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Chair

The Honourable Paul DeVillers

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (1610)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I call to order this meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, pursuant to the order of reference of Friday, October 22, 2004, on Bill C-10, An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts

Appearing before us, we have the Hon. Irwin Cotler, Minister of Justice. With us from the department is Catherine Kane, senior counsel with the criminal law policy section.

As is the custom, Mr. Minister, if you would like to commence with an opening statement or review of the bill, we will then have our questions from the committee members.

Hon. Irwin Cotler (Minister of Justice): Thank you, Mr. Chairman.

I want to thank the committee for the opportunity to appear before you as you begin your consideration of Bill C-10, and indeed as you begin your important work as a committee with a very charged agenda as a whole.

For some of you with regard to this bill, the content may be very familiar. As you know, the Standing Committee on Justice and Human Rights, as it was then named, conducted a thorough review of the mental disorder provisions of the Criminal Code in 2002. This review was required by the 1992 act that brought about very significant reforms to modernize the law governing persons found unfit to stand trial and persons found not criminally responsible on account of mental disorder.

I might add parenthetically that the very difference in the use of nomenclature with regard to these matters signifies the change in approach in this regard. Where we used to have the conventional approach of, let's say, not guilty by reason of insanity, etc., we now have a far more sophisticated and nuanced approach to these matters.

[*Translation*]

The committee heard more than 30 stakeholders over a period of three months. The report and the recommendations of the committee reflect this broad consultation, as well as a careful scrutiny of current legislation.

In examining Bill C-10, you will note that its provisions encompass the vast majority of your recommendations. One might say that this is an example of democratic renewal. The report of your committee concluded that, in the main, the system provided for in the Criminal Code functioned very well, but could be improved. The reforms proposed in Bill C-10 are based on the code's Part XX.1, and aim to improve the system in several key areas.

[*English*]

The government tabled the response in November 2002, detailing the proposed approach to each recommendation. The government undertook to introduce legislation to implement most of the recommendations calling for code reform and to pursue other non-legislative initiatives. Bill C-10 includes these amendments and additional reforms, the need for which has been highlighted in consultations that have been conducted by my department over the years with the provinces and territories, review board chairpersons, and other stakeholders. Indeed, this has been an extensive consultation both on the governmental level and, one might say, on the civil society level in this regard.

As you know, I introduced Bill C-29 last March, but that bill died on the order paper before this committee had an opportunity to review the bill. Bill C-10 includes the same reforms as Bill C-29, although some minor refinements have been made. Either my officials or I can provide further information on how the government is following up on the recommendations that are not reflected in Bill C-10 if time permits.

I'm delighted to be joined here by Catherine Kane, whom I would regard as the expert in these matters with respect to appreciating what is in effect a kind of code of conduct in these matters, and to whom I would defer lest I be presumptuous in my attempt to explain that which she would better appreciate and can convey to you.

[*Translation*]

Before expounding on some of the key elements of the bill, I would like to point out that preparing criminal law regulations with regard to persons with mental difficulties remains a challenge.

Many people fall through the cracks in our society. It can happen that because of mental illness they behave in a way that brings them into conflict with the law. We should not presume that persons with mental illnesses are dangerous or that they pose a risk to public safety. Some of them commit minor or nuisance offences, while it does happen that some commit violent offences.

Our criminal law must provide a range of possibilities for persons who, because of mental illness, come into conflict with the law. The law must also ensure the protection of the public against potentially dangerous individuals. Part XX.1 of the Criminal Code arrives at a very functional balance between the protection of the rights of the accused suffering from mental illness, and the protection of public safety.

● (1615)

[*English*]

The Supreme Court of Canada has scrutinized part XX.1 in several recent cases and noted that the twin goals, treatment for the accused and public safety, must be equally respected. They underpin the entire philosophic and juridical approach to this legislation. Accordingly, the Bill C-10 amendments include both reforms to ensure that the rights of the accused are protected and reforms that will improve public safety where necessary.

Let me turn now to the key amendments in this bill. But before doing so I want to make a brief comment on the structure of the legislation itself.

Bill C-10 includes 65 clauses; it's a rather large and complex bill as these matters go. Some of the length, one should appreciate, is due to the fact that the same regime applies to military personnel found unfit or not criminally responsible for offences under the National Defence Act. What you have here is clauses 47 to 61 of this legislation amending the National Defence Act in the same manner as the code is amended by Bill C-10.

Some of the length and complexity is also due to the fact that part XX.1 is a complete code of law and procedure for the mentally disordered accused. An amendment to one provision has an impact on several others, so Bill C-10 includes many consequential amendments.

The main features of Bill C-10 focus on the following. I'm just going to, almost by way of one-liners, identify the main features. Again, as I said, this committee and some of its members have visited this before, so I will just summarize them quickly.

They include expanding the powers of the review boards to enhance their ability to make dispositions; repealing unproclaimed provisions; addressing the situation of the long-term or permanently unfit accused; addressing the concerns of victims; giving police more options when they arrest an accused for a breach of a disposition order, and if you're going to give the police more options in this kind of collateral way, you give the accused more options as well; and finally, clarifying, or making housekeeping types of amendments.

I'm going to leave out the part about the expansion of the powers of the review board. I'll be prepared, together with Catherine, to deal with this in questioning, but I think I should move further along on matters regarding the more substantive aspects of the bill.

[*Translation*]

As to the situation of the accused who are not fit to stand trial in the long term, or will never be, Bill C-10 introduces new provisions that will allow the court, and not the review board, to order a stay of proceedings against an accused person who is unfit to stand trial but presents no significant risk to public safety.

The review board may recommend that the court make inquiries about the status of an accused who is deemed unfit. The court may convene a hearing pursuant to the recommendation of the review board, or do so on its own initiative. This hearing will enable it to hear the comments of the department, the hospital, the attending physician and the various other parties. The court must order an assessment to determine the mental state of the accused.

The new provisions will not allow the release of an unfit person who is dangerous, but our legislation must provide a means of bringing to a close the criminal proceedings involving a person who is unfit to stand trial, but presents no danger to society.

[*English*]

The committee recommended that the Criminal Code be amended to permit the court to absolutely discharge a permanently unfit accused. The Bill C-10 amendment responds to the recommendation but provides instead for a judicial stay and sets out in detail the process to be followed, the nature of the hearing, and the factors to be considered in the appeal process by the Crown.

