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Chair

The Honourable Paul DeVillers

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

Monday, November 29, 2004

● (1530)

[*English*]

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

We have three groups of witnesses with us today. From the Centre for Addiction and Mental Health, we have Padraig Darby, the deputy clinical director, law and mental health program, and the chair of the Research Ethics Board. That's quite a title.

[*Translation*]

With us we also have two representatives of the Barreau du Québec—Nicole Dufour, a lawyer with the Research and Legislation Service, as well as Lucie Joncas, lawyer.

[*English*]

From the Canadian Mental Health Association, we have Penelope Marrett, chief executive officer, and Richard B. Drewry, chair, Legal Issues Network.

Welcome to all witnesses. What we do is we normally start with opening statements of approximately ten minutes from each of the presenting groups. From there we go to questions from the committee members.

So in the order of appearance here on the agenda, I'll ask Mr. Darby to commence and make the first presentation.

Dr. Padraig Darby (Deputy Clinical Director, Law and Mental Health Program; Chair, Research Ethics Board, Centre for Addictions and Mental Health): Good afternoon, honourable members of the standing committee. I thank you for the opportunity to address you today. I'm here today on behalf of Dr. Howard Barbaree, who's the clinical director of the law and mental health program.

By way of brief background, the Centre for Addiction and Mental Health is the largest mental health and addictions facility in the country. The law and mental health program has 139 forensic in-patients and provides treatment for approximately 260 patients under the jurisdiction of the Ontario Review Board. We also provide approximately 300 court-ordered assessments during the course of the year.

Dr. Barbaree and Ms. Gail Czukar, the general counsel of the Centre for Addiction and Mental Health, gave evidence before the standing committee in 2002 and also submitted a written brief at that time. We've submitted a written brief for you today.

Many of the issues that we addressed in 2002 have been addressed extensively in the proposed legislation. I will be fairly brief today and only comment on two specific items.

The first concerns section 672.11, which is the section that provides for court-ordered psychiatric assessments for the mentally ill, for assessment either of fitness or of criminal responsibility.

In 2002, we commented on the apparent tension between the need to provide timely assessments for the mentally ill in front of the courts and the competing demands on hospital resources to maintain safety and a safe environment for both staff and patients.

The recent ruling here in Ottawa of His Honour Judge Desmarais that the detention of the mentally ill in custody while awaiting forensic assessments is contrary to the provisions of the charter will likely exacerbate the pressure on the finite number of hospital resources.

CAMH has always strongly advocated for the rights of the mentally ill and the provision of adequate services. However, we believe that in a situation of limited hospital resources and a finite number of beds, the consent of the person in charge of the hospital should be required for assessments ordered by the court or ordered by the review boards.

The second area I would comment on briefly is the proposal in clause 27 to add new subsections to subsection 672.81(2). These would allow the review board to extend the time of an annual review of an NCR disposition up to 24 months. As an advocate for the mentally ill, the Centre for Addiction and Mental Health believes that this section is quite antithetical to the whole spirit that has been articulated by the Supreme Court in Winko, in Pinet, and Tulikorpi. We urge that the legislation be amended to maintain the requirement that the review board hold a hearing after every 12 months.

The other submissions in our brief are of a technical nature concerning adjournments of restriction of liberty hearings under paragraph 672.81(2)(a) and a recommendation that the wording of the proposed legislation concerning permanently unfit accused be consistent with the recent court cases.

Given that many of the issues we had addressed in 2002 have already been covered in the recommended legislation, I can be fairly brief in my submissions and would welcome questions when the time is appropriate.

Thank you.

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

[*Translation*]

Ms. Dufour and Ms. Joncas will both be speaking for the Barreau du Québec.

● (1535)

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good afternoon. My name is Nicole Dufour, and I am a lawyer with the Research and Legislation Service of the Barreau du Québec. With me today is Ms. Lucie Joncas. Denis Mondor, the President of the Barreau du Québec, asked to convey his apologies. He was unable to come today. On behalf of the Barreau du Québec, my colleague, Ms. Joncas, will put forward comments and observations on this bill.

However, before giving her the floor, I will if I may sketch out her background. In addition to her law degree, Ms. Joncas has a masters in health law from the Université de Sherbrooke. Her thesis was on mental disorders. She has been practising criminal law for 12 years, and teaches criminal representation at the École du Barreau du Québec. Because of her interest in mental health issues, she has conducted a series of lectures both in Canada and abroad, and took part in the work of the Barreau du Québec's criminal law committee on the study of Bill C-10.

Ms. Lucie Joncas (Lawyer, Barreau du Québec): Good afternoon. At the outset, I would like to say that the Barreau du Québec supports the amendments that Bill C-10 would bring to the *Criminal Code*. In fact, they include some of the changes the Barreau du Québec envisaged in its discussion paper of April 8, 2002.

I would like to point out that the Review Board, whose jurisdiction is exercised by the Tribunal administratif du Québec, could order an assessment before a hearing was held. However, in section 672.5(8), the *Criminal Code* provides that the Review Board must assign counsel to act for any accused who has been found unfit to stand trial, or wherever the interests of justice require, if the accused is not represented by a counsellor already. Why could the same principle not be applied to assessments? Thus, the Barreau du Québec considers that representation by counsel should also be mandatory when the new section 672.121 is applied.

Incidentally, this might be a good opportunity to reorganize the numbering of the sections, which at the very least could lead to confusion.

With respect to representation by counsel and application of section 672.58, the Barreau du Québec recognizes the pivotal nature of the pilot project launched by the federal government in 2002. Le Barreau du Québec would like this project to be made permanent.

The Barreau du Québec is pleased to note that provisions for maximum duration will not come into force, because of the perverse effects they might have. We reiterate our position: these provisions must be repealed.

On a different point, as we have noted in our brief, fitness to stand trial is considered the cornerstone of our criminal justice system. Yet, sections 672.11(e), 672.23(1) and (2) of the *Criminal Code* provide only that the accused must be fit to stand trial

[*English*]

before a verdict is rendered

[*Translation*]

or "before a verdict is rendered". However, it is crucial that any accused be able to participate in the sentencing process. We cannot simply rely on application of the Balliram decision, which does not necessarily have authority in other provinces, since it is a ruling by a superior court. We would like these two sections to be amended so that they read:

[*English*]

until a verdict is rendered

[*Translation*]

but rather "until the sentence is rendered".

Furthermore, we drew your attention, on the first page of our document dated November 16, 2004, to the fact that the English version in subparagraph 672.11(e) and in the new clause 672.851 use an expression

[*English*]

stay of proceedings

[*Translation*]

that has been translated by "suspension d'instance". However, "suspension d'instance" does not mean a "stay of proceedings". In order to comply with the Supreme Court terminology which, in the Demers decision, uses the expression "arrêt des procédures", this provision should be amended. Moreover, the Barreau would like to take this opportunity to mention that this terminology should be standardized in the *Criminal Code*. Here I refer specifically to clause 579.

As for the rest, I would like to thank the committee for the consideration it will be giving to the concerns raised by the Barreau du Québec. I am available to answer any of your questions.

● (1540)

[*English*]

The Chair: Merci beaucoup.

I'm now going to the Canadian Mental Health Association. Mr. Drewry will be making the presentation. Go ahead, please.

Mr. Richard Drewry (Chair, Legal Issues Network, Canadian Mental Health Association): Thank you very much, Mr. Chair.

Good afternoon, ladies and gentlemen. My name is Richard Drewry. I am the chair of the Legal Issues Network for the Canadian Mental Health Association. It's a pleasure to be addressing you this afternoon, and the association is grateful for this opportunity. With me is the chief executive officer of CMHA National, Ms. Penny Marrett.

The Canadian Mental Health Association was founded in 1918. It is Canada's only voluntary charitable organization that deals both with mental health and mental illness. CMHA's vision of "mentally healthy people in a healthy society" provides the framework for the work that we do. Our mandate is to promote the mental health of all people and to support the recovery and resilience of people with mental health illness.

CMHA plays an important role in providing a voice for our community of people who have not been active in public policy development until recently. CMHA is a strong supporter of increasing the role of all stakeholders in the mental illness and mental health communities in public policy development, particularly those who are consumers of services.

The impact of September 11, 2001, on individuals in Canadian society as a whole is still being measured. Individuals have become far more careful and scrutinize other individuals in a way we have not experienced in the past. Governments have increasingly added additional security requirements in an untold number of ways in an effort to prevent such a tragedy from happening again. Based on the draft legislation presently being reviewed, the Canadian Mental Health Association hopes this committee will ensure this legislation will provide for appropriate safeguards to ensure the balance between public interest and individual rights.

