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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Monday, December 11, 2017**

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**Chair**

**Mr. Anthony Housefather**



## Standing Committee on Justice and Human Rights

Monday, December 11, 2017

• (1530)

[English]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):** I call the meeting to order.

Good afternoon, everyone.

[Translation]

I would like to welcome you to the 81st meeting of the Standing Committee on Justice and Human Rights.

Pursuant to Standing Order 108(2), we are continuing our study on counselling and other mental health supports for jurors.

[English]

I'm really pleased to be joined by some very distinguished witnesses today. We will hear from Ms. Cherish De Moura; Ms. Sonia Chopra, from Chopra Koonan Litigation Consulting; Mr. Mark Zaborowski; and by video conference from London, Ontario, Mr. Peter Jaffe, who is a professor in the faculty of education at Western University. Welcome.

**Dr. Peter Jaffe (Professor, Faculty of Education, Western University, As an Individual):** Thank you.

**The Chair:** We'll go in the order that I read from the agenda, hearing from each person for eight to 10 minutes, and then we'll have questions.

We're going to start with Ms. De Moura. Welcome, Ms. De Moura. Go ahead.

**Ms. Cherish De Moura (As an Individual):** Thank you.

Hello. My name is Cherish De Moura. I would like to walk you through my experience of being a juror, from the selection process to serving on the jury to taking part in deliberations to life after jury duty.

Throughout I will highlight specific stressors and rank them on a scale of one to 10 to help you get an idea of what it's like to take part in a jury process and its long-lasting impacts.

I'll begin with the selection process.

In late 2012, I was summoned for jury duty in Toronto, and my stress level was zero. In fact, I was excited and proud to take part. In the courtroom, among hundreds of others, I was selected to interview with a detective to see if I would be a good fit for a coroner's inquest. We were told that it may be a year-long case. It would be high

profile, and this jury would hear evidence and make recommendations so that a future death under similar circumstances could be avoided.

At the time, I was working as a senior adviser with the federal government. I managed the office of a director general, issue-managed contentious and sensitive matters, and provided recommendations for their resolution. I believed that my work made me an ideal candidate for this jury panel, and I was selected.

The authority of the detective and the pressure of wanting to do well in the interview made this a stress level five.

Now I'll move on to serving on the jury.

I began my jury duty in January 2013. Knowing that I might be there for an entire year, I treated this experience as if it were a new job. The first-day jitters, not knowing what to expect, and meeting new people made this a stress level three. At this point, I was still excited.

I will now give you some details about the case so that you have an understanding of what I heard and saw in my new job, beginning with the inquest synopsis and my experience.

The coroner's inquest into the death of Ashley Smith took place from January to December 2013. This was a case of a 19-year-old woman with mental health issues dying while in the custody of Correctional Service of Canada. It was a high-profile case that garnered nationwide attention because it crossed many provincial boundaries.

A coroner's inquest is unlike a regular trial. It is composed of only five jurors. We were charged with answering five pertinent questions about the deceased and making recommendations to avoid future deaths in similar circumstances.

Also, what separated this case from most was that we had the opportunity to speak to every witness who took the stand. At the outset, the coroner told us that we speak for those who can no longer speak for themselves. This was a responsibility that I did not take lightly. I spoke to several correctional guards at the institutions where Ms. Smith was held, as well as their supervisors, wardens, and senior management from regional and national headquarters, including the commissioner for CSC. I questioned her doctors and nurses, leading experts in the field of youth mental health, women and psychiatry, and Ms. Smith's mother. That was stress level 10.

Every day for a year, we walked past the numerous lawyers in the court room, national and local media, and the general public. For each witness who took the stand, we watched and listened to examinations and cross-examinations. Then the tables were turned and the courtroom listened to the jury conduct our own questioning. It is not a normal environment. There's constant pressure to process all of the information and then immediately ask someone questions about their role in another person's death. This resulted in stress level nine.

There were 116 witnesses in total, and over 80,000 pages of evidence were examined. We read and discussed how Ms. Smith would hide broken glass in her cavities, then use that glass to make ligatures to choke herself. We heard numerous audio recordings of conversations between correctional staff and management. We were shown videos depicting the treatment of Ms. Smith. Some of them were violent, showing numerous uses of force against her, Ms. Smith being sprayed with pepper spray by guards, and guards entering her cell in full riot gear. Ms. Smith was in various emotional states, such as sadness, fear, distress, anger, and frustration.

The constant ongoing stress of watching, reading, and hearing someone suffer raised the stress to level 10.

Next was the death video.

There are few videos that I can recall to this day, but there is one in particular, the death video. We were told the week before to prepare to watch it the next Monday. It was a daunting feeling, having to watch someone die—not in a movie, but for real. Having the weekend to think about it, how does one prepare themselves? That was stress level eight.

From a layperson's perspective, you see a young woman hunched over herself, pinned between a concrete wall and metal bed. You hear laboured breath-like noises that make you think she's gasping for air. We watched it twice in court. The second time was with a respiratory expert on the stand. His function was to explain the last seconds of Ms. Smith's life as she died from ligature strangulation and positional asphyxia.

•(1535)

We'd watch a few seconds and pause the video, and then he would explain exactly what was happening in her body. We'd watch a few more seconds, and again pause as he explained how the position of her body being pinned between the wall on the bed is problematic because...I don't remember now. We'd continue the video.

Watching it in this way was clinical, cold. We jurors were just regular members of the public. We didn't know that what we originally thought were breaths, gasps for air, were in fact her body expelling its last gases. She was dead many gasps ago. The impact level was 8.

In the early months of the inquest, we visited Kitchener's Grand Valley Institution for Women. I stood in the very cell where she died. Standing there, looking around, I felt something within me, and it was eerie. The stress level was 10.

On another occasion, we visited a psychiatric hospital that she attended. Seeing a bed where mentally ill are strapped down and

restrained in an unsympathetic room was highly unsettling. The stress level was 9.

I remember there was an older correctional guard who took the stand. He recounted emotional moments he shared with Ms. Smith prior to her death. At the end of his testimony I looked around, and there was not a dry eye in the courtroom, especially one of CSC's lawyers, a man in his 50s, crying so hard his head was in his hands. It was clear how real the impacts are of one human life on another. How can one not be impacted? None of us in the room, except for that one guard on the stand, had even met this young woman. The impact level was 9.

Others on the stand took the loss of life so flippantly that it angers me to this day—those who could have done better but didn't, those who should have done something but refused. So many said, "I did the best that I could." Those words haunt me. Since then I've played and replayed conversations of what more I could have said to those on the stand. The stress level was 10.

In terms of impacts, I didn't realize I was being stressed out, not at first anyway, but psychological stresses have a way of becoming physical. I experienced nightmares, recurrent thoughts, loss of sleep, loss of balance, weight loss. Grinding of teeth at night escalated to clenching of teeth during the day, which led to headaches. I had a general feeling of anger all the time, and the feeling of helplessness.

One morning near the end of the inquest, the jury began talking about the case's effects on our health. It turned out I wasn't the only one having trouble. That day the courts brought in two counsellors for us. We talked as a group for perhaps an hour. The counsellors seemed inexperienced to deal with what we were going through. At the end, I left with a list of sad movies that were intended to help me cry. That was insufficient. The helplessness level was 1.

In terms of the deliberations, the jury was there to answer five questions. The first four were simple, as they were presented in evidence. Who was the deceased? When did she die? Where did she die? What was the cause of death? However, the most controversial was the final question: by what means did she die—suicide, homicide, accidental, natural, or undecided? It weighed heavily on me, as I felt that it was the most impactful. The stress level was 9.

After participating in the process for a year, I felt a high amount of pressure to do a good job, give the right answer, give the best recommendations. After a week of deliberations and composing recommendations, the jury came up with 104 recommendations. The stress level was 10.

In terms of life after jury, when the inquest ended, for my civic duty I got a thank you and a goodbye. Something so out of the ordinary that no one could have prepared me for, that had consumed my life for a year and would have impacts so great and long-lasting, was over.

How was I to deal with the mental and physical concerns I had as a result of a year-long jury case? I didn't know who to turn to, so I created my own support system. I saw my family doctor and was referred to a psychiatrist and a psychologist. I began seeing a massage therapist, osteopath, and naturopath. I had a team of medical professionals helping me, anyone I thought could make a positive impact on my health, with thousands of dollars paid from my own pocket.

Here are my recommendations for your study. Number one, give jurors tools in advance so they can recognize the signs and symptoms of stress early. This can be as simple as an information leaflet or poster in jury rooms highlighting the most common symptoms of stress and giving them basic information and coping strategies once they start to see the signs.

