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# Standing Committee on Justice and Human Rights

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Chair: Ms. Iqra Khalid





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• (1120)

[*English*]

**The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)):** I call this meeting to order.

This is our 30th meeting of the House of Commons Standing Committee on Justice and Human Rights. Today we have Andy Fillmore replacing MP Mike Kelloway and Julie Dzerowicz replacing Arif Virani.

Welcome, Andy and Julie. It's great to have you in our committee.

To ensure an orderly meeting, I will outline some rules, especially for our witnesses who are here today.

Take note that at the bottom of your Zoom screen, interpretation services are available. Select the interpretation service that you'd like to listen to. You should be able to speak in the language of your choice, either English or French. Before speaking, please wait until I recognize you by name. Then unmute yourself, and once you're done speaking, please mute yourself again. Keep your microphone on mute.

I'll remind you that all comments by members and witnesses should be addressed through the chair. With regard to a speaking list, Mr. Clerk and I will do our best to maintain one. If you would like to speak, you can use the “raise hand” function at the bottom of your Zoom screen to alert me to your inquiry.

Before we start our study on the impact of COVID-19 on the justice system, we have to approve the report from the subcommittee meeting that we had last Thursday. The report was distributed electronically to members yesterday. If there are no comments on it and if everybody agrees with it, we shall have it carried.

Can I have a thumbs-up from members for it to be carried?

Great. The report carries. Thank you, everyone.

Now I would like to welcome our witnesses.

From the Action Committee on Court Operations in Response to COVID-19, we have the Honourable J. Michael MacDonald, who is the former chief justice of Nova Scotia and of the Nova Scotia Court of Appeal, and Renée Thériault, who is the executive legal officer in the chamber of Chief Justice Richard Wagner in the Supreme Court of Canada.

We also have The Canadian Bar Association, represented by Jody Berkes, who is the chair of the criminal justice section.

Finally, we have the Canadian Superior Courts Judges Association, represented by the Honourable Madam Justice Mona Lynch and the Honourable Madam Justice Kristine Eidsvik, who are on the board of directors.

To each organization, you have five minutes to make your opening remarks. I have a one-minute deadline and a 30-second one so that you can keep track of your time.

Thank you once again for being here today. We'll start with J. Michael MacDonald and Renée Thériault.

You have five minutes. Go ahead.

[*Translation*]

**Ms. Renée Thériault (Executive Legal Officer, Chamber of Chief Justice Richard Wagner, Supreme Court of Canada, Action Committee on Court Operations in Response to COVID-19):** Thank you, Madam Chair.

Thank you, everyone.

Mr. MacDonald and I are pleased to be speaking to the honourable members of your committee about the Action Committee on Court Operations in Response to COVID-19.

As an executive legal officer at the Supreme Court of Canada, I am an ex-officio member of the action committee. I would like to take this opportunity to thank the co-chairs of the action committee, the Right Honourable Richard Wagner, Chief Justice of Canada, and the Honourable David Lametti, Minister of Justice and Attorney General of Canada, for inviting the Honourable Michael MacDonald and myself to talk to you about the work of our action committee, which has now been in place for over a year.

We are using this opportunity to applaud the wise initiative of the Standing Committee on Justice and Human Rights to consider the impact of the pandemic on the justice system, so that fellow Canadians can continue to benefit from a system that protects their rights and their interests while ensuring their safety. It is actually this dual commitment—in other words, ensuring both access to justice and a safe health context to do so—that guides all of the action committee's work.

So I propose to speak briefly to you about the action committee's mandate and composition. I will then yield the floor to my colleague, Mr. MacDonald, who will discuss our work in terms of the pandemic's impact on legal activities.

The action committee was established in May 2020, shortly after the pandemic began. It acts as a national leadership body that helps courts and officials responsible for the administration of justice safely restore court operations across the country. The courts and officials have ensured to do their best to fulfil their judicial mandate, despite court houses having to close owing to the health crisis.

In addition to the Chief Justice and the Minister of Justice, the action committee has three members of the Canadian Judicial Council, as well as representatives of the Canadian Council of Chief Judges and the British Columbia Ministry of Attorney General—for the sake of coordination among the provinces, territories and the federal government—and the Public Health Agency of Canada.

The action committee also works with many stakeholders and collaborators. Among others, I'm thinking of the Canadian Centre for Occupational Health, heads of court administration and the Office of the Commissioner for Federal Judicial Affairs, which hosts on its website all the work produced by the action committee.

Bolstered by those partnerships, the action committee is a national consultative forum—and I emphasize its consultation mandate—for promoting non-prescriptive guidance and fostering communication, information sharing and collaboration between the executive and judiciary branches, which is no small matter. In fact, that is without a doubt one of the most positive lessons of the entire undertaking.

As its name suggests, the action committee mainly deals with operational issues that arise within the legal system owing to the pandemic. Its work extends to provincial, superior and appeal courts dealing with various areas of law, including criminal law, civil law and family law, as we know that the pandemic has had a sliding scale of repercussions. Not all bodies have suffered the same consequences. We will come back to this.

Mr. MacDonald and I would be pleased to answer your questions when the time comes. Without further ado, I yield the floor to him, so that he can talk to you about the specific work of the action committee likely to be of interest to you.

Thank you.

● (1125)

[*English*]

**Hon. J. Michael MacDonald (Former Chief Justice of Nova Scotia and of the Nova Scotia Court of Appeal, Action Committee on Court Operations in Response to COVID-19):** Thank you very much. I see we may be running a little low on time, so I'll be brief.

It's an honour for me to appear before you yet again this year. I appeared last March in my capacity then as interim executive director of the Canadian Judicial Council, and I think we attended one of the last meetings before COVID-19 hit in March.

With regard to the action committee, I would commend our website to you. The action committee has listed some core principles. The interesting thing about them is that because it's a collaborative effort, it has core principles from the public health perspective, from the judiciary's perspective and from the court administrator's

perspective, so it honours judicial independence but is still able to collaborate.

We essentially do tip sheets, guidance for getting courts back to full operation. Jury trials have been identified in this connection, so we've shopped the country to see who's doing what best, and we're sharing that and coordinating it. We have looked at some case studies and best practices, coordinating those for the individual judges, chief justices, courts of all levels, court administrators and ultimately the people of Canada to get the courts running as efficiently as possible in the middle of this horrible pandemic.

Thank you.

**The Chair:** Thank you very much for that. I am sure the remainder of it will come out during the questions and answers.

**Hon. J. Michael MacDonald:** Yes.

**The Chair:** Thank you.

We'll now go to The Canadian Bar Association for five minutes. Please go ahead.

**Mr. Jody Berkes (Chair, Criminal Justice Section, The Canadian Bar Association):** Good morning, Madam Chair and honourable members of the committee.

My name is Jody Berkes, and I'm the chair of The Canadian Bar Association's criminal justice executive. We're pleased to present you with our report, "No Turning Back: CBA Task Force on Justice Issues Arising from COVID-19".