I just want to say that a judicial stay of proceedings has the same consequences as an absolute discharge. An absolute discharge is a term used to describe the disposition for an accused found not criminally responsible based on the criteria set out in the code. The judicial stay—and this is the important point—is the remedy a court will consider for a permanently unfit accused who is not dangerous.

Note that since the committee's review and report, the Supreme Court of Canada delivered its judgment in the Demers case in June 2004. This decision confirms the need for amendments to provide a judicial stay of proceedings for a permanently unfit but non-dangerous accused. The Supreme Court of Canada struck down key provisions of part XX.1 as they apply to the permanently unfit. The declaration of invalidity has been suspended until June 2005 to give Parliament an opportunity to amend the Criminal Code.

I'm confident that the approach we have set out here in Bill C-10, which reflects both the recommendations of the committee and the guidance provided by the Supreme Court in the Demers case, will ensure a constitutional regime for the permanently unfit accused who is not dangerous.

● (1620)

[*Translation*]

In order to grant victims a role during the proceedings

[*English*]

that is similar, but not the same as the role at sentencing hearings....

Now I'm going to make some brief references with regard to victims.

Victims will be permitted to read their victim impact statement aloud at disposition hearings. However, in some situations the review board may refuse the oral presentation. This could occur where reading an impact statement could cause the accused to react negatively and thereby cause more trauma to the victim or otherwise disrupt the hearing, which should proceed in an informal manner.

Bear in mind that NCR accused—those not criminally responsible—are not sentenced; therefore the nature of a victim impact statement at a disposition hearing must relate to the criteria that are relevant to making a disposition for the non-criminally responsible accused.

The victim statement may recount the impact of the crime and the harm or loss suffered, and in addition any ongoing concerns they have for their safety that may be addressed in the conditions of a disposition. But—and this is the important point—a non-criminally responsible accused is not responsible or accountable for the offence, and it may be difficult for victims to reconcile this notion with the content of their victim impact statement.

Courts and review boards will also be required to ask whether a victim has been advised of the opportunity to prepare a victim impact statement before the first disposition hearing. At all times, it is the victim's decision whether to submit a victim impact statement. Whether or not the victim reads the statement aloud, the review board is required to consider this statement.

Review boards will also be given the same powers as the court to order a publication ban on the identity of either a victim or a witness. For sexual offence victims, the ban will be imposed by the board, and for other victims and witnesses the board may receive applications for an order to prohibit publication of the identity of a victim or a witness and may make the order where it is necessary for the proper administration of justice.

These provisions will mirror those in the Criminal Code that permit the court to order a publication ban, and the application process and factors to be considered will be the same.

I was going to go into some reference to the enforcement of disposition and assessment orders by the police, who will have more options, or some of the clarifying amendments in the bill to address redundant or confusing provisions, or some recommendations of the standing committee that were not included in Bill C-10—although I want to again emphasize that most of the recommendations have been included in Bill C-10, though some as I said, were not.

I think I may just move very quickly to a close with regard to the recent developments that have just occurred. The federal-provincial-territorial working group on mental disorders meets regularly, and most recently it met on October 21 and 22. Although our provincial colleagues were aware of the former Bill C-29, as it then was, and in addition had indicated their support for the government's response, which notes the amendments to be proposed, this meeting provided them with the first opportunity to actually focus on the bill now before you.

[*Translation*]

The main concern raised, and I agree with it, is that the provisions in Bill C-10 generally work well in practice and will help the State in the administration of justice.

I am aware that there are certain questions concerning the way in which Bill C-10 reaches its objectives. I expect that certain provincial Crown prosecutors will raise important questions of concern to them before the committee. I also expect that other witnesses will raise other issues, as well as different points of view.

The committee's examination is essential, and will ensure that many viewpoints are examined within the context of law reform, and that the amendments put forward are clear, effective and compatible with criminal law and with the House.

● (1625)

[*English*]

My objective here—and it is, I'm sure, the objective that is shared by the committee—is to ensure that Bill C-10 reflects the twin objectives, as I said, that underpin the philosophy and the legal framework of this bill, namely, the protection of public safety on the one hand and the safeguarding of the rights of the mentally accused on the other.

Thank you, Mr. Chairman. I think I'll stop here to allow for any questions. I want to introduce Catherine Kane again as the expert on these matters. Her responses will provide you with more substantive appreciation than mine could in this area.

Thank you, Mr. Chairman.

The Chair: Thank you, Minister Cotler.

We will go now to Mr. Warawa for seven minutes.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman.

I would like to thank Minister Cotler and his staff for being here today and for the work that has been done on this.

I do agree in principle with Bill C-10, but there are some concerns that I'd like to share and hopefully I'll get some answers to my questions. Mr. Chairman, do I have seven minutes? Seven minutes.

An issue arises regarding a family physician. For our purposes today, I won't use names, but it is public information. A North Vancouver doctor had a patient he was caring for who had a mental disorder. That patient felt betrayed by the medical staff and proceeded to create a hit list. This doctor was number one on the list. He was killed and the person with the mental disorder was arrested at the scene, and there were nine other people on that list. Fortunately, nobody else was hurt.

It was, as you can well imagine, very troubling and trying for that doctor's family. They felt that the review board that handled this did not properly give them opportunities for input, and they weren't helped with the process. That was a big concern. As I go through this, we can maybe learn from some of their experiences.

After ten years—and I'm not sure of the proper terminology for what to call that person, an accused or an offender, so I'll use the term “the person with the mental disorder”—that person was released from a hospital and reintegrated back into the community. The victim's family was not made aware of that, but when they did find out, they also found out that this person had now volunteered at a hospital in the community. This made them very concerned as to whether, if this person had a problem with health care providers and had created a hit list ten years prior, that person should be involved as a volunteer in a hospital, a different hospital now from the one this person had just been released from. They were very concerned.

The case workers and the review board, of course, knew the history, but the hospital was not aware of that possible risk factor. The family of the doctor made a recommendation that we should very seriously consider assuring that volunteer application forms have that information. The information would be obtained my ensuring that all criminal record check applications bear the following question: have you ever been found not guilty of a criminal offence by reason of a mental disorder?

The RCMP, a federal body, has community policing offices across our country that are involved with volunteers. Volunteers are needed right across our country, so I think that would be an appropriate question on an application form.

Also, regarding applications for jobs within the federal government, any federal government body, I think we should have that as a question on the application form for employment or for volunteering.

