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Chair

The Honourable Paul DeVillers

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● (1530)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I call this meeting to order, please. This is the fifth meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We're studying Bill C-10, an act to amend the Criminal Code (mental disorder), and to make consequential amendments to other acts.

We have a panel of witnesses. From the British Columbia Review Board we have their chair, Bernd Walter. We also have, from the Review Boards of Canada, the secretary, and counsel of the Ontario Review Board, Mr. Joe Wright. From the Canadian Association of Chiefs of Police we have Vince Westwick, the co-chair of the law amendments committee; Vince Bevan, vice-president, and Chief of the Ottawa Police Service; and Luc Delorme, executive support officer.

I'll ask each of you to limit your comments to approximately ten minutes. Then we'll be able to have questions from the members.

We'll start with Mr. Walter, if you could address the committee for approximately ten minutes.

Mr. Bernd Walter (Chair, British Columbia Review Board): Thank you, Mr. Chairman and members of the committee.

I want to thank you again for making it possible for us to come to address this honourable committee, as well as providing the means to share the British Columbia Review Board's views and concerns with respect to Bill C-10. Some of these have been shared with research staff. I will try to restrict my comments to what I consider to be some important outstanding matters that will affect the review board's procedures.

I would say at the outset, by way of a disclaimer, that the invitation to share these remarks was fairly recent as well as unexpected, so I have not been in a position to consult with the other review boards across the country. I want to make sure it is understood that my remarks this afternoon are simply those of myself as an administrative law judge and the chair of the British Columbia Review Board. I know my friend will be perhaps reflecting more of a consensual point of view this afternoon. So I don't purport to speak on behalf of the other boards. The last time I was here I did that. I will launch right into the issues, given the brief amount of time.

My first issue deals with the power to order assessments. Bill C-10 clarifies that the review board, in its inquiry function, and in assessing a mentally disordered offender's significant threat under section 672.54 of the code, as interpreted in the Winko decision, will have the same power to order assessments that is currently held by the courts under section 672.11

Although this is a very welcome amendment, I'm concerned that the effectiveness of this new authority could be limited, for a number of reasons.

First, the definition of “assessment” retains the current narrow medical definition of assessment that is used by the court to assess whether or not a person is eligible for a verdict of unfit to stand trial, or not criminally responsible on account of mental disorder. My concern is that this narrow definition, which focuses very much on mental state at a point in time, may or may not be helpful.

The board, I'll let you know, frequently requires information or assessment data of a neuropsychological nature to determine, for example, intellectual functioning, the presence of a cognitive impairment, dementia, or fetal alcohol effects or syndrome. Alternatively, we frequently require a forensic risk assessment. That is an assessment, based on expertise, of a mentally disordered offender's likelihood of future violence or dangerousness, or that pivotal issue of significant threat. So I'm concerned about the narrowness of the definition.

Second, clause 3 of the bill imposes a rather limiting set of circumstances for when the board can actually order up an assessment. In order to render this important new authority more effective, I would recommend that the restrictive criteria currently in proposed section 672.121 of the amendments be deleted. The board is a quasi-judicial body, and should be trusted to order the type of assessment it requires to enable it to discharge its inquisitorial burden and mandate, and to tailor its disposition to fit the accused's individual circumstances under section 672.54.

This principle was recently endorsed by the Supreme Court of Canada in the Demers decision at paragraphs 47 and 52. So proposed section 672.121, as it's currently drafted, should actually stop after the number 672.54 in proposed paragraph 672.121(b) of the draft amendment. I've put the full proposed section into my comments that have been shared with you.

Finally, the ordering of an assessment will obviously require an adjournment of a review board hearing in order to allow for the preparation of a report by a professional or expert. I'd like you to keep in mind that convening any quorum of the review board, which I believe in every province is composed of part-time members, except perhaps in Quebec—and indeed, except in Ontario and B.C., of part-time chairs as well—to convene a hearing carries a significant cost. It probably costs me at least $2,000 to convene a hearing, whether we're going to sit all day, or whether we're going to sit for ten minutes and have an adjournment.

So my recommendation, ladies and gentlemen, is that an assessment, as well as some of the other procedural powers that are being given, should be able to be ordered by the chair alone, on the application of the parties, much like chamber matters in the civil courts, which I'm sure some of you are familiar with.

● (1535)

My next issue is in a similar vein; that is, the assignment of legal counsel. As you know, the board has the power to assign legal counsel under certain circumstances. Subclause 16(1) of the bill is very helpful. It allows counsel for an accused to be assigned before the actual hearing takes place. However, again, this is an amendment that I think should be exercised by the chair prior to the actual date of the hearing to avoid unnecessary and costly adjournments. It's in the nature of a procedural matter, and in fact it's how we practise, although, given the amendment, I'm not sure what we're doing is perfectly legal. We certainly assign counsel before the day of the hearing.

Next is the power to adjourn, and again, it's a very welcome authority in subclause 16(2) of the bill. But again, I would argue that this is a power that should be able to be exercised by the chair alone well before the date of the actual hearing, where it is necessary and appropriate, to render the full hearing, when it does arrive, a more meaningful and useful exercise.

My fourth issue is that of victim participation. The drafting of the various amendments in subclause 16(3) of the bill relating to victims should make it absolutely clear that the opportunity to read and otherwise present a victim impact statement, which is a very important right, is restricted to an initial or first hearing of the review board and doesn't have to be extended year after year.

I would like you to keep in mind that many of our accused persons stay under our jurisdiction for a great number of years, some for as many as twenty years. It's difficult for me to envisage what the reading of a victim impact statement year after year, repeatedly, could possibly add to the proceeding, other than having the statement on file, as is every other piece of historic evidence, to be considered in our risk assessment.

On a second note, dealing with victims, I believe the bill should also clarify that the task of identifying and locating the victims to be able to attend and present at a hearing is a function or role that the Ministry of the Attorney General, in the person of the crown prosecutor, should play. It shouldn't be a role that is imposed on the independent adjudicator or tribunal. Nor does the review board, I would have you keep in mind, have the resources to search out or identify who the victims are. We don't have the capacity.

Another issue is the power to order a 24-month disposition. Currently, as you know, our orders must be reviewed every 12 months. Subclause 27(2) allows for the making of a 24-month order in certain circumstances, with the consent of the accused, counsel, and the crown. I would simply add that to the extent a 24-month order imposes costly treatment and housing obligations on the health system, on the forensic psychiatric system, it should also require the consent of the treatment team or hospital that is going to house the accused person.