I join you today from Toronto, from the traditional territory of the Wendat, the Anishinabek Nation, the Haudenosaunee Confederacy, the Mississaugas of the Credit First Nation and the Métis Nation. This land is covered by the Dish With One Spoon treaty.

Thank you for inviting the CBA to discuss the impacts of COVID-19 on the judicial system, especially any delays or impacts on trials in the criminal justice system.

One of the unique things that the CBA criminal justice section prides itself on is that our members come from both the Crown and the defence bars. As such, we bring a unique, balanced, user-oriented focus to our commentary.

● (1130)

[*Translation*]

The CBA is a national association that brings together more than 36,000 legal experts from across the country. The CBA's main objectives are to improve law and the administration of justice, and it is with this in mind that we are here this morning on behalf of the criminal justice section.

[English]

As I mentioned before, in February of this year the CBA published its report, “No Turning Back: CBA Task Force on Justice Issues Arising from COVID-19”. The report highlights two themes. First, there is no turning back from the pandemic-fuelled modernization of the criminal justice system. We must continue these modernizations even after this pandemic ends. Second, new measures in technology must be deployed in a manner that enhances access to justice while ensuring the security of the private information of individuals in the system.

The move to digital courtrooms has enhanced the access to openness of the justice system. For example, in June 2020, Justice Di Luca's decision in *Regina v. Theriault* was livestreamed, and over 20,000 people watched that decision. Such widespread, first-person access to the justice system would never have occurred pre-pandemic. To this end, in the CBA report, recommendation number 12 states:

Justice system participants including courts, tribunals, and other dispute resolution bodies and bar and media representatives should prepare a tip sheet on best practices to ensure public and media access to courts in a way that respects open courts and privacy principles.

The other issue that I wish to highlight in my opening statement is the need to return to in-person trials. Within the last 12 months, I have personally conducted Superior Court applications, provincial court trials and preliminary inquiries, plea and sentencing proceedings, and routine case remands over the Zoom platform. In many areas, especially routine remands, Zoom reduces client costs relating to travel for counsel. It also allows counsel to assist more clients in different locations, increasing access to justice. Additionally, electronic service and filing of applications as well as provision of disclosure has reduced costs, increased efficiency and reduced paper waste.

Despite these efficiencies, civilian witness testimony represents a major drawback of virtual hearings. Police and expert witnesses are trained that testimony in a criminal case is different from everyday conversations. Courtroom testimony requires formality, accuracy and solemnity, unlike engaging in everyday conversation.

Civilian witnesses receive no such training, and for most, testifying in a criminal case may be a once-in-a-lifetime event. Prior to the pandemic, counsel—both Crown and defence—relied on the surroundings in the courthouse and courtroom to convey the solemnity of the occasion to civilian witnesses. The courtroom trappings signalled that testifying in a criminal case was different from speaking with a friend or even giving a statement to the police.

With the pivot to Zoom trials, witnesses' “courtrooms” occur in the same place they have casual conversations with their friends or relatives, such as the dining room table. Even witnesses testifying from a location within a controlled environment—for example, a remote room in a courthouse or a police station—lack the trappings of the courtroom, the seal of the Crown, the layout of the courtroom and the formality of testifying from a witness box.

Allowing witnesses to testify remotely is a necessary evil of the pandemic. The alternative would have been to shut down trials for over a year. However, remote testimony, even in jurisdictions where

transporting witnesses may be challenging, should not become a substitute for trials in the courtroom with all participants present.

Thank you for your time, and I welcome your questions.

**The Chair:** Thank you very much, Mr. Berkes. We appreciate that.

We will now go to the Canadian Superior Courts Judges Association.

You have five minutes. Please go ahead.

● (1135)

**Hon. Mona Lynch (Secretary, Canadian Superior Courts Judges Association):** I'm Justice Mona Lynch of the Supreme Court of Nova Scotia. With me is Justice Kristine Eidsvik of the Court of Queen's Bench of Alberta. We're representing the approximately 1,100 members of the Canadian Superior Court Judges Association.

As you're aware, not every region or court in Canada reacted or had to react in the same way. Prior to the pandemic, we were still very much paper-based. The pandemic required us to adapt or pivot to use technology.

The increased use of technology and virtual hearings has had the biggest impact on the justice system. That would not have happened as quickly, or perhaps at all, if not for the pandemic, and not everything went smoothly. We were not ready. The search for the right hardware and software continues. Sometimes technology works and sometimes it doesn't.

As you're aware, except in rare cases in Canada, the chief justice or judges don't have control over the funding to support the courts. Co-operation between the branches of government had to be high during the pandemic so that the justice system didn't grind to a halt.

While technology has been good and has increased access to justice, there are issues. Poverty is a major limitation. Not everyone has access to the technology necessary for a virtual hearing. We have places in Canada without good, or any, Wi-Fi, and Wi-Fi is not free. Not everyone has child care and is able to concentrate solely on the court proceeding when they're in their home. We learned very quickly that when a young child wants a parent, the judge is no longer in charge of the proceeding.

While we want to keep the good, we want to stress that in-person hearings are fundamental to the justice system. A colleague of mine was conducting a family hearing by phone when one of the parties said, “Just a minute.” There was silence, and then she heard, “Can I have a medium double-double?”

While that incident is amusing and quintessentially Canadian, it also reveals a lack of respect and attention from participants when the court proceedings are not in person in the courtroom with a judge.

Courts of appeal in Canada adapted to have virtual hearings and continue to do that, but they tell me that virtual platforms do not allow the same back-and-forth with lawyers. Some of the non-verbal cues are missed. Family proceedings moved to deal with urgent cases, such as those in which domestic violence is an issue. We all know about the increase in reports of incidents of domestic violence during the pandemic. You can't make the same connection with parents or parties virtually as you can in person. Civil trials were cancelled in many places. The civil bar has long complained that criminal trials always get priority, and the pandemic made that worse.

We can't come out of COVID and just go back to the way it was. We have advanced the justice system and need to continue with that advancement. We also know that we can never have a totally virtual justice system. There are concerns as to whether the open court principle is truly respected with virtual hearings.

Now I'm going to turn it over to Justice Eidsvik.

**Hon. Kristine Eidsvik (Board of Directors, Canadian Superior Courts Judges Association):** Good morning, everyone. It's my great pleasure to be speaking with you from Banff, Alberta. We are here on the land of Treaty 7.

Let me tell you a little bit about the criminal system, because we decided to divide this up. We did a survey with the Canadian Superior Court Judges Association. I looked through all of that with respect to what's going on. There's a fairly similar experience, with some exceptions in the north, which I'll come back to.

There were initial delays of criminal trials—both jury and judge-alone trials—for a few months, but most trials were back in service by September 2020, with some exceptions. The courtrooms were opened up with COVID plexiglass protection and protocols. Trials were rescheduled and resumed within a few months.

