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Chair

The Honourable Paul DeVillers

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

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● (0900)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I would like to call this meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We're beginning the study of Bill C-13, An Act to amend the Criminal Code, the DNA Identification Act, and the National Defence Act.

Witnesses with us today are Mr. David Griffin, executive director of the Canadian Professional Police Association; Mr. Michael Thomson and Mr. Alistair Deighton, from the Schizophrenia Society of Canada; and Mr. Steve Sullivan, from the Canadian Resource Centre for Victims of Crime.

Welcome, one and all. We'll proceed in the order that appears on the orders of the day. We'll start with Mr. Griffin. I think most of you have been here before and know the drill. If we can start with approximately a ten-minute submission, we'll then go to questions from the members.

Mr. Griffin.

Mr. David Griffin (Executive Officer, Canadian Police Association): Thank you very much, Mr. Chair, and good morning. We certainly appreciate and welcome the opportunity to present our submissions to the House of Commons Standing Committee on Justice and Human Rights with respect to Bill C-13.

Just two comments. First of all, I apologize. Our brief is still in publication, so we will be forwarding it to the committee later this week, in both official languages. And our president regrettably couldn't be here this morning, but certainly this is an issue of importance to our association.

The CPPA is a national voice for 54,000 police personnel across Canada. Through our 225 affiliates, membership includes police personnel serving in police services from Canada's smallest towns and villages, to those working in our largest municipal and provincial police services, to the RCMP members' associations, to first nations police officers.

We are acknowledged as a national voice for police personnel in the reform of the Canadian criminal justice system. We are motivated by a strong desire to enhance the safety and quality of life of the citizens in our communities; to share the valuable experiences of those who are working on the front lines; and to promote public policies that reflect the needs and expectations of law-abiding Canadians.

The CPPA was created in 2003 with the merger of the Canadian Police Association and the National Association of Professional Police. For over a decade, we have been actively involved in discussions concerning the creation of and enhancements to the National DNA Data Bank, including Bill C-104, Bill C-3, Bill S-10, and various consultations concerning DNA legislation.

The DNA data bank was established in 2000 to assist law enforcement agencies in solving crimes by linking crime scenes where no suspect has been identified; helping to identify suspects; eliminating suspects where there is no match between crime scene DNA and the DNA data bank; and determining whether a serial offender is involved.

Currently the DNA data bank is receiving only a fraction of the expected or eligible samples. Less than 50% of primary samples and much fewer of the secondary offence samples are in fact being submitted. Although the enabling DNA legislation has been in effect for almost five years, it is evident the samples are not being requested, authorized, or collected to the full extent of the law. Further work needs to be done in training the judiciary, crown prosecutors, and law enforcement to ensure that samples are sought in all eligible cases.

The National DNA Data Bank has assisted in solving the most serious crimes—such as murder, attempted murder, and sexual assault—that may not have otherwise been resolved. Canada's National DNA Data Bank also provides valuable assistance to law enforcement agencies with break-and-enters and crimes of a similar nature.

The data bank now predicts that 5% of the crime scene profiles entering the data bank will result in a match with a previous offender's profile. While this is a significant achievement, it pales by comparison to the United Kingdom, where there is a 40% chance that a crime scene sample will match immediately with an individual's profile on the National DNA Database.

In a typical month in the United Kingdom, the National DNA Database will find matches linking suspects to 15 murders, 31 rapes, and 770 motor vehicle crimes. In U.K. crimes in which a DNA profile has been obtained, the rate of crimes detected increases by more than 50%, from 24% to 37% of crimes.

Bill C-13's purpose is to amend provisions in the Criminal Code respecting the taking of bodily substances for forensic DNA analysis and the inclusion of DNA profiles in the national data bank. Bill C-13 also makes related amendments to the DNA Identification Act and the National Defence Act.

The CPPA supports the incremental improvements contained in Bill C-13, and we urge Parliament to proceed with swift passage of Bill C-13 to give effect to the amendments contained therein. In addition, the CPPA strongly recommends that Parliament fulfill its obligation to convene a parliamentary committee to review the DNA Identification Act this year.

DNA analysis has proven to be a breakthrough technology in policing and the administration of justice. It is a science that assists in detecting and convicting offenders and acquitting the innocent. In serious police investigations, the cost savings in reducing the time spent on investigations and in identifying and confirming or eliminating suspects can be extraordinary. This is particularly important in crimes such as child abductions by strangers, where precious hours can be critical to finding the victim alive.

● (0905)

In Canada we have yet to realize the full potential of DNA technology and a National DNA Data Bank. Not only is the existing law not being applied to its fullest, the law itself unduly restricts the use of DNA technology, as compared to the experience in other jurisdictions. The fact that a sample submitted to the U.K. data bank is eight times more likely to result in a match than a sample submitted in Canada demonstrates this point. To quote the DNA data bank's own literature, “The more samples in the bank, the better the chance of a match, which may lead to solving a case or focusing an investigation.”

In terms of our recommendations, we have several.

First, the Canadian Professional Police Association recommends that Parliament proceed with swift passage of Bill C-13 to give effect to the amendments contained therein.

Second, the CPPA strongly recommends that Parliament fulfill its obligation to convene a parliamentary committee to review the DNA Identification Act in 2005.

Third, the Department of Justice, in collaboration with the Department of Public Safety and Emergency Preparedness, should develop and implement a coordinated strategy with the judiciary, crown prosecutors, and law enforcement, to ensure that DNA samples are sought and obtained in all eligible cases, to the full extent of the law.

Four, for the purposes of the review, the CPPA recommends amendments to the Criminal Code of Canada to ensure the taking of samples at the time of charge for persons charged with designated offences; from persons currently in custody or on conditional release for a designated offence, including all offenders serving sentences for any indictable offence; and third, from those who consent to the taking of samples. In addition, the CPPA recommends amendments to the Criminal Code of Canada to expand the scope of designated offences established under the Criminal Code to enable effective and efficient utilization of forensic DNA analysis as a means of furthering the interests of justice and the investigation of all crime.

Finally, provide that where the court determines that the prescribed duties imposed under subsection 487.07(1) were not fully complied with, that should not of itself invalidate the seizure of the sample or constitute grounds for exclusion of evidence otherwise lawfully obtained.

Thank you again, and we welcome any questions at the appropriate time.

The Chair: Thank you, Mr. Griffin.

Now, from the Schizophrenia Society of Canada, we'll hear from Mr. Thomson.

● (0910)

Mr. Michael Thomson (Board Member, Schizophrenia Society of Canada): Thank you.

I'm a national board member with the Schizophrenia Society of Canada. I come here from Winnipeg today, and I'm here with Alistair Deighton.

Alistair is a volunteer with the Ottawa chapter of the Schizophrenia Society of Ontario. Alistair is also a person living with schizophrenia.

As you know, the Schizophrenia Society of Canada is a national registered charity committed to alleviating the suffering caused by schizophrenia and related mental disorders, and to improving the lives of individuals and families with this illness. As you may also know, approximately one person in every one hundred is living with schizophrenia. That's an estimated 300,000 Canadians, not to mention the many hundreds of thousands of family members and friends who are also profoundly affected by their loved ones' illness.

There are a great many issues facing individuals with mental illness, and the Criminal Code of Canada frequently impacts the lives of ill individuals and their families. That's why Mr. Deighton and I are here today to offer the views of the society with respect to Bill C-13. Specifically, we note that the bill proposes a number of amendments to the code respecting the taking of bodily substances for forensic DNA analysis and the inclusion of DNA profiles in the National DNA Data Bank that will undoubtedly enhance public safety while also respecting the privacy rights of Canadians.

However, the SSC recommends removal of a particular amendment from Bill C-13. That's the amendment that provides for the making of DNA data bank orders against a person who has committed a designated offence but has been found not criminally responsible by reason of mental disorder.