There are so many mentally disordered persons in Canadian prisons that in a way Canadian prisons have become the nation's largest psychiatric institutions. Community treatment and services are stretched beyond capacity in communities throughout the nation. The Canadian Mental Health Association is concerned that the number of prisoners affected by mental illness will continue to increase if the lack of treatment and services in the community is not addressed.

The unique problems of the NCR accused and other mentally disordered persons who have become involved in the criminal justice system will not go away or even be substantially improved with legislation, even excellent legislation, alone. Systemic problems within the mental health delivery system will end any effective progress in treating mentally disordered offenders unless steps are taken to improve these systems. What is not happening, and as far as we are aware has never happened, is the delivery of adequate treatment to the individuals involved.

Generally speaking, the Canadian Mental Health Association is in agreement with the provisions of Bill C-10; however, we do have some specific recommendations.

Firstly, with respect to subclause 16(1), the CMHA supports the requirement of counsel being appointed to represent the accused at a hearing. However, the provisions stipulate that the appointment may be made "at the time of the hearing". These matters are often far too complex and the issues far too important for legal counsel who is appointed at the time of a hearing to have much effect. We would recommend that this amendment be altered so as to acquire appointment within a reasonable period of time prior to the hearing.

Secondly, there's subclause 16(3). This provision amends subsection 672.5(16) so as to permit a victim to read a victim impact statement at a hearing and to require the court or review board to inquire of a prosecutor or victim whether they have been advised of the opportunity to prepare such a statement. Given the fact that by definition an NCR individual is in effect not guilty, and by definition as well does not understand the nature of his act and therefore lacks the requisite intent to commit a criminal act, we are puzzled as to why victim impact statements are of any relevance in those cases; why it is proposed that victims be permitted to read such a statement, as opposed perhaps to submitting it in written form; and why it has become mandatory for the review board or court to inquire if a victim has been informed of his or her rights in this regard.

● (1545)

Well, it may be very appropriate in specific cases for an accused to be made aware of the impact of his or her activity, but surely there is a better way of doing this than having the victim perform this task. Further, if a case should arise where a victim impact statement is of relevance, surely the legislation should restrict the statement to matters that are relevant to the criteria set out in section 672.54.

Third, with respect to subclause 27(2), this provision permits a review of a disposition to be extended from 12 months to 24 months when the accused consents or the accused has been found NCR with respect to a serious personal injury offence and is in the hospital and is not likely to improve. The CMHA does believe that the nature of the offence should dictate when a disposition is reviewed. This imports an element of punishment into the proceedings. In the Winko case the Supreme Court noted on several occasions that the 12-month automatic review was an important consideration in upholding the constitutional validity of Bill C-30.

Fourth, clause 29 repeals subsection 672.83(2) of the code, which in turn, by reference to subsection 672.52(3) of the code, requires a review board to state its reasons for making a disposition in the record of the proceedings and provide a copy to all parties. It is exceedingly important that a review board state its reason for any disposition. How else can a decision be effectively challenged? CMHA recommends that this amendment be deleted.

Fifth...our background paper refers to this as clause 31. That was a typographical error; it should be clause 33. This provision enables a review board to hold a hearing to determine whether or not it should recommend a stay of proceedings in the case of accused who are found not fit to stand trial. CMHA strongly supports this provision.

Sixth, subclause 34(2) seems to permit a review board to direct the transfer of an accused who is not in custody to any other place in Canada for the purpose of reintegration into society, recovery, or treatment. This should be approached with caution. An accused who is not in custody is by definition thought not to be dangerous. It would therefore seem extraordinary to provide an unqualified authority...permitting a review board to transfer such a person anywhere they sought fit.

Seventh, clause 39. The effect of this clause is to repeal section 747 of the code, which provides for detention in a treatment facility as the initial part of a sentence of imprisonment where the court finds the offender is suffering from a mental disorder in an acute phase and that immediate treatment "is urgently required to prevent further significant deterioration of the mental or physical health of the offender".

CMHA cannot understand why this provision has never been proclaimed, let alone why repeal is now proposed. Without the authority provided by section 747, it seems to us the court has no alternative but to send the offender to a conventional prison. We don't like the chances of an offender being adequately treated in a conventional prison very much. If the problem with section 747 is lack of funding, the answer is not to repeal but to properly fund a program for this.

Last, the Canadian Mental Health Association has two general recommendations. First, CMHA recommends that this committee support the development and implementation of a pan-Canadian strategy on mental illness and mental health, one that would include the necessary treatments and services for NCR accused and those convicted.

Second, CMHA recommends that the variety of treatment and services needed by those living with mental illness and other serious mental health problems, including those under mental health care, are fully integrated. This will ensure that disorders of the mind are treated the same as disorders of the rest of the body, and at the same time that other services that are non-medical in nature are integrated and available.

● (1550)

We believe that for this legislation to be successfully implemented, the federal government must make a long-term financial commitment to ensure adequate and appropriate treatment and services are available in a timely manner to NCR accused, as well as those convicted, and make a commitment with other levels of government to ensure that NCR accused in the provincial and territorial justice systems also have adequate treatment and services available in a timely manner.

Thank you very much, Mr. Chair.

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

We'll now go to the first round of questioning, for seven minutes.

Mr. Breitkreuz.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you very much, Mr. Chairman, and thank you all for coming to the committee to make your presentations.

If our justice system loses its focus of protecting society, I believe it will lose its effectiveness. I don't know what you think of that statement, but that's where I'm coming from. I think all legislation should always keep in mind the impact on the victim, so I am rather surprised some of you are advocating that victims should not have any say at these hearings.

I would like you all to give me your thoughts on this, as to whether Bill C-10 goes far enough in protecting the rights of victims who have suffered as a result of the actions of a mentally disordered person and whether Bill C-10 should include an amendment that says victims are entitled to receive notice of the hearings. You can all make a comment on that.

Mr. Richard Drewry: Mr. Breitkreuz, first let me say that CMHA agrees that society has to be protected from danger, regardless of the source, and whether it's from people who are mentally disordered or otherwise, it really makes no difference.

My response is based upon my analysis of whether a victim impact statement serves any real purpose in these tragic situations. By the very nature of the mental disorder defence, in order for it to be successful or in order for a person to be found not fit to stand trial, the person must lack the intent to have committed the offence.

Now, if you're proposing a victim impact statement for the purpose of somehow deterring such future conduct, I have to say it's not going to have any success. I don't think it has any function in that regard.

If the purpose is to help victims understand, or if the purpose is maybe to help the perpetrator understand, then maybe there is some purpose in it. But in terms of trying to prevent such conduct in the future, with all due respect, I just don't believe it will have any practical effect to require a victim impact statement.

Mr. Garry Breitkreuz: Before the rest of you reply, let me ask, wouldn't it have an effect on what is done with the mentally ill person?

Mr. Richard Drewry: It may have an effect on when the person is reintroduced into society, and I don't really have a problem with that.

Mr. Garry Breitkreuz: Well, that's why it's important.

Mr. Richard Drewry: I'm not disagreeing with you, but I think that purpose can be served better by other means than having the victim attend and give evidence.

Ms. Lucie Joncas: Maybe I can respond. I know the committee reflected on this issue in particular, and it is the Quebec bar's position that we do believe there is a place for the victim to be heard at this level, but we have to bear in mind that these decisions have a curative purpose, not a punitive one. We believe the victim impact statement should be a recent one, to be close to making the less restrictive decision possible for the person declared not responsible. So we do believe there is a place for the victim, but we also have to see that if it's only a statement that is put in proof, a statement cannot be cross-examined. We do have an issue on that.

But we have to bear in mind that this should only be taken into consideration for the application of paragraph 672.54(b) and not for any other purpose.

● (1555)

The Chair: Mr. Darby.

Dr. Padraig Darby: Actually, Mr. Chairman, it's Dr. Darby. I'm a psychiatrist, and I both look after patients who are under the jurisdiction of the review board and also sit on the review board, so I see this issue from both sides.

Although the Centre for Addiction and Mental Health hasn't adopted a formal position, I think there is a real tension between, on the one hand, giving proper voice to victims who may in fact have been seriously injured and, as others have commented, the real thrust of section 672.54, which is on the reintegration of the accused into society.

Section 672.54 talks about taking four factors into consideration. The first is the protection of the public, and hopefully the review boards will take that seriously in making any disposition. As the previous speaker has suggested, the whole thrust of the legislation is aimed at a reintegration of the accused into society, because that person has been found not responsible for whatever offence he or she has been deemed to have committed. I think it is a balancing act.

As a psychiatrist, I would have concerns that victim impact statements, particularly powerful ones, 20 years after the commission of an index offence, might have a huge amount of emotional weight that might not bear very much on the current status of the accused.

The Chair: Thank you, Mr. Breitkreuz.

[*Translation*]

Mr. Marceau, you have seven minutes.

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

I would like to thank the witnesses for coming.

