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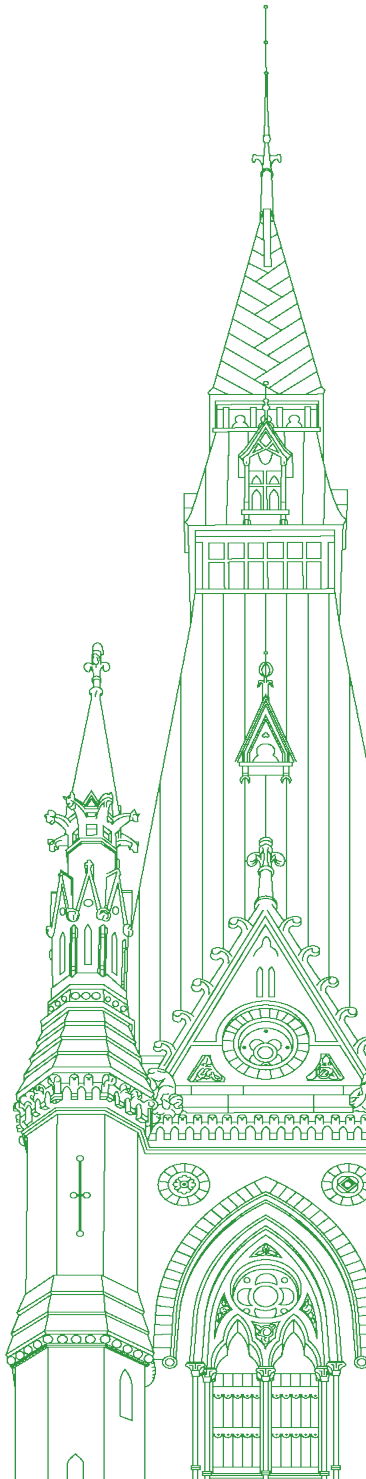

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Monday, October 31, 2022

● (1105)

[*English*]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 35 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to Standing Order 108 and the motion adopted on September 22, the committee is meeting to begin its study on the subject matter of Bill C-28, an act to amend the Criminal Code regarding self-induced extreme intoxication.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I'd like to make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you before speaking. For those participating by video conference, click on the microphone icon to activate your mike, and please mute yourself when you're not speaking. For interpretation for those on Zoom, you have the choice, at the bottom of your screen, of floor, English or French. For those in the room, you can use the earpiece and select the desired channel.

All comments should be addressed through the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will attempt to do our best to put you in the speaking order.

For your information, all sound tests have been successfully performed with our witnesses.

I have a couple of cue cards. When you have 30 seconds left in your time, whether you're a witnesses or a member, I'll raise the cue card. When you're out of time, I'll raise the red, out-of-time cue card. Please be mindful of that so I don't interrupt your thoughts. Please wrap up when I raise the 30-second cue card.

I'd like to welcome our first witnesses. Appearing today, we will have Holly Foxall, program director from Action Now Atlantic, via video conference. Professor Hugues Parent from the University of Montreal is also via video conference. From Manitoba Prosecution Service, we have Ami Kotler and Michele Jules, executive director.

Each organization will have five minutes.

We'll begin with Manitoba Prosecution Service.

Ms. Michele Jules (Executive Director, Manitoba Prosecution Service): Thank you, Mr. Chair.

Good morning. We'd like to thank members of the committee for allowing us the opportunity to speak to you today.

Manitoba's justice minister, Kelvin Goertzen, has actually been deeply engaged on this issue. He's urged legislative action following the loss of the previous section 33.1. He has offered to help in any way possible, so we're here hoping that we can offer some assistance in your deliberations on this complex issue.

With me is Ami Kotler, general counsel in our office, senior counsel in our appeals unit and counsel who represented Manitoba in the Supreme Court in Brown, as well as Chan and Sullivan.

It has been said a number of times in these deliberations that cases involving extreme intoxication are rare. As the office in Manitoba that conducts criminal prosecutions, we can agree that in relation to overall offences these cases are rare, but that does not mean that they arise infrequently or that their impact is not significant in our communities. Several such cases are before the courts in Manitoba.

In one that resolved just last week, the accused fired a shotgun through the front door of a random house, nearly striking a child. The accused had consumed crystal meth and was totally incoherent. Officers noted that he ate his own feces in the interview room following his arrest.

In a previous case that went to trial last year, the accused jumped into a random stranger's vehicle at a gas station and stabbed her to death. He was shirtless, barefoot and described as "speaking in tongues". The trial judge observed that he had taken several drugs, including, again, crystal meth, and that his behaviour was "indicative of someone in a different reality and not in touch with this world."

In a third case, pleas had been entered in relation to a homicide. The matter was set this past May for sentencing. Instead of delivering the sentence, the sentencing judge invited the accused to withdraw his guilty plea in light of the decision in Brown. He did so, and we now have this matter set awaiting trial in September 2023. We have other cases like this before our courts, and this is an issue that we will be litigating.

I raise these examples in order to emphasize the importance of a law like section 33.1. It shows that the justice system is capable of responding to the threat posed by powerful, mind-altering substances that lead to extraordinary acts of violence often against random victims. A well-established body of medical evidence links widely available drugs like crystal meth to toxic psychosis, paranoid delusions and violent aggressive behaviour. People taking these drugs frequently exhibit suicidality, homicidality, psychosis, and abnormal behaviour and movements.

The justice system must be able to respond in the face of such violence. Not only does it risk the lives and safety of the community members we serve, but it jeopardizes the public confidence in the administration of justice and the rule of law.

At the same time, however, it is important that the law recognize realities of addiction, particularly for marginalized communities grappling with the intergenerational aftermath of colonization. If we're committed to advancing reconciliation, our laws must criminalize morally blameworthy behaviour, not addiction or poverty. For this reason, we believe the answer is not to have an offence of extreme intoxication. We support the decision to root liability in negligence, and particularly to consider steps taken by accused consuming intoxicants to avoid placing others at risk when determining whether there has been a marked departure from the standard of a reasonable person.

This balance acknowledges the challenges facing many members of our community, while still insisting that whatever our circumstances, we must still take reasonable steps to protect one another from risks caused by our own dangerous acts. We appreciate that some may feel that weakens the legislation. Respectfully, we would suggest that the decision in Brown makes the need for this kind of approach fairly clear. More fundamentally, a law is not weaker because it is humane, balanced and fair—in our submission, we believe it is stronger and, of course, more likely to survive constitutional scrutiny.

To address the enforceability of the legislation, we will close by briefly discussing how we propose to obtain convictions under the new section.

● (1110)

Virtually all the cases we are seeing where the accused's degree of intoxication approaches the extraordinary level contemplated by the legislation involve consumption of one or more powerfully dangerous drugs whose effects can reasonably be expected to include disassociation, psychosis and violence.

While verdicts in individual cases will obviously turn on their facts and the evidence that we're able to call, we feel there is a case to make that an accused consuming these dangerous substances, particularly in excessive amounts or over a prolonged period of time, combining them with other dangerous substances or taking unidentified substances from an unknown source, courts a foreseeable risk that their actions may lead to a violent loss of control that harms another person.

The Chair: Thank you, Ms. Jules. Hopefully, we'll be able to extract some more out of the questioning.

Ms. Michele Jules: Certainly.

The Chair: I'll go next to Holly Foxall, program director for Action Now Atlantic.

You have five minutes.

Ms. Holly Foxall (Program Director, Action Now Atlantic): Thank you so much, Mr. Chair.

Thank you so much for having me here today. My name is Holly Foxall, and my pronouns are she/her. Today I am joining you from Mi’kma’ki, the ancestral and unceded territory of the Mi'kmaq people.

I'm the program director of Action Now Atlantic, which is an initiative and campaign to end sexual and gender-based violence at universities in Atlantic Canada through education, advocacy and community engagement. We've been fortunate enough to receive funding through Women and Gender Equality Canada to launch this project.

Our mission is to promote a culture of consent on campus through virtual workshops, the development of educational material and resources, and our own youth advocacy network. A big part of our work is connecting and collaborating with other organizations and individuals and taking a cross-provincial approach to addressing the issue of sexual violence on campus in Atlantic Canada.

The inspiration for Action Now Atlantic grew out of my personal frustrations around my own experiences and the experiences of my friends and peers while attending post-secondary education. I completed my undergraduate degree at Queen's University. I remember feeling a culture, both on and off campus, where sexual violence was normalized and many people didn't understand or respect consent. When I graduated and moved home to Nova Scotia, I remember seeing news stories about similar campus cultures and attitudes here. I read of many instances of sexual violence on campus where universities mishandled the cases and caused even greater harm to survivors.

Unfortunately, sexual violence is still a prevalent issue within post-secondary communities. We know that one in four women experiences sexual assault while attending a post-secondary institution, and 71% of Canadian post-secondary students have witnessed or experienced unwanted sexualized behaviour during their time at post-secondary institutions.

The first semester of university is meant to be an exciting time for students returning to school, but it's a notable time when it comes to sexual violence on campus. The first eight weeks of each fall semester are referred to as the “red zone”, when 50% of all sexual assaults on campus will occur. This is a time of increased vulnerability on campus, when there are many new students who are often away from home for the first time and without their usual support systems. It's critical that information around sexual violence and the laws relating to intoxication and assault are understood correctly by all members of our society, but especially those who may be engaging in sexual activity, drugs and alcohol.

When the news of the Supreme Court ruling on extreme intoxication was announced, there was serious concern about what the ruling would mean for campus communities and all survivors of sexual and gender-based violence. In our society, intoxication is often used as an excuse for those who cause harm, and a way to delegitimize survivors who do come forward.