As you're all aware, our justice system has long acknowledged that individuals with mental illness are entitled to special legal consideration. Section 672.35 of the Criminal Code provides that an individual found not criminally responsible by reason of mental disorder is neither found guilty of the offence nor has a conviction entered.

Our laws continue to make distinctions, and in our respect you ought to continue to make distinctions for individuals with mental illness. By allowing this particular amendment, in our view, you will be lumping mentally ill individuals together with convicted criminals, though the code already clearly doesn't contemplate such a result. To do so would not only create an incongruity between the bill and the code, but much more importantly, it would serve to perpetuate the devastating stigma and discrimination endured by an already severely marginalized segment of our community.

If a principal purpose of the code is to help protect the public, then the resources required to facilitate this amendment would be much better dedicated to treatment programs for ill individuals, not to systemic mechanisms that further stigmatize the one in five Canadians who we know will experience mental illness in their lifetime.

The SSC acknowledges the relationship between mental illness and violence. To ignore that relationship would be a disservice both to the ill individuals and to their families. But it's extremely important to remember two points. First, a large body of research confirms that the risk associated with mental illness is modest relative to the risk associated with other factors, such as gender, age, education, addictions, and previous history of violence. Second, violence is quite simply not a symptom of schizophrenia.

According to Dr. E. Fuller Torrey, there are three primary predictors of violence. The first is the history of past violence. This of course applies to individuals with and without mental illness. The second is drug or alcohol abuse. Again, this has application to individuals who do and who do not suffer from mental illness. The third is a failure to take medication. In our view, by providing more resources for treatment programs that may include medication, the relationship between mental illness and violence can be addressed in a way that is beneficial to ill individuals, to their families, and to public safety.

● (0915)

I'd like to let Mr. Deighton make a few comments as well, to provide the committee with a much more personal view from the perspective of an individual with mental illness who has come into contact with the criminal justice system.

Mr. Alistair Deighton (Volunteer/Consumer, Schizophrenia Society of Canada): Thank you, Michael.

Thank you, members of the committee, for allowing us to speak to you today.

Schizophrenia is a medical illness, not a criminal offence. As a person living with schizophrenia and found to be not criminally responsible in 1996, first I was stigmatized because I had schizophrenia. I was then further stigmatized because I was deemed not criminally responsible due to a mental disorder. Now, by asking for a DNA sample, you are stigmatizing me for a third time and criminalizing a person for having a mental illness.

Mr. Michael Thomson: Thank you, Alistair.

Just by way of a conclusion, we urge you to remove the proposed amendment that would allow DNA data bank orders to be made against persons found not criminally responsible on account of a mental disorder. As Alistair has articulated so poignantly, the proposed amendment will serve only to further stigmatize the ill. It will direct precious resources toward effectively criminalizing them. We say to dedicate those resources to more effective treatment programs that far better serve and protect society.

We've also prepared additional recommendations that you will find affixed to an appendix to the written submission.

I just want to thank you for the opportunity to speak to you today. We would ask that you please carefully consider the submission that we make.

Thank you.

The Chair: Thank you, Mr. Thomson and Mr. Deighton.

We now turn to the Canadian Resource Centre for Victims of Crime, and Mr. Sullivan.

Mr. Steve Sullivan (President, Canadian Resource Centre for Victims of Crime): Thank you, Mr. Chair.

For the new members who might not be familiar with our organization, the Canadian Resource Centre for Victims of Crime is a national non-profit victims' advocacy group. We assist victims with their individual cases and any problems they may be having in the justice system, but we also try to lobby for more victims' rights and justice reform to hopefully prevent more people from becoming victims.

In the course of the submission, I'm going to be mentioning a couple of individuals with whom we are currently working. I'll be brief, because I think Mr. Griffin has covered a lot of what we would have said. We have a couple of suggestions for improving this bill and a couple of other issues we want to raise that we would like to see you deal with in this bill, but we realistically expect that you probably will wait for the legislative review of data bank legislation.

On that note, I would echo Mr. Griffin's encouragement to you on the committee to make sure that review takes place this year. In the past, members will know, mandatory five-year legislative reviews haven't always meant five-year legislative reviews. The mental health provisions were supposed to be reviewed I think in 1998, and I think the legislation is still before Parliament or the Senate. The Corrections and Conditional Release Act was supposed to be reviewed in the late 1990s as well, but it wasn't done until 2000, and we still have yet to see a bill dealing with many of the recommendations from that review. Certainly the recommendations with respect to victims have not been acted upon.

These five-year reviews have a way of extending their shelf life, so I would encourage the committee to act quickly on that review. We will mention a couple of issues that we expect will be dealt with later on in that review, but we would like to see them dealt with in this bill.

We support Bill C-13, and we think it makes a lot of practical amendments. Certainly, on some of the issues that are dealt with, we've had discussions with law enforcement across the country, and some of these issues have been issues on which they would like to see action. We're pleased to see the expansion of the offences to include child pornography offences and indecent assaults on children.

We would encourage the committee to take a second look at some of the additions to the secondary list. I note that criminal harassment is being added to the secondary list. I would suggest that might be given consideration for the primary list. Criminal harassment is an incredibly serious crime and has a long-lasting impact on crime victims.

Criminal harassment is ongoing harassment of an individual that can, in the cases we've dealt with, completely change the life of the victim. We've had victims who have moved and left their employment just to escape their harassers. Unfortunately, criminal harassment is not dealt with very seriously by the courts. We think it's serious enough to be considered to be moved to the primary list of designated offences.

We've also included in our brief that we sent last week consideration of other offences that we would suggest be moved to the primary list, including bestiality in the presence of a child, torture, and break-and-enter with intent.

With respect to the other members of the panel, I would encourage members to retain the provision that would include not criminally responsible individuals to be included in the data bank. With respect, from our perspective of dealing with victims, some of whom have been victimized in those cases, it's not about stigmatizing anybody, it is about solving crimes and protecting the public. One of the ways in which we protect the public is to solve those crimes. That's where we're coming from. The mechanics and philosophy of matching samples from offenders and not criminally responsible individuals is the same, so we would encourage the committee to retain those provisions.

The retroactivity provisions of Bill C-13 are looking to expand the current provisions. As members will know, for those offenders convicted or serving sentences before the bill was passed in 2000, there's a very limited scope whereby authorities can go back and take samples from those individuals.

For dangerous offenders—those who have committed more than one homicide in a separate incident and more than one sexual assault in a separate incident—we recommended at the time the bill was being passed that the list was too narrow and should be expanded. We are pleased to see there is some movement on that in this bill that would create a new category of an individual who has committed one homicide or one sexual assault in different circumstances. With respect, though, in my view, that is still quite limited.

● (0920)

There's a woman in the audience, Carolyn Gardner, whose sister was murdered 24 years ago by a man named Ralph Ernest Power. He had a list of ten women in Toronto whom he was going to attack and sexually assault. The first woman he attacked was Sheryl Gardner. He bludgeoned her to death with a hammer. He was apprehended when he tried to attack a second woman who got away. Had he completed his list, he would be in the data bank right now. Because he didn't, he's not. Mr. Power is eligible to apply for day parole any time, and he's up for full parole next year. If he is released, he will not be in the data bank even if Bill C-13 is passed.

I have provided a couple of different scenarios like that, and I'll just briefly mention a couple more. David James Dobson murdered Darlene Prioriello. We worked with Darlene's family as well. Darlene was 15 when she was murdered. She was brutally sexually assaulted before and after death. Mr. Dobson is also eligible for parole next year. He is not in the data bank. If released on parole, he will not be in the data bank even if this bill passes.

Donald Armstrong is currently doing time for murdering Linda Bright. We've worked with her family as well. He sexually assaulted and murdered Linda in 1980. He also had convictions for attacking other women, but there was no sexual component in those convictions. He's eligible for release. He was actually eligible for parole this year. He's not in the data bank and won't be even if Bill C-13 passes.