Ms. Joncas, you stated that the Barreau du Québec is of the opinion that legal representation should be mandatory. Does the fact that it is not mandatory cause any problems today, and if so, what are they?

Ms. Lucie Joncas: The fact that persons found not responsible are not represented by legal counsel does indeed constitute a major societal problem. Fitness to stand trial is assessed on a one-time basis and can vary in time. It is a little bit like diabetes. The situation is very different depending on whether or not the person is taking insulin. We are talking about the most vulnerable members of society. The impact of review board decisions is very significant. In our opinion, every individual should be represented.

Fortunately, the federal government freed up some money in 2002 to deal with this problem. Unfortunately, the code is not always being enforced, even in situations where the appointment of legal counsel is mandatory, namely, when the issue of fitness to stand trial is raised. However, in my opinion, with this new clause that will enable the board to order assessments, it would be quite appropriate for each individual to be heard with respect to the qualifications of the expert, of the individual who will be doing the assessment. There should be a debate on this issue so that we could determine whether or not somebody could be assessed by an outside expert, a professional of his or her choice. In my opinion, this matter should be discussed.

In order for an individual to be found not responsible or unfit, this has to be the case—this would be mandatory— or it has to be in the best interest of justice. Indeed, in all cases, this is in the best interest of justice, particularly if there are other interveners, such as the victim. The law is loathe to allow the accused or the individual found not responsible to cross-examine the victim. Under these circumstances, it would really be appropriate to have a neutral person representing the accused.

Mr. Richard Marceau: Is it not true that people suffering from mental disorders often have financial problems, and if this is the case, who would be paying for this mandatory representation?

Ms. Lucie Joncas: If these people are living in poverty, they should of course be eligible for legal aid. Moreover, the federal government pilot project dealt with this problem by appointing, in Quebec, six permanent attorneys who will do nothing but represent individuals appearing before the Quebec administrative tribunal.

Mr. Richard Marceau: Thank you very much.

Dr. Darby, I am convinced that you have read the testimony of other individuals who have appeared before this committee. One of the issues raised was the lack of staff, including a lack of qualified psychiatrists in remote regions, which would obviously create some significant assessment problems.

It has been suggested, specifically by this committee in 2000, if my memory serves me well, to allow individuals other than qualified psychiatrists to do such assessments. Do you think that the committee should entertain such an option?

● (1600)

[*English*]

Dr. Padraig Darby: Yes, I believe it is. Actually our centre made submissions on that in 2002, and Dr. Barbaree, who is a psychologist, suggested that psychologists and perhaps other mental health professionals should be allowed to carry out fitness assessments. It's my understanding that part of the government's concern was that in situations where someone is found unfit and there's then a suggestion that a treatment order would be required, psychologists obviously would not be able to comment on treatment with medication that might make somebody fit. But certainly we feel that in terms of utilization of resources, psychologists and other well-trained professionals certainly should be able to do fitness assessments or risk assessments for review boards.

[*Translation*]

Mr. Richard Marceau: Thank you.

Mr. Drewy, could you also answer the question?

[*English*]

Mr. Richard Drewry: I can't say I'm an expert on what the distinction is between psychologists and psychiatrists. The distinction is rather blurred in my mind right now. I'll go along with what Dr. Darby has to say on that point, at least in this context.

[*Translation*]

Mr. Richard Marceau: Counsellor Joncas, did you want to comment?

Ms. Lucie Joncas: If I may.

The legislation committee did wonder about that. Our concern is that it is often a matter of getting a diagnosis and then access to care and treatment. Therefore, it seems essential to us that a health professional such as a doctor or a psychiatrist first see the accused.

Mr. Richard Marceau: If I understand you correctly, it wouldn't be a good idea to call upon a psychologist. What do you think of asking a family physician to do this assessment?

Ms. Lucie Joncas: The code provides that the assessment be made by a doctor, not necessarily a psychiatrist, if I understand correctly. In any case, only a doctor can make a diagnosis. Since it is difficult to get care for these accused, we would like them to be assessed by health professionals. There can be mental health problems that have a physical or organic cause. This is a concern to us, and the Quebec Bar believes that the first assessment of the accused's fitness to stand trial and criminal responsibility should be done by a psychiatrist.

We would be open to other options when it come to the assessment that is made under sections 672.54(a), 672.54(b) or 672.54(c), but the Quebec Bar firmly believes that a health professional such as a doctor or psychiatrist should make the first assessment.

Mr. Richard Marceau: Do I have any time left, Mr. Chair?

The Chair: No. Ms. Marrett wants to answer too.

[*English*]

Ms. Penelope Marrett (Chief Executive Officer, Canadian Mental Health Association): Thank you.

I think one of the things we have to remember is there are the rural issues, the urban issues, and then of course the remote issues. For many people who live in remote areas, finding a health care professional of any sort is a difficulty. So it would seem to us that it would be important for us to have some flexibility, but training would absolutely need to be required for that.

[*Translation*]

The Chair: Thank you, Mr. Marceau.

[*English*]

Mr. Comartin, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I'm going to follow up on that.

Dr. Darby, if we were going to do that, and I'm thinking of the psychologists in particular, I'm looking for criteria as to when a psychologist would be well enough trained. Are there any models that we could look to for the criteria?

Dr. Padraig Darby: I'd certainly be treading on dangerous ground to comment on the training of psychologists, especially since Dr. Barbaree is a psychologist. However, in the United States, for instance, in terms of fitness assessments for court, psychologists do the vast majority of assessments. So I certainly don't think it's all that difficult to visualize a system whereby psychologists who were appropriately trained would be able to do at least the assessment around fitness. The issue of the criteria required for a treatment order obviously would be a separate issue.

● (1605)

Mr. Joe Comartin: Other than the psychologists and, as Monsieur Marceau is suggesting, potentially the family doctor or the non-specialist doctor, are there any other fields that we could be looking at to draw on expertise?

Dr. Padraig Darby: Assessments of fitness are often not particularly difficult, so certainly with adequate training I think other health professionals could do a good job of a fitness assessment, whether it is a social worker, a nurse, or an occupational therapist—from a variety of disciplines, as long as they were properly training in the forensic area and around the criteria for fitness.

Mr. Joe Comartin: Madame Joncas,

[*Translation*]

If I understand you correctly, you believe there is a problem with regard to...

[*English*]

the curative side. If the assessment was done, and again, back to Ms. Marrett's point about the remote areas and even most rural areas, on accessibility to the assessment.... If the role of the alternative was limited to assessment, would you still have a problem?

Ms. Lucie Joncas: Our concern is that some medical conditions could not be evaluated by a psychologist. I take, for example—excuse my lack of English words—somebody suffering from a head trauma, or different physical problems that trigger someone not having responsibility. Those could not be assessed. We're quite concerned about a health professional being able to apply section 672.58, and also the treatment orders. At the evaluation, we're afraid that the psychologist would not have all the skills to make the proper diagnosis.

Mr. Joe Comartin: The leading work in this country, and I believe in North America, is by the neuropsychologist, not by the psychiatrist, in terms of a physical trauma to the head.

Ms. Lucie Joncas: Obviously, as an attorney, I'm not the best person to answer on all the medical qualifications, so I don't feel comfortable saying what the proper training would be and how the code could provide for that.

Mr. Joe Comartin: I share that concern.

Mr. Drewry, I'm going to go back to the victim impact statements. If I understand your position, one, you would use them certainly much less. I'm trying to get a better sense of when you would see them being invoked.

Before you answer that, I think the concern we have is the situation where the person is being looked to as being at a stage of release and wanting the victims to know that the perpetrator does understand the impact he or she had on the victim. Second, because oftentimes there may be some ongoing connection—it may be a family member—we need to hear from the victim who is a family member of the perpetrator what impact the release is going to have on them.

I know I've thrown a number of points in there, but I want some comments from you as to when it is appropriate to have an impact statement, from your perspective.

Mr. Richard Drewry: I certainly agree that it's of great value for victims to be made aware of everything that is happening with the perpetrator, insofar as it might affect their future lives. There's no difficulty there. Our main point is that by having a victim impact statement read at a hearing, it introduces something to the hearing that I don't think is helpful. It adds an air of almost theatricality to the proceeding that seems to me to be really inappropriate. Obviously everybody sympathizes with the victim. There can't be any doubt about that. If somehow that statement would assist in the treatment of the NCR, we would have no objection to its use, or indeed if the victim came to court and read it, if that had a therapeutic value to the NCR. We just don't see when that would happen. It would have to be very rare, in our view.

● (1610)

Mr. Joe Comartin: What about the therapeutic value to the victim? There's certainly a number of cases where—

Mr. Richard Drewry: I understand what you're saying, sure. I can't really comment. I'm not a psychiatrist, and I can't really judge that situation very well. From common sense, it might in certain circumstances be helpful.

