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Chair

The Honourable Paul DeVillers

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

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● (0905)

[*English*]

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

We have with us today as an individual, Helen Ward, staff psychiatrist, forensic psychiatry and schizophrenia, Royal Ottawa Hospital.

From the National Action Committee on the Status of Women, we have Sungee John, interim president.

Welcome, both of you. What we'll ask for is a presentation from each of you of approximately ten minutes and then we'll have questioning from the members.

Ms. Ward, perhaps you'd like to commence.

Dr. Helen Ward (Staff Psychiatrist, Forensic Psychiatry and Schizophrenia, Royal Ottawa Hospital, As Individual): Good morning. My name is Dr. Helen Ward. I am a forensic psychiatrist on staff at the Royal Ottawa Health Care Group. I have an appointment to the faculty of medicine as an assistant professor at the University of Ottawa. My professional work is focused almost exclusively on the assessment and treatment of the seriously mentally ill who have involvement with the criminal justice system.

Over one-half of my in-patients and approximately one-third of my out-patients are current or former “not criminally responsible by reason of mental disorder”—or NCRMD—patients.

Bill C-13 proposes numerous amendments to the Criminal Code respecting the taking of bodily substances for forensic DNA analysis and the inclusion of these profiles in a national DNA data bank. The focus of my presentation is on the parts of the bill that provide for the making of DNA data bank orders against a person who has committed a designated offence but who is found not criminally responsible by reason of mental disorder.

The purpose of my presentation today is to provide the committee with further information about the risks posed by NCRMD accused and the measures that are already in place to reduce the risk these individuals pose to the safety of the general public. The information underlying this presentation is from several primary sources: my training and clinical experience; a research paper provided by Dr. Karen DeFreitas, a member of the Ontario Review Board; and a study by Livingston and others published in The Canadian Journal of Psychiatryin 2003, following up persons found NCRMD in British Columbia.

I'm aware that the committee has already heard submissions from the Schizophrenia Society of Canada regarding the relevant NCRMD Criminal Code sections and the special provisions made for these individuals. A person found NCRMD must have been severely mentally ill at the time of their offence, and while it is acknowledged that they committed the offence, they are not considered to have been criminally convicted.

In Dr. DeFreitas' sample, 83% of the offenders suffered from either schizophrenia or a major mood disorder. In my clinical experience, the vast majority of NCRMD individuals end up in contact with the criminal justice system because the general mental health system did not meet their needs.

In the Livingston study, more than 75% had previously undergone psychiatric in-patient treatment. These were seriously mentally ill people who needed hospital beds, case managers, enforced treatment, and/or substance abuse treatment. In today's health care environment there is a severe shortage of these resources. The police have no choice but to arrest mentally ill people who are repeatedly turned away from hospitals. Their families call the police in desperation when they feel there is no other way to obtain help for their loved ones.

Part of my job is to assess newly arrested individuals at the local courthouse, and the phrase “This person is clearly suffering from a mental illness and needs help”, or a similar phrase, is one I commonly see in police occurrence reports.

Once a person is found NCRMD, a disposition is made by either the court or the provincial criminal review board. The disposition must be the least onerous and least restrictive to the accused, while protecting public safety. According to a 1999 Supreme Court of Canada decision known as Winko, the NCRMD individual must be granted an absolute discharge from the jurisdiction of the review board unless they are found to pose a significant threat to the safety of the public.

In order to determine this, the review board relies on expert risk assessment and testimony provided at annual hearings by forensic mental health experts as well as their own review of the condition and progress of the accused. If the review board does not grant an absolute discharge, a number of options are available to them. These include detention in hospital, detention in hospital but with conditions allowing the person to live in the community with varying degrees of supervision, or a conditional discharge.

NCRMD patients residing in the community are generally far more closely supervised than offenders on probation and possibly even parole. They are subject to residing in supervised accommodation, or if living independently, such accommodation must be approved and is closely monitored. Most are subject to random screening for alcohol and illicit drug use. A person on detention orders can be immediately detained in hospital if their psychiatrist sees any deterioration or any medication non-compliance, or for any violation of their review board conditions.

● (0910)

While the disposition of the review board is reviewed annually, it will continue indefinitely as long as the accused is considered to pose a significant threat to the safety of the general public.

In my opinion, the extensive supervision of NCRMD accused occurs because they are subject to conditions and involved in programs that are specifically aimed at addressing their individual risk factors. This is partly a result of the requirement that the review board disposition provide a program for the rehabilitation of the accused. It is also because the most important risk factor, that of relapse of the individual's mental illness—which produced the offence in the first place—is generally readily treatable once the person is required to cooperate with mental health care providers. This results in very low recidivism rates.

In the Livingston study, 7.5% of the NCRMD accused residing in the community were convicted of a criminal offence during a subsequent 24-month period after their release from hospital. In Dr. DeFreitas' study, the recidivism rate was less then 2.5% per year, with no offence more serious than common assault.

In summary, it is my argument that NCRMD accused differ from other offenders in the following ways: (1) they have not been criminally convicted of the offence and should not be treated as equivalent to other offenders, which is clearly reflected in the current Criminal Code; (2) they are a group of mentally ill persons who in many cases have only come into contact with the criminal justice system as a result of inadequacies of the mental health system; and (3) they are already subject to extensive conditions, which can be prolonged indefinitely and have been shown to effectively reduce their risk of reoffending.

The taking of DNA samples in this population is an unnecessary and intrusive measure that would significantly impact the privacy and security of this vulnerable group. I submit that this presentation has laid a foundation that supports the removal of the amendments to Bill C-13 that include provisions to authorize the taking of DNA samples from NCRMD persons who have committed a designated offence.

Thank you for the opportunity to speak to the committee today.

