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Chair

Mr. Garry Breitkreuz

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•(0905)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): This is the Standing Committee on Public Safety and National Security, meeting number 16.

I'd like to inform everyone that we are continuing our study of the Sex Offender Information Registry Act. It's a statutory review of the act.

We have before us witnesses from the Office of the Privacy Commissioner of Canada, Mr. Carman Baggaley and Ms. Lisa Campbell; from the Canadian Council of Criminal Defence Lawyers, Brydie Bethell; and as individuals, Anna and Jim Stephenson. We welcome you all to our committee.

I think you have agreed to go in the order I have just listed.

You may introduce yourself and also maybe just give a brief résumé of yourself.

Mr. Baggaley, you may begin.

Mr. Carman Baggaley (Strategic Policy Advisor, Office of the Privacy Commissioner of Canada): Good morning. My name is Carman Baggaley. I'm a strategic policy advisor with the Office of the Privacy Commissioner of Canada. I'm here with our general counsel, Lisa Campbell. We're pleased that we were asked to appear to comment on the Sex Offender Information Registration Act.

Our office has an obvious interest in the act. The act requires convicted sex offenders to register with the police and, after they've been released, regularly inform the police of their movements. In addition, they're required to provide personal information, telephone numbers, secondary addresses, and other information that potentially allows the police to contact them. These are requirements that are not imposed on other types of offenders who have completed their sentences.

We understand why this is the case, given the seriousness of these offences. Nonetheless, this is a significant intrusion into an individual's privacy, an intrusion that can only be justified on the grounds that it produces a clear and demonstrable public safety benefit that cannot be achieved through less intrusive means.

One way to assess the reasonableness of the inherent intrusiveness of the legislation is to look at its effectiveness. We know that questions were raised about the potential effectiveness of the registry when the legislation was first proposed. We're not aware of any formal evaluations that have been done since the act came into effect that would directly answer these questions.

We're also aware of testimony before this committee that casts doubts on the effectiveness of the registry. Assessing the effectiveness of the scheme is very important. If it's not effective, then the privacy intrusion is for nought. Sacrificing someone's privacy in the hope that this may protect society is a dangerous precedent.

We expect that the committee will hear many suggestions to improve the registry, and we expect that many of these suggestions will involve expanding the scope of the regime. This could involve a number of possible changes, such as increasing the number of designated offences, eliminating judicial discretion with respect to the issuance of orders, or allowing greater or broader use of access to the registry.

We would urge the committee to avoid trying to improve the effectiveness of the registry by allowing its broader use. Providing public access to the registry or allowing it to be used for community notification could be counterproductive. Incidents have occurred in both the United States and the United Kingdom in which members of the public have attacked and even killed people suspected of being sex offenders, based on information contained in the press or accessible through the Internet.

In addition to the harm caused to the offender, or, in some cases, people wrongly thought to be an offender, this publicity may be counterproductive. It can drive offenders underground and make them less likely to comply with registration requirements. One of the purposes of the act is to help police investigate crimes of a sexual nature by requiring registration of information related to sexual offences. Making changes to the act that would reduce the likelihood of compliance runs counter to this purpose.

Publicizing the identities of offenders may also make them less likely to seek treatment, and it could make it harder for them to establish a stable environment, increasing the possibility that they may reoffend.

We did not come here this morning to urge the committee to recommend withdrawing the legislation. We know this isn't going to happen. We know there is considerable pressure to change the legislation. We would urge the committee to look at any proposals carefully, particularly proposals that would increase the amount of information being collected or disclosed or expand the permitted uses.

•(0910)

There may be ways to make the scheme more effective, perhaps through increased resources or through procedural changes that would enhance the effectiveness and value of the legislation without increasing its intrusiveness.

We'd like to conclude by offering two specific suggestions. First of all, we think there should be greater transparency and openness about the program. For example, we weren't able to find any information on either the RCMP's website or Public Safety's website about the number of registered offenders. In contrast, one can look at the DNA data bank. It publishes an annual report. You can go to its website and find out a great deal of information about how that program operates.

The other recommendation we would make, and we think this is critically important, is that there should be a formal evaluation of the effectiveness of the legislation. This should be done by an independent third party. We would strongly recommend that this evaluation be done before any significant changes are made to the legislation.

Thank you for your time. We'll be pleased to answer any questions you may have.

The Chair: Thank you very much, sir.

We'll now move over to the Canadian Council of Criminal Defence Lawyers, Ms. Bethell, please.

Mrs. Brydie Bethell (Barrister, Canadian Council of Criminal Defence Lawyers): Thank you.

My name is Brydie Bethell, and on behalf of the Canadian Council of Criminal Defence Lawyers, I'd first like to thank the committee for the opportunity of being here, as well as Mr. Baggaley and Ms. Campbell for their comments. I'd also like to commend Mr. and Mrs. Stephenson, who are here this morning, for the courage that it no doubt takes them to do so.

As you probably know, the Canadian council is a national council, as compared to some of the other organizations in the country. It has representation right across the country, from coast to coast to coast, including our three territories in the north. We offer a national voice, not on behalf of defence counsel so much as on the administration of justice in relation to the preservation of due process.

We're very grateful to be here, and it is the council's hope that we can assist the committee in any way we can. This is not an easy issue. This issue strikes at the core of our hearts as human beings and as parents, as many of us in the room today are. All of us want to protect our children and our communities. It's almost impossible to think we would not do anything in our capacity to do so. The issue also strikes us, however, at the core of who we are as citizens in this country. The reason that Canada is the envy of the world in many respects is because we as citizens have sought to uphold the principles of democracy in the choices we make for our communities. We compromise and we balance. We balance competing interests.

I'm sure none of you believe this, and I hesitated about whether I would say exactly this, but it's often the case, and this is true among my friends as well, that as a defence lawyer I protect the rights of offenders, but that's not what I'm here to do today. We are all together here today as citizens to figure out what the right thing to do is with respect to the national sex offender registry. I don't think there is anyone here who would disagree with me that we are here to strike the appropriate balance, to step back and look dispassionately at what we have, what's missing, what's needed, and why we are doing

this. This is not a we-and-they issue, but it is an issue that requires us to balance individual and collective rights.

The criminal justice system in this country exists because it is a system to which we turn to address wrongs committed against society. We don't address those wrongs ourselves. When a criminal offence, for example, of a sexual nature occurs, we don't put a sign on someone's lawn because we think that person has done it. We go to court to have the problem addressed appropriately.

I'm not here to tell you what the law should be; it's up to you as parliamentarians to decide what the law should be. I view my role here today as to help you decide what the balance should be. In doing so, I would urge you to consider the following questions, and I hope this idea, these two questions, will help you to frame the way in which you will approach the solution to this problem.

First, what is the purpose or goal of the registry, and what are the purposes of the proposed changes? Secondly, if the changes are made, how would this affect accused persons across the country, not just here in Ottawa, but for the farmer in Saskatchewan, for aboriginal persons working the seasonal traplines in fly-in communities in Nunavut?

It's my understanding that there are serious concerns about the effectiveness of registries in either solving or preventing reoffending, and I emphasize the word "reoffending". Two possible reasons for this are as follows. Registries can do little, if anything, to capture first-time offenders. The registry is about catching reoffenders. Secondly, the majority of sexual assaults occur between people who know each other—family, friends. So it is a serious question to ask whether registries in fact make society safer and at what expense.

On the practical level, resources are another factor to consider. Resources, as parliamentarians, we all know, are not infinite, but demands, both financial and administrative, are. So there are choices to be made when making sensible investments in our law enforcement policies. The question, I think, is what is the best way to spend our limited law enforcement dollars, especially when we marry this question with the serious issue of effectiveness.

● (0915)

Also relevant when considering whether registries add value to the process is the fact that there are alternatives already functioning in the criminal justice system. For example, we have the ability to make designated offender designations, as well as the ability to make long-term-offender designations. There are others—for example, the 810. (1) peace bond provision in the Criminal Code, and probation generally, which is designed for rehabilitation and social integration and is tailor-made to the needs and requirements of the offender and the offence.

My final point is a note about discretion. An integral part of the criminal justice system, in my view, is the ability of judges and prosecutors to deal with the offender and the offence on an individualized basis. This is consistent with another principle of our criminal justice system, which is respect for the independence of the judiciary. When we give judges and prosecutors discretion regarding who is placed on the registry, rather than requiring placement and permitting exceptions on a high test of “grossly disproportionate”, it takes away from the ability of judges and prosecutors to use discretion.