I, along with so many Canadians, had many initial questions about this ruling. Would it provide more protection for those who sexually assault people and create even greater barriers for survivors to come forward? Would the ruling impact the ability and willingness of survivors to report cases of sexual violence? Do people who cause harm know that drunkenness alone is not a defence in sexual assault cases?

While the initial ruling got a lot of press, Bill C-28 and what it actually means received far less interest or time in the media. How people understand laws can greatly impact behaviours and cultures within our communities, so it's essential to have clear and easy-to-interpret information around these laws. This will build greater trust in our government and legal institutions.

I'm not a legal expert, so I will not try to comment on the technicalities of the initial Supreme Court ruling and Bill C-28 and what it means from a legal perspective, but I do hope to bring a youth perspective to this conversation. I can share why many survivors don't trust legal institutions and why rates of reporting sexual violence are so low, as well as what the initial reaction was within campus communities to this ruling and how it may impact campus cultures even with the implementation of Bill C-28.

I am someone who cares deeply about the safety and well-being of young people, and especially survivors of sexual violence. Anything that has the potential to create opportunity for people to cause harm and to build further barriers for survivors is something that we need to think critically about. How our legal institutions and governments share this information with the general public is important for community safety and overall trust within our institutions.

Thank you for your time.

● (1115)

The Chair: Thank you, Ms. Foxall.

We will go next to Professor Hugues Parent from Université de Montréal.

You have five minutes.

[*Translation*]

Mr. Hugues Parent (Full Professor, Université de Montréal, As an Individual): First, I would like to inform you that I currently have COVID-19 and may have to interrupt my presentation a few times to catch my breath. I apologize for that. Without further ado, I will begin my presentation.

In law, extreme intoxication can manifest itself essentially in two ways.

First, sometimes, but rarely, extreme intoxication disrupts the subject's consciousness to the point where the subject is no longer able to act consciously. In this case, the person can move, but is not aware of their actions. In fact, the person is like a robot. This is referred to as extreme intoxication akin to automatism. Substance-induced delirium is an example of extreme intoxication akin to automatism. This is exactly the diagnosis used by the Supreme Court in Brown.

The second manifestation of extreme intoxication occurs when the person is under the influence of delusions or prominent hallucinations as a result of their voluntary drug use. In this case, the person remains physically aware of their actions, but is unable, because of the psychotic episode, to appreciate the nature and quality of their actions, or to know that the actions were wrong. This is called extreme intoxication bordering on insanity.

To understand the distinction between the two types of extreme intoxication, consider the following example. A man takes cocaine and develops delusions of persecution. The man is convinced, because of his delusions, that his neighbour is a member of a criminal organization that wants to kill him. The man, in order to avoid being killed, takes a gun, goes to his neighbour's house and fires at him. Here, the accused is not in a state of automatism. On the contrary, this man is fully aware of his actions, insofar as he knows that he has a gun in his hands, that he has his finger on the trigger and that he is firing in the direction of the victim. Far from being unconscious, this man's act is in direct pursuit of the goal imposed on him by his delusions—that is, to save his life by killing his attacker. Although he is capable of consciously controlling his conduct, the accused is not capable, because of his delusions and psychosis, of knowing that his actions are wrong, hence the presence of extreme intoxication bordering on insanity.

I will now talk about extreme intoxication in medicine.

The presence of psychotic episodes without disturbance of consciousness is a well-known manifestation of drug intoxication. Discussing the symptoms associated with acute intoxication and the importance of considering psychotic episodes without disturbance of consciousness, Dr. Marie-Frédérique Allard, a leading forensic psychiatrist, writes that, as a forensic psychiatrist for many years, she regularly evaluates individuals who severely intoxicated while committing a crime. She also writes that altered consciousness may occur in very specific situations—for example, severe alcohol or benzodiazepine intoxication, delirium, and so on—but this is not the generality.

In Brown, it is a matter of delirium, but these situations are rather rare, indeed.

Dr. Allard writes that, when there is acute intoxication by drugs such as amphetamines and cocaine, which are often linked to behavioural disorders seen in criminal law, the individual's state of consciousness is not altered. On the contrary, psychostimulants have the property of stimulating alertness. These substances also have a high potential to induce psychotic symptoms that may even last well beyond the period of intoxication.

In fact, the first witness pointed this out very well a few minutes ago. Dr. Allard also writes that, when individuals suffer from stimulant-, cannabis-, or other substance-induced psychotic disorder, they generally remain able to control their actions and aware of their behaviours. According to her, the substance-induced loss of contact with reality therefore primarily affects their ability to know that the actions were wrong under the circumstances.

This is what explains all the importance of adding extreme intoxication to the threshold of insanity to that of automatism.

I will now turn to the problem with section 33.1 of the Criminal Code as it is currently written.

By limiting the definition of extreme intoxication to cases akin to automatism, the government is focusing on only one manifestation of extreme intoxication: automatism. It leaves out cases of intoxication that do not affect the accused's ability to consciously control their behaviour, but that prevent them from knowing that their act is wrong.

Unfortunately, I won't have time to make my entire presentation. That's too bad, because I took the time to write it all down and it's extremely important.

● (1120)

In other words, what will happen is that the person who finds himself or herself in a state of extreme intoxication at the threshold of insanity will be able to plead extreme intoxication because section 33.1 only focuses on states of extreme intoxication at the threshold of automatism. From that point on, a decision will be made, and it will definitely go to court. Section 33.1 will suffer exactly the same fate as the previous incarnation.

I have given you a report on this, but I cannot comment. Do what you want based on that.

[*English*]

The Chair: Thank you, Mr. Parent.

I'll go to the first round of questions, beginning with Mr. Caputo for six minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you very much, Chair. I'd like to thank everybody here.

First off, Prof. Parent, I'm sorry to hear of your illness, and I hope that you get better soon.

Ms. Foxall, I just want to very briefly mention something. I really do appreciate your work. In fact, my wife does a lot of the same work that you do. She recently attended a seminar where the focus was “No means no.” In fact, I think we have to start shifting the narrative, as you are, to “Only yes means yes.” I really do appreciate that work, and I wanted to put that on the record.

To the Manitoba Prosecution Service, thank you for being here. So often when we're here, we debate things in the abstract and we don't hear from people on the ground who are actually impacted. I encourage this committee and all committees to bring people here who are on the ground, because this is a unique perspective and it may be the only perspective we have from people who are in the trenches in the prosecutorial end of things, so I really do appreciate that.

I'm going to start there, Mr. Kotler. You're obviously a distinguished appellant litigator, and we're so fortunate to have you and Ms. Jules, somebody at the top of your organization. Thank you.

I'm going to ask a bit of a nerdy question. It's about foreseeability of harm versus foreseeability of loss of control. You may have anticipated us going there with this. They are two very different things. I'm just wondering if either or both of you could comment on that distinction.

I don't have the legislation right in front of me. My recollection is that it refers to foreseeability of harm. A reasonable person must reasonably foresee that the self-induced intoxication would result in harm. Can you comment on that distinction and whether it's material?

Mr. Ami Kotler (General Counsel, Manitoba Prosecution Service): Sure. First of all, the legislation refers to both. You will see that it says, in subsection 33.1(2), that in “determining whether the person departed markedly from the standard of care, the court must consider the objective foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person.” You have the reference to loss of control and to harm.

We took the position in the Supreme Court that the fault element of the offence should follow the physical element, so that the risk at issue when discussing negligence should be the risk of a violent loss of self-control, as opposed to simply a loss of self-control. There are a number of paragraphs in Brown that suggest that the court took a similar position.

That said, we don't want to overstate, and I think you may not want to overstate, that requirement, because in many cases, bringing yourself to the point where you can no longer control your body will strongly imply a risk of violence. If you're not in control, then anything is possible. Ipso facto, that's going to include violence. Someone who takes their hands off the steering wheel of a moving car can hardly be surprised when the car runs into somebody. Monsieur Fortin, I believe you have made similar observations in the course of previous hearings.

But you can foresee a case where that isn't the situation—for example, where a defendant is using a drug like crystal meth at a safe consumption site. There is a foreseeable risk of a loss of self-control because you're taking a drug that removes that self-control, but that person reasonably expects that they will be supervised and kept away from other people, so there isn't a foreseeable risk of harm to another person. In such a case, depending on the facts, it might not be fair to conclude that the person was negligent and was therefore liable for what happened—for example, if there was a failure of supervision or the door was left unlocked.

To finish on this, the current wording of the legislation I think arguably does place unnecessary emphasis on the foreseeability of violence as a stand-alone requirement. The use of the word “and” generally is a strong signal to judges interpreting legislation that these are independent elements, as opposed to simply a way of describing what kind of losses of self-control the legislation is looking to address.

That might cause a concern if a judge were to interpret the legislation as saying they need proof that this particular substance in this particular dosage will cause people to become violent, because the Crown is rarely going to have precise information about the toxicology of what an accused was taking. Also, street drugs are unpredictable. They are constantly evolving. It makes it hard to get expert evidence even if you did have that kind of information available to you.

So if you are looking for ways to amend the legislation, you may want to consider something along the lines of “foreseeability of risk of a violent loss of self-control”. In the Brown decision, at paragraph 119, Justice Kasirer refers to the “choice to voluntarily [consume] intoxicants where that choice creates a risk of violent crime”, as opposed to setting out self-control and harm as independent requirements that both need to be proved beyond a reasonable doubt.

● (1125)

Mr. Frank Caputo: Thank you. That's very clear.

The Chair: Thank you, Mr. Caputo.

Mr. Frank Caputo: Was that it?

Okay. Thank you.

The Chair: Ms. Diab, you have six minutes, please.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Thank you and welcome to all our witnesses.