● (0915)

The Chair: Thank you very much, Ms. Ward.

Now we'll go to Ms. John for approximately ten minutes.

Ms. Sungee John (Interim President, National Action Committee on the Status of Women): Thank you.

The National Action Committee on the Status of Women welcomes this opportunity to make its presentation to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. As Canada's largest feminist organization, NAC has been fighting for women's equality for over 30 years. Committed to equality and social justice for all women, NAC focuses mainly on advocating for changes that will improve the status of women, such as those in child care, violence against women, anti-poverty, and minority rights. In addition to supporting national, regional, and local issues, NAC participates in conferences and actions to promote international solidarity between women and advocates for women's equality rights globally.

Historically, NAC's strength was threefold: as an advocate for the equal and active involvement of grassroots women in all aspects of Canadian society and polity through democratic fora such as the annual NAC lobby on Parliament Hill; providing leadership and voice for feminist advancement in public policy; and as an umbrella organization whose momentum and raison d'être is sustained by the energy and commitment of our member groups on the front lines of the Canadian women's movement in communities large and small.

In our brief to this committee NAC will focus on a few key issues that are of concern to our member groups on the front lines. These are issues of concern that have been expressed to us particularly by grassroots women across the country.

The scope of Bill C-13 and the haste in which it is being steered through Parliament should be alarming to all Canadians because it's being done in a way that is not looking at all the various elements and evidence that would justify its arguments. Quite simply, the tabling of Bill C-13 is at odds with the parliamentary review of Bill C-3, the DNA Identification Act, which was mandated to have a parliamentary review after five years. It was enacted in 2000.

When Bill C-3 was passed—and following subsequent rulings by the Supreme Court of Canada—the collection of DNA samples applied only to serious offences that were defined as that "which consist primarily of violent and sexual offences that might involve the loss or exchange of bodily substances that could be used to identify the perpetrator". This was quoted from the Supreme Court ruling in R. v. S.A.B. in 2003.

Bill C-13 proposes to expand this clearly designated set of offences to include a long list of new ones, including intimidation, extortion, and robbery, etc. The principles for expansion should be clearly laid out. Instead, after reading the bill and its backgrounders, there appears to be little to no rationale presented for the expansion of criminal offences that would allow for the collection of DNA samples and no scientific evidence to support such cases.

For example, how is intimidation defined when it becomes a criminal offence? Would participating in a protest or a picket line be labelled as intimidation? Moreover, how is Bill C-13 balanced against the rights of individuals as guaranteed and entrenched in the Charter of Rights and Freedoms?

As an advocate for equality rights, NAC has serious concerns that the proposed legislation could be applied disproportionately against the more disadvantaged, vulnerable, and marginalized members of Canadian society. Using immigration policy as an example, “DNA testing is required by over 85% of African immigrants, even though it should only be required in cases of doubt about the identity of the applicant.” I quote this statistic that was part of the presentation given by the African Canadian Legal Clinic before the UN World Conference against Racism in 2001 that was held in Durban, South Africa.

If Bill C-13 were enacted, how would the lives of women be any safer? That's another question. In 1995, when the establishment of a DNA bank was being proposed, NAC, along with many other equality-seeking women's organizations, was opposed to it. Advocates in the anti-violence movement understood that DNA would not be the issue when sexual assault and rape cases go before the courts. The issue is consent. In the majority of sexual assaults and/or rapes, the attacker is known to the woman. Defence lawyers will try to turn the issue in the court from sexual aggression to one of consent between two adults.

Perhaps a better use of the government's time and money would be on programs and services that would provide education, tools, training, and/or rehabilitation.

● (0920)

Finally, there's another question I would like to put to the committee. How extensive has the public outreach and education been on this bill? How many NGOs have been approached to give their perspective on this piece of legislation?

The far-reaching nature of this bill needs to be dealt with in a way that includes all Canadians and not rushed through the House. Therefore, NAC recommends the following: that the Standing Committee on Justice, Human Rights, Public Security and Emergency Preparedness conduct a gender-based analysis of Bill C-13 in order to clearly understand the impact of this proposed legislation on the lives of women in Canada; that the gender-based analysis include a component for critical race and class analysis; that the committee refer this bill to the status of women committee, which was newly created last year, for further review; and that the committee hold consultations with equality-seeking groups and other social justice groups across Canada similar to the ones held in 1995-1996 when the DNA data bank was first being proposed to the broader community; and finally that the committee wait for the parliamentary review of the DNA Identification Act to take its course.

In closing, we find that Bill C-13 gives the appearance of being driven more by fear than by reasoned argument. It does not offer women any greater protection from violence; instead, it has the potential of targeting unintended victims. I urge this committee to reassess the speed at which it is proceeding with this legislation.

Thank you.

The Chair: Thank you very much, Ms. John.

For the first round of five-minute questioning, Mr. Thompson from the Conservatives.

Mr. Myron Thompson (Wild Rose, CPC): I won't take a whole lot of time. Hopefully we can get lots of questions in.

For Dr. Ward, I'd like to give you a scenario that has happened that I'm very well aware of—and I won't tell you where and I won't tell you who, for the protection of this individual. A grade 12 student viciously attacked his own family. Following that particular investigation there were other assaults by this individual on other students, etc. It went on for a while. Finally they did the right thing and sent this boy away for some assessments. He definitely was determined to have a mental disorder. I think a lot of it was schizophrenia. There could have been other things, but I'm not sure.

As a member of a community, the entire family...we learned that after much treatment this individual was quite capable of maintaining control and living a normal lifestyle that you would expect out of a young person. He was required, though, to keep taking his medication. Without it, all hell could break loose. That was pretty much the message. There was a duty to be performed by those engaged with this individual to see to it that his medications were adhered to.

