted sexually and that the perpetrator lives in their community and was charged but let go because the clock ran out, I can tell you that doesn't feel like justice to the victim. It doesn't feel like justice to me, and we need to take action.

Anthony Housefather: I agree.

Thank you so much.

The Chair: Thank you, Mr. Housefather.

Minister, thanks very much for being here today and thank you for your time.

We'll suspend for a few moments, and then we'll get to the second round.

● (1200)

(Pause)

● (1210)

The Chair: I call the meeting back to order.

I'd like to welcome the officials. We're also joined by Chelsea Moore and Joanna Wells for the second hour. Thank you for joining us.

We will jump right in. The first round of six minutes will start now with Mr. Lawton.

Andrew Lawton: Thank you very much, officials, for being here.

Ms. Wells, I know you haven't had the opportunity to be at many justice committee meetings, so I especially appreciate your being here.

I'd like to delve into the so-called safety valve. The bill itself says, and I'll read it very specifically:

> When imposing a sentence for an offence that has a minimum punishment of a specified term of imprisonment, a court shall impose a shorter term of imprisonment than the specified term if, in the circumstances, the minimum punishment would amount to cruel and unusual punishment for that offender.

This is basically giving judges the latitude to ignore minimum sentences if they believe that a minimum sentence would be cruel and unusual. I just want to delve into the scope of what this applies to.

In your understanding, could this section be invoked in a case involving aggravated sexual assault with a firearm?

Joanna Wells (Senior Counsel and Team Lead, Criminal Law Policy Section, Department of Justice): If this were adopted, it would apply to any mandatory minimum penalty that currently exists on the federal statute books.

Andrew Lawton: Okay, so would that include aggravated sexual assault with a firearm?

Joanna Wells: If there is an active MMP in that offence, yes.

Andrew Lawton: Would it include human trafficking?

Joanna Wells: It would include any offence for which there is an MMP that is currently on the statute books.

Andrew Lawton: Would that include extortion with a firearm as well?

Joanna Wells: It would apply to any MMP that is currently on the federal statute books.

Andrew Lawton: What about weapons trafficking, then?

Joanna Wells: Yes. I don't have committed to memory all of the offences under an MMP, but yes, it would apply, as I said.

Andrew Lawton: The reason I bring that up is that we have.... Of course, the offences that were at issue in Senneville, on child sexual exploitation and abuse material.... The problem here is that we already have cases where judges are finding, as in the Senneville case, that even one year is cruel and unusual punishment.

What consideration was given, as this bill was being crafted, to ways to prevent this from being basically a way for judges who don't believe in mandatory minimums to simply ignore them if they don't want to impose them?

Joanna Wells: I'll draw your attention to the language in proposed section 718.4. It proposes the standard of cruel and unusual punishment, which is the language that appears in section 12 of the charter. It essentially incorporates the charter standard into the Criminal Code, and the jurisprudence is clear that a sentence that reaches that level would be grossly disproportionate. That's a very high standard that would outrage the public's sense of decency.

It incorporates a very high standard, and it would apply not to a reasonable hypothetical, but to the individual before the judge. It would very much be a tailored response to the offender who is being sentenced by the court. If, in that context, the MMP would result in cruel and unusual punishment, the judge may depart from the MMP, but they must still impose a term of imprisonment.

Andrew Lawton: In the case of Senneville, where Senneville had hundreds of images of child sexual exploitation and abuse material, the trial judge found that a one-year minimum would be cruel and unusual. Is that correct?

Joanna Wells: I don't know what the trial judge found. I do know that a one-year penalty was imposed on Mr. Senneville. That was the ultimate result, even though it was struck down in a reasonable hypothetical situation.

Andrew Lawton: It was nine months—or that was Naud; I'm sorry.

Joanna Wells: I believe it was never nine months. Mr. Senneville received one year.

Andrew Lawton: I yield to Mr. Baber.

Roman Baber: Under the Criminal Code, mandatory minimum sentences apply to a range of serious offences. They're designed to set a sentencing floor to create deterrence and denunciation of certain crimes, but in recent years, courts have been striking down mandatory minimum sentences as cruel and unusual. That includes the Supreme Court.