Jury trials were much more of a challenge because of the distancing requirements for the jury members in particular. Nonetheless, in most jurisdictions courtrooms have now been built in theatres, convention centres, concert halls, community centres, and, in Calgary, the Stampede Grandstand. Jury trials resumed except in the north, but in some jurisdictions they have been put on hold again. They are now on hold in Saskatchewan and Ontario.

The north and the Northwest Territories, Nunavut and Yukon have not resumed any trials. There is a significant backlog there. More than 60 jury trials are waiting in the Northwest Territories.

The format of trials has changed dramatically. Rarely are we completely in person anymore. We have witnesses, complainants, interpreters and even accused appearing remotely.

I thought I'd give you an on-the-ground example. I'm presently in a multi-week, multi-accused sex trafficking trial that's being conducted completely remotely. The counsel are appearing from Calgary and Edmonton. The accused and complainants are testifying

from Montreal. The many police witnesses involved are testifying from Calgary. It is a French trial.

• (1140)

[*Translation*]

I preside over the trial in French, and all the interpreters are from Calgary.

[*English*]

The plan was for only the complainants to testify remotely, but the crown was exposed to COVID, and in order to avoid yet another adjournment of this long trial, we were able to pivot and do this hearing completely remotely.

Some issues that come up are document management issues, exhibit marking—

**The Chair:** I'm so sorry, Madam Justice—

**Hon. Kristine Eidsvik:** I know; my time is up.

I'm happy to answer any of your questions concerning the on-the-ground changes to the justice system.

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

We'll now go into our question-and-answer round. We'll start with Mr. Moore for six minutes. Go ahead, sir.

**Hon. Rob Moore (Fundy Royal, CPC):** Thank you, Madam Chair.

Thank you to a very esteemed panel of witnesses. It's really interesting and fascinating, actually, to hear your testimony this morning about how you have had to respond to COVID-19 and some of your commentary about virtual versus in-person meetings. We're noticing it on Parliament Hill: before COVID, we had never conducted these types of Zoom meetings, and now it's an everyday staple. Your comments regarding what's missing sometimes, when you can not have an in-person meeting, were very interesting.

My first question is for the Action Committee on Court Operations in Response to COVID-19.

Are there any outstanding items now that you feel should be a particular focus? I'm interested in everything that you put together as best steps and action items. Is there anything right now that stands out as a greatest need to keep the wheels of justice moving?

**The Chair:** Who was that question directed to, Mr. Moore?

**Hon. Rob Moore:** That was to the Action Committee on Court Operations.

**The Chair:** Mr. MacDonald, Ms. Thériault, do you want to take that?

**Hon. J. Michael MacDonald:** Yes. Thank you very much for the question.

The thing that is most pressing for us right now—in Nova Scotia it changed overnight for us—is to try to stay ahead of this pandemic and to deal with the backlogs. That's going to be a big issue, and it's not just a criminal law matter. Obviously there's a constitutional right to a speedy trial, and that's very important, but when criminal trials bump civil trials, civil trials are delayed as well.

That's an immediate issue. Another issue we're dealing with and working on right now is vaccinations and making sure that there is a two-road approach. We're seeing in real time here in Canada that we have to time it properly so that we don't morph into lessening restrictions on the strength of vaccinations. Just finding the appropriate balance on that is a big issue.

Those two, and dealing with the privacy issues emerging from virtual hearings, are just three examples, Mr. Moore, that are pressing for the action committee right now.

Madam Thériault may have some other examples as well.

**Ms. Renée Thériault:** I would add in response to the question that initially this action committee was struck in response to the challenges posed by the pandemic. From the outset, we endeavoured to identify the particular pain points. Thus, for instance, criminal jury trials were by far the most pressing issue. That led to a number of recommendations on the part of the action committee for action on that front.

I would add that although this is meant to be temporary, we're also realizing that the pandemic has revealed a number of pre-existing challenges and issues with respect to the justice system, be it the criminal justice system or otherwise, so we have intervened in a number of areas that needed attention even prior to the pandemic.

• (1145)

We're realizing the acuteness of the problem in, for example, access to justice and the impact on the more vulnerable. I think we rightly point out how agile the judiciary has been in pivoting, which is obviously what we have been doing since the pandemic hit, but of course—and I believe it's Justice Eidsvik who has reminded us—not everyone has Internet access; not everyone is able to just log onto a computer and to participate and proceed as they should, because many don't even have access to lawyers.

The action committee has undertaken to look at the justice system through the prism of the pandemic, which is why we're actually considering where to take it from here. It may be that the action committee will still have its *raison d'être* even when we're all vaccinated.

[*Translation*]

Thank you.

[*English*]

**Hon. Rob Moore:** Thank you for that.

I only have a minute left. I'm going to ask both of our witnesses from the action committee if there are a couple of top-of-mind developments that you've put in place and that you've seen over the last year how they've worked and would say are perhaps are the ones that should continue as we hopefully move towards a more

normal existence. These would be ones were done in reaction to COVID-19 but that should last beyond.

**The Chair:** Be very brief.

**Hon. J. Michael MacDonald:** Very briefly, I would point to the use of technology. Judges were forced to embrace technology in ways they haven't before, as was the justice system. I think that will be a legacy piece.

I would also like to put a pitch in for broadband. It will be very important if we're going to have access in remote areas.

**The Chair:** Thank you very much for that, Justice MacDonald. Thank you, Mr. Moore.

We'll now be moving on to Mr. Maloney for six minutes. Go ahead, sir.

**Mr. James Maloney (Etobicoke—Lakeshore, Lib.):** Thank you, Madam Chair.

Let me echo Mr. Moore's opening remarks about the panel. I really appreciate this.

This issue is also near and dear to my heart. I practised before the courts in Ontario for over 20 years before I went into politics. Six minutes of time here isn't enough, frankly. Justice MacDonald, it's nice to see you again.

We're talking about COVID issues. From my perspective, the challenges during COVID have been or are being addressed. The real issue is what the takeaways are from all of that, and what improvements we can make to the judicial system, the court system and the administration of the courts going forward.

I was very pleased to hear from Mr. Berkes and Justice Lynch and others that going back to in-person trials is a necessity, because I agree. Much of what takes place in legal proceedings are assessments made by judges and juries. You can't see if anybody is in the room with me right now. You can't see if somebody is holding up a sign saying, "That's a bad answer" or "That's a good question". The solemnity of the court room is bang on. I think it applies equally to other steps in legal proceedings too, like mediations, pretrials, discoveries and civil proceedings. Thank you, Justice Lynch, for mentioning the civil process. It gets overshadowed by the criminal process time and time again in the civil areas where I practise.

This is a very long-winded way of asking whether thought has been given to criteria on when video trials and appeals can be used in place of in-person proceedings. That question is for anybody. I would think we could start with some of the judges on the panel.