But every time there was a crime of any kind that went on in town and they weren't sure who was responsible for it, it seemed like this person was the first person the people turned their eyes to: “Poor old John—you know he's done it again”, that type of attitude. I think you understand what I'm saying. It was the community at large.... Of course, the police always seemed to have a word with John about where he was, etc., and if he had any relationship to the particular event that happened.

It seems to me that if John's DNA data was available immediately to exonerate him, rather than investigate him, this would really be a good thing to do. What's wrong with doing that in this regard? I think the exoneration of an individual is equally as important as the conviction of an individual.

Dr. Helen Ward: Well, I would submit that it's actually fairly unlikely that DNA evidence would have been involved with most of those incidents. Those incidents are not typically the kind in which DNA samples are available and taken.

Mr. Myron Thompson: I'm sorry. I could mention other things where it would be considered evidence.

Dr. Helen Ward: Right.

In general, you're certainly right that a person who's identified as mentally ill and a previous offender is going to be already a person of interest to police. That is true. But my point is that—and you've made it yourself—as long as he's on his medication, he's not going to be at much risk to reoffend at all. That's the first point to be made here, and it's really important.

Second, you didn't mention if this individual—perhaps he's theoretical or perhaps not—is an NCR individual, but that's important. These individuals are subject to conditions that are essentially for the protection of the public, but they're also for their own rehabilitation.

Some of these individuals are themselves just appalled at what they did. Many of them are, and they're quite happy to follow the restrictions. But a number of other people find this quite intrusive, and that's been reflected in the case law. It's quite intrusive to have these restrictions. Many of these people have a psychotic illness. To actually have to provide DNA and to know that their DNA is on a data bank and to know that the police will be checking them out, including their DNA, they find significantly intrusive. The idea of it is very unpleasant to them. These are, to my mind, special individuals in that way.

● (0925)

Mr. Myron Thompson: My last question is to both of you, if you care to comment.

It's been stated many times, and I believe it to be true, that one of the most elemental duties we have as politicians and elected officials is to do all we can to provide safety and security for our citizens. Their protection against crime is most significant, especially those most vulnerable, and I would classify children and women in that category. They're vulnerable.

This kind of legislation is an effort to accomplish that feat of providing the best protection we possibly can for the victims. My concentration is always for the benefit of victims, and if I wander astray from that, I have colleagues who will bring me back in order, but the protection of victims has to be first, in my view. I look at this as a measure of doing that. I'm pleased that neither one of you mentioned the fact that we've included child pornography as part of the requirement.

The Chair: Mr. Thompson, your five minutes is up.

Mr. Myron Thompson: Is it up already? I do that every time.

At any rate, would you care to respond to that briefly?

Dr. Helen Ward: Briefly, I would just indicate, with respect to the NCRMD offenders, that these are not sex offenders, especially under the Criminal Code since 1992. The NGRI was different, but these people almost exclusively have psychotic illnesses and really are not the people who are placing children at risk in general—certainly not at risk from sex offences.

The second comment I would have is what I've already stated, which is that, yes, absolutely, protecting the public is important, but the law has already upheld that this needs to be balanced. You can't pick out a special group and place restrictions on them unless it's justified. My submission is that it's not justified with this particular group of NCRMD accused.

The Chair: Ms. John.

Ms. Sungee John: As I mentioned briefly in my presentation, there's no empiric evidence to show that the changes being legislated will have an impact on the protection of the people you've mentioned, Mr. Thompson.

The Chair: Thank you.

Thank you, Mr. Thompson.

Madam Bourgeois, pour cinq minutes.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chair.

Good morning, ladies. I am very happy to see you here this morning. I was looking forward to have the feminist groups and the people who are mentally ill send us somebody that could shed a new light on this bill.

I think we should be very careful, especially with the impact of this bill on women. In fact, we know that all the studies show beyond doubt that women represent an overwhelming majority of the people who suffer mental illnesses. Over 80 p. cent of incarcerated women have mental illness problems. I think you came here this morning to tell us to be careful with this bill, because it could victimize women.

I would like Ms. John to elaborate on this subject, to give us some very specific examples, because she spoke of gender-based analysis. I don't think there has been any gender-based analysis done. Even if Canada officially spends 11 millions dollars to get that type of analysis, I don't think any such analysis was done in this case. We are being asked to submit this bill to the committee on the status of women. I find this quite exciting, but I would like you, Ms. John, to give us some very specific examples which establish beyond doubt that women could be victimized by this bill.

My next question will be for Mrs. Ward.

● (0930)

[*English*]

Ms. Sungee John: It's difficult to give specific examples, but looking at the statistics, we know that Bill C-3 was passed in 1998 and enacted in 2000. It became law in 2000. Since that time women's lives have not been any safer; in fact, more women have died as a result of domestic violence.

If you look at the example of Ontario, in fact the coroner's report has strongly recommended that other forms of databases be used rather than DNA to look at providing some greater protection for women. Furthermore, with the DNA again and the examples of sexual assault, rape, and other violent crimes against women, when these cases go to court, as I said in the brief, the defence lawyers will usually use them as cases about consent. Consent is very difficult. It becomes a case of he said, she said.

So how does DNA evidence apply? Usually in these cases the woman knows the attacker; it's not a matter of finding out who this person is. Attacks by strangers happen, but they're not the majority of cases when it comes to sexual assaults.

[*Translation*]

Ms. Diane Bourgeois: You raised a very important point. It is not clear that DNA is useful in sexual assault cases. It could be useful where the identity of the agressor is unknown, but when the woman knows her agressor, it is not helpful at all.

