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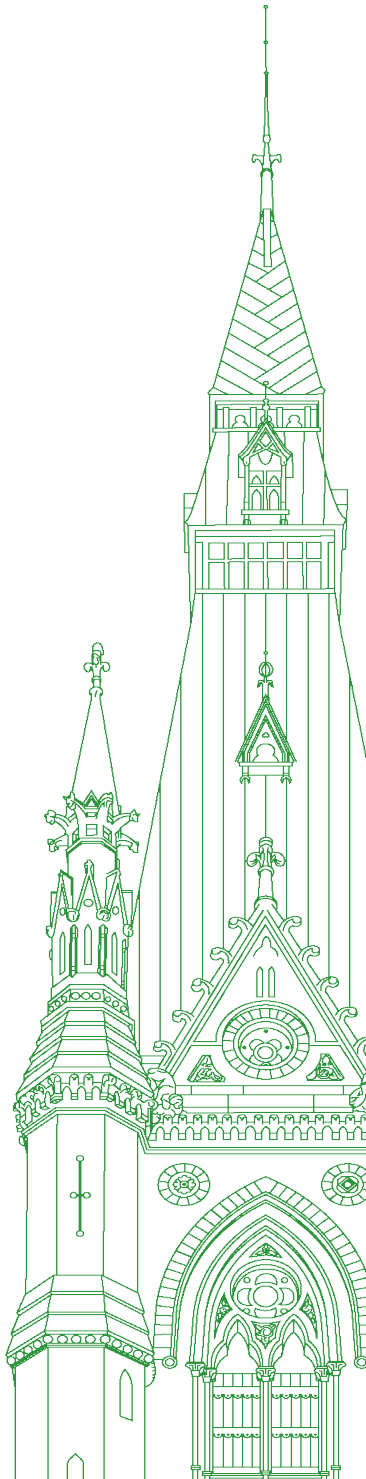

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

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

Welcome to meeting number 12 of the House of the Commons Standing Committee on Justice and Human Rights.

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

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

I would like to welcome our witnesses to the committee's first meeting with witnesses appearing in person since we started this parliamentary session.

We have here in person two witnesses from Mothers Against Drunk Driving, Eric Dumschat and Steve Sullivan. We have, from the Canadian Bar Association, Jody Berkes and Tony Paisana. They are appearing virtually. From the South Asian Bar Association of Toronto, we have Janani Shanmuganathan, director. I think her camera is probably off, but she's there, I believe.

Each one of you will have five minutes as a group; you can split it among your team. Afterwards there will be rounds of questions.

I will give you and the questioners a 30-second warning signal, and then I will give an “out of time”. I try to be as liberal as possible in that respect.

It's now over to you. We'll begin with The Canadian Bar Association.

Mr. Tony Paisana (Counsel, The Canadian Bar Association): Thank you, Chair.

My name is Tony Paisana. I am the chair of the CBA's criminal justice section. I am joined by my colleague Jody Berkes, the immediate past chair.

The CBA represents approximately 36,000 lawyers, students and jurists across Canada. The criminal justice section, in particular, comprises a mix of both Crown counsel and defence counsel, and it's from this unique, balanced perspective that we appear today and offer our commentary on Bill C-5.

I will be addressing you on the provisions in this bill relating to CSOs, or conditional sentence orders, and Mr. Berkes will deal with mandatory minimum sentences.

Put simply, the CBA supports Bill C-5. As stated in our brief, this legislation will lead to a fairer and more just sentencing regime, one that recognizes that criminal offences can be committed in various ways and that one size does not fit all, particularly when it comes to offenders from traditionally marginalized communities.

The lifting of prohibitions on CSOs is among one of the most important reforms in the criminal law over the last decade, in our view.

We make several points about CSOs, but I'll highlight three here.

First, CSOs are vital to the proper functioning of the criminal justice system and to ensuring that non-dangerous offenders are encouraged to rehabilitate rather than harden themselves within our prison system. I emphasize and reiterate that CSOs, by statute, can only be granted to non-dangerous offenders who commit an offence deserving of less than two years in custody.

Second, making CSOs available does not mean that you will receive them. Indeed, I successfully argued a constitutional challenge to some of these very provisions in a drug trafficking case called “Chen”, but the trial judge nonetheless sentenced my client to nearly four years in custody. The sky did not fall, but as a result of that decision, numerous other marginalized accused in British Columbia have access to CSOs where appropriate.

What we are talking about is affording sentencing judges more discretion, not less. Suggestions that serial rapists, human traffickers or other serious offenders will now be liberally afforded CSOs are fanciful, in my respectful view. These people will continue to go to jail, as they always have.

Third, the need for reform is urgent. As a result of a patchwork of constitutional challenges across the country, Canadians have inconsistent access to CSOs. If a drug-addicted mother of three commits a low-level trafficking offence to feed her addiction in the Downtown Eastside of Vancouver, she is eligible for a CSO in B.C. If that same offender commits that same offence in Winnipeg or Edmonton, she is not. This lack of uniformity is troubling and inconsistent with our federal system.

Each day that goes by, more non-dangerous offenders are sentenced to jail when they might otherwise be provided an opportunity to rehabilitate in the community, where access to programming, work, treatment and counselling are more accessible and cost-effective to the state.

Those are my comments on CSOs. I'll now turn it over to Mr. Berkes to touch upon mandatory minimum sentences.

● (1535)

Mr. Jody Berkes (Counsel, The Canadian Bar Association): Good afternoon, Mr. Chair.

As Mr. Paisana mentioned, my name is Jody Berkes. I join you today from the traditional territory of the Wendat, the Anishinabek Nation, the Haudenosaunee Confederacy, the Mississaugas of the Credit First Nation and the Métis nation. This land is covered by the Dish With One Spoon treaty.

If there is one message that the CBA has for the committee, it is this: Bill C-5 is not soft on crime. If and when Bill C-5 is proclaimed in force, it will not prohibit any judge from sending a single violent offender to jail. On the other hand, it will allow non-violent offenders who deserve a second chance an alternative to incarceration.

Mandatory minimum sentences have contributed to overcrowding in prisons, an over-incarceration of marginalized communities and increases in court delays as people litigate matters when they are guilty, instead of resolving them. Additionally, mandatory minimum sentences have distorted the principles of sentencing. The fundamental principles of sentencing from the common law are now codified in section 718.1 of the Criminal Code. Those principles are that “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”

As a result of mandatory minimum sentences, instead of a sentence tailored to the seriousness of the offence and the record of the offender, we have a one-size-fits-all approach of jail for everyone, regardless of their circumstances. Allowing non-violent offenders to serve sentences in the community allows offenders to work to support their families, receive treatment for the addictions that caused their offending and give back to the community they harmed through restorative justice measures.

On the other hand, mandatory minimum sentences simply warehouse people until they can be released, often with diminished life skills and prospects for employment, and untreated for the problems that caused them to offend in the first place.

My colleague Mr. Paisana has spoken about the changes to the conditional sentence regime in Bill C-5, but the short answer is if an offence carries a mandatory minimum sentence, it is ineligible for a conditional sentence. As a result, without eliminating mandatory minimum sentences, the other aspects of this bill are useless.

Bill C-5 represents the first step in recognizing the harmful effects of mandatory minimum sentences. The CBA supports the repeal of all mandatory minimum sentences, except for murder. There is no harm prevented by mandatory minimum sentences but a lot of harm caused by them.

We look forward to answering the committee's questions.

The Chair: Thank you. Thank you to the Bar Association.

I will go to Mothers Against Drunk Driving. It's over to you for five minutes.

Mr. Eric Dumschat (Legal Director, Mothers Against Drunk Driving): Thank you very much.

Mr. Chair, members of the committee, we appreciate the opportunity to speak with you about Bill C-5 today. My name is Eric Dumschat. I am the legal director for Mothers Against Drunk Driving Canada. I am pleased to be sharing my time today with my colleague, Steve Sullivan, who is our director of victim services.

Much of the information we will discuss today here is expanded upon in the written brief that we've submitted to the committee, and this includes the appropriate reference information.

MADD Canada is a national charitable organization with the mission to stop impaired driving and to support victims and survivors of this violent crime. We have volunteer-led groups in over 100 communities across the country, and indeed many of our volunteers are themselves victims and survivors of impaired driving.

Our work is aimed at providing support to victims and survivors, raising awareness about the dangers of impaired driving and saving lives and preventing injuries on Canada's roads. We are here today to talk about the provisions of Bill C-5 dealing with conditional sentences and how they would impact victims and survivors of impaired driving.

If the bill is enacted in its current form, it would allow for the return of conditional sentences for any first-time impaired driving offender who met the eligibility criteria, including those convicted of impaired driving causing death or the associated refusal offence.

To put this in context, in 2018, as part of Bill C-46, the government repealed, revised and re-enacted the Criminal Code transportation offences. As a result of this, conditional sentences were allowed for some new impaired driving offences that were previously ineligible for them, so long as they were now tried by summary conviction. However, impaired driving causing death was excluded from eligibility for a conditional sentence, presumably because it was deemed sufficiently egregious to remain a purely indictable offence that carried a maximum sentence of life in prison. This decision is in line with the unanimous Supreme Court of Canada case of R. v. Proulx, which held that conditional sentences should not be imposed when the need for denunciation and deterrence is so strong that incarceration is the only way to express society's condemnation of the conduct or to deter similar acts in the future.