**The Chair:** You'd have to be a little bit more specific, Mr. Maloney, but I do encourage our judges.

**Mr. James Maloney:** Why don't we start with Justice Eidsvik? She's in the middle of a six-week trial right now. She's living it in real time.

• (1150)

**Hon. Kristine Eidsvik:** That's right. I'm on the ground working on this.

I think on a go-forward basis, with regard to some of the criteria of who can attend or not, right now we have much more flexibility. Let's put it that way. In the past, criminal trial lawyers in particular were very hesitant to have complainants or their accused attend remotely. Now they are seeing the benefits of that happening.

I understand your views, Mr. Maloney, about how it's difficult to monitor a video situation. We're taking lots of steps. If somebody does attend remotely, we have them turn their camera around. The complainant in my case, who is testifying right now, is in a hotel room so that there are no distractions.

All of this is to say that I agree that an in-person hearing is a lot more interesting. It goes a lot more smoothly and it's less tiring, but nonetheless, sometimes our witnesses are out in remote areas and it's very difficult for them to attend in court. This gives us the flexibility and the access to justice that we didn't see available beforehand. I think that is tremendous.

I saw the CBA report, and I read it with great interest. I thought it was a tremendous piece of work. Mr. Berkes, I'm glad you're here. I certainly wouldn't want to see many of the improvements that we've made in conducting trials go away.

The other really important thing that's changed because we're doing things virtually is that the need for digital documents has become crucial. This paper-based world that the court systems were logged into.... There was movement before the trial. I actually did a study on this in 2018, about technology across the country and in the U.S. and the U.K. Canada is very far behind in terms of moving to an electronic digital-based system. COVID-19 has forced us to use more technology. I would hate for that to go away. Even if we're in person, we can use more digital documents and kill fewer trees.

I don't want to hog the stage here, but those are a couple of my thoughts.

**Mr. James Maloney:** I'm running short of time, so I just have a quick question. I agree that the CBA report was very helpful, but one of the recommendations is that less complicated, simple proceedings can be done remotely. There is an access to justice issue. I used to have to go up to Haileybury, which is in northern Ontario. I'd fly and then rent a car, and I'd stay there for a one-hour pretrial. There's going to be great pressure now to do those remotely instead of in person, and you lose the solemnity, as Mr. Berkes has mentioned. I would ask that hopefully all of your groups could come up with criteria that would be applied, because ultimately it's going to be the judges who are going to have to decide when that happens.

Very quickly, one thing we've seen during COVID-19 here in Toronto is that judges are working from home and court reporters are working in the courthouse. There are health and safety concerns. It's a technology issue. Have there been any steps taken in your jurisdictions to give consideration to how you could create a level playing field between the court's administration side and the actual judicial aspect of it?

**Hon. Mona Lynch:** I'll jump in with that.

I don't think that's the same across the country. In Nova Scotia, up until we had the recent outbreak, we were working in the courthouses, and then the court reporters were working from home at

different points as well. I understand from speaking to Kris that in Alberta the judges are more likely to be in the courthouses and the support staff is at home. It's different across the country.

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

My apologies; we're running very short on time. Thank you, Mr. Maloney.

We'll now go to Monsieur Fortin.

[*Translation*]

You have the floor for six minutes.

**Mr. Rhéal Fortin (Rivière-du-Nord, BQ):** Thank you, Madam Chair.

Good morning, witnesses. Welcome. It is impressive to have so many judges and experts on court proceedings among us today.

[*English*]

**The Chair:** I'm so sorry; Mr. Fortin, I've just been informed that the bells are ringing in the House.

The bells will ring for 30 minutes. At this time I will ask for unanimous consent of committee members to continue for 12 minutes with Monsieur Fortin's time and with Mr. Garrison's time so that we can at least get through the first panel. Is that okay with everyone?

**An hon. member:** Yes.

• (1155)

**Mr. Randall Garrison:** No.

**The Chair:** In that case, because we do not have unanimous consent, we will suspend the meeting until after the vote. Thank you for your patience, everyone.

• (1155)

(Pause)

• (1235)

**The Chair:** As we connect with Monsieur Fortin, we'll resume our meeting.

For members' benefit, I have asked the witnesses from our last panel to stay and to be available for questions and answers for the second round because there was not much of an opportunity, especially for the Bloc and the NDP, to ask questions to this very interesting panel.

At this time, I will introduce our second panel of witnesses.

We have the Canadian Association of Elizabeth Fry Societies, represented by Emilie Coyle, who is the executive director. We also have the Canadian Juries Commission, represented by Mark Farant, who is the founder and chief executive officer. We also have the Office of the Federal Ombudsman for Victims of Crime, represented by Heidi Illingworth, who is the ombudsperson.



Welcome to our committee. Thank you for being here today.

Just for housekeeping, I have these one-minute and 30-second deadline cards so that you can keep track of your opening remarks. Each organization will have five minutes to present, and then we'll go into questions and answers.

We'll go ahead and start with the Canadian Association of Elizabeth Fry Societies. You have five minutes.

Please go ahead.

**Ms. Emilie Coyle (Executive Director, Canadian Association of Elizabeth Fry Societies):** Thank you very much.

Good afternoon, Madam Chair and members of the justice committee.

CAEFS, as we call the Canadian Association of Elizabeth Fry Societies, is a national organization. Our main office is located on the unceded and unsundered territory of the Algonquin nation.

We are dedicated to upholding and forwarding the rights of criminalized and incarcerated women, trans, non-binary and two-spirit people, particularly those who are serving federal sentences.

One of the key aspects of our work is the monitoring of conditions of confinement within the federal prisons that are designated for women. The people we work with are disproportionately those who are living in poverty, with mental illness and often with histories of addiction. They are people who have been underserved by multiple systems prior to incarceration, including health care, and so they often enter into their time in prison with underlying comorbidities.

It is not surprising, then, that when the COVID-19 pandemic began in Canada, the fear of contracting the virus was extremely present in the prisons, given the existing health conditions. Add to this the very real risk of being incarcerated in a congregate living environment.

Since the emergence of COVID-19, people in prison have been held under harsh conditions that were not contemplated or foreseen by the courts at the time of sentencing. These have included but have not been limited to the suspension of all programming and visits; adapted movement schedules, such as being allowed out of living units or pods for less than half an hour a day, if at all; limited access to the telephone; limited access to legal counsel; and disturbingly, the reported use of structured intervention units—which are the old segregation units—to isolate prisoners who were showing symptoms.

Based on this, the most important recommendation that CAEFS has for this committee is to immediately push for the implementation of alternatives to incarceration and, in tandem, to resource communities as well as possible so that they can provide the supports that are needed. This recommendation is in line with the latest COVID-19 report from the Office of the Correctional Investigator.

Additionally, given that the harsh conditions were not and could not have been foreseen at the time of sentencing, we are encouraging government intervention to count time served during the pandemic in such a way that it accelerates the timings of release.