It seems odd to me that these individuals, whose crimes we know were motivated by a sexual component, are somehow deemed not appropriate to be in the data bank because they've only killed one person. With respect, that is ridiculous, and I think you have an opportunity with this bill to expand that list to include these people.

We propose a couple of different scenarios for the committee. One, I think, would frankly be the easiest—and I think it would be supported by the public—and that would be just to expand the list to include people who have committed one sexual assault or one homicide, and include long-term offenders in that as well. The other would be to create a provision whereby, upon someone's parole or release from prison, the authorities could go to the court and ask for that person to be included in the data bank. We certainly prefer the first option.

I think it's hard to argue that these people shouldn't be in the data bank. They may be released within the next short time. They may have committed other crimes that we don't know about. Based on the success of the data bank, these are the kinds of individuals we want to capture.

I'll talk briefly about three other issues that we would like to see the committee deal with, certainly in this round, and if not, then in the broader review. One is the timing, or when samples are taken. Back when Bill C-3 was passed, we argued that samples should be taken at time of charge. We've provided some scenarios in which people who commit sexual assaults are often released on bail. If someone who commits a sexual assault knows he's going to face trial and that his DNA will eventually go into the data bank but he is released on bail, there's not a whole lot of incentive for him to stick around while knowing he's going to face charges. So I don't think it's out of the realm to think that person would then skip bail, and we would never know that he might be responsible for a variety of other sexual offences.

We propose one scenario in which police could take the sample if the person is released on bail and frankly not use that unless that person absconds. If the person is kept in custody leading up to trial or returning for trial, then that sample could be destroyed.

Mr. Griffin mentioned the problems there are with getting samples from the courts, that we're only seeing 50% of those orders being made for the primary designated list. At the time the bill was passed, I don't think anybody expected what was supposed to be a narrow exception to include 50% of all people. We're talking about the primary list here. We're talking about homicide and sexual assault, the most serious offences that Parliament found and for which it ordered that judges shall provide those orders. They're only doing so in 50% of cases. There is an exception if the court finds that there is an invasion of privacy. With respect, I can't imagine that what was supposed to be a narrow exception applies to 50% of all convicted offenders.

The third issue I want to raise is a private member's bill that has been introduced by Mr. Gary Lunn on behalf of one of his constituents, Bill C-240. Judy Peterson's daughter, Lindsey Nicholls, has been missing for over a decade. Police believe there was foul play and she is presumed dead, but they've never been able to find her remains.

● (0925)

Mr. Lunn's bill would expand the data bank to create a missing persons index, so that Mrs. Peterson in this case could submit her DNA to the data bank and review it against all unsolved crimes. For example, in British Columbia there are over a hundred unidentified human remains in coroners' offices across the province. I don't know how many there are across the country.

Right now, we're doing some research with families of unsolved homicide victims and missing persons. The human cost of not knowing what has happened to your loved ones is just enormous. Whatever the cost of this data bank or this missing person's index, it would pale in comparison to the human cost.

Former Solicitor General Wayne Easter expressed his support for Mr. Lunn's bill when he was minister. The DNA data bank advisory committee has expressed its support for the idea. I would ask this committee to give consideration to Mr. Lunn's bill. If you do not incorporate it, then at the very least encourage Parliament to move on creating this index. It's very important, and there are too many families out there suffering from not knowing where their loved ones are.

Those are my remarks, Mr. Chair, and I welcome any questions.

The Chair: Thank you, Mr. Sullivan.

We'll now go to questions from the members, beginning with the Conservative Party, for seven minutes.

Mr. Toews.

Mr. Vic Toews (Provencher, CPC): Thank you very much, Mr. Chair.

Thank you, witnesses. I appreciate your submissions here today, and specifically the amendments that have been suggested by Mr. Sullivan and Mr. Griffin. I do support those, and I'm certainly supportive of Mr. Lunn's bill. We'll try to see what we can do to incorporate that into this bill.

I am concerned about this government bill. There appears to be no real rationale as to why there are primary and secondary offences. There doesn't seem to be any clear distinction, and the fact of judicial discretion after a conviction causes me concern. These are individuals who have been convicted, yet there is still discretion. It leads to the kind of situation that you were pointing out Mr. Sullivan: that 50% of people convicted of very serious crimes are still not on the DNA database. So this bill is clearly deficient. There seems to be a deliberate attempt to keep as much DNA out of the hands of the police as possible, despite what are very strong safeguards.

I want to, however, deal with the schizophrenia association's presentation. I have a deep respect for the Schizophrenia Society. Also, we've heard Mr. Deighton before. He has attended here before and we've certainly appreciated his submissions.

I do have to take issue or at least disagree with the characterization that a person found not criminally responsible, by *being* found criminally responsible, is being stigmatized. In our society we recognize that people with specific mental and medical illnesses of that sort are in a very special category. In fact, we do not want to stigmatize them as criminals, so we therefore have the not criminally responsible designation. So this is not an issue of stigmatization, this is in fact in respect of the fact that a person has a medical illness. That's why we make that designation, and I assume that's why that designation was placed upon you rather than convicting you of a criminal offence back in 1996.

The second issue is that we have a broader responsibility to society. We recognize that simply because a person has a mental illness, has a medical illness of that sort, that doesn't mean he's violent. But where there are individuals who have been found not criminally responsible, who have demonstrated violence in the past, don't we certainly have an obligation to society to put those people on the list in the same way that we put criminally responsible people on the list? This is not an issue of stigmatizing, this is an issue of ensuring that the public is safe. Where a crime has been committed, whether that individual has been found criminally responsible through a conviction or whether he has committed the act but has been found not criminally responsible, the same public safety considerations apply. So I'm having a lot of trouble accepting your argument, Mr. Thomson and Mr. Deighton. Perhaps you can expand on that a little.

● (0930)

Mr. Michael Thomson: I'm not sure I can respond any further than by saying what we've put in the submission and what I mentioned earlier. The reality is that notwithstanding there having been some degree of enlightenment about those individuals with mental illness over the course of the past couple of decades, there is still a tremendous amount of stigmatization of those with mental illness, and in particular those with chronic and severe forms of a mental illness like schizophrenia. To suggest that there isn't a further stigmatization of those individuals by forcing them to provide DNA samples in situations in which courts have found those individuals not criminally responsible.... That is, they have not committed the crime, so in our view that is a further stigmatization.

We're not blind to the submissions that have been made today, that have been made by others, and that will be made by others, that "public safety" should trump our position in every instance. But I think what needs to be recognized and what needs to be understood —and I'm not certain it is, with the greatest of respect, Mr. Toews— by a large segment of the population is that those who suffer from schizophrenia are not axiomatically violent people, and that there are much more constructive, beneficial, progressive, and, in our view, intelligent ways of dealing with issues of this sort, rather than simply telling them to give up their DNA when they have been found not guilty.

Mr. Alistair Deighton: If I understand what would happen, first of all, the way the system is set up, you either are a criminal and you go through the criminal system or you're NCR, which is not criminally responsible. Those words simply say that I'm not a criminal.

Now, if you take the DNA from a person who is not criminally responsible, not a criminal, what's going to happen to him on the street is that police officers are going to look in their little computers and they're going to get back a message on whether they have DNA or they don't have DNA. If they have DNA, what they will then obviously do is go to CPIC, and on CPIC they'll bring up whatever offences this particular person has committed.

What will follow is that when that person suffering from schizophrenia and is not a criminal.... When he goes to cross the border, what's going to happen to him? When he wants to fly to another country, what's going to happen to him? He's going to be dogged all the way along, if he's even able to get out.

The difference is that schizophrenia is an illness that is basically a broken brain. It's like a broken arm. What do you call people who have to take insulin shots? If you take a person who has to take insulin shots, they know they have to take those shots in order to be able to survive. The same thing happens with schizophrenia. When you take your medication, you are like any other citizen and you're not a criminal.