Two, implement a juror assistance program. Once jurors know how to recognize their symptoms, they might need psychotherapy. Similar to how an employee assistance program works, offer jurors someone to reach out to, a program that connects with professionals who have experience working with jurors or who are specialized in the nature of the trial.

● (1540)

Number three, in cases involving death or distressing details, help needs to come soon. It should not just be offered, but given. This may entail bringing in counsellors at key points in the case or after a certain duration—for example, 90 days—so that stress is not compounding. I would recommend this as mandatory. The immediate cost of this may be far outweighed by the long-term burden on the individual jurors.

Fourth, jury duty is unlike any other circumstance in one's life, and jurors have no network—i.e., family or friends—with whom they can share what they're experiencing. They need someone who can guide them through what to expect in emotional impact, psychological impacts, impacts on their family and social life, and when the jury duty ends, they need someone to set expectations on how to adjust back to normal life after being a juror. It's post-trial care, if you will.

As closing remarks, it's almost four years to the day that we delivered our verdict. That was on December 19, 2013. At times I still feel the consequences of the inquest, especially when I hear the name Ashley. I'm told it will pass in time.

Don't get me wrong: serving on this jury, while very challenging, had its positive impacts. I learned so much about Canada's correctional, legal, and health care systems. Through speaking up for someone who could no longer speak for herself, I've learned how to speak up for myself more, and I certainly treat people with more care now.

Finally, I would like to thank the Standing Committee on Justice and Human Rights for allowing me the opportunity to share my experiences and for affording your time and efforts to ensure jurors

have access to the necessary psychological support services they may need. I am excited to hear what comes of your study. My hopefulness level is a 10.

**The Chair:** Thank you so much, Ms. De Moura. I know how difficult it is sometimes to express the incredible emotions and convey them to the committee, but just understand that your testimony will be incredibly helpful to us in formulating recommendations.

**Ms. Cherish De Moura:** Thank you.

**The Chair:** Ms. Chopra, the floor is yours.

**Dr. Sonia Chopra (Chopra Koonan Litigation Consulting, As an Individual):** Good afternoon. My name is Sonia Chopra. I received my Ph.D. in psychology, with an emphasis on psychology and law, from Simon Fraser in 2002. I've since worked as a litigation consultant in the United States for the last 15 years. In my role as a consultant, I assist attorneys in preparing for trials. I conduct mock trials, do witness preparation, and assist in jury selection, but I also do a number of post-trial interviews with jurors.

My dissertation research at Simon Fraser dealt with the experience of stress among Canadian jurors. Data was collected by interviewing former jurors. I was interested in how Canadian jurors' stress levels might compare to the levels of stress experienced by jurors in the United States, primarily because of two significant procedural differences between the two countries. The first is section 649 of the Criminal Code, which prevents jurors from discussing the content of their deliberations with anyone, even after the trial is concluded. By "anyone", that means spouse, partners, mental health professionals, spiritual advisers. The content of deliberations is illegal for them to talk about, and it's illegal for anyone to ask about. Jurors in the United States are prohibited from discussing the case during trial. At the conclusion of the trial, they are generally free to speak with anyone but are told they don't have to speak with anyone.

From prior research on stress reactions, we know that social support is one of the key factors in reducing stress. Being able to talk about it, to debrief, being able to share your experiences, is one of the most effective ways to reduce stress levels, so it was expected that the ban on discussing deliberations among Canadian jurors would be a significant source of stress for them.

The second key difference in the two countries is the jury selection process. As you might be aware, in the United States, jurors are routinely questioned about their background, their life experiences, and their attitudes and beliefs as they relate to the nature of the trial. It's often specifically tied to the types of evidence they might hear or see, the images they might be expected to witness. Just as in Canada, jurors in the United States can be removed by either a peremptory challenge from the attorney or by a challenge for cause.

Some lawmakers in the United States, in talking about juror stress, have suggested that the jury selection process serves a role in weeding out jurors who may not be equipped to handle certain types of trials because of their own personal life experiences, mental health issues, or sensitivity to certain types of evidence.

As you know, in Canada the jury selection process involves very little questioning. If there is any questioning allowed at all, it's typically by the judge, and it often deals with exposure to pretrial publicity. Sometimes the nature of the case is mentioned, but not always, and jurors are rarely given a preview of what sort of evidence they can expect to see.

The results of my research are detailed in the brief that I submitted, and there's also another handout here that has some of the statistics. I'm happy to make a copy of my dissertation available electronically. I know there hasn't been an opportunity to get it translated yet, but I'm happy to do that for the committee.

In short, the primary findings are that two-thirds of the jurors I spoke with indicated they agreed with the statement, "I experienced stress as a result of my jury duty." An even larger percentage, 84% of those I spoke with, agreed with the statement, "I think other jurors experienced stress as a result of their jury duty." Nearly two-thirds of the jurors said that stress had an effect on the thinking of other jurors, and 48% felt that stress had an effect on the decision-making of jurors.

There were 40% who believed that something should have been done to address the stress that the jurors were experiencing. When asked for suggestions about what could be done, the most common responses had to do with providing post-trial debriefing; improving the juror conditions; providing more instructions about the decision-making process, their task as jurors, and their role; and expanding the breadth of questioning allowed during jury selection.

Jurors were asked about the sources of their stress. Seven of the top 10 sources of juror stress related to reaching a verdict and to the deliberations process. Again, this is relevant because of the restrictions under section 649 that prevent jurors from talking about this part of the process, which is often deemed the most stressful. Many jurors spoke out about the stress they encountered within deliberations, although we had to be very careful about it because I would be in violation of the law, and they would as well, if I had to delve too deeply.

● (1545)

It was very difficult during the data collection process, because there were some jurors who I could see were emotionally upset and wanted to talk, and I had to stop the inquiry. It was difficult for me just as a human being, much less as a researcher, to tell them, "Okay, you can't tell me about that."

Several of the jurors hinted at problems with other jury members, suggesting that the jury selection process should allow for more thorough screening of potential jurors.

Jurors who had the highest levels of stress were significantly more likely to indicate that they found it necessary to talk to others about the distressing aspects of their jury duty. That said, even the majority of jurors who were not ranked as having high stress or having post-

traumatic stress-like symptoms also wanted to talk about their experiences at the conclusion of the trial.

I rated jurors as high stress or low stress by a couple of different criteria, which are all outlined in the brief. One was looking at jurors who experienced symptoms associated with a diagnosis of post-traumatic stress disorder. The other was a summation of different levels of stress, so I have the PTSD, non-PTSD sub-sample, then the high-stress, low-stress sample.

Before I get into that, I want to highlight a couple of things.

I find that the data is interesting, but hearing from real jurors in actual quotes is much more impactful, so I want to highlight a couple of the responses that I heard from jurors describing the difficulty of the deliberation process.

"Conflicts in the deliberation room and the length of time exacerbated everyone's stress and made things difficult."

"The deliberation room, that's where the stress began. The trial was fun."

"I was just appalled with the jury. If there's a weak link, that's where it was."

"Stress wasn't because of the trial; it was because of the other jurors."

"Infighting with the jury was my only source of stress."

"Deliberations were stressful for me and I'd been holding it in."

"After the verdict, I was crying."

"It should be talked about with someone who can effect changes or give guidance."

"The dynamics of the group and the process, that's what caused my stress."

Jurors talked about not being allowed to discuss the deliberations: "That's what's most stressful." "You should be able to talk to a counsellor or a psychologist after because of the stress from jury dynamics and the pressure."

Jurors talked about being sequestered and having to spend long amounts of time with relative strangers. They talked about how things like a certain person's laugh or their mannerisms would start to be stressful to them, and make it even more difficult. They said, "I got sick and tired of looking at them." "It was very exhausting and stressful to be with a big, loud group for so long." The deliberations and especially the sequestration process were difficult for them.

Going back to the jury selection process, some of the quotes were, "One person had repressed feelings about the past that came to light...it was left for us to sort out." "Lawyers should ask questions... because you may get someone who can't decide because of their past." One juror said, "I experienced a very strong reaction. I had a stress break and spent some time in hospital afterwards. It really shook me up...I wonder if there's a way to get a psychological profile of prospective jurors. I'm sure I'm not alone in the reaction I had, and it could have been avoided...there should be a brief questionnaire to screen people who have a heightened sensitivity."

Then jumping back to what I was talking about before, jurors' stress and the need for discussion, you can see that 82% of jurors who are classified as having some levels of post-traumatic stress disorder said they found it necessary to talk to others about distressing aspects of their jury duty, and 91% of these individuals said that after the trial they felt the need to discuss their experiences.