This is a national registry, so its impact must be considered with respect to all Canadians. I would ask you to consider whether it would be a principled approach to take away from the ability of the present registry to individualize and not arbitrarily sweep up all persons based on the class of offence.

To return to my main theme this morning of balance, the difficulty of resolving the issue between getting the compromise right between collective rights and individual rights, the question we're all here to answer is, what are the reasonable limits on a person's rights and freedoms in pursuing the particular objectives of this legislation? We must be alert in answering that question so that we do not use means that are broader than necessary to accomplish that objective, which is an inherent principle of our Constitution—that is, to not go overly broad in achieving that objective. We all feel the need emotionally to respond to serious tragedies, but we must react to legislation and proposed amendments on a principled basis.

Those are my submissions. Thank you.

• (0920)

The Chair: Thank you very much.

We'll now turn to Anna and Jim Stephenson. Who is going to present?

Mr. Stephenson, go ahead, sir.

Mr. Jim Stephenson (As an Individual): Good morning, Mr. Chair. Good morning, committee members and other witnesses.

My name is Jim Stephenson. This morning I am joined by my wife, Anna. We are here today to share our views and concerns about the national Sex Offender Information Registration Act, SOIRA, as the acronym is probably more commonly understood, to share our concerns with you.

With all respect for the viewpoints and perspectives submitted earlier this week, together with those we have heard in introductory remarks today, we believe that you will find that what we have to say this morning somewhat unique, unique not only for the reason that we are the parents of a child abducted, sexually assaulted, and murdered by a known, convicted sex offender, but also because of our determination to see to it that communities will be better protected from such offenders than we were.

To accomplish this it was necessary to bring about significant systemic changes in the manner by which authorities manage convicted sex offenders released into communities. Earlier this week, you heard testimony about the legislation that created Ontario's sex offender registry in 2001. That legislation, of course, is named

Christopher's Law, in memory of our 11-year-old son who died very violently and tragically on the 1988 Father's Day weekend.

Ontario's sex offender registry is proactive. Registration is automatic following conviction of a criteria offence. Law enforcement officers are proactive in consistently verifying the information contained in the registry's database to ensure that it is up to date and completely accurate. More importantly, the information is available for sharing with other police agencies that are investigating sex-based crimes. These features alone underscore reasons for the provincial registry's success.

The SOIRA was proclaimed in early 2004 and became operational later that same year, more than 10 years after a 1993 inquest into our son's death had recommended that the federal government move immediately to create a national sex offender registry. In statements we made during public hearings into the proposed legislation over five years ago, we expressed serious concerns relating to a range of features of that legislation. We were troubled then, as we continue to be troubled today, that registration does not follow automatically upon conviction.

Our concerns today are heightened more so when we learn, as you did earlier this week, that nearly one-half, or 50%, of those convicted of criteria offences are literally excused by the courts from being required to register, without those same courts providing an explanation for such a disposition, which is clearly stipulated in the legislation.

It is my understanding, as it is, I'm sure, everyone's in the room, that federal offences are more serious than those dealt with through the provincial courts. In the case of the latter, the provincial system, registration is automatic for all convictions named under the legislation.

Mr. Chair, committee members, to me it just doesn't seem to make a great deal of sense. I would respectfully submit that if the judiciary does not comply properly with its responsibilities under the legislation, then it is broken and badly in need of major repair. In the words of a popular home repair television personality, “Let's make it right”.

From the time the federal piece was first being developed, we have held concerns about the effectiveness of the national registry, and I have often been quoted as referring to it as a notional concept of a sex offender registry. Unfortunately, I believe that the public has been misled into assuming that practical safeguards are in place for their security and protection, when this in fact is not the case.

• (0925)

There is in fact a troubling parallel between the state of the NSOIRA and a fairy tale that we would often tell to our son and daughter when they were very young. The tale involved a monarch who desired a new wardrobe to impress his subjects when he frequented the town and surrounding countryside. He would not consider any of the designs submitted by the court tailor, who had for many years been responsible for the king's wardrobe, although many of his advisers felt the designs were truly exceptional. Finally, after considering many different designs from many of his loyal subjects, he appointed a lowly stable boy to design his new wardrobe.

The trouble was, the stable boy knew nothing of clothing design. Convinced that he would suffer dire consequences if he could not come up with something his monarch would accept, he determined finally to persuade the monarch that he had created an invisible fabric that was superior to anything yet seen. In fact, the stable boy had created nothing and counted on his ability to convince his king that he was outfitted in the finest cloak and vestments ever seen.

In the end, a completely naked monarch walked among his subjects convinced that he possessed a most wonderful and unique outfit. At first no one dared to tell the king the truth. But finally a young man who had been watching the king's procession uttered the words to everybody's surprise, "But the king has no clothes." The villagers all broke out into laughter and the king then realized his folly.

Mr. Chair, committee members, I submit that in its present form the NSOIRA has no clothes either. It is dysfunctional and fails to properly protect Canadians from becoming victims or from being victimized by offenders released back into their communities.

Earlier I mentioned that our presence here might be considered unique and provided some reasons why. Let me close my opening and formal remarks this morning by adding one more argument for this uniqueness. The other parties appearing before you have done so as part of their job, and it is safe to assume that they have been paid for their time. Anna and I, however, speak to you today because we have paid and paid dearly to be here. No doubt that distinction will be weighed carefully in the final determination that this committee will make on the future direction of the national sex offender registry.

We look forward to questions from the chair and members of the committee during the remaining time available here this morning.

Thank you.

• (0930)

The Chair: Thank you. We appreciate your appearance before this committee.

Mr. Oliphant.

Mr. Robert Oliphant (Don Valley West, Lib.): My thanks to all the witnesses. We're very happy that you're here as part of this review. This is part of an independent review. The parliamentary committee has the ability to look at this legislation, and that's exactly what we're doing. At the end of this, we will be making recommendations to the government about this legislation.

I have a couple of questions for Mr. Baggaley. You mentioned in your statement that you understand why this is being done, given the seriousness of these offences. I think it's also the nature of the offences and the nature of the offenders that have provoked this kind of legislation. There are many serious crimes, but my sense is that we have this legislation because the nature of some offenders is different and their potential to reoffend is greater.

While I respect and in fact treasure our privacy, does the Privacy Commissioner actually think there are some offences that demand the lessening of one's privacy?

Mr. Carman Baggaley: We recognize that people convicted of offences have a reduced expectation of privacy. As it turned out yesterday, we appeared before the Senate to discuss the review of the DNA Identification Act. That's an example of another piece of legislation that's based on the assumption that people who have committed certain offences have a reduced expectation of privacy.

Having said that, we certainly don't believe that someone has no expectation of privacy, that it's completely eliminated as a result of offending. And the question we would ask you to consider is whether there is a clear benefit from this regime that justifies the reduction in the privacy of the individuals in question. We've heard a great deal of evidence about the effectiveness of it. The question you should ask is whether it's possible to make changes that would enhance the effectiveness to further justify that reduced privacy.

Mr. Robert Oliphant: With respect to the changes in your early text, your major concern seems to be the expansion of the use of the registry into non-police agencies, into public use, into access by other agencies or people that may be interested. This is my grave concern as well. I acknowledge that I don't want people to have a public registry where they can Google someone and find their name. That, to me, is totally inappropriate. This is for police agencies.

But later you talk about the amount of information being collected. You just mentioned it at the end of your presentation. It seems to me that to make this more effective, the amount of information that a restricted number of agencies would have—the police agencies—could improve the effectiveness and yet not expand the use of the registry.

I'm just wondering whether you agree with that or whether you want to push back on that.

Mr. Carman Baggaley: I think we'd have to see what additional information that's proposed would be collected. There is a significant amount of information that is collected now. I understand that there is some debate about the fact that the taking of photographs isn't mandatory. But I think it really would be a question of what other pieces of information we are talking about. We would look at that, and again sort of look at it using a kind of proportionality test, depending on what was being proposed.

• (0935)

Mr. Robert Oliphant: I guess I'll end up pushing back on that because there is some identification information there, but not enough to make it effective. You might as well not have any because if the police officers don't have enough information, it's just not going to work. But we'll get to that later.