The process that's used in NCR, at least in Ontario, is one wherein you go into a hospital if the judge says you're not a criminal. That hospital is responsible for you for the full time that you are under the Ontario Review Board. You are not allowed off that Ontario Review Board list until such time as they designate that you can be.

If you went through the criminal system, what would happen? Lawyers do this all the time. They say to their clients, "Say you're guilty and you'll be out in five years." If you go through the NCR route, what ends up happening is...in my case, it has probably been seven to eight years that I've been under the Ontario Review Board.

You can see that in terms of how you're being taken care of as an NCR patient, you go through a whole series of levels. You start off, first of all, becoming non-psychotic. Then you're allowed to be able to go with somebody and walk around the grounds. Then eventually you're allowed to go by yourself for a walk. Then after that you're allowed to leave the grounds completely and then come back. After that point, when you reach the point that you're ready to be able to be discharged, what they do is they discharge you to...I forget what they call them.

● (0935)

Mr. Vic Toews: Let me intervene here, because I just want to get to the point. The point is that while you're not convicted of a criminal offence, you are different from an ordinary individual who has not committed that particular act. Let's say it's some kind of an indictable offence. You're in a different category.

I guess the struggle we have as a committee is how to deal with individuals who have committed serious anti-social acts, yet are not criminally responsible. That's the struggle we have. We have to find a place in which to put that special category of people who are not responsible but who have committed what would otherwise be a criminal act. That's my comment.

The Chair: Thank you, Mr. Toews.

[*Translation*]

Thank you, Mr. Toews.

Next in the rotation is the Bloc Québécois. You have seven minutes, Mr. Marceau.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman. I'd also like to thank the witnesses for their presentations.

Mr. Griffin, I'm sorry I missed the first two minutes of your presentation. I was detained elsewhere. I'd like to hear your views on the difference between a primary offence and a secondary offence. My colleague Vic Toews alluded to this distinction briefly. In one case, there is an obligation to supply DNA samples. In the other case, at the request of the Crown, it's left to the judge's discretion. The Crown must therefore prove that such samples are necessary.

Do you see the logic in having some offences categorized as primary and others as secondary, because I'm afraid I don't. For example, Internet stalking is classified as a primary offence, whereas assault is deemed to be a secondary offence. Where's the logic in that? Do you think it's important to draw a distinction between these two types of offences?

[*English*]

Mr. David Griffin: Merci.

From our understanding, when the bill was originally crafted, certainly our association was of the view that the distinctions were too narrow and that we should have much broader application of DNA technology, such as is the case in the United Kingdom. However, my understanding of what was intended to differentiate a primary offence from a secondary offence was the seriousness of the offence; the linkage between sexual and violent behaviour; and the fact that in a primary offence there more likely may have been an exchange of bodily fluid, loss of blood, or that type of thing where the DNA analysis would seem more automatic. Certainly, from our perspective that distinction is fairly grey in some areas, and it's difficult to understand why one offence would be excluded and another would be included.

● (0940)

[*Translation*]

Mr. Richard Marceau: That's the explanation we were given. However, torture, which I consider to be a fairly serious offence, and impaired driving causing death, are classified as secondary offences. Based on the criteria that you've identified, would you agree with me that these offences should be designated as primary offences?

Finally, if we decide to maintain this distinction between primary and secondary offence and if we adopt the criteria mentioned earlier, would we need to revise and expand the list of primary offences to bring the list in line with the criteria?

Mr. David Griffin: Most certainly.

[*English*]

From our perspective, we would like to see the five-year parliamentary review focus a lot of attention and time on that particular issue. Probably seven or eight years ago, when the DND data bank was first being contemplated, I think there was a lot of anxiety about the types of offences that would be included; the impact on individual rights; and the perception that there was some intrusion in terms of the taking of samples. I think the experience and the lessons learned over the last five years would suggest that a review is important and that we should look at those distinctions.

We're of the view that we should have a much broader application. If you look at the experience in the United Kingdom, I have two examples here with me today, one case of a person arrested for shoplifting and another case of a person arrested for driving while under the influence of alcohol. In both those cases, DNA samples were taken and they were linked to very serious sexual, violent crimes. In Canada, those people wouldn't have been detected and they wouldn't have been linked with those crimes. In the United Kingdom, those people are now serving time for those offences. And in one case it involved a serial offender.

So from our perspective, we do think the distinctions are too narrow and that we should be reviewing this area in its entirety.

[*Translation*]

Mr. Richard Marceau: Can I get your opinion of Bill C-240, draft legislation to which Steve Sullivan alluded earlier? As for the very principle of helping to find missing persons — because such matters are often turned over to law enforcement agencies — without getting into the specifics of the bill, would you be prepared to support this principle, as an amendment to Bill C-13?

[*English*]

Mr. David Griffin: Most certainly. We haven't reviewed the bill clause by clause, but certainly in principle we would support the use of the available technology to deal with those cases.

[*Translation*]

Mr. Richard Marceau: A component of the bill that you failed to mention this time around is the actual process of taking samples. On numerous occasions, you refer to the way things are done in the UK, that is to the fact that samples are taken when charges are laid, not at the time of sentencing.

Often, the focus shifts to the problem of the Charter, more specifically to section 8 of the Charter. A solid organization such as yours surely as a legal services division. Have your legal services analysed the legal ramifications, from a Charter perspective, of taking a sample at the time charges are laid? In your opinion, would this approach withstand a Charter challenge, or does your legal analysis confirm the government's position, namely that such actions would violate section 8 of the Charter which safeguards against abusive searches.

● (0945)

[*English*]

Mr. David Griffin: Our predecessor association, the Canadian Police Association, did in the late 1990s, when this data bank was being evaluated. Also, with Bill C-104, we argued very strenuously for the taking of samples at the time of charge, and one of my recommendations to the committee today was that this be included in the review. We did offer a legal opinion at that time that supported the taking of samples at the time of charge; however, there were also dissenting opinions tendered by government at that time as well.

But certainly, for many of the reasons Mr. Sullivan cited, we see this as an important issue in terms of apprehending people, especially when we're looking at the most serious and violent crimes. When you have that person in custody, to make that determination is important in order to prevent their flight.

[*Translation*]

The Chair: Thank you, Mr. Marceau.

We continue with Mr. Comartin from the NDP. You have seven minutes, sir.

[*English*]

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

Mr. Sullivan, on the statistic that you toss out about 50% of the existing cases not receiving an order from the courts for a DNA sample, what is your source? It's the first time I've heard that. I've heard concerns about a number of cases in which a sample was not ordered, but I haven't seen any background material on that or statistical material on it. Could you tell us where that came from?

Mr. Steve Sullivan: We got that information from the National DNA Data Bank annual report for 2003-04.

Mr. David Griffin: If I could just add to that, our understanding is that what they've looked at there is the number of offences for which the convictions have been registered, versus the number of samples that are in fact submitted to the data bank.

Mr. Joe Comartin: That actually was going to be my next question as a follow-up. This isn't just the situation of applications to the court being denied; it's all of the cases, so there will be a number of cases in there in which there was no application made by the prosecutor.

Mr. David Griffin: It's certainly our belief that the law is not being applied to its fullest extent. In part, that's the case because people are making the wrong decisions, whether they don't believe they should make an application, they forget to make an application, or judges believes they have greater discretion than they do. From our perspective, it really goes back to whether or not the discretion is necessary for those offences or whether it should be automatic.

Mr. Joe Comartin: Specifically, is there a percentage of the number of cases in which the application has been made and then denied? What's the success rate percentage, if I can put it that way?

Mr. Steve Sullivan: I don't think it's in this report. They may have it, but I don't think that statistic is in the report.

Mr. Joe Comartin: As a final point on this, is this an issue of resources at the prosecutorial level?