There is a new section, section 672.81, which requires a mandatory hearing following a significant restriction on an accused's liberties. We already do this. The section as drafted should make it clear that this is a review of the accused's disposition, once again, not an inquiry into the decision or circumstances that precipitated the restriction.

I should add that in terms of some of the foregoing examples, I've mentioned that it's unnecessarily costly to convene three-person or five-person panels to deal with, essentially, procedural matters. Such items as ordering assessments, ordering adjournments, adding parties to the hearing, assigning counsel, compelling the attendance of parties or witnesses, initiating hearings, etc., should be able to be performed by the chair or alternate chair in the nature of a chamber's application.

The final issue is the Mazzei decision of the British Columbia Court of Appeal. Currently, the crown, the accused, and the forensic psychiatric system, all three, are parties to a review board hearing. In the recent Mazzei decision, the British Columbia Court of Appeal said that the review board has no authority to impose its orders or conditions on anyone other than an accused. In my view, this decision severely restricts the board from imposing conditions on the forensic system, which is, in fact, the probation officer, the monitor, the supervisor of an accused living in the community.

● (1540)

Our conditions, you have to respect, are integral to maintaining public safety, and in the language of section 672.54, they are to be the least onerous and the least restrictive on the accused. Again I would refer to the Demers decision I mentioned before.

So it seems to me manifestly unfair, and perhaps even unconstitutional, that parties before a tribunal are given different statuses in the context of a hearing that is fundamentally concerned with values and entitlements that are protected by sections 7 and 11 of the Charter of Rights and Freedoms. It would be very easy to amend section 672.54 to make it clear that the board may impose on any party conditions it considers necessary to carry out the requirements and the criteria imposed in that pivotal defining section.

Thank you. I'll wait for your questions. I hope I didn't go on too long, Mr. Chairman.

The Chair: Not too bad at all. Thank you very much, Mr. Walter.

Now, Mr. Wright, for your submission of approximately ten minutes.

Mr. Joe Wright (Secretary, Counsel, Ontario Review Board, Review Boards Canada): Thank you, sir.

Honourable members of the standing committee, I thank you for the opportunity to address you in respect of Bill C-10, and, on behalf of Review Boards Canada, I'd like to express our gratitude for the work done by the committee and to applaud the proposed changes. Anyone who read the Ottawa *Citizen* last Friday will know that the continuing struggle to place mentally disordered accused on a level playing field is still going on.

We would like to improve Bill C-10 with some discrete recommendations, and I think we are similarly situated to Mr. Walter. Review Boards Canada learned of this opportunity quite late, and although we were able to consult, we were not able to provide written submissions. I'd be happy to provide some at a later date if that is the wish of the committee.

I have provided two documents. One is a recent memo that was prepared after the decision in R. v. Demers. It was drafted by the counsel to the Ontario Review Board, Ms. Forestall, as she was then, and distributed to all the review boards in Canada. The second document contains up-to-date statistics from the Ontario Review Board. Except for the statistics, I don't think I'll refer to either one of those documents particularly.

We see problems, and there are three areas I'd like to address.

Section 672.121 is the section that allows for review boards to make assessments, and you heard Mr. Walter on that scheme. There is really no reason to curtail the ability of review boards to order assessments to the three enumerated categories in paragraph 671.121 (b). While all of those are typical situations where a new assessment would be called for, they are hardly exhaustive. In fact, the first two instances would actually preclude the possibility of the board's ordering assessments, sometimes in an important situation. For example, it may be the case that some accused is found unfit in court and remanded to the jurisdiction of the review board to make a disposition. Unless there has been a significant clinical change in that person within about 45 days since they were dealt with in court, the issue for the review board is not particularly one of fitness. The board must make an important decision, however. The decision it has to make is where the person is going to be placed and what we can do about his or her treatment needs. That decision cannot be properly made where the report available is restricted only to fitness to stand trial. Fitness to stand trial is a court-centred assessment, and it doesn't address the issues of what to do with this person or what needs the person has. Sometimes, for example, the report is stale on mental status. Mentally disordered people can fluctuate significantly. An up-to-date assessment is not necessarily one that's been done in the last 12 months. Also, where the report is otherwise substandard or inappropriate, the review board can't make a good decision on bad information.

What a court needs in the way of an assessment and what a review board needs in the way of an assessment are often two different things. The same problems can exist with people who are found not criminally responsible as well. When courts deal with these people, they are determining, for example, the issue of fitness or unfitness, or NCR for that individual. Their reports are directed to those issues. While review boards also deal with the issue of fitness, they also have to determine whether the person is a significant risk. Mr. Walter indicated to you that this is a perennial concern of review boards. That test is applied not just to people who are unfit, but to every accused within the jurisdiction of a review board, and not at an initial hearing, but at every hearing, initial, annual, and any other type. The factor that stands first and foremost is whether that person is a significant risk.

Review boards will have to bear the cost and inconvenience of ordering an assessment, and they are not going to require them other than in a responsible or necessary way.

● (1545)

In that event, the simplest way to address the concern within the spirit of the legislation is to simply amend proposed paragraph 672.121(b) by ending the proposed section after “672.54” and striking the remainder of the proposed section. We are *ad idem* with Mr. Walter on that issue.

The framework for the assessment is still there. It's set out in section 672.54. The review board still has to consider the four factors: the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society, and the other needs of the accused. In consideration of those factors, the review board has to arrive at the least onerous and least restrictive disposition. The boards believe those criteria can reasonably accommodate any assessment exigency that may arise, and we may slightly differ from Mr. Walter on that issue.

I am certainly not suggesting that the mentally disordered as a group are any more dangerous than other individuals charged under the Criminal Code, but at every hearing, whether it's an initial or annual or other, whether the person is unfit or NCR before the review board, the board is required to first make an assessment of whether that person represents a significant threat to the safety of the public. The board must be empowered to determine whether or not the individual they have before them is a sick apple rather than a bad apple, and there shouldn't be any limits on the review board's ability to protect public safety as well as to least restrict the liberty interests of an accused person.

A second area of concern for the review boards is proposed section 672.851, which deals with permanently unfit who are not a significant risk. This is the case the Demers decision is all about, and Mr. Walter referred to Demers. The scheme proposed to deal with the “unfit but not significant risk” accused involves paragaph 672.121(a) and proposed section 672.851. The scheme that is suggested there seems to us unduly complicated.