Ms. Bethell, thank you for your remarks as well. I've spent lots of time with offenders and appreciate due process completely. I think you're absolutely helpful in reminding us that Canada is based on due process and all that. One area I wanted to ask you about is some of the alternatives to the registry, such as section 810 peace bonds, and some probation, have also been criticized as not being as effective as they could be. Has your association made representation to anybody about how we could improve some of those alternatives: probation, designations of long-term offenders, designated sex offenders?

Mrs. Brydie Bethell: I don't know if the council has made any submissions on that, so I'll leave that aside because I just don't know the answer to that. But I can tell you that the system isn't perfect. There are lots of things that we can improve on in the present tools that we have, both in terms of crime prevention and crime investigation.

One of the main criticisms, of course, for any kind of supervisory order, which is true for probation—and long-term-offender designations entail a type of probationary supervision—is that there aren't enough probation officers, and the rehabilitation side and treatment side of our criminal justice system is lacking in resources.

I guess that comes back to the point I made about how we decide where our money goes. Does it go to the rehabilitation side or does it go to the registry side? Can the two interact? Can the two work together? Can there be some way of coming to a middle ground so that the two regimes can work together? That may be.

Mr. Robert Oliphant: One last question. I value judicial discretion. I absolutely believe in it. I also believe that there should be a possibility of a double judicial discretion, not only to lighten or lessen—that's why I tend to not believe in mandatory minimums, because I think judges need to look at every case individually—but also I think there are times when they should have discretion to increase penalties, such as in multiple incidents where the 17th offender isn't even heard at trial, as in B.C. or in several other cases. Has your association had any discussion on giving judges more authority to have discretion on the other end, to increase penalties?

Mrs. Brydie Bethell: I would disagree with you. I think that already exists.

In terms of the ability for the Attorney General to make a dangerous offender designation, that application comes from the Attorney General's office, but the decision is ultimately made by the judge. For a dangerous offender designation, the offender remains in custody indefinitely so long as that offender is deemed a threat. The long-term offender designation carries not an indeterminate length but it has a much greater custodial and punitive aspect to it.

So I wonder whether that doesn't already exist.

Mr. Robert Oliphant: I'm thinking of non-custodial, moving into non-custodial effects beyond probation.

Mrs. Brydie Bethell: Okay.

Mr. Robert Oliphant: I'm just trying to open up the box to look at some new ways that we can actually deal with this.

Thanks, Mr. Chair.

The Chair: We can come back to this issue maybe a little later.

Monsieur Ménard, please.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): First I would like to thank all those who have testified before us and to congratulate them on the quality of their presentations. I also want to emphasize to the Stephenson family that we have a great deal of sympathy for them in view of their misfortune. We are all married and—

• (0940)

[*English*]

The Chair: Sorry to interrupt, but we have to provide some technical assistance here.

Okay, go ahead, Monsieur Ménard; I will start the clock from the beginning.

[*Translation*]

Mr. Serge Ménard: Once again, I would like to thank the witnesses whom we have heard this morning for their excellent presentations on a very delicate subject. First of all, I would like to say to Mr. and Mrs. Stephenson... I believe that all of us here have children. I'm very happy in my marriage. My children are now adults. My daughter is pregnant with twins. If one of my children was attacked, I don't know how I would react. My first reaction would definitely be very violent. I understand your suffering.

I also very much appreciate Mr. Baggaley's presentation and the principles of which he reminds us. I think that's consistent with the balance that Ms. Bethell urges us to seek.

I would like to ask a few specific questions. Mr. Baggaley, you talked about the fact that there should be a formal evaluation of the registry by someone independent. I quite agree with you.

What kind of evaluation are you thinking of. What suggestions can you make? Should we appoint a judge? I don't believe a mere committee such as this one can conduct the kind of evaluation you are proposing. We need more investigations, in greater depth. Time is very short and we can't get to the bottom of such a delicate subject.

[*English*]

Mr. Carman Baggaley: There are several possibilities.

One potential possibility would be the Auditor General. I know the Ontario Auditor General reported on the Ontario registry in 2007. The Ontario Auditor General came to the conclusion there was no clear evidence the Ontario registry was effective.

You could retain academics who have expertise in social sciences, in criminology.

This is a very complex issue. I've looked at studies that have been done with respect to the registry in New York State, which came to the conclusion there was no evidence the New York State registry is effective.

This is, admittedly, a very difficult issue, partly, as I think you discussed on Tuesday, the challenge of proving a negative, and that's part of the challenge. But since the effectiveness of the registry is such a critical issue to your process, I really think it would be very valuable to have an assessment of whether it's working, and if it's not working, why not, before you make significant changes.

Thank you.

[Translation]

Mr. Serge Ménard: Thank you.

Mr. Stephenson, I understand why you prefer the Ontario system. However, I understood from your presentation—which may have been too short—that the major difference, in your mind, is that registration is mandatory in Ontario, whereas you believe it's optional.

However, when I read the exceptions contained in the legislation, I find it ultimately very restrictive, and I wonder whether people indeed weren't entered in the registry.

In any case, what are the other aspects of the Ontario system that, in your view, should be incorporated in the federal scheme?

• (0945)

[English]

Mr. Jim Stephenson: Thank you.

Of course, the mandatory registration feature is paramount in any revisions being considered to the NSORIA. But in addition to that, there are other features in the Ontario model that are well worth looking at.

I believe that in testimony earlier this week you heard mention of the recommendation that the Ontario registry be adopted as a model for the national registry. I think this came out of a proposal by the commissioner for the OPP, Commissioner Julian Fantino.

To answer your question, in addition to that mandatory order to register, I think there should be much more ability on the part of the national police force—in this case it's the RCMP—to enforce and follow up on the registration requirements.

There was a very tragic case in Toronto, the Holly Jones abduction and murder, in which this ten-year-old girl was abducted, murdered, and her body was taken apart and hidden in various places. One of the things that came out of that tragic case was that the police force involved in the investigation at that time had a whole range of potential offenders to look at, and resource deployment is critical in an investigation such as that.

We talk about whether there are enough police officers. Probably there aren't. Some of us would like to see a police officer for every law-abiding citizen, and that would eliminate anybody from ever offending, but of course that's something that isn't going to happen.

In the case of the Holly Jones investigation, let me get to that point specifically. Within a very short period of time they were able to look at a range of about 60 offenders, 60 potential offenders, who had registered addresses in the immediate area surrounding the area where Holly Jones was found. They were able to eliminate those suspects within hours of the discovery of Holly Jones' body and

immediately deploy those resources into more productive aspects of the investigation, and the investigation did end successfully with an arrest being made, charges laid, and a conviction won for her abductor and murderer.

That is the type of information that has to be available and accessible to all police forces. The national registry, if it were beefed up, if we gave it some steroids, and gave it the ability to expand the database of convicted sex offenders, those who we know have committed serious offences, if we have addresses on them and we know for a certainty that those people are at those addresses.... Follow-up on registration is an important feature of the enforcement component. Police services are required to do this in Ontario. Once an offender has registered, there's a follow-up procedure. A door knock is done to ensure that yes, that is the correct address, this individual is here. Once that information is verified and currently maintained, it is extremely important in the investigation of any crime of a sexual nature.

Accurate information that is up to date and current and has been verified is a component that I think should be transferred from the provincial registry to a national revision. I would like to think, too, that there would be more transparency between the two. There should be an ability with the Ontario registry to have information flow back and forth between its database and the federal database. This has encountered some serious problems in the past.

I'm not certain that I am the party to talk in detail about the changes that should be transferred from a very successful Ontario model to the federal model. I would comment, though, if I could—

• (0950)

[Translation]

Mr. Serge Ménard: We don't have much time, Mr. Stephenson, but I believe I clearly understood your remark that we could adopt the Ontario system and that that would be a major step forward.

[English]

Mr. Jim Stephenson: I'm sorry, I didn't catch all of that.

[Translation]

Mr. Serge Ménard: Your wife understood, I believe.

[English]

The Chair: We'll have to wrap this session up. Please give a quick response.

Mr. Jim Stephenson: That would be the case.

The Chair: Thank you.

[Translation]

Mr. Serge Ménard: With your permission, Mr. Chairman, I would like to put just one more question to Ms. Bethell.