If that criminal record check were to come out of that application for employment or volunteering, they would go to CPIC to do the criminal record check. I'd like to know, would CPIC have it listed on the person's record that they were found not guilty of a criminal offence because of a mental disorder? Would that be made public to the person making the record check?

● (1630)

I think it's an important issue, Mr. Chairman, because the example that I've shared with you, and very briefly because of the limits of time, has exposed that those other employees at the other hospital could have been put at risk and not been aware of that risk. Maybe they weren't or maybe they were at risk, but think we owe it to them, and also on the side of protecting the public, which is very important, to ensure that they're aware of the risks.

I'm not sure who can answer that question for me. Would CPIC have the information that this person, or a person, would have on their record that they were found not guilty of a criminal offence by reason of a mental disorder? Would that information be made available to the person doing a record check?

Hon. Irwin Cotler: Mr. Chairman, I can't address the specific case addressed here, but I can address the situation that has been raised. It is an important question. I will try to reply to it. I will then ask Catherine Kane to fill in those gaps that I have not myself addressed.

Let me say again, because it deals with a question that bears repetition, that the whole approach with regard to this bill and the crafting of the amendments in this bill has been to balance the public's right to safety with the right of the mentally disordered accused.

As we know, a person who's found not criminally responsible has been found to have committed the offence, but they're not responsible in law for their actions. The provisions of the Criminal Code will ensure that a person will only be absolutely discharged when he or she does not pose a significant risk to public safety. If there is a significant risk, he or she will be either detained in a hospital or placed on a disposition with conditions that meet both the needs of the accused and public safety.

Once discharged, the whole approach is that the accused should be integrated into the community. For example, the Criminal Code currently provides that on an application for federal employment—this deals in part with your comments—there can be no questions that require a person to disclose any charge or finding that the applicant was found not criminally responsible if the applicant has been absolutely discharged and if he is no longer subject to any disposition in respect of the offence.

Here we get to the question of screening of volunteers in that regard. The screening of volunteers is essential to ensure that those who work with children and vulnerable persons in particular are healthy and fit to do so and do not pose a risk to those whom they are seeking to help. The screening of volunteers has been addressed by each province. Protocols have also been developed through the efforts of Volunteer Canada.

The screening of volunteers cannot be addressed in Bill C-10. However, I have put this issue on the agenda for my meeting with my counterparts, federal and provincial, whom I will be meeting with, but in particular, our officials meet with them regularly. In particular, I would say that this issue needs to be canvassed by the federal, provincial, and territorial directors of victims services and the Federal-Provincial-Territorial Working Group on Mental Disorder, which, as I said, also recently met to consider this bill.

Catherine Kane may be able to provide you an update with regard to discussions on how this issue is currently being dealt with. Clearly, victims of crime need more information about the consequences of a not criminally responsible verdict and their role in the disposition hearings and their access to information about the accused's release conditions. These issues, however, will need to be canvassed with our provincial and territorial colleagues for the reasons I mentioned.

I'll just turn it over now to Catherine in that regard.

● (1635)

Ms. Catherine Kane (Senior Counsel, Criminal Law Policy Section, Department of Justice): As the minister mentioned, there is a working group of directors of victim services, and for the last two or three years they've been looking at how they can provide better services to victims where the offender is found not criminally responsible. Previously it was a bit of an unknown group of victims. They hadn't been aware that victim services existed in their province, and unless the services were provided right in the courthouse to them, they weren't connected to those services up until the time of verdict.

It is quite a confusing area of the law even for those of us who are familiar with it, and more so for victims. A lot of efforts are being made now, but we haven't come to any perfect solution to ensure that victims get the information they need about when the accused is being released, what the conditions of his disposition are, and what they do if they see him on their front porch and he's not supposed to be there, that sort of thing.

We're working towards some policies, and we're also developing some fact sheets for victims that will provide them with the basic information they need. Hopefully, by the time this bill is passed we'll have that in place and victims will have the information they need. But it will differ from province to province because the administration of justice and the delivery of victim services are primarily matters of provincial responsibility.

With respect to your question regarding CPIC, CPIC is certainly capable of including the information on the conditions of a person's disposition when that person is found not criminally responsible. It's up to the crown attorney or the review board to provide that information to CPIC. Again, that will vary according to the practice of the particular review board and crown attorney, but there's no impediment to having that information recorded on CPIC.

With respect to the screening of volunteers, I know from my own experience in seeking a clearance certificate that it's usually up to the person who wants to be the volunteer to go to the police and have the certificate prepared. If you have any reservations about whether you're going to pass that screening test, you tend to screen yourself out. But in that situation, if you had been found not criminally responsible and it was recorded on CPIC, that information would be there for those who do the check.

The Chair: Thank you.

We'll have to move on.

[*Translation*]

Mr. Marceau, you have seven minutes.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you, Mr. Chairman.

Minister, Ms. Kane, thank you for having taken the time to be here with us this afternoon.

There are five clauses in Bill C-10 which broaden the powers of the review board. These are clauses 3, 16, 27, 28 and 32. This extension of the powers of the board had not been recommended by the Standing Committee on Justice in its report, which as you know was unanimous. What led you to broaden the powers of the review board?

[*English*]

Ms. Catherine Kane: Forgive me, but I'll have to answer in English so I convey the proper information.

In addition to the committee's review, which was a statutorily required review, the department had been consulting with review board chairpersons and our provincial colleagues since the time the major reforms were implemented in 1992. We'd been keeping track of all the necessary amendments those groups we consulted with felt were necessary for the proper administration of the regime. Many of the amendments that are included in this package are in response to those consultations and to the case law, and we were waiting for the opportunity for the committee to have their review to do a comprehensive package of amendments rather than to proceed with amendments ahead of the committee's review.

The increased powers for the review board were highlighted primarily following the decision of the Supreme Court of Canada in Winko, which made it clear that the review board must release an accused unless they found the accused posed a significant threat to the safety of the public.

● (1640)

Mr. Richard Marceau: Or to himself.

Ms. Catherine Kane: To the public, not to himself, although that would be a factor in terms of assessing his or her mental condition.

Often the review board didn't have the information they needed at their disposal in order to make a decision of such consequence, so they highlighted for us that they needed powers to order an assessment. They also had situations where they would hold a hearing but didn't have everything at their disposal at the time they needed to adjourn, but they didn't have the power to adjourn because a review board must derive all of its powers from the statute. Unlike a court, they have no inherent powers, and they have to find all their authority in the Criminal Code.

That's primarily the reason for so many small amendments in this package, to clarify what their mandate actually is.