We started this study and it's been a couple of meetings now. The witnesses we have encountered have really spoken to how technical the law is, particularly when we're talking about the criminal law and those particular sections of it, and how it affects people. Thank you very much for coming to aid us in our deliberation as we study the afterthought of this.

Ms. Jules, I have questions based on where you left off. You began by saying that Manitoba is urging the government to act. In fact, there was an urgency in that there was a gap left in the system when the decision was made at the Supreme Court of Canada. Then you went further and recognized, which I actually very much appreciated, that there's always a balance that needs to be made when making policy and when creating laws, a balance between the justice system needing to respond but also recognizing certain realities that we have in our society.

I think you left off by trying to propose how you believe, or how Manitoba believes, you can still get convictions. You were not able to complete that. Would you mind starting us off by going back to where you left off and talking to us about that, please?

● (1130)

Ms. Michele Jules: Certainly.

Again, I think we had indicated that we believe that the inherent dangerousness of certain drugs themselves will be evidence that will assist us in terms of the effects that we would expect everyone to have some concept about...and can be reasonably expected to potentially lose control and have a violent loss of control. We anticipate that there would be expert evidence that we would call in many cases.

The individuals we're talking about may also often have a history—a history that we're aware of, a history that has been introduced to the court previously. We often hear submissions in court from defence counsel when explaining their client's behaviour that speak to this Jekyll and Hyde change in behaviour when they've consumed a dangerous drug. We may very well have history to call to demonstrate how foreseeable it was for this particular individual that they would act in a violent way if they were consuming and becoming extremely intoxicated.

So we do think that it is a foreseeable risk in many instances and that we will have evidence put before the court of that in terms of the negligent action of the individual when compared with the reasonable person. We are confident that we can make this case in front of judges and juries, that those who negligently jeopardize the safety of other members of our community can be held accountable through this legislation.

Ms. Lena Metlege Diab: I'd just like to again clarify something that goes to Ms. Foxall's point and to a question I had the last time I had an opportunity on the committee. It's about the need to be very clear and very concise. There's been a lot of misinformation about this, in particular after this came about, and in my opinion there's been a gross amount of misinformation, particularly online for young women.

There's a particular need to really be clear and not talk so much legalese. There's a need to have plain language in the law, no matter what the law is but particularly in these cases. Can you, just for the record, again...? Let's be clear that anybody who puts themselves negligently in a dangerous state, in which they cannot control their actions, cannot think that they should be escaping a conviction if they hurt somebody. Do you know what I'm saying?

Ms. Michele Jules: I do. I think I know what you're saying.

Again, I don't think we can guarantee in all cases that each case will turn on its facts in the evidence of the case, but we do think that the legislation can get us there in terms of being able to obtain convictions.

I will say, in listening to Ms. Foxall, that I also would encourage a communication strategy to reach the public so that there is an understanding of the risk that individuals have and the expectation of that foreseeability when they're in those circumstances. I also had young adults in university when the decision came out, and within 24 hours they were contacting me and asking, “Mom, is it true that you can sexually assault someone if you just get drunk enough?”

I do appreciate very much what Ms. Foxall indicated, and the need for clarity, as well as perhaps, I think—as I said, it's not really for me to say as a prosecutor—a communication strategy, so that the law is clear to those who may face this jeopardy.

● (1135)

Ms. Lena Metlege Diab: Thank you.

Ms. Foxall, just to end—

The Chair: I'm sorry, Ms. Diab.

Ms. Lena Metlege Diab: Okay.

Ms. Foxall, thank you for being here. Thank you for coming online from Nova Scotia. Maybe someone else will come back and ask you what I was going to ask you.

The Chair: Thank you, Ms. Diab.

Next is Mr. Fortin for six minutes.

[*Translation*]

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

Ms. Jules, Mr. Kotler, Ms. Foxall, and Mr. Parent, thank you all for being here this morning.

Mr. Parent, I understand by the hasty end of your presentation that you were a bit rushed. We are unfortunately still caught with the problem of time management. However, I would like to hear more from you this morning. So, if it is okay with you, I would like to give you a few minutes of my time to finish your presentation.

We are ready to hear what you wanted to tell us in the rest of your presentation, Mr. Parent.

Mr. Hugues Parent: What I am saying, essentially, is that by limiting itself to the definition of extreme intoxication akin to automatism, section 33.1 of the Criminal Code leaves out the most serious and, more importantly, the most frequent manifestations of extreme intoxication—namely, all psychotic states that do not diminish the individual's consciousness. It is certain that section 33.1, as currently worded, leaves out all such states.

I will read you a passage from the Brown decision. Justice Kasirer is of the following opinion:

> ...it is notable that extreme intoxication akin to automatism is an exigent defence requiring the accused to show that their consciousness was so impaired as to deprive them of all willed control over their actions. This is not...the same as suffering a psychotic episode where physical voluntariness remains intact.

Section 33.1 is essentially limited to this type of extreme intoxication. However, in the majority of extreme intoxication cases—95% of such cases—people have taken drugs, and these are situations where there is no diminished consciousness or state of automatism. For example, if a person takes cocaine, develops delusions of persecution and then kills someone else, that is not a case of automatism. It has nothing to do with it. So section 33.1 would not apply to this person. In that case, the person could plead extreme intoxication at the threshold of insanity and they would be released, plain and simple.

Section 33.1 is limited to only one facet of extreme intoxication, which is what the Supreme Court stated in Brown, because it was a question of delirium. This is the rarest manifestation of extreme intoxication. We're talking about cases where the intoxication causes a state of automatism and the person becomes like a robot. This is extremely rare. The Association des médecins psychiatres du Québec and the Canadian Psychiatric Association will tell you that in 95% to 98% of cases of extreme intoxication, a person develops delusions or hallucinations as a result of drug use. Yet this type of manifestation is not covered in any way by section 33.1.

Under section 33.1, the prohibition on pleading extreme intoxication as a defence applies only in cases where, "intoxication...renders a person unaware of, or incapable of consciously controlling, their behaviour." This leaves out the most serious and, more importantly, the most common manifestations associated with voluntary intoxication—that is, psychotic episodes where the person's consciousness is not diminished or obliterated. Since a person in a psychotic state is generally not in a position to know that their act is wrong, their conviction violates principles of fundamental justice as much as that of a person who commits the same act in a state of automatism.

It is certain that this will be challenged in court and that section 33.1, whose current wording limits extreme intoxication to a defence of automatism, will be declared unconstitutional. I'm not going to say anything else; that's the reality.

Mr. Rhéal Fortin: Mr. Parent, what changes would you make to the current wording of section 33.1? Specifically, which parts would you change?

Mr. Hugues Parent: If memory serves, the definition of extreme intoxication is found in subsection 33.1(4). The solution is not complicated: in this provision, extreme intoxication should be defined as intoxication akin to automatism or insanity. This would cover all manifestations of extreme drug intoxication. In fact, it would simply repeat the language used by the Supreme Court in Daviault, which referred to extreme intoxication at the threshold of automatism or insanity. The concept of extreme intoxication at the threshold of insanity could simply be added to the definition in subsection 33.1(4). This would cover all facets of extreme intoxication, even the rarest of cases, such as the one in Brown, where the person falls into a state of automatism and becomes like a robot. In that case, the person went into a state of delirium as a result of substance-induced intoxication, which is very rare indeed. I have only seen two cases like this in my entire career. I've talked to psychiatrists, and they say exactly the same thing.

This addition to the definition would also cover cases of psychosis. After using drugs, some people develop delusions of persecution or hallucinations. The cases Ms. Jules mentioned earlier are cases of psychosis.

If one were to speak of extreme intoxication akin to automatism or insanity, one would cover all facets of extreme intoxication. Then there would be no problem; that's certain.

● (1140)

Mr. Rhéal Fortin: Mr. Parent, I have only a few seconds left.

Subsection 33.1(4) refers to "a person who is incapable of self-control consciously". We all understand what that means. However, when it says that the person is incapable of "consciously controlling, their behaviour", does that not cover the cases that you are concerned about being excluded from section 33.1?

Mr. Hugues Parent: Absolutely not. Indeed, this is emphasized by Justice Kasirer in paragraph 50 of Brown:

> This is not...the same as suffering a psychotic episode where physical voluntariness remains intact.

In his view, extreme intoxication that is akin to automatism and affects the individual's consciousness—that is, awareness of their actions—does not cover cases of psychosis without diminished consciousness. This is written in black and white in paragraph 50.

[*English*]

The Chair: Thank you, Mr. Parent and Mr. Fortin.

Next, we have Mr. Garrison for six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

I want to thank all the witnesses for being here today.

We've certainly had discussion about whether the changes in the law are sufficient. We've also had discussion about whether those actions are needed. I want to particularly thank Ms. Foxall for being here and for the work that her group does.

My question to you may be an obvious question, but I think it's one worth allowing you some time to talk about. What are the obstacles you're facing in the kind of work you're trying to do to raise the consciousness on campuses about consent?

Ms. Holly Foxall: In general, in the sexual violence prevention space within post-secondary communities, there's a really big lack of resources and support. There's often only one sexual violence prevention adviser per campus doing the work of taking in reports, education and so many more other tasks. They're amazing people doing such important work, but it's just too much for folks to be doing. I think is something we're trying to do in our work, creating that cross-provincial conversation.

When the ruling initially came out, there was so much panic and concern about what it actually meant. When I first saw it, I thought it meant that someone can get drunk and assault someone else. The term "extreme intoxication" is something that people really didn't understand. That misinformation caused a lot of fear. I think creating that plain language interpretation of these things and a communications strategy, as someone mentioned previously, would be really valuable because the legal jargon can be very confusing.