I think in part these proposed provisions may be problematic due to the fact that they were drafted long before Demers was rendered. Indeed, some parts of proposed section 672.851—at least in my submission—may have difficulty surviving a post-Demers constitutional challenge.

As the court notes in Demers, where you have an unfit accused under the criminal process, and there is clear evidence that the person's capacity will never be recovered, and there is no evidence of a significant threat to public safety, the law is over-broad, because the means chosen are not the least restrictive of that person's liberty and they are not necessary to achieve the state's objective; accordingly, these sections of the law restrict the liberty of permanently unfit accused for no reason. As a result of that, the court indicated that Parliament must amend the legislation within 12 months, or that class of persons would be eligible for consideration for a stay.

In one sense, proposed section 672.851 addresses that situation. In the review board's submission, however, this mechanism—first to order an assessment, and then to make a recommendation to the court to return the accused to the court, for the court to hold an inquiry, for the court to order a second assessment for the inquiry—is to us very cumbersome and awkward. While it seems conceptually coherent that the review board and the court have concurrent jurisdiction over an accused person—always with the understanding that the ultimate jurisdiction resides with the court for somebody who's temporarily unfit and who is going back to court to be found fit and proceed through the system—it does not seem fair or logical that the ultimate disposition rests with the court for somebody who's permanently unfit.

The primary issues to be considered there are the duration or permanency of the unfitness and the significance of the threat to the public, and both of those are acknowledged to be within the expertise of the tribunal, the review board.

● (1550)

Personally speaking, I don't think courts want to have that responsibility. That fact seems to be borne out, at least from the statistics of the Ontario Review Board. I venture to say—you may want to ask Mr. Walter about this—that most review boards have similar statistics. That courts seem uncomfortable dealing with the mentally disordered, or are more comfortable in allowing the review board to fashion a disposition, seems borne out when you observe that, in our statistics for the last 17 months, 92% of courts declined to make a disposition after they had rendered a verdict that the accused person is unfit. When you get to NCRs, 87% of courts declined to make a disposition.

One might surmise that the courts would be similarly content or relieved to have review boards fashion a final disposition in respect of an accused who typically might have been under the review board's jurisdiction for several years, for whom the board may have numerous psychiatric reports and other evidence from numerous hearings.

Review boards have always had the ability to absolutely discharge NCR accused, and those people have index offences no different from those of an unfit accused. The review board is also applying the same test: whether that person remains a significant threat to the safety of the public.

It's the review board's submission that the court initially, or the review board thereafter, should be able to grant an absolute discharge to permanently unfit accused who do not pose a significant risk to the safety of the public.

The scheme of XX.1 envisages the restoration of fitness to the temporarily unfit so that when they return to court, they can carry on proceedings through the court system. We really doubt that the courts relish the return of somebody who remains unfit. To the extent that courts deal with stays, the core issues there usually relate to an abuse of process or alleged charter violations.

With respect to a a stay here, the issue is the nature and permanency of a mental disorder, risk assessment factors, or, to quote Demers, “clear evidence that capacity will never be recovered”—all issues that courts, I think, do not relish dealing with.

The court in Demers specifically mentions the proposed November 2002 amendments to XX.1, and the contemplation of absolute discharges being available to permanently unfit. I'm looking at paragraph 60 of Demers. The court simply observes that the proposed legislation would have the review board recommend an absolute discharge to the court.

Given that the court reiterates the importance and the role of the review board as inquisitorial in nature, I think it can be easily inferred that the court would support both courts and review boards being empowered to grant absolute discharges.

Finally, with respect to the provisions that relate to victims—Mr. Walter referred to those, they're proposed amendments to subsection 672.5(16)—the boards generally would submit that it should be clarified that the victim's right to personally present his statement, and I think it is an important right, should exist at the initial hearings, and thereafter their views can be put forward by way of a statement. I think as well that it should be the crown's role and not the review board's role to identify or locate victims. In that regard, I believe the crown could assist in making sure a victim impact statement is included, perhaps in the documents referred to in the proposed new subsection (1.1) to section 672.45; otherwise, the crown can try to ensure that the adjournments as contemplated by the new subsection 672.15(2) are obviated or kept to a minimum.

Thank you, Mr. Chair.

● (1555)

The Chair: Thank you, Mr. Wright.

For the Canadian Association of Chiefs of Police, we have Mr. Westwick.

[*Translation*]

Mr. Vincent Westwick (Co-Chair, Law Amendments Committee, Canadian Association of Chiefs of Police): Mr. Chairman, members of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, my name is Vincent Westwick and I'm the Co-Chair of the Law Amendments Committee of the Canadian Association of Chiefs of Police. With me today is Vince Bevan, Chief of the Ottawa Police Service and Vice Chair of the CACP, as well as Luc Delorme, a regular member of the RCMP now assigned to the CACP National Office.

The CACP represents over 900 chiefs, deputy chiefs and other senior police officers, and over 130 police forces across Canada.

[*English*]

By advocating legislative reform and innovative solutions for crime and public issues, as well as promoting community partnerships and high professional standards, the CACP is dedicated to leading progressive change in policing.

It is always a pleasure to appear before Parliament and make representations on new legislation. It is an important aspect of the work of our association to listen to our communities and members, to consult with government, and to make representations before Parliament. While it is always an honour to appear, we believe that we also have a duty to make available to parliamentarians the experience of the CACP members in policing and investigation.

At this time, I would like to ask Chief Bevan to say a few words.

● (1600)

[*Translation*]

Mr. Vince Bevan (Chief, Ottawa Police Service; Vice-President, Canadian Association of Chiefs of Police): Good day and thank you, Mr. Chairman.

I am honoured to be here today to talk about Bill C-10.

[*English*]

We are very grateful that the Parliament of Canada is steadfast in its intention to consult with law enforcement. We are grateful that you accord this opportunity to our association.

A true measure of a civilized society is how it deals with those members of the community who suffer from a mental disorder. Throughout history, such persons have been treated unfavourably without respect to the fact they suffer from an illness, and without respect to the principle that they too should enjoy the same fundamental rights as other members of the community.

Regrettably, these persons often find themselves in conflict with the criminal justice system, a system that is all too often ill-equipped to respond. Recent events in my own community demonstrate that there is room for improvement.