There are similar numbers for those who are rated as high stress: 77% of high-stress jurors wanted to talk about distressing aspects of their jury duty, and 94% of those wanted to speak about it at the conclusion of the trial, but again, notably, even 67% of those who weren't rated as high stress wanted to discuss their experience.

Most of the respondents had no contact with the judge at the conclusion of their trial. I heard a lot of jurors saying things like, "After all of this, weeks, months, they just sort of kicked us out on the street, and we didn't have any closure. We didn't know what we could expect in the future. We didn't know if what we were going through was normal and something to be expected."

Of those who did not have an opportunity to speak with the judge, 65% said that some sort of debriefing or the chance to just talk with the judge, aside from even mental health professionals, would have been helpful.

Juror commentary regarding the desire for post-trial debriefing was both prolific and compelling. Some of the quotes here were, "I was so surprised there was no debriefing. I was very upset with how it ended so abruptly. It was an intensive experience. We were treated as important, but immediately after the verdict, we were just hustled out.... I had lots of problems for the next week. I didn't sleep. I kept seeing the person's face...even now when I think about it."

Another said, "I needed to debrief with somebody to talk about our experiences. ... I hadn't slept all night. I was so exhausted...being on Smith Street with my luggage and trying to catch the bus, I felt so disoriented."

• (1550)

Another said, "There could be more of a debriefing process once the case is closed. ... It comes to a close and you walk out onto the street with a lot still on your mind, still unresolved. ... You go home and you can't talk to your family."

Another said, "I wish I had taken the names of the jurors, because I can only talk to them. I needed to be debriefed. There was no sense of closure. Even 10 years later, I still feel the need to talk about it."

Another quote was, "We needed a professional to talk us down. ... We should have had some sort of counselling for the whole jury. It was the worst thing I ever imagined. The pictures were very traumatic. We all had PTSD afterwards."

One juror described how she'd had a big dinner the weekend after she'd finished: "I had 20 people at my house. I had to go from this very serious business...and luckily my family members were helping me out, trying to lighten the mood. I really felt I needed someone to tell me, 'This is what you're going to experience', because I felt really awful. I felt sick inside. For a good week I felt awful. ... All I would have needed was a half hour or something, a handout, a resource, someone to say, 'If you feel this two weeks from now, you ought to call this number, and they'll just talk to you', just to know. We were

treated as being special, and then the minute it was over, it was like, 'Hit the road!'"

There are a number of policy recommendations that could reduce the amount of stress experienced by Canadian jurors and provide mechanisms for faster resolution of stress that may be experienced. These are outlined in my submitted brief. They include a number of things, one of which is more comprehensive orientation. I know there's been a push toward having resources available at the end of the trial, and I think Mark is going to speak to some of this, but there's also a need to have more information given to jurors before the trial about what to expect, about trying to figure out if this is something they could handle or not, about what the process is going to be like and the potential for having stress reactions. Jurors want to know even simple things, such as where to park, what to wear, where to go for lunch. Uncertainty also increases stress levels unnecessarily.

Another recommendation is to make the juror experience more physically comfortable. Some of the jurors talked about the poor quality of the jury rooms they were in, about being locked in these windowless rooms with nothing to do, having no recommendations about where to eat, and the jurors' pay—it cost more to park downtown than they were getting paid, and then they couldn't buy lunch. If they're not getting paid by their employer, that can become a hardship on people who really want to serve and want to do their civic duty.

Another recommendation is around educating judges and sheriffs about juror stress and the symptoms and reactions. I think there's been a movement to educate judges, but educating those who are on the ground in the courtroom, those who have interaction with the jurors, would also be a beneficial step.

Debriefing by the judge should be routine, no matter what type of case. I think there's a misperception that only jurors who serve on gruesome murders or child cases experience stress, and that's not true. As I mentioned before, sometimes it can be a rather mundane case, but problems within the group dynamics or the deliberation room can also result in stress. Making it universal normalizes it so that jurors know it's okay to feel the way they do. It also makes sure we don't skip those jurors who may experience stress reactions but who are not on what we consider a high-profile or particularly gruesome trial.

Because of the time limitations, I want to focus very briefly on three of the more controversial policy changes that I recommend: modifying section 649 of the Criminal Code, expanding the scope of jury selection, and eliminating the requirement that jurors be sequestered.

I'm going to start with section 649. The rationale behind section 649's protection of juror secrecy is fourfold—to protect the finality of verdicts, to protect freedom of debate in the deliberation room, to protect jurors from harassment, and to promote public confidence in the jury system.

In the United States, there is federal rule of evidence 606(b). It addresses some of the same concerns, but as mentioned previously, jurors in the U.S. are free to talk about their experiences after the trial is over. There is, in fact, no empirical evidence to suggest that trials are overturned more in the United States because of juror commentary than they are anywhere else. In reality, in my experience—and I've been doing this for a number of years—it is incredibly difficult to get a verdict overturned because of something that happened in the deliberation room.

There are reported examples of jurors using cocaine in the deliberation room, and of drinking during the trial. Those did not result in an overturning of the jury verdict. It's only if a juror reports the influence of outside information coming into the deliberation room or if the jurors ignore or fail to follow the judge's instructions. Those are the only two instances in which they will even hear an appeal based on jury misconduct, and it's incredibly rare to have it granted.

•(1555)

Moving on to the second reason, protecting the sanctity of deliberations, there is an idea that if jurors think they're going to be questioned about their deliberations, they're not going to be honest in the deliberation room. Again, there's no empirical evidence to suggest that's the case. In the United States, jurors don't have the expectation that it's going to be secret, and there's nothing to suggest that their deliberations are any less robust than they are in Canada.

On the third reason, protecting jurors from harassment is easily accomplished by ethical rules guiding post-trial conduct with jurors. Attorneys are told that if they contact a juror and the juror doesn't want to talk to them, they are not allowed to go back multiple times to try to get permission to speak to the juror. No is no, one answer is enough, and you can be sanctioned if you don't.

As for public confidence in the jury system, I think this is the most ridiculous rationale for protecting juror secrecy. I think the reason the public often questions jury decision-making is that they don't know how the decision was made. You hear the public ask how this jury could have come to this conclusion; it's because they don't know what went on in the process. Often once they learn how the jury made their decision, there's a greater understanding of why that verdict made sense, at least in the United States.

Lastly, I think from a public confidence point of view, we have to protect our jurors. If we want jurors to continue to serve as jurors and to value the system, then we need to provide them with avenues to reduce the stress they're experiencing while they're serving, and also provide the opportunity to talk about it afterwards. We need to make improvements to the system, not only in terms of juror stress but also in terms of how the system operates, to help it become more efficient, and to help shorten the duration of any stress experiences jurors might have.

I would propose that section 649 be amended to allow jurors to have debriefing sessions that include discussion of the deliberation process, as well as to allow academic inquiry into the juror deliberation process.

The second main policy change that I recommend is to expand jury selection. Ascertaining whether or not jurors have life

experiences, attitudes, or beliefs that would make them unsuitable as impartial triers of fact would also reduce stress by avoiding having a biased juror participate in deliberations and by avoiding jurors who are not mentally able to handle the evidence presented in court.

My last main policy change would be to remove the requirement that jurors be sequestered while deliberating. This was one of the most common reforms brought about in the United States following the jury reform movement of the mid-nineties. Jurors are not sequestered in the United States during any part of the proceedings, and from my interviews, that was one of the most stressful aspects of the jury service process. It's expensive, it's burdensome, and there's nothing to suggest it has any more impact in protecting the rights of the accused than allowing jurors to return home in the evenings.

Thank you.

•(1600)

**The Chair:** Thank you very much. We really appreciate that.

We'll go to Mr. Zaborowski.

**Mr. Mark Zaborowski (As an Individual):** I wish to thank the Standing Committee on Justice and Human Rights for the opportunity to appear today.

My name is Mark Zaborowski, and I am appearing as an individual with 30 years of experience in the community mental health field, providing supportive housing and case management programs for the mentally ill. Twenty-five of these years were in management. In addition to this work experience, a few years ago I trained as a volunteer community mediator, and in 2013 I did a year of community mediation. This year I trained to be a compassion fatigue educator with the TEND Academy out of Kingston, Ontario.

Over my career, I came to experience operational stress injury in the form of compassion fatigue, which I understand to be a loss of caring due to constant exposure to demands from those who are in pain and suffering, both emotionally or physically.

In addition, I experienced secondary trauma, which occurred when I was exposed to the traumatic stories of our clients, both while I was in the mental health field and as a community mediator.

I found myself having symptoms of hopelessness, hypervigilance, intrusive thoughts, depression, and anger, some of which occurred after spending hours in mediation with angry people. In addition, over time the repeated exposure to secondary trauma led to a condition I've come to understand as vicarious trauma, whereby my perception of the world fundamentally changed. I saw psychiatric crises wherever I went.