Mrs. Ward, do you believe, from your training and your experience, that people who are mentally ill— we talk about schizophrenia but also about the other types of mental illnesses—could be traumatized by the taking of an ADN sample?

[*English*]

Dr. Helen Ward: Yes, I do. Certainly not all individuals would be. Some of them do comply in a fairly passive way with whatever is required of them.

But my patients find being an NCR individual quite a label. They know they have to have drug screens; they know we can visit them at any time; they know it comes up on any police check that's run on them. They have to come to a hospital that's designated as the psychiatric hospital.

They are already quite sensitive, and many of them have a hard time now distinguishing that they're not actually criminals. They feel criminalized already by the review board, despite the emphasis of the review board on rehabilitation. Quite often the focus of their discussion with me about when they're going to receive an absolute discharge has to do with this feeling that they're still criminals if they're under the review board.

Clearly, with something like having your DNA taken and being in a data bank, everyone is very aware in the media that this is a "sex offender measure". That's where all the publicity has been. They are going to see themselves as lumped in with and equivalent to, basically, psychopaths or predators, and that is going to be very traumatizing.

● (0935)

[*Translation*]

Ms. Diane Bourgeois: You are a psychiatrist, you know all about policemen, the way they are, the way they address people, the way they act. You also have a clinical experience of people who suffer from schizophrenia or from another mental illness. Could a mentally ill person feel completely at a loss in that situation? Could the policemen somehow abuse their power? Could the taking of an ADN sample be used as a form of abuse of power that would create a feeling of rejection in the patient the sample was taken from? I am speculating but we could suppose this is nevertheless a likely scenario.

[*English*]

Dr. Helen Ward: Unfortunately, yes, I do have quite a lot of professional exposure to the police officers directly and to my patients' interactions with them.

Many police officers deal with the mentally ill very well. I would certainly say that. They are as aware as I am of the problems. I think, though, the police themselves get very confused about what NCR means. It comes up when they check their records—and sometimes it's also misentered as something else—but many of them do identify this person as a criminal even though they're NCR. Certainly if this person also comes up as being on the DNA database, it's my contention that the police are definitely going to be identifying him or her even more strongly as a criminal and will deal with the person in a different manner. This is clearly the way it happens now, despite these people being flagged as NCR.

[*Translation*]

The Chair: Thank you, Ms. Bourgeois.

[*English*]

Mr. Comartin, five minutes.

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

Thank you both for being here.

Dr. Ward, if I can start with you, we've had this come up with regard to the NCR component of this legislation. It's the broad-range question of what harm it might do. I think our image would be of the court at the time of the finding simply including, as one of the conditions of that finding, that a sample be taken. I think all of us on the committee are wondering where's the harm to the patient.

I wonder if you could address this, either concretely by examples or maybe more subjectively.

Dr. Helen Ward: There are several different scenarios. First of all, at the time of being found not criminally responsible, often these people are still somewhat ill. Most of them remain in hospital, so they are at that time still in an extremely vulnerable state. Many of them are still paranoid. We can have trouble getting them to give blood samples for assessment or treatment purposes. Certainly, the actual practical issue is important. I've already mentioned that for them the label is a significant stigma; knowing you are an offender with your DNA in the data bank I think does have a significant impact. Third, we've mentioned the impact perhaps on how the police are dealing with these individuals.

I don't know how this is going to be used. I don't have experience or exposure concerning how the DNA samples are used now. But it seems that if this is going to put these people at a higher risk of being suspected of any crime that occurs in their neighbourhood and sought out, that's going to have quite a significant negative effect. I have patients, for example, who breach their conditions by using a street drug; I find it in a urine sample. I have several different options, one of which is to send the police to their door, either to lecture them or to bring them directly to hospital. We can do that, and we do that. It's frightening to patients; it's really traumatic to patients when that occurs. I've seen it happen. I still have to do it at times. They've often had very difficult experiences with the police, because they were so ill at the time they were dealing with them that they've become traumatized by it. I do think it can have a significant impact on these particular people.

● (0940)

Mr. Joe Comartin: Ms. John, if I understood your presentation and NAC's position earlier in the first round, when the legislation was working its way through back in the late 1990s, you were opposed completely to the legislation for the establishment of the data bank. Is that still NAC's position today?

Ms. Sungee John: Yes. We're opposed to it for a number of reasons, including privacy too.

Mr. Joe Comartin: Okay.

I wonder if I can get some comments from you. I'm going to use the Bernardo case as an example. The DNA bank can be used, in effect, as a preventive measure. If you follow the scenario of Bernardo, first in Scarborough and the number of rapes that took place there, then over to St. Catharines, you see the length of time the police took and the lack of sharing—that's another issue. Had they taken DNA samples from the perpetrator in those cases in Scarborough, they would have caught him. That's the belief of the police, and I think the judge who reviewed the case came to the same conclusion. They would have caught him before the murders in St. Catharines. Just assume that those facts are accurate, because they will be in a number of other cases where the DNA data bank actually acts as an investigative tool and does prevent subsequent crimes by the same perpetrator. Does that not justify the existence of the data bank, as protecting women from sexual assault?

Ms. Sungee John: People will bring up the Bernardo case, but that's a rarity. I haven't read the judge's rulings. While that might have been the case if that had been done, people often use cases like Paul Bernardo or the attacks of serial rapists as justification. Again I emphasize that's more an anomaly than it is the usual day-to-day life for women across the country. Again, I haven't read up on the findings, but we don't know what events would have been brought about. If you look at it to conduct an analysis of the overall impact, that might give a better sense of whether it would truly protect women across Canada.

Mr. Joe Comartin: I just want to say to you, so you know, both of you, I have some serious reservations about part of this legislation being done at this point, as opposed to waiting to the end of the year, when the full review would be done, as was mandated by the original legislation. I think the points you've made today are somewhat of a reflection of that weakness in the process we're going through right now.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Mr. Maloney, for five minutes.