[English]

The Chair: You will have an opportunity in the next round. You're three minutes over.

Mr. Davies, please.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you.

I very much appreciate the physical manifestation here today of the diverse perspectives on this. We have the valid voice of due process, privacy, and the particular horrors experienced by those who have suffered the victimization of this. I think these are all very important voices added to this discussion, along with hearing the police perspective on Tuesday.

I want to express my deepest sympathies to the Stephensons at the outset.

I'd like to start by asking about something the police representative said on Tuesday. If I understood them correctly, they said that there are certain specific and unique attributes to offences of a sexual nature. One of them is the need for speed. They claimed that when a child is abducted, or if there's any kind of sexual abduction, the chances of the victim being murdered are very high within the first 24 hours. There seems to be a particular urgency to these kinds of offences. Second, they asserted that very often there are multiple offences, whether discovered or not. They seem to suggest that if you caught an offender, even a first-time offender, the chances of that person having done it before on many occasions without being caught were quite high.

I'm wondering if you have any comment on that. And if you accept those comments, do you think that those particular attributes justify a more robust approach by Parliament on this to ensure that the registry be tougher because of those reasons?

Mr. Carman Baggaley: Clearly, we don't have any expertise with respect to law enforcement, but unfortunately on Tuesday I believe Sergeant Nezan commented that the national sex offender registry had not been used to solve a single crime. If there are ways from a systems perspective to make it easier and quicker to search the information in the database to deal with the very understandable need to get access to information as quickly as possible, by all means make those system changes—whatever is required. However, I understand there are 19,000 names in the registry now. If with 19,000 names it hasn't been used to solve a crime, would increasing that to 25,000 or 28,000 suddenly make it significantly more efficient? It's not clear to me why that would be the case. I think until you have a very clear idea of why it's not more effective it's very difficult to get a sense of what the changes needed are to make it more effective.

• (0955)

Mr. Don Davies: I'm not sure that I heard Inspector Nezan actually say that the registry had not been used to solve a single crime. I think what he said was that the registry had not been in place long enough and the data has not been compiled to draw that direct conclusion. I'm not sure that his remarks would be interpreted quite that way.

I want to move to judicial discretion. Under the present circumstance, of course, we don't have automatic registration. However, if I understand correctly, there's a reverse burden on the offender, because they would have been convicted at that point, to satisfy the court on a gross disproportionality test that his or her privacy interests outweigh the interests of protecting the public.

I'm wondering, Ms. Bethell, or the privacy people, if you can give me an example of where you think an offender would not properly be the subject of an order.

Mrs. Brydie Bethell: There is a whole range of sexual offences under the Criminal Code. At a drunken office party, a person who is otherwise a very law-abiding citizen commits an indiscretion—and I don't want to minimize that at all. I'm a woman and I understand that. I don't want to minimize that at all. If we take the mandatory system in Ontario, if that person who committed and was convicted of that sexual assault—that kiss at an office party—goes on the registry, is that a reasonable limit on that person's freedom, to achieve the objective we're trying to achieve with this legislation? For ten years after serving that sentence, the guy who kisses the colleague at the office party, should that person's privacy be limited for a period of ten years? Does that make sense? Is that an appropriate use of that power?

That may be an example of one situation where it may not be appropriate, but that's up to you guys to decide.

Mr. Don Davies: And I also thought it was an important point to make that it's not just judicial discretion we're talking about, but prosecutorial discretion as well. Do I have that correct?

Mrs. Brydie Bethell: That's correct. Currently as I understand the legislation, the prosecutor is the one who initiates the registration. So the form 52 is commenced by the prosecutor and then it's the judge who decides whether or not to proceed with that procedure.

Mr. Don Davies: The chair is giving me a very short period of time, so I'll just quickly get this out. The officers wanted to make the system more effective with the addition of vehicle information and I think a broadening of the sharing of information among law enforcement agencies. Could you give a brief comment? From a privacy point of view, do you have any concerns or problems with either of those two enhancements to the information collected?

Mr. Carman Baggaley: With the very important caveat of the overriding question of the effectiveness of the scheme, adding vehicle information is a relatively minor additional piece of information to what's already being captured. Keep in mind that, since people do change their vehicles frequently, it does impose that extra compliance requirement and the administrative burden of keeping the vehicle information up to date.

The Chair: Thank you. Very good.

We'll now go over to Mr. MacKenzie, on the government side.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

Thank you to the panel for being here.

I have listened very closely, and I share some of the same views as Mr. Oliphant.

I have certainly dealt with a number of offenders and I've also dealt with a number of victims. When you look at it from all sides, I think we have let society down somewhat with an expectation that we have a system that is effective. We heard very clearly, and Mr. Davies pointed it out in what we heard.

Ms. Bethell, you indicated a drunken kiss at an office party. That wouldn't result in the conviction of a sexual offence. We need to make certain that we understand here that these are people charged and convicted of sexual offences.

I listened to some of the concerns, and I appreciate what the concerns are, but Mr. Baggaley, I think you'd have to agree that anybody convicted of a sexual offence generally has had their name in the press, and frequently the public could Google that name. What in the world would be wrong with the police agencies having that information available to them in a central system, where they can access it?

The effectiveness of the program obviously won't work if we don't put the right information in. Take for example car registration. I think you'd recognize that. Registration of cars is in the system now.

What would be wrong with assembling that? Those people convicted of these sexual offences have been fingerprinted and photographed. What would be wrong with having some additional information there to deal with these issues to help the police in those cases?

And these are serious cases. When we have people coming here today, like the Stephensons, who have experienced that, I don't know how we can say to Canadians that we're trying to protect them by keeping other people's information secret when the information has already been made public. I look at this whole scenario, and I think sometimes we set up bridges—and I think Mr. Stephenson used a prime example—we set up the system with not enough information, and it won't work.

I think we heard from all of the police officers here on Tuesday that the systems we have in place do not cost a great deal of money. We don't seem to mind spending money on other registries, from a federal perspective, that are somewhat questionable. Why would we not want to expand this to give it the worthwhile tools to help the police community, to help our families, in many cases, come to a quicker conclusion?

Could you explain to us, under the privacy legislation, what would be wrong in enhancing that registry by putting the information in there that's already known?

• (1000)

Mr. Carman Baggaley: Well, let me make a couple of comments.

First, as I think I suggested, we didn't come here today to advocate the abolition of the scheme, so we're not saying that you should do away with this.

One of the other concerns of our office, quite frankly, is with the amount of information that's available over the Internet, the amount of information that's generated through administrative tribunals, very sensitive information about individuals. There is, however, a difference between a newspaper's reporting on a crime, reporting on the conviction of an individual, and people forgetting about it,

and for example the types of schemes we have in the United States, where the information is posted on a website.

You know, we did have the situation of a young man from Nova Scotia going to Maine and killing two people.

Mr. Dave MacKenzie: But if I could interrupt you right there, there's never been a suggestion from this committee or anywhere else that I know of that the intent is to make the information generally known to the public. I have a serious problem if we look at what's going on in other jurisdictions. We need only look in our own jurisdiction. We heard very clearly that we could enhance the system by putting in more information, which is already known.

Mr. Carman Baggaley: I guess the question is, how much more information? You have all of the physical characteristics of the individual. He or she's required to provide an address, keep it up to date. The possibility of adding information about the vehicle, we've discussed that. I guess it would be a question of what other information you're suggesting.

The individual is required to provide information about his or her place of employment at the moment, required to provide information about aliases, distinguishing characteristics. The database contains information about the types of offences the individual has committed in the past, the age of the victims.

If there are problems with the way in which that information is made available to law enforcement agencies, then you should look at whether there are ways to make this information, which is already collected, more readily available to law enforcement agencies, provided they have a reason to be looking at it.

• (1005)

Mr. Dave MacKenzie: Sir, with all due respect, law enforcement agencies have access to the information on registration of vehicles, they have information on convicted criminals, all of those things. Why would it not make sense that in this particular case we put it into a registry that just deals with these types of offences? I understood from your comments that you've looked at the evidence that was heard here on Tuesday. I think we heard about some effectiveness from the Ontario registry, from the people in charge of it. It has been beneficial in at least taking people out of situations where they had access to potential victims. The federal system doesn't have that capability in it.

What would be wrong in importing the Ontario system into a national system? How does that hinder the protection of privacy of individuals other than those who are potential perpetrators? They've already been convicted.