Mr. Joe Comartin: I guess what we're looking for, in terms of us writing legislation, is, how do we determine when it is useful for either the victim or the accused?

Mr. Richard Drewry: To me, where the legislation is flawed is the requirement almost that the victim has a right to come and give a statement. I'm just not sure that's appropriate. Certainly it's not appropriate for the victim to be able to state anything they want in their statement. The way the act is set up, the statement can contain virtually anything, as I read it. The court or the review board is only constrained in applying a statement to the criteria in section 672.54. That should not be appropriate, in our view.

The Chair: Do you have one short question?

Mr. Joe Comartin: No. I really just wanted Ms. Joncas and Dr. Darby to comment. What I'm asking is, when would you see us enshrining in legislation, and what criteria would we use to allow, victim impact statements?

Ms. Lucie Joncas: As I mentioned before, I think the bar's position is that there is some value to victims in comprehending the justice system and feeling they are part of it and understanding what's going on. We believe the victims should be able to put in what they feel is necessary to protect them. I don't see how we can restrict that, except to leave it up to the review board to say what is appropriate.

Dr. Padraig Darby: One option—I wonder whether it may be worth thinking about—is to have some limitation on the length of time during which victim impact statements can be read in front of the review board. I believe some of the submissions from either the chairs of the review boards across the country or maybe from the chair of the B.C. review board suggested that the actual reading of the victim impact statement should be limited to the initial hearing and not necessarily carry on in perpetuity.

The Chair: Thank you, Mr. Comartin.

Mr. Macklin, you have seven minutes.

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

Thank you, witnesses, for being here with us today.

Dr. Darby, I'd like to go back for a moment to a couple of points you raised and probe them. In one instance you said you thought the review board hearing should be every 12 months and that the opportunity ought not to be given, as we have given it in this draft legislation, to allow it to go up to two years. If you're dealing with someone who falls into the category of having a substantial organic brain defect, where no amount of help given would ever allow them to recover—I realize we're dealing with a small segment of the people who are dealt with under the section—don't you think we should at least minimize obligations on the accused in circumstances like this and therefore allow for a period of time that could be extended up to two years?

Dr. Padraig Darby: Perhaps I'm being overly optimistic, but I'm trying to think that even in a case like that, where there may not be a cure for the diagnosis, there still may be things the hospital can do that can manage the risk in a safe manner and that still might require, within a year's time, some further liberties for the NCR accused. It might not necessarily change the diagnosis, but I believe, and I think our hospital believes, the NCR accused should be given the right to have a hearing once a year and to make the case for whatever the least onerous and least restrictive disposition should be at the time.

Hon. Paul Harold Macklin: Another matter you raised was your belief that one should always get the consent of the person in charge in the hospital, however one is referred for this process. But isn't it in fact in many cases asking a lot of a review process to do that, especially in circumstances where there may be limited facilities and there really isn't an option? Couldn't that lead to the possibility of refusals and then create more difficulties in the process of dealing with these individuals?

● (1615)

Dr. Padraig Darby: Absolutely. This is a very difficult issue. There's a huge issue for referrals from the courts as well as from the review boards. People who have severe mental illnesses clearly should not be detained in custody without effective treatment. Part of the difficulty is that often, because effective treatment isn't available within the correctional system, there's a perception that it has to happen immediately and that transfer to hospital has to be immediate. Realistically, however, beds, no matter how well one funds them, are finite in number. I think it's impossible to set up a system whereby one can guarantee that a bed is always available. That's why we were suggesting that the consent of the person in charge should be required.

Hon. Paul Harold Macklin: Thank you.

Mr. Drewry, you made the comment that an offence should not dictate when one should review. What are your feelings on this review process? Do you believe it should be every 12 months? Do you believe there should be opportunities to allow it to be extended up to two years?

Mr. Richard Drewry: I'll answer that question in a moment.

Whatever the result is, it shouldn't depend upon the nature of the offence. This is triggered, in part, by whether or not the person involved committed what is called a "serious personal injury offence". If you look at the definition of that offence, it's very broad. It involves almost, I would suggest, any violent act.

I don't know what the connection is between a serious personal injury offence and whether or not you review it every 12 months or every 24 months. I don't think there should be a connection.

As to the general principle, yes, if there are cases where it's serving absolutely no useful purpose to have a review every 12 months, I don't see a particular problem in extending it. That would be a medical question, however, it would seem to me.

Hon. Paul Harold Macklin: I guess this is what the doctor raises. He suggests that maybe we're hard-pressed to say there might not be some type of reversal or treatment that might, to some extent, allow someone to come back into the community with fewer restrictions.

Mr. Richard Drewry: I don't think that sort of NCR should be restricted to a 24-month hearing. Maybe there are medical developments, and some people fall between the cracks and stay longer than they should. I think when there's any doubt, we should be staying with a 12-month automatic review.

That was regarded as fairly important by the Supreme Court of Canada, incidentally, in upholding the original provisions of Bill C-30. I don't know if he can push that envelope further than 12 months or not. We would urge caution with respect to this.

Hon. Paul Harold Macklin: I think there are also precautionary suggestions in the legislation as to the terms and conditions under which it could be done, and they're rather limiting, I think.

Thank you.

The Chair: Thank you, Mr. Macklin.

Mr. Moore, you have three minutes.

Mr. Rob Moore (Fundy Royal, CPC): When we look at the criminal justice system and the provisions of sentencing, and even in situations like this when we're dealing with mental disorders, some of the overriding factors, I appreciate, include deterrence, to the best extent possible, to ensure that a crime similar to the one that has been committed is not committed again, particularly by the same perpetrator.

Another is healing for the victim in this crime. We're talking today about acts that have resulted in damage, potentially, to some victim. I'm a little surprised to hear about some of the responses when it comes to victim impact statements. I think those are important and should be encouraged, but I've heard, particularly from Mr. Drewry, that in some situations they would not be helpful, that they'd be inappropriate or inflammatory.

I can't help but think that when we're looking at the big picture and at what's happening with someone who has committed an offence, we have to consider what the victim went through in that situation. We have to remember, too, that when someone falls under the provisions we're discussing today, the victim is being denied the process of a trial and any benefits it might have had for a victim. They also could be denied any sense of justice, at times, when you find out that the person who committed this offence against you—and you may not have known the person; all you know is that you've been victimized—is now, because of what you're going to perceive as a loophole in the law, going to be going through some alternate route.

Dr. Darby, you mentioned that you worked with victims and offenders. I would like to know the impact on someone's psychological well-being or their mental status when they're forced to go through a system like this rather than the more normal course, and when they perhaps find out that the person who perpetrated an offence against them is going to be dealt with in a manner different from what they maybe expected. My question is, what is the impact on the victim when we go through a process such as this?

● (1620)

Dr. Padraig Darby: I'm afraid I can't really comment with any expertise in that area. I may have misstated it, but I didn't say I worked with victims. I work with patients who are under the review board system, and I sit on the review board at the same time in other hospitals, but I don't work particularly with victims.

I think it would be very difficult to make a very general statement as to what the impact on the victim is likely to be of seeing somebody go through the NCR system versus going through the judicial system. I think it's dependent on a whole variety of personal factors.

I certainly would agree with you that there can be a perception that somebody going through the NCR system got away with something. But I'm firmly of the opinion that that's due, unfortunately, to a lack of understanding of the foundations of the NCR system, which says that the person was not responsible for the offence, and therefore the same principles one might apply in the judicial system, of either individual deterrence or general deterrence, really don't apply in the same way in the NCR system.

I've certainly seen cases where victims' families have attended, and it actually has been quite beneficial for them to observe the review board process, because they come to a better understanding of the foundations of the system. But there are ones where there is certainly a sense of resentment that the NCR is getting on with his or her life and their lives have still been significantly impacted.

The Chair: Ms. Marrett, do you wish to comment on this?

Ms. Penelope Marrett: When you look at this, I think many of you are probably aware that throughout the country there have been several different cases.

Here in Ottawa, several years ago, some of you may recall the incident where Brian Smith was killed. In this case, when you look at whom you might consider to be the victim, it would have been Brian's wife and his family. When you look at what Alana has done —she was very angry at the beginning, and she began to understand that the individual had schizophrenia and was not treated and had not been in treatment and was looking for some assistance—she turned it completely around and became very supportive in many ways of the need for treatment and services for individuals who are mentally ill.

So I think oftentimes there are different circumstances, where people who have been victimized, once they begin to understand and learn more about the individual who has been involved, in actual fact want to see changes in the system so that the individual gets the treatment and the services they need before anything like this happens.

The Chair: Thank you.

Thank you, Mr. Moore.

Monsieur Marceau, pour trois minutes.

[*Translation*]

Mr. Richard Marceau: Thank you, Mr. Chair.