MADD Canada believes that impaired driving causing death and its associated refusal offence meets this criterion. We recognize that it would be uncommon to seek a conditional sentence for someone convicted of impaired driving causing death; however, any chance of this happening is too high when a life has been taken by the actions of another.

MADD Canada does not believe that a conditional sentence for impaired driving causing death should be an option at all. To allow the possibility for an impaired driver who has caused the death to serve his or her sentence outside of a prison would undermine the seriousness of the crime and adversely affect many victims and their families. We need to remember that this is a completely preventable crime that continues to occur despite years—decades—of advocacy and education efforts by MADD Canada, other organizations and indeed the Government of Canada, yet Canadians still make the decision to get behind the wheel of a car while impaired by alcohol or drugs, and in doing so, they take the lives of numerous Canadians each year.

We understand that the changes contained in Bill C-5 are made in part to address the systemic racism inherent in Canada's criminal justice system and we support this goal. However, the government has determined that some restrictions on conditional sentences are in line with this objective and are constitutional and that certain offences should remain ineligible for conditional sentences under Bill C-5. With this in mind, MADD Canada strongly recommends that impaired driving causing death in section 320.14(3) and the associated refusal offence in section 320.15(3) of the Criminal Code be added to the list of offences ineligible for conditional sentence in any circumstance, as has been outlined in clause 14 of Bill C-5.

Thank you for the time and the opportunity to present to you today. I'll now turn things over to Steve Sullivan, MADD Canada's director of victim services.

● (1540)

The Chair: Mr. Sullivan, I'll just remind you that you have about a minute.

Mr. Steve Sullivan (Director of Victim Services, Mothers Against Drunk Driving): Thank you, Mr. Chair.

MADD Canada is the only national anti-impaired driving organization in the country to provide services to victims and survivors of impaired driving. When conditional sentencing provisions were first enacted in 1996, families were outraged and felt revictimized by the imposition of house arrest for someone who took the life of their loved one.

Losing someone in an impaired driving crash is extremely difficult to deal with because it is something that is totally preventable and because these deaths are not seen to be as serious as other criminal deaths like homicide. In 2007, the federal government enacted Bill C-9, which narrowed the categories and excluded impaired driving causing death. MADD Canada and our volunteers—many of them have lived experience—worked hard to eliminate conditional sentences for impaired driving causing death.

People we support suffer from PTSD, depression and anxiety. Many feel sentences for impaired driving causing death do not reflect the harm that has been caused. For families, the intent and motivation of the offender is not significant. In recent years, courts have recognized the need for stricter sentences for impaired driving causing death, but we believe to allow for the possibility of conditional sentences in these cases, which are entirely preventable acts, suggests they are not a serious crime.

Thank you, Mr. Chair.

The Chair: Thank you.

Hopefully, if you have more, we'll be able to extract it in the questions.

Next, for five minutes, we have Janani Shanmuganathan, from the South Asian Bar Association.

Ms. Janani Shanmuganathan (Director, South Asian Bar Association of Toronto): Thank you to the standing committee for the invitation to present today.

I'm a board director of the South Asian Bar Association, the largest diversity organization in the country. I'm also a criminal defence lawyer.

Almost seven years to the day, the Supreme Court of Canada released R. v. Nur, a decision in which the Supreme Court, for the first time in 30 years, struck down a mandatory minimum sentence. I had the privilege of being counsel for Mr. Nur at the Supreme Court and I have worked on several challenges to mandatory minimum sentences since then. I come before the standing committee today with the benefit of litigating these challenges and with the stories of my clients who actually faced the mandatory minimum sentences that Bill C-5 would repeal.

There is one particular story that I want to share today. It is the story of my youthful client who, with no criminal record, walked into a convenience store holding a BB gun he previously bought from Canadian Tire, showed it to the store clerk and stole $100.

He was an alcoholic at the time and extremely drunk when he committed the offence. He used the $100 to buy even more beer. He was caught within a couple of hours and immediately confessed. In the time between his arrest and sentencing, he completely turned his life around. He enrolled in university, got into a relationship, regularly attended Alcoholics Anonymous and became a facilitator for Alcoholics Anonymous. The last sip of alcohol he had was on the day he committed the offence.

This client, this real person, received a 12-month jail sentence because that's what the mandatory minimum sentence demanded. No one in that courtroom—not the lawyers, the judge or the court staff who heard his story—thought that this person should go to jail for 12 months and be stripped from the prosocial life he had developed only to be locked up in a jail cell, but they had no discretion or choice. In the trial judge's words, it was heartbreaking to send this person to jail, but she had no choice.

What Bill C-5 would do is introduce discretion into the criminal justice system again, the discretion to consider the circumstances surrounding the offence and the moral blameworthiness of the offender and to ask, “What sentence does this person actually deserve?”

I also come before the standing committee today as a director of the South Asian Bar Association and a racialized lawyer who represents the racialized accused. When I walk into a courtroom or a jail and look at the faces of the accused whom I see, they resemble my own. So often, they are racialized. The empirical evidence backs up my lived experience. Study after study has revealed that Canada has a problem with the overrepresentation of indigenous and Black offenders in jail.

If this problem of overrepresentation matters to us as a country, then we need legislation like Bill C-5. We need to give trial judges the discretion to let people serve their sentences in the community or to shorten their jail sentence to only what's necessary. Without such discretion, judges don't have the ability to consider the systemic factors that contribute to the commission of crime: colonial legacy, residential schools, poverty, over-policing of certain communities.

Bill C-5 is not about being soft on crime. Offenders who deserve long jail sentences will continue to get those sentences. Bill C-5 is about proportionality and giving judges the discretion they need to ensure justice is done.

Thank you again for the opportunity to present today.

● (1545)

The Chair: Thank you, Ms. Shanmuganathan.

I will next go to our first round of questions, beginning with Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for the testimony they provided. It is good to see some of our witnesses here in person, because that's a first for our committee. I hope to see more of that in the future.

We heard the characterization of Bill C-5 as some offenders just needing an opportunity to “give back to the community”. As someone who was involved in the drafting of Bill C-9, which ended the practice of giving conditional sentences such as house arrest for crimes like criminal negligence causing death, manslaughter, impaired driving causing death, aggravated assault, aggravated sexual assault, sexual assault with a weapon, kidnapping and torture, I can tell you that these are serious offences. To pretend that somehow someone who's committed these offences should immediately be given a chance to go back into the community so they can “give back” is absolutely ridiculous.

Every case before a judge is different and every one of them brings its own unique challenges. Mandatory minimum penalties and house arrest have their place, but for serious offences, we need to make sure that our communities are protected and that offenders can get the help they need.

Using a firearm in the commission of an offence, weapons trafficking, robbery with a firearm and extortion with a firearm are things we hear about every day as parliamentarians. We hear about gun violence. These are currently offences that require someone who's been found guilty to serve jail time, as they should. This bill would end that. Obviously it should be a concern for all Canadians, whether they live in rural or urban areas.

As I mentioned, as parliamentary secretary to the minister of justice at that time, I was happy to work with organizations such as MADD Canada, which supported Bill C-9. They were looking at these offences from the perspective of the many victims they represent, as well as protecting Canadians from impaired driving. It's hard to believe, in fact, in my opinion, that we're back here discussing some of these offences after the hard work that went into correcting the imbalance in our justice system.

I will pose my question to MADD Canada.

Could you tell us how the legislation from 2007 impacted victims of impaired driving, and why victims of impaired driving and their families were calling on changes to the legislation as it was?

● (1550)

Mr. Steve Sullivan: Thank you, Mr. Chair.

As we mentioned, MADD Canada was very much involved in the discussion and debates around Bill C-9 back in 2007. We brought a message from the families we work with and support, families that had lost a loved one or multiple loved ones: House arrest and conditional sentences were not appropriate for impaired driving causing death.

We have seen sentences increase generally over that time, and I think it's important that the courts have recognized that an essential message needs to be sent in terms of denunciation and deterrence. The idea, however, that we could step back and possibly allow conditional sentences for impaired driving causing death is hurtful and harmful to many of the families we support. They feel it could revictimize them.

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

In your brief, you stated that many of the individuals with whom MADD Canada works feel that sentences for impaired driving-related deaths do not reflect the harm that was caused. In a September 2020 letter to the Prime Minister, you stated that, “in too many cases, we are the only support victims and survivors have”. We've heard, in this justice committee, about the need for support for victims and their families.

Since impaired driving is often not a priority for government-funded victim services, could you share what, if any, consultation MADD Canada had with the federal government on Bill C-5? I know you were consulted widely on Bill C-9 when some of these changes were first put into effect. These are changes that will impact the families of victims of impaired driving and put impaired drivers back on the street rather than in jail. Could you talk about consultations you've had with the federal government on this?

Mr. Steve Sullivan: We did have an opportunity to discuss the previous bill, Bill C-22, I believe, with department officials. We also met with the then parliamentary secretary to the minister of justice and expressed exactly the same sentiment we're expressing here today.

Hon. Rob Moore: I only have one minute left. Time flies.