I also think that the people who are going to really try to understand what something means in the law are not the people who are going to cause harm. The people who cause harm may see a headline and think they can get away with things that they couldn't beforehand.

● (1145)

Mr. Randall Garrison: I know, having spent 20 years teaching criminal justice, that sometimes there is a tendency for things to get siloed and for people to say, "Well, this group is already doing that work."

In the work you are doing on campus, how are you finding your relationships with other existing groups and finding support for them to talk to their members about the message you are trying to get out?

Ms. Holly Foxall: There are so many incredible organizations and individuals who have been doing this work in this space for so many years. We're so thankful for the work they've been doing over the years.

It's a lot about connecting and collaborating with those folks. We have bimonthly meetings with the sexual violence prevention advisers from each university in Atlantic Canada. We come together and talk about the issues and the challenges that folks are facing. We really connect and try to establish best practices across institutions because there is so much important work being done.

It's just getting it out to different people and ensuring that we have the funding and resources to get those great programs out there.

Mr. Randall Garrison: Thanks very much.

I want to turn to Manitoba Prosecution Service—either Ms. Jules or Mr. Kotler.

I want to be very clear before the committee. You are saying that the changes made in Bill C-28 do close the gap and that you will be able to use this law to successfully prosecute, in your opinion.

Mr. Ami Kotler: Thank you for the question.

As Ms. Jules indicated earlier, you can never guarantee a result in a criminal case. It's important to always remain conscious of the burden of proof beyond a reasonable doubt that rests upon the Crown in every prosecution. That said, there are a number of reasons for optimism in the application of this legislation. Ms. Jules referred to some of them.

There is the fact that the language of proposed subsection 33.1(2) is inclusive. It requires only a foreseeability of risk that consumption could lead to a loss of self-control. There is some jurisprudential support for the idea that as the gravity of a potential harm goes up, the public is endangered even if the risk of harm actually occurring is small. I think you can expect to see prosecutors making that kind of argument in these sorts of cases.

The test is objective, not subjective, so even if an accused says that they had no idea this was going to happen, that won't be the end of the analysis. There are a number of other avenues that we will be able to look to in determining whether a reasonable person would have foreseen the likelihood of a risk.

Finally, in Brown itself, the court seems to accept the idea of inherently risky forms of self-intoxication. Justice Kasirer refers in particular to the idea of mixing alcohol with street drugs and sort of suggests that this activity in and of itself may carry reasonably foreseeable harm.

This goes back to what I was saying before, that some sorts of activities are inherently risky on their face, such that any reasonable person would be aware, “If I'm going to do this, I really need to start thinking about what I'm going to do to make sure I'm not going to hurt anybody if things go sideways.”

Mr. Randall Garrison: Thank you, Mr. Kotler.

Do you think that Bill C-28's requirement that the accused present expert evidence on the state of extreme intoxication has raised the bar for establishing, in that particular case, that we are dealing with extreme intoxication?

The Chair: Answer very briefly, Mr. Kotler.

Mr. Ami Kotler: Thank you, Mr. Chair.

As you know, the Daviault decision, some 30 years ago, already placed the burden to raise the defence on the accused. I should note that it did so in relation to all general-intent defences, not just violent ones.

I think what proposed subsection 33.1(2) does in this case is provide some useful guidance to trial judges in terms of what sorts of things you have in mind that they should be looking at.

The Chair: Thank you, Mr. Garrison.

For our next round of witnesses, we'll go to Mr. Brock for five minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair.

Thank you to all the witnesses for your attendance today and your testimony so far. It's been very informative and important to this committee.

I'm going to turn it over to you, Ms. Jules.

I distinctly recall you being cut off at the end of your presentation. It was on the theme of how confident you were, as a member of the Manitoba Prosecution Service, that, notwithstanding some of the commentary from legal scholars that this would make it extremely difficult for Crown prosecutors across this country to meet the high threshold, you didn't feel the same way. You were laying out some steps. I believe you got to the first step and then your time expired.

I'm going to give you the opportunity now to finish your thoughts.

● (1150)

Ms. Michele Jules: Thank you.

I do think I got a little bit further in Ms. Diab's question, but I think, again, that we anticipate.... First of all, as Mr. Kotler has pointed out, the onus is on the accused. Having said that, we believe that there is certainly expert and medical evidence that we would be able to call upon to speak about the inherent dangers of many of the substances.

The substance that we see the most—as Professor Parent pointed out—that induces psychotic states is crystal meth. There is a wealth of evidence in terms of the inherent risk of those drugs and the consumption of those drugs that we would be able to call upon. Then, when we speak of the individuals, again, there is often going to be evidence that we can call upon in terms of the individual and their history and their knowledge of how they act when they've consumed dangerous drugs.

We do see a path to obtaining convictions in these cases. We think that judges and juries are going to want to hear that evidence and are going to accept that evidence. They are aware of the dangers inherent in some of these drugs. That speaks to the foreseeability of what will happen when consuming, particularly if you're consuming multiple dangerous drugs and when you're consuming an excess of dangerous drugs for a prolonged period of time. Courts will accept that it is foreseeable that those actions will lead to a violent loss of control that will harm individuals in our communities.

Yes, we are confident that we can make the case for those who negligently consume those drugs to excess and find themselves in the situation where they endanger the safety of other members of our community, and be able to hold them accountable with this legislation.

I don't know if Mr. Kotler has any other specific technical knowledge that he wishes to add.

Mr. Larry Brock: The second area I want to get into, with the time that I have remaining, is the overall impression that Canadians and victims groups, particularly women's groups.... I've engaged in a number of town hall meetings and have explained to them, as a former prosecutor, that these are rare defences that are being used in courts across this country, but it was really of small comfort to a number of these individuals because, in their view, one case is too many.

Quite frankly, despite that, they still had this overriding belief that alcohol alone could be deemed to be ultimately successful, despite my best efforts to reassure them that the Supreme Court of Canada has made it abundantly clear in this decision that alcohol alone would not be successful.

I have done some research and I've concluded that between the passage of the original section 33.1 and the Daviault case, there have been successful cases, across this country, where alcohol alone was the sole intoxicant.

Do you feel—I'd like to get some commentary from the two of you—that Parliament missed an opportunity to codify that alcohol alone could be a bar to the advancement of this defence?

Mr. Ami Kotler: Thank you for the question.

I think, in determining where you want to go, you probably need to start with the Supreme Court's decision, which makes it abundantly clear that, absent negligence.... Sorry, let me back up.

The court has taken a strong position that, absent fault, we will not be able to enter convictions for criminal offences. There are fundamental elements of an offence that have to be made out. If the science suggests that alcohol is capable of putting an accused in a situation where they are no longer acting voluntarily, or where they lack one of the elements of offence necessary to make out the offence, then, unless we can show negligence in consumption, they should not be convicted.

I suspect that your question is best directed to a toxicologist, a neurologist or a doctor who is an expert in the area of the impact of alcohol—

● (1155)

The Chair: Thank you, Mr. Kotler. We're out of time.

Mr. Ami Kotler: I don't think the question is a legal question. It's a scientific question.

The Chair: Thank you, Mr. Brock.

Now we'll go to Mr. Naqvi for five minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you, Mr. Chair.

I want to thank all the witnesses for appearing today and sharing their expertise and knowledge with us.

I will go back to the Manitoba Prosecution Service. I have five minutes, and I think we've discussed all these things, but let's see if I can bring it all together. It's good for the record and for our deliberations later as well.

Can you outline the legal analysis or the legal test that you would work through as a prosecution service in the old section 33.1 before the Brown decision?

Mr. Ami Kotler: How would it work before Brown? Well, it was a pretty short analysis. The Crown would analyze the evidence to see whether we could make out *mens rea* and *actus reus* to the extent that an accused wanted to argue that because of intoxication, they lacked the *mens rea*....

I'm sorry for using technical lawyer language, but *mens rea* just means the fault component of the events.

Mr. Yasir Naqvi: Every single one of us is a lawyer here.

Mr. Ami Kotler: Okay. Very good.

I was saying, to the extent that the accused wanted to raise intoxication as a way of showing that they lacked one of the elements of the events. Then, if it was what the law calls a specific intent defence, that would be fine. So, if you were charged with murder because of intoxication and you didn't have the capacity to form a sufficient degree of intent, then it could reduce it to manslaughter, which is a general intent defence. However, when it came to general intent defences, because of section 33.1, you would be foreclosed from arguing that you lacked the intent necessary for the offence or that you had committed the offence involuntarily.

It was a fairly short process, and the focus of the prosecution would simply be whether the Crown could make out the offence, and that defence was not available...nowadays.

Mr. Yasir Naqvi: What changed because of the Brown decision?

Mr. Ami Kotler: Right. So, what the Supreme Court said was that the problem with that approach is that you have to have a degree of fault to convict somebody. You can't convict somebody who, for example, went to see a doctor, got a prescription, took their medication, had a completely unforeseen result and ended up doing something that they didn't even have any control over.

The legislation, as it stood, was not narrowed tightly enough to exclude those people, and the prosecution argued that the legislation shouldn't be read as including those people but should only be read as including those people who took substances negligently in a situation where there was a foreseeable risk that they could hurt somebody if they took them. It wouldn't catch those other people.

The Supreme Court said two important things. The first was that it didn't agree that that's what the legislation says. It said that it's written too broadly and catches everybody and is not narrowly tailored to just those people who exhibit that moral fault.

The second thing the Supreme Court said is even more important for your purposes. It hinted pretty strongly that, were you to draft legislation that was narrowly restricted to those who were negligent in the act of consumption, notwithstanding the constitutional concerns about convicting somebody for an offence that they committed when they weren't in control of their body, because of the very pressing concerns surrounding intoxicated violence, it may let that pass. That was the impetus for you to go back to see if you could put together a piece of legislation that did restrict liability to those who exhibited that degree of negligence: who consumed substances in circumstances to a degree or to an extent to which there was a foreseeable risk that there could be a violent loss of control.