Ms. Joncas, recommendation 9 of the Report of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which was tabled before Bill C-10, says the following, and I quote:

> The committee further recommends that the Criminal Code be amended to establish an offence of failing to comply with a disposition order made by a court or review board.

As we can see as we read the bill which we're now studying, the government did not follow through with that particular recommendation.

Do you believe that the government was right in not creating such an offence or do you think that it should have followed the committee's recommendation?

● (1625)

Ms. Lucie Joncas: The review board can change the conditions of release when the conditions have been breached. When the conditions are breached, the police can arrest the individual and release him by way of a summons, or take him back to the hospital that issued the conditions.

I believe there are enough remedies within the Criminal Code to change the conditions of release when there has been a breach.

Mr. Richard Marceau: If I understand you correctly, you believe it would be redundant.

Ms. Lucie Joncas: The necessary tools already exist. They are important because the review board's decisions must be complied with.

Mr. Richard Marceau: At one of our previous meetings, someone raised the issue of accused persons who moved from one province to another. It could be the case, for example, of someone under the responsibility of the Quebec review board, based in Gatineau, who decides to move to Ottawa.

In your experience, are these individuals tracked properly when they move from one place to another in Canada?

Ms. Lucie Joncas: In my experience, the review board can require that the accused give notice of any change of address. However, as far as I know, there have been no problems in that regard.

The Chair: Thank you, Mr. Marceau.

Mr. Comartin, you have three minutes.

[*English*]

Mr. Joe Comartin: Thank you, Mr. Chair.

Back to the victim impact statements, for anybody on the panel, are you aware of any research that has been done that would help the committee in trying to get a sense of how many people, on a percentage basis, take the opportunity to do a victim impact statement?

Secondly, coming back to the effect the victim impact statement has on the victim, is there any research either in Canada, the United States, or western Europe on the impact of the ability of the victim to make a victim impact statement?

Dr. Padraig Darby: I'm certainly not aware of any research, although, as I said to Mr. Moore, it's not a particular area of expertise of mine. Sitting on the review board for the last—I can't remember—two or three years, since the provisions have been in allowing for victim impact statements, I certainly have no idea what the figures are. But I would say it's in a very small minority of cases, as we're sitting on review boards, that we do either have victim impact statements submitted or the Crown occasionally does call a victim to actually give evidence.

Mr. Joe Comartin: Does there appear to be any relevance between the seriousness of the injury to the victim and the percentage numbers that respond?

Dr. Padraig Darby: I honestly can't answer that in any meaningful fashion. I think the numbers are probably too small to really make any good judgment.

Mr. Joe Comartin: Mr. Drewry or Ms. Marrett, do you have any sense of any research?

Ms. Penelope Marrett: Not that we're aware of, but we certainly will look into it and get back to you.

Mr. Joe Comartin: If you could just communicate with the clerk of the committee, she'll pass it on. Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Mr. Warawa, for three minutes.

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

My first question is for Mr. Drewry. You made a comment that introducing victim impact statements introduces something that is not particularly helpful and is theatrical. Is that from the perspective of the NCR accused, that it's not helpful in dealing with the NCR accused?

● (1630)

Mr. Richard Drewry: Let me say this. This is a big problem, and we don't dismiss anything that you or Mr. Breitkreuz or Mr. Moore have said about this. We wish we had an answer, but it seems to us that the purpose of the disposition hearing should be to determine what's going to happen with this person who has been found not guilty because he's an NCR. Our view of this is that a victim impact statement is in most cases not going to be helpful and in many cases is going to be hurtful.

Mr. Mark Warawa: To who?

Mr. Richard Drewry: To either. There's almost an irony in the way the legislation is drafted. The legislation says that the victim can give a statement, and it doesn't restrict the victim in what they can say. It says the review board can only consider certain aspects of the statement. Is the victim necessarily going to understand what the process is?

Mr. Mark Warawa: Mr. Drewry, my understanding was that you and Dr. Darby have said that you are not experts in this, in dealing with victims, and that it rarely happens where you have victim impact statements. Now you're telling me that it's not helpful for the victim to go through this.

Mr. Richard Drewry: I just can't see how it would be.

Mr. Mark Warawa: But you have no expertise in that, and that rarely happens.

Mr. Richard Drewry: No, I'm not speaking from personal experience, and I don't think anybody has that expertise. I agree with Dr. Darby. I don't think the studies have been done.

Mr. Mark Warawa: So why would you say that if you have no expertise in that?

Mr. Richard Drewry: I'm just speaking from common sense. I'm not speaking as an expert on that subject. To us, the purpose of the disposition hearing is to determine how to treat the individual who is before the court or before the review board.

Mr. Mark Warawa: Who is the NCR and the accused.

Mr. Richard Drewry: Yes.

Mr. Mark Warawa: It's not the victim.

Mr. Richard Drewry: That's correct.

Mr. Mark Warawa: That's where my next comment would be. I believe this is your perspective. It's a perspective from your dealing with the NCR accused and not necessarily the victim. When you are dealing with a victim, which doesn't happen that often, it may be perceived as being theatrical. It might be emotional, but I think theatrical is a stretch.

We've had perspective shared, as my colleagues have shared; we've had a number of witnesses come here. Those on review boards who are dealing with the NCR accused have shared similar comments that it may not be helpful to the NCR accused. At the last meeting it was shared that it may even be stressful and cause additional stress. So one idea could be that the victim impact statement could be made with the NCR accused not present. It could be made to the review board. This is just sharing another comment I heard.

The police shared that they thought it would be helpful, whereas the review board people have shared that it may not be.

We actually had a very interesting witness at the last meeting. She was the wife of an NCR accused who found it very helpful to both her husband, who had killed their son—it was very helpful to him, the husband, the NCR accused—and to her as a victim, to bring healing to both of them.

Your comments are very important today, but I think it's very, very important that we do look at all parties when we have an event, an offence. If you do have a victim, I believe through the experience of having restorative justice that it's very helpful to a victim to be able to share how that event has affected them. If there's a healing and an understanding, it could be helpful to that person who is the other party.

My understanding is your focus is on the NCR accused and not the victim.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Warawa.

Now... unless someone wanted to respond to those comments. No?

Ms. Marrett, did you...

Ms. Penelope Marrett: Just for a minute.

When I look around this room, I think about the number of us who have some relationship to mental illness and other mental health problems. I think that certainly some of our local groups do have programs for individuals who may have been victimized in some situation.

It probably is much more dependent on individual circumstances than on generalities. I think that's probably the hardest part for our organization to try to deal with this. In many circumstances it may not be helpful; in other circumstances it may. As in any other situation, it probably is much more of an individualistic situation versus a very general statement from that point of view.

Thank you.

● (1635)

The Chair: Thank you, Ms. Marrett.

Mr. Macklin, for three minutes.

Hon. Paul Harold Macklin: Thank you.

I would just like to clarify one point. Dr. Darby, in the last paragraph of the document you submitted today, you referred to a recommendation that the legislation adopt the wording in R. v. Demers. I'm just concerned as to what wording you are speaking about. Are you talking about permanent unfitness or likely to remain unfit, or are you coming up with a different concept? What is it you'd like us to take notice of?

Dr. Padraig Darby: Our reading of the proposed legislation was that it was going to be that the "unfit" was "unlikely to become fit", but that the language in Demers was that there be "clear evidence that capacity will never be recovered". That seemed to us a stronger and clearer statement, that the unfit accused was definitely never going to become fit.

The proposed wording of it is "unlikely to become fit", I think it certainly might be difficult for many psychiatrists to make a judgment about.

Hon. Paul Harold Macklin: All right. Thank you. That clarifies my question.

The Chair: Thank you, Mr. Macklin.

Monsieur Marceau.

[*Translation*]

Mr. Richard Marceau: No, that will not be necessary, Mr. Chairman, thank you.

[*English*]

The Chair: Mr. Comartin.

[*Translation*]

Mr. Joe Comartin: No, thank you.

[*English*]

The Chair: Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chair.

I have a quick question for clarification, Mr. Drewry. At the end of your presentation you made two recommendations—one dealing with a pan-Canadian strategy for those who have mental challenges or disabilities, and the other one was calling for a variety of treatments and an integrated approach to it, as I heard it. What I didn't hear was whether you were referring specifically to the NCR or whether you were referring to the general population?

Mr. Richard Drewry: The general population.

Ms. Anita Neville: Thank you.

Mr. Richard Drewry: Really to both.

Ms. Anita Neville: I'm sorry?

Mr. Richard Drewry: I think there are just as many mentally disordered offenders who are not in prison because they are NCR as probably there are. I think that's just as big a problem as the NCR population as well. And the studies bear out that a very high percentage of conventional inmates, if we can call them that, in prisons are suffering from some sort of mental disorder. But those statements were intended to refer to both the NCR offender and the convicted offender who is also mentally disordered and in a penitentiary or prison.