[*Translation*]

Hon. Irwin Cotler: Perhaps I could add something to that.

[*English*]

I think the powers of the review board that have been expanded are particularly relevant in terms of understanding this overall code of conduct we are now going to have here. The review board makes the critical decisions about the accused, the disposition, and the terms and conditions of the disposition. The review boards derive all their authority from the Criminal Code, and therefore the Criminal Code has to ensure they have the appropriate tools and capacities to make these decisions.

What is changing here is that the review boards will now have the authority to order an assessment of the mental condition of the accused. They will be able to convene a hearing on their own motion. They will be able to adjourn a hearing for up to 30 days, for example, when they need to gather more information. Again, this is in order for them to deal with the fundamental issues at stake in a more nuanced manner.

They will also have the authority to issue a summons or warrant to compel an accused to appear before them. This is particularly important where the accused is on a conditional disposition, is living in the community, and fails to attend their disposition review hearing. You have here a kind of monitoring function the review board is engaged in, and that kind of supervisory monitoring function does have a public safety dimension to it.

The review boards will also have the authority to extend the annual review up to two years on the consent of all parties when the accused is represented by counsel. It will permit an accused, for example, who is on a conditional disposition and is observing his or her terms and conditions to continue without the prospect of a hearing that would simply endorse the status quo.

The annual review may also be extended to 24 months for those not criminally responsible, accused who have committed serious personal violent offences and who are detained in custody or in a psychiatric hospital. Where the disposition information and the assessment indicate that the mental condition of the accused is not likely to improve within the year and that detention and custody will continue to be necessary, the review hearing could be postponed for up to 24 months.

Now, I understand this recommendation was proposed to this committee at an in camera session, where one heard at that time first-hand experience of a victim of a not criminally responsible yet violent accused. This may have found its way, therefore, into the expanded powers of the review board, as they're not in the specific recommendations in that regard.

[*Translation*]

The Chair: Thank you.

Mr. Marceau, you have the floor.

Mr. Richard Marceau: The standing committee had proposed that deliberately not complying with a decision of the court or of a review board be made an offence. Why has that not been included in clause 36 of Bill C-10?

[*English*]

Ms. Catherine Kane: In the government's response to the committee's report, an explanation was provided about some of the consequences of creating a new offence for breach of a disposition. If you have an accused who has conditions of their disposition, usually the conditions are fairly restrictive as to where the accused can reside, what geographical area they can travel in, whether they agree to take certain medication, and so on. If they breach those conditions, then they're charged with an offence. Then they will be back before the justice of the peace, charged with a different offence for which they might be convicted rather than found not criminally responsible, because their mental condition may have improved in the meantime and they may be quite aware that what they did was wrong.

In that case you'd have two parallel processes happening. They'd be under disposition for the initial offence, and they'd be subject to the criminal courts for the new offence of breach of a disposition. It is very disruptive to the rehabilitation and reintegration of the accused to have these two parallel processes. They wouldn't be able to return, perhaps, to where they were residing or whatever.

Mind you, if the accused commits another offence, then they will be charged with another offence. If they commit a robbery, an assault, or whatever, then they will definitely be charged with that offence, but breach of a condition of their disposition is dealt with in another manner. The idea is that they should go back before the review board and the review board should review their whole behaviour and mental condition at the time and determine whether different conditions should be imposed. There could be more restrictive conditions, perhaps, or in certain cases they may even have to be detained in a hospital if they can't abide by the conditions in the community.

In Bill C-10 a range of options is proposed for the police when they arrest an accused for breach of a disposition. They can return the accused to the place where he is supposed to reside, and that could be attached to a hospital, it could be a group home or whatever, or it could be with his family. They can give him a promise to appear, and he must then appear before the court or appear again before the review board.

But if they have reservations about whether he will continue to breach his disposition, they're worried about his committing another offence, they don't know his identity, or they can't ascertain the conditions of his disposition, they must bring him before the justice of the peace as they do now. The justice of the peace will then decide whether he should be detained or released, and at that point the review board will be notified and the review board will convene a hearing as soon as possible.

● (1645)

[*Translation*]

The Chair: Your time is up, but I'm sure you'll have another opportunity.

[*English*]

Mr. Comartin, do you want your turn now or do you want to gather yourself together, having just returned from the House?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Could I ask just one question?

The Chair: Certainly.

Mr. Joe Comartin: I hope this hasn't been asked. I know this came out of the briefing we got from the Library of Parliament. It involves a case that came out of my community, so I'm particularly interested. It's R. v. Demers. They talked in there about when the Supreme Court had considered that, and that you had provided in Bill C-10 only for a stay of proceedings as opposed to an absolute discharge. I'm wondering if you'd considered the Demers case when you drafted the bill the way it's drafted.

Hon. Irwin Cotler: Yes, I absolutely did consider the Demers case when we drafted the bill. In fact, we have until June 2005 to respond to the guidance that the Supreme Court provided us in the Demers case.

As I said in my opening remarks, our approach here was to try to integrate both the guidance provided us by the Supreme Court in the Demers case, along with the recommendations that have been made by the parliamentary committee, and to integrate that in our response with regard to Bill C-10.

Cat, did you want to add to that?

Mr. Joe Comartin: Just before you go on, I suppose the point I'm making is that they made the specific recommendation that absolute discharges be provided for. You've not done that and I'm asking why not.

Ms. Catherine Kane: An absolute discharge is the term we use in the Criminal Code to describe the outcome for a person who has been found not criminally responsible and has been determined not to pose a significant risk to the safety of the public, and the person is discharged at that point.

Judicial stay has the same consequences. It will end the proceedings once and for all. The Crown will not be able to reinstitute the proceedings after that point in time. But it is the term that will apply to this situation, which is different from the situation where somebody has been found to have committed the offence. The unfit accused has not been found to have committed the offence. The consequences will be the same for that unfit person.

In the Demers case, the Supreme Court used the words "absolute discharge", but the test that they set out for the common law, the test that would apply should we not enact new provisions, basically applies to a judicial stay of proceedings under the charter.

In our view, the mechanism we've provided and the terminology we've used will achieve the same results that the court demanded in Demers and will avoid confusion in terminology. We've set out a fairly comprehensive procedure and criteria for that judicial stay to be ordered. So the accused will be fully protected and public safety will be protected in the criteria that must be taken into account.

● (1650)

The Chair: Thank you, Mr. Comartin.

Now we'll go to the government side. Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): I'm sorry, no, I don't have a question.