We appreciate the work that you're doing because you bring forward the perspective of victims and their families. It is important for us as parliamentarians that the Criminal Code reflect Canadian values and a balance in our justice system that treats everyone fairly. I always like to err on the side of protecting our communities and victims and listening to the concerns of the families of victims who are no longer with us.

You stated that victims and survivors should not be sacrificed to safely return offenders to the community and that you believe that the well-being of victims and survivors should be balanced with the safe integration of offenders. I think most of us support the safe integration of offenders.

Could you expand a bit on how you reconcile those two things?

● (1555)

Mr. Steve Sullivan: I think all of the folks we work with appreciate that at some point individuals will come back to their communities. Their number one concern is that people do not recommit and harm another family. We support people changing and rehabilitation, but at the same time those decisions can impact the people who have been most affected by the crime. We want to make sure, whether it's a parole decision or probation, that we take into consideration their concerns and their needs as well.

The Chair: Thank you, Mr. Moore.

Now it's over to you, Ms. Dhillon, for six minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair. My questions will be directed to Ms. Shanmuganathan.

I'd like to start with something we've been seeing more and more of, which is the overrepresentation of people of colour and indigenous people in the criminal justice system.

Can you please talk to us about the impact of mandatory minimum sentences on these communities and community members who come from financially disadvantaged backgrounds?

Ms. Janani Shanmuganathan: What mandatory minimum sentences do is handcuff the ability of trial judges to give what they feel is the appropriate sentence for a particular offender.

What we know from the empirical evidence is that members of racialized communities are overrepresented in the criminal justice system. They are arrested disproportionately to their representation in their community. They're convicted. They're sentenced for longer periods of time. What mandatory minimum sentences do is force judges to send these particular members of the community to jail, even when, outside the mandatory minimum sentence, they wouldn't have to go to jail.

The reality is that these members of these marginalized communities may not have the resources to fight mandatory minimum sentences and the challenges in the courts, so they end up getting a sentence that they otherwise would not have received.

Bill C-5, through introducing discretion to trial judges, will hopefully alleviate the problem of overrepresentation.

Ms. Anju Dhillon: We've seen that minimum sentences have been in place for over a generation. Do you find they've had an impact in general or that they've really harmed marginalized, racialized communities, in your opinion?

Ms. Janani Shanmuganathan: I can only speak based on the experience I have representing certain communities and based on my review of the empirical evidence. The empirical evidence shows that mandatory minimum sentences don't deter crime. Simply having a mandatory minimum sentence in the book doesn't mean that a prospective offender is going to see that minimum and then decide not to commit the offence.

The things that are going to help alleviate crime are investing in resources in the community, such as by addressing issues of poverty, over-policing and those kinds of systemic issues.

If mandatory minimum sentences don't deter crime, the harm that they produce, in my view, is disproportionate. We send people to jail for long periods of time when they shouldn't be going to jail for those long periods of time.

Ms. Anju Dhillon: In your opinion, what are some of the impacts on somebody who receives a mandatory minimum sentence if it's their first offence and it's the first time they're being sentenced to a sometimes harsh sentence?

Can you talk to us a little bit about how it impacts them as a member of society?

Ms. Janani Shanmuganathan: Sure. It's the impact generally of sending a person to jail, and the story outlines this person who is a youthful offender with no criminal record who essentially rehabilitated himself and become a prosocial member of society. He is suddenly stripped from his life, his family, his friends, his job and his Alcoholics Anonymous meetings and put into a jail cell for 12 months. Stripping this prosocial person away from the community and making him serve a jail sentence simply because it's a jail sentence that the code requires is not good for him, and it's not good for society as a whole.

Ms. Anju Dhillon: In your opinion, can mandatory minimum sentences force those from disadvantaged backgrounds to relinquish their rights to be heard in court because they don't have adequate resources or legal representation and don't get the same, equal treatment they should get?

● (1600)

Ms. Janani Shanmuganathan: The danger of a mandatory minimum sentence is that it can act like an incentive, in that if a person is charged with an offence and is facing a mandatory minimum sentence if convicted and were to plead guilty to a lesser offence in order not to have to face that mandatory minimum sentence, it incentivizes the person to plead guilty to an offence even if they're not guilty of the offence. Even if the Crown can't prove the offence, they're incentivized to plead guilty just to avoid that mandatory minimum sentence.

Unfortunately, many of our accused who go through the criminal justice system don't always have the benefit of counsel and make these decisions with a cost-benefit analysis, and if they say, “Oh, if I just plead guilty to this, I don't have to go to jail for 12 months”, they may very well do that.

Ms. Anju Dhillon: Oftentimes we see that.

I thank you so much for your time and coming here to testify, and for the work you're doing to raise awareness.

The Chair: Thank you, Ms. Dhillon.

Ms. Janani Shanmuganathan: Thank you.

The Chair: Now we'll go over to Mr. Fortin.

[*Translation*]

Mr. Rhéal Fortin: Good afternoon, Ms. Shanmuganathan.

I was very interested listening to what you had to say. You just said that the problem with mandatory minimum sentences is that racialized individuals are less likely to be able to afford a lawyer to defend themselves, so they may decide to plead guilty for financial reasons. That means they end up serving prison sentences they may not have received otherwise.

Am I to understand that the real problem these individuals face is funding for legal services?

Are you saying that these people shouldn't be sent to prison because they're less fortunate? If someone can afford a lawyer, they may be able to avoid incarceration.

Is that what you're saying?

[*English*]

Ms. Janani Shanmuganathan: This is not a resource problem. The danger of the incentive that mandatory minimum sentences create affects every accused person when they're engaging in a cost-benefit analysis of what to do: Do I take a matter to trial because I am not guilty of the offence, or do I just resolve the matter in some way so I don't risk having to go to jail for a mandatory period of time?

The problem becomes exacerbated among accused people who belong to certain communities, because members of those communities, as a result of issues with poverty, may not have adequate supports or resources or advice to make those types of decisions, so it is not uniquely a problem of resources; it is a problem that mandatory minimum sentences create for all accused, namely the incentive to plead guilty to a different offence.

[*Translation*]

Mr. Rhéal Fortin: If I understand correctly, then, the answer is to make funding available for legal services so that all accused have access to counsel.

I'm still struggling to understand the impact of what you are suggesting: that mandatory minimum sentences shouldn't be imposed on racialized offenders. That logic seems somewhat questionable to me. You can argue either against mandatory minimum penalties or in favour of them, but the same rationale should apply to everyone. I take issue with the argument that racialized people are more likely to behave in a way that lands them before a judge. I don't think that's the reality.

Nevertheless, Ms. Shanmuganathan, would you agree with me that we should do away with some of the existing mandatory minimum sentences, while keeping others?

Do you think all mandatory minimum penalties should be eliminated, regardless of whether the offence is murder, armed robbery, assault or what have you?

● (1605)

[*English*]

Ms. Janani Shanmuganathan: I will just clarify my earlier submission. If I've led this committee to believe that I think mandatory minimum sentences should be abolished only for members of the racialized community, that is certainly not my submission. The submission is that mandatory minimum sentences should be repealed because they affect members of all communities and not just those among the racialized ones.

With respect to abolishing mandatory minimum sentences, my submission would be for Parliament to do whatever it can to introduce discretion into the hands of the judges—the judges who hear the background information about the offender and understand why a person committed the offence—and leave them with the responsibility of ensuring that the sentence they impose on that offender is proportionate to the offence and the offender. That is what is going to make our justice system a better place for everyone involved, and that includes the offender, the judge and the victim.

[*Translation*]

Mr. Rhéal Fortin: Do you mean for all offences? Should mandatory minimum penalties remain in place for some offences?

[*English*]

Ms. Janani Shanmuganathan: My submission—and this is just me based on my experience in the criminal justice system—is that what from we've seen from the literature that's developed on mandatory minimum sentences, as well as the decisions on these court cases, the judges don't need mandatory minimum sentences. If they feel that an offender needs to go to jail for a particular period of time, they can impose that sentence regardless of the existence of the mandatory minimum.

[*Translation*]

Mr. Rhéal Fortin: I agree with you, but as a lawmaker, I worry about the message it sends society when we get rid of mandatory minimum sentences. Like you, I believe that judges will impose sentences that are appropriate, with or without mandatory minimum penalties. We agree on that.

Nevertheless, doesn't eliminating all mandatory minimum sentences send the public a concerning message? Aren't we basically saying that certain offences aren't as serious as they should be?

[*English*]

Ms. Janani Shanmuganathan: The people we should be concerned about are the informed public. The message that it sends the informed public is that we trust trial judges to do their job. These are people who are qualified to be in the positions they hold. They're going to do their jobs appropriately, and if they feel that a person needs to go jail for a certain period of time, we can trust those trial judges to do their job.

[*Translation*]

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

[*English*]

The Chair: Thank you, Monsieur Fortin.

Now we go to Mr. Garrison for six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair, and I thank all of the witnesses for being with us today when we're dealing with such an important bill.

I want to start with Ms. Shanmuganathan and ask a question that backs up a step from her remarks on the impacts of mandatory minimums on the racialized community. When it comes to drug offences, I guess the point I've been pursuing is this: Why are we talking about mandatory minimums rather than actually removing personal possession of small amounts of drugs from the Criminal Code as a criminal offence? Wouldn't that have a larger effect on the racialized communities in Canada?