In Bill C-16, which we're looking at, the Attorney General points to Senneville and recent jurisprudence where a mandatory minimum was struck down for possession of child pornography. To address this, the government is creating a safety valve that would allow courts to impose sentences below the mandatory minimum where applying it would be cruel and unusual. Effectively, this would convert a mandatory minimum sentence from a binding floor and allow a judge to disregard it. In practice, this means that mandatory minimum sentences would no longer be mandatory. Is that not correct?

Joanna Wells: I mean, I think you could look at it that way. What it does is provide judicial discretion to depart from an MMP in a very narrow circumstance when a judge is of the opinion that in the case before them, it would result in cruel and unusual punishment—i.e., it would violate the charter, because that is the charter language. It provides a very small window.

Roman Baber: I understand that while jail would still be required, the duration of imprisonment would be left to a judge's discretion.

Joanna Wells: That is correct.

Roman Baber: In practice, that means the mandatory minimums that are prescribed by Parliament are no longer mandatory if a judge feels they should not be applicable in any given case.

I submit that this is outright crazy. This will erode mandatory minimum sentences. It will result in lighter sentences for serious offenders. The Liberals are doing precisely the opposite of what is now required. Am I wrong?

Joanna Wells: There are two things I would say in response to that. Currently, without an escape clause, what is happening, as the minister indicated, is that courts are striking the MMP down so they apply in no situations. The proposed approach in Bill C-16 is adding the structured judicial discretion clause to restore the mandatory minimum penalties that have been struck down so they apply to the majority of offenders, except in those very narrow cases for which it may be grossly disproportionate for that offender.

The Chair: Thank you, Mr. Baber. You're out of time. In fact, you're over time.

Ms. Lattanzio, we'll go over to you.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you to the officials for being here this morning.

Bill C-16 proposes a new offence related to coercive and controlling behaviour in intimate partner relationships. Can you explain the legal elements of this offence? What would need to be proven in the courts for a conviction to occur?

Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you. That's an excellent question.

The offence has been carefully crafted to criminalize engaging in a pattern of coercive or controlling conduct, either with the intent to cause the accused's intimate partner to believe their physical or psychological safety is threatened or with recklessness as to whether that pattern of conduct could have this effect. That is the mental element of the offence. The act element is, as I've said, engaging in a pattern of coercive or controlling conduct.

The offence would define a pattern of coercive or controlling conduct as any combination or repeated instances of three types of conduct: violent conduct, including any attempted or threatened violence towards the intimate partner, the intimate partner's child, their animal or anyone known to them; coercing or attempting to coerce the intimate partner to engage in sexual activity; or conduct that could, in all the circumstances, reasonably be expected to cause the intimate partner to believe their physical or psychological safety is threatened. We refer to that as conduct that threatens safety.

The first two types of conduct are criminal in and of themselves. The third type of conduct addresses all forms of subtle coercive conduct that could be engaged in by an abuser, provided that a reasonable person in the victim's position would believe their physical or psychological safety was threatened. In order to give that provision life, the legislation includes a non-exhaustive, illustrative list of different types of coercive conduct. That list is taken from the lived experiences of survivors of coercive control.

The approach is consistent with Scotland's approach. Stakeholders have told us that this is the gold standard, because it doesn't require the victim to testify that they actually feared for their safety. That is the critical element.

Patricia Lattanzio: Thank you.

Some comments or suggestions have been made that allowing judges to depart from a mandatory minimum in very limited circumstances would weaken penalties. Can you explain how the safety valve actually helps ensure that these mandatory minimum sentences remain constitutionally sound while still requiring a term of imprisonment for serious offences and offenders?

Joanna Wells: I think the minister also made this point when he was here earlier. What the escape clause does is create a situation whereby MMPs currently in the statute book that have been struck down by the Supreme Court of Canada or held to be inapplicable by other courts at other levels are reanimated.

They apply again, but this provides a small window of judicial discretion to allow judges to depart from a mandatory sentence in situations where they may otherwise have to strike it down or not apply it in a particular case because it would offend section 12 of the charter, the right to be free from “cruel and unusual treatment or punishment”. In that respect, it reanimates MMPs that are not currently at issue while allowing for judicial discretion.