Mr. David Griffin: I'm not sure we're qualified to answer that, but I don't believe so. I think it's more a case that it's a procedural issue, that it's an add-on. As Mr. Toews described, it's an application that has to be made after a conviction is registered. For whatever reason, people aren't factoring that into their processes.

So I think it begs the question of whether that procedure is necessary or is cumbersome. And if the procedure is determined to be necessary, then we see it as a training issue. One of our recommendations is that the Department of Justice work with Public Safety and Emergency Preparedness Canada to address the issue, determine where the gaps are, and ensure that we're getting all of those samples in.

Mr. Joe Comartin: Work that would have to be done with the provincial justice attorneys general—

Mr. David Griffin: Yes.

Mr. Joe Comartin: —to make sure the prosecutors, and so on....

Mr. Thomson, with regard to the point you've raised, I'm not quite clear on it; are you advocating that this amendment not go through with regard to those found not criminally responsible just if they have a diagnosis of schizophrenia, or is it for all persons who are so found?

Mr. Michael Thomson: To clarify, we're of the view that it ought to have application beyond those with that particular diagnosis, yes.

Mr. Joe Comartin: So anybody who's so found would not—-

Mr. Michael Thomson: Anybody who is found not guilty shouldn't have to register.

● (0950)

Mr. Joe Comartin: Do you have any statistics with regard to the rate of recidivism?

Mr. Michael Thomson: I don't. One of the—

Mr. Joe Comartin: I just want to get this clear and on the record. Do you have the rate of recidivism amongst those people who have been found to be not criminally responsible?

Mr. Michael Thomson: I don't have those statistics on hand. We can certainly get those to the committee, if you like.

One of the statistics that I think is also significant is that, as I understand it, and as the data seems to describe, a majority of those who are victims in these types of situations are family members. It's not typically—my friends beside me would be able to confirm that—random assaults, if we deal with assaults. It's most often family members who are trying to assist, deal with, and respond to other family members with this particular illness.

Mr. Joe Comartin: My perception—I'm just going to take a bit of issue with that—is that this would be true for those people who have been diagnosed as schizophrenic. I'm not sure that's true across the whole gamut.

Mr. Michael Thomson: Oh, no, I'm suggesting specifically with respect to schizophrenia, just to clarify.

Mr. Joe Comartin: If that statistical database is available, I would really like to see it. I would just make the point that I think we're all looking at this legislation as a mechanism to allow for greater apprehension, or maybe easier apprehension, of criminals. So I would like to know what the situation is with regard to the rate of recidivism.

Mr. Michael Thomson: I'll do my best to get that to you.

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

The Chair: Thank you, Mr. Comartin.

Mr. Cullen, for the government side, seven minutes.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you to all the presenters. I'm sorry I missed your opening remarks.

Mr. Griffin, do you have a written brief, or will you be submitting something?

Mr. David Griffin: Yes. I apologize, I did announce at the beginning that it's in production. It should be with the committee by the end of this week.

Hon. Roy Cullen: Thank you.

I would like to pick up on this point of the 50% or thereabouts of DNA being sent into the DNA data bank for primary offences. That troubles me as well. You indicated that when this was launched, there was some capacity not to submit the DNA if there were some issues around privacy...or I'm not exactly sure.

Can you give us a bit more insight? Do you understand what that was meant to contemplate, and can you maybe talk about how judges have perhaps expanded the use of that provision? Can you give a little more context to that?

Also, can you can give us some ideas on how we deal this? Is it strictly a matter for the provinces? Obviously, the federal government can use moral suasion and other instruments, if there are other instruments. How do we make sure that for very serious criminal offences, DNA gets into the bank? What do we have to do?

Mr. David Griffin: In terms of the distinction, I would refer to the summary presented by the Library of Parliament. There they indicate that where an offender has been convicted of a primary designated offence, the court is obliged to make an order that samples be taken for DNA analysis unless satisfied by the offender that the impact on his or her privacy and security of the person would be grossly disproportionate to the public interest and the protection of society.

Certainly you would expect, for somebody convicted of murder or a serious sexual offence, that in most cases a sample would be ordered. As I said earlier, I think the issue is that the application is not being made, so the judge has not been asked, or the judge has been asked and there's the exercise of that discretion.

So we see it primarily at this point as a training issue in terms of ensuring that the judiciary, the crown prosecutors, and even the police in terms of collecting the sample once the order is made...or it seems there are breakdowns in each of those scenarios. There's a need for training.

Looking longer term, in terms of the review, we think there should be some examination of whether the procedure itself is overly cumbersome.

Hon. Roy Cullen: You mentioned the words “disproportionate”, or “grossly”; I think that's a pretty high hurdle rate. Surely you'd have to.... I mean, it turns out that it's quite judgmental, at the discretion of a judge, I guess. In terms of the way it's been worded, it's a pretty high hurdle, but it would appear that it's not being applied perhaps in precisely that way.

I take your point. I know it's an issue I'm working on, and I'm concerned. I think we have to find a way to make sure that this DNA gets into the data bank for those types of heinous crimes. So thank you for that.

That's all I have.

● (0955)

The Chair: Thank you.

The second round of three minutes, Mr. MacKay, for the Conservatives.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair.

I thank all the witnesses for their appearance today and for previous appearances. Your input here is very valuable.

Cutting right to the chase, the issue over the use of DNA and this balance, which was always the goal from the very beginning, between protecting individuals' rights and the presumption of innocence versus the need to protect society, is really the crux of the matter. Yet we're talking about one of the most forward-looking and preventative tools available to law enforcement. The real issue to me seems to be the exculpatory nature of DNA, which quite often seems to be left out of the discussion.

If we're really putting the emphasis on the innocent, which is where I think it should be—and I know that many would agree that the innocent and the victims, as Mr. Sullivan, Mr. Griffin, and all of you are painfully aware, sometimes get short shrift—really the obvious question is what is there to fear when giving your DNA?

Some have even gone so far as to suggest that you take DNA at birth. That is perhaps the extreme, but if DNA is really a genetic fingerprint, as it's often been described, I still am at a loss when I hear the argument from some civil libertarians about it being such an intrusive and invasive procedure.

Mr. Griffin, as I understand it, and maybe you could put this on the record as a police officer, the practical exercise of taking DNA now is really quite simple. You referenced the taking of a hair. I believe there's a type of tape now that's simply placed on the skin and that removes a skin sample. There's even blood, breath, or in some cases saliva.

Is that in fact that case?

Mr. David Griffin: As a former police officer, I didn't work during the time that DNA analysis was available, but certainly we did present evidence to prior committees where we actually demonstrated how a DNA sample could be taken with a cotton swab and simply a quick rinse of somebody's mouth for a saliva sample. I understand that there are technical issues in terms of storing that sample versus a blood sample, being preferred, but I think when we look at issues in terms of the time of arrest of a subject, the use of a cotton swab may be appropriate, and then a blood sample at a later stage if the conviction is registered.

We're of the view, if you look at the primary principles of why the DNA data bank was established, that certainly, as you suggest, it eliminates suspects and identifies suspects, linking crime scenes where a suspect has not been identified and determining whether there is a serial offender. And we're talking here today about the most violent and serious offences in our law, so we have some difficulty comprehending that.

We don't advocate taking a sample at birth. We don't advocate taking samples from people who haven't been confronted with a criminal allegation. But when we're looking at the types of offences where there may be a child abducted, where there may be a serial sexual offender in the neighbourhood, we believe there should be a capacity to use this technology to a much greater extent than we can today.

The Chair: Thank you, Mr. MacKay.

For three minutes, Mr. Maloney.

Mr. John Maloney (Welland, Lib.): Mr. Griffin, with regard to your statistic that the inclusion rate in Britain is eight times higher than in Canada, is there a significant difference between the Canadian legislation and British legislation?