I also want to briefly expand upon two of the conditions of confinement that I articulated previously. The first is the sustained lack of access to legal counsel and the second is lack of access to programming.

During the pandemic, lawyers were barred from physically entering the prisons. This was at the beginning. Thus, the reliance on telephones for communication with lawyers became paramount, while at the same time, access to confidential phone calls became extremely limited. In many cases, private phone calls between lawyers and their clients are taking weeks to set up. Some are being asked to use the telephones in their living units, which can be expensive and are not guaranteed to be confidential, given the ability for the Correctional Service to monitor any of the calls in the prisons from these particular telephones.

Where lawyer visits have resumed in some jurisdictions and in restricted ways, prisoners and lawyers alike have been asked to articulate in writing why an in-person meeting is needed, including in some cases providing details about the concerns that will be addressed, which is a clear violation of lawyer-client privilege.

These difficult logistics are for people who have already retained counsel. Actually finding and hiring counsel while incarcerated during COVID-19 presents an additional suite of barriers that are nearly insurmountable without outside support.

Without in-person lawyer meetings, reliance on written materials and communication raises yet another access-to-justice issue, as the rates of literacy for federally incarcerated people are considerably lower than for the rest of the population in Canada.

In sum, during COVID-19, the right to legal counsel for incarcerated people is being treated as an inconvenience. Thus, access to legal counsel should be prioritized and should never be considered conditional. The government should ensure that prisons are held accountable for violating these rights and ensure that no further violations occur.

During the course of the pandemic, we've seen a near halting of programming inside the prisons. Although core institutional programming has resumed at 50% capacity in some prisons, the lack of access to programming is having serious adverse effects on prisoners, affecting the timing of their release on parole. We've been told that parole officers have been encouraging prisoners not to go before the Parole Board when they become eligible. In fact, some people are being told that they cannot go before the Parole Board prior to completing their programming. This means that people are spending more time in prison than they should. The law that governs the Correctional Service is clear that people can apply for parole at the earliest date they are eligible. The lack of programming during COVID should not be used against them in this particular way.

We recommend that the Parole Board reconsider programming requirements in their decision-making and instead utilize all mechanisms available to them to ensure that access to parole, and therefore liberty, is not unduly restricted.

- (1240)

Thank you very much for your time.

**The Chair:** Thank you very much, Ms. Coyle.

I will now go to Mr. Farrant for five minutes. Please go ahead, sir.

**Mr. Mark Farrant (Founder and Chief Executive Officer, Canadian Juries Commission):** Thank you.

Honourable Chair, vice-chairs, and members of the justice and human rights committee, thank you for the invitation to appear before you today as part of your important study on COVID-19 and its impact on the judicial system.

The COVID-19 pandemic has impacted every industry and sector like nothing in our history, and our courts and justice system are no exception. Prior to the crisis our courts were already stressed with enormous backlogs and delays in many provinces and territories; the closure of courthouses across the country as part of the emergency public health measures has compounded the problem further, delaying trials and due process.

Once regular court operations resume, there will be an unprecedented requirement to begin empanelling juries across the country. While responding to a summons is mandatory, many Canadians will be very unwilling or unable to participate, for very real reasons.

During the first wave of the pandemic, the Canadian Juries Commission conducted a national opinion poll and found that Canadians were more willing to donate blood or volunteer for a community organization than to serve on a jury when emergency measures lift. Similarly, Canadians rated jury duty lower in terms of civic importance than donating blood or volunteering within the community. These opinions are a direct result of decades of underinvestment in jury duty across the country and of not keeping pace with the modern world and its challenges.

As the crisis comes to an end, many Canadians will be unwilling or unable to respond to a jury summons, yet responding will be expected of them. Transitioning out of the period of unemployment,

layoffs and tenuous employment, for many Canadians the focus will now be on their jobs, families and availability for work. Many will be experiencing financial hardships not seen in decades and will still have family care commitments that will not have expired and may have been exacerbated by COVID-19 health issues. Canadian workplaces will be less willing and sympathetic towards supporting employees during time spent in court, given their own economic fragility and desire to revitalize operations. This will put mounting pressure on employees to respect their employers more than their summons.

Alarming data has emerged during the pandemic that highlights the significant worsening of Canadians' mental health. It has raised concerns among health care professionals of a looming echo mental health crisis. Statistics Canada has observed Canadians reporting increases in anxiety, depression and PTSD, as well as alarming increases in suicidal ideation as a result of the pandemic. Reported substance abuse and alcohol consumption among Canadians has increased across the pandemic. All reported figures are higher among vulnerable communities, those with existing mental illness, the indigenous community, the LGBTQ community and, sadly, among our young adults.

In 2017, I was very pleased to appear before this committee as part of its groundbreaking study on jury duty mental health and the publication of its landmark report, "Improving Support for Jurors in Canada", in 2018. The 11 recommendations contained in that report stand today. They include providing more information to prospective jurors about jury duty, providing psychological support to jurors, increasing daily jury pay to \$120 per day and federal funding to the provinces and territories to implement the findings of that report.

It is now almost three years since the publication of this report, and sadly, very little has been done since to see these recommendations universally adopted.

The Canadian Juries Commission was born out of those recommendations to represent and support Canadians on jury duty and in coroners' inquests and to provide programs directly to jurors to assist them in their roles, working with the provinces and territories and the judiciary to improve jury duty.

The recent federal budget detailed significant investments in mental health to meet the challenges of COVID-19, vital investments to combat systemic racism and improve access to justice across Canada, and also investments to repair our economy and grow back post-pandemic. These investments must be met with similar investments in jury duty, which is the last remaining mandatory civic duty in our democracy. This current crisis will only serve to compound and deepen foundational concerns for jury duty identified by this committee and the Canadian Juries Commission.

Once selected, jurors are identified as judges of the facts and are exposed to the same graphic and disturbing evidence as others in the court as part of their role. However, unlike the judge, legal counsel, court staff, police and first responders, they are not afforded access to new and evolving evidence-based treatments to assist them after the verdict is delivered. Jurors are the group in the court most vulnerable to developing mental ill health, as jury duty is not a vocation, has no training and affords no organizational support, yet is exposed to the same graphic evidence, and without a support network.

Juror mental health requires a specific intervention through evidence-based assessments and treatments and trauma-informed approaches, and it must be given the same priority everywhere and made available to all regions of the country.

• (1245)

Those concerns for juror mental health predate the pandemic. Now Canadians may be returning to court experiencing elevated mental ill health from the pandemic and exposed to new trauma in the court.

It is vital that we invest in mental health.

Thank you.

**The Chair:** Thank you, Mr. Farrant. My apologies; we are now out of time.

I will now move to Ms. Illingworth for five minutes. Please go ahead.

• (1250)

**Ms. Heidi Illingworth (Ombudsman, Office of the Federal Ombudsman for Victims of Crime):** Thank you so much.

[*Translation*]

Thank you for inviting me to appear before the committee today.