I would also like to clarify that the exception for the MMP doesn't impact a judge's ability otherwise to impose a just and appropriate sentence.

Patricia Lattanzio: Moving on to the portion of Bill C-16 on the online protection of children, several amendments of the bill focus on protecting children online, including changes related to child luring and sextortion. Can you describe how these changes expand the tools available to law enforcement?

Nathalie Levman: There is a bunch of different amendments in Bill C-16 that would directly address sextortion, including sextortion of children, which we know to be a significant problem. The first is an offence that would prohibit threatening to distribute child sexual abuse and exploitation material. That's intended to assist with proving sextortion cases, because the extortion offence requires not just threatening behaviour, but also inducing the other person to do something, whereas this offence would apply to a person who threatens, let's say, a child to distribute CSAM without requiring proof of the purpose. The same new offence would apply to threatening to distribute intimate images in the world of sextorting adults.

We also have an amendment in Bill C-16 that would expand the child luring offence to ensure that police can use that offence when an accused communicates with children in order to sextort them. We call those preparatory offences. They address conduct that occurs before the actual offence occurs, and that provides greater protection for children. There would be—

The Chair: I'll have to ask you to wrap up, please.

Nathalie Levman: —an aggravating factor on the extortion offence in the case where it's sexual in nature.

The Chair: Thank you.

Mr. Brunelle-Duceppe, welcome to the justice committee. You have six minutes.

[*Translation*]

Alexis Brunelle-Duceppe (Lac-Saint-Jean, BQ): Thank you, Mr. Chair.

My colleague seems to be very interested in mandatory minimum sentences.

On the whole, Bill C-16 would introduce a so-called safety valve for judicial sentencing discretion that would have the effect of reinstating, in future cases, mandatory minimum sentences that the courts have found unconstitutional. A new provision would allow the courts to sentence an offender to less than the minimum term of imprisonment, but only if the minimum sentence would constitute cruel and unusual punishment for that offender.

Could you explain why this approach was chosen?

[*English*]

Joanna Wells: On the MMP question, I think the objective of the change, of the proposal, is to allow judicial discretion in the case before a judge—that is, the case they're hearing. In that situation, the mandatory minimum penalty would be unconstitutional. It would amount to cruel and unusual punishment.

● (1225)

What's happening now is that often the case before the courts would not fall under that situation, but when the court does its section 12 analysis, it looks to a reasonable hypothetical. That is a case that often falls at the lower end of the moral blameworthiness spectrum, for which an MMP might not be appropriate or for which it would be cruel and unusual. On that basis, they strike it down.

The proposed approach in the bill is intended to focus the analysis on the offender before the court and protect the MMP by moving the analysis to the specific offender.

[*Translation*]

Alexis Brunelle-Duceppe: Which country did you look to as a model, and how does this approach differ from what other countries are doing, if at all?

[*English*]

Joanna Wells: The model that has been put forward as part of Bill C-16 is responsive to Canada's legal landscape and our jurisprudential framework. This type of structured judicial discretion, or the fact that it is needed in the criminal space, has long been called for by criminal law experts and sentencing experts in Canada.

The Supreme Court has suggested that this type of structured discretion would be a way of preserving the mandatory minimum penalties in the Criminal Code. That's the model we based it on, as opposed to looking internationally. It was very much a made-in-Canada approach for the specific issues we've been facing.

[*Translation*]

Alexis Brunelle-Duceppe: Which mandatory minimum sentencing provisions that were found to be unconstitutional would be restored if this measure is passed?

I would appreciate it if you could provide specific examples.

[*English*]

Joanna Wells: The best example to provide is the mandatory minimum penalty of one year that was recently struck down by the Supreme Court in the Senneville case in October of last year. In that case, the court held that the mandatory minimum penalty was unconstitutional and could not apply. It did not apply. It struck it down across the country.

By enacting the structured judicial discretion in Bill C-16, that MMP, because it remains in the statute books, would be reanimated. It would apply again going forward, but offenders who are charged would be evaluated under the judicial discretion clause.

The MMP would apply, and it's expected to apply in the vast majority of cases.