The Chair: Okay.

Ms. Neville, then.

Ms. Anita Neville (Winnipeg South Centre, Lib.): I guess what I'm interested in is the relationship with the provinces and whether the procedures are in place to protect individuals who are suffering from a mental disorder—I wasn't part of the earlier consultation, so this is really new to me—and to protect the public if a threat occurs. How does this interact with the provincial governments?

Ms. Catherine Kane: The provisions in the Criminal Code that apply to mentally disordered accused only come into play where a person with a mental illness has committed an offence. As the committee heard when they conducted their review, there is a concern that the criminal justice system tends to be the social service system of last resort for the mentally ill.

Many do fall through the cracks. They are treated in the community to a certain extent, but if they escape the attention of those providing social services, if they commit a minor offence, they're charged with something and they're brought into the criminal justice system, and then many more resources are brought to bear on that person because they are assessed by the court. They may have treatment ordered to try to make them fit to understand the proceedings. Sometimes that involves some basic health care or basic nutrition and what not that makes all the difference to them. Then some of them get stuck in the criminal justice system as a result. Part of the amendments in this bill are designed to make sure that those who get stuck in the criminal justice system don't remain there for longer than necessary.

But there is certainly a complementary provincial mental health scheme that works very well, and the Criminal Code scheme, which is only intended to deal with those people who commit offences. When a person does commit an offence and they are ordered to be assessed or treated, it is the provincial health system that provides that assessment and that treatment. So it's a complementary, interdependent regime between the justice system and the health system.

Ms. Anita Neville: I have one quick follow-up question, Mr. Chair.

I'm sorry, I should know this, but I'm assuming there were extensive consultations in the drafting of this bill, both with the stakeholders and with the provinces in terms of what you're recommending here.

Ms. Catherine Kane: Yes.

Hon. Irwin Cotler: I think this bill has perhaps had more. As I indicated in my earlier remarks, the bill is almost like a case study of an ongoing consultative process, both on the intergovernmental level with respect to consultations with federal, provincial, and territorial officials, not only with regard to ministers but also to respective working groups in that regard, and also with regard to stakeholders and civil society representatives.

So you have here really a convergence of both consultation on the intergovernmental level and consultation on a civil society level. The bill is intended to reflect the consensus from those consultations that have gone on over the year. We're talking here about a situation where we're almost in the twelfth anniversary of this consultative process, and hopefully now we're getting close to getting it right.

The Chair: Ms. Fry, there are three minutes left in that seven-minute round.

Hon. Hedy Fry (Vancouver Centre, Lib.): Thank you.

My question is about people who fall between the cracks. The group I'm thinking of are those in the fetal alcohol effect group, who don't actually have fetal alcohol syndrome and are not therefore seen to be completely mentally unfit, but who, because of fetal alcohol effect, are in and out of the justice system constantly, due to either violent acts or getting into trouble for various reasons. Is there a provision for people with fetal alcohol effect?

I know they tend to fill the jails because they fall between these cracks. They're not actually mentally unfit, but they do have an effect that creates this violence and anger, inability to sustain attention, and so on.

● (1655)

Ms. Catherine Kane: There is no specific provision that singles out fetal alcohol syndrome or fetal alcohol effect. Some people who do suffer from fetal alcohol syndrome will meet the criteria and be found unfit to stand trial—

Hon. Hedy Fry: But very few.

Ms. Catherine Kane: But very few, and others will unfortunately be convicted of an offence. This has been quite a challenge for some judges in terms of crafting the appropriate sentence for those people, because they may not understand the consequences of their sentence.

It is an issue that is under study by officials in the Department of Justice and officials at Health Canada with our provincial colleagues. Some provinces are exploring diversion programs for people with fetal alcohol effect so that they are not thrust into the justice system unnecessarily and they are supervised and supported in the community. But despite the fact that knowledge of fetal alcohol effect has been on the horizon for several years, they're only beginning to grapple with it now. I think it will be several more years before we find the appropriate solution, perhaps with amendments to the Criminal Code and perhaps not, perhaps just policy.

Hon. Hedy Fry: These people are victims of the system, actually, more than anything else.

Ms. Catherine Kane: Again, it's that problem of balancing, because some do put public safety at risk, and some commit just minor nuisance offences.

The Chair: Thank you.

Mr. Thompson, for three minutes.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, and thank you, Mr. Minister, for being here.

Right at the outset I'd like to say that I believe the minister has done a very good job of putting this bill together, using the suggested amendments from the committee from the past. I think you've done fairly well. I compliment you on that.

I do believe this is not going to be a very controversial bill. I think everybody is pretty well in agreement that this is a good thing that's going to happen, and if there's anything else that needs to be done, we'll get there.

I have only one question I'd ask the minister in regard to this bill. Is the minister comfortable that the victim's rights are not weakened in any way as compared to any other type of crime? Victims are always a little behind when it comes to rights in many pieces of legislation, and I want to make absolutely certain that the minister is comfortable that the victim's rights are well adhered to in this bill.

The Chair: Minister Cotler.

Hon. Irwin Cotler: Yes, I just want to say to Mr. Thompson that I'm the beneficiary of the recommendations as made by the parliamentary committee and my ministerial predecessor, so in that sense I'm here informed and enlightened by what has gone before. As I said, this bill really is a case study, in the best sense of democratic renewal, on the work of a committee for which both the government and society benefit.

I want to say again that we are open to any further recommendations, whether they be in the area of victims' rights or otherwise, that can improve or refine this matter. When you get to the issue of victims' rights, there are matters, for example, that were included in the recommendations of the previous standing committee—which I said we have been the beneficiary of—that were not included in this bill and that do bear in some sense on the issue of victims' rights. So while we've responded to the vast majority of the recommendations, let me just address that particular aspect, because in this regard perhaps the specific amendments may not be exactly as the committee proposed.

[*Translation*]

For instance, the...

[*English*]

Mr. Myron Thompson: I have a point of order, Mr. Chairman. I'd like a little shorter answer. I've got three minutes, and if he could get right to the point....

The Chair: That's because you said you only had one question.

Mr. Myron Thompson: I didn't say that.

Some hon. members: Oh, oh!

Mr. Myron Thompson: I didn't say I had one question. I said I had three minutes, so I want him to move along.

The Chair: Yes, Minister Cotler.