We recognize that the Parliament of Canada has been active on this issue by improving provisions of the Criminal Code of Canada dealing with persons who suffer from mental disorders. With the passage of Bill C-30 in 1991, Parliament took a significant step in updating the law by bringing into being more progressive and responsive provisions. The introduction of the concept of mental disorder, forging a role for expertise-specific review boards, and securing a role for victims were meaningful strides to improve the way in which the criminal justice system responds to persons with mental disorders.

In 2002 Parliament conducted a review of previous legislation and offered important suggestions to improve the new process. Bill C-10 is now before Parliament to further modernize the law.

While important and socially relevant, this is not easy work; I wish the committee well in their deliberations. It is difficult to reconcile the sympathy and need for treatment for the persons accused of a crime with what would otherwise attract the denunciation and condemnation of the community as a whole.

The Canadian Association of Chiefs of Police fundamentally supports the principle that persons who suffer from mental disorders and commit crimes must be treated in a way that respects the special circumstances that affect their lives and their individual disease or disability, and that respects the Canadian Charter of Rights and Freedoms and its application to these particular situations.

Our principal point today is that while we fundamentally support these objectives, at the same time, we recognize the profound and sometimes catastrophic impact on victims and communities arising from crimes committed by persons with mental disorders.

Public safety and confidence in our system must not be lessened or lost in this process. This is not an argument that suggests a retreat from progress made in Bill C-30 or the legislative objectives underlying Bill C-10; rather, it is a modest reminder on behalf of those who are victims of such crimes and those who must investigate such crimes.

Crime and its impact are always difficult for victims and those affected in the community, but no more so than when a crime is committed by a person with a mental disorder. For that reason, we would invite this committee to take note of recommendation 6 of the standing committee, that victims always be notified of their rights and entitlements.

While we take no pleasure in a recommendation that will further burden the system, we believe that because victims have familial or sometimes other close relationships with the accused, there need to be assurances that victims can and will be heard by the court or review board.

I disagree with earlier submissions on the frequency. In my experience, the act of delivering victim impact statements can assist in healing, and ought not be limited solely to the first hearing. Victims do not stop being victims. After they first tender their victim impact statement, they may benefit from other opportunities. So I encourage you to keep an open mind on options.

At this point, I would like to take the opportunity to address particular clauses that I find to be positive improvements on the existing law. For example, section 672.5 will give victims or their representatives more rights.

● (1605)

There will now be an opportunity to submit victim impact statements and attend hearings. Furthermore, there are provisions that will provide for non-disclosure of information or documents that may identify victims or witnesses. For the reasons just stated, we applaud this progress.

Subsection 672.67(2) gives a not criminally responsible disposition precedent over a prior custodial sentence with respect to dual-status individuals. This is in keeping with section 672.54, "least onerous and least restrictive to the accused". It makes sense that neither jail nor prison is a place to have custody of a not criminally responsible individual. This provision will allow the accused to receive immediate treatment to prevent further deterioration and prevent possible harm to others.

Section 672.85 allows for the review board to make application to the court for a stay of proceeding where an individual is found unfit. This should operate to reduce court time and hasten the proceedings involving not criminally responsible individuals. It will also ensure a sound process involving hearings, assessments, and inquiries.

As well, section 672.9 is now much improved. It allows police to arrest for failure to comply with an assessment order, not just the disposition order or conditions. It will allow police to release an individual by way of summons or appearance notice in keeping with current bail or judicial release provisions. It will also permit the police to convey the individual back to "the place specified in the disposition or assessment order".

We applaud the addition of these provisions, but on the other hand, in a few moments my colleague will offer some comments on the relative complexities of these particular provisions.

There are as well some weak points in the bill that I would like to draw to the committee's attention, with the hope that the legislation could be made stronger. For example, section 672.54 and section 672.83 allow the review board to make a disposition, "taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused", and further on, "that is the least onerous and least restrictive to the accused", and make any other disposition that the review board considers to be appropriate in the circumstances.

It seems ironic that under these provisions an accused has the right to refuse medical treatment. I submit to you that even in the face of the individual's charter rights there is something inconsistent when a person accused of a serious crime who is found to be not criminally responsible can then refuse treatment for the very illness that was a factor in the commission of the offence. This simply doesn't make any sense.

Committee members are likely familiar with the Supreme Court decision in June of 2003 that found that Scott Starson, also known as Scott Schutzman, had the right to refuse medical treatment for his schizophrenia.

As well, section 672.82 now makes the review board give notice of a hearing to any other party. However, "party" is defined as "any person who has a substantial interest in protecting the interests of the accused", and I stress the reference to "accused". Subsection 672.5 (6) allows the review board to exclude "the public or any members of the public... from the hearing or any part of the hearing".

There is nothing in the bill that provides for the notification of a hearing to be sent to the victim or victim's family. In a tragic situation locally, a sportscaster was shot to death by an individual who was found not criminally responsible. The victim's wife was not notified regarding the release of the individual. I urge the committee to consider balancing the rights of victims and their families with that of the accused person.

● (1610)

In addition, section 672.86 allows for the transfer of a not criminally responsible individual to another province and that province's review board. The problem is that there is no specified timeframe for the new review board to take ownership of the not criminally responsible individual. This creates problems for the administration and the enforcement of conditions imposed on the individual.

Locally, we have had two individuals, one who has moved to British Columbia and the other to Quebec. Subsequently, they were required to be apprehended. After many months when the individuals were already living at their new residences, neither file had been transferred. As you can well appreciate, this imposed a good deal of extra work on local authorities, who tried their best to address gaps that were caused by the fact that there was no obligation to transfer the file in a timely manner.

In other sections, the bill proposes time limits for hearings, notices, etc. I ask that consideration be given to establishing similar timelines for transfers from one review board to another.

Again making reference to the local situation with the close proximity to Quebec, there are several not criminally responsible individuals who reside across the river in Gatineau but who are still being administered in hospitals in Ottawa. They are therefore subject to the Ontario review board. We would like to recommend that Parliament consider a provision that would impose a mandatory requirement that the not criminally responsible individual's place of residence dictate which province and which review board has jurisdiction in the case.

Mr. Chairman, with your permission, I'd like to turn to my colleague for some concluding remarks.

The Chair: We're over 13 minutes, so if you could be to the point, Mr. Westwick, as you always are...

Mr. Vincent Westwick: I'll do my very best, Mr. Chair.