● (1200)

Mr. Yasir Naqvi: In your view, did Parliament get it right in a fairly short period of time—to capture that concern of the Supreme Court in the way we have drafted and passed the legislation?

Mr. Ami Kotler: From what I can say, it appears to me that you tried to follow the road map that the Supreme Court had laid out for you, and of course whether there are ways in which the legislation could be improved.... Now that you have more time to think about it, I expect it is what you're looking at now.

Mr. Yasir Naqvi: From a prosecution services perspective, the gap that was left, has that been sufficiently met?

The Chair: Answer very briefly, please.

Mr. Ami Kotler: Yes.

The Chair: I want to thank Mr. Naqvi.

Thank you to all the witnesses for the first round.

We'll suspend for a minute or so to get sound checks done for the second panel. We'll resume right after that. Thank you.

● (1200)

(Pause)

● (1205)

The Chair: We are now resuming our panel with the next set of witnesses.

We have with us Pam Hrick, executive director and general counsel, Women's Legal Education and Action Fund, and Farrah Khan, executive director of Possibility Seeds, both appearing by video conference.

Hopefully, you've been sound-tested and you've chosen the right language on the bottom of your screen. If you want interpretation or floor, the option is there. I hope that's all good.

You each have five minutes. We'll begin with Ms. Khan.

Ms. Farrah Khan (Executive Director, Possibility Seeds): I'd like to begin by acknowledging that this conversation takes place across the traditional territories of many indigenous nations. I'm currently on the traditional territory of many nations, including the Mississaugas of the New Credit First Nation, the Anishinabe, the Chippewa, the Haudenosaunee, the Wendat peoples, and now home to many diverse first nations, Inuit and Métis people.

Thank you to the House of Commons Standing Committee on Justice and Human Rights for inviting me to appear as a witness for its study on the subject matter of Bill C-28, an act to amend the Criminal Code regarding self-induced extreme intoxication.

I'd like to thank Rebecca Akong and Grace Baric for helping me prepare for today's presentation.

My name is Farrah Khan. I have been raising awareness about gender-based violence, specifically sexual violence, for 25 years. I have been working in the field as a frontline worker for sexual assault survivors, and now run a sexual assault centre at Toronto Metropolitan University. This is an issue that is near and dear to me. Sexual assault continues to be the most under-reported crime in Canada.

The Supreme Court of Canada's recent judgment on the defence of self-induced extreme intoxication and the resulting Bill C-28 have been grossly misunderstood by the public—from people in my field to policy experts alike. Public and community-centred responses are rooted in a lack of fundamental understanding of the decision and the proposed new law. We can do better.

Members of the public, including me, were scared when they first heard the appeal and the decision. We were scared that this would allow self-induced extreme intoxication to be a valid defence for sexual assault, giving people who do harm carte blanche to commit sexual violence without repercussions.

I know now, from reading and understanding the bill and understanding the decision, that it's not true. But as sexual assault and alcohol consumption have often been co-related, it's reasonable to have this initial fear. About one in three respondents to a gender-based violence and unwanted sexual behaviour study in Canada stated that most incidents of unwanted sexual behaviour they were subjected to were related to alcohol or drug use by the perpetrator, with this being slightly more common among men than women. This view allows intoxicated people to get the idea that perpetuating sexual violence is okay—but it's not. I worry that organizations, sexual assault centres and survivors are getting the idea that this somehow is giving carte blanche when it's not.

Survivors may be less likely to report their cases if they're misinformed in their understanding of this defence and believe it will be invoked easily where people are drinking or doing drugs. In 2019, the general social survey reported that only 6% of sexual violence was reported to the police. I worry that the misinformation on this new defence may further reduce this already low statistic.

To understand why this matter has been taken up the way it has, we have to understand what the decisions actually say and why section 33.1 of the Criminal Code was deemed unconstitutional. In essence, section 33.1, as it was, breached an accused person's right to life, liberty and security of the person and the right to presumption of innocence by holding them criminally responsible for actions committed while in a state similar to automatism. This is when mind and body stop talking to each other. Think, for example, of sleepwalking, another form of automatism. This prevented anyone from raising the state of automatism as a defence in cases, general intent to violent offences, even when they could not reasonably predict they would reach this state when they were choosing to self-intoxicate.

The holding is actually progressive, as it safeguards the well-being of those potentially suffering from addiction issues, many of whom come from marginalized identities that are already overrepresented and over-criminalized in the so-called criminal justice system.

Contrary to what many people are saying online, on TikTok and social media...and that part worries me the most, as someone who works with survivors. I work with 16- to 24-year-olds. They were terrified about this. They were spreading misinformation. We need to do better about that conversation.

The thing was that the SCC was clear that drunkenness on its own would rarely result in a state similar to automatism. Therefore, the crux of the issue is the extent to which the consumption of drugs or alcohol prevents the user from having voluntary control over their actions. An accused would need to prove that they were in a state of extreme intoxication, drawing on expert advice. It would not be sufficient to show that they were really high or drunk. In other words, the accused would need to prove that they had no real control of their actions at the time of the offence.

● (1210)

The reasons for finding it unconstitutional lie in the fact that the old section 33.1 would lead to convictions even when someone is completely lacking intention, guilty mind or voluntariness to commit a crime. If one's intoxication is extreme to the point of automatism, they may negate the requirement of both *mens rea*—the guilty mind—and the voluntary wrongful act of the offence.

The new section 33.1 allows individuals to raise a defence under very limited circumstances consistent with the Supreme Court decision. While the onus remains with the Crown to prove beyond a reasonable doubt that the accused committed the act, the burden is on the defendant to establish the defence of extreme intoxication and the balance of probabilities using expert advice.

The Crown—

The Chair: Thank you, Ms. Khan.

Unfortunately, your time is up, but hopefully you'll be able to include that in some of the questioning.

Ms. Farrah Khan: Yes, no problem.

The Chair: It's over to you, Ms. Hrick, for five minutes.

Ms. Pam Hrick (Executive Director and General Counsel, Women's Legal Education and Action Fund): Thank you.

Good morning. My name is Pam Hrick. I'm the executive director and general counsel of the Women's Legal Education and Action Fund, also known as LEAF.

I am grateful to appear before you today from Toronto or Tkaronto, which is within the lands protected by the Dish With One Spoon Wampum Belt Covenant. I'd like to thank my colleagues Jen Gammad and Kat Owens for helping me prepare for this appearance today.

Founded in 1985, LEAF is a national charitable organization that advocates for the substantive equality of all women, girls and trans and non-binary people. We do this through litigation, law reform and public legal education that is feminist and intersectional.

LEAF was an intervenor in the Supreme Court case of R. v. Brown, which struck down the former section 33.1 of the Criminal Code. We intervened in that case to advocate for the equality of survivors of sexual and intimate partner violence, who are overwhelmingly women. When the Supreme Court released its decision, we were glad to see that it reiterated that intoxication alone is not a defence in sexual assault cases.

We were, however, deeply concerned to hear the confusion and misinformation circulating online after the decision was released, particularly among young people. People were worried about whether saying “I was drunk” was now a legitimate defence to sexual assault. The Supreme Court clearly said it was not.

LEAF was at the forefront of efforts to stem this tide of misinformation, alongside other gender justice advocates like Ms. Khan. Accurate information about what this decision meant was tremendously important, as is accurate information about what Bill C-28 means.

The Supreme Court's decision created a very narrow gap in the law, something that would not be relevant to the overwhelming majority of cases where an accused person was drunk or otherwise intoxicated. The court laid out constitutionally compliant options for Parliament to consider if it wanted to address this very small gap. Bill C-28 was intended to fill this gap. As we said when it was introduced earlier this year, LEAF supports the amendments in Bill C-28. The changes to the Criminal Code represent a tailored and constitutional response in line with the Supreme Court of Canada's guidance in R v. Brown.

Education and training for justice system participants will be needed to ensure the law's proper application. Moving forward, however, we encourage committee members and all parliamentarians to resist focusing on the criminal law as an effective response to gender-based violence, including sexual violence. Canada's criminal legal system is a site of systemic discrimination. It disproportionately criminalizes Black, indigenous and racialized people while at the same time failing to effectively respond to the high levels of violence faced by members of these same communities.

In addition, the criminal legal system too often fails and retraumatizes survivors of gender-based violence. We urgently need a fully funded intersectional national action plan to end gender-based violence and violence against women. As part of that plan, we need survivor-centred approaches to addressing and ending gender-based violence and violence against women. Survivors must have agency and choice in every step of the process.

It is imperative to study, develop and implement survivor-centred alternatives that move beyond existing legal systems. Alternatives like restorative and transformative justice models broaden the possibilities for justice, accountability and healing. LEAF is committed to supporting this work through our own alternative justice mechanisms project, which will identify legal barriers to alternative justice mechanisms for sexual violence and propose law reform measures to address those barriers.

While this committee's current review serves an important purpose, I want to reiterate that the Supreme Court decision preceding Bill C-28 created only a very narrow gap in the law. Bill C-28 implemented a minor, constitutionally compliant response that follows the Supreme Court's guidance.

The bigger issue is what this committee, this government and this Parliament must do to more meaningfully address violence against women and gender-based violence. More criminal law is not the answer. The answer is properly supporting and funding education, prevention, frontline services and alternative accountability mechanisms that respond to the needs of survivors while working to end gender-based violence and violence against women entirely.

● (1215)

The Chair: Thank you, Ms. Hrick.

We'll go to our first round of questions for witnesses, beginning with Mr. Brock for six minutes.