Ms. Anita Neville: Right now you're saying there is no overarching strategy and there is no variety of services available for those who have...

Mr. Richard Drewry: I'm not going to say there is none. The B. C. Community Legal Assistance Society, which I believe testified here last week...their legal counsel, who does nothing but represent NCRs before review boards and before courts, as I understand it, speaks of it being very common that persons who are in detention cannot be released into the community because there's no housing and there's no ability for economic stabilization of these individuals.

This program that is inherent in this legislation is bound to be very expensive regardless of what level of government is going to implement it. And to suggest that we have a system whereby you have the least restrictive approach, yet there's no funding available to put people into the community, to me is the key to all of this. It's not really the legislation. I don't think all of these technicalities and so forth are really going to get to the heart of the problem. The problem is whether or not we can treat the individuals once we have them in some sort of custody or in some sort of control.

Ms. Anita Neville: Thank you very much.

The Chair: Ms. Marrett, you had a comment to make.

Ms. Penelope Marrett: To build a little on what Mr. Drewry has said, we are calling for the strategies for the general public as well in order to ensure that it is everybody who would be able to receive the treatment and services they require, whether they have been accused or not, whether or not they're NCR convicted.

● (1640)

The Chair: Thank you, Ms. Neville.

Are there any other questions from any of the members?

If not, I will thank our witnesses for their attendance and for their assistance.

[*Translation*]

Thank you for your assistance.

[*English*]

I will suspend for five minutes to allow our witnesses to withdraw, and we'll go in camera on other committee business.

Thank you.

[*Proceedings continue in camera*]

● (1640)

(Pause)

● (1654)

[*Public proceedings resume*]

The Chair: When we suspended debate last Wednesday we were debating the motions proposed by Mr. Breitkreuz. We'll resume at this point.

Yes, Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): I'm just wondering what the format will be, because I know Mr. Breitkreuz wants to make a brief statement about the motion, and I feel obliged to respond. Are we going to have an ongoing debate? What is the format for the debate on this motion?

The Chair: Mr. Breitkreuz.

Mr. Garry Breitkreuz: I'd like about seven to ten minutes. I don't know if anybody else is going to speak to it.

The Chair: I think what Mr. Cullen is discreetly asking is whether we are in for a filibuster or we are going to progress.

● (1655)

Mr. Garry Breitkreuz: I didn't plan the last one. It was the Liberals.

Hon. Roy Cullen: Yes, but by dropping the amendment on my lap ten minutes before the meeting...

The Chair: Let's proceed on that basis, Mr. Breitkreuz. You wanted to continue debating this issue.

Mr. Garry Breitkreuz: Yes. Thank you, Mr. Chair.

Colleagues, just picking up where I left off last Wednesday, I'd like to add a little bit of new information that would be helpful. I'm going to be essentially addressing both of my amendments at the same time.

Before I do that, I am going to read you something I received today. It's an e-mail, and I don't have permission to release any names, but I want to put it on the record. It is from a police chief from Ontario. It says:

> Let's not forget the aboriginal men and women who police on reserves in this country, with next to nothing for resources and often work alone due to ridiculous working conditions and under-staffing levels not tolerated anywhere else in the country.
>
> For the majority the gun registry was just a slap in the face on two fronts. It has not improved their ability to combat violent crime one ioda, and secondly it has dis-regarded and infringed upon the law-abiding aboriginal hunter by turning them into criminals by refusing to have another law imposed upon them that ignores their way of life and just doesn't make sense. For a fraction on what has been wasted on the registry Canada could have gone a long way to making the aboriginal policing profession a viable career option for aboriginal youth.

He says, “Keep up the good work!” This is an anecdotal example of what I'm trying to do with my motions.

I want to tell you about a recent national poll on this issue conducted in May 2004. That's not very long ago. I'd like to quote:

> A substantial majority of Canadians (76.7%) agree that the federal gun registry should be scrapped, allowing the federal government to fight violent crime by devoting more resources to other law enforcement priorities.

That's a national poll.

Over the weekend I also learned that Saskatchewan RCMP are short 60 officers, and the provinces all are very short. Over the weekend we finished the analysis of the most recent access to information requests from the Canada Firearms Centre. This is a key point, Mr. Chairman. After spending more than $1 billion, the CFC reports 5,059,780 of the firearms are still unverified in the Liberals' gun registry. That's about three-quarters of the guns that are unverified, and we've spent $1 billion. We have to go back now, and I don't know how much it's going to cost, to verify all these. What has to happen here is mind-boggling.

In August of 1999 one of the key demands by the Canadian Police Association was that “The accuracy of the information that is collected in the firearms registration database be verified.” They said, “We demand that it be verified.” It has not been verified five years later.

How does anyone accurately verify a firearm by phone? The Canadian Firearms Centre claims it has verified 98,683 guns by phone. You can't “verify”; you can't look at a gun over the phone. So much for the police demands for verification—and by the way, 98,000 is a drop in the bucket.

On November 17, 2004, the Canada Firearms Centre sent out Special Bulletin for Police number 61, claiming:

> The Canada Firearms Centre (CAFC) has established a Verifiers' Network with over 5,000 approved verifiers to assist businesses and individuals that need to have their firearms verified.

Yet in response to my Access to Information Act request they say that as of October 19, 2004, only 1,654 of those volunteers out of over 5,000 have actually verified a firearm in the last year. The access to information response from the firearms centre also revealed that they are receiving many complaints about the effectiveness of their verifier network. For example, there were 62 complaints that “there is no verifier in our area”; 28 complaints of “contacted verifier but not with success”; 35 complaints of verifiers' phones not working; 68 complaints that the verifier doesn't have enough knowledge. It goes on and on.

In conclusion, I'd like to make a few comments about how misdirected this billion-dollar boondoggle really is. Think about the gun registry issue as a parliamentarian and a taxpayer, not as the member of a political party. I appeal to you.

● (1700)

If government is made aware of the problem, what should they do? They should investigate the nature and the extent of the problem, and then they should design an appropriate response and pass legislation accordingly.

What happened in the case of this gun registry? The government assumed that every law-abiding person who owns a gun is a problem. Then, based on this false assumption, they completely failed to investigate the nature and extent of the real gun problem. Consequently, Bill C-68, the Firearms Act, was aimed at the wrong target.

What is the source of 99.99% of the firearms problems in Canada? It's the criminals. The government knew this back in 1994, but they went after law-abiding gun owners anyway.

Mr. Chairman, there's a target there. It should have been the criminal misuse of firearms and crime, and I thought we were going to focus on that. Then all of a sudden, instead of focusing on the criminal, we turned sideways and focused on law-abiding citizens, and that's still the focus of the entire firearms registry. It has virtually no effect on criminals.

Statistics Canada recently reported that in 2003, 69% of murders were committed by convicted criminals. Five had been previously convicted of murder. The RCMP reported that in 1991 there were 176,000 convicted criminals who had been prohibited from owning firearms by the courts and had had restraining orders placed on them, and there were restraining orders on another 37,000 Canada-wide and 2,241 province-wide.

What does the Firearms Act do in respect of this? It does not track the addresses of convicted criminals and people who have been proven to be dangerous; it does not track those people at all. Instead, it tracks two million law-abiding gun owners, and they're forced within one month of changing their address to report that to the government. So the people who are the problem report to nobody—in fact the government won't even touch that issue; they say we'd be violating their rights—but on the other hand, they say we can go and inspect anybody's home or put them in jail if they don't report their change of address. It's completely misdirected.

It authorizes the government to check to see if convicted violent criminals—and more than 250,000 have proven to be—have acquired... It just goes after the wrong people. I would like to ask this committee, where's the logic in that? There is no logic.

There's another thing that's wrong with the Firearms Act. Last week, the commissioner of firearms reported to the House that since December 1, 1998:

> ...12,074 firearms licences were refused or revoked because of violence, prohibition orders, misuse of firearms, and other public safety concerns.

What happens to those 12,000 newly identified, too-dangerous-to-have-guns people? They've now been identified at the cost of hundreds of millions of dollars. The Firearms Act completely ignores those people. The government doesn't check to make sure they have surrendered all their firearms. They no longer are required to report their change of address, so suddenly they're taken out, and they no longer have authority to inspect their homes to see if they've acquired more guns. Do you see the lack of common sense here? It's crazy.

What is the rate of success of the government's strategy of targeting law-abiding gun owners instead of the real problem, namely convicted criminals? It's 12,000 firearms licences refused and revoked out of two million. That's 0.6%. The rate is half of what it used to be before the Firearms Act was brought in—we've had a licensing system since the late seventies.