Mr. John Maloney (Welland, Lib.): Dr. Ward, you indicated that a lot of people you see end up on your doorstep simply because there is a lack of mental health resources in the community or perhaps the regular psychiatric ward. Do you have enough resources?

Dr. Helen Ward: No, we don't have enough resources.

Mr. John Maloney: And what is the result of that?

Dr. Helen Ward: It's difficult to quantify. It does not appear to be recidivism at this point in time. The result, however, is that we are working extremely hard. I have people in the hospital who are doing double duty on supervision. They're going the extra mile. They're going out to see people. We keep pretty good track of our people at the hospital as to whether they're complying. We know if people are missing appointments, we know where people live, we have contacts with them, we know if they're failing their drug screens, we know if they're missing their drug screens. We're keeping up with the basics. I think where we're having difficulty is in rehabilitating people.

So I think part of the impact is not directly relevant to this committee. There's not higher recidivism, but these people are staying longer in the review board system, longer than CRMDs, because I can't get them to a point where it's clear that they're going to be able to carry on on their own without the restrictions of the review board. I don't have case managers and programs and rehabilitation to help these people improve beyond the level of medication management and a safe place to live.

● (0945)

Mr. John Maloney: Eventually, how many of your patients would become fully rehabilitated? Or is that a term you can't really apply to this category of individual?

Dr. Helen Ward: It depends on how you define it.

Mr. John Maloney: How would you define it?

Dr. Helen Ward: I would say, on one level, not at all, because these are mostly people with a chronic mental illness. Schizophrenia is the major illness here, and like diabetes, it doesn't go away. You have it for your whole life, you need to stay on medications, you need to look after yourself, and many people can't work and need to be sheltered, etc. So in that regard, no, but I do think many become rehabilitated to the point where they re-establish good connections with their families and do meaningful work or engage in other occupations to the extent they can.

With respect specifically to the NCRMD system and absolute discharges, which is one way to measure rehabilitation, where they've reached the point where the review board no longer believes them to be a significant threat to the safety of the general public, the length of time varies. It doesn't vary, of course, according to the offence; it varies according to how well the individual is doing. Very rarely people get immediate absolute discharges. Most of the time it's two, three, five years. I have people who are still NCRMD in the community after ten years. They're doing fine, but they're not really to the point where we want to let them go yet. So it varies, but many of them do progress to absolute discharges.

Mr. John Maloney: You indicated some studies of individuals who did relapse or were charged with criminal offences. One was 7.5% in a 24-month period, another one was 2.5% for a year. I think those were the most serious crimes.

Dr. Helen Ward: Those are all offences leading to conviction.

Mr. John Maloney: Are there any studies beyond a 24-month period?

Dr. Helen Ward: No. In fact, the study on the 24-month period is pretty much the first of its kind in Canada. Part of the problem is that we're we're experiencing the changes in legislation. That study came out in 2003, and it was designed to evaluate the effects of the 1992 changes. We've now had, in 1999, the Winko decision, which changed the review boards and how they discharge people, and we're only just starting to see some short-term studies looking at that. It just takes too long to do it, and I don't think research efforts are very coordinated.

Mr. John Maloney: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Maloney.

Now Mr. Warawa for five minutes.

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

My question is for Dr. Ward. You mentioned that one-third of your patients are NCRMD, and in speaking to Bill C-13, the three points you made were that they're not convicted of a criminal offence; they were involved with a criminal offence, but they were not convicted, because they were found not criminally responsible by reason of a mental disorder. The second point, which was already addressed, was that there are not adequate mental health resources in the system. And third, it's intrusive to this vulnerable group. I think those are the three points you brought up.

The purpose of the DNA bank is to identify suspects, to eliminate suspects, to identify serial offenders, and to link crime scenes. Which would you find less intrusive, to be sought out and questioned by police, which you said was traumatizing to them, or for them to have had a one-time DNA sample provided, so now the police at the DNA bank are matching up to find out whether or not this person is eliminated or identified as a possible suspect? So is it repeatedly being sought out and traumatized by an interview by the police or a one-time sample taking? Which would be found less intrusive?

● (0950)

Dr. Helen Ward: I would certainly say, based on the scenario you provide, that it would be less intrusive to be exonerated by the method you indicate. However, I would indicate that my patients are generally not sought out and interviewed and harassed currently—sorry, harassed is a bit of an overstatement. They're not generally called in and interviewed. If the police have a concern, they usually come to us initially, and we try to buffer with the system. That's the first issue.

The second issue is the more general point I made before. Obviously, if we wish to protect the public completely, every single Canadian could have their DNA in the data bank. No one's advocating that. My point today about the NCRMD population is that these are not serial offenders, these are not criminals. They offended, but they offended because of their mental illness, and their mental illness is being very well taken care of. We have some data to support that.

Mr. Mark Warawa: Dr. Ward, I only have five minutes, and I have a couple more questions here for you.

Dr. Helen Ward: Sure.

Mr. Mark Warawa: You mentioned that they feel criminalized by the review board. How often do you attend an NCRMD at a review board? How often do you go to review board hearings?

Dr. Helen Ward: I go for every single one of my patients.

Mr. Mark Warawa: How often would that be?

Dr. Helen Ward: I probably attend 40 review boards a year.

Mr. Mark Warawa: Does your patient feel criminalized or victimized when they attend one of these review board hearings?

Dr. Helen Ward: I used the word "criminalized" because I think for some of them it does apply. They feel like criminals even though you can get them to appreciate on a basic level that they're not. It's a very intimidating process for them to go through.