Mr. Larry Brock: Thank you, Mr. Chair.

Thank you, Ms. Hrick and Ms. Khan, for your attendance today and your participation in this important review of Bill C-28.

I'm going to offer an opportunity for you, Ms. Khan. You had much more to say, I believe, in your opening statement, so I'm going to cede some of my time and allow you to complete your thoughts.

Ms. Farrah Khan: That's so nice. Thank you.

I think the biggest things that I want to name—and Pam has already brought it up—are the two pieces we see. We really need the justice department to look at public legal education to address the misinformation that comes out. I even think about the SCC decision that came out on Friday. People are so scared...and the work, and survivors are. When we don't have a good communication process that includes youth.... The most misinformation that was coming out about this was coming out on TikTok. I saw thousands of young people talking about this and sharing this, yet we didn't have a communications plan. When this comes out or when anything comes out that will affect survivors, we have to think about the accompanying communications plan so that people are not spreading more misinformation that will hurt survivors.

The other thing I want to name is that transformative justice processes need to be funded in this country. If we're saying that this is administrative justice.... Justice goes beyond the legal walls, and right now, it's not being funded. It's only been looking at a very narrow idea of justice, and we need better.

Mr. Larry Brock: Thank you, Ms. Khan.

That, I believe, is a good segue to an area that I want to focus on. I listened very carefully to your opening statement, and this is a question that I put to the previous panel in our first hour.

I accept that across this great nation there is an erosion of trust. When we look at sexual assault victims and their responses to the criminal justice system, we see that they don't see a fair system. They see a system that is rigged against them right from the outset. They see...the statistics alone, the under-reporting, a mistrust in police investigations, mistrust in the relationship with Crown prosecutors, a mistrust of the judiciary and a mistrust of the probationary system. It's small wonder that the small portion of cases that we, as prosecutors, would have the privilege of prosecuting would still have those difficulties in terms of securing convictions, because of a number of issues. Largely, it's a result of individuals—victims—who just did not feel they were equal participants in the process.

When we take a look at Bill C-28 and take a look at the number of fears and concerns that victims have across this country, I totally agree with you that misinformation is eroding that public trust. It is up to the government, in my view—and I think you both share this—to engage in a public education system to reassure victims of crime, particularly in this area, that Bill C-28 does not open the floodgates. With regard to Ms. Hrick's commentary, this is a narrow gap. We, as lawyers, as parliamentarians, as academics, understand that, but the vast majority of Canadians do not.

I'm going to ask both of you specifically what more your organizations can do. What more can other agencies across this country do, in addition to the government response of educating the public?

● (1220)

Ms. Pam Hrick: Sure. I'll take a stab at this first.

Before I get into what we are doing with the limited resources that we have as organizations and advocates in this area, I will say that I think when we're talking about how well, as a society, we're dealing with sexual violence, we have a tendency to look at conviction rates and reporting rates as indicia of whether or not we're doing a good job. I really hope that one message I can convey here today—and that we do try to convey—which is grounded in community and in the experiences that we've heard survivors share, is that looking at conviction rates doesn't accurately reflect how well we are dealing with sexual violence.

I would like for us to more consistently look at how survivors feel about the accountability they're able to obtain and the healing they are able to engage in when they've experienced sexual violence, and use that as a metric for how well we're doing, offering a wide array of options for survivors to choose from about the path to justice, accountability, and healing and support that looks right for them.

To address the question of what more we can do, again, I run a non-profit. I know that Ms. Khan operates in similar spaces. We certainly do the best we can with the resources that we have to reach as many people as possible. Part of what we did—actually working with Ms. Khan—after these decisions came out was to deliberately go to spaces where young people, in particular, were interacting: Instagram and TikTok in some cases. We were trying to share information as a trusted resource—and I believe we, as LEAF, are that, given our history of 37 years of advocacy in this space for the legal rights of women, girls and now trans and non-binary people as well.

We try to reach as many people as we can in the spaces where they are, and I think that's an important and fundamental aspect of the work that Ms. Khan does as well, which I would invite her to speak about.

The Chair: Thank you, Mr. Brock.

Mr. Larry Brock: Thank you, Mr. Chair.

Thank you, ladies.

The Chair: Next we have Mr. Naqvi for six minutes.

Mr. Yasir Naqvi: Thank you very much, Mr. Chair.

Ms. Khan and Ms. Hrick, it's really good to see you both. Thank you for the incredible work you do and for all the guidance that you've given me in the past in various ways when we have interacted on exactly the same issues. I feel like we continue to have the same conversation, unfortunately, again and again, which tells me that we have far more work to do.

I'll start with Ms. Hrick on the legal side of things, but I do want to pick up on the next steps that both of you articulated because I think it's an important conversation to get on the record as well.

Ms. Hrick, you mentioned that you were involved in this case. LEAF intervened. Thank you for that. Can you speak with regard to the gap the Brown decision created? In your view, how does Bill C-28 meet that gap? Could more have been done in that regard?

● (1225)

Ms. Pam Hrick: I'll take the opportunity to reiterate that it was an incredibly small gap that the Brown decision created, and I will emphasize again that simply being drunk or being high is not a defence to crimes of general intent, including sexual assault.

What the Supreme Court did here was strike down an unconstitutional provision that prohibited, in all circumstances, people from raising the defence of extreme intoxication akin to automatism as a defence to crimes of general intent, including sexual assault.

What Bill C-28 did was take a look at what the Supreme Court said in its decision about what constitutional responses might look like, and it chose to implement one of those two options that would comply with constitutional rights, which are important. The rights of the accused are important and are to be respected, of course.

I think the implementation of the provisions in Bill C-28 strikes that balance between the rights of accused persons and the rights of women and girls and all those who experience gender-based violence to be free of violence. It provides that pathway where there is some more blameworthiness in conduct and also allows for individual circumstances to be taken into account in the adjudication of these cases, which is why we have found it to be a tailored and constitutional bill.

Mr. Yasir Naqvi: Ms. Hrick, were you consulted on this bill?

Ms. Pam Hrick: Yes, we spoke with the Minister of Justice's office.

Mr. Yasir Naqvi: What guidance did you impart when you were consulted in relation to Bill C-28?

Ms. Pam Hrick: If the government was going to move forward with a legislative response to the Brown decision striking down the former section 33.1, we felt that this was the option that ought to be pursued, as opposed to a second option that was offered up by the Supreme Court of creating a stand-alone offence for extreme intoxication.

To put it this way, it's sort of a pared-down version of the former section 33.1, which allows some nuance and tailoring in the consideration of how the provision applies.

Mr. Yasir Naqvi: Ms. Khan, I will come to you. You talked about a gross misunderstanding of the Supreme Court's decision. You're in this space. You work in a university setting. I just cannot imagine the kind of gross misinformation that you must have seen in light of that decision, which probably amplified already pre-existent misconceptions around sexual violence, sexual conduct and their intersection with alcohol and drugs.

Can you speak to that experience and how you were able to get the correct information out and negate some of those abhorrent views that may exist out there?

Ms. Farrah Khan: So, 71% of post-secondary students have been subjected to or have witnessed sexual assault or harassment. Much of that includes alcohol-facilitated sexual assault. During the first time that it was appealed, and then the Supreme Court decision, we had survivors come into our office in tears, come up to us during training, saying, “Well, I guess I can't report. No one is going to believe me. He's going to get off.” They would say in workshops that there is no point in reporting because no one is going to go forward with this, because now they can do it without any repercussions. It was a consistent thing. We actually had to change the way we did our training.

I am a part of the federal government-funded project called “Courage to Act”, which is leading the conversation on gender-based violence at universities and colleges across the country. We were working with organizations from across the country having the same conversation. They had survivors coming in terrified that they no longer could report, or, if they had reported, that during the trial it would be pushed out because of this decision.

We actually worked really closely with LEAF. We approached them and talked to the ministry of justice and said, “There's a problem here. Can you give us more information that we can have about this?” You should not need a law degree—because most survivors don't have one—to understand the decisions that the SCC makes. That's the problem we have a lot of the time. It's not that people aren't smart. It's not that people don't know things. It's that they know other things. Making sure that it's plain language, making sure it's accessible, is really important to us. It's about making sliders on Instagram and talking to our peers, but I think there's a big challenge in that social location impacts the ways in which people feel safe to report and the ways people are criminalized.

Another part of that was talking about what could be done differently with people who have sexually assaulted someone—alcohol-facilitated sexual assault. I would say to you all that we need to invest also in accountability counselling, and work specifically with men who have committed sexual assault, young men. If women between the ages of 16 and 24 are the largest age group who are targeted for sexual assault, that means the majority of that is done by their peers. We're not doing that work, and it's important.

● (1230)

The Chair: Thank you, Ms. Khan. Unfortunately we're out of time.

Mr. Fortin, you have six minutes.

[*Translation*]

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

Ms. Hrick and Ms. Khan, thank you for joining us today.

Ms. Khan, my colleague Mr. Naqvi has encroached a bit on the question I wanted to ask you. I am also interested in how people perceive Bill C-28, as well as the correction that the government intends to make with respect to the interpretation of what may constitute a defence against certain crimes when it comes to extreme voluntary intoxication.

How do people see this? You've talked a lot about TikTok. Based on the answer you just gave, I understand that there is a negative perception or at least a negative effect that makes victims of sex crimes less likely to report them, as they are afraid that they will not be believed and that the perpetrator will not be found guilty. I am interested in this aspect.

I assume that women come to talk to you about a crime committed against them, and you explain the situation to them. Once you explain to them the scope of section 33.1 of the Criminal Code, do they understand and recognize its merits? Or, on the other hand, despite all the explanations given, do the victims feel that there is never an excuse, if I may say so, for the crime committed against them? This reaction is certainly understandable. In any event, I would like to know what the reality is on the ground when victims understand the scope of section 33.1.