[*English*]

The Office of the Federal Ombudsman for Victims of Crime works to ensure that victims are treated fairly and with respect across the criminal justice system.

I give my respects to the First Nations, Métis, and Inuit ancestors and affirm my office's commitment to respectful relationships with one another and this land.

Honourable members, there can be no doubt that the COVID-19 pandemic has had a profound effect on Canada's criminal justice system.

The pandemic has exacerbated challenges faced by victims of crime in Canada and has had disproportional effects on vulnerable populations, who are already at greater risk of experiencing violence and victimization. These include women, children, and older adults, as well as members of the 2SLGBTQ+ community and members of indigenous and racialized communities.

According to Statistics Canada, research has shown that social isolation, loss of employment and reduced income are all factors known to increase the risk of domestic violence, and these conditions have been heightened in recent months.

Intimate partner and family violence often go unreported because the perpetrator is a loved one who exerts control over victims, who are left feeling unsafe in their own homes. Stay-at-home orders mean fewer opportunities for victims of violence to reach out for support or to report the violence to police or other agencies.

Pandemic-related restrictions have also meant that agencies' capacity to provide service to victims has shrunk, and in some parts of Canada the systems have been overwhelmed with demands for service.

Marginalized groups who face a higher risk of victimization also cope with considerable structural oppression in accessing support and justice. For instance, individuals who identify as 2SLGBTQ have voiced that receiving help from victim service providers is often a barrier on its own, as victim service organizations may overlook the importance of considering and addressing multiple intersectional identities.

I am also very concerned about the increased vulnerability of children. Violence against children has become even harder to respond to, since school staff make 90% of all reports of child abuse and children have been out of school because of the pandemic.

In my view, Canada must take proactive steps to fund and deliver prevention information, education and services to the public in order to reach persons who may be at risk of instigating violence.

Alongside greater investments in prevention, victims' rights need to be prioritized, enforced and upheld. Respect for victims' rights was inconsistent prior to the COVID-19 pandemic, and victims in vulnerable populations often reported experiencing many barriers to navigating the criminal justice system and feeling like an afterthought. This situation has been worsened by the pandemic.

For example, early in the pandemic the Parole Board of Canada cancelled all observer attendance at parole hearings, meaning that victims could not attend hearings that were scheduled and that would still take place without them. My office raised this matter as unfair and as failing to comply with the statutory rights of victims. The teleconferencing and videoconferencing accommodation was eventually extended to victims, as had already been the case for offenders' assistants.

This set a concerning precedent that victims' rights could simply be pushed aside and overlooked, instead of ensuring that proper accommodations were put in place so that victims' rights could be upheld. This cannot and should not be the case.

I would also like to discuss the worsening of criminal justice system delays due to COVID-19.

Courts and other tribunals have been slow to modernize and use technology to move cases forward. We must bring accused persons to justice in a timely manner, as required by the charter. Not doing so affects us all, but none more so than the victims and survivors who have been harmed. Victims experience memory loss, heightened stress and anxiety and feelings of languishing the longer cases take to be decided.

In closing, I will emphasize that the consideration of the rights of victims of crime to information, protection, participation and restitution is in the interest of the proper administration of justice during COVID-19 and beyond.

I welcome the opportunity to answer your questions. Thank you.

[*Translation*]

*Meegwetch.*

[*English*]

**The Chair:** Thank you very much, Ms. Illingworth.

We'll now go into our first round of questions, starting with Mr. Cooper for six minutes.

• (1255)

[*Translation*]

**Mr. Rhéal Fortin:** I apologize, Madam Chair.

[*English*]

**The Chair:** Monsieur Fortin, do you have a point of order?

[*Translation*]

**Mr. Rhéal Fortin:** Yes, Madam Chair. When we suspended the meeting because of the vote in the House, it was my turn to ask questions. Have we lost that time? Are we not taking up where we left off?

[*English*]

**The Chair:** Thanks for that question, Monsieur Fortin.

Yes, we have lost a significant amount of time with the two full panels. This is why I asked the witnesses from the first panel to stay for the second panel; it's so you will have your opportunity to ask them questions as well when it's your turn.

Right now we have started our second hour and our second panel, so we'll just go through. I'll do my best to make sure you get your time, Monsieur Fortin. Thank you for understanding.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you.

[*English*]

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

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Madam Chair.

Mr. Ferrant, I was there in October 2017 when you appeared before the justice committee and gave very powerful testimony along with other jurors, and I was proud of the fact that we came together as a committee unanimously with, as you put it, a groundbreaking report on enhancing juror supports, the first parliamentary study and the first report of its kind.

You noted that despite a great deal of consensus, we unfortunately haven't seen a whole lot of action three years later.

You spoke of the fact that nowhere in the budget was there mention of jurors. I would further note that recommendation 10 spoke of the need for one-time federal funding to the provinces and territories to implement the recommendations in the report.

Could you speak to that, and more broadly the need for federal leadership? Would you agree that leadership and funding are all the more necessary in light of COVID?

**Mr. Mark Farrant:** Thank you for the question.

In speaking with attorneys general across the country, I have heard them express a willingness to implement some of those recommendations—some more than others—but they are also expressing the need for a federal investment going back to that report.

COVID-19 obviously has put downward pressure on the provinces like no other time in our history, so given that jury duty is vested in the Criminal Code and is a federal mandate administered provincially by the provinces, there is a need for a federal role at this time in investing in improvements to jury duty.

As I said, raising jury duty pay to \$120 per day, while it's a provincial responsibility, can be shared with the federal government through transfer payments, and we're not talking about an investment that is going to break the back of any government. In fact, it's going to improve the lives of jurors and it's going to open the opportunity for racialized Canadians, those who work in the gig economy and those who are under-represented in the justice system to participate in jury duty simply by being able to afford it. I have heard from so many Canadians who have said, "I would love to serve on a jury; I simply can't afford it" and "My employer will not allow me to do it."

If we are talking about combatting systemic racism in access to justice, simply raising jury duty pay allows us that opportunity to suddenly change the diversity of a jury simply by bringing in people who would not have been able to do it before.

**Mr. Michael Cooper:** Thank you.

I would concur that the amount of funding we're talking about here with respect to juror pay and with respect to implementing other recommendations that would go a long way to support jurors is a pittance, having regard to the firehose of money that we have seen showered in this budget. Some of it very much needed funding; I don't want to minimize that reality. This, though, would be a mere pittance.

Another area that you cited is mental health and issues around mental health that jurors face in going through, in some cases, horrific trials, including stressors from not being familiar with the judicial system and being away from family and work, among many other factors.

One recommendation in the report from 2018 was to carve out an exception to the jury secrecy rule. Right now, jurors who are suffering from mental health issues arising from their jury service aren't able to talk about all aspects of their jury service, namely the deliberation process, which often can be the most stressful aspect.