Mr. Carman Baggaley: My understanding is that the most significant difference between the federal system and the Ontario system is the issue of discretion. We've discussed the issue of discretion, and perhaps my colleague can comment on the issue of discretion.

Mrs. Lisa Campbell (Acting General Counsel, Legal Services, Policy and Parliamentary Affairs Branch, Office of the Privacy Commissioner of Canada): Good morning, sir. Thank you very much for your comments. My name is Lisa Campbell.

Our point of view is that privacy's a constitutional right, which we have to remember. Even after a person's been convicted of a very serious offence, they still have some rights. It's in our best interest as a society to ensure their legal rights are protected for rehabilitation purposes.

We agree with you, and with the Stephensons for that matter, that if you're going to establish a system like this, it should be effective. It should make effective use of the personal information that's collected. You make a good point, that much of the information you're talking about is already available in other databases. I think our main point, and I think the Stephensons' as well, is get some empirical evidence on how it's working now, before you make further changes.

Mr. Dave MacKenzie: Maybe our problem is that we don't have the system in place. We need to work on the system to get the evidence. I think our Constitution also provides for the safety and security of the individual. We also have to look at that as being one of the tenets of this whole system. I think we have failed because we haven't set up the system with the breadth and the depth it needed.

The Chair: I think you'll have to come back to that a little later.

Mr. Holland, please.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair.

I want to start by thanking the witnesses for the intelligent and sensitive way in which they approach what is a very difficult, sensitive topic. Particularly, I want to thank the Stephensons for all the work they've done. It's a great tribute to your son, everything you're doing, and it really is remarkable. I thank you for appearing today.

I want to start with a point before I go to my questions, because we really can't address it today. I think one of the things we have to underscore in this, because I very much support the sex offender registry, is I think it's also important to not hold it out as a panacea, that it unto itself is going to solve the problem. Often we talk a lot about enforcement, but I don't think we spend nearly enough time talking about either prevention or rehabilitation. I think it's an area of great failure that we have to be a lot stronger on. When we're talking about enforcement, I think it's important to hold our minds to that topic.

With respect to data, one of the things I'm trying to look at is the Ontario example, where there's an automatic addition, as opposed to judicial discretion. Ms. Bethell, the example you gave strikes me as sexual harassment, not a sexual offence as it's been defined as an example in Ontario. Ontario has a very defined sense of a sexual offence that certainly would preclude the example you gave.

I'm concerned that so many people are being left out of the system, and this registry, because it's not being publicly disseminated, is for the information of police officers. I'm wondering, though, because right now under the federal system we have a number of things here that are a little sticky and it would be hard to know exactly how to pinpoint. For example, right now in the federal registry you can have trespassing at night listed, or breaking and entering. I'm presuming the intent there is that if you're breaking and

entering with the intent to commit a sexual offence, that puts you onto the registry. Yet I don't see that in the provincial law.

It seems to me the province has taken a very narrow view of looking at this, and the federal legislation is much broader. Maybe that's why it's not automatic. If we were to do what Ontario did, which is make the list of offences narrower and have it be automatic, would that assuage some of your concerns, or is there a way of dealing with some of these so we can make sure they're caught? I share the concern that a lot of this is not being picked up in the system. Personally, I don't believe it's somebody kissing somebody at a work party.

• (1010)

Mrs. Brydie Bethell: The offence of sexual assault encompasses a wide variety of behaviour and what's called the *actus reus* of the offence, which is the actual act and not the intent involved. It encompasses a wide variety of behaviour, which can be determined on the basis of circumstances: things said, what is done and in what context, and what the relationship is between the two. So in fact, depending on the circumstances, yes, where there's no consent, an indiscreet and inappropriate kiss at an office party can be deemed sexual assault.

Mr. Mark Holland: Okay, but let me, just to be clear, and I won't read them all, read some: sexual offence against a child by a Canadian citizen; sexual exploitation of a person with a disability; accessing child pornography; luring a child by means of a computer system; stupefying or overpowering for the purpose of sexual intercourse; living off the avails of prostitution; purchasing sexual services of a person under 18; removal of a child from Canada for sexual offence purposes; rape; attempt to commit rape; indecent assault on a female. I guess that's the one you would have a concern with, then. Is it possible, then, to...?

Mrs. Brydie Bethell: Are you reading from the Ontario legislation?

Mr. Mark Holland: This is my example, the Ontario one, to address your point, because my point is that Ontario has made it much narrower. They've said that these are the offences we've deemed sexual offences for the purpose of putting somebody on the registry. If we're looking at this issue of automatically being placed on the registry, isn't part of the solution having a narrower list of definitions, as has been done in Ontario, to ensure that we preclude the type of situation you're stating while also dealing with the Stephensons' concern that you have a very large number of people who don't seem to be put on the registry right now?

Mrs. Brydie Bethell: Yes, I was getting to that. The designated offences under the national sex offender registry right now include, as you say, a wide variety. So I was just addressing your comment about whether a sexual assault would put a sex offender on the national sex offender registry.

I know much less about the Ontario law, so I'm afraid I can only talk in generalities. I think that may be one way to strike the right balance in terms of not casting the net so arbitrarily wide as to encompass all offences and all variations of assaults. That is one possibility. But I think there are other ways to make the national sex offender registry more effective without making it mandatory. For example, some of the members of the council, who work right across the country, have told me that one improvement to the registry might be to list the factors a judge could take into consideration when putting an offender on the registry. Right now there is no enumerated list. A judge can take into account a wide variety of factors. That is discretionary, and it's up to the judge to make that determination. That may be a good thing, but one of the criticisms of that is that the law is applied inconsistently. In one case a judge might take into account some factors, and in another case the judge may not take into account those same factors.

One possibility, rather than having a mandatory list, might be to keep the list of designated offences but enumerate the factors a judge takes into consideration when making the determination on whether an offender goes on the registry.

• (1015)

The Chair: We'll have Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much.

And thank you to the witnesses for coming this morning. We've heard some very good evidence.

Last night, when I was having the second part of my evening meal at my apartment, I happened to be needing some brain candy. I didn't get any, because there was a program on, one of the more popular police-type shows. It had to do with the very subject matter we're talking about here today.

Earlier on in the week we heard some testimony from the police witnesses, and then this morning of course we're building on that and dealing with some issues. I don't think anyone, whether they be police officers, defence counsel, prosecutors, judges, or even victims, for that matter, would want their personal privacy to be exposed to the extent that they would really have none. But that's not the purpose of this registry, at least as far as I know.

Nor would we want to restrict the ability of judges to exercise discretion. But in the view of many people—and I believe Mr. Stephenson—this discretion has gone to the point where the weight of the needs of society and the victim seem to be still tilted towards the needs of the accused. We get so worried and so bound up in making sure the person who has perpetrated the crime—and in this case it's on conviction, so we're not dealing with somebody who is accused, we're dealing with somebody who's been convicted—that we forget what the purpose is.

This program has some similarities to what the police said. Number one, the first few hours of the investigation are crucial. We're dealing with the office kiss and that. I'm going to allude to that, and then I'm going to ask for some comments from the Stephensons. But the first few hours are crucial if you're going to find that abducted person who will be sexually assaulted. The first

few hours are critical, and the whole purpose of the registry is to give the police a tool.

When we talk about the efficacy of the registry, it's not actually designed to solve the case; it's designed to assist the police in narrowing in on the few individuals who might be the perpetrator of the crime and then solve it. It's only part of it. In that way, I guess it's very difficult to quantify. It's very difficult to say how good it is except to ask the very people who use it and who do the investigations.

If we look at their testimony, it leads us to a few things: time is of the essence; as much information as can be gleaned from the convicted persons...their habits, sexual preferences, sexual appetites; and then of course the very significant part is where they live, because that's going to narrow in where the crime occurred, etc. The other thing of course is that you bring in people like profilers who help with that.

My question to the Stephensons will be this. I don't want you to go into something that would be difficult for you emotionally, but talk about the system you would like to see. It sounds like it would be a system similar to Ontario's, with a few things that are better.

Based on your experience, and from similar cases, which I'm sure you've look at, do you think there would have been a more successful outcome were there a better system? I would like you to comment on that.