A point that we wish to make deals with the level of complexity that currently exists in part XX.1 of the Criminal Code and our submission that it is seriously exasperated by Bill C-10. The Criminal Code currently runs from page 1132 to page 1193. That's 61 pages packed with some of the most complicated concepts and challenging language found in the Criminal Code. I'd ask you, for example, to consider the provisions dealing with arrest that I'll deal with in a moment. But the complexity does not stop at the bill itself. With due respect to the committee staff, may I direct you to page 41 of the legislative summary on the topic of coordinating amendments, which reads as follows:

> Clause 64 coordinates proposed amendments in Bill C-2, An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.(63) Because the substance of s. 486(3) of the Code, which lists the offences for which a publication ban may be warranted, would be amended and become s. 486.4(1) as a result of clause 15 of Bill C-2...

It demonstrates the complexity. My point is not to criticize the drafters nor those who prepare these most helpful legislative summaries, but rather to demonstrate to committee members the growing complexity in the criminal law, especially in this particular area. Police officers will be called upon to apply these provisions and are all too often the ones who must try to explain the process to victims or to the community. If police officers cannot understand the law, they cannot be faulted for misapplying it. If the public cannot understand the law, they can hardly be faulted for losing confidence in it.

If I am unable to persuade the committee to the merits of simpler language, the CACP would be pleased to work with Justice Canada or others to develop a plain-language guide for part XX.1. Other suggestions with respect to clarifying it would be the addition of a preamble. A preamble could set out some of the important broad principles of the entire section, emphasizing, for example, the important objective of community safety, highlighting the balance between treatment and punishment, and providing practitioners, including judges, the context within which to apply the provisions, not just of Bill C-10, but in the entire section.

Very briefly, I'd like to touch on the arrest provisions, if I could, because of the importance to our members.

I spent some time with representatives from Justice Canada last week, who were most helpful in explaining the new arrest provisions and their legislative intent, the intention of which is to provide police officers with more options, generally a good thing. However, in our submission and with respect, the good intention is lost in complicated language and legal ambiguities. For example, there is no charge for breach of an order, and thus officers are left wondering whether they have the grounds for arrest, and if so, what can and perhaps what should be done with the person on arrest. Generally, police don't arrest where there is no charge, and justices of the peace don't deal with persons not facing a charge. These sections create, in our submission, a practical anomaly, albeit for good reason, but an anomaly nonetheless.

Police involvement with people afflicted with mental disorders typically follows some crisis in the community. There needs to be clarity, in our submission, brought to these provisions so that police have a succinct and understandable road map as to what they should do in these circumstances.

The last point I would like to raise with you is the requirement for a prima facie case obligation, clause 13. Where an accused is unfit to stand trial, an inquiry must be held every two years to decide whether sufficient evidence can be adduced at the time to put the accused on trial. This provision exists to ensure that a person is not being held when the crown would be unable to prove its case. The difficulty is that the crown must retry its case every two years or more often if the person makes a request. Imagine the police resources needed every second year to contact witnesses, review and secure exhibits, re-interview experts, provide defence disclosure, prepare a new court brief, and liaise with the crown.

Clause 13 in Bill C-10 provides that a court can extend the time for holding a hearing. The CACP would recommend that this whole section be reconsidered. While the requirement of the crown to demonstrate that it can prove its case is sound, thereafter the crown ought not to have to retry the matter every two years. As well, the community ought not to have to pay the expense of trial preparation, a complex and resource-intensive exercise, merely to re-establish what has already been established. Surely the filing of a certificate would suffice.

● (1615)

May we again, Mr. Chair, express our appreciation to the committee for inviting our submissions and involvement in the legislative process. We'd be pleased to answer any questions you have.

The Chair: Thank you, Mr. Westwick and Chief Bevan.

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

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

I would like to thank the witnesses for being here today and sharing their insights on this legislation, on this bill. I found it very informative, not necessarily agreeing with everything, but it was quite helpful to get your perspective.

I'd like to ask Mr. Walter a question regarding victims' rights. The House of Commons Standing Committee on Justice and Human Rights recommended that victims always be notified of their rights and entitlements, such as the right to file a victim impact statement, as well as to be notified of a disposition hearing if they so requested. Your recommendation was that the impact statement be restricted to the initial hearing, with your explanation being that their written statement would be a continual resource that could be referred to. My concern is that for victims—and I appreciated the perspective of the police—it's a healing process and they may not feel at liberty to share fully. But as time passes, and if they are involved with the process, there may be additional willingness, an ability to share. Also, some victims who do not feel a freedom or ability to share initially may further on feel that they would like to. Could you comment a little fuller on your experience?

You've been involved with the review board for a number of years, and thank you for your participation in that. Could you elaborate, through your experience as chair, why you're recommending that the victims only be given the input initially?

● (1620)

Mr. Bernd Walter: Thank you, honourable member.

I probably chair 150 to 200 hearings a year, and have done so for the last eight to ten years. In 1997 amendments were made to this part of the code, which made the possibility of filing victim impact statements and having them considered by the review board a reality. We have absolutely no difficulty with this.

I guess I'd answer you in the following way. There's a fundamental difference between what happens in a court and what happens at a review board. The court is essentially looking backward to ascertain whether, on the rules of evidence, it can be established that certain things that constitute a crime happened. It's a backward-looking event, including what happened to the victims. At the end of the day, on a standard of proof beyond a reasonable doubt, the court makes a finding of guilt or innocence, and then, in the sentencing process, considers the impact on victims. That's very appropriate.

The board's process is essentially a forward-looking one. We're not as concerned about what happened in the past. What we're trying to do, as the Supreme Court said in Winko, is that most difficult of human tasks of looking into the future to determine whether a person still constitutes a foreseeable significant threat; and by that, we mean a threat of serious criminal behaviour in the future. So it's different from any other legal event.

To the extent that the victim's statement is relevant to that future prediction of risk and to the assessment, I say, by all means, it should be there. All of an accused's historic psychiatric records, including his criminal history, psychiatric history, treatment history, and substance-abuse history, in many cases are there from the first day he comes in. As I mentioned, many of our accused are with us for years and years, and all of that is evidence that is reconsidered at each and every hearing, so the victim impact statement would be there. Under section 541 of the current provisions, we must consider it to the extent that it's appropriate and relevant to our assessment of future risk. We have no problem there.

What I'm saying is under the new provisions, the opportunity to actually stand up and read the statement or make another presentation should be restricted to the first hearing, or the first few hearings. After a time—and no disrespect to victims—it simply becomes repetitive, and we already have the information on file as an exhibit that allows us to use it to predict risk in the future.