Ms. Janani Shanmuganathan: I think it would certainly have an impact, and I just wanted to sort of stay in my lane. We're talking about mandatory minimum sentences, but I certainly invite the committee to consider other options and ways of eliminating, or helping to alleviate, the overrepresentation problem. Nonetheless, at the bare minimum, removing mandatory minimum sentences would also have some effect.

Mr. Randall Garrison: Thank you, Ms. Shanmuganathan.

I think you're technically correct about staying in your lane, but we're also talking about ways to attack systemic racism within the justice system, so I think we also have to keep our eye on that larger court of play when we're talking about this bill.

I want to turn to the Canadian Bar Association and talk about one of the things that was said as part of your presentation. I forgot which of the two of you said it, but you talked about mandatory minimums that “warehouse people until they can be released”.

My background is in criminal justice, and I know we have often seen short sentences of about one to two years resulting in no rehabilitation because of a lack of resources within the provincial and federal corrections systems. Was that what you were referring to in that very brief statement of yours?

● (1610)

Mr. Jody Berkes: Mr. Chair, if I could answer Mr. Garrison's question, mandatory minimum sentences are generally less than two years, which means that any offender who is sentenced to that period of time will spend it in a provincial jail. Conditional sentences must, by definition, be less than two years. In effect, some of these mandatory minimum sentences, which are passed by federal legislation, put a substantial burden on the provincial jail system. That system isn't able to deliver the kind of programming, number one, because they don't have the resources, and, number two, because people aren't in a place long enough to become entrenched in a program and see it through to its completion.

A much better alternative is to allow offenders—non-violent offenders, obviously—to serve their sentence in the community. They begin their sentence with a conditional sentence, which could include a period of house arrest, as well as treatment. Their sentence, because it would be less than two years, can be followed by a period of probation of up to three years. In effect, that person has the ability to receive five years of supervision and access to rehabilitative programming.

Eliminating these mandatory minimum sentences is a first step to seeing people receive better, longer and more involved treatment and emerge from the system rehabilitated, as opposed to being warehoused until they can be released.

Mr. Randall Garrison: Of course, the result of that is greater public safety.

When you talk about a burden on systems—I want to continue with you, Mr. Berkes—can you talk a bit about the problem we have with delays in the criminal justice system and the impact of the existence of mandatory minimums on those delays?

Mr. Jody Berkes: Mr. Chair, Mr. Garrison raises a very important issue. Normally speaking—and I've been doing this for over 20 years—I have clients who come to me all the time and say, "Look, you know what, I did it. I want to accept responsibility for my actions and I want to receive my sentence." I facilitate that. The problem with mandatory minimum sentences is it disincentivizes early pleadings.

For someone who can receive an appropriate disposition that both the Crown and the defence agree upon, oftentimes it is non-incarceratory, so there is a large incentive to plead early on in the process. If there is a mandatory minimum involved, the cases languish in the process, pretrial motions are brought and a lot of resources are spent defending that in the effort to try to escape a conviction, because it would end up with a mandatory minimum.

If you remove these mandatory minimums and make alternative sentences available, people will generally resolve their matters early on in the process, freeing up valuable resources with respect to much more serious offences. Right now those serious offences have to wait in the background while resources are spent on these mandatory minimums. The problem is if things languish too long, the Jordan decision gets involved and matters are thrown out for delays.

Mr. Randall Garrison: If we proceed with Bill C-5 as it's written, we could expect within a fairly short time a major impact on delays in dealing with more serious cases in the court system. Is that correct?

Mr. Jody Berkes: Any piece of legislation that encourages people to resolve their cases for just disposition will free up resources. Over time, we will see a faster justice system, which is beneficial to the accused, to victims and to the system in general.

Mr. Randall Garrison: Thank you very much.

The Chair: Thank you, Mr. Garrison.

Now we'll go to Mr. Morrison for five minutes.

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

Thank you to the witnesses for coming today.

Sometimes when we talk about offences and offenders, I don't think we ever forget the victims, but sometimes a victim's rights are not really at the forefront when it gets to sentencing.

I'm going to ask one question to either Eric or Steve. If you have spoken with victims, especially about Bill C-5, how will they feel if Bill C-5 repeals mandatory minimums for impaired driving causing death?

● (1615)

Mr. Steve Sullivan: I speak to victims and survivors every day.

To clarify, it's not repealing mandatory minimums for impaired driving; it's expanding the ability of judges to impose conditional sentences for a wider variety of offences, including impaired driving causing death.

I've talked to families from years ago, who may still work with us, about conditional sentences being handed down. In more recent times, I've talked to families about some of the things we're involved with and talked about the possibility of conditional sentences being reintroduced. Many are shocked. Those people we work with today can't imagine a time when a conditional sentence would be given for impaired driving causing death.

The families we talk to today about it—I don't even know what the words are—are just shocked that it could be a possible sentence for someone, who, by their own decision, has caused the death of someone else.

Mr. Rob Morrison: Thank you.

I want to ask the Canadian Bar Association a question. I think both Tony and Jody were talking about "non-violent" and how you could see the mandatory minimums being removed from "non-violent", but would that mean that you don't agree that robbery with a firearm, extortion with a firearm or discharging a firearm with intent are violent? To me, all the firearm offences are pretty violent.

Even when we get into the expansion of conditional sentencing, there are some of these that would apply to kidnapping. Would you not consider that violent? In the case of an abduction of a person under 14, imagine telling the parents of that individual, "Oh yes, we're going to CSO because we're reducing some mandatory minimums."

I just wonder if you do agree that some of these offences that are listed in Bill C-5 should remain because they are violent, and that in fact Bill C-5 could be amended.

Mr. Tony Paisana: I'll take this question, Chair.

One of the problems that I think surrounds this debate is that the focus remains on the black-letter wording of an offence, as opposed to the circumstances in which it is committed.

For example, take “robbery with a firearm”. When people say that, what comes to mind immediately is the person with the gun in their hand holding up the bank. What doesn't come to mind is the drug-addled assistant to the robber, who is driving the car and has no idea or is willfully blind to the fact that someone is going to go into a store with a weapon. Is that person in the same circumstance as the person holding the weapon? Clearly not, but they're going to be treated the same under a mandatory minimum, because one is a party and one is a principal, and under the law, those things are the same.

When we speak of offences in the singular terms of how they're written down in the law, we lose sight of the fact that they can be done in a wide variety of circumstances, and when we think about conditional sentences, that's particularly important.

Think about drug importing. We all think of the major drug trafficker who brings kilos and kilos into the country. We don't think of Cheyenne Sharma, the appellant in the Sharma case before the Supreme Court of Canada, who was raped at 13, was a sex worker at 15 and was trying to feed her family by taking on a task at the behest of someone who was exploiting her.

In my respectful view, it is overly simplistic to look to just the name of the offence and close the book. What we have to think about is not just the evidence, but what happened.

Mr. Rob Morrison: Yes. Thank you for that. I have just a short time.

I do agree in some cases about robbery with a firearm, but when you look at a victim who doesn't know the difference between a pellet gun and a nine-millimetre or .45 calibre gun, I find it a little hard to imagine that we're going to remove mandatory minimums because somebody couldn't identify whether or not it was a pellet gun.

Let's talk about drug offences and the production of crystal meth. How can someone possibly say, “Yes, go ahead and produce it, and let's remove mandatory prison for drug dealers.” We have an opioid crisis on our hands in Canada. If we start dealing with removing mandatory minimums for trafficking and what you're talking about, what are we saying now to the victims and to the people we should be helping?

Do you not agree that maybe we should be spending way more time on crime prevention, not crime reduction? I do agree with you that putting people in jail isn't exactly the answer, but—

The Chair: Unfortunately, we're out of time. I'm sorry about that.

Next I'll go to Mr. Naqvi for five minutes.

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

I am going to go back to Mr. Paisana to talk a bit more about conditional sentence orders.

Perhaps just so that we are all understanding from the same foundation, describe to us your understanding of some of the key features or elements of CSOs. What makes them unique? Why do you think they are an important tool to have in the Criminal Code?

● (1620)

Mr. Tony Paisana: The conditional sentence order was an elegant solution introduced by Parliament in the 1990s to address the problem of overincarceration. Why it was elegant is that it was a scalpel instead of the sledgehammer of jail.

What it did is tailor a sentencing option to people who were, first of all, non-dangerous; second of all, who could be properly managed in the community; third of all, who had committed an offence deserving of less than two years in jail that was, fourth of all, an offence for which the deterrence and denunciation requirement could be addressed by a community sentence.

That was incredibly innovative and important progress in the law because it addressed a subsection of offenders who had committed a mistake and had done something terrible in their lives but who had a great prospect of rehabilitation. It's the kind of thoughtful, insightful criminal law policy that distinguishes us from other jurisdictions like our neighbours to the south, who take much more of a sledgehammer approach than a scalpel approach. I think it is more appropriate to our system.

Mr. Yasir Naqvi: Can you speak to the impact of the non-application or non-use of CSOs on the criminal justice system in particular and people within the criminal justice system? What have you seen in your practice and heard from other colleagues within the Canadian Bar Association?