[*English*]

Ms. Farrah Khan: I love this question because this is the crux of the issue.

I travel across Canada and America as well, talking about sexual assault and consent with young people. The biggest issue they are challenged with is alcohol-facilitated sexual assault. It's the number one thing that young men will say: “Well, if I'm drinking and she's drinking, is this okay?” This initial decision made it more complicated because people didn't have the answers they needed, or they felt as if it was shutting it down.

We do make sure that we have included provisions within our training and have one-on-one conversations with survivors, so we train our staff and have those conversations of how to talk about it when they bring up these things. For a lot of people, they feel like the sky is falling. They feel like it's the worst thing that's ever happened to them.

With regard to young men, they are already feeling confused about consent because we don't have comprehensive sexual health education in Canada that actually teaches young men, young women and all genders—because all genders are sexually assaulted and all genders can commit sexual assault—on what their roles and responsibilities are or how to have sexual communication. What is masculinity? What does gender have to do with it? So, a lot of our work is unpacking those.

I will say this. There's a moment of relief. I can't describe the face that I see in front of me when I'm doing a counselling appointment and a survivor says to me, “You mean I can still talk to someone?” Yes, you can. Luckily, in Ontario, we have the independent legal advice pilot project where survivors can access up to four hours of free legal advice, but that doesn't exist in every province, so they have nowhere to go.

This is an access to justice issue. This is about access to public legal education. I would ask you to please invest in talking to people who work with young people around this. Invest in people who are doing the work on the ground. Bring us in. We want to talk to you about this stuff.

I would say that the justice department has been great about conversations around it, but they need to have more resources to be able to do what we need to happen around communication.

● (1235)

[*Translation*]

Mr. Rhéal Fortin: We understood earlier that Ms. Hrick was consulted by representatives of the Minister of Justice before Bill C-28 became law. Were you also consulted, Ms. Khan?

[*English*]

Ms. Farrah Khan: Yes. I did have the opportunity to speak to members of the justice department.

[*Translation*]

Mr. Rhéal Fortin: Do you believe that the current form of section 33.1 of the Criminal Code addresses the concerns you raised with the minister?

[*English*]

Ms. Farrah Khan: Yes. It actually gives provisions and ways in which people could go about addressing this, so I think, absolutely, it does. However, again, it's how we communicate those and how we make sure not only that the public knows, but also that the defence counsel understands it, that the Crown prosecutors understand it, that the police understand it.

What we have seen, time and again, is survivors coming forward with stories. They say, “I reported it to the police, and the police said, 'Oh, I don't think this can go forward'” or they give misinformation to a survivor. This is not just about “public” as in the general public. These are people who work within the court system—judges, lawyers, police, people in frontline services, the victim/witness program. We need to ensure that they have the education to understand this.

Yes, I agree with the provisions, but I think we have to go farther. Provisions aren't enough. It's how we apply them.

[*Translation*]

Mr. Rhéal Fortin: In summary, a good communication plan would be important for this aspect.

Thank you, Ms. Khan and Ms. Hrick.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Next we go to Mr. Garrison for six minutes.

Mr. Randall Garrison: Thank you, Mr. Chair.

Thank you to both of the witnesses.

I think it has been very useful to broaden the conversation beyond the specifics of legalities. I think you made the important general point that our priorities are sometimes revealed by our spending. We spend a lot on incarceration. We spend a lot on the criminal justice system. We don't spend so much on prevention and education.

I saw Ms. Hrick nodding a lot during Ms. Khan's presentation. I would ask you, Ms. Hrick, to comment on that relative prioritization of where we work on the issue of sexual assault.

Ms. Pam Hrick: Happily.

Yes, I was nodding along quite a lot. I find I do that when Farrah is speaking, because she's right. We do need to prioritize better funding for prevention and education and, where sexual assault has occurred, support for survivors. As Ms. Khan correctly pointed out, we also need support for accountability for people who have committed sexual assault, especially young people.

We really need to have in place a fully funded national action plan to address gender-based violence and violence against women. Funding for prevention, for education and for systems outside of formal legal processes to support survivors in finding the accountability and justice that works for them is critical.

I would like to see a greater investment in the sector in delivering on those important issues, which would also align with an earlier committee member's line of questioning about what we can do where we are to help educate the public. We do need funding and support to be able to do that.

Mr. Randall Garrison: Of course, I guess it does tell us a lot that this work is left to women-led NGOs in our society. My own experience for many years with non-governmental organizations was that there was lots of project funding, but there was rarely money to keep the lights on. The core funding issue was really a hard one for the NGOs. You can go to people and say, “I have a good idea”, but you can't run those good ideas without the core funding.

Ms. Khan, I'd ask you to comment on that challenge.

Ms. Farrah Khan: That is a challenge near and dear to my heart. I've been working in the field of not-for-profit. It raised me. The thing is always that we don't have the money to do our core services, so we're chasing grant after grant. People are living on shoestring budgets. There is an expectation to do tremendously important work that will actually help society thrive. If you want a thriving economy, you have to address violence. If you want a good education system, you have to address violence. If you want non-carceral approaches and other things to address violence and oppression, you have to address this.

We need to have core funding and we need to stabilize this sector. This sector needs to have the core funding it needs to do the work, including work with all parties involved in sexualized violence: respondents, complainants, survivors and families. I think the thing is that we oftentimes see the priorities skewed, such that we feel we have to focus on all these other pieces. But unless you have people who feel safe, people who feel as though they are nourished and nurtured, we will not move forward. I absolutely think that.

I also think a big part of it is expanding what we see as justice. If only 6% to 10% of survivors are reporting sexual assault, then we need to support those other survivors who are not. Where is the money going to support them? We look at the money being spent on carceral approaches as compared to that spent on supportive healing approaches, and there's a big difference.

● (1240)

Mr. Randall Garrison: Thank you.

Ms. Hrick, could you respond to the same question on core funding for the organizations that do this important work?

Ms. Pam Hrick: Again, I am in very enthusiastic agreement with Ms. Khan. It's a hugely important issue. I speak especially as a member of a national organization. We don't have options to access, for example, core funding that might be offered at the provincial or territorial level. We need to know that year to year we will have a certain pot of funding that will allow us to pursue the work that I know is important to members of this committee and to members of the communities for which LEAF advocates.

We need to be able to have the stability and resources to do that on an ongoing basis. Every time we have to pick up a pen to write and submit an application for a grant, that takes us away from doing that important core work.

Mr. Randall Garrison: I have very little time, but I want to broach the question of the differential impacts of sexual assault and our efforts to combat it on marginalized women, both racialized and poor. Maybe I can just ask that question generally quickly to both of you.

Ms. Farrah Khan: Our social location, our race, our gender and our sexuality impact the way in which we are believed. Are we going to approach the police if our community has been criminalized by the police time and time again? We are not. So Muslim communities, Black communities, indigenous communities, South Asian communities, racialized communities and queer communities may not feel safe to report, let alone access services or be seen as someone who can get the help they need, so these things absolutely have an impact.

We have to look at an intersectional approach and recognize that so many people don't access support. I would add gay men in there too. So many men come to our service, and what's interesting is that.... I work in an all-gender service, whereas before I worked just with women. It's been seven years now, and it's been a lightning rod to see so many men come forward and say, “I was sexually assaulted. I need support.” Before, there was nowhere for them to go, and now there is somewhere.

Mr. Randall Garrison: I know there's very little time, but, Ms. Hrick, perhaps you could make a quick comment.

Ms. Pam Hrick: I don't know how many times I'm allowed to simply agree with Farrah, but I will agree with her. I'll leave it at that. I can't put it any more eloquently.

Mr. Randall Garrison: Thank you very much to both witnesses.

The Chair: Thank you, Mr. Garrison.

Next, we'll go to Mr. Van Popta for five minutes.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you, Chair.

Thank you, witnesses, for being with us and for doing the important work you do.

Earlier in this study we had witnesses before us at this committee who talked about the trauma that women face in sexual assault trials in a criminal court setting. We heard, and I think you reiterated, that only a very small percentage, like 6%, of sexual assault cases actually get reported. Even fewer get prosecuted and, of course, even fewer end in convictions. Now we have a defence of self-induced extreme intoxication available once again. We heard from witnesses earlier today, Crown prosecutors working in this field, who said they expect there will be more accused people who will raise this as a defence.

This is just a wide-open question: Could you comment on that? What does this do? That's for either one of you. Maybe Ms. Khan could answer, because my follow-up question will be for Ms. Hrick. Just generally speaking, what does the availability of this defence do to the trauma of victims in a criminal court setting?

Ms. Farrah Khan: It will only do what we put into it. What I mean by that is that if we don't have clear communication, if we're not educating survivors, if we're not providing them access to justice that's outside of the Crown so they can talk to a lawyer independently to understand, then they're going to be less likely to report, because we're allowing influencers, people who are not experts on this, to start speaking about it and taking up the loudest space. We have to do campaigns on misinformation. Right now, disinformation is one of the biggest problems.

In terms of survivors going through a court case, someone said before that there's an erosion of trust in the court system by survivors. It's not eroded. It's always been there. Survivors don't trust a system that is not made for them. Survivors don't trust the system that is set up to put them on trial and not the person who has harmed them.

We need to do better, but we also need to have more access to justice processes for them and more information for the general public.

● (1245)

Mr. Tako Van Popta: Thank you.