[*Translation*]

Alexis Brunelle-Duceppe: Thank you.

Another major issue I believe my colleagues are concerned about, when it comes to Bill C-16, are the court delays. They remain a major concern, especially since the Jordan decision.

Practically speaking, how will the measures proposed in the bill help to reduce delays in criminal proceedings?

Chelsea Moore (Team Lead and Legal Counsel, Criminal Law Policy Section, Department of Justice): Thank you for your question.

It's important to recognize that the bill would maintain the incentives established by the Jordan decision, but would create new incentives by simplifying sexual offence proceedings, for instance, which are known to be a problem in terms of the Jordan time limits. The bill would also set time frames for the filing of applications, which are also known to be a problem. The approach really targets the proceedings.

The bill also contains measures to simplify the presentation of evidence and provides more guidance on complex cases, so that they are recognized as such in accordance with the Jordan decision.

Alexis Brunelle-Duceppe: Proceedings involving offences against children are known to be especially lengthy in many cases.

Is there anything specific in the bill to speed up the handling of those cases, so that child victims don't have to wait years for the trial to end?

● (1230)

[*English*]

The Chair: You have time for a very brief answer.

[*Translation*]

Chelsea Moore: All of the court delay measures in the bill will address cases where the victims are children. Those cases are among the most complex and will be recognized as such under the bill.

[*English*]

The Chair: Thank you.

Mr. Gill, you have five minutes.

Amarjeet Gill (Brampton West, CPC): Thank you, Chair, and thank you, officials.

Good afternoon, everyone.

We are all here to strengthen and improve our laws and our justice system so we can restore confidence among Canadians. Families expect firm consequences, not legal loopholes.

With Bill C-16, are we strengthening public safety or creating more legal challenges in the courts?

Matthew Taylor (Senior General Counsel and Director General, Criminal Law Policy Section, Department of Justice): I'll take that question. Thank you.

In his remarks, the minister talked about the ways that Bill C-16 would enhance criminal justice system responses to particular types of crime—for example, gender-based violence, sexual offences against children, sextortion, deepfakes and sexually explicit deepfakes. Certainly, a range of new tools are being proposed that would address pressing public safety threats.

The minister also talked about what the bill is trying to do with respect to mandatory minimum penalties, which is to ensure that they remain available for the range of offences for which Parliament has already decided warrant a mandatory minimum penalty. This is with a view to enhancing public confidence in the sentencing framework in criminal law and ensuring that mandatory minimum penalties remain available in specific cases.

Amarjeet Gill: I know you talked about victims in this case. I always say that it's time to put victims ahead of criminals.

Does Bill C-16 give greater legal priority to victims over offenders? If yes, can you please point to the clause? If no, why are victims still not the priority?

Matthew Taylor: I might offer a few examples. Then I'm happy to unpack those a bit more.

As one example, there are a number of proposed amendments that specifically acknowledge the impact that criminal justice system delays have on victims and would require courts and prosecutors to turn their minds to those specific impacts when conducting an analysis of justice system delays. There are amendments to the Criminal Code and the Victims Bill of Rights in relation to that.

There are also proposed changes to make testimonial aids easier to obtain by adult victims in sexual offence proceedings. This is something the government heard through consultations, the work of Parliament, and the victims ombudsperson. Although there are testimonial aids in the Criminal Code, they can be more difficult or challenging to obtain in certain cases. The bill seeks to make those more readily available to the victims, as I mentioned.

Then, of course, as the minister mentioned, there are a number of proposed amendments to strengthen the Victims Bill of Rights as well.

Amarjeet Gill: Do you have the numbers of the clauses that you mentioned address these points?

Matthew Taylor: Sure. I can give you a couple of examples.

Clauses 38 to 41 are about the proposed changes to the testimonial aid provisions. Clause 46 deals with delays. Clauses 135 to 144 are about the proposed changes to the Victims Bill of Rights.

Amarjeet Gill: Whose decision was it to include mandatory minimum penalty reforms alongside the gender-based violence proposals in this bill?

Matthew Taylor: That was a decision taken by the Minister of Justice as lead minister responsible for this legislation.