I introduced a bill in the last Parliament to implement the recommendation to carve out a narrow exception to the jury secrecy rule so that jurors who are suffering from mental health issues could consult a mental health or other medical professional bound by confidentiality, thereby protecting the integrity of the jury secrecy rule while ensuring that jurors can get the help they need. There was again unanimous support for that bill, but it died in the Senate prior to the last election. I worked with Senator Boisvenu to introduce a bill in the Senate, but it's been stuck there.

The government has introduced Bill C-23, which touches on issues around jurors in a COVID context. Would you see it as beneficial that Bill C-23 be expanded to include the substance of what is in now Bill S-212 so that we can get this done, finally, which is something everyone seems to agree to?

• (1300)

**Mr. Mark Farrant:** I absolutely agree with that statement. This is the third time we have tried to see this bill and this amendment to the Criminal Code pass. There is no reason it should not be added to Bill C-23.

I have spoken to members across all parties. I've spoken to members of the judiciary. I've spoken to lawyers, both Crown and defence, across the country, who all agree that this is a common sense piece of legislation that would demonstrate to Canadians another investment in jury duty and an important contribution to post-trial recovery.

Many jurors have said that it wasn't the trial, nor was it the evidence, that hurt them mentally; it was the emotional trauma of reaching a decision or not being able to reach a decision in a truly public and difficult case.

**The Chair:** Thank you very much. I'm sorry, Mr. Farrant; we're really running low on time.

My apologies, Mr. Cooper. You are out of time. We'll now go to Madame Brière for six minutes.

**Mrs. Élisabeth Brière (Sherbrooke, Lib.):** Thank you, Madam Chair.

Thank you to all of our witnesses, and for your patience today.

[*Translation*]

Ms. Illingworth, you said earlier that COVID-19 caused delays in case processing. Have you noticed an increase in the number of cases waiting to be processed in a specific field?

[*English*]

**Ms. Heidi Illingworth:** Thank you for the question.

I think my comment was around the fact that we had considerable delays and backlogs prior to COVID. The pandemic has only worsened them. In terms of trials being put on hold, initially we saw that courts were addressing only urgent matters. There has been some restarting of proceedings.

Again, as we go through more and more lockdowns, we see cases being put on hold. Not everyone is fully moving towards virtual hearings in all parts of the country as of yet. I think the judge who was on previously was talking about how in the north in particular they haven't been having trials consistently during the last year. I was talking about that context in terms of actual criminal cases proceeding in a timely manner.

**Mrs. Élisabeth Brière:** Okay. Thank you.

[*Translation*]

The fact that proceedings are taking place over video conference obviously has an impact on our system's ability to take on various cases. Have you noticed whether this has had an impact on the humanity in the treatment of witnesses?

[*English*]

**Ms. Heidi Illingworth:** We have heard from impacted family members, survivors, that people have been able to participate sometimes through audio or teleconferencing in a sentencing proceeding, and so they appreciated that they could be involved, that they could read their impact statements and still participate in proceedings.

I think it's important that we use technology as much as we can and that courts continue to modernize and improve infrastructure to be able to bring in people from rural areas who might have to testify, who might have to give evidence, who are victims who need to participate and provide [*Technical difficulty—Editor*] and what have you. I know we're still not there yet, but I think, as the judge on the last panel said, that there have been improvements in terms of access to justice for some people who can now participate and for whom it may have been too difficult to get physically to a courtroom in the past.

I do see some positives that have come out of the pandemic in terms of participation and access to justice.

• (1305)

[*Translation*]

**Mrs. Élisabeth Brière:** I also think that something positive can be taken from this. In fact, some sort of a hybrid system should be put in place that would maintain the positive elements brought out by the COVID-19 crisis, as well as best practices we already had.

I'm in Sherbrooke, Quebec, and a number of judicial districts in the region do not have a judge on a regular basis.

Do you think the fact that hearings can be held by video conference will help the processing of cases in the legal system?

[*English*]

**The Chair:** Ms. Coyle or Mr. Berkes can answer.

**Ms. Emilie Coyle:** I'll answer very quickly on that.

There seems to often be a lack of understanding that the line between the perpetrator of harm and the victim is blurry and that it is often a circular process. Many of the people we work with in the prisons designated for women are also victims of gender-based violence and have been survivors of an intense amount of trauma in their lives. It's important for us to remember that if they're going to participate in the courts as survivors of whichever crime or harm has come to them, there needs to be accessibility for them as well, and that has been seriously hampered during the COVID-19 crisis.

I'll just end there.

**The Chair:** Thank you.

Mr. Berkes, do you also want to intervene?

**Mr. Jody Berkes:** I will, just very briefly.

In terms of these remote areas, they would receive the most benefit from having virtual hearings. However, I would like to stress that a trial process does require that all parties come together in the same location so that the solemnity of the occasion is carried forward and that all parties have an equal chance to be heard. That's the ideal. Where it's not available, obviously we should look to alternatives.

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

That concludes your time, Madame Brière. I know there were other witnesses who wanted to speak, but perhaps Monsieur Fortin can encourage this conversation to continue.

Please go ahead, sir, for six minutes.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Madam Chair.

I would like to ask a question about the administration of the justice system. I understood that there was a certain number of advantages to hybrid proceedings. However, I thought I understood that this also came with a certain number of disadvantages, especially at trial, when witnesses are heard from.

I would like to hear the opinion of Judge MacDonald on cases where decisions are being appealed. The parties are often not in attendance at the court of appeal. At the very most, they are at the hearing, but lawyers are the ones pleading the case.

Judge MacDonald, do you see an advantage to proceedings taking place virtually in appeals of decisions?

[*English*]

**Hon. J. Michael MacDonald:** Thank you very much.

It's nice to see you again, Mr. Fortin. I think we met around this time last year.

I'd like to very briefly respond to Madame Brière's question. We made arrangements to email the link to our commissioner's website and the portal for the work we're doing, and we actually have a paper on virtual indigenous justice centres and liaison officers for dealing with virtual hearings in remote communities and indigenous communities. I commend that to you.

It's an excellent question, Mr. Fortin. Thank you for the opportunity to differentiate between trials and appeals. Justice Lynch touched on that. Many appeal courts, including the Supreme Court of Canada and many appeal courts throughout the country, really didn't miss much in terms of having their appeals proceed as they should. Justice Lynch mentioned that the real-life interaction is certainly jeopardized, but nothing at all like trial court. I think there is a significant distinction to be made.

Of course, if you go in camera on any matter in the court of appeal or in trial, privacy issues have to be taken into account, and we at the action committee have prepared a paper on the risks of jeopardizing privacy issues in the context of virtual hearings.

I see that Madame Thériault as well has her hand up, and I'm sure she can supplement my answer, but thank you for the question, sir.

• (1310)

[*Translation*]

**Mr. Rhéal Fortin:** Thank you.

I think that it is perhaps even more effective to proceed virtually rather than in person in a court of appeal.