Mr. David Griffin: My understanding is that in Great Britain they use it for property crimes. In fact, the literature we reviewed provided such examples as the individual arrested for shoplifting—through a sample being submitted, it was determined that they were responsible for serious sexual crimes—as well as the individual arrested for driving. In fact, they use it for their motor vehicle offences as well.

So from our perspective, it's a much broader system.

● (1000)

Mr. Steve Sullivan: I would just add that in the U.K., they have over two million samples in their bank. They take samples at time of arrest and charge, not just conviction.

Mr. John Maloney: And if there's not a conviction, do they remove those samples?

Mr. Steve Sullivan: I can get back to you on that, but I believe there is a provision that if someone is acquitted, or charges don't proceed, then they would destroy those. But I don't want to definitively say so. I can get back to the committee on that.

Mr. John Maloney: Would you be suggesting that we should also include offences such as shoplifting in this legislation? You've mentioned that a couple of times now.

Mr. David Griffin: We would like to see in the review an examination of whether that is appropriate. We would like to see greater use of DNA technology in drug crime, in dealing with drug offences, such as trafficking, possession, and those types of issues—not minor possession but certainly in more serious situations. We think there is much greater use of this technology available than we currently are...and we believe that should be explored in the review.

Mr. Steve Sullivan: I would add that we have this perception that if you're a rapist, then the only crimes you commit are sexual offences, and you wouldn't commit other crimes, such as shoplifting. We know from the success so far...and I think people were surprised by the number of hits that police got through break-and-enters. No one thought, well, if you're a break-and-enter person, you might be doing other things.

So I think we need to broaden our scope to suggest that if you commit these kinds of offences, it doesn't mean you're limited to that. You may be committing other kinds of crimes as well. They may not be as serious, but they can link you to the more serious crimes.

Mr. John Maloney: But where do you draw the line? I mean, you could apply that to every offence in the code, so to speak, using that logic.

Mr. Steve Sullivan: Frankly, if you're looking at people who've been convicted, I would draw the line fairly far back. And I think that's what the review will do. It will look at those kinds of successes, not only in Canada but in jurisdictions like the U.K., to see where they're getting hits and we're not.

Mr. John Maloney: Again, I think we're all troubled by the thought that only 50% of our primary offences are in fact entered. Do you have any statistics on whether one region of the country is more guilty of this situation than others?

Mr. Steve Sullivan: I don't. I'm not sure if you're going to have anyone from the DNA data bank advisory committee come before the committee. I'm sure they would have those breakdowns. I'd certainly be happy to review the report and report back, if that's okay.

The Chair: Yes, there will be someone coming, and we'll be touring the facility as well. So I think we'll get that.

Thank you, Mr. Maloney.

[*Translation*]

You have three minutes, Ms. Bourgeois.

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you very much.

First off, Mr. Thomson, I'd like to thank you for bringing to our attention the difference between a bona fide offence and an offence committed by someone who is not mentally competent. Like you, I see a grave danger in drawing up a list of persons who are labelled criminals when that list could potentially contain the names of persons who are not mentally competent and who may have unwittingly committed a criminal offence. You're right in saying that a growing number of Canadians are suffering from mental disorders. I'm not just saying this. Various studies have come to this conclusion. In my opinion, the person suffering from a mental disorder is known to the majority of his or her victims. The problem stems from the lack of adequate support and resources on which these families can draw. It was important to bring this fact to the committee's attention today and for that, I thank you. Mr. Thomson, I'd like to hear your views of the danger surrounding the existence of this type of list.

I'd also like to ask Mr. Griffin if, in his opinion, this list could be turned over to the Americans, for example. If such a list does exist, will the Americans not ask for a copy, or would there not be some kind of agreement in place with other law enforcement agencies for sharing information?

Lastly, Mr. Sullivan, you drew the committee's attention to harassment. I would imagine we're talking not just about sexual harassment, but also about psychological harassment such as intimidation. This is an extremely important matter. Can you explain to us the significance of classifying harassment as a primary rather than as a secondary offence?

Thank you.

● (1005)

The Chair: Kindly keep your response brief. Some committee members are rather clever and manage to ask three questions during their three minutes of speaking time.

[*English*]

Mr. Thomson.

Mr. Michael Thomson: I think I had the first of those three questions.

I can't really articulate the concern, or the mischief, any better than you've done, in my view. What we're creating is a list, as I understand it, that doesn't draw distinctions between people who suffer from mental illnesses who've gone to court and been found not guilty and people who don't suffer from mental illnesses who've gone to court and been convicted for crimes.

Mr. David Griffin: I think there's a bit of a misnomer being created here. From our perspective, we're not dealing with somebody who's been found unfit to stand trial; we're dealing with somebody who has had a trial and there's been a determination that they were responsible for the crime but not criminally responsible, by virtue of mental illness.

From our perspective, when we go back to the principles of why you collect those samples, certainly we believe it's in the public interest to determine if that person is in fact responsible for other crimes or not, if there's a serial nature, and also eliminate people from being accused of other crimes. So I think there's an important concept there.

A list is not created; rather, it's like a fingerprint, a genetic fingerprint. In fact, what's shared or used is the evaluation of those fingerprints. A sample goes into the DNA data bank and is compared against the profile of other samples to determine if there's a match. You won't see a list. Police officers can't go on CPIC to see if so-and-so has a DNA data bank sample. There are restrictions in the legislation in terms of how police can access the information and how the information can be used.

I understand, from the DNA data bank's own literature, that they have agreements with 178 other countries in terms of sharing access to compare samples. A sample from the U.S. could be compared with a sample in Canada. But I don't believe—again, the officials may be able to assist you here—they could contact the DNA data bank in Canada and say, "Does a sample exist for David Griffin?" I think it's much more a comparative analysis of the evidence as opposed to the individual.

Mr. Steve Sullivan: Just briefly, you're right, criminal harassment is not just sexual, not just physical or violent; it can be psychological, and it can be long term. It's a very, very difficult offence, or series of offences, to prove, because it generally includes activities that are normally legal.

Calling someone on the telephone is normal. When a couple breaks up, you may call a couple of times, but if you call a hundred times, that's a different story. It's hard to prove those things. The onus is often on the victims to keep logs of the criminal harassment activities—i.e., I saw him here, he was at this corner, he called me fifty times today.

It's very onerous, and in terms of the impact on people, I don't think we really, truly have explored that yet. Criminal harassment is a fairly new criminal offence. We've had victims, women and families, who have moved out of the country because of fear of this person and the concern that the criminal justice system couldn't deal with them. They have given up their jobs, given up their families, given up their loved ones—uprooted their entire lives—because of this kind of activity. It is probably one of the most serious crimes being committed. You don't see the injuries, but they're there.

The Chair: Thank you, Mr. Sullivan, and merci, Madam Bourgeois.

Ms. Neville, for three minutes.

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

Thanks to all of you for coming today. I particularly want to thank you for bringing attention to the differences between the primary and secondary lists. I think it's given us all reason to go back and review them very carefully.

To Mr. Griffin, you talked about the importance of this in terms of apprehending criminals. To reverse it, perhaps you could speak to the importance of the collection of DNA in terms of ensuring that people are not improperly prosecuted and convicted. We've all seen the high-profile cases that have very much affected the lives of families and victims of a different sort. I would appreciate some comment on that.

I also would welcome your comments on whether you feel the existing bill provides sufficient safeguards. We've touched on it, but I'm interested in your comments further on that.

● (1010)

Mr. David Griffin: Thank you very much.

If you consider some of the most prominent cases of wrongful conviction in Canada, DNA analysis and that technology has played an important part in determining those matters, and in terms of 21st century policing also assists in ensuring that those types of mistakes will be less likely to happen, although I wouldn't say they can't happen, in the future. So I think it's important in terms of eliminating suspects.

In particular, when a very serious crime takes place in the community...and we saw the emotional reaction to the Cecilia Zhang case in Toronto. First of all, a great deal of resources and attention get put into finding the victim and the abductor as quickly as possible. There's also a lot of emphasis put on identifying potential suspects and then eliminating those suspects, or confirming who is the person responsible.