Hon. Irwin Cotler: Some of this was actually answered by Catherine Kane earlier on, but let me just say on the one particular theme with regard to the federal-provincial-territorial group, they made recommendations with respect to research on the ways we can improve services that would be given to victims, in order to better respond to their needs in cases where an accused would be declared not criminally responsible as a result of mental unfitness—for example, to assist victims with regard to their appearances before examination committees and the like. It may be that those are areas we have to look into, to see if—

● (1700)

Mr. Myron Thompson: But are you, sir, comfortable with this bill in the present form?

Hon. Irwin Cotler: I'm comfortable with it in the present form, but as I said, I'm open if you or any members of the committee feel this can be enhanced, because one of the things we wanted to do in this bill was, in addition, when we talk about the rights of the mentally disordered accused and we talk about public safety as being the twin prongs underpinning the bill.... I think there is an overall disposition in our legislative approach as a Parliament to be concerned with victims' rights. We have to satisfy ourselves that in this bill we have addressed that issue, and I'm satisfied that we have.

The Chair: Thank you, Mr. Thompson.

That was four and a half minutes.

Mr. Myron Thompson: Is my time up? These guys go on too long. We've talked about that—

The Chair: There was a lot of latitude in that.

Madame Bourgeois, trois minutes.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chairman. Mr. Minister, some time ago the Auditor General of Canada tabled a very critical report concerning the incarceration of women in this country in the facilities of the Correctional Service of Canada. She stated that more than 90% of incarcerated women were suffering from mental illnesses and addictions. She moreover deplored the high rate of recidivism due to the fact that these women are not receiving the care they need, neither for their addictions nor their mental illnesses. For these reasons there are very few paroles.

I would like to know, Mr. Minister, whether you took into account any comparative gender analyses before introducing your bill, analyses which should normally have been provided to you. You could perhaps obtain assistance from the Committee on the Status of Women. That is my question.

Hon. Irwin Cotler: Thank you for your question. I must admit that I don't know the history of this project as well as Ms. Kane does. I think that she could speak to you about the research and the approach we took to this matter and the related concerns, particularly with regard to the victimization, if you will, of women.

[*English*]

The Chair: Ms. Kane.

Ms. Catherine Kane: If I understand the question correctly, you're referring to women who are in federal penitentiaries.

[*Translation*]

Ms. Diane Bourgeois: I'm talking about women who have problems with the law in general. Over 90% of these women have addiction and mental health issues.

[*English*]

Ms. Catherine Kane: This bill and the initiatives we proposed to deal with those who are found not criminally responsible would not result in anyone, male or female, being incarcerated in a federal institution. If they were detained at all, they would be in a provincial mental hospital. We do know, however, that there are many people in federal penitentiaries who have mental illnesses and drug dependencies. Your questions with respect to that population would be better addressed by our colleagues at the Correctional Service of Canada, who have instituted programs for people in prisons.

With respect to the gender analysis of those found not criminally responsible, unfortunately we don't have any statistics that indicate how many men as opposed to women are in conflict with the law and are found to be either unfit or not criminally responsible. The data provided to us by the provinces are not that specific.

[*Translation*]

Ms. Diane Bourgeois: You tell me that I should address my question to the Correctional Service of Canada! Are you aware that you are introducing a bill that amends the Criminal Code, in particular as it concerns people who have been incarcerated because of mental illness, which is true for 90 per cent of these women? Would it be possible Madam, for you to consult the Committee on the Status of Women to obtain a comparative gender analysis, in order to get a clear picture of the situation and help the women who have no recourse in the facilities of the correctional service?

I don't need any comments or answers, Mr. Chairman.

The Chair: Thank you.

Mr. Minister, you have the floor.

● (1705)

Hon. Irwin Cotler: In this regard I would like to mention that the federal-provincial-territorial task force on mental illness which I referred to a bit earlier meets regularly to discuss current issues. This group undertook an examination of several recommendations concerning the role of prosecutors and the particular needs of adolescents grappling with mental illness. A round table met on this topic in November 2003. A few months ago, also, another discussion took place concerning persons with mental illness. Consequently, with regard to questions related to application, in particular as concerns the suffering of women, we could examine these issues within the framework of the federal-provincial-territorial task force on mental illness, which, as I said, meets on a regular basis. We could submit your question to that group to have them study it in the course of their work.

The Chair: Thank you, Mr. Minister.

[*English*]

Mr. Cullen, three minutes.

Hon. Roy Cullen: Thank you very much, Mr. Chairman.

Thank you, Minister, and Ms. Kane.

On the issue of fitness to stand trial, I was reading an article the other day in the newspaper about some gentleman who had been through the justice system and had been deemed unfit to stand trial, and he told his story. Of course, a lot of people are quite the braggarts about...they misconstrue the events; but he talked about how he went to three or four psychiatrists. The first thing he had to do was convince one of them that he was paranoiac, so he told a story about how everyone was after him. Then he spoke to another psychiatrist to convince this person he was a schizophrenic. He had some story to try to persuade him. On the basis of that, I guess, he was considered unfit to stand trial.

Some of the psychiatrists have said that there is no way an individual like that could get through three or four psychiatrists and fool them all. But I'm just wondering, in terms of this bill and the notion of limited cognitive capacity tests issued by the courts, I gather that a person is deemed to be fit to stand trial if he or she has a capacity to understand the process and instruct counsel. But I wondered if you could elaborate on that and maybe give us some assurance that people can't trick psychiatrists. What kind of test is being used, and how does it apply in the context of this particular legislation?

The Chair: Ms. Kane.

Ms. Catherine Kane: This bill does not change the existing law with respect to the test for fitness to stand trial. It's set out in section 2 of the Criminal Code, which is the definitions section. That's been interpreted by the courts in several cases. The Supreme Court of Canada has made it clear that the test is one of limited cognitive capacity, and it's a fairly high test to be found unfit to stand trial. But an accused must be unable to understand the nature of the proceedings or communicate with counsel on account of a mental disorder.

So first of all, the doctor who assesses the person has to determine whether that person is suffering from a mental disorder at that time. A mental disorder is a disease of the mind, and the psychiatrist uses the state-of-the-art manuals for what are the medically agreed upon mental disorders. That's the first hurdle. Even if you have that mental disorder, you may still be fit to stand trial. Many people can be made fit quite easily with treatment, medication, or just some basic counselling to help them understand what the proceedings are.

A person who is found unfit is truly in a state of not knowing what is going on around them, and it would be very difficult to trick a psychiatrist. I would suggest that if you have psychiatrists appear before the committee when you're studying the bill, they would be in a better position to indicate the specific types of tests they go through with an individual when they are determining if they are unfit to stand trial.