Mr. Tony Paisana: You see two important knock-on effects as a result of CSOs not being available.

The first is the obvious one, which you've heard a lot about today. People who would otherwise properly serve their sentence in the community and rehabilitate are forced into the jail system. I don't think there's any real debate that they are not going to rehabilitate there to the extent that they would in the community.

You also see the opposite end of the spectrum. Individuals are getting suspended sentences instead of the more harsh version of a sentence in the form of a conditional sentence because the parties that are litigating and the judges who hear the cases realize it would be completely unjust to send the person to jail. They are left with only one other alternative, which is simple probation. Rather than unjustly sending the person to jail, they give them something less than a conditional sentence and probation. That doesn't do anything for the administration of justice either.

When we take away the discretion of this elegant middle option, we're really forcing people to go to one end of the spectrum or the other and avoiding the obvious answer, which lies in the middle and is often the conditional sentence.

Mr. Yasir Naqvi: Can you further speak to the impact on indigenous people, Black people and people of colour of not having CSOs available within the tool kit of the criminal justice system?

Mr. Tony Paisana: This is one of the great ironies of Bill C-10 in taking away conditional sentences. The conditional sentence was introduced primarily in response to the problem over incarceration in the 1990s of indigenous and other marginalized communities. In the 25 years since, that problem has only become worse with these restrictions being put on CSOs.

The very purpose of this thing was to give the system greater restraint and a greater toolset to deal with communities that are overrepresented. By removing it, we have simply exacerbated the problem, in my view.

Mr. Yasir Naqvi: When Bill C-5 is passed into law, what opportunity do you see as it relates to CSOs being available as a way of sentencing?

Mr. Tony Paisana: It will significantly expand the eligibility of offences that we don't really think about when we think about violent offenders. The scope of offences that is captured by the current prohibitions against CSOs is staggering. It includes things like forging a passport, contraventions of the Competition Act and other offences that one does not associate with the serious offending that it was said to be targeted towards. It will unlock CSOs for a number of offences for which it would be appropriate.

I reiterate what I said earlier today. This is only about giving more discretion, not less. If jail is appropriate, be it under two years or over two years, that discretion will remain the same. That includes offences like drinking and driving causing death. That's an offence for which the range of sentences across this country is in the years and sometimes double digits.

Mr. Yasir Naqvi: Thank you. My time is up. I really appreciate your participation.

The Chair: Thank you, Mr. Naqvi.

Next we'll go to Mr. Fortin for two and a half minutes.

[*Translation*]

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

My question is for Jody Berkes, of the Canadian Bar Association.

I quite agree that mandatory minimum penalties aren't really helpful to the courts in dealing with the cases before them, but I also think that what we do as lawmakers sends society a message. We pass laws, we amend laws and we repeal laws day in and day out. We have been doing that since the earliest days of Confederation, even since the beginning of time, and we probably always will. I believe that legislation should match the realities of society, that it should be appropriate and that it should be a tool that helps the people we represent.

Right now, some regions of Canada are experiencing a rise in violence. My fellow member talked about the opioid crisis earlier. He is right. I am seeing it in my region as well, not to mention an increase in gun violence. On the news, I heard mothers being interviewed, and they were saying that they were afraid to send their children to school because kids in some schools had guns. That's pretty worrisome. Members of the public reach out and ask us to do something. Efforts are made, special police units are created to tackle gun smuggling and so on. Now, we are being asked to do away with mandatory minimum sentences.

Mr. Berkes, I heard you say earlier that perhaps an exception should be made for murder. I'd like to know whether you think it's necessary to make distinctions. The idea of eliminating mandatory minimum penalties today, in 2022, has to fit the reality of 2022, not the reality of 1970 or the reality of 2060, whatever that might be. In 2022, the public is worried about gun violence.

Shouldn't we show some restraint and caution in eliminating mandatory minimum sentences?

● (1625)

[*English*]

Mr. Jody Berkes: Thank you, Mr. Chair.

Mr. Fortin raises a very important point, which is that the members of the public whom he serves and whom all of the lawyers involved in the criminal justice system serve are aware of the public perception of what we do. The answer is that if we eliminate certain mandatory minimums or, as the CBA recommends, all mandatory minimums except for murder, it doesn't mean that people don't need to go to jail as denunciation of their conduct or that those using firearms in a violent way won't end up in jail. They will end up in jail. The fact that violent crime is on the rise while we have these mandatory minimums on the books is evidence that they don't work to deter that kind of crime. What we need is more enforcement.

The Chair: Thank you, Mr. Berkes.

Next is Mr. Garrison for two and a half minutes.

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

I want to go back to Mr. Paisana and his comments on the application of CSOs in the cases of drunk driving causing death or bodily harm. You quickly passed over the normal sentences for those, so I'm drawing a conclusion that what you said is that passing Bill C-5 in its current form would have relatively little effect on cases of drunk driving causing death because the sentence is almost always more than two years.

Is that correct?

Mr. Tony Paisana: That's correct. The range in sentences for that offence across the country in courts of appeal is in the multiple single digits and sometimes, depending on the circumstances, double digits. It's not uncommon to see six-, eight-, 10-year sentences. Of course, there was the famous Humboldt case that resulted in an eight-year sentence, for example.

Mr. Randall Garrison: Okay.

I want to go back to Ms. Shanmuganathan.

I appreciate that you were very clear that your expertise is in mandatory minimums, but I want to talk about another aspect of the built-in or structural racism, and that has to do with the effect of criminal records on those who have been sentenced for drug offences.

I wonder whether the clients you deal with have seen the long-term impacts of not being able to get diversions or dispositions that would result in no criminal record for employment and housing and those kinds of things.

Ms. Janani Shanmuganathan: Yes, absolutely. Being stamped with a criminal record has long-lasting, lifelong effects on a person. It can hinder their ability to be gainfully employed, to get housing, to move on with their lives in some meaningful way, and so if there are mechanisms to divert people away from a criminal offence or a criminal conviction and a criminal record, it is of course a welcomed option.

● (1630)

Mr. Randall Garrison: When you talk about housing, I know in my own community, there are some social housing and supportive housing programs that you're simply not eligible for if you have a criminal record. Is this the kind of impact that you're talking about, that you've seen with your clients?

Ms. Janani Shanmuganathan: Yes, absolutely. There are checks that are run on certain people in order to get housing in places, in order to get jobs, and if you become flagged as somebody with a criminal record, you're out of the running for those types of things.

Mr. Randall Garrison: I see I'm out of time. Thanks very much.

The Chair: Thank you. I'll now conclude this first part of the panel and suspend for a minute to do a quick sound check for Dr. Robert. I think the rest have all been sound-checked.

To the rest of the witnesses, we're happy to have you stay on if you want. Otherwise you can disconnect if you'd like.

I'll suspend for one minute.

● (1630)

_____(Pause)_____

● (1630)

The Chair: We're resuming with the second panel for this meeting.

I'm going to ask each group to speak for five minutes, and then after the five-minute rounds for each each of the speaking groups, we will continue with questions. As I outlined earlier, I have a 30-second time clock card and then an out-of-time card. Please be respectful of the time so that all the members can have a question.

We'll begin with Brandon Rolle, senior legal counsel for the African Nova Scotian Justice Institute, for five minutes, and then we'll go over to The Dispensary and then the National Coalition Against Contraband Tobacco.

We'll begin with you, Brandon Rolle, please.

Mr. Brandon Rolle (Senior Legal Counsel, African Nova Scotian Justice Institute): Thank you, Mr. Chair.

Good afternoon. My name is Brandon Rolle, and I'm the senior legal counsel at the recently established African Nova Scotian Justice Institute.

I'm pleased to speak today in support of Bill C-5, which we see as a necessary step towards justice.

African Nova Scotians are a distinct people who descend from free and enslaved Black planters, Black Loyalists, Black refugees, maroons, and other Black people who inhabited the original 52 land-based Black communities in that part of Mi'kma'ki known as Nova Scotia.

The African Nova Scotian Justice Institute is a provincially funded—but importantly, community-led—infrastructure developed in response to systemic anti-Black racism faced by African Nova Scotians in the justice system. We acted as intervenors in the Anderson case, a Nova Scotia Court of Appeal decision that affirmed the use of impact of race and culture assessments, IRCAs, as a valuable sentencing tool when sentencing people of African descent and provided a framework for applying systemic and background factors related to race and culture.

There can be no serious dispute that systemic anti-Black racism exists in the criminal justice system. In R. v. S. (R.D.), a well-known case from Nova Scotia that went to the Supreme Court of Canada, the Supreme Court endorsed comments from another Nova Scotia case and put it very bluntly:

> [Racism] is a pernicious reality. The issue of racism existing in Nova Scotia has been well documented in the Marshall Inquiry Report (sub. nom. Royal Commission on the Donald Marshall, Jr., Prosecution). A person would have to be stupid, complacent or ignorant not to acknowledge its presence, not only individually, but also systemically and institutionally.

The evidence is also very clear that one of the ways that systemic anti-Black racism has manifested is through the over-incarceration of African Canadians.

The committee has the data from the Department of Justice about the disproportionate impact of mandatory minimums on custody rates for Black people, but I would suggest there are some contextual factors that we can look at to help us understand why MMPs disproportionately impact people of African descent.