I pointed out last Wednesday as well that $119.7 million is being spent directly or indirectly on failed firearms programs this year. The money should go to police and public safety priorities. That's my argument, and that's the bottom line. I've asked the government 26 times in the last two years to tell us how much it will spend to fully implement the gun registry, and 26 times they've refused. I think it's a very important question. At last count, there were still 59 sections of the act and regulations that were not in force. Remember, this was passed in 1995. That's almost 10 years ago, and there are 59 sections of that that have not been put in place.

Then there's the question of hundreds of thousands of unlicensed gun owners and eight million guns still unregistered. Registration of firearms for Nunavut has been stopped by a court injunction for the last two years. Court challenges by the dozen are under way, and the justice minister refers to that as “high impact” litigation.

● (1705)

The Liberals really have failed to comply with the recommendations made by the Auditor General a couple of years ago to provide Parliament with estimates of the cost of enforcement and the cost of compliance. According to the Library of Parliament Research Branch, this has added hundreds of millions to the cost of the program, yet it has not been reported to Parliament as a cost. So the economic costs and the cost-benefit analysis have been declared a cabinet secret. We can't get that information, so we don't even know how much money we're talking about and what we're getting in return for it.

So I'm advocating, Mr. Chairman, in conclusion, that the government pull its head out of the sand. It's time to do what the majority of Canadians, or 76% of Canadians, want us to do and redirect the money being wasted on the gun registry to front-line police priorities.

I thank you for your patience. I don't know how many minds I've changed with my presentation, but I believe, Mr. Chairman, it strikes at the heart of how we should be spending our money in this place.

Thank you.

The Chair: Thank you, Mr. Breitkreuz.

Mr. Cullen.

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

I must admire the member's tenacity in his fight against the firearms registry and the Firearms Centre and the gun registry, but I think I need to put something on the record in rebuttal of, or in comment on, Mr. Breitkreuz's comments.

First of all, none of us at this table, I suspect, is very happy with the cost overruns of the Firearms Centre, and we don't make excuses for that. We have taken action, though. We have transferred the Firearms Centre to Public Safety and Emergency Preparedness. We have a new management team and they are managing down costs; they are managing the situation and moving forward.

As I said, this year our estimates' $100 million is half the cost of 2000-01. We are moving next year to a net cost of $85 million a year and capping the gun registry estimates at $25 million or less. Beyond that, once the revenues are fully on stream, we believe we can have it in a maintenance mode at about $55 million a year. So we have taken action to deal with the fiscal problems in the gun registry. There was a lot of money spent on it, and we're not very happy about that either. The government has to take action.

With respect to some of the other comments and the quote from the aboriginal police chief, all I can say is that the Canadian Association of Chiefs of Police has consistently supported the gun registry, and in fact just last year the Canadian Police Association came out with a resolution supporting the gun registry. That was a major, major step.

As for the polling of Canadians, Mr. Breitkreuz, I'm not sure where you get your data, but a poll in January 2003 showed that 74% of Canadians support the gun control legislation.

With respect to the number of firearms registered, again, I'm not sure where you get your data, but the best data we have would suggest there are two million firearms licence holders, or 90% of the population, as we estimate it.

In terms of registration, we have seven million firearms registered, which is getting close to 90% of the total population, as we know it. The gun registry itself is getting about 2,000 queries per day from police officers—and not only from CPIC spillover. The CPIC requests are hugely more numerous than that, and these are requests from police officers for information, which they're presumably finding useful.

I would have thought the 12,000 individual firearms licences that have been refused or revoked was good news, where assessment has been made and these individuals have been deemed not to be responsible enough to be licensed for a firearm.

You're right about criminals not registering their guns. The government has never made the claim that firearms or gun control is the be-all and end-all; it is a useful tool that the police are saying is useful to them. They are on the front lines and the people who have to work with us. They want to see it managed in a cost-effective way as well. But our government has also indicated its intent to bring out tougher sanctions for gun-related crime and also to enhance support for police to fight gun crime and smuggling. Certainly, that resonates well in my riding; I have a lot of gun-related crime, and we know that a lot of those guns are coming from black market sources, etc.

There had been a significant drop in the rate of firearms homicides, and also a very big decline in homicides related to shotguns and long guns. The government, again, is not attributing that kind of decline totally to the gun registry or gun control, but we are quite confident that it is adding some value.

● (1710)

I'm just about finished, Mr. Chairman.

With respect to redeploying resources, there's the technical question about this being out of order procedurally, but in terms of the substantive issue, we all understand that law enforcement needs resources. Let me just recap some of the money that's gone recently to the RCMP: in budget 2000, we announced $584 million over three years to the RCMP; in budget 2001, we announced $1.6 billion for the national security efforts of the RCMP; and in budget 2003, we provided almost $100 million to fully implement the RCMP real-time identification project and improve the national fingerprint system. Right now, we're working with the RCMP on their agenda moving forward.

Resources are always an issue, whether it's the RCMP or the Canada Border Services Agency. Unfortunately, we live in a world of finite resources, but we are going to be doing our level best to make sure the RCMP have the resources they need to fight organized crime and the crime elements they have to deal with.

I suppose we could go on for some time. I tried to limit my remarks to some of the points you made, and hopefully that's now on the record. We both have our points of view on the record. I'm not sure you're going to convince me or I'm going to convince you, or vice versa, with other members at the table. I just wanted to put those comments on the record.

The Chair: Thank you, Mr. Cullen.

Monsieur Serge Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I would like to briefly explain why the Bloc Québécois is against the Conservative Party resolution.

At the outset, I am surprised to see that the Conservative Party, every time we discuss crime, is concerned about the victims. It is to its credit that this is one of its major concerns. The party is constantly reminding us, for example, when we talk about rehabilitation, that we need to think about the victims and it is constantly suggesting measures to that effect. However, I have practised criminal law since 1966, both as a Crown Attorney and as a defence lawyer, and I was, in addition, Minister of Public Safety. I can therefore tell you that in the sectors that deal with crime, I know of no measure that is better able to reduce the number of victims of the most serious crime, which results in loss of life.

I would also note, like the Honourable Roy Cullen, that it truly seems that we have not consulted the same statistics on Canadian support. In January 2003, namely one month after the Auditor General published her report—which was quite devastating as far as the management of the gun registry program was concerned— 74% of Canadians were still in favour of the current gun control legislation.

The Bloc Québécois naturally deplores and deplored the waste that occurred in implementing this program, a program which we deem to be necessary and important. That being said, I see that most Canadians see things the same way we do: although they deplore the wastage, they do recognize the positive impact of the program.

First of all, police officers use the program a great deal. I have been told that there are nearly 2,000 requests per day. I know what that means, in practical terms, for certain police officers. In cases of violence, where the police are called to the scene, whether it be at a residence—in the case of marital violence, for instance—or at a business, they are very happy to be able to find out, at the outset, if there will be any firearms on the premises. In addition, this knowledge enables them to resolve certain crimes. Being able to ascertain the most recent owner of a weapon used in a crime is a clue.

The Canadian Association of Chiefs of Police said that it was in favour of continuing the program. The Canadian Police Association itself said that it was also in favour of maintaining it. I acknowledge that there is an exception, which you refer to a lot, and that would be Saskatchewan. The fact remains that a very large majority of Canadian police officers, be they executives—they are almost unanimous—or ordinary police officers, support the program. Could it not be said here that these are the experts advising us to carry on with this program?

I do recognize that you have done some smart and necessary work in reviewing the statistics provided to you, which cover a long period of time. The fact that the rate of violent crimes and gun-related crimes has been declining year after year since 1970 or 1971 is, in our opinion, a success for our society. You have pointed out, rightly so in my opinion, that the statistics may not be convincing, namely that the program would have in itself led to a decline in this rate. Finally, it is nevertheless good to point out that the program has not disturbed this trend, given that it is continuing to decline.

There are, however, instances where the program is important, particularly with respect to rifle-related homicides. Here we are talking about one of your major concerns. You often say, as do many other people, that this will not prevent real criminals from obtaining weapons, and that is true. But sadly, the majority of murders are not perpetrated by real criminals. Why do people kill? There are many reasons. In the United States, in particular, the murder rate is three and a half times what it is in Canada. Moreover, we seem to forget that it is also three and a half times what it is in all industrialized countries.

Every five years, an organization does the survey. I do not have the exact reference, but I do know the situation, since I have been following it closely for at least 20 years.

How much time do I have left, Mr. Chairman?

● (1715)

The Chair: The only limit is our patience.

Mr. Serge Ménard: I don't seem to be testing your patience too much.

Every five years, that organization makes crime comparisons among industrialized countries. Recently, they have begun to include in the list former east European countries that had been excluded in the past. It's very hard to make that kind of comparison because not all crimes are defined the same way by all countries. They go about it by surveys, like in the case of opinion surveys. They do sampling and simply ask people whether they've been victims of a criminal act in the past five years.