The costs involved there are incredible. The more we can use the technology to do that, first of all we reduce the margin of error. We also reduce the costs incredibly in that you can use a DNA sample to eliminate somebody as opposed to interviewing witnesses, confirming alibis, or determining whether or not there are physical records of somebody being in a different place at a different time. All of that is very time-consuming, and also, where there's a sense of urgency it limits the likelihood of success.

From our perspective, then, it's an incredible technology. It has to be used, like any science, appropriately, but we view the current regime as very cautious. We would like to see a re-evaluation of that, now that we have five years of experience, to examine whether that caution is still required.

The Chair: Thank you, Ms. Neville.

Mr. Comartin, for three minutes.

Mr. Joe Comartin: I want to explore a point that Mr. Griffin had made, that the person not so found is different from an individual who's been acquitted. In the acquittal situation, we would assume that the DNA sample is not going to be taken. But under the separate circumstance of a person actually guilty of the offence but found not to be responsible, is there some compromise position, some mechanism, defence perhaps, we could put in to say, okay, an application could be made for a DNA sample under these circumstances, but here's the ability the individual's going to have to convince the court that it should not be granted? The onus perhaps is on the prosecutor and the individual being able to raise these defences, beyond perhaps just the general ones.

I'm just wondering if you've done any thinking about what I suppose I'm suggesting, a compromise position.

Mr. Michael Thomson: The submission you have contains an appendix that sets out some alternative positions. As confident as we were that we'd succeed with our arguments today, we did have a fallback position. The appendix doesn't really address that type of scenario, but it could. And I follow you, which is to say that if a discretion is being exercised now by judges in terms of granting and not granting orders at the disposition phase—or post-disposition, I guess, after finding of guilt—a similar consideration could be given in situations where the finding has been one of not criminally responsible by reason of mental disorder, and that criteria be developed, different from the criteria that's in place currently, where a judge could, if there's an application, consider that criteria and make a determination as to whether this is a situation where there ought or ought not to be a collection, based on the circumstances.

Those would be very different circumstances, I would submit, than where there's been a finding of guilt.

● (1015)

Mr. Alistair Deighton: Perhaps I can interject here that for the majority of people who are brought to a court, usually it's a family member who says that they were assaulted. I think that's in about 80% of the cases. What we find is that when you take somebody to the hospital who is obviously psychotic, who needs to go into the hospital, when they get to the hospital they change. They don't become a danger to themselves, or a danger to society, or a danger to somebody else. But the second they walk out, they're back with the family and it's back to the assault once again.

Now...excuse me, I have a hard time thinking straight.

Because we have to do that, one of the things we're going to lose is that when we get a person who obviously is suffering from schizophrenia and has deep psychosis, and we try to get them into the hospital, and you can't get them into the hospital for the reasons I stated, that will take away something that allowed us to get people who are really sick into the hospital.

It's not easy to get somebody who suffers from schizophrenia into a hospital. You can take them in...and it's a disservice to the police sometimes, because the policeman has to wait up to six to eight hours with that patient before, or if, he is admitted to the hospital. So you would be taking away one of the tools we can use. I'm talking about a situation where a person has assaulted their mother and went into jail; the next thing you know, they've stabbed somebody.

The point I'm trying to make is that you're taking away from us an ability to be able to get sick people into hospital.

The Chair: Mr. Griffin has a point on that, and then we need to go to Mr. Warawa.

Mr. David Griffin: I have a lot of respect for the concern that's been raised, and I don't want to diminish it. But when you have a primary offence, where really the onus is on the judge to issue an order, unless the circumstances are extremely compelling not to, such as murder, sexual assault, that type of thing...and a secondary offence, such as assault, it's almost the opposite; there is almost an onus on the judge to be satisfied it's in the public interest to put the sample in. Otherwise, they won't.

In the somewhat less than five years the DNA data bank has been in existence, as of January 17 of this year, in the entire country, there are 151 cases of assault where a sample has been filed with the DNA data bank.

So I don't want to marginalize the concern, because in terms of the right I think it is an important consideration, but in terms of the application, I think there are significant safeguards in place.

The Chair: Thank you, Mr. Griffin.

Mr. Warawa, for three minutes.

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

Thank you to the witnesses for being here today.

To Mr. Griffin, regarding backlog, you mentioned that 50%, or less than 50%, of sampling is taken. Maybe you could comment on the backlog, which is a different issue.

And to Mr. Thomson, during your presentation you said—and you're representing the schizophrenia association—that typically they do not involve violence. But we heard from Mr. Deighton just a moment ago, and the examples he was using involved violent offences. You've also suggested that anybody with the NCR-MD classification would not be subject to having DNA samples taken. People with the NCR-MD classification are not just people with schizophrenia. It's a broad range. But you're representing just schizophrenia. If we look at NCR, the majority of those cases do involve a violent offence. Why would you be recommending that all NCR-MDs not be involved with bodily substance-taking when they do include violent offences?

Do you understand my question?

Mr. Griffin first.

● (1020)

Mr. David Griffin: Certainly we had some concerns raised within our membership two to three years ago, I think, when a decision was made to consolidate some of the labs. There were concerns about access to that. In terms of actually loading the samples collected following conviction, we don't believe there's a backlog. In fact, they're under-capacity, because they built this anticipating a certain number of offenders would be loaded, and that hasn't been their experience. So we're not aware of a backlog there.

From time to time we have had concerns raised about getting test results back from the laboratories, but I couldn't give you specifics in terms of where that is taking place, if that's still a problem, or if the problem has been adequately addressed. Certainly it's not something raised with us more recently.

Mr. Michael Thomson: I'm here for the Schizophrenia Society of Canada, but the reason...and I think the comment was made by me, in answer to Mr. Comartin's question about audit to apply only to those who've had a specific diagnosis of schizophrenia, or should it include all NCR situations. The position I articulated is one that has to be articulated, because it's the only consistent position, which is that the diagnosis within the context of NCR shouldn't determine the registration. To turn it around, I don't expect that the committee would support an amendment that sought to make some kind of distinction on the basis of a medical diagnosis within a finding of NCR.

Hopefully that's responsive to the second part of your question. The first part of your question was related to the issue of violence. The point I was making in the submission, and I'll reiterate now so that the point is not lost, is that among the predictors of violence, as Dr. Torrey has indicated in a number of articles and books—this is referenced in the written submission—the primary predictors of violence aren't whether or not the person has schizophrenia. The primary predictors of violence are histories of past violence, which have application to those who do and do not suffer from mental illness and/or drug and alcohol abuse or drug and alcohol addictions, which are prevalent, as the committee members know, among those who are mentally ill and those who are not.

The Chair: Thank you, Mr. Thomson and Mr. Warawa.

[*Translation*]

You have three minutes, Mr. Ménard.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you.

As with Mr. Warawa, I would also like to address my question to Mr. Thomson and Mr. Griffin.

I can appreciate your concerns. Mr. Deighton voiced them quite eloquently. Many people run the risk of viewing the genetic data bank as a dangerous offender list because of the way in which the bank is set up. Because these persons have committed a crime and are likely to re-offend, the bank is one way of keeping track of them. These individuals will be labelled dangerous offenders because, even though they were not criminally responsible, they did commit an offence where a victim was involved. If a person fails to take his or her medication or if that person's illness progresses, he or she could again present a risk. Persons whose name appears on the dangerous offender list could encounter problems in their everyday lives, especially if we share this list with the Americans who are extremely concerned about border security, much more so than they were five or six years ago. These persons will not be able to travel.

Mr. Griffin, I was a defence lawyer for over 25 years. I can therefore appreciate that there are many advantages to using DNA technology. This adds an element of certainty to many criminal law cases and that can be considered progress. However, what assurances do we have that this list will not be used as a dangerous offender list?