● (1710)

Hon. Roy Cullen: Thank you.

Could a person who is deemed by a psychiatrist to be, let's say, a paranoid schizophrenic legitimately understand the process but still be a paranoid schizophrenic? Is that possible?

Ms. Catherine Kane: Yes, I believe that's possible. The notion of fitness is with respect to the time that the criminal proceedings are occurring, so the person could be well aware of what's happening around them because they're taking their medication, or could be at a good point in time in terms of their mental health, and things could proceed in that regard.

The question of whether they're not criminally responsible relates back to the time they committed the offence. At that time they could have been suffering from a mental disorder so they could not appreciate the nature and consequences of their act or didn't know it was wrong. But at the time the trial is occurring, they would fully understand what they were being charged with and what the consequences of their actions would be if they were tried and found to have committed the offence.

So we're looking at two different points in time. The existence of the mental disorder, in and of itself, is not enough to determine either unfitness or criminal responsibility. There must be that other step of the test taken into account.

The Chair: Thank you, Ms. Kane.

Hon. Irwin Cotler: I might add on that point—just because I was reminded of it by the question—that I took my master's in law in law psychiatry and psychoanalysis. I remember that we had some illustrations of paranoid schizophrenics who had made interventions or submissions that were particularly representative in their brilliance. So sometimes they are able to fool psychiatrists. That's why you may need the kind of sustained inquiry that needs to be involved.

The committee may recall it recommended that the code should permit assessments by professionals and not be limited to psychiatrists. We do not include such an amendment in this bill, but we are continuing to consult with our provincial colleagues on this recommendation. This is something you may wish to consider.

The Chair: Thank you, Minister.

Mr. Prentice for three minutes.

Mr. Jim Prentice (Calgary Centre-North, CPC): Thank you, Mr. Chairman.

Thank you, Minister.

My own particular history with the minister goes back many years to when he was a visiting professor and I was a law student, which dates both of us.

Hon. Irwin Cotler: You've worn your age better than I have.

Mr. Jim Prentice: You and I—maybe I more than you—are interested in finding a new basis for the relationship. But welcome here.

The question I have relates to Bill C-10 and to other legislation before the House. I'm trying to understand it with respect to the charter. You mentioned the charter in your comments, so in the context of Bill C-10, does Justice provide an opinion to the government relative to how the charter applies to the legislation, and whether the legislation is thought by Justice to be within what's acceptable under the charter?

Going beyond Bill C-10, I have the same question in relation to Bill C-14, which was the Tlicho legislation, and the application of the charter in that case, given the interrelationship between section 35 of the Constitution, the charter, and some of the provisions that are being proposed by the government.

So is it common practice for Justice to provide such opinions? If so, can they be produced for the committee, sir?

Hon. Irwin Cotler: We do provide opinions, because the Attorney General of the day has to certify that any prospective law or policy comports with the charter. This is a juridical responsibility that attorneys general have. So my officials, on this or any other piece of legislation where issues of compliance with the charter arise, would provide such an opinion with respect to charter compliance.

Mr. Jim Prentice: Are those opinions made available to the justice committee upon request?

● (1715)

Hon. Irwin Cotler: I don't know, frankly, what the practice has been in this regard. Normally the Attorney General would advise what the opinion has been in relation to a particular issue, and that it complies with the charter. On whether the specific opinion that has been provided to the minister would be provided before the committee, that may be regarded as a confidence—

The Chair: If I could assist, I'm advised by the researchers that the practice is that they are not turned over to the committee, I guess on the basis of privilege—

Hon. Irwin Cotler: The minister could summarize the view, but not provide the actual opinion of the—

Mr. Jim Prentice: I wonder if I might just leave it on this basis, with respect to both Bill C-10 and Bill C-14. I'd like to request the opinion. If your response is that the opinion is not producible, I would certainly like to see some sort of summary or have you or someone speak to what the opinion says. But it seems to me that such an opinion for draft legislation should be accessible to the committee so we can judge whether the legislation fits within the four square corners of our constitution.

I raise that particularly in the context of Bill C-14 because we are talking about arrangements that are constitutionally extremely complicated. I think it's important for the committees and for the House to know whether the Attorney General and Justice have fully considered that.

Thank you, sir.

The Chair: Thank you.

We have on the list Madame Bourgeois, and then Mr. Thompson.

Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you Mr. Chairman. Mr. Minister, I would like to know whether you ensured that incarcerated persons suffering from mental illness will receive the care they need. Have all of the provisions been put in place to give them the treatment they need?

I will quickly ask my second question. With regard to the changes that simplify the transfer of an accused to another province or another territory, isn't there a risk of interfering with the recovery of persons who are suffering from a mild mental illness, when we know that the fact of being in one's family or one's area is considered a positive factor in the treatment of mental illness?

I will ask my third question very quickly, since we are running out of time. The text mentions the possibility of ordering psychiatric assessments, of adjourning hearings and of extending the assessment period in relation to an accused person's treatment. Those are a lot of procedures for an accused person. Will that accused be able to benefit from legal aid or financial assistance of some type? I come back to the problem of women who don't necessarily have access to legal aid. This has once again been denounced by the Elizabeth Fry Society and by other groups.

I think three questions will suffice.

Hon. Irwin Cotler: Ms. Kane's answers are shorter than mine; I will thus invite her to reply to you.

[*English*]

Ms. Catherine Kane: With respect to your first question about the services that mentally disordered accused persons need, those services are provided by the province. This is another one of those situations where we share the responsibility with the provinces and territories, which are responsible for both the administration of justice and the provision of health services. That is why we've had such extensive consultations with our provincial counterparts.

For example, the increased powers for the review boards to order assessment will obviously have implications for provincial mental health services, and they are completely supportive of those changes and the ability to provide those services.

With respect to the transfer provisions, one of the primary reasons for making the amendments is to loosen up the ability to transfer an accused to another jurisdiction. Often, they want to return to their home jurisdiction rather than remain where they have committed the offence. For example, if you were normally resident in Manitoba, you travelled to Ontario and committed an offence and were found not criminally responsible, you would remain in Ontario, even though your support network is in Manitoba. The transfer provisions permit you to go back to Manitoba, if that will assist in your reintegration and rehabilitation. This requires consent of the accused, so no accused would be transferred without their agreement that it would be better for them to be transferred.