These events led me to explore this emotional distress that I felt. What was my distress? Was I bearing witness to others' suffering? Was this empathy? Was it empathetic distress? Was this compassion?

As I asked these questions and got counselling, read, studied, and trained, I landed on discussions and research on psychological and neuroscientific foundations of empathy and compassion, now known as compassion science.



Tania Singer, a neuroscientist from Germany, in her e-book “Compassion: Bridging Practice and Science” is one of the groundbreakers in this field. Her research, I believe, is promoting ways to care for the caregivers, for those who bear witness to others' suffering, and has the potential to inform the topic of psychological preparedness for, and resilience to, exposure to traumatic stories.

This committee has heard deeply moving, lived-experience testimony from a number of jurors who suffered PTSD, and their struggle to find help through the courts and in the mental health system after the trials. While I have not yet been called for jury selection, I did receive my jury questionnaire a few months ago, and as I listened to the proceedings on November 22, I thought about the questionnaire and the science of psychological preparedness and resilience.

My first recommendation pertains to the pretrial information package that has been discussed here. I propose that it include a chapter on psychological preparedness and resiliency, with reading material, links to the Internet, and websites that will have training videos for jurors to prepare them for their time as jurors.

Ideally these links should have the most current information and practices that jurors could read about before they head into court. There would be a range of suggestions, as not all jurors are alike. There would also be procedural guidelines for the role of the juror. The pretrial information package could arrive with the juror questionnaire or be provided at the time of jury selection.

Why is this important? There is research and cross-fertilization from the neurosciences, psychology, psychiatry, and the contemplative practices that point to therapeutic approaches and teachings that may lessen the emotional impact of viewing traumatic material. Jurors may suffer less. We train and provide focused orientation to all sorts of professionals in our society; why wouldn't we be providing the best possible knowledge and research to help mitigate the effects of exposure to traumatic material to a group of ordinary citizens who, as jurors, could be sitting for weeks, if not months?

My second recommendation is that a national office for juror support be established. As there is a national study and forthcoming recommendations for national standards, a national office could oversee these standards. As an example, we need look no further than our own Mental Health Commission of Canada and the impact of the voluntary standards on psychological health and safety in the workplace since January 2013.

The office could manage the collection, coordination, website links, and dissemination of all information, and provide an access point for any juror to get provincial information and referral contacts from a system navigator.

My third recommendation is that there be an international conference every two years on juror support, where there would be a discussion among leading experts in psychology, psychiatry, neuroscience, law, philosophy, theology, and other disciplines to examine the confluence and cross-fertilization of these disciplines in understanding how to support and protect our jurors from psychological harm and to better understand the features that not only provide natural resilience but build new resilience.

Middle management plays a key role in supporting staff, paid or unpaid, and PTSD symptoms can arise in people who have no known prior vulnerability, so my fourth recommendation is that the National Judicial Institute should add to their workshop curriculum one on juror support. This would assist judges in learning about the range and depth of support options as identified through the new standards and possible Criminal Code amendments.

• (1605)

My fifth recommendation refers to amending section 649 of the Criminal Code.

Why have we legislated and legitimized one of the key symptoms of trauma—namely, silence—into the expected court behaviour of jurors? In addition to cautioning jurors as to what not to say and to whom, could judges also advise jurors about whom they are permitted to speak with?

Michaela Swan, one of the jurors, spoke of thinking that she would break the law if she spoke about the jury deliberations to her counsellor. Telling stories is what we do every day with each other. Telling stories releases trauma and heals trauma, and telling stories can also perpetuate trauma. Jurors need someone or somewhere to tell their stories. The Criminal Code could be amended, as it has been in one jurisdiction, to allow for jurors to speak in complete confidence about all aspects of the trial, including their deliberations, with an appropriate court-appointed counsellor.

The sixth recommendation is on variations of counselling supports. Individual counselling supports for jurors during and after trial are absolutely essential. Not everyone will have symptoms immediately, and two months may not be sufficient to access counselling services. Consider offering counselling for up to a year, with extensions by application. Semi-annual check-ins for up to a year for jurors should be instituted as part of a greater safety net to ensure no one is being missed, as several jurors spoke of their families insisting that they seek help.

Jury deliberation sounds very intense. Both as a community mediator and as a program manager, I know how meetings can be emotionally charged. Imagine being in one long meeting for days and days. Could the foreperson who is overseeing the jury deliberation not have access to a management consultant for group process issues as needed? Critical incident stress debriefings at the end of a trial for individuals and groups should be offered, and more than once for those who initially declined but may wish to debrief days or weeks later. Imagine a network of former jurors who are part of a peer support model with complete confidentiality, a buddy system across all provinces.

Finally, I wish to return to my first recommendation, the pretrial information package that would have information on self-care, self-management, natural resiliency, and healthy empathetic responses. How many thousands of Canadians receive their juror questionnaire and shortly thereafter head for jury selection? Consider the nationwide health promotion opportunity when Canadians get immunized for any trauma exposure through their pretrial information package, whether they're selected for jury duty or not.

This year's Writer's Trust award for non-fiction went to James Maskalyk for *Life on the Ground Floor: Letters from the Edge of Emergency Medicine*. In his introduction, he writes, "Medicine is life caring for itself." I believe that is what we are doing here today.

Thank you so much.

• (1610)

**The Chair:** Thank you very much.

We will now move to Professor Jaffe, who is on video conference. Can you hear me?

**Dr. Peter Jaffe:** Yes, I can. Thank you.

**The Chair:** The floor is yours, sir.

**Dr. Peter Jaffe:** Thank you.

Mr. Chair, members of the committee, thank you very much for your work on behalf of this very important issue.

I'm going to focus in my presentation on the issue of vicarious trauma and the things that jurors are exposed to in terms of disturbing testimony and images.

By way of background, I'm a psychologist who has specialized in the issues around child abuse and domestic violence and domestic homicide for the past 44 years. In particular, not only do I teach at the university, but I've also been involved over the years, now as the director emeritus at the London Family Court Clinic. I've authored 10 books, 24 chapters, and 70 articles, so I've been steeped in the issues of trauma and vicarious trauma.

I wanted to focus on the issue of vicarious trauma. I think the older I get and the more time I spend with other psychologists and mental health professionals, and also lawyers and judges and police officers, the more I come to appreciate the impact that doing this work has on individuals' mental health. I've written an article and done many presentations around the issue of vicarious trauma and the impact of disturbing images on judges. In that work, as I've thought more and more of how judges may be affected over the years by being exposed to extreme violence. I've seen the increasing number of judges who suffer their own mental health problems related to depression, hopelessness, and anxiety, and they start to have flashbacks and nightmares similar to those of the trauma survivors they're dealing with in court.

I have had first-hand experience in not only working with judges but also in testifying in court and watching the reaction of juries over the last 40 years. As I've thought about the impact of this work on judges and many other professionals, including police officers and lawyers—both defence lawyers and crown attorneys—I began to think more and more about the impact of this issue on jurors. Although I can't bring you any survey about what we're doing across

all our provinces and territories in Canada in terms of providing help for jurors, my experience has been that it's very much hit-and-miss and very much depends on the individual courthouse and the individual judge and their sensitivity to this issue.

There's more and more research, some of which you've already heard about, coming out on the impact of being a jury member and being exposed to horrific images and stories of violence. There's a recent review article that I have in my submission from Michelle Lonergan and her colleagues in Quebec. In it she says that they found that a lot of jurors suffer symptoms related to post-traumatic stress disorder, and a minority of those jurors may have symptoms that last for months and even longer.

In my submission I highlighted the definition of "post-traumatic stress disorder". I don't want to review that in any detail, other than to say that one can suffer from post-traumatic stress disorder not just by suffering a life-threatening event but by witnessing a life-threatening event or by hearing the details as part of one's professional duties. This certainly would apply to jurors in terms of their exposure. I certainly can't put it any better than Ms. De Moura has today. Much of what I wanted to say has been presented in a very compelling first-hand account of what it was like to sit at the Ashley Smith inquest, which is certainly an extreme but not isolated example of the kinds of evidence jurors have to be exposed to.

I also want to indicate that although we recognize post-traumatic stress disorder more and more as a mental health issue, we also have to recognize that even those who don't qualify for post-traumatic stress disorder may suffer for months or years from a number of symptoms that may impact their family life, their work life, and their daily coping in a variety of ways.

• (1615)

I have very specific recommendations for the committee in my submission, and I'll just highlight them. Most of what I'm about to say has already been reinforced by the other witnesses.