Mr. Mark Warawa: You also said the police treat them as criminals and they feel stigmatized by the label of NCRMD.

Dr. Helen Ward: I would say yes.

Mr. Mark Warawa: So having their DNA in the data bank is just another element of being stigmatized and labelled?

Dr. Helen Ward: But just because they are criminalized and stigmatized, or feel criminalized and stigmatized, it doesn't mean that's okay. In my opinion—

Mr. Mark Warawa: But this is the frame of mind you're sharing.

Dr. Helen Ward: That's true, but my point is that we should be working to educate police forces better about this. We should be doing what we can to de-stigmatize mental illness in general, not add something else to it.

Mr. Mark Warawa: Finally, with regard to the risk they pose to our society, Mr. Thompson brought up the point that as long as they're on their medications, the risk can be kept low, but if they come off their meds, it's different. Even though they may have an absolute discharge, they rely on those meds, probably for the rest of their lives, to keep that risk low. If they're off the meds and are not under your care any more, they could pose a significant risk. Is that not the case?

Dr. Helen Ward: Theoretically, yes, but I would comment that when the review board is assessing significant threat, they're not just looking at a snapshot of today. They are looking at how this person is going to manage and their level of insight into their illness, their level of commitment to continuing with their mental health treatment and their medications for the foreseeable future. So the review board is only discharging people they feel confident will continue to comply; it's not just that they're complying today and off they go. These are usually people who've had quite a gradation. They've moved to the point where they're functioning independently and we know that. Then we just let them go a little bit longer. I still follow these people.

Mr. Mark Warawa: At that point, with an absolute discharge, their DNA sample would be destroyed at the bank.

Dr. Helen Ward: That's actually a question I have, but I would hope that is the case.

Mr. Mark Warawa: That is the case.

The Chair: Thank you, Mr. Warawa.

Mr. Tonks, for five minutes.

● (0955)

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman.

I found the testimony fascinating. I appreciate the insights you bring.

To follow the line of questioning from Mr. Warawa, Dr. Ward, you quoted the Livingston study on recidivism: 7% after release, and as low as 2.5%. Does your experience with respect to recidivism correlate with the Livingston statistics?

Dr. Helen Ward: Actually, my experience is that it's at least as low as that. I canvassed Dr. John Bradford, who is the head of forensic psychiatry for the region, with over 25 years of experience. His immediate response was that it was less than 1% per year. Certainly, in his extensive experience, it's very low. If we had a recidivism rate per year of 2.5% of our patients, we would be alarmed. It's usually lower.

Mr. Alan Tonks: I'm not sure if it was with respect to even a low percentage of those who would regress that you indicated there was a correlation with street drugs. Could you expand upon that? What kinds of street drugs? Are those medically available, pharmaceutically approved street drugs?

Dr. Helen Ward: Sure. There are never pharmaceutically approved or medically approved street drugs in our population.

Let me back up a second. Schizophrenia lifetime co-morbidity with substance and alcohol abuse is about 50%—it's very high anyway. With the NCRMD patients, in my experience, it's approximately the same, and in these studies it's approximately the same over a lifetime; it's not higher. With most of these people it's marijuana that's the subject of interest, with a number of them alcohol, and very occasionally stimulant drugs, such as cocaine, but that's fairly rare. These are obviously drugs we screen for. We screen across the board for all drugs, no matter what the person has used.

Mr. Alan Tonks: These are people who have been found not guilty of a crime because they've been declared mentally incapacitated. You have found that there's a correlation after findings by the court. What about identifying those who might be capable of a crime or an incident because of a propensity for mental disorder that would be induced by those drugs? Is there any work that goes on to try to identify people who are brought in? I guess I'm trying to get at the availability of resources. Are there resources to undertake an activity that would find those who would be brought in by their families prior to an acceleration of incident?

Dr. Helen Ward: You're not talking about NRCMDs, you're talking about people generally with mental health issues plus street drugs.

● (1000)

Mr. Alan Tonks: That's right.

Dr. Helen Ward: General practice in a hospital emergency room when someone is brought in who is acutely psychotic, etc., would be to do a drug screen. So people are evaluated objectively and subjectively. Certainly, that's something that's canvassed for. What often happens, in fact, is that the psychosis is misattributed as being primarily due to the street drug use, not due to the mental illness, or the mental illness piece is missed. The street drug use is seen as voluntary, so we can't do anything until you want help, etc. That's often what happens.

There are programs. Are there enough programs or not? The current focus of research in this area of drug use plus mental illness indicates quite strongly that the most effective programs are those that treat both together. There is certainly an initiative in this city and in other cities in Canada to try to set up such programs, but we're still working on that.

Mr. Alan Tonks: That's all I have, Mr. Chair.

The Chair: Thank you, Mr. Tonks.

Monsieur Marceau, five minutes.

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chair. Thank you to the witnesses for being here this morning.

Dr. Ward, according to the way the bill is presently drafted, an accused could be required to give a DNA sample at the time of his conviction or at the time he is found non criminally responsible. You said one of the problems, from your point of view, was that policemen don't know how to deal with mentally ill people.

Would you be less concerned if the DNA sample was taken not by a policeman but by someone with a medical training or a nursing training?

[*English*]

Dr. Helen Ward: I suppose, theoretically, it might be reassuring in the actual moment. I think, though, that the bigger issue is that this person now in the data bank, and aware that they're in the data bank, is still labelled as being in the data bank. To me, that's the bigger issue as to the impact.

[*Translation*]

Mr. Richard Marceau: How does the fact of being in a data bank, with all the precautions taken to separate the name and the sample, would be worse than having one's name in a hospital record as a mentally ill person?