First, we know that Black communities are subjected to over-policing and over-surveillance. Since Black people are more likely to be arrested and charged with an offence, they are subject to a disproportionate risk of criminal liability for offences carrying a mandatory sentence.

Second, Black accused are disproportionately detained before trial. The research is increasingly clear that accused persons who have been denied bail feel greater pressure to plead guilty.

Third, African Nova Scotians and African Canadians at large have experienced the legacy of slavery, colonialism, segregation and racism that has led to this historic pattern of disadvantage, which includes overrepresentation in custody, involvement in certain offences, being denied bail and receiving longer jail sentences, and subsequently serving harsher time while in custody.

We submit that to truly address systemic anti-Black racism, the approach has to be multi-faceted and must include the type of legislative reform being proposed by Bill C-5. We suggest that has to be done in combination with efforts further upstream in the justice system that address the root causes of offending behaviour, which is the type of infrastructure we're trying to build here at the African Nova Scotian Justice Institute.

We endorse the comments of Justice Derrick in R. v. Anderson, that case I mentioned earlier, when she was discussing this exact type of legislative reform. At that time it was called Bill C-22, but we know that was the earlier version of this bill. She said, and I quote:

> It speaks to what the Supreme Court of Canada noted in Gladue: "Overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament".[29] Its proposed reforms would enhance the discretionary powers of judges in sentencing Black offenders. The increased availability of conditional sentence orders would afford judges greater scope in imposing sentences that better serve the principle of proportionality, thereby better serving the community and the offender, with systemic factors and historical disadvantage taken into account.

We agree that MMPs do not effectively address recidivism. Longer and harsher jail sentences have been shown to actually increase recidivism, and as such MMPs can work to decrease public safety. Mandatory minimum sentences do not accord with the fundamental sentencing principle of proportionality, because they remove that discretion of the sentencing judge to consider the moral blameworthiness of the offender and provide no opportunity to account for not only the personal circumstances of the accused but also those systemic and background factors that may come into play.

When it comes to African Nova Scotians and Black Canadians, we suggest that judicial discretion should always be informed by tools like impact of race and culture assessments to better address overrepresentation. This type of legislative reform is an important part of the answer. It's not the complete answer, but we suggest it is a step towards substantive equality.

Thank you, Mr. Chair.

● (1635)

The Chair: Thank you, Mr. Rolle.

Next we have The Dispensary Community Health Center and Hugo Bissonnet, Alexandra de Kiewit and Dr. Jean Robert for five minutes.

You can split it up however you want.

[*Translation*]

Dr. Jean Robert (Medical Specialist in Public Health and Medical Microbiology and Infectious Diseases, Professor, Université de Montréal and Université du Québec en Outaouais, The DISPENSARY Community Health Center): Thank you, Mr. Chair.

It's an honour to be invited to appear before the committee.

I will be speaking from the heart much more than from the head.

I am a physician, and my first specialty is infectious diseases, which I've practised in university hospital centres. I also have extensive experience working under a community health model. This year marks my 46th caring for patients. I say "caring" because I don't necessarily treat them. I provide support to individuals who are part of a culture that carries a systemic stigma; they are oh so cruelly referred to as "addicts".

Given my years of experience, I was deeply troubled and saddened when I read Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, because it appears to put guns and drugs in the same category. Keep in mind that guns kill other people, whereas drugs kill the person who takes them. Guns are a safety issue, but drug use is not a justice issue; it is a health issue. That is very important.

This is something I am extremely concerned about. I completely agree that it is finally time to get rid of mandatory minimum sentences for individuals who, for lack of proper care, treat themselves using substances that are available around them. That is the first point I want to make.

My second point has to do with people who die as a result of substance abuse or overdose. A unique feature of people who try to treat themselves using substances is that they are totally unaware of what is in the substances being sold to them. For example, as a physician, I am required to inform users of what this residue contains. I have here a minuscule amount of a substance, smaller than a match head. It's heroin that was recently brought to me by users, and it contains 12 different substances. What kills people is not knowing what they are actually taking. That is why it is important not to prevent these substances from being handled. I am able to do it because it's part of my job and because it's necessary in order to care for people. That is a crucial issue.

The bill sets out exemptions for simple drug possession offences. The third point I want to make is how vital it is that an exemption be added so that people like my team members and I can have access to these substances. There needs to be an exemption for professional use. That way, when our outreach workers, who are professionals, cross the street with a bag containing a small amount of powder residue, they won't have to fear being arrested or thrown in jail.

That is my only recommendation. I have other ideas, of course, especially when it comes to the terminology, but those are my own personal observations. I have spent 46 years working in this field. I've worked with inmates, and I am very familiar with the issue. Residue analysis can save lives. We also do urine analysis to determine what people have taken. That is the basis for the care we provide.

● (1640)

We, ourselves, applied for an exemption exactly a year ago, and we are still waiting. We haven't gotten it.

Now I will turn the floor over to my colleague, Ms. de Kiewit.

[*English*]

The Chair: Thank you. Unfortunately your time is up, but I'm hoping you can answer some of your questions or make your statements in answering some other questions and extract it out of there.

Ms. Alexandra de Kiewit (Risk and Harm Reduction Educator, The DISPENSARY Community Health Center): Thank you.

The Chair: I'll next go over to the National Coalition Against Contraband Tobacco. We have Rick Barnum for five minutes.

Deputy Commissioner Rick Barnum (Executive Director, National Coalition Against Contraband Tobacco): Thank you, sir.

Good afternoon, committee.

My name is Rick Barnum, and I am the recently appointed executive director of the National Coalition Against Contraband Tobacco.

I most recently served as deputy commissioner of the Ontario Provincial Police and had an over 30-year career in law enforcement. During my career, I spent most of my time combatting organized crime. I saw first-hand how lucrative the contraband tobacco trade can actually be.

The Criminal Intelligence Service of Canada estimates that contraband tobacco and cannabis have a cost of over $12 billion in health care, lost productivity, criminal justice and other direct costs.

The RCMP estimates that there are over 175 criminal gangs involved in the illicit trade of contraband tobacco. These gangs make millions of dollars a day off contraband tobacco, which they use to fund their other illicit activities, including illegal firearms, drugs such as fentanyl, and human trafficking.

To combat this important funding source for organized crime groups, in 2014 the government passed Bill C-10, which introduced a Criminal Code offence for the trafficking of contraband tobacco and also a mandatory minimum penalty for the same offence. Both of these tools have been used by law enforcement across Canada since that time to dissuade individuals from participating in the contraband tobacco trade.

Prior to this, many of those charged and found guilty under provincial tobacco tax laws would simply be fined, but the fines would never actually get paid. The Criminal Code offence and penalties associated with this offence have made trafficking of contraband tobacco less attractive for some people.

However, Bill C-5 proposes to eliminate the mandatory minimum penalty for the trafficking of contraband tobacco while keeping the Criminal Code offence. By eliminating the mandatory minimum penalty, the government is removing a tool used by law enforcement to dissuade possible contraband tobacco traffickers.

The government of late has also helped to fuel the contraband tobacco trade by continuous increases in tax on tobacco. History shows us, as was also reported by the Parliamentary Budget Officer, that tax increases without action against contraband tobacco result in a larger black market that directly funds criminal gangs. This is why, after removing one of the law enforcement tools, the government must add another.

First, the contraband tobacco trade continues to grow across Canada without concerted federal action. Illegal cigarettes, manufactured mostly in Ontario, can be found from British Columbia to Newfoundland. To curb the illicit trade, we recommend that the government create a contraband tobacco enforcement team within the RCMP that would help to coordinate enforcement across the provinces. Provinces like Quebec have seen great successes in such a model, in which municipal and regional law enforcement have been coordinated.

Second, further increased taxation on tobacco without action against contraband tobacco will only help to further grow the illicit trade. We recommend that the government resume a prudent approach toward tobacco taxation until contraband tobacco is addressed across the entire country.

Lastly, Ontario continues to be the epicentre of contraband tobacco in Canada. One in three cigarettes purchased in the province is purchased illegally. Criminal gangs make millions of dollars every day from this illicit trade.

To address this core issue, we recommend that the government partner with Ontario in taking action against contraband tobacco. By supporting law enforcement through countrywide coordination and a prudent taxation approach, the government can begin to effectively address Canada's growing contraband tobacco problem. With the removal of one law enforcement tool, the government must add another.

We hope we can count on your support in taking action against contraband tobacco and also against organized crime.

Thank you for your time. I'll be happy to take any questions.

● (1645)

The Chair: Thank you, Mr. Barnum.

Now we'll go to the first round of questions. I believe we have Mr. Cooper for six minutes.

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

I will address my questions to Mr. Barnum.

You cited in your testimony that since the passage of Bill C-10, adding that section to the Criminal Code has been an important tool for law enforcement. Given your extensive background in law enforcement and tackling organized crime, I would be interested in your comments related to the mandatory minimum aspect of Bill C-10 as it pertains to the trafficking of contraband tobacco.

We've heard a number of witnesses who simply say that mandatory minimums don't work, that they're ineffective and increase recidivism. Is that your experience? I presume it's quite the contrary.