First and foremost, it's important that court staff and judges identify criminal or civil cases that are going to involve violence, abuse, and death, as well as cases involving graphic testimony and evidence. These cases have to be identified at the outset. I don't want to minimize the stress of being a juror in general for any case, but my submission is really focused more on post-traumatic stress disorder and the extent to which there's a lasting impact on the life of jurors.

My second point is the importance of appropriate jury preparation after cases that have this graphic evidence and testimony have been identified. Again, you heard a lot of evidence from other witnesses. Jurors need to understand what they're getting into and what they might be exposed to, and that the reactions they have are normal. They're not a sign of weakness, but a normal human response to exposure to this kind of trauma.

My third recommendation is the importance of offering jurors an opportunity to debrief with a counsellor after the trial is over. The days of simply sending jurors back onto the street and wishing them all the best are done, in my view. There needs to be much more care and sensitivity to what jurors have been exposed to, and a recognition of the need to debrief in a meaningful way with a qualified counsellor.

I really appreciated Mr. Zaborowski's recommendation about working with the National Judicial Institute, because I think there needs to be training for judges. Not all judges are equally sensitive to helping jurors deal with the aftermath of what they've been exposed to. They generally are qualified in the law and in giving juries very clear instructions about the evidence before them, but some may not be as sensitive or thoughtful as others, or have the training to help jurors deal with what they've been exposed to.

My last recommendation is the importance of having ongoing counselling, if required, for some jurors. By ongoing counselling, I'm talking about ready access to a counselling service that's accessible and affordable, and preferably free, in recognition of the important civic duty the juror has provided.

In my submission I've highlighted an example where these initiatives have already taken place. In particular, I've highlighted the work of judges in King County in Seattle, Washington, which addresses each of the points I've raised. In the courthouse in King County, they consider themselves to be trauma informed. Part of being trauma informed is recognizing the impact of trauma on not only the litigants who are appearing before judges but also on court clerks, court reporters, all court staff, and juries.

There's a brochure that I know has been translated for the committee. At the very top it says "King County Superior Court wants you to know", and then there's a two-sided brochure that you can examine at your leisure as part of your deliberations on this issue. It prepares jurors for what they are about to experience, for some of the warning signs, and for some of the potential coping strategies, including getting access to counselling. In much of the information I provided for you, there's a 1-800 number or a card with a phone number for a mental health centre that the jurors can contact for counselling as part of the follow-up after trial.

Again, I won't go through this part of my submission other than to say it's important not only to prepare jurors beforehand but also to debrief them after the trial is over and make sure they have access to ongoing counselling.

• (1620)

In the submission, I highlight that judges should be given instructions on what to say to juries. Judges are excellent at trying to explain to jurors what the law means and what reasonable doubt means in a criminal proceeding. However, it's also important that judges be given potential scripts they can work with and adapt to their own communities to talk about the impact of jury duty and the importance of debriefing. Again, I've highlighted those in my brief.

In my brief I've given you the name of a senior judge in Seattle who could provide more detailed information, and I'm also prepared to offer that. I didn't put it in my submission, but there's a terrific article that reviews the impact of trauma exposure on jurors. There's

also an article I wrote on the impact of this work on judges, which is very parallel to what jurors may experience with much less preparation.

In closing, I want to indicate some limitations in my evidence today.

My evidence is limited in that I haven't done any independent research on juries. I haven't done any independent surveys on what's available in each Canadian province or territory. I'm also expressing my own personal views about the importance of this issue.

Notwithstanding the limitations that I've indicated, I hope my testimony is helpful and I wish the committee the very best in its ongoing deliberations.

Thank you.

**The Chair:** Thank you very much. All of your testimony was very helpful to us.

We will now go to question period.

Go ahead, Mr. Nicholson.

**Hon. Rob Nicholson (Niagara Falls, CPC):** Thank you very much, and thank you so much for your testimony. It was very moving, and I believe there's almost a consensus among you that we have to do something. I want you to know that those of us who sit on this committee are very determined that we are going to make a difference here, because this is an area that has not been addressed over the years to the extent that it should. Thank you so much for that.

Dr. Chopra, I would like to start with you. There's almost been a consensus that we have to change section 649 of the Criminal Code, and you pointed out that things are different in the United States.

Are all these quotes that you gave us from Canadian jurors?

**Dr. Sonia Chopra:** Yes.

**Hon. Rob Nicholson:** Let me be the devil's advocate on just one of them.

One of the provisions of the Criminal Code is that jurors have to be sequestered. They can't discuss, and they can't be doing things outside of the proceeding. Speaking as the devil's advocate on this, because I truly believe we have to do something in this area, isn't it possible that...? You said it wouldn't be that realistic that somebody could be influenced by something. Aren't all of us influenced?

I notice that when I'm reading about a trial in some of the newspapers here, reading what the columnist has to say about the testimony... Isn't there a potential that you could be influenced by that outside information? What do you think?

**Dr. Sonia Chopra:** Yes, absolutely there's a potential. It all comes down to the warning given to the jurors and letting the jurors know the potential consequences. We're running into that in the United States, and here as well, with jurors looking up things on their smart phones online, even when they're not being sequestered.

Some jurors are going to violate that law and do so anyway. I assume that if they're sequestered and their devices are taken away, they may not have the ability to do that, but I don't think that the benefit of sequestration outweighs the risk in terms of the added burden that it puts not only on jurors but on the system as well.

• (1625)

**Hon. Rob Nicholson:** That's a good way of putting it.

You've spent a lot of time in the United States working with solicitors who are involved with this situation. You testified that to a certain extent, there is less trauma for jurors in the United States. Are they in a better position there because of the different ways they're treated?

**Dr. Sonia Chopra:** A study was done in 1998 by the National Center for State Courts. I replicated many aspects of that in my research. What was interesting was that the ban on discussing the case during the trial and some aspects of the deliberation were less stressful in that sample, and I believe it's because of the ability to reduce and remedy the stress from those aspects by talking about it afterwards.

**Hon. Rob Nicholson:** Dr. Zaborowski, you said there is one jurisdiction where the criminal code was changed. Is that one of the American states? Is it Australia? Canada has just one Criminal Code, as you know.

**Mr. Mark Zaborowski:** Just for the record, I'm not a doctor.

I was referring to the comment made in one of the other hearings about Australia. It was mentioned in one of the previous hearings that jurors in Australia are allowed to discuss their deliberations.

**Hon. Rob Nicholson:** That's fair enough.

That pre-education package touches on something you said, Ms. De Moura, and you, Dr. Jaffe, that some sort of heads-up would be of considerable help to somebody getting into this business. It seems to be very simple and straightforward to do this, quite frankly. It's not as if you need huge amendments or a huge outlay of money.

You'll see that from the King County material. This is something to get in their hands so there's some preparation for them. I can see in your case, Ms. De Moura, that this whole process would have been completely foreign to you. Of course we wish you all the best.

Dr. Jaffe, you said judges sometimes experience these traumas, and then toward the end you said that sometimes these judges are insensitive to the jurors. That may be part of the problem they're going through, and in the case you heard here, if the jurors and the judge did get together, it may help both of them if they have a debriefing and work with each other so they're not excluded.

What do you think?

**Dr. Peter Jaffe:** I agree, Mr. Nicholson. That's a great point.

I hesitate to generalize and I should choose my words carefully, but certainly some judges are much more sensitive and aware about

how their work has affected them over the years, and obviously the more aware they are about how they've been impacted, the more sensitive they're going to be to a juror who's dealing with something like this, potentially for the first time.

I think the more we do to provide support for judges, the more they're going to do to support jurors. I see this as much more a topic...

In the early days of presenting on issues around child abuse and domestic violence, we spent very little time talking about vicarious trauma, but now I notice that in every seminar I do for judges, it's always a topic on the agenda. There's much more awareness of this topic, and the more we make judges aware, the better job they'll do with jurors.

Notwithstanding that comment, I think that after the trial is over, the jurors still need some sort of independent mental health professional, even for an hour or an hour and a half, to debrief as a group, above and beyond what a compassionate judge can do.

**Hon. Rob Nicholson:** Thank you very much.

Ms. De Moura, that Ashley Smith inquiry was very important on a number of different levels in what it exposed and what it focused on, and I just can't let this go. I've probably used up my time, but I want to publicly thank you for being a part of it. For this country to have that here was extremely important.

**Ms. Cherish De Moura:** Thank you very much. That means a lot.

**The Chair:** Thank you very much.

Mr. Boissonnault is next.

**Mr. Randy Boissonnault (Edmonton Centre, Lib.):** Thank you, Mr. Chair.

I'd like to thank all the witnesses for appearing today.