• (1020)

Mr. Jim Stephenson: My immediate response to that is yes, I think there would definitely have been a very different outcome. In our case, Christopher was abducted from the mall, on a shopping trip with his mother and younger sister, and he was taken from the mall to the offender's residence. He was held there against his will, for approximately 36 hours, at an address and a location that was probably about a block away from where we lived, and continue to live to this day.

At the end of that 36-hour period, the attacker, the man who murdered him, decided that he had no alternative, unless he wanted to go back to prison, but to do away with Christopher, to end his life, preventing him from testifying or identifying him should he ever be apprehended. And that was his whole modus operandi.

Today, if we had the sex offender registry that is in place in Ontario—which is a state-of-the-art role model for registries in other jurisdictions—the outcome would have been very different. Time is of the essence in these investigations, and police were on the scene within about three minutes of Christopher's abduction. They responded very quickly but did not have much information to go on. They had no information on sex offenders who were living in the community, although by order of his release from the institution, Fredericks—who had abducted and murdered Christopher—had registered his address with the police services, as he was required to do. They had no access to that information. It wasn't contained on a database. It was contained in the local police station where he registered, and it was confined there. It was held basically in a Hilroy exercise scribbler. That was where the information was stored.

Today we have a database with IT support that is second to none. There is no comparison. Today that information would have been available to officers immediately on the response to the call to the shopping mall, and within minutes they would have had a list of known sex offenders, child molesters. Fredericks had been convicted of a sexual assault on a young boy in this very city some three years before he abducted and murdered Christopher. So he had a record, and this information would have been available to police officers.

I mentioned Christopher's being held for 36 hours. Certainly a police intervention would have taken place much before 36 hours, and this would have made an incalculable difference to his mother and me.

Mr. Rick Norlock: Thank you.

The Chair: We'll now go over to the Bloc Québécois.

Monsieur Gaudet, go ahead.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): I only have a brief observation to make. Then I'll hand over to my colleague.

I'm in favour of recording information on sex offenders in order to assist police, just as I am in favour of registering firearms. My colleague Mr. MacKenzie is in favour of recording information on sex offenders, but he does not want to register the weapons with which sex offences are committed most of the time. We have to be consistent in our opinions. That was my observation.

As I am not very informed about justice, I will let my colleague Mr. Ménard continue asking you questions. If you want to answer, you have the right to do so.

Mr. Serge Ménard: In fact, the question I wanted to ask Ms. Bethell has already been asked by the New Democratic Party representative.

However, I would have liked you to elaborate a little more. I practised criminal law for more than 30 years. I was Quebec's minister of public security for a long time, and minister of justice as well. So I'm quite familiar with the subject. You said that more than half of sex offences are committed between people who know each other. I imagine your practice has given you more examples than that unwanted kiss at the Christmas or New Year's party.

Are there any other situations for which you believe registering sex offenders is not effective in solving other sex crimes that might be committed.

• (1025)

[*English*]

Mrs. Brydie Bethell: Thank you.

My answer to that question is that I don't know what crimes or offences the registry would be able to solve or prevent. From what little I do know about the registry, albeit it is little, I have yet to see any empirical evidence that it works for any offence. That's not to say I don't think it could; it's very possible, and I'm open to that. It's simply that in order to be satisfied that we are conforming to the principles of fundamental justice when we enact certain laws, we should be doing so with not too broad an objective and we should have an understanding of what it is the legislation is going to solve, the problem we're going to solve. Is there evidence that a particular solution will solve that problem? I haven't seen it. I'm open to seeing it. I hope the registry will solve some problems, but I wonder where the evidence is that it can, does, or will.

It's true that if a first offender commits an offence, the registry will not catch that person because that person has not been convicted before. The registry is only for someone who has been convicted before, so the issue is reoffending, not the global idea of the offences themselves.

Of course, as we know, the vast majority of sexual offences occur between people who know each other. The horrible tragedies where it is an offence committed by a stranger are in fact rare. That's not to diminish that we shouldn't be very alive to doing everything we can to prevent that, but again, we have to maintain a perspective on what the levels of incidence are vis-à-vis what kind of solution we design to address that problem.

[*Translation*]

Mr. Serge Ménard: Before saying that I'll put the same question to Ms. Campbell or Mr. Baggaley, I believe we all agree that the kind of offence committed by the offender who assaulted the Stephenson boy is definitely a striking example of the usefulness of this registry. I also think that all the examples cited by my colleague Mark Holland are cases where that is not a problem; that's very clear.

It's true that the majority of sexual offences committed on a daily basis, which do not make newspaper headlines but are judged before the courts, generally involve people who already have sustained relations not only within the family, but very often at work. These offences are sometimes also committed in the field of education. They also occur among people who fall in love but do not have the matter prosecuted in criminal court because that would be contrary... That is the case in certain professional relationships and so on, and these are classified as sex offences.

I believe that Ms. Campbell is ready to respond to those concerns.

Mrs. Lisa Campbell: Yes, thank you very much.

The point you raise is very important. What is the purpose of the act? As Ms. Bethell said, a significant number of sex offences often involve people who know each other, and those offences are committed in domestic situations. They are often committed by young people who do not commit other offences during their lives.

Earlier we heard that the Ontario act contemplates a limited number of offences. And the purpose of that act is indeed to assist police where offences have been committed.

However, the federal act, which affords discretion, includes a broader range of offences, offences that people may commit before committing more serious offences, such as the one the Stephensons experienced.

It depends on what you want to do: do you want to assist police in preventing serious crimes, or do you want to help them rule out suspects in an investigation? That's the distinction between the two models.

The current federal model could also help prevent serious offences, while respecting the privacy rights of the persons involved. Does that answer your question somewhat?

• (1030)

Mr. Serge Ménard: Yes, but I'm ready to answer the one you're asking us.

I believe that, if possible, we all want to prevent as much as to prosecute quickly those who commit offences. That's the idea.

I'm talking about professional relations, such as those between a psychologist and patients, those between a teacher and a student where the age difference is not great, even though the student is a minor. These are all sexual relations that are characterized as assaults when the cases are brought before the courts.

[English]

The Chair: Thank you.

We'll go to Mr. Rathgeber, please.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

To all of the witnesses, thank you very much.

I'd especially like to thank you, Mr. and Mrs. Stephenson, for coming here and sharing your story and your passion on this very important issue.

I'm somewhat troubled by some of the comments I heard from the Office of the Privacy Commissioner, so I'd like to go there first.

Mr. Baggaley, I accept the premise that society, and we as parliamentarians, must balance privacy versus the value that a sex offender register brings to society. But I suggest to you that it becomes a self-fulfilling prophecy that a sex offender registry becomes ineffective if, by statutory definition, you limit its scope.

Now, we've heard some suggestion that the Ontario registry is more effective because it is more exclusive, and therefore, by definition, the national registry is less efficacious because it is more restricted. Do you agree with my premise that if you restrict its application to such a narrow...or to making it optional, at the

discretion of the judge, by its very definition you're going to capture fewer offenders?

Mr. Carman Baggaley: I have a couple of comments.

First of all, on the issue of discretion and the percentage of offenders who are in the national registry, one of the things I would suggest is that you try to get a very clear sense of why you're not capturing a higher percentage. Would a reasonable person look at it and say that these are cases in which the judge reasonably exercised discretion? Are these cases of plea bargain, or cases of the prosecutor not even asking?

So you should have a clear sense of why you have a much lower percentage.

Mr. Brent Rathgeber: Right. And the registry has only existed for four-plus years, so it's still in its infancy, especially compared with the Ontario registry, which has been with us nearly a decade.

Mr. Carman Baggaley: That's a fair point. But with respect to, I guess, the heart of your question—whether too much focus is being placed on the privacy rights of the offenders, and therefore, by definition, you've built in failure—I'd go back to the point I made earlier. It seems to me that a huge amount of information is already collected about the offender; I would ask what additional information you're proposing to add.

If there are problems with respect to police agencies not being able to access this, or if the system is structured in such a way that it's not easy and quick to search the registry, then by all means make those changes. The worst possible case would be to have this information, to intrude on the privacy of the individuals by collecting this, and then have a system that doesn't work.

You either make it work, preferably by measures that are as least intrusive as possible, or come to the conclusion that, by the very nature of the offences, this type of registry is not going to work.

• (1035)

Mr. Brent Rathgeber: On that point, we agree. I think we have to make it effective if we're going to compromise on the privacy rights of individuals. It's certainly my motivation, as I think it is for all of my colleagues, to make it effective.