D/Commr Rick Barnum: My experience would show that over the years, individuals whom we've caught doing trafficking in contraband tobacco in significant amounts usually ended up with a hefty fine the first time and usually the second time as well. It's not until the third or fourth time that they usually end up with a small jail sentence. It would be less than two years.

Mr. Michael Cooper: Would you agree that a mandatory minimum is an important tool?

● (1650)

D/Commr Rick Barnum: It's an important tool for law enforcement from the perspective that it gives us the opportunity to make sure, when we charge and arrest people and do significant investigations, that there is the opportunity that they could do some jail time.

Mr. Michael Cooper: Have you seen the impact of that since the passage of Bill C-10?

D/Commr Rick Barnum: The investigations that we were doing were very high level. These aren't individuals that are walking down the street with a baggie of contraband tobacco. We're talking about full tractor-trailers and things of that nature.

We have seen the opportunity for the individual to go to jail, but most often it's a significant fine, sometimes $200,000 to $300,000 or more, but not jail time.

Mr. Michael Cooper: I think it's an important point that you've made that these are not people with a baggie.

Part of the problem, I think, with this bill is that it's not as advertised. The government talks about minor possession, even though there is a directive that has been issued not to prosecute such cases. What the substance of the bill does offer is eliminating mandatory jail time for trafficking offences and the importing, exporting and production of schedule I and schedule II drugs.

Speaking of schedule I and schedule II drugs, we have an opioid crisis in Canada. Twenty Canadians die a day.

Can you elaborate on the connection between those who are involved in the trafficking of contraband tobacco and those who are involved in perpetuating the opioid crisis in Canada?

D/Commr Rick Barnum: Yes, I can, and that's an excellent question.

There's absolutely no doubt in my first-hand, lived experience that in probably the last 10 years or so, it's not been uncommon for police to do significant high-level investigations targeting contraband tobacco or cocaine, methamphetamine or fentanyl and during the course of those investigations to run into significant amounts of whichever drug, but at no time in my experience have I seen high-level organized crime groups working in a linear fashion, just dealing in contraband tobacco. In our seizures, it's not uncommon to find cocaine, tobacco and fentanyl together with handguns, and the list goes on.

Recently, in 2020, in Project Cairnes, which was an investigation the OPP did just north of Toronto in York region, there were two or three kilograms of cocaine, hundreds of cases of contraband tobacco, kilograms of fentanyl, handguns and other associated types of drugs that are used to break down cocaine for sale on the street, all captured from one organized crime group, and one arrest.

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

The Chair: You have one and a half minutes.

Mr. Michael Cooper: Thank you for that. I'll turn the balance of my time to Dr. Robert.

Dr. Robert, you spoke about issues around simple possession and personal use, but again, this bill doesn't address that. What it does is eliminate mandatory jail time for the producers and pushers of dangerous drugs that harm many Canadians.

When we talk about the opioid crisis, 20 Canadians a day die. That's 7,000 a year. Are you concerned that this bill eliminates mandatory jail time for traffickers, producers and pushers, and would you not see a significant distinction between those involved in such activities and someone who is involved in simple possession for their personal use?

[*Translation*]

Dr. Jean Robert: Thank you for your question.

The statistics you referred to represent the worst case. Can it be worse?

We are talking about personal use. Our goal is to ensure that people are no longer punished for their illness. That's what matters. Selling, producing and distributing have more to do with public safety than they do with the health of individuals.

I should point out, by the way, that we spoke mostly about opioids, but almost 90% of the substances sold contain between two and 18 different substances. The focus has been on opioids, but there are other drugs as well.

● (1655)

[*English*]

The Chair: Thank you, Mr. Cooper. Thank you, Mr. Robert.

Next it's over to Madam Diab for six minutes.

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

[*Translation*]

Thank you to the witnesses for being here today.

[*English*]

I am going to be directing my questions to Mr. Brandon Rolle of the African Nova Scotian Justice Institute.

For the benefit of my colleagues, I had a chance to meet Mr. Rolle when I served in the provincial legislature, and I am familiar with a number of the initiatives that have been undertaken in Nova Scotia to combat the systemic racism that Nova Scotians experience. It's well documented in our system, so I'm really grateful you're here with us to share your experience and expertise with our committee today.

I understand, Mr. Rolle, that you recently met with the justice minister when he was in Nova Scotia, I think a couple of weeks ago. Can you share with the committee whether or not you would have spoken about this bill and what you would have shared with him—and I would direct you to be as blunt as you obviously need to be with us—on the use of mandatory minimums and the restrictions on conditional sentencing orders, which are the two things we're talking about today, and the effect on the features of racism in our justice system, from your expertise and your experience?

Mr. Brandon Rolle: Thank you for the question.

One of the arguments we put forward in Anderson, which I think is important to remember, is that the law itself has been used as a tool to oppress people of African descent, and particularly African Nova Scotians, for centuries. This is obviously a complex problem that resides not only in justice, but we do need a justice response, because in part this is a justice problem.

When Minister Lametti visited Nova Scotia, we talked primarily about the work being done with impact of race and culture assessments. Those are connected to this debate, because by allowing more community-based sentences, we can actually allow some of that work that gets at root causes to take place. An impact of race and culture assessment looks at the historical context of that specific community and at how the reason the person came to be before the court is connected to some of those systemic factors. It then presents rehabilitative options that are culturally appropriate.

By keeping this punitive regime of mandatory minimum penalties, we're taking the discretion away from judges to provide that sort of culturally specific programming that's needed to get at root causes. If the idea is that mandatory minimum penalties somehow send the message that they are going to decrease recidivism, I think that decades of research have shown that this is not the case. We need to get at the root causes to really address the problem. That's the work we're trying to do at the institute.

We also have to recognize that sentencing is at the end of the process, so we need to infuse that throughout the process and look at police discretion and Crown discretion. Those are the sorts of supports—bail supervision programs and reintegration programs—we want to implement at the institute so that people are fully reintegrated in a way that's beneficial to community safety. That's some of the work we're trying to do.

Racism is pervasive in the justice system—I think that's clear—and the response has to be multi-faceted, as I said in my opening statement.

Ms. Lena Metlege Diab: I'm looking for your opinion. Do you believe this bill will reduce the incarceration of Black Nova Scotians or Black Canadians in the jail systems?

Mr. Brandon Rolle: As I think people have previously testified, serious offenders will still go to jail, but what it does is give judges the opportunity to impose sentences that are community-based for those who don't need to go to jail. In particular, we know that when you go to jail as a Black person, you're not going to have culturally informed programming. You're going to be deemed a troublemaker more often. You're going to be classified at a higher risk. You're not going to come out of that situation in a place to successfully reintegrate into the community.

That process of reintegration should start immediately upon entering the custodial setting. Not having those programs in place points to the need for the community-based resources that are going to have more of an impact in rehabilitation. I think that's got to be the answer.

● (1700)

Ms. Lena Metlege Diab: Can you speak to me a little bit more about conditional sentencing? It requires that an offender have a home and some support. Can you speak to me about the elimination of that, I guess, if this bill does not go through? What are the consequences that you would see for a young Black male—or even a female, for that matter—having that taken away from them in appropriate circumstances?

Mr. Brandon Rolle: Maybe the best example to give you is the Anderson case.

A young Black man was pulled over at a random checkstop with a prohibited firearm. Members in his community around him were dying through gun violence. He armed himself not to commit substantive offences but to protect himself. The judge in that case called evidence in from someone who worked in corrections and asked them what was available in corrections if they were to send the young man to jail. The corrections officer gave evidence that there was nothing available in terms of programming. By contrast, she also called in members of the community to ask what was available. They were able to present a couple of options in terms of counselling, education, and those sorts of programs that were going to assist him in the community.

That particular MMP had already been struck down, but in the absence of that, that's someone who would have gone to jail and not received the culturally appropriate treatment that was required in that case. They would have had a worse outcome. Again, that would not have been helpful to public safety, in my respectful opinion.

Ms. Lena Metlege Diab: Thank you very much for that.

That brings me to my time.

The Chair: Thank you, Madam Diab.

Mr. Fortin, you have six minutes.

[*Translation*]

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

My questions are for Dr. Robert, first, and, then, Ms. de Kiewit.

Dr. Robert, I gather from your remarks that you are in favour of the diversion measures that would be added, under the bill, after section 10 of the Controlled Drugs and Substances Act. Those measures stipulate that, when an individual is arrested in possession of a quantity of drugs that is not for the purposes of trafficking, that person can be referred to certain resources, such as an organization that will help them by treating their substance abuse as a health problem, not as a public safety problem. I take it that you support those measures, but correct me if I'm wrong.

Specifically, I'd like you to elaborate on what you said in your opening statement about the bill not containing an exemption for professionals who handle drugs on a daily basis. They are doing so not for the purposes of taking the drugs themselves or selling them, but simply because they work with people who have substance abuse issues. I'm not quite sure I understand the problem, so I'd like you to explain it to me.

What exactly do you want to see, Dr. Robert?

Dr. Jean Robert: The people we are concerned about are those who do not have the support of their profession in responding to the distress of users who do not want to die but simply want to alleviate their suffering. We work with other professionals including social workers and psychologists, but outreach workers are mainly the ones in direct contact with users on the street. It is thanks to the trust that we have been able to build with them that they bring in residue on a daily basis so that we can analyze it and share what we learn right away. That is absolutely vital to prevent deaths and overdoses.