One of the things I've learned listening to the study so far is how we force jurors to cut themselves off from normal support systems. I know we face that sometimes as members of Parliament as well, and so for full transparency, I have part of my support system here today with me. It's my mom, Shirley, who's in the room from Alberta.

I want to ask some questions about resources, because if we're lucky, we could see changes to legislation come out of this study.

We're going to make a call for resources. Those need to get into people's hands, and I've asked some of the other witnesses how long it would take for this system to get ready to handle the jurors who would need to seek psychological support. Ms. De Moura, yours was compelling testimony level 10, so thank you very much.

In 2015 Alberta was the first province to provide a support system for jurors, and it includes counselling that's available to jurors during the trial and after. There are also mechanisms for exceptional measures to address the needs of former jurors. Would that type of a program have helped you in your process as a juror?

• (1630)

**Ms. Cherish De Moura:** Absolutely.

**Mr. Randy Boissonnault:** In your testimony, you also recommended time to prepare. What kind of early warning systems or signals would you have liked to know about that you experienced as a juror?

**Ms. Cherish De Moura:** One of the first things that happened was nightmares of choking in my sleep. It was something as simple as that. I just thought I was having a nightmare. I wasn't linking it to the case, even though she choked herself with ligatures.

As I mentioned, it could just be something simple that could trigger awareness. Right at the outset of the case, if the detective or the coroner had said, "Here's some information. You might not recognize it now, but maybe one, two, or three months down the road....", it might have triggered me to go back to a leaflet or a poster in the room or...anything.

**Mr. Randy Boissonnault:** You would have been able to understand where it was coming from.

**Ms. Cherish De Moura:** Absolutely.

**Mr. Randy Boissonnault:** I appreciate that.

How much time would you have liked to have had to prepare before the jury process began?

**Ms. Cherish De Moura:** I think it was about a month I had, from the time I was interviewed until the trial actually started. I honestly had no idea what I would be doing.

**Mr. Randy Boissonnault:** Right.

**Ms. Cherish De Moura:** Maybe it would have been helpful if the detective had told us what we could expect.

You and four other people on the jury stand with you go into a little room, and as soon as you come into the building every single day, you don't leave. The detective is with you the whole time. You're in a tiny little room with four other women, in my case. The washrooms are in the same room where you eat and read evidence. It's not normal. Nobody told me that in advance. The dynamic between the five of us women changed from the outset to the very end. I had no idea what I was getting into.

**Mr. Randy Boissonnault:** The jury orientation process is important as well.

**Ms. Cherish De Moura:** Oh, yes. There was none.

**Mr. Randy Boissonnault:** That's helpful. Thank you.

To Drs. Chopra and Jaffe, and then Mr. Zaborowski, I'm looking for some guidance in terms of ranking the recommendations to focus on the prevention of trauma.

We're going to have cleanup to do if the trauma happens, but how do we prevent as much trauma as possible from happening? We've heard everything from preparing jurors to counselling during and after. We've heard about screening jurors for those who are

psychologically resilient enough to go through the process, and the more traumatic the trial, the more resilience we need. Then also, judges need to be supported and educated.

How do we rank those or other recommendations you have, given limited resources?

Let's start with Dr. Jaffe.

**Dr. Peter Jaffe:** A lot of these recommendations wouldn't be expensive and could be immediate. For example, starting tomorrow, there could be a pretty good brochure provided.

I know there's experience in Alberta. If you look at the King County brochure, you see it wouldn't take a lot just to make sure to provide one to every juror going into a case that involves sources of trauma, such as the graphic evidence around violence and abuse and homicides, notwithstanding that all jurors are going to experience some stress. I do think we could have a brochure done overnight almost for every province and territory.

Debriefing could cost, in terms of trying to make sure there are mental health professionals who are qualified. I think you've heard evidence about unqualified professionals asking somebody to watch a sad movie, and that's going to be it. Certainly having a licensed professional with background in trauma is obviously going to be a cost for provinces and territories, but that should be affordable in most provincial and territorial budgets.

Ongoing counselling would be my third priority. It's going to be a minority of jurors; based on the research, you're probably looking at 10% of jurors, or less, who are going to require ongoing counselling.

Those would be my three priorities.

I have a caution that could lead to a debate, but I'll take my chances here. I would worry about asking about resilience. If somebody gets called for jury duty, they're going to be given some information about the nature of the case. I'd hate to start screening out people because they're sensitive. You wouldn't want to have all the jurors to be people who are so desensitized or feel they're so strong that they can handle the evidence. I would suggest that we don't go down that road. If a juror has a particular problem or issue, I'd certainly welcome them to raise it in an appropriate forum, but I wouldn't want to screen out jurors for past trauma by itself.

• (1635)

**Mr. Randy Boissonnault:** That's a good balance to that argument.

Could Dr. Chopra comment, and then Mr. Zaborowski?

**Dr. Sonia Chopra:** I know there's a concern about expanding jury selection in Canada. You hear the horror stories in the United States about jury selection going on for days and weeks, and people trying to craft a certain jury. I don't agree with that assessment, but I'm also not suggesting that you go to an open inquiry of jurors. I do think, however, that in certain types of cases in which someone has been a victim of a similar crime, that person is not automatically excluded, even in the United States, but has an opportunity to talk about whether they feel that they are able to separate their own personal experiences from the decision-making in that case.

I've had a number of instances of a juror saying, "Yes, I'm fine; I can put it aside", and then finding out in deliberations, once they see the evidence and start hearing the testimony, that they have to be excused. Sometimes that causes problems with mistrials and whatnot. Just having the information... It goes back to making sure they're informed. Ultimately you can let the juror make the decision if it's something that they think they can do or not do.

I'm not talking just generally. Very few people are going to say, "Yes, I'm great with hearing about child abuse." It's really more those people who have had a personal experience that will make it hit so close to home for them that they're not going to be able to separate their emotional response from the decision-making. Among the jurors I spoke to in Canada, even though they were not able to get into the specifics, there were several who make it clear that there was someone who had experienced something in their past that was preventing them from being able to be a juror in the case.

**Mr. Randy Boissonnault:** Thank you very much.

**The Chair:** Thank you very much.

Mr. MacGregor is next.

**Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP):** Thank you very much, Chair.

Ms. De Moura, I want to echo my colleague Mr. Nicholson and thank you personally for your service and to assure you, I think on behalf of all my colleagues around this table, that we will take your testimony and that of the jurors who preceded you very seriously. I think it's going to form a very important part of our report and the recommendations we deliver to the government. Thank you for making the effort and the courage you have shown today.

In previous testimony we've heard about the compensation that jurors have received. Of course, it varies quite widely. In some jurisdictions they may not get compensated for the first 10 days. In others, it amounts to \$50 a day.

What are your thoughts, first of all, on the compensation you personally received and how that may broadly affect jurors across the country in terms of the value we're placing on the work they are doing?

**Ms. Cherish De Moura:** I believe for the first 10 days there was no pay. Then I think there was maybe \$10 a day up to the next 100 days. Then after 100 days, it's \$100 a day. It's something like that. Please don't quote me.

In terms of value, it wasn't much. As I said, I treated it like a job, but I also was proud to do my civic duty. From what I hear around this table, what I did was important, and I felt that way at the time,

absolutely. Is \$100 a day the right value? For an eight-hour workday, that's not much. Is it minimum wage? I can't do math in my head right now.

It was lucky for me at that time that I worked for the federal government, so I had an income, but if I think of all the people who are on jury duty who aren't getting paid, that's a problem. How do you survive? How do you make ends meet, especially if you have children or something like that?

● (1640)

**Mr. Alistair MacGregor:** What do you think it does to our selection of juries when some people have that income stability and are able to comfortably serve on a jury, while others do not? What do you think that does to the cross-section of society we're asking to serve when some can't afford to serve on a jury? You're really being judged by your peers, but if you're limiting the number of people from society who can actually judge you, what do you think that does to being judged fairly and effectively by your peers?

**Ms. Cherish De Moura:** I think it will cause a lot of pressure on the jurors who can't afford to be there. I feel if you say you can't do jury duty when you go through the selection process, you're not bringing the proper cross-section, because we want the right demographic. We want people from all economic backgrounds. Maybe this person who can't afford to go on jury duty is a perfect candidate to be a juror and will make great recommendations or great decisions.

I think maybe there needs to be a little more value on the work that is being done, because it's hard. It's not just nine to five, and it's really long-lasting.

**Mr. Alistair MacGregor:** You literally have someone's life in your hands. Your decision is going to have profound consequences for that person.