Ms. Bethell, I want to challenge you on this hypothetical analogy that's been the subject of some questioning here, and that's the office kiss. I thank you for lending me your Criminal Code, which confirmed what I had suspected: sexual assault, section 271, is in fact a hybrid offence. The crown has the discretion to proceed by indictment or by summary conviction; you'll agree with that.

Mrs. Brydie Bethell: Yes.

Mr. Brent Rathgeber: So is not the solution to this problem—if we were to make registration of the designated offences mandatory, such as it is in Christopher's Law in Ontario—to make the discretion, in the trier of fact, limited to those convictions where the crown has proceeded by summary conviction? Doesn't that solve the office kiss problem?

Mrs. Brydie Bethell: It may solve the office kiss problem. It may solve the idea of sweeping up arbitrarily all persons into the registry who may not be appropriately there. That may solve that problem, and that's something to consider, but again, the issue with making it mandatory is that it leaves the prosecutor and judges without any discretion at all.

Right now in the criminal justice system—

Mr. Brent Rathgeber: But the prosecutors have the discretion to proceed by summary conviction.

Mrs. Brydie Bethell: Sorry...?

Mr. Brent Rathgeber: The prosecutor has the discretion to proceed by summary conviction.

Mrs. Brydie Bethell: Right, with respect to the Ontario registry. So you're saying that a summary conviction—

Mr. Brent Rathgeber: No, no, with respect to any sexual offence anywhere in Canada, if it's a hybrid offence, the prosecutor has the discretion to proceed by summary conviction.

Mrs. Brydie Bethell: Yes, they do.

Mr. Brent Rathgeber: Thank you. So you're not taking away the crown's discretion.

Mrs. Brydie Bethell: I'm sorry...?

Mr. Brent Rathgeber: You're not taking away the crown's discretion on a hybrid offence. That is my question.

Mrs. Brydie Bethell: No, the discretion is with respect to the registration. That is what I'm talking about.

Mr. Brent Rathgeber: Thank you.

Is that my time?

The Chair: I'm so absorbed in listening here that I wasn't watching. Yes.

I have a question. I was hoping in all the rounds of questioning that we would come back to something we heard last Tuesday, and that is that in the U.S. the public has access to information about who is living in their communities. Could each of you give me a brief comment on whether you would agree it would help in protecting the public if it had access to the information that is contained in the sex offender registry? Could each of you give me a brief comment on that?

Mrs. Brydie Bethell: I will come back to a comment I made in my opening statement, which is that in a democratic society, we make the decision for the prosecution of offences and the investigation of offences to be undertaken by the criminal justice system. We don't undertake that obligation or responsibility ourselves as individuals. So in my view, that would be an impermissible breach of privacy rights.

Mr. Carman Baggaley: There are already provisions under the Conditional Release Act that allow, on a case-by-case basis, information to be released to local police forces and to the community, when someone is released who is considered to be a threat. We would much prefer this to be dealt with on a case-by-case basis as opposed to making the registry open.

Mr. Jim Stephenson: Just prior to commenting on the question, I'll make another comment. That is, I'm absolutely stunned by the

amount of attention that has been paid to this office-kiss scenario. We are talking about the national Sex Offender Information Registry Act, which covers a range of offences, sexual offences, from homicide to an office kiss. The majority of the offences for which convictions are brought down fall well within those ranges, and it is just stunning to spend the amount of time we have this morning on discussion about whether or not an office kiss should result in the offender being placed on the registry.

However, having said that, at the time the Ontario registry was in its conceptual state, we were approached with the question of whether or not the information should be made public, and our advice on that was no, absolutely do not make it public. The last thing we need to do is put information about offenders, who may or may not be guilty of a particular offence that is under investigation, in the hands of the public, particularly concerned family members who may take the law into their own hands and do something they would regret and society would regret at a later date.

I'd like to make another comment, too, on the registries that exist in other jurisdictions. This seems to have been something that someone has thrown up on the wall. It seems to have stuck that the Ontario registry, compared to other registries in the States, doesn't seem to have the same kind of power of police search capability or the ability to assist in an investigation. I would think Ontario's model is, as I've mentioned in my presentation, state of the art. Registries in the States, in various jurisdictions south of the border, range from notebook information maintained at various central police stations, to Hilroys that go absent and are taken home by officers who are involved in management of the information, to models that are computer-based, similar to Ontario's.

So to compare apples with oranges is a mistake, and I would think if we look at the success or lack of success of models in the States as a benchmark for what we should be doing in Canada, we're making a bit of a mistake and we're shortchanging the ability of a model that is based on current IT and is aggressive and proactive. The jurisdictions in the States cannot boast similar models in operation in their investigations.

• (1040)

The Chair: Thank you very much.

Mr. Kania, please.

Mr. Andrew Kania (Brampton West, Lib.): First, to the Stephensons I'd like to sincerely say that I am truly very sorry for your loss.

Speaking to the reason we're here today, my perspective is that we have to develop a system that is as strong as possible, taking fairness and privacy issues into account, but unfortunately, we're here seven months after amendments were passed. I think most of the members of this committee would agree that when Bill S-3 was proposed and passed under the leadership of the Conservatives, they left a number of problems unsolved. What I'd like to discuss is those problems and how we best can develop a system that focuses more on prevention.

We have discussed mandatory inclusion, automatic registration, the use of the system proactively, so that they can try to find people who have been abducted, as one example.

Concerning identifying people, I find it quite amazing that under the amendments they didn't allow for warrants to be issued or for publicizing people who have not registered, as they are supposed to do. Failure to use licence plates on vehicles I can't understand either.

What I'm looking at is something that tries to fix these problems that were left unresolved when the Conservatives passed these amendments seven months ago.

I will address the Stephensons first. You say the Ontario system is state of the art, and I know it is much better than the federal system, so my first question is whether you think there are any ways that the Ontario system should be improved, so that we would take that into account when trying to do something else now.

Mr. Jim Stephenson: You mention the amendments that were legislated about seven months ago. They came as a result of the findings of the Auditor General, who had done an audit on the sex offender registry. He mentioned a number of shortcomings and gaps and soft spots in the existing legislation at the time. The provincial government's response to that was to move to close those gaps and loopholes, as he had suggested in his report.

Beyond that, I am not aware of and cannot recite any further enhancements that we would submit here today.

Mr. Andrew Kania: This is to the Privacy Commissioner. In your report, you made a comment: "There may be ways to make the scheme more effective through increased resources or through procedural changes that would enhance the effectiveness and value of the legislation without increasing its intrusiveness." When I read the words, "without increasing its intrusiveness", I understand, don't put in mandatory inclusion and don't remedy all these various problems.

What I'd like to know from you, either today or through a written response at some point, is what you would suggest to improve the system to the strongest possible level without violating privacy rights that you are responsible for. That is something I want to address.

I am going to suggest one potential compromise. If the legislation is made stronger, and I'm not going to suggest what should be included, but if it is made stronger to try to address some of the problems, what about a potential compromise? Right now section 17 of the statute provides penalties for the improper use of the information. One suggestion perhaps, and I'd like to hear your opinion on it, would be to make that even stronger, to really provide a disincentive to anybody to improperly use this information at the same time as we're strengthening the legislation to make it more helpful for preventative types of activity.

I'd like your comments on that.

• (1045)

Mr. Carman Baggaley: I'll be brief.

We're not convinced that this would necessarily be more effective, unless we have some reason to believe that there's a problem now that the information is being misused. From our perspective, the privacy intrusion is not about the misuse of the information in the registry, but rather about the collection of the information, the monitoring of the individuals. That's why we're saying that there

needs to be a balance, and one way to look at the balance is to assess its effectiveness.

Concerning ways to make it more effective, resources is one possibility. I suspect that one of the problems with the scheme is that ultimately it is a national scheme and not a federal scheme, that much of the day-to-day work is not done by the RCMP but by local police forces. How you get them to cooperate or how you get them to take a more active role is likely to be a challenge.

Are there systems ways to make it more effective? One of the problems, I understand, is that when the year is up and the individual has perhaps not re-registered, there isn't a simple systems way of identifying the fact that the person has failed to re-register. Are there ways to address some of the problems that would not increase the intrusiveness?