I would take issue with one comment that has been made this afternoon on the review board hearing serving in any way as a therapeutic process. As I said, I sit on 200 hearings a year, and although I defend to the death everybody's right to be heard, I have yet to find much in a review board hearing that's in the nature of therapy. I dare say, as part of the criminal justice system, a review board hearing probably shouldn't strive for that rather ambitious goal of providing therapy to anyone.

Having said that, we have had one or two instances in the past number of years when victims have wanted to appear. Their statements have always been taken and given appropriate consideration. I don't see much to be gained, in terms of the central task of assessing future threat, by repeatedly hearing the statement read when it is already on file. It's as simple as that.

Mr. Mark Warawa: Sir, do I have time for one more question?

The Chair: Yes, there is time.

Mr. Mark Warawa: Thank you.

I appreciate your points. I don't necessarily agree with you, but that's fine.

Regarding victims being notified by the board, you recommend that it be the crown. What is your reason for requesting that?

Mr. Bernd Walter: As I said, sir, sometimes the person who is defined as a victim in the relevant section can be a relative and sometimes beyond an extended family member, or someone else affected. My reasoning is basically that in the criminal process, the crown is charged with bringing forward the views of the victim—and appropriately so.

As an independent trier or adjudicator, in the first instance, I don't think it's appropriate for the review board to be seeking witnesses to appear before it. Secondly, this is going to impose a certain amount of resource requirement. I think my friend Mr. Bevan also observed that in his comments. It is loading something onto the province for which I'm not sure I would have much success in arguing with the provincial attorney general to get the resources to do. It is simply a capacity issue. Again, this is not in disrespect to that point of view or voice; it is simply a capacity issue of how do we determine and find the appropriate person to assist them and bring them forward.

● (1625)

Mr. Mark Warawa: If it's an administrative issue, then it would be the crown instead of the review board. If the crown did not contact the victims adequately, the review board process would continue dealing with the offender, but the victims may or may not be involved with us. Is that a possibility?

Mr. Bernd Walter: Currently, in B.C., at least, it is the crown who continues to maintain the liaison with victims and who informs the victims or families year after year if a hearing of the review board with respect to a specific accused is coming up for an annual review, and it makes arrangements for them to attend. It's actually a role they play already.

I suppose something could be put into the drafting that if the crown fails to do that, the hearing ought to be adjourned to enable it to be done. Again, perhaps that's something the review board can be admonished to impose on the crown to actually do and to keep their feet to the fire.

The Chair: Thank you, Mr. Warawa.

[*Translation*]

You have seven minutes, Mr. Marceau.

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

Let me start by thanking you for coming here today and for your very informative presentation.

My first question is fairly straightforward. If I understand correctly, Mr. Walter and Mr. Wright feel that Bill C-10, as it is now worded, adequately safeguards victims' rights. Mr. Westwick and Chief Bevan believe otherwise. Have I understood your respective positions correctly?

[*English*]

Mr. Bernd Walter: I think that's fair.

[*Translation*]

Mr. Richard Marceau: Thank you.

Given the shortage of qualified persons, primarily psychiatrists, in certain regions, the Standing Committee on Justice suggested at the time that individual assessments could be conducted by other qualified persons such as psychologists. As you know, the government rejected that proposal. In your opinion, shouldn't Bill C-10 contain provisions authorizing other stakeholders such as qualified psychologists, to assess a person's fitness to stand trial? How do you feel about that?

The Chair: Would someone like to venture an answer to the question?

[*English*]

Mr. Vincent Westwick: I don't think we would be in a position at all to offer an opinion on that. It's not really in our area.

Mr. Bernd Walter: Yes, sir.

On the earlier comment, my sense of whether victims are adequately represented, I meant to say that under the current provisions as the amendments are providing, they would be.

With respect to psychologists, certainly that was an early part of Bill C-30, where there were not psychiatrists.

I certainly don't want to get into the difficult area of professional competition here, but it has occurred to me in conducting hearings, to the extent that the essential defining issue is that of threat assessment, I have wondered whether or not psychologists could perform such a task equally as psychiatrists. It could certainly be a benefit, at least in territories or jurisdictions where there's a shortage of forensic psychiatrists. It is a sub-specialty of psychiatry.

I'm not fully convinced that psychiatrists in and of themselves, by dint of their body of knowledge or education, are solely in a position to assess risk or threat. I think some psychologists could perform that equally.

● (1630)

The Chair: Mr. Wright.

Mr. Joe Wright: Monsieur Marceau, I think that is an idea that certainly deserves study. I know that the chair of the Yukon board particularly felt that this would be an appropriate measure because there is difficulty in getting psychiatrists to become board members in the Yukon. Certainly I think we would be looking for forensic psychologists, as opposed to forensic psychiatrists.

I share Mr. Walter's observation that I don't think necessarily that having a medical degree ensures that you're better able to assess risk than anybody else.

[*Translation*]

Mr. Richard Marceau: The committee also suggested at the time that failure to comply with the conditions set out by a court or review board should constitute an offence in and of itself. This suggestion was included in the five recommendations rejected by the Justice Department.

Chief Bevan, how do you feel about the proposal which would see failure to comply with a court or review board order an offence in and of itself?

Mr. Vince Bevan: The Canadian Association of Chiefs of Police feels that in cases where a person refuses to be assessed, the provisions of the bill are not sufficiently stringent to address the issue of the person's behaviour. Therefore, the bill needs a provision to ensure that the person in facts participates in a program.

[*English*]

The Chair: Mr. Wright.

Mr. Joe Wright: In my experience, sometimes police are frustrated in having to deal with a person in that situation. I think, in part, some of that frustration stems from the fact that the attending officer who deals with an incident like that knows that the person is disordered. That officer wants to take the appropriate measure, but realizes that taking that person to a hospital, for example, may result in him and his partner sitting in a cruiser for several hours hoping that this person can be admitted to the hospital. So given that one of the suggested powers is that the person can be returned to the site from which they are affiliated, the hospital, I think that goes a certain amount towards addressing that concern.

Chief Bevan was addressing, I think obliquely, section 672.85. That's the section that deals with the power to compel attendance. Certainly it didn't make sense to some of the review board members that the review board might be able to issue a summons or a warrant for somebody to attend for a hearing after they had failed to attend for a hearing for some specific date in the future. I think we thought that if the board were able to generate a warrant, it should be something like a bench warrant. If that person has already shown some disregard or decompensation such that they're not showing up for their hearing, an attending officer should have the ability to arrest that person and go through the same procedures that are set out in section 672.91, not to issue a summons or a warrant for some future date and hope that the person would show up on that date.