**Ms. Cherish De Moura:** Well, in our case, she was already deceased, but her family and even some of the correctional guards.... I felt for some of those guards who were on the stand, because they had a relationship with her. I'm sure they were watching it when we were in the courtrooms, as it was webcast.

I don't think I would be able to say how much or put a dollar figure on it, but I don't think that zero dollars for the first 10 days is okay.

**Mr. Alistair MacGregor:** Dr. Chopra, if I can continue with you, on an earlier day we received testimony from the Province of Ontario's juror support program. They gave some figures showing that in one year, only 24 of 7,000 jurors took advantage of the counselling sessions. I think your research has found that two-thirds of jurors have experienced jury stress and one-third have had stress reactions comparable to those experienced by individuals with PTSD.

How do you explain the very low turnout in Ontario's program, and what do you think they can be doing more of? If we're only getting 24 of 7,000 jurors, how can we make sure that more jurors take advantage of these programs?

**Dr. Sonia Chopra:** I think there is a stigma associated with seeking mental health advice and counselling. I think one way to increase the number of people using these resources is to normalize the response from the beginning by saying, "This could very well happen to you, and there are resources in this information pack. This is normal. We give this to all jurors. There's nothing wrong with you personally if you're having this reaction." I think that sometimes jurors will have these reactions and not associate them as having to do with the trial and as meaning they need to seek mental health services for them.

I think normalizing it by talking about it early and handing every juror an exit sheet that has.... Some people don't want to do one-on-one mental health counselling. I also know jurors who have been in debriefing sessions with the group, but part of the problem is the group. It was the other jurors they were having issues with, so they didn't want to participate in that particular process. I think having multiple levels of support, saying, "Okay, maybe you don't want to talk to this...."

Again, this is touchy, because it goes back to section 649. There are some people who'd probably be more comfortable talking about it with a spiritual leader or with family members and who wouldn't want to talk about it with a court-appointed mental health counsellor. We all deal with stress in different ways, and not everyone who's experiencing these symptoms knows they need mental health support and feels comfortable seeking it.

I think providing a wide variety of resources and normalizing the response so jurors can learn to recognize it in themselves when they see it could increase attendance or compliance with the programs.

•(1645)

**Mr. Alistair MacGregor:** I saw you nodding in agreement with....

Okay, I'll save it for the next round.

**The Chair:** You're way over. Save it for the next round.

Mr. Ehsassi is next.

**Mr. Ali Ehsassi (Willowdale, Lib.):** Thank you, Mr. Chair.

I, in turn, want to thank everyone. It was incredibly educational and very helpful to me personally. Thank you very much.

The first question I have is for Ms. De Moura.

You did an incredible job explaining to us all the stress that you endured, both mental and physical. I know it was a one-year trial. How far in were you when you recognized that you were going through a lot of pressure?

**Ms. Cherish De Moura:** I'd say it was probably about 10 months in.

**Mr. Ali Ehsassi:** That's when you were having nightmares?

**Ms. Cherish De Moura:** I had a couple of nightmares fairly early on. Toward the end, I remember standing in my front hall getting ready to leave, and I literally just fell over. It was like, "Oh, that's

different. I don't understand what's going on. That's fine. I'll just continue about my day going to court."

I was walking along, about to enter the courtroom, and same thing happened. I just sort of lost my balance. I walked into the little jury room, and the foreman looked at me and said, "What's wrong?"

I didn't realize that I looked different. I just thought this was a regular day and just some balance issues, let's say. She said, "What's wrong?" and I said, "Oh, you could tell?" "Yes, something's not right." That's the day we all let it all out. The five of us had a discussion. One lady actually said that she had no problems, that she didn't lose a wink of sleep. We had some counsellors in. We had a little chat.

The next day that same woman texted me from her minivan to tell me how she broke down crying in her minivan. She didn't realize that all of the stress was compounding and having an effect until one day we just let it all out.

**Mr. Ali Ehsassi:** Thank you for that.

I have several questions for Dr. Chopra.

One of the things I wasn't aware of is how stressful other jurors can make it for you. That's something I saw in your presentation. What are the policy implications of that, if we are to learn anything from that?

**Dr. Sonia Chopra:** I think it's twofold.

First, what other jurors say or do is part of the deliberations. It's part of what jurors are precluded from speaking about under section 649, even with the people doing the debriefing, so I think that's the policy implication there: changing the ban on the discussion of deliberations can help alleviate the stress associated with problematic jurors.

The other goes back to the jury selection process and finding out a little more about jurors. Mostly what we currently know is just what they look like and their names. It could be more along the line of the federal model in the United States, which doesn't involve extensive questioning. It's typically 15 minutes of questioning done by a judge. A brief description of the case is given, and then it's anything about your background or life experiences that you think could impact you if you were a juror in this case. It's not an open season, getting rid of everyone who has some sensitivities; it's just finding out if there are personal life experiences that would make you not the right juror for this case, but perhaps a fine juror for another case. That would be a recommendation.

**Mr. Ali Ehsassi:** Thank you for that. You actually answered two questions that I had.

Just revisiting the issue of resilience and leaving aside, for the time being, whether that's a desirable thing or not, is it possible to actually identify resilient people?

**Dr. Sonia Chopra:** Not necessarily. I think it's possible to identify people who, because of the way they talk about their experiences, generally give you a sense of whether or not they are past it and have moved on, versus if they are clearly expressing some emotion still attached to describing the experience. That said, I've also seen jurors who describe a horrific experience in their past and say they are completely fine with it, but when they get on the jury, that ends up not being the case.

I think it's very difficult to judge resiliency. There are cues based on how the person talks about the experience, but I think it is just another piece of information that the lawyers and the judge can take into consideration when making the jury selection decision. It also gives the juror an opportunity to ask himself or herself if this is the right case for them, because, again, the more information going into it, the better. We're often good judges of ourselves—not always, but often—and of whether we're someone who could handle it.

• (1650)

**Mr. Ali Ehsassi:** Thank you.

Mr. Zaborowski, you mentioned the need for a national juror office. First of all, could you elaborate on what that would entail? Second, perhaps you could inform us of any other precedent you may know of in another jurisdiction where they have done something of this nature.

**Mr. Mark Zaborowski:** As I understand the federal guidelines or recommendations that will come from this study, they are recommendations, and the provinces will choose how they will implement them. There has been some discussion in prior meetings about costing for counselling and for other services, so it's similar to the Mental Health Commission of Canada, which has laid out standards that have subsequently been administered by the different provinces, such as the changes to the labour act and the WSIB act here in Ontario. I could see how the standards would inform and create structure for each of the provinces, but also create a bureaucracy that will outlive all of us. Looking back 30 years from now, we could see how healthy our jurors are as a consequence of regular updates, regular information, but also the bureaucracy that's outlived the current proceedings today.

As for examples, I can't think of anything off the top of my head, but I do know there are institutions out there that have lived on for a very long time because of the way they've been structured. I would look to those to inform the structure of this national office. It could be housed, perhaps, within the Mental Health Commission of Canada, which has been doing well for quite a while. It could be housed within the Department of Justice.

**The Chair:** Thank you very much.

Now we'll go to shorter questions.

We'll start with Mr. Liepert, and then Mr. McKinnon, Mr. MacGregor, and Ms. Khalid.

**Mr. Ron Liepert (Calgary Signal Hill, CPC):** Again, thank you all. This has been quite an eye-opening experience for a whole bunch of us.

We talk a lot about the counselling afterward, but how valuable would it be if jurors in cases that were more significant, let's say, were surveyed by someone who was appointed by the court in the same way you've done with some jurors at large? If we talk to these people after they've served on the jury, maybe we would learn something from it. Is that something that could be recommended? I ask you the question because you did the survey, but maybe others would have the same kind of comment.

**Dr. Sonia Chopra:** I think that's a great idea. It could be a short, scaled survey ranking things from 1 to 5—you know, “applies to me”, “doesn't apply to me”—and a series of yes-or-no questions. I think it would be valuable for two reasons. One is that we could learn about this individual juror, but then we could also start getting some national data on this problem and how widespread it is. Is it more prevalent in certain types of trials or in certain jurisdictions where you want to focus your resources? I think that's a fantastic idea.

It would be voluntary. The jurors wouldn't have to do it, but I think it could be part of the post-trial debriefing with the judge, when they just say, “If you're interested, we're collecting some data. Complete this survey.” I think that's a great idea.

**Mr. Mark Zaborowski:** Mr. Liepert, I would like to add that we've talked about resilience here today, and Dr. Baillie, in a previous hearing, talked about natural resilience.