That gives us a good basis for crime comparisons among developed countries. When I say developed countries, I'm obviously talking about all of western Europe, Australia, New Zealand, North America, and increasingly, as I said, certain east European countries. Russia, for reasons you can imagine, is excluded. Its statistics aren't reliable. The surveys show that crime is roughly the same in all developed countries, except when it comes to homicide.

● (1720)

In the United States, firearms are easily accessible. In the United States, a large number of disputes are settled with firearms. The homicide rate is, generally, three and a half time higher in the United States. However, when it comes to the homicide rate involving firearms in the United States, it is a little over eight times higher than Canada's. It is four homicides per 100,000 people in the United States versus 0.48 homicides per 100,000 people in Canada. As for spousal murders—this doesn't refer to the acts of criminals, but rather to crimes of passion—the rate is 0.48 homicides per 100,000 people in the United States versus 0.09 homicides per 100,000 people in Canada.

First of all, I think that the firearms registration program may act as a deterrent to some criminals who, although they are considered the most impulsive and the least organized, represent a real danger: street gangs. They constitute the greatest danger, ever since we busted up one of the largest criminal organizations in Quebec. As one crown prosecutor said to me, fighting organized crime is like housework; it's never finished. Be that as it may, those gangs are now the number one danger. Complicating access to firearms serves a purpose: it delays the acquisition of those weapons.

From what I understand, there's apparently something almost mythical about owning firearms. You mention that very often and compellingly. There is apparently an essential connection between the weapon and the owner exercising his or her freedom; thus, should the protection afforded by society disappear, firearms could still be relied on for self-defence. Reference was also made to farmers, law-abiding citizens that they are, who are attached to their firearms. Am I wrong to think that farmers must be at least as attached to their tractors as to their firearms? And yet they don't buck at registering their tractors. Remember your youth, when you weren't allowed to drive yet and tell me whether there's anything more mythical than being able to take to the road at last, with all of the possibilities that entails.

Why don't you have the same reaction there? Why don't you question the purpose of registering vehicles? In my opinion, that became the practice because it was very easy to avoid responsibility when you hit someone, when you committed a crime and then fled. So people were then required to put licence plates on their vehicles. That's a more demanding requirement than for firearms, given that licence plates have to be installed. Personally, I don't see much of a difference between the requirement to register a motorized vehicle and the requirement to register a firearm.

Think of aboriginal people, even if they were granted certain privileges. An aboriginal person on a snowmobile, checking his trap lines, with a shotgun on his back, has at his disposal two instruments inherited from the white man. Which is more dangerous? Which is registered?

The fact that this program is supported not only by police officers but also by public health agencies is quite significant. They're the ones who deal with the victims of firearms abuse. We're not necessarily talking about victims of organized crime or serious criminals: those people have the means to buy firearms illegally and this type of obstacle is not what's going to stop them. I think that applies to the United States in particular.

It's true that the system has been costly. In my opinion, it's been too costly. There's another thing that's important too, and here I'm referring to training, to make people aware of the danger and safe storage of firearms. That training should be given when the person applies for a permit.

I don't know all of the reasons for the waste, and although the program has undeniably been too costly, I have to say that in my opinion, part of the reason for the increased cost is due to systematic campaigns from firearms lobbies to obstruct the system at strategic points in time.

We have heard tell of instructions that were given, for example, to wait until the last minute. As Minister of Public Safety who was responsible for the Sûreté du Québec—the organization administering the program—I was responsible for the registration of firearms in Quebec. So I know that many of the problems were due to computer programs. Clearly some of them weren't due to the actions of the firearms lobbies. For example, the initial forms were eligible. We initially thought that the problem had to do with poor translation; but the forms were as incomprehensible in English as in French. No one could handle all of the questions. All of those forms were rejected and had to be sent back, which obviously increased the delays and so on. That kind of thing was a sign of poor administration.

The system is now up and running reasonably well. It seems to me that it would be an even greater waste to scrap the investment that has already been made. We now have a highly effective system that produces results and confirms the fact that firearms use is on the decline.

We don't live in the same province, and I understand that things aren't the same in Saskatchewan. But my understanding is that the public in the nine other provinces supports the program. That sets us apart from our neighbours to the south, who live in a country where firearms abuse occurs frequently.

If you've built a house that cost you too much, the worse solution, in my view, is to burn it down, unless of course you plan to defraud your insurance company. If it cost you too much, at least enjoy it.

We now have a system that puts us in a certain class of civilization and that is supported by all of the experts in this field, the same experts you often refer to when you want tougher laws against criminals. The police are fully in support; public health agencies and the general public are also supportive. Accordingly, we are going to vote against your resolution. We're convinced that you've done a great job of defending your position and have shown exceptional talent in defending your ideas. Moreover, you've been remarkably well prepared, better than I, I admit.

● (1725)

[*English*]

The Chair: Merci, monsieur Ménard.

Are we ready for the question?

Yes, Mr. Breitkreuz.

Mr. Garry Breitkreuz: I have one little comment.

I could counter every argument, I guess, and show that it's not cost-effective. I'm really saddened and disappointed that the Liberals, the NDP, and the Bloc really aren't looking and scratching below the surface. I just want to put that on the record.

There wasn't an argument that came forward that actually demonstrated that the registry is cost-effective.

The Chair: Okay.

The motion is that vote 20 of the Department of the Solicitor General (Public Safety and Emergency Preparedness) for the Canadian Firearms Centre in the amount of $82,000,080 be reduced by $20 million.

All in favour of that motion?

A voice: Can I have a recorded vote?

The Chair: Yes, we can have a recorded vote.

(Motion negatived: nays 7; yeas 4)

● (1730)

The Chair: The motion being defeated means the second motion then would fail as well, because it's contingent on the first passing.

Does the committee wish me to report to the House? It's the option of the committee whether to report the estimates to the House or to...

Hon. Paul Harold Macklin: Sure, I think we should.

The Chair: Well, then we'll have to deal with all those votes.

Shall votes 1, 5, 10, 15, 20, 25, 30, 35, and 50 under Justice; and votes 1, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, and 75 under the Solicitor General (Public Safety and Emergency Preparedness); and vote 55 under the Privy Council, less the amount granted in interim supply, carry?

JUSTICE

Department

Vote 1—Operating expenditures.....$533,850,000

Vote 5—Grants and contributions.....$389,604,000

Canadian Human Rights Commission

Vote 10—Program expenditures.....$18,270,000

Canadian Human Rights Tribunal

Vote 15—Program expenditures.....$3,895,000

Commissioner for Federal Judicial Affairs

Vote 20—Operating expenditures.....$7,970,000

Vote 25—Canadian Judicial Council—Operating expenditures.....$1,575,000

Courts Administration Service

Vote 30—Program expenditures.....$47,662,000

Law Commission of Canada

Vote 35—Program expenditures.....$2,966,000

Supreme Court of Canada

Vote 50—Program expenditures.....$20,137,000

(Votes 1, 5, 10, 15, 20, 25, 30, 35, and 50 agreed to on division)

SOLICITOR GENERAL (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS)

Department

Vote 1—Operating expenditures.....$100,944,000

Vote 5—Grants and contributions.....$301,793,000

Canada Border Services Agency

Vote 10—Operating expenditures.....$546,584,000

Vote 15—Capital expenditures.....$23,349,000

Canadian Firearms Centre

Vote 20—Operating expenditures.....$82,080,000

Vote 25—Contributions.....$14,500,000

Canadian Security Intelligence Service

Vote 30—Program expenditures.....$269,911,000

Correctional Service

Vote 35—Penitentiary Service and National Parole Service—Operating expenditures.....$1,261,054,000

Vote 40—Penitentiary Service and National Parole Service—Capital expenditures.....$136,712,000

National Parole Board

Vote 45—Program expenditures.....$29,076,000

Office of the Correctional Investigator

Vote 50—Program expenditures.....$2,558,000

Royal Canadian Mounted Police

Vote 55—Operating expenditures.....$1,231,710,000

Vote 60—Capital expenditures.....$196,334,000

Vote 65—Grants and contributions.....$37,425,000

Royal Canadian Mounted Police External Review Committee

Vote 70—Program expenditures.....$769,000

Royal Canadian Mounted Police Public Complaints Commission

Vote 75—Program expenditures.....$4,177,000

(Votes 1, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, and 75 agreed to on division)

PRIVY COUNCIL

Security Intelligence Review Committee

Vote 55—Program expenditures.....$2,206,000

(Vote 55 agreed to on division)

The Chair: Shall the chair report to the House the votes as carried?

Some hon. members: Agreed.

The Chair: Thank you. That concludes the business of this meeting.

The committee is adjourned.

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