● (1635)

[*Translation*]

Mr. Richard Marceau: I have one last question, Mr. Chairman.

Would Mr. Westwick and Chief Bevan be kind enough to send us, either through the Chair or the Clerk, their suggested amendments respecting victims' rights to which they referred earlier in their submission? That would be greatly appreciated. Thank you.

[*English*]

Mr. Vincent Westwick: It would be our pleasure. Thank you.

The Chair: Merci, Mr. Marceau.

Mr. Comartin, for seven minutes.

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

I'd like to go back to the issue of who the assessor should be.

Mr. Wright, I'm going to ask you this, because of the Ontario experience. In the late nineties this was still coming into effect, and we couldn't assess it before I was elected in 2000. So we were going through that process to determine mental competency in terms of the ability of people to care for themselves, to make wills, powers of attorney, etc., and we had broadened in that legislation quite extensively who was able to make those assessments. A good number of the people we were assessing would have been suffering from various forms of dementia as a result of old age. I think they would have been the vast majority of people coming under this.

I'm wondering if you have any experience or know of any studies that were done from that experience over about the last seven years and whether the use of people other than psychiatrists has worked out in Ontario.

Mr. Joe Wright: Just so I understand your question, Mr. Comartin, does this relate back to the issue of psychologists?

Mr. Joe Comartin: This is the debate between the psychiatrist and the psychologist, whether they're qualified doing it.

Mr. Joe Wright: Again, I'm a layman. I'm sure they exist, but I'm not particularly aware of any studies. Certainly I have heard the suggestion that psychologists, or forensic psychologists, should be able to sit on review boards on numerous occasions, and it's particularly a sore point in provinces that don't have psychiatrists readily available. Certainly I think from the Ontario board's point of view, we would welcome an investigation in that regard. I can't think of a reason right now why that shouldn't take place.

Mr. Joe Comartin: In terms of the availability—and Mr. Walter, you may be able to answer this, as well—if you get into some more remote areas, or certainly into the territories and the northern parts of the provinces, are there forensic psychologists who are any more available than psychiatrists?

Mr. Bernd Walter: I can't really speak to that, sir.

Mr. Joe Comartin: With regard to the little clash we have here between the use of the victim impact statements, Mr. Walter, I'm just wondering if there's some in-between ground here that we could achieve some result on. In that regard, as I think somebody else mentioned, oftentimes because of family connections there is ongoing contact between the accused and the victim. There may be in fact additional information coming out in the victim impact statements as a result of that contact or some conduct by the accused that would be useful for the trier. It may be, in that sense, somewhat therapeutic on the part of the victim in the sense that they still have some impact on the decisions that are going to be made because of additional evidence, new evidence, that in effect they want to put in, that wasn't in the original statement.

To go back to the compromise, is there some way we can say that normally we'd just take the initial victim impact statement, but if they want to make an additional one because of new information, or perhaps a new perception they have on the problem, they'd be allowed to give it in those circumstances?

Mr. Bernd Walter: Yes, and I think that's actually an excellent idea. I have to confess, I haven't turned my mind to the ongoing contact between a victim and an accused, or a victim's family and the accused, but the review board is an administrative law body that's not bound strictly by the rules of evidence. There would be absolutely nothing to bar a review board, under its procedures, to accept an amended victim impact statement in subsequent years, making it part of the body of evidence for it to consider in its assessment. I don't think we have a point of contention there at all.

My only question is what would be the value, including the therapeutic value, of year after year having a victim actually stand up and read that? I'm thinking, obviously, of a situation where nothing changes from the time of the offence, going forward. But there would be absolutely nothing wrong with subsequently filing and receiving written material, as we do from many sources now, and making that part of the evidence to be weighed appropriately by the review board in its adjudicative discretion, just as we admit hearsay evidence in many cases now.

● (1640)

Mr. Joe Comartin: Just as one final point, Mr. Walter, you were quite affirmative, in terms of the procedural points, the adjournments, and some of the other points, in wanting to move that away from requiring a full panel to be sitting on that. The only concern I have about that, and I wonder if you have any way of resolving this, is that if you had a chair who was constantly allowing adjournments when in fact they shouldn't be, on specific individual files... and/or not allowing them, looking for some recourse on the part of either of the parties, the Crown or the accused, to be able to either appeal or to insist that there be a full panel on those procedural points.

Mr. Bernd Walter: Again, it's not a situation I've encountered either in my own practice or that of my alternate chairs' on the review board. However, for any kind of application of an interlocutory or interim nature, we obviously have a duty, under the rules of natural justice, to hear from all parties about how they're going to be affected.

We also have the added benefit in the Criminal Code, which I think sets us apart from other administrative tribunals, of very finite timeframes within which something has to be done. We have to have 45-day reviews, or 90-day reviews, or annual or perhaps even 24-month reviews. There's not a lot of elasticity and not a lot of room that we have to play with. I find that a real benefit in terms of holding parties' feet to the fire, to use that trite phrase yet again.

Having heard from all the parties, I think I have never encountered a situation where a legitimate request to perhaps allow something to be put over for a short period of time in order to amass some important evidence relevant to our inquiry was ever opposed. The Crown, at least at our hearings, is always very proactive in terms of joining his or her voice to those of others in terms of ensuring a fair process. It's just not a situation we've had, but again, perhaps even the current provisions would limit the number of adjournments that could be granted in a specific matter. I think some notion of that is inherent in the current drafting.

The Chair: Thank you, Mr. Comartin.

From the government side, questions?

Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much.

With respect to the representation you've made about the definition of assessments, and the fact that you believe assessments should be permitted to be broader, not just limited to medical assessments, what sort of criteria should one use? Who would pay for these assessments? How do we get into the resource side of this? Where do we go with this as a recommendation?

Perhaps you could address that a little more fully.

Mr. Bernd Walter: Yes, sir, to the extent I can.

Obviously, the bill is silent on those issues. Our board has asked those questions as well: who can be ordered to produce an assessment, and who pays? In the normal course of drafting legislation, these are things that are often left silent and left up to the implementers.

Currently, proposed subsection 672.1(1) reads:

> "assessment" means an assessment by a medical practitioner of the mental condition of the accused

My submission was essentially that this may serve well for a court in its initial determination of whether the accused is eligible for the verdict of not criminally responsible, or unfit to stand trial. However, in its ongoing review, the review board needs to assess a whole bunch of other matters, including dangerousness; how their accused can be managed in the community if in fact that's the case; his or her other needs; his intellectual limitations; and the kinds of programs he or she should be involved with, including drug or alcohol. Our friend Mr. Buchan, from Yukon, has real difficulty getting assessments with respect to fetal alcohol syndrome individuals.