As we've heard about severe post-traumatic stress that jurors have had, we haven't talked about jurors who have managed to move on in their lives after spending a lot of time. For me, the question is whether there are natural resiliences found within all of us that have, in some way, assisted and protected jurors, and what those features are, so that they can be naturally encouraged. In a pretrial information package, you're reminded you have this resource, but it would also build on and sort of instruct all jurors before they head into jury duty.

That would be a fascinating question that I would ask. What are that natural resiliences that we all have to manage this kind of—

• (1655)

**Mr. Ron Liepert:** Just briefly, I think I'm referring more to a survey that might be a little further down the road than just in the room when they're done.



**Dr. Sonia Chopra:** That's what I was going to clarify, because it takes a while for the symptoms to manifest themselves.

**Mr. Ron Liepert:** I'm not sure who would manage that, but it seems to me that if we really want to ensure that we're doing the right thing, we should talk to the folks who have experienced these situations.

**Dr. Sonia Chopra:** Yes.

**Mr. Ron Liepert:** Thank you, Chair.

**The Chair:** Go ahead, Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Thank you, Chair.

I believe my question will be for Mr. Zaborowski. It goes to the aspect of counselling.

We've heard throughout this whole study of the importance of pretrial preparation to inoculate jurors against the stress they might encounter, post-trial debriefing so they can decompress and be prepared for what to expect, and then ongoing counselling after that. We've also heard many people speak of the need for counselling during the trial, both in the case of traumatic evidence and also in the case of the interpersonal relationships during deliberations.

My question relates to the nature of counselling that might occur during the trial and whether you believe that it is likely to influence the outcome of the decision.

I guess fundamental to this question is that I don't know how counselling works, so if you can educate me a little bit on that, it would be helpful.

**Mr. Mark Zaborowski:** I've been the recipient of counselling over the years. I've never led or been a therapist myself, but as someone who has had counselling service, I could see how, if my emotions were disregulated by the tension in the room over a period of days, just having someone to discuss those emotions with, whether it was related to the people in the room.... We've heard that some jurors don't get along with each other. It could be related to a past experience that's now resurfacing, perhaps prior trauma that I've had that's now appearing amongst the tension of the deliberation.

If there are opportunities for jurors to be able to access someone to.... If the constraints of section 649 were still there, then maybe the content of what's being discussed would not be on the table, but certainly the processing of the feelings and the emotions might be a place for that to be released to clear the mind so that you could come back to the deliberation itself.

**Mr. Ron McKinnon:** I'm not sure I'm hearing this, but are you saying that counselling could be undertaken in such a way that the counsellor would not be influencing the decision of the juror—that it deals with emotions and how they react to the data and to their circumstances, not how to interpret the data?

Would that be appropriate?

**Mr. Mark Zaborowski:** Again, I'm not an expert in this, so I would perhaps defer to Dr. Jaffe, who's perhaps the therapist in the room at this time, but I believe that you could talk about your feelings without necessarily affecting the deliberation. I have never been on a jury, but that would be how I think it would go.

**Mr. Ron McKinnon:** Thank you.

Perhaps, Dr. Jaffe, you'd like to respond to this as well.

**Dr. Peter Jaffe:** Is that with regard to counselling during the jury deliberations or during the trial itself, if jurors have a crisis? I just want to make sure I understand the question.

**Mr. Ron McKinnon:** It's both, actually. It seems to me that during the course of the trial, before they get to the process of deliberations, they're encountering a lot of stressful circumstances, with a lot of traumatic data in some cases. They may need counselling at that time. Even after that, once they get into deliberations, there's the whole aspect of the intensity of the deliberations themselves.

• (1700)

**Dr. Peter Jaffe:** I think it would be good for jurors to have access to ongoing services as needed. It would be ideal to have somebody who's designated to be available to debrief afterward, but also to be available on a crisis basis for jurors. There would have to be clear guidelines that you're not getting into the evidence itself—what jurors believe or don't believe—but more into the trauma triggers.

The research suggests that whether you're a juror, a judge, or an old psychologist, you'll be more triggered by certain cases. For example, if you were sexually abused in childhood yourself and you hear accounts from a victim, you might be triggered about your own childhood history. If you are hearing evidence from a 10-year-old girl, and you have a 10-year-old daughter, you might be triggered. Some jurors will be more sensitized than others to some information and evidence.

I think we need counsellors who are especially skilled to deal only with the jurors' reactions and to stay away from the quality of the evidence or whether something is accurate or not. I'm sure defence lawyers are watching this testimony, and being very.... I think they'll be very concerned if we're getting into the evidence itself, rather than the impact of the evidence.

**Mr. Ron McKinnon:** Okay. Thank you very much.

**The Chair:** Thank you.

Next is Mr. MacGregor, and then Ms. Khalid.

**Mr. Alistair MacGregor:** Thank you, Chair.

**Dr. Chopra,** when I was asking Ms. De Moura about the impact that income security has on our jury pool and whether that's an accurate representation of society at large, and also on the remuneration that jurors receive, I saw you nodding in agreement. Did you have anything you wanted to add on either of those points, based on your experience?

**Dr. Sonia Chopra:** Yes. I think that this remains a problem in the United States as well. It drastically affects the jury pool when you have employers who aren't paying and you have trials that are lasting weeks, months, and years sometimes. The pool of people who can actually serve becomes very, very small. I think increasing juror pay not only sends the message that it's a valuable service but also broadens the pool to give a more thorough cross-section of the community.

I've also heard recommendations to provide for child care. We have a huge number of jurors who have child care issues, who could serve but have to be able to pick their child up from school at three o'clock. Having state-funded or government-funded child care agencies is another example of how you could make jury service easier on potential jurors.

**Mr. Alistair MacGregor:** Thank you.

That's it, Chair. Thank you.

**The Chair:** Thank you very much.

Go ahead, Ms. Khalid.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Chair.

Thank you to our witnesses for their very compelling testimony today.

Ms. Chopra, you touched on the jury selection process, and I wanted to know a little more about it. I looked at the recommendations you provided in your briefing. When it comes to aligning the person who is most responsible for ensuring the safety and then the mental well-being of jurors, do you think counsel in any case has a role to play—maybe from the beginning, from the point of jury selection, up until their closing remarks? Do you think there is a role for counsel to play with respect to that?

**Dr. Sonia Chopra:** I hear two separate questions. There's the jury selection question: do you have a role, if you think somebody is going to have a mental breakdown because of the nature of the case, to ask to remove that juror? That's one question.

The other question I have a quicker answer to, which is in terms of considerations throughout the trial process. Jurors I spoke with asked that there be a greater sensitivity, on both sides, to what is being presented. With regard to things like timing the gruesome evidence right after lunch, don't do that. Prepare jurors by saying something like, "All right, you're going to hear some really graphic evidence, and I want you to be prepared for it", although you can never fully be prepared for it, as Ms. De Moura has mentioned. As a lawyer, there's a need to be sensitive to the idea that while you may have seen a piece of evidence a million times and have become desensitized to it, that's not the case for everyone who's going to be seeing it. I think being compassionate when presenting the evidence is important on both sides.

Going back to the jury selection aspect, I don't know if counsel has a responsibility. I would think, as somebody representing a

client, that I wouldn't want to risk having a juror who has a potential to have a mental breakdown because of a similar life experience in the past. I would probably recommend challenging that juror. However, I don't think we can put the attorneys in the position of having to ensure the well-being of jurors, because their primary responsibility lies in defending their clients. I think that would be a tough position to put the attorneys in.

• (1705)

**Ms. Iqra Khalid:** Thank you.

**The Chair:** I have a question for you.

By the way, I thought your article was very interesting, and your submission as well, just like the other witnesses.

In terms of section 649, you proposed that we should create exceptions to section 649 and have the general rule remain. However, what I also understand from reading and listening is that you feel all the presumptions that lead to us having section 649 there, as a general rule, are not really necessary.

Why are you proposing to create exceptions to 649, as opposed to simply removing the general rule on the prohibition and leaving it as it is in the United States, where a juror is free to discuss the case after trial but is not compelled in any way to do so?

**Dr. Sonia Chopra:** That would absolutely be my initial recommendation. It would be to change it so that the restriction is lifted. However, in the interest of knowing how things sometimes work within government, I'm suggesting baby steps.

That absolutely would be my initial recommendation, but if that's not palatable in the first round, then maybe we could start to slowly change it.

**The Chair:** Okay, but it's good to know what your real recommendation is.

**Dr. Sonia Chopra:** That's right.

**The Chair:** Does anyone else have any questions?

If not, let me thank the witnesses again. You were incredibly helpful.

Tomorrow is the first day of Hanukkah, so I'd like to wish everybody a very happy Hanukkah, a very merry Christmas. This is our last meeting until the new year, so have a great new year, everyone.

The meeting is adjourned.







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