In other professional settings, even those where physicians work, people are afraid of being caught with these substances and arrested. What we want to see is recognition and protection for professionals who work with drug users, not just for physicians. They need that protection, even if it's just through good Samaritan legislation, for example.

Mr. Rhéal Fortin: I wouldn't want to ask you how old you are, but I take it that you have seen quite a bit in your time. You did mention how long you had been practising in the field.

As far as you know, is it commonplace for outreach workers and social workers to handle drugs, not to take them or sell them, of course, but simply as a way to help?

● (1705)

Dr. Jean Robert: Now you understand the issue. These workers feel threatened, and society is telling them that they could be apprehended. In that sense, I, too, experience systemic stigma from my fellow physicians. When they find out that I provide care to drug users, they seem surprised that I work with “those people”. That is stigmatizing.

Mr. Rhéal Fortin: Thank you, Dr. Robert.

Now I'm going to turn to Ms. de Kiewit.

In Dr. Robert's opening statement, he said that some people with substance abuse issues had health problems and were self-treating. I'm not sure what those treatments are or what that means exactly.

I would like to hear your views on that.

Ms. Alexandra de Kiewit: People have countless reasons for using drugs. I, myself, am a drug user. I have also been a front-line worker for more than a decade, providing harm reduction and street outreach. I come from a good family. The first time I tried drugs was in college. I started using for certain reasons and I still do. Through my work, I've met people who began using after having an accident, for example.

A lot of drug users go to the hospital because they're experiencing pain, but they don't receive the treatment they need to deal with that pain once the physician finds out they have been prescribed painkillers or have used drugs in the past. They aren't going to the hospital for detox treatment; they are going to have an urgent health issue looked after. People in those circumstances tend to turn to the black market for substances that help them feel better, so they can keep working and contributing to society.

Mr. Rhéal Fortin: I have just a few seconds left.

What effect does a conviction for the possession of drugs for personal use have on a person's health?

Ms. Alexandra de Kiewit: It affects a person's health in a myriad of ways. I, personally, have a criminal record because of it, and that puts many things out of my reach. It doesn't matter that I work very hard and have been a contributing member of society for more than a decade. I am on boards and do a lot of good for my community.

From a health standpoint, drug users are at risk. I lose people I know every week to the opioid crisis. Yesterday, I found out that a friend of mine had died because she was forced to buy painkillers on the black market.

Mr. Rhéal Fortin: Thank you, Ms. de Kiewit.

[*English*]

The Chair: Thank you, Mr. Fortin.

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

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

I'd like to stay with Ms. de Kiewit for a moment.

We're talking about Bill C-5 here, but we have another bill before Parliament. It's a private member's bill, Bill C-216, which proposes not to take away mandatory minimums but to take away the offence of personal possession of drugs and to establish a regime for safe supply.

I don't know whether you've actually seen the bill, but my question for you is an obvious one. In order to attack the opioid crisis, don't we need a lot more than what's in Bill C-5?

Ms. Alexandra de Kiewit: We do. I'm actually in the National Safer Supply Community of Practice. I'm part of that as a CAPUD member.

[*Translation*]

Yes, we definitely need a lot more than what's in the bill. We need a suite of practices and policies to stop criminalizing drug users. The idea is not to decriminalize drugs; rather, it is to prevent drug users from having criminal convictions hanging over them. These are people's mothers, fathers, brothers and sisters—perhaps yours.

The media tend to show the issue through the most compelling lens, so they focus on homeless people and individuals with major issues. People like me, however, go to work every day, but they might do a heroin injection on the weekend. While it may not be newsworthy, it's part of my life. I am at risk and I know I am at risk of an overdose. All that to say, many measures are needed on top of the bill.

Thank you.

[*English*]

Mr. Randall Garrison: Thank you.

I know we're getting very short of time today. I want to go back to Mr. Rolle for just a moment.

In Bill C-5, there's an increase in discretion proposed for police and prosecutors in how they would proceed with cases of personal possession of small amounts of drugs. I'm just wondering, given the existence of systemic racism in the system and the absence of serious police reform, if you have any concerns about this increase in discretion and how it would be applied.

● (1710)

Mr. Brandon Rolle: I do think that's an area for growth. Accountability becomes important when we talk about the use of discretion, so the fact that keeping that data is optional can be seen as problematic. I think it's a step forward, but perhaps not far enough.

The corresponding question then becomes who has access to that data when we talk about the use of police referrals or warnings. I'd love to see a national framework on disaggregated race-based data collection that may be beyond the scope of this bill, but yes, that is a concern. The use of police discretion and the use of Crown discretion are two of the biggest sources of power in the justice system, and I think we do need some accountability mechanisms when we look into that.

Mr. Randall Garrison: Are you aware of any literature or studies that look at the use of that discretion currently? I ask because I haven't seen much work done on that.

Mr. Brandon Rolle: No. I know that locally we've been fighting to get some data standards for how we capture disaggregated race-based data. If we think about the entry points for data, these are typically with police or corrections, so I think we're missing an entire segment by not having people self-identify at the courthouse or having some accountability by having lawyers give clients the opportunity to self-identify.

With respect to the use of police discretion for warnings or referrals to restorative justice, I can't say that I've seen much research on it either.

Mr. Randall Garrison: I guess my last question for you is somewhat similar to what I've just asked the witness from The Dispensary. Do you think that Bill C-5 is a robust enough response to the existence of systemic racism in the justice system?

Mr. Brandon Rolle: No, but I think it's part of the answer. I think we need more upstream responses, but we certainly support this bill as part of the answer. This problem is so complex that we're not going to address it solely at the sentencing stage, but it doesn't mean that we're relieved of our obligations at the sentencing stage when people's liberty is at risk. In that sense, I support the bill.

I do think there's a lot more work to do across the system. For example, I'd love to see a specific recognition of Black people in paragraph 718.2(e) of the Criminal Code as a type of response to further ingrain the fact that we're going to tackle overrepresentation in a really specific and targeted way, but this bill is a part of the answer.

Mr. Randall Garrison: Thank you very much.

The Chair: Thank you, Mr. Garrison.

We're over to you, Mr. Morrison, for five minutes.

Mr. Rob Morrison: Thank you, Chair, and thank you to all of the witnesses here today.

Mr. Barnum, I have a couple of questions for you. It's interesting that you are here talking about illicit tobacco when I'm sure that a lot of people here think, “Who cares? How can this be a real problem?” A few years ago, when I was in law enforcement and working on a file that concerned illegal tobacco, I thought the same thing. I wondered how this could be a real problem, until I got into having to deal with gangs and organized crime, which is when you see where that whole event is going. I'm sure that what can happen with illicit and contraband tobacco is eye-opening for a lot of people listening to this.

Since you have been dealing with this a lot more recently than I have, I would be interested to know what you see happening now that we know that it's not just tobacco but all sorts of illicit drugs, whether it's crystal meth or cocaine. It doesn't even matter; it's just that it's part of major organized crime, gang activity, and the shootings that we've seen everywhere. Of course, I could get into the opioid crisis, which is a result of that.

What have you seen in your experience when this goes sideways, and what are the results, the victims? What's happening at the end of the day?

D/Commr Rick Barnum: The contraband tobacco issue—this sounds kind of strange—is a unique issue, but it's not. What I mean by that is that the profitability for contraband tobacco for organized crime groups in Canada is absolutely huge, and contraband tobacco is a Canadian problem. Ninety per cent of the contraband tobacco that we seize in our country is from Ontario, in most cases. It's not something that's coming into our harbours and it's hidden or something of that nature.

The organized crime groups that are engaged are Canadian organized crime groups for the most part. They're selling contraband tobacco in Canadian communities. This money that they make goes to fuel all kinds of crime, as we're talking about today. I understand these conversations so very well. I've lived these conversations for the last 20 years of my career. I'm not here to comment from a policing perspective on these issues, but they are all intertwined now with contraband tobacco.

From the last 10 years, I do not recall a single person whom we arrested or charged on contraband tobacco at a significant level being engaged with any sort of race-based group or from any sort of specific racial community. Ninety percent of them were white organized crime figureheads. That's who we're dealing with here.

My message on the contraband tobacco issue would be to please not just swipe it away with the rest of what Bill C-5 hopes to accomplish, which, for the record, I'm not against. However, this issue is unique from the perspective that organized crime is targeting contraband tobacco, pairing it with cocaine and fentanyl and all of the issues that we're talking about today, and using it to make millions of dollars to use themselves.

● (1715)

Mr. Rob Morrison: I wouldn't mind hearing a bit about the policing side of it, but we all.... That's one of the major problems that we're trying to deal with: organized crime and gang activity, especially gun violence and how that can tear apart a community. It doesn't matter who's involved here. You get shootings and young people, and it sounds as though if you give us some police experience—

The Chair: The bells are ringing. Can I get unanimous consent to go until 5:30, and then there's enough time to physically go to the—no. I see a “no”, so unfortunately we will have to suspend here. We don't have unanimous consent to go to 5:30.

I want to thank the panel. I want to thank all of the witnesses for your important testimony today. It's an important study.

We'll resume on Friday.

Thank you. The meeting is adjourned.