So my submission was essentially that we need to be able to gather assessments, however they're going to paid for and wherever we find the experts, if we're going to be given this power, to make it a bit broader, to assess what we think, in our expertise, is necessary for us to meet the criteria of section 672.54 of the Criminal Code, and make an appropriate disposition that safeguards the public and is least restrictive on the accused.

● (1645)

Hon. Paul Harold Macklin: Would you have any sense of what criteria should be laid out in order to go forward with these assessments? In other words, you mentioned in your commentary here that the board should be trusted. Well, sometimes we like to see guidelines rather than just outright trust. Do you have any thoughts on what guidelines, criteria ought to be used in addressing this idea?

Mr. Bernd Walter: I think both Mr. Wright and I in our submissions are rather *ad idem* on this, that proposed section 672.121 should read:

> The Review Board that has jurisdiction over an accused found notcriminally responsible on account of mental disorder or unfit to stand trial mayorder an assessment of the accused of its own motion or an application of theprosecutor or the accused, if it has reasonable grounds to believe that suchevidence is necessary to
>
> (a) make a recommendation to the court under subsection 672.851(1); or
>
> — that is the permanent non-risk, unfit person—
>
> (b) make a disposition under section 672.54.

We recommend that the section stop there as opposed to eliciting a whole bunch of other criteria under that particular section.

I'm sorry, I don't have the text of the current drafting, but if you relegate it to section 672.54, those are the criteria and the considerations that the law has imposed on the review board. And I'm all for structuring discretion and imposing criteria on decision-makers.

Hon. Paul Harold Macklin: Right, but in terms of costs and resourcing, you have no particular perspective on how you believe that ought to be met?

Mr. Bernd Walter: The one thing I've learned about this is that every province functions quite differently. It deals with picking up accused, as our friend the chief talked about. I think there are lots of different interpretations in terms of the practical implementation of this act.

In B.C. we have the relative luxury of having a very finite, defined, forensic system. There's one forensic hospital where all of our custodial persons are kept and assessed. Then there are out-patient clinics that supervise persons in the community in the nature of probationers. We also have the Forensic Psychiatry Act in B.C., which makes it clear that the assessment or treatment function for forensic Criminal Code patients is done by that service.

So the cost issue doesn't arise in B.C. There is a dedicated service there to serve this particular function of the Criminal Code.

Hon. Paul Harold Macklin: So generally it's really on a province-by-province basis in terms of how that could be resourced appropriately.

Mr. Bernd Walter: Just as the consent-to-treatment issue is under provincial mental health act jurisdiction, and it varies. We don't have the treatment issue that the chief identified because our patients in custody are deemed to have consented to treatment. So the Starson issue wouldn't even arise in B.C., interestingly enough.

The Chair: Thank you, Mr. Macklin.

[*Translation*]

Have you any further questions, Mr. Marceau?

Mr. Richard Marceau: I have a quick question for Mr. Westwick and Chief Bevan concerning the problem of persons who relocate to another province. Earlier, you mentioned an individual who lives in Gatineau and whose case is administered in Ottawa. Is there a solution to this problem? If so, what would it be?

● (1650)

[*English*]

Mr. Vince Bevan: Mr.Chair, if I understand the question correctly, I think the solution would be found in having each person who was subject to an order report to the review board of jurisdiction in the province. The situation in Ottawa is such that people who are living in Gatineau, when they cross the border, are reporting to the Ontario Review Board but they're actually living and conducting their lives and their business in another province, in which neither the review board nor the police of jurisdiction have any authority over them. So here, as with many things, the river and that provincial border cause us some administrative difficulties.

[*Translation*]

Mr. Richard Marceau: So then, that individual would be required to report in person to the review board of the province in which...

[*English*]

Is that something you would agree with?

Mr. Vince Bevan: Yes.

The Chair: Thank you, Mr. Marceau.

Mr. Maloney.

Mr. John Maloney (Welland, Lib.): This is for the representative of the police. You indicated you were concerned that there was no charge for breach of an order, which is a little difficult, perhaps, when the whole mental capacity of the individual is in question. However, I agree with you that it's maybe inconsistent, but do you have a recommendation that would suggest there should be some, not necessarily a sanction, but some...when there is a breach, some function, if it's not punitive, to get this person back again? Maybe I'll address this to the whole panel: what do you feel we could do to prevent breaches or try to enforce an order?

Mr. Vincent Westwick: There's not an easy solution. Part of our concern at the very front would be a situation in which the person is no longer suffering from the original mental disorder. A breach would then be an appropriate way to go, on a breach charge. The difficulty arises when the original mental disorder is still at play; then it's more of a treatment.

The difficulty for police is that you're asking them to do something they normally do without legal justification to do it. You're giving them the authority to arrest, but to arrest normally, certain steps flow. There is the ability to bring the person before a justice of the peace, who then takes steps. All of that is being changed.

We applaud the idea, as do our friends, about the ability of the police to take a person directly back to a situation where they may be.... We're not arguing against that. We're saying that having a breach charge is yet another tool. But it's not like in the regular criminal system, where it's the answer for all the situations. It's simply another tool.

Mr. John Maloney: Any further comment?

Mr. Joe Wright: Mr. Maloney, the one thing I would say is that there is some extra weight to these provisions. If somebody is found to be breaching or suspected of breaching their order, the warrant or breach is good Canada-wide. So if somebody wanders away and a police officer from New Brunswick finds somebody from Ontario, there's the power to arrest.

Certainly I think it's appropriate that the person be taken in front of a justice of the peace within 24 hours, the same way that if you or I were arrested we would be entitled to be taken in front of a JP for those bail procedures. It may not be perfect, but I think it's a pretty good scheme that's fair both to the police and to the accused person. Certainly if somebody is decompensated, no one wants to see that person wandering around without an ability to have their situation addressed.

The Chair: Thank you, Mr. Maloney.

Any further questions?

I would, then, like to thank our witnesses for their attendance today and for providing us with assistance in our review of this bill.

I would ask the members of the steering committee to remain. We'll suspend for five minutes to allow the witnesses to leave. It was convened for 5:30, but since we're all here, maybe we can get started right away.

The meeting is adjourned.

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