[*English*]

Dr. Helen Ward: When they're in hospital records, they're dealt with when they are presenting themselves to the hospital for treatment. It's a very different situation. They're not further labelled as a person of interest to police; they're not having police come to deal with them at their homes or ask them to come in. All of these things are quite different.

[*Translation*]

Mr. Richard Marceau: I have difficulty understanding what you mean when you say a policeman would come to deal with them at their homes. If somebody's profile is in the data bank and the police discover, at the other end of the town, a crime that looks like the one that person has committed, the fact that the DNA profile of that person already is in the data bank will mean that the policeman won't go to see that person, because he will know that person is not guilty. On the other hand, if the sample is not in the bank, the police will be able to say this looks like soandso did it and they will go and see that person. This is, I think, exactly the contrary of what you say since there would be no need for the police to go and see that person, if she has nothing to do with the crime, with the attendant stress. I don't understand.

[*English*]

Dr. Helen Ward: I won't argue with that point. If it works exactly the way you describe it, it's obviously not going to traumatize the patient, because the patient isn't even aware that it happens. I accept that point. The patient has to have had the sample taken; the patient knows they're in the data bank. When they have any other encounters with the police, that comes up. Those things are relevant. These are people who have a paranoid illness. These are people I'm having to convince to get help. It's counter-therapeutic.

[*Translation*]

Mr. Richard Marceau: Could you tell me what you mean when you say:

[*English*]

when they have an encounter with the police, it's going to come up.

[*Translation*]

Why? How does the fact of being in the DNA bank...? The policeman on the scene won't know that.

● (1005)

[*English*]

Dr. Helen Ward: I may have made an assumption that's not correct in terms of whether or not there's any kind of alert on their police file. I know there are currently all kinds of alerts to police; when they encounter an individual, they get their identification, and they're dealing with them. There are all kinds of things. Again, many of them are not in fact accurate, but they're on police records.

If you're telling me the fact that their name is in a DNA database would never come up to a constable who's making a routine traffic stop, then I stand corrected, as that doesn't apply.

[*Translation*]

Mr. Richard Marceau: Thank you very much.

The Chair: Thank you, Mr. Marceau.

[*English*]

Ms. Neville, for five minutes.

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

A number of my questions for Dr. Ward have been answered.

Ms. John, I just wanted to follow up a little bit on your line of questioning. I'm not sure whether you're aware that the committee has in fact visited the DNA database and had a fairly comprehensive meeting there. We were a little rushed, but it was a good meeting. I, too, at one time, shared the privacy concerns you have. I'm satisfied in my own mind right now that the privacy issues are well looked after at the moment.

I just wanted to go on to the issue of gender-based analysis not serving women. You made a suggestion that it should be referred to the status of women committee. I'm involved with the committee, which is not at this time undertaking to review other legislation going through Parliament. What we've done at the moment is to set our own agenda, and at the present time we are undertaking a fairly comprehensive study on gender-based analysis. The Department of Justice is to appear before the committee, and at that time we will have a better understanding of what they're going to be doing or what they are doing, and what the strengths and weaknesses of their programs are. So I think we can certainly raise this matter at that time.

But what I am more concerned about from your presentation is your comment that it doesn't protect women. I think it was Mr. Comartin who asked you the question on the Bernardo case, and you said that it was an isolated case or one of a few. But what we heard very clearly when we visited the DNA database is that when they have tested for secondary issues, many times they have in fact identified or brought up very violent cases they have not been able to solve. In my mind, that protects women if they can identify through the secondary list people who have committed violent, predatory abuses against women. That's a very important piece for women.

I'm just interested in your comments.

Ms. Sungee John: I wasn't thinking too clearly earlier, but going back to the Bernardo case, a big part of the problem wasn't so much that he might have been caught if they had the DNA data bank at that time, but perhaps more that if the police work had been better coordinated and there had been better communication between police forces he might have been caught earlier. That also raises questions that women's groups have, that the police themselves don't take seriously the crimes committed against women. Having a DNA data bank will not necessarily protect women because, again, many of the people who have killed or assaulted many women are first-time offenders in such cases.

While you said that the DNA data bank might have indicated their prior...how far are we to go in this expansion of criminal offences? It becomes a slippery slope of becoming a huge one-stop shop data bank where any form of a crime will then become a reason for the police to collect DNA samples. As it is, this legislation further expands the definition of criminal offences. What next? In two or three years' time, will more legislation even include crimes that are considered misdemeanours now?

● (1010)

Ms. Anita Neville: I'm not going to get into an argument on the issue of misdemeanours, and I'm not sure I would agree that all of the crimes that are designated to become primary offences need to be designated as primary offences.

What I'm taking issue with you on is the matter that it does not protect women, because in my mind the ability to identify through DNA, and in a very short time short-circuit days and weeks of police work, protects women and gets people off the streets much faster.

The Chair: Do have any response, Ms. John?

Ms. Sungee John: Again, looking at the women who have been harmed and killed, they were harmed and killed by their spouses, by their boyfriends, by people they know. In these cases, having a DNA data bank would not have protected them.

The Chair: Thank you, Ms. Neville.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Ms. Neville took some of my questions.

On that line, Ms. John, in some instances it's a boyfriend or a husband, but every crime has a different scenario.

This piece of legislation is a tool. You said that police don't take crimes against women seriously. Whether we agree with that or not, this is a tool designed to prevent, or to link two different crime scenes. So a DNA sample is taken at one crime scene, or from an offender, and if there's a subsequent crime committed and DNA is found, they can link it to that individual when those DNA strands match. It may not help in every situation, but there are some situations where it would help.

So I don't think it's helpful to say that it's not going to work in every situation. Why don't we look at the situations where it will? The police have told us, and we've heard from other witnesses, it's being used worldwide as a tremendously positive tool for investigating crimes. I suspect roughly half of Canadians are women and are the victims of crimes—52%.