Amarjeet Gill: Did the minister's office have any input into what went in this bill? If yes, what was the input?

● (1235)

Matthew Taylor: Certainly, in our role as public servants, there's an ongoing conversation between ourselves and the Minister of Justice in terms of giving effect to the government's criminal justice system priorities. We take guidance from the minister and from the government via its platform commitments, for example, or the Speech from the Throne.

Amarjeet Gill: Is it correct to say that the minister's office saw and approved a draft bill that included broad, sweeping reforms to mandatory minimums, including the other gender violence reforms?

Matthew Taylor: Yes, absolutely. The government is responsible for the legislation that it introduces.

Amarjeet Gill: Who suggested the inclusion of making intimate—

The Chair: I'm sorry, Mr. Gill. That's your time.

Amarjeet Gill: Is that the time?

The Chair: That's the time.

Next we have Mr. Chang.

Wade Chang: Thank you for being here, officials.

What resources or training will be required for law enforcement or prosecutors to effectively implement the new offences, particularly those related to coercive control or online harm?

Nathalie Levman: The minister mentioned that there is a two-year coming-into-force provision attached to the coercive control offence. That is specifically to facilitate the training being developed right now at the FPT level. It's very targeted training to deal with some of the concerns we heard during a 2023 stakeholder engagement process on the potential unintended, negative impacts of a coercive control offence, one of them being weaponization against the victim of the offence.

For the offence itself, there are some critical provisions that assist in avoiding or minimizing the possibility of that occurring. These will form a central part of the training being developed, and that will be rolled out before the coercive control offence comes into force. That's consistent with the knowledge we've gleaned from other jurisdictions that have implemented coercive control offences. Success is largely dependent on effective training.

Wade Chang: How will the government support smaller or rural police services in adapting to these new investigative requirements, especially in digital evidence cases?

Matthew Taylor: One of the ways we work to support legislation enacted by Parliament is through engagement with our provincial and territorial partners. That takes many different forms. It can involve things like the development of handbooks, for example, to support police and prosecutors in implementing new legislation. It can involve webinars. It can involve knowledge exchanges. These are things that we would continue to explore with our provincial partners, which in turn involve their criminal justice system actors, whether they be police officers from smaller communities or larger communities, Crown prosecutors or others responsible for implementing changes to the criminal justice system.

Wade Chang: Do I still have time, Mr. Chair?

The Chair: You have two minutes.

Wade Chang: I will defer to Ms. Lattanzio.

Patricia Lattanzio: Thank you, Mr. Chair.

Since we began the study this morning, I think it would be appropriate at this time to put forward a motion with regard to the framework and the study of this particular bill, Bill C-16. I move:

> That the committee begin its study of Bill C-16 on Monday, March 23, 2026, with the first hour dedicated to the appearance of the Minister of Justice and the second hour to departmental officials.
>
> That the committee hold five meetings with witnesses on March 25, April 13, April 15, April 20 and April 22, 2026.
>
> That, following the conclusion of witness testimony, the committee proceed to clause-by-clause consideration of Bill C-16 on Monday, April 27, 2026.

I am sending both versions, in French and in English, to the clerk as we speak.

Andrew Lawton: On a point of order, could we have a brief suspension to review the motion?

The Chair: I was going to suggest that we suspend, because it's being circulated right now.

Thank you. We'll suspend.

● (1235)

_____(Pause)_____

● (1245)

The Chair: I'd like to call the meeting back to order.

We just heard from Ms. Lattanzio on her motion. I believe Mr. Lawton wants to make some remarks.

Mr. Lawton.

Andrew Lawton: Thank you very much.

I appreciate the opportunity to have some direction on where we go as a committee from here. I think there is a lot of common ground between the parties on a lot of the parts of Bill C-16, but as we've discussed today in our interventions with the minister and with the justice department officials, there are a few very key areas that I think need some more clarity. I would love to go into clause-by-clause having done a lot of the work up front. That, as we've seen on previous bills that have come before this committee, is very important.