The Chair: I want to make the committee aware of and would like to welcome the group of grade nine students who have come to observe the proceedings of this committee. They're from the Woodbine high school in Toronto, and I believe they want to see how Parliament works outside the House of Commons. I hope they will see that some real, serious work goes on here that is generally not as political as what they would normally observe.

Welcome. We appreciate your taking the time to observe what we're doing here. Thank you.

Mr. Serge Ménard: We are the best committee.

The Chair: That comment you heard was that "we are the best committee". I won't object to that.

An hon. member: Hear, hear!

The Chair: Thank you very much.

We will now go over to the government side, to Mr. MacKenzie, for a moment.

You're sharing your time with Mr. McColeman?

Mr. Dave MacKenzie: Yes, I am, Chair.

For the benefit of the public watching—because this is televised—I want to make two things very clear. Mr. Kania spoke about the amendments that were just made and why these things weren't fixed. From this side, we would say it's a shame that the federal policy didn't mirror the Ontario policy when it was implemented by a former government.

The other thing, which is perhaps even more important, is that I don't want to leave the impression that the government is looking at making this a public, accessible document or system. I know that was not your intention; you were simply asking for clarification. But just so that there is no misunderstanding, it's not the position of the government to make this accessible to the public.

Thank you.

The Chair: Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): Thank you, Mr. Chair.

I too want to say to the Stephensons that we will never understand, any of us, what you have experienced. Your courage and your wisdom in your public witness speaks volumes.

I want to thank the other presenters as well, because you provide a very stark contrast to this issue and to the protection of the perpetrators.

Public safety, to my mind, happens every day, every second, every hour. The issue of the sex registry reminds me of the poster—it's a picture, actually—used by firefighters in promoting the need for working smoke detectors. Many of us have seen it. It's a firefighter standing outside a charred building holding the body of a charred baby. We have here a smoke detector that isn't working—it doesn't have batteries. It's nice to look at, and it rather makes you feel good; it gives you a sense of being secure without that actually being the case.

I was shocked, and I would like my question now to be to whoever chooses to answer, to hear that 50% of the people who are convicted, due perhaps to judicial discretion—and I believe this is the comment, Mr. Stephenson, that you made—do not end up being put on the registry.

Would you like to comment further on that, sir? Or would someone else like to comment on the reason for it?

• (1050)

Mr. Jim Stephenson: It's a matter of grave concern. Add to that the fact that the legislation requires that when judicial discretion is exercised and the judge determines not to proceed to issue an order to register, he's required to document the rationale behind his decision. In fact, that is not being done. To go back, as one of the witnesses suggested, to review the rationale for why the discretion is used to the extent it is.... I doubt that you'd find much success in that type of exercise, because quite simply, there is no narrative provided on the rationale not to order an issue to register.

But I'd be very interested in what the response from the other witnesses might be.

The Chair: Would you like to comment?

Mr. Carman Baggaley: I continue to think there might be value. One thing is, at least according to some reports, that there's plea bargaining. There is failure of the prosecutors to make the request. I think it's very useful to separate what a third party might view as a reasonable use of judicial discretion from other reasons. It's a striking figure that almost 50% of the offences are not on the registry, and I think it's very important to know why that is the case.

I note from the experience of the DNA Identification Act, which also has discretion built into it, that over the course of the life of that scheme, the percentage of people who are now providing DNA has steadily increased; in other words, the percentage of people who are not required to provide DNA has steadily decreased as the law has come into force. One thing that I understand has worked in that area is that there has been some attempt to work with the judiciary to make them better understand the legislation.

Mr. Phil McColeman: Mr. Chair, I'd like to address my second question to Ms. Bethell.

You mentioned in your opening comments the balance of budgetary constraints against the benefits, and weighing that. I wonder if you are aware of the per annum costs to actually run this registry.

Mrs. Brydie Bethell: Yes, I am. At present I understand that the resources are not high. But if there are to be further amendments, then it's an open question as to whether that would increase the costs.

And if resources are going into the registry—and that might be a valid value-added thing to do—I just question what the balance is between putting money into the registry and whether there is money being taken away from other sides of the balance sheet, taken away from rehabilitation efforts, for example, from probation, and those other kinds of social integration efforts.

Mr. Phil McColeman: Mr. Chair, if I may, I'll put on the record that the actual cost is approximately \$400,000 a year to run the registry.

Mrs. Brydie Bethell: I've seen numbers ranging from \$400,000 to \$600,000.

Mr. Phil McColeman: Yes, to \$600,000.

I'm a new parliamentarian, but apparently it was initially \$2 million to set up. So in a comparative sense with other registries that we've been discussing in Parliament, I just want to put that on the record as a frame of reference.

Mrs. Brydie Bethell: If I could just comment on that, this is probably a little provocative, but the gun registry of course is an example—I realize this is regulation of guns, and not people—of something that can take on a life of its own when resources are put into a registry like that.

I think you make a valid point.

• (1055)

The Chair: An excellent point, I must say. That needs to be stated very clearly—\$85 million to \$90 million for....

I just want to point out to the students who are watching here that one of the purposes of a committee like this is to review legislation to see how effective it is. What we are doing today is reviewing the sex offender registry. I just wanted to put that in context to help you understand that one of the purposes of parliamentarians is to ensure that the laws that we put in place that Canadians have to live by are effective. That's what we're doing here in committee, and many committees do that same thing.

I have only a request for one more brief question from Mr. Kania, and then we'll wrap up this meeting.

Mr. Andrew Kania: I have a very brief follow-up in terms of the Office of the Privacy Commissioner. The comment was:

There may be ways to make the scheme more effective, perhaps through increased resources or through procedural changes that would enhance the effectiveness and value of the legislation without increasing its intrusiveness.

Can you please provide us with something in writing with the specific ideas you may have? I think we should take them into account, but I think that sort of comment needs to be concrete in terms of how we would improve this.

Thank you.

Mr. Carman Baggaley: Yes, we will do that.

The Chair: Does anybody have one very brief closing comment?

Mr. MacKenzie.

Mr. Dave MacKenzie: It's not about this, but could we have two minutes after?

The Chair: Then we'd better wrap this up, because I think there's another group waiting.

Mr. Stephenson, you indicated you have a little comment.

Mr. Jim Stephenson: If I could, I always like to have the last word, and since I've been invited....

One of the concerns is the cost of the registry, the cost of maintaining and administering it, and whether it is maybe in the better interests of society to put those dollars into preventative or treatment programs.

I've had this discussion with police officers. I've had this discussion with offenders in the institutions who are there because of convictions for sex offences, and they appreciate the fact that the sex offender registry reminds the sex offenders that somebody is watching. And if that isn't preventative enough, I don't know what else can be suggested. But certainly convicted sex offenders have confided to me—and I know they can be a manipulative population, but I believe they are sincere when they have confided this—that they appreciate very much the fact that they are required to register. They know they're going to have a policeman knocking on their door to verify address and verify that they are not taking up residence in an apartment building that is full of children under the age of eight or under the age of fourteen. That is a kind of preventative offshoot, a very beneficial offshoot of the sex offender registry, which I think was not anticipated at the time it was crafted and put into place.

That would be my final comment.

The Chair: Mr. MacKenzie, did you want to go in camera?

Mr. Dave MacKenzie: No, not necessarily.

The Chair: Okay.

The witnesses may excuse themselves, and we'll just continue with our business here. Thank you all very, very much for appearing. We've appreciated your testimony very much.

Go ahead, Mr. MacKenzie.

Mr. Dave MacKenzie: The only thing I would say for the committee is that I think we have two days where we maybe don't have anything blocked off, and the witnesses the other day talked about coming back in an evening. I know we've talked to some people and found out that most folks feel their evenings are pretty tied up, but I'm wondering if we could have the Ontario people come in and do a demonstration.

The Chair: A demonstration of...?

Mr. Dave MacKenzie: I'm wondering if we could use one of those days and have them come back and do the video. I think it would be beneficial, and if it fits—

The Chair: Okay, I'm going to set 15 minutes aside on Tuesday to discuss future business of the committee, and let's keep that in mind for May 14. I have a suggestion for May 12 and May 14, and we can discuss all of that next Tuesday.

Okay?

Mr. Dave MacKenzie: Okay, that's fair.

The Chair: Does anybody else have anything to add?

This meeting stands adjourned.

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