You talked about a gender analysis on this. Even if in a very narrow set of cases this were helpful, if we could solve a crime or prevent a crime, whether it was against a man or a woman, or whomever the future victim is going to be, and find out who the perpetrator was, that would be helpful. Just because it maybe would not be applicable in the majority of cases....

You mentioned that there are instances where this is the first offence. If it's a first offence and the person is convicted, there will be a DNA sample. If there's a second offence, that person can be found.

I'd like your comments on that.

Ms. Sungee John: You've raised a lot of points. On your first one, what if the first offence ends with the woman being killed? Then that person is sentenced, and there's no....

I do stand by some of the points you made, such as if there were better policing, women would feel safer. Examples I could give you are the scores of women whose deaths and murders still have to be solved in Alberta and B.C.

Mr. Rob Moore: Ms. John, if I may, that might be true, if there were better policing or better resources, but I don't think that's relevant to the issue of the DNA data bank and your evidence on how it would or would not help Canadians.

● (1015)

Ms. Sungee John: First you raised objections to my comments, and I'm clarifying those comments. On having the data bank, the biggest concern is the risk of potential exploitation of the data bank. It's very easy, once they have it, for the police to rely solely on it and do very little other real police work. There are other very relevant fears amongst marginalized communities that they will be targeted; that a new form of profiling will exist with a DNA data bank, especially one that expands into more areas of criminal offences.

Mr. Rob Moore: There are two scenarios that could happen after someone is convicted of a crime or is found NCR and a sample is taken. One is that they never reoffend, and therefore they're not going to be linked to any future crimes. The other is that they do reoffend, and this is going to be a tool to link them to that crime—possibly an unsolved crime—and to provide evidence that would possibly require someone to be incarcerated or to be linked to that crime where there is another set of victims.

Given that reality, on balance, why would we not want to proceed with this, even in a case with NCR, if those are the two scenarios? They may not reoffend, in which case there will be no one knocking on their door based on this database, because this is a way to exonerate as well as to link crime scenes; or they may reoffend and this is a way of finding out who committed a particular act.

Dr. Helen Ward: I think I've really addressed these points. I can't argue with your particular argument, but it's a narrow argument. It's setting aside the other part of it, which is that to take this sample in the case of NCRMD is, in my opinion, not fair to them. It's treating them as a group that is equivalent to people who have committed criminal offences when this group has not been found criminally to offend, has a low recidivism rate, and is a special group. And there are other measures in place.

I've already addressed why I believe it to be intrusive to this group. There need to be checks and balances in the system. If you're focused entirely on dealing with the victims, as I indicated earlier, we should all have our DNA in there. But we don't, and that's my point.

The Chair: Thank you, Dr. Ward, and thank you, Mr. Moore.

Go ahead, please, Mr. Tonks.

Mr. Alan Tonks: I'm just trying to understand the line of questioning and your answer. You have indicated once again that the levels of recidivism are low. But regardless of whether they're low, they do involve people who were party to a crime but have been found not guilty because of.... Have the 7% or the 2.5% been involved in similar incidents? Is that the experience you've found in terms of even those who are not able, through therapy, to be...?

Dr. Helen Ward: In my experience, and in general with these papers, in fact there has been a deceleration. There is a reduction in risk, and there is a reduction in committing offences, and the offences committed are of lower severity.

Mr. Alan Tonks: On the use of DNA, would it not be an investigative tool that right up front would exonerate more quickly those who have been accused of a repeated offence, regardless of whether it's an escalation or a lower level of activity? I guess the question has been asked and answered, but I guess my question is, doesn't the intent of the questioning you've received change your mind with respect to the use of that tool and its applicability from a therapeutic and a preventative perspective? Does it not give you, as a professional, some cause for second thought?

● (1020)

Dr. Helen Ward: I do understand the intent, and I'm not arguing that the intention of this committee in looking at this issue is a good one. I'm arguing that the effects on these people are not insignificant.

I work in a system where the intrusion to and the restrictions placed on these people are balanced with their degree of risk. That's the system I come from, and, in my mind, that's what's fair. I'm making the point that these are low-risk people by virtue of their involvement in a system that is already protecting the public. The addition is not necessary and not warranted in this case, and I don't want to get into all of the other potential things. I mean, obviously to exonerate people we could have them all wear location bracelets all the time. We don't do that. That would be very—

Mr. Alan Tonks: That would make them a little more paranoid.

Dr. Helen Ward: We can all see that's very intrusive.

I know the committee may be having a hard time seeing that DNA sampling is intrusive, but to my mind, and, according to my evidence, to the mind of many of my patients, it would be.

Mr. Alan Tonks: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Tonks.

We'll go to Mr. Comartin for the last one, and then we'll need to go in camera. We have future business to deal with.

Dr. Ward, you made reference to some studies on recidivism. I wonder if you could provide those to the committee, not only for review of this bill but for the overall review of DNA testing we'll be doing in the future.

Dr. Helen Ward: Certainly. At least the Livingston study is published, so that would be easy to do.

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: I was going to ask about the same point, Mr. Chair, the Livingston study.

Do you know how recidivism was defined in there? There's been a lot of criticism of the Correctional Service of Canada in that any new incident beyond five years doesn't show up in the recidivism rate. Do you know how he or she defined it?

Dr. Helen Ward: It was defined as a criminal conviction for an offence within that two-year period of them being released.

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

The Chair: Thank you.

Thank you very much to Dr. Ward and to Ms. John for your attendance. We appreciate your taking the time to share your views.

We'll suspend for five minutes and allow the witnesses to withdraw. I'll ask members to return as quickly as possible for future business, and we'll be going in camera.

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