I've seen the witnesses who have been proposed by all parties. There are a lot of witnesses. I'm not convinced that we will be able to get through them adequately in five meetings. I would propose an amendment—and I hope we can find some unanimous agreement here—to replace “five meetings with witnesses on March 25, April 13, April 15, April 20 and April 22, 2026” with “nine further meetings”. We do not take a position as to the timing of those. If we need to sit on break weeks, that's obviously an option. That would give us time to get through all of the witnesses who have been put forward by all parties.

That's the amendment. I'd note the size of the bill. It's 170 pages. It is quite substantive, and I want to make sure we're covering the issues.

● (1250)

The Chair: Everybody is free to speak to your amendment, Mr. Lawton. I just want to point out, though, that if you're only proposing a change to the second paragraph, the third paragraph might need to be changed, because I don't think we can complete it by April 27.

Andrew Lawton: I'm sorry. If there's unanimous agreement, what I would say is to have nine further meetings, after which the committee proceed to clause-by-clause consideration.

The Chair: All right.

Are there any comments? Are we ready to vote? Okay, I'm not going to miss that opportunity.

(Amendment negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

The Chair: The amendment has been defeated, which takes us back to Ms. Lattanzio's motion.

Mr. Brunelle-Duceppe.

[*Translation*]

Alexis Brunelle-Duceppe: Thank you, Mr. Chair.

I'd like to propose an amendment to Ms. Lattanzio's motion. At the end of the last paragraph, immediately after “on Monday, April 27, 2026”, I propose adding “and that the committee then proceed with the study proposed by Rhéal Fortin on the appointment of judges, as adopted on September 23, 2025”.

[*English*]

Roman Baber: Can we just suspend for a moment, Chair?

The Chair: Sure. We can suspend for two minutes.

● (1250)

_____(Pause)_____

● (1250)

The Chair: I call the meeting back to order.

Does anybody have any comments on Mr. Brunelle-Duceppe's proposal?

Mr. Housefather, you have your hand up.

[*Translation*]

Anthony Housefather: I would just like to understand, Mr. Chair.

Ms. Hepfner's private member's bill was referred to the committee. I'd like to know whether Mr. Brunelle-Duceppe is proposing that we consider Ms. Hepfner's bill once we're finished with Bill C-16 or whether he's proposing doing his study and setting Ms. Hepfner's bill aside. I wasn't quite sure.

[*English*]

The Chair: Mr. Brunelle-Duceppe.

[*Translation*]

Alexis Brunelle-Duceppe: Logically, I believe committees have 30 days to examine a private member's bill, so the committee has obligations to deal with before these bills. The purpose of my amendment is to prioritize what we can once we're done with Bill C-16 and the committee has met all of its other obligations.

The first study to prioritize once the committee has met its obligations, in other words, Bill C-16 and perhaps the private members' bills, should be the one I'm proposing, depending on how much time we have left—or you have left, I should say, since I'm not on this committee. That is really what I'm trying to do with my amendment, so I think the wording of the amendment is pretty clear.

I hope that answers Mr. Housefather's question.

● (1255)

[*English*]

The Chair: Just so everybody understands, it's Bill C-223, which has to be reported back to the House by June 18. We would have to satisfy those timelines and then proceed accordingly, as you've outlined.

Are there any other comments?

Roman Baber: Do we not have another private member's bill in the queue before our committee?

The Chair: No, Bill C-223 is the only one we have.

Roman Baber: Is Bill C-223 the only bill outstanding for the justice committee?

The Chair: Yes.

Go ahead, Mr. Clerk.

(Amendment agreed to: yeas 9; nays 0)

The Chair: I'm sad Mr. Fortin is not here. He's been trying to get this on the agenda for some time and he's not here for the vote.

(Motion as amended agreed to: yeas 5; nays 4)

The Chair: We're out of time for witnesses.

I have one budget that we have to get done. We have budgets for all the various studies. We're behind, and we haven't approved the food budget for the time we spent on Bill C-9, which is the parliamentary equivalent to dining and dashing, because we actually had the food; we just haven't approved the budget to pay for it. The budget total we're voting on is a supplementary request of $15,000.

The budget has been circulated. Everybody should have had it in their inboxes for some time now. Are all in favour?

Some hon. members: Agreed.

The Chair: Thank you, everybody.

The meeting is adjourned.