● (1025)

[*English*]

Mr. David Griffin: Perhaps I can reflect on that for just a moment.

[*Translation*]

Mr. Serge Ménard: Did I understand you correctly, Mr. Thomson?

[*English*]

Mr. Michael Thomson: I'm not sure that I do have it.

I'm very mindful of the distinction between being acquitted—that is, the Crown not succeeding and proving beyond a reasonable doubt that both the act and the intent existed, or that the act and the mental capacity were present, and that in the case of an NCR disposition, it isn't that the act didn't occur, because the act did occur, but the issue is the mental component, that the person didn't have capacity.

We identified in the appendix, and I mentioned this in relation to Mr. Comartin's questioning as well, that failing the committee's willingness to simply withdraw the amendment, in the case of those found not criminally responsible, that it be classified differently, and that a discretion be retained to deal with the situation of those with a severe mental illness in a different way.

The Chair: Thank you.

Mr. Griffin, are you prepared to answer?

Mr. David Griffin: Yes.

Certainly with Mr. Sullivan's assistance, we're looking at the annual report of the National DNA Data Bank of Canada, and certainly it reinforces our previous comments that there's not a list, per se, of individuals.

To quote the report on page 17, it says:

> It is important to realize that both crime scene samples and convicted offender samples are identified simplyby a bar code number. In fact, the process separates the donor identity of the convicted offender from thegenetic information at the time the sample arrives at the NDDB. A bar code number links the personalinformation to the DNA sample. This link is protected information that is not accessible by NDDB staff and iskept in a separate registry by the RCMP's Canadian Criminal Records Information Service (CCRIS).

As well, while I can't cite the particular references, I know that within the existing law there are restrictions in terms of the disclosure of that information and also penalties for other police officers or others who misuse the information that's there.

So I think there's been quite a lot of emphasis put on that privacy concern.

The Chair: Thank you.

[*Translation*]

Would you like to follow up on that briefly, Mr. Ménard?

Mr. Serge Ménard: Mr. Griffin, Mr. Deighton believes that if, after doing a check, the police discover that a person's name does appear on this list, that this person has committed an offence, then that person will encounter problems at the border. Are you quite certain that this won't happen?

[*English*]

Mr. David Griffin: I'm confident it couldn't happen, but I think you could reassure yourselves by confirming that with the officials from the data bank when they appear. But I certainly believe, to my understanding, that this could not happen.

The Chair: Thank you, Mr. Griffin.

Mr. Sullivan.

Mr. Steve Sullivan: I think the only way in which the DNA data bank would impact someone, either an offender or someone found not criminally responsible, would be that when their DNA is put in, there's already maybe a crime scene where you would get a link, or in the future there's a new offence committed. If there are no hits, so to speak, in the data bank, it has no impact on anybody's privacy, including offenders or not criminally responsible individuals. As Mr. Griffin said, it's not a list, it's a very specific purpose.

● (1030)

The Chair: Thank you, Mr. Sullivan, and merci, Monsieur Ménard.

Mr. Breitkreuz, for three minutes.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you very much.

I want to add my thanks to all the witnesses for coming before the committee.

During the break we just had, I had many individuals coming forward, coming to me, getting appointments, and so on, expressing a lot of frustration with our judicial system. They say that in the last five or ten years there seems to have been a decline in its effectiveness. They see the work of the police as exemplary, but they don't feel they are properly supported by our justice system. They really want to see Parliament urgently address some of the deficiencies.

I want to zero in on something from 1988. The Supreme Court ruled, unanimously at that point, that the forcible taking of a criminal suspect's fingerprints, or even a strip search, does not violate a person's charter rights. I'd like Mr. Griffin and Mr. Sullivan to comment on this question.

Do you know why we, or the government, would have more concern about taking a saliva sample from a prisoner's mouth than strip-searching criminal suspects? It seems to me that strip-searching is much more invasive than taking a DNA sample.

Second, could we not make an amendment to this bill to include collecting of DNA samples upon charge?

You've been saying that in our review we should maybe look at further considerations on this, but couldn't we more urgently, as people are asking us, address some of these deficiencies in our justice system? Upon conviction, could not a sample be taken?

Also, would not the DNA data bank information be secure enough so that this information may not be available beyond its intended purpose of collection? I mean, to me, a DNA sample isn't any more invasive than a strip search.

I would like both of you to comment on that, if you wouldn't mind.

The Chair: Mr. Sullivan.

Mr. Steve Sullivan: The Supreme Court has said, since DNA has become more of an issue for law enforcement, that the actual physical taking of the sample is minimally intrusive. Whether it's a pinprick or a saliva sample, the physical part of it is no big deal, frankly. I think where some people, and I'm not one of them, see a difference between samples of DNA and fingerprints is the type of information you can obtain about someone from a DNA sample that you can't obtain from a fingerprint, or that we will one day be able to obtain.

There are concerns about privacy, and certainly people have talked about broader data banks, and whether insurance companies could get access—those kinds of things. Those are legitimate concerns, but this is a very specific tool. This is a data bank of people who have committed very serious crimes, and it's accessible only by law enforcement, controlled by the RCMP. There are provisions in the law that if the information is misused, it's a criminal offence.

So I believe the protections are there. It's difficult for me, when I'm dealing with victims of sexual assault and criminal harassment, and parents of murder victims, to hear the word "intrusiveness" when you're talking about taking a DNA sample.

The dilemma for some people is the information you can obtain, not necessarily the taking of the sample itself. But I think there are proper protections in the code. With respect to when the sample should be taken, we've actually proposed a suggestion for the committee—and certainly if it can be dealt with during this round of committee hearings, all the better—that when someone's arrested and charged with one of the primary list offences, if that person is granted bail then the police would take a sample. The sample wouldn't be used unless the person absconded. If the person were kept in custody until trial, or took off while on bail, then the police would use the sample. Otherwise, the sample would be destroyed and the person would be convicted—assuming they're guilty; if they're not, then the sample would be destroyed anyway.

So the sample taken at charge wouldn't be used unless the individual skipped bail.

● (1035)

Mr. David Griffin: It's been some time since I did my recruit training in terms of the authorities for some of this, but in terms of fingerprints, generally it's accepted that we collect fingerprints for identification primarily. I think the argument then with DNA is that DNA is not necessary in all cases for identification, because you can get that through fingerprints.

Personally, I'm with Steve on this. I don't think we need to draw that distinction. But I think that's where the distinction has been drawn.

I can tell you from personal experience that taking ten fingerprints from a person who is not willing to have their fingerprints taken is a lot more difficult than taking a cotton swab, sticking it in the person's mouth, and getting a sample. So in terms of intrusion, while you don't invade the person's body space, it's very difficult to obtain fingerprints. It might be worthwhile at some point in the review to look at that.

In terms of a strip search, I think I would argue that there are very strict limitations on when and how a police officer can conduct a strip search, and the circumstances. Certainly issues such as the seriousness of the offence and the urgency come into play, but primarily we're given the authorization to search somebody that we're taking into custody to ensure that they don't have any device or something that would assist them in escape, to prevent them from injuring themselves or somebody else or the collection of evidence.

I'm not sure the strip search example is consistent with why we would use DNA, but from our perspective, why wait for the review? We don't want to wait for the review. We want the review to be conducted on time. I think the issues that need to be examined there are probably a lot broader than what's contained in this bill, but certainly we look forward to having an opportunity to promote changes that will address some of our concerns.

The Chair: Thank you, Mr. Griffin, and thank you, Mr. Breitkreuz.

Now we'll excuse our witnesses. I would ask members to remain so that we can deal with some housekeeping matters.

Mr. Deighton and Mr. Thomson, thank you.

Thanks as well to our regulars, Mr. Griffin and Mr. Sullivan. We may bill you two as a tag team from now on, you're doing so well.

Thanks very much.

[*Proceedings continue in camera*]

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