That said, I will let you add your comments, Ms. Thériault.

**Ms. Renée Thériault:** You are right. That is sort of along the same lines as what Mr. MacDonald was saying, that the pandemic has had varying impacts. The impact has obviously been much more intense for trial courts, for the obvious reasons you have mentioned, including witness attendance.

When it comes to appeal courts across the country, they have had to adapt to the new platforms, which has required some dexterity. Now that the system is in place, it is true that they have done their best to hold hearings without it leading to delays like those we can imagine during trial.

I would add to this that there are sometimes hybrid formats. In the Supreme Court of Canada, members of the court have continued to preside in person—in other words, they would all be in the hearing room, which was reconfigured to meet health guidelines—and lawyers argued remotely, so as not to have to travel from their province to Ottawa.

Of course, bar association representatives will tell you that it's not the same thing. Someone can prefer to argue in person instead of through virtual platforms. Nevertheless, there have been very few delays.

Since we are painting a broad picture, I would add that this is also true when it comes to administrative tribunals. A large number of federal administrative tribunals managed to catch up in the context of the pandemic. As they did not have to hear from witnesses, they held their hearings through things like virtual platforms, and there were more presentations electronically, they managed to do a great deal of catching up.

So although the pandemic is leaving more negative traces, some benefits have come out of it, and a certain number of realizations are here to stay.

**Mr. Rhéal Fortin:** So there could be a preference for a hybrid format going forward.

**Ms. Renée Thériault:** It is not for me to say. All I can say is that some dexterity has been necessary.

I can only speak for the Supreme Court, where I am currently. We are now redefining the format for the fourth time. We had an entirely virtual format, considering the circumstances. After that, some lawyers would be in the hearing room and others—for example, for stakeholders—were attending virtually. When the pandemic got worse, we came up with a format where all lawyers argued through virtual platforms. As for Supreme Court members, with very few exceptions, they have always been on site, while following the health guidelines.

**Mr. Rhéal Fortin:** I would like to know what was happening in trial stages, but I see that my time is up. I may have an opportunity to come back to this in the next round. I would be curious to hear you talk about challenges, the evaluation of witnesses' credibility and the dynamic of exchanges between lawyers, experts and so on. I think that could be interesting information.

Thank you, Ms. Thériault and Mr. MacDonald.

• (1315)

[English]

**The Chair:** Thank you, Monsieur Fortin.

We'll now go to Mr. Garrison for six minutes. Please go ahead.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you, Madam Chair, and I thank all the witnesses for their patience with the parliamentary system today.

In particular I want to thank the witnesses of the second panel for bringing forward the important topics of the conditions under which jurors serve and the impacts upon victims and also upon those who are currently incarcerated. I want to return, however, to the first panel for my first and probably only round of questions here.

Mr. Berkes, the very comprehensive and excellent brief we received from The Canadian Bar Association raises two issues that are of concern to me. One of those is the use of private platforms for online proceedings. I have this concern about the House of Commons, not just about the court system.

Your report talks about those who make money from the data acquired from hosting these services. Can you expand more concerning the threat—because I think it is a real threat—both to privacy and to security of information?

**Mr. Jody Berkes:** Thank you very much for your question.

It's probably a trite statement at this point that the new currency in the new electronic world is personal data. Our data is constantly being monitored, harvested and used to target us with advertising. The federal Privacy Act legislation and various provincial privacy act legislations are going to have to take a long and hard look at some of these private platforms.

Just to use the social media example, when you plug in your credentials and sign up for the service, that data is harvested, monetized and then disseminated. Obviously, if a judicial or quasi-judicial body is going to be using a private service such as Zoom or Microsoft Teams or any of the other ones, there have to be some provisions put in place whereby the private organizations undertake not to disseminate our private information.

That is going to have to be legislated, it's going to have to be monitored, and it's going to have to be enforced, so that if the data gets out, whoever leaked it inappropriately is going to face some kind of sanctioning.

Subject to any further questions you have, I want to keep this brief to give everyone an opportunity.

**Mr. Randall Garrison:** Thank you very much.

All of the participants in the first round, and indeed in the second panel, talked about the impacts of COVID on the problems of systematic racism and the disadvantage of people who live in poverty.

I just want to return to the superior court judges we have with us to ask whether they believe COVID has exacerbated the already large disadvantages that racialized Canadians and people living in poverty face in accessing justice.

**The Chair:** Justice Eidsvik and Justice Lynch, I think that question was directed at you.

**Hon. Mona Lynch:** I think I said in my opening that there's been good and bad. There are people who can't get to courthouses because they would need parking or would need public transportation. If those people are able to get to a platform such that they can participate virtually, they are advantaged.

The other thing the courts have done is make a lot of the proceedings.... If somebody doesn't have the ability to have the technology, they have used telephone, and so hearings have been by phone, which most people have access to. The difficulty has been for underserved communities, in expecting that people will have access to those means or will have a private place to have a virtual hearing.

There has, then, been good and bad. I can't say that the pandemic has made it worse. Some parts of it are not as good and some parts are better in terms of access to justice for racialized people and people living in poverty.

**Mr. Randall Garrison:** Thank you very much.

Mr. Maloney raised an important point that I hope the committee keeps in mind, which is whether, when we return to some sort of new normal, there will be criteria set for which of these electronic and online procedures we keep.

My question to Madam Thériault is this. Is somebody working on this right now, or are we in danger of just falling into accepting that these changes have taken place in the court system? Are there some things for which we really need to go back to in-person meetings?

• (1320)

**Ms. Renée Thériault:** In fact, I think there are a number of stakeholders who are looking into this question. I believe The Ad-

vocates' Society in particular has taken quite a deep dive with a number of experts and has given it some considered attention. Obviously, it really does require some thought, and it really depends on the circumstances. I know that's not the best answer, but it often happens to be the case. It depends on the courts. There are no hard and fast rules. I guess that's the best way I can put it.

I don't know if Michael has anything to add to that, but I can assure you that some consideration is being given to this very question.

**Hon. J. Michael MacDonald:** Yes, Mr. Garrison, I'll answer it very briefly.

The Advocates' Society is about to publish a very significant piece of work. They put together a review committee made up of former justices of the Supreme Court of Canada, other eminent counsel, and Canadians to look at that very question. I would watch for their report, if you will.

Of course, there is the judicial independence piece as well, because a judge in stream has independence. We can only offer guidance. That's all we can do. It's the judge who decides how her or his court will proceed in any given circumstance.

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

I'll once again thank all of our witnesses today for appearing before us and for their very compelling testimony.

If there are pieces that you feel were not highlighted enough or if you would like to provide additional information, please don't hesitate to send that information to Mr. Clerk, and he will circulate it throughout our committee. Thank you once again.

I'll just remind members that the deadline for submitting witnesses for the upcoming elder abuse study is this Wednesday, so please make sure that you get your witness lists in.

With that, the meeting is adjourned.









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