As for the final question about extending the hearings, the many steps that are involved and the legal representation, there are provisions in part XX.1 of the Criminal Code to provide counsel to persons who are not criminally responsible or are unfit. Where they're not covered by legal aid, the attorney general of the province is required to pay their costs and disbursements for counsel.

● (1720)

The Chair: Thank you, Ms. Kane.

Mr. Breitkreuz, for three minutes.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you very much, and thank you, Mr. Minister and Ms. Kane, for coming.

The devil is often in the details, and the review board seems to be a very critical part of the process that's outlined in Bill C-10. What expertise does that review board need to have? How do the people on the review board come to have those positions? We know that parole board members sometimes do not receive their appointments because of their expertise. How is this review board constituted?

Ms. Catherine Kane: The existing part of the Criminal Code does provide criteria for the review board. They are appointed by the province under the Inquiries Act, but basically there has to be at least one legally trained person who is eligible to be a judge. That would mean somebody of fairly senior stature in the legal profession. There also has to be a psychiatrist or someone from the mental health profession. Then there are also lay members. You get a multi-disciplinary group, usually lawyers, psychiatrists, medical doctors, social workers, and so on.

Mr. Garry Breitkreuz: Appointed by the province.

Ms. Catherine Kane: Appointed by the province.

Mr. Garry Breitkreuz: My second question is my concern for public safety. I think that's part of the provisions you've outlined. What possibility is there that this bill might provide an incentive for a lawyer defending his client to use this bill to get his client a stay of proceedings by convincing the court that he has a mental disorder? Is there anything in here that might compromise public safety because it might provide some kind of incentive in the justice system to use this bill to get the client a stay of proceedings?

Ms. Catherine Kane: Certainly not in our opinion. We have a very carefully crafted regime in Bill C-10 with respect to the judicial stay of proceedings. First of all, it would only be applicable to a person who was likely to remain unfit, not to ever recover their fitness, and secondly, who does not pose a significant threat to the safety of the public. If there's any threat involved, they are not eligible for a judicial stay. Even after those criteria are met, there are a number of other criteria that have to be considered, including the nature and seriousness of the offence, the time that has elapsed since the commission of the offence, whether the Crown has had their opportunity to come forward and show the evidence they have to prosecute that person.

At every step of the way there needs to be another assessment of that accused, at the time the review board recommends their status be looked at and at the time the court conducts that inquiry, so I think there's very little risk that anybody could use that as a quick escape route from the criminal justice system. It's a fairly high bar that's been set, but one that, on the other hand, should be sufficient to make sure that nobody remains in the system who shouldn't be in the system.

Mr. Garry Breitkreuz: Okay.

I'll share my time with Mr. Thompson.

The Chair: He has four seconds.

No, there's no one else on the list, Mr. Thompson. You can have three minutes.

Mr. Myron Thompson: Well, it's a strange thing; he asked the exact question I was going to ask in regard to the review board. I wanted to know what it was going to be comprised of and how it was going to be selected.

When I look at the authority that the review board is going to have in regard to what's going on, they're virtually telling the victims...or they're going to be looking at the victim impact statements and they're going to decide whether they'll be admissible or not, it appears to me. They're going to decide if there's going to be a ban on publication, decide on what is going to be available and what isn't. It looks to me like there's a lot of flexibility, and they have a lot of decisions to make in regard to some very important issues that seem to come across this justice department's area a lot.

I think of freedom of expression, for example. How many times have I heard how, in child pornography, you have to be so careful? In fact, there was a court decision made once, and it was about freedom of expression, artistic merit. Remember those good old days? Here we have a board that's going to tell a victim that they can't make a statement based on whatever. Is that going to cause a problem with the charter in regard to freedom of expression?

The one thing that will scare the daylights out of the public is when you start talking about boards. They've seen decisions by parole boards. They've seen decisions by probation boards. They've seen decisions by immigration boards. Now we're talking about a review board dealing with a very delicate piece of law.

Are we not overdoing it with the authority that this review board's going to have? I think we'd better be careful there.

● (1725)

Ms. Catherine Kane: I can address some of your points.

The review board is considered to be an expert tribunal. They were appointed in 1992. Review boards have been in existence in every province and territory. Basically, they are regarded as having the multidisciplinary expertise that a court lacks in this regard. In most provinces, the chair of the review board is a judge or a retired judge. So they are aware of the balance that must be struck and the authority that they must derive from the Criminal Code.

With respect to your concerns that their powers have been increased too greatly, although they have been expanded they are still limited in Bill C-10. It doesn't go beyond what is said there.

With respect to victim impact statements, they don't have the discretion to rule a victim impact statement inadmissible. They may not permit the victim to read aloud the victim impact statement in certain situations, but where one is submitted in writing, they are required to consider it to the extent that it's relevant to the criteria they are required to consider to make a disposition.

So there wouldn't be a situation where they would say it's inadmissible—unless, of course, it didn't meet the criteria for victim impact statements, which are set out in the Criminal Code. They would be in the same category as victim impact statements that are considered at the time of sentencing.

Mr. Myron Thompson: Are they the only group that would determine how much of a risk an individual is in terms of whether he'd be released, or completely discharged, or...?

Ms. Catherine Kane: The Criminal Code sets out the criteria that have to be taken into account in determining the proper disposition. There are three possibilities: detention in the custody of a hospital, which would be a secure psychiatric facility—

Mr. Myron Thompson: And it's the board that makes that decision.

Ms. Catherine Kane: Yes, the board makes that decision. A court could also make that decision immediately following verdict, but where the court does not, the court defers to the review board. The review board makes that decision initially and then at least every year thereafter.

Mr. Myron Thompson: As I said earlier, Mr. Chairman, I believe this bill is going to have a lot of support around this table. I think we should move along quickly with this bill and get to some of these other ones that, I can guarantee the minister, won't be so easy.

The Chair: Thank you.

Mr. Cotler.

[*Translation*]

Hon. Irwin Cotler: I would simply like to conclude. Bill C-10 benefited from the contributions of parliamentarians, as I said, and from the study conducted by your committee, ensuring an additional review of the delicate balance we must seek, when drafting a bill, between protecting public safety and defending individual rights. I am certain that this committee will help us to find that balance. Thank you.

The Chair: Mr. Minister and Madam Kane, I thank you very much for your presence here today. Mr. Marceau, could we adjourn the meeting for 30 seconds? We will discuss the future business of the committee.

[*English*]

Thank you very much to our witnesses.

We'll suspend for 30 seconds.

[*Proceedings continue in camera*]

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