Ms. Hrick, earlier in this study—I think it was last week—we had some law professors here giving evidence, including Dr. Kerri Froc of the University of New Brunswick, who is the chair of the National Association of Women and the Law. That organization is critical of Bill C-28 and the revised section 33.1. In discussing Bill C-28, she talked about the "problematic aspects of the bill, which we fear will pose nearly impossible hurdles for prosecution of intoxicated perpetrators of violence against women."

She then went on to say that there are other alternatives available that Parliament could have followed, rather than just necessarily one or the other of the two options that the Supreme Court of Canada gave us, including reversing the onus on the negligence aspect of the bill.

What do you say to that?

Ms. Pam Hrick: I appreciate the opportunity to be able to speak to this.

My concern with any sort of reverse onus at this point is the large risk that the Supreme Court would find that to be unconstitutional. What I do appreciate about how this particular bill was tailored and implemented is the nuance that it allows to be brought to consideration of the defence. All the relevant factors that are able to be properly taken into account I think ensure the constitutionality of the legislation.

As to whether this sets too high a bar, or a nearly impossible bar.... I only caught part of the last panel, but I believe you had representatives from the Manitoba Prosecution Service, who were speaking to the extent to which they thought it would be possible to prosecute under these new provisions that have been implemented by Bill C-28. I'd defer to their prosecutorial expertise on that particular issue.

Mr. Tako Van Popta: Yes, that's a fair comment. Thank you for that.

The Chair: You have 30 seconds.

Mr. Tako Van Popta: I'm reading on the LEAF website about the criminal law disproportionately discriminating against marginalized people. In the few seconds remaining, could you comment on that? I'm assuming you're not expecting a different balance of proof depending on race, for example.

Ms. Pam Hrick: No, of course not. What I do think is that people, particularly at this committee, and all parliamentarians, need to understand the ways in which racialized people—Black, indigenous—are disproportionately criminalized. You need look no further than the statistic that 50% of federally incarcerated women in this country right now are indigenous, notwithstanding that they represent under 5% of the Canadian population.

Mr. Tako Van Popta: Thank you.

The Chair: Thank you, Mr. Van Popta.

We'll go to Ms. Dhillon for five minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair.

Thank you to our witnesses for being here.

I will start with you, Ms. Hrick. I was going to ask you this question, but Mr. Van Popta has already started it. You spoke about the importance of constitutional rights and how they are being protected with this legislation, and said that this important balance is being looked at. You also spoke during your opening statement about marginalized people, people of colour, Black and indigenous people, being adversely affected, both on the victim side and on the accused side.

Can you please tell us how this legislation and this approach will help in these kinds of situations? As you stated, it's important to look at both sides to see that there's a balance, where rights are protected both for the victim and for the constitutional rights of the accused.

Thank you.

Ms. Pam Hrick: Right, and that's exactly what our charter requires. It requires the protection of rights of accused persons and also provides for the protection of rights of equality-deserving groups, including women and girls. The particular provision in subsection 33.1(2) that is, I think, important to this legislation is, again, looking at all of the relevant circumstances of a particular case and those being brought to bear on determining whether or not the prosecution is successfully meeting that threshold of proof beyond a reasonable doubt in light of all relevant circumstances. That will allow things like addiction issues and mental health issues to be taken into account.

I also think that it acknowledges exactly what I was talking about, which is the ways in which the criminal justice system disproportionately comes to bear on Black, indigenous and racialized people. It's not privileged white women who are being stopped in the street and who are being carded. We are not disproportionately being charged and being brought into contact with the criminal justice system. It is members of those marginalized communities, and I think that's something that always needs to be front of mind when we're talking about criminal law.

● (1250)

Ms. Anju Dhillon: Thank you for that.

What would you see as alternatives? You spoke a little bit about getting people out of the criminal justice system and having more healthy.... We've heard throughout testimony in this committee that holistic approaches need to be looked at. Do you have any suggestions? What do you envision those as being?

Ms. Pam Hrick: I envision fully funding, as Ms. Khan already said, restorative justice, transformative justice processes and community-based accountability mechanisms. As somebody who has been on the front lines of some of that, Ms. Khan may be well placed to actually share some of those experiences and expertise on that specific question.

Ms. Anju Dhillon: I was actually going to ask Ms. Khan if she could follow up and give us her opinion on the questions I asked you previously, and carry on with what you said.

Thank you, Ms. Khan.

Ms. Farrah Khan: Thank you both. Everything Pam said, I agree with, so I would just co-sign on everything there.

I would say, around transformative and restorative justice, that Courage to Act released two guides on working with people who have caused harm and working from a non-punitive approach around accountability. I would say those two things really need to be looked at.

Too often, we create processes that actually don't heal communities. We can't create an island where all the people who commit sexual violence go; they are amongst us. We have to build resources, opportunities and training so people can do the work. I've been witness to accountability counselling in which a young man was found to have sexually assaulted someone, and instead of going through an investigative process was asked if he would go through accountability counselling. He agreed and he went through it and at the end he was able to say, yes, I did that and this is why and this is what needs to change within me. Six years later we spoke to him. He was a part of a podcast we just put out in which he and the survivor talked together about what it meant to go through that process.

We need more opportunities like that, because the thing is, there was actual change there. There was a change of mindset to “I won't do this again.” This takes more resourcing and a whole system change, but it's where we need to go, because the current criminal legal system—I'm not going to call it justice—isn't working for survivors and respondents. We need to do better and invest in that transformative, restorative justice, but that's going to take funding, resourcing and being creative, which I hope we can be.

The Chair: Thank you, Ms. Dhillon.

Next we'll go to Mr. Fortin, for two and a half minutes.

[*Translation*]

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

Ms. Khan, I think you are very optimistic that it can be done. All the better if that is the case.

I'd like to take you a step further. Shouldn't victims be more involved in criminal trials? Obviously, when it's a civil trial, the victims are involved, since they are the plaintiffs. However, in a criminal trial, which is normally between the Crown and the accused, isn't the space for victims a little too small? Shouldn't victims be allowed to participate in all stages of the trial? I am not talking about forcing them to do so, since some of them would not want to, and that is understandable. For example, they could be allowed to put questions to the accused and be represented by a lawyer, of course. They could also participate in the famous plea bargaining.

In your opinion, is it not possible to improve the way victims are heard in a criminal trial?

● (1255)

[*English*]

Ms. Farrah Khan: Our Canadian laws are quite good around sexual violence and consent. I think the challenge is how they play out in court, so I think we need to look at that. That includes better training for lawyers and strongly encouraging that lawyers, judges and everyone who is part of the criminal legal system be trained about sexual violence, including on this provision.

I think one of the other things that we really need to see is that the independent legal advice, although I think we can change it.... I think survivors really need to talk to someone they have as an independent person, who is just for them during that process. The respondent gets that and the defence gets that, but the survivor doesn't through that process. That's why the independent legal advice pilot projects are so important. They shouldn't be pilots; they should be permanent.

Pam, I think you're better to speak to this than I am, because I am not a lawyer.

[*Translation*]

Mr. Rhéal Fortin: What is your opinion on this issue, Ms. Hrick?

[*English*]

Ms. Pam Hrick: I do think that we need to ensure that survivors—and in the context of the criminal system, they're legally called “complainants”—do have access to that independent legal advice and are given proper information throughout from the Crown prosecution service, and from the victim/witness assistance program and equivalents outside the province of Ontario as well, to ensure they have a working knowledge of exactly what they're going into and exactly what this process is going to look like so that they can make informed decisions and informed preparations along the way.

The Chair: Thank you.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Last, we have Mr. Garrison for two and a half minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Earlier, Ms. Khan, I think you made reference to the Ndhlovu decision on Friday with regard to mandatory registration of sex offenders. I wonder if you see the same kind of fear and misinformation that we saw with the previous decision spreading through the same channels.

Ms. Farrah Khan: Yes. I wish I could put my DMs on display right now on Twitter, because so many survivors are messaging me in a place of fear. I actually wrote to Justice today to say that I need better information to be able to explain the decision in plain language and why the sky isn't falling. The thing is, I'm ready to go back to school to get my law degree at this point, but I shouldn't have to get it.

When these decisions are made, if the government knows they're coming, then we need a communications plan that's in plain language, that really speaks to folks and speaks to young people who are doing the work and who can communicate to their peers. It's not enough.... Pam and I are not young enough. Sorry, friends, we may look it, but we're not, and we need to have young people—like 18 or 16 years old—talking about this in plain language.

It's really too bad, because in this moment we need stronger provisions around this, and we've again failed the public, I think. I know that Justice is doing so much and has low resources itself, so this is no blame or shame. This is just another thing to think about.

Mr. Randall Garrison: I would direct the same question to Ms. Hrick.

Are we committing the same fault here, on this second Supreme Court decision?

Ms. Pam Hrick: I'd say that we do need to have better education and information sharing about this. I know that the Supreme Court, in cases like this, of course gives a bit of a heads-up that the decision is coming so the implications of it can be thought through and plans can be made in advance where there are enough resources to do so.

I think it's important to dedicate the resources to doing this so that it's not again—to your earlier point—left on the shoulders of women, predominantly, and gender-diverse-led not-for-profit organizations to do the public education that is so urgently needed to ensure we are providing accurate information about what the law is.

Mr. Randall Garrison: Again, I thank both of you for being here today. I think you've had very important things to say that will inform our report, I hope.

I thank you, Mr. Chair.

The Chair: Thank you, Mr. Garrison.

I want to thank both Ms. Khan and Ms. Hrick for their great testimony today.

That concludes our meeting for today.

I just want to remind our members that this Thursday's meeting will be cancelled because there's the fall economic statement at four o'clock, so I think all committees are—

Mr. Frank Caputo: Are you delivering it or what?

Voices: Oh, oh!

The Chair: Maybe one day.

I will adjourn the meeting and see you guys next Monday.

Thank you.