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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I'm going to call this meeting to order. This is meeting number 75 of our Standing Committee on Justice and Human Rights. Today we will be dealing with Bill C-54, an act to amend the Criminal Code and the National Defence Act (mental disorder).

Just before we begin with our very special guest, the Honourable Minister Nicholson, Minister of Justice and Attorney General of Canada, we are meeting because of the seventh report of our Subcommittee on Agenda and Procedure. So to be official, I would like somebody to move this because this is what we said we were going to do.

An hon. member: I so move.

The Chair: All those in favour?

(Motion agreed to)

The Chair: We'll move on.

Thank you, Minister, for joining us. You have one hour, until 4:30, to talk to us about Bill C-54. We'll give you time for an opening statement and then we'll go question by question.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much. I'm pleased to be with Julie Besner and Carole Morency, whom you have probably met or known over the years, who have testified and provided information to the committee.

[*Translation*]

I am very pleased to come before the committee today to discuss Bill C-54, the Not Criminally Responsible Reform Act.

[*English*]

Before I discuss what is in the bill, I would like to mention what is not proposed by this legislation.

First, the proposed reforms do not seek to punish individuals who have been found by the courts to be not criminally responsible on account of mental disorder.

Second, nothing in the bill would impact mentally disordered accused's access to mental health treatment. Bill C-54 seeks to provide guidance to those who are involved in the decision-making process for accused persons who are found by a court to be either not criminally responsible on account of mental disorder or unfit to stand trial. These individuals are referred to as mentally disordered accused and are dealt with according to the powers and procedures set out in the Criminal Code mental disorder regime.

I would like to speak first to the difference between these two verdicts. When an accused person suffers from a mental disorder that prevents them from understanding the court proceedings and communicating with their lawyer, the trial cannot take place and the court enters a verdict of unfit to stand trial. On the other hand, if the accused person is tried and is found to have committed the act or omission that constitutes an offence, but lacked the capacity at the time of the offence to appreciate what they did or know that it was wrong, the court enters a verdict of not criminally responsible on account of mental disorder.

A finding of NCR or unfit to stand trial are special verdicts, as those accused persons are neither acquitted nor convicted. Instead, orders referred to as dispositions are put in place to set out whether the accused will be detained in the custody of a hospital; discharged with conditions; or in the case of those found NCR, if they do not pose a significant threat to the safety of the public, discharged absolutely.

Bill C-54 proposes to amend the provision in the Criminal Code that sets out the considerations that the court and review board must take into account in making dispositions with respect to NCR or unfit accused persons.

One of the key proposals in Bill C-54 is the amendment that would clarify that public safety is the paramount consideration in the disposition-making provision. This is an amendment that has been strongly supported, you will be pleased to know, by my provincial and territorial attorneys general.

Codifying this principle would ensure that it is applied consistently across this country in all jurisdictions, and it would also be consistent with the Supreme Court of Canada jurisprudence, most recently in the case of Regina v. Conway, in 2010. In that same provision, Bill C-54 proposes to replace the term “least onerous and least restrictive to the accused”, with the requirement for the courts and review boards to make a disposition that is necessary and appropriate in the circumstances. This wording is easier to understand and is intended to be consistent with the Supreme Court of Canada's interpretation of this principle in Winko v. British Columbia. That is, in essence, that the accused's liberty shall be limited no more than is necessary in order to protect the public.

Bill C-54 amends the Criminal Code to enhance the safety of victims and provide them with opportunities for greater involvement in the hearing process. The bill provides that victims be notified when an accused is discharged if they so requested, and it allows for non-communication orders between an NCR accused and the victim. The bill also requires the courts and review boards to give specific consideration to the safety of the victim in determining whether or not an accused poses a significant threat to the safety of the public.

● (1535)

[*Translation*]

In addition to the amendments seeking to clarify the provisions of the Criminal Code, the bill proposes a new procedure for increasing public safety in cases where the public is at higher risk.

[*English*]

The bill proposes a new scheme that would permit the courts to designate certain NCR-accused as high risk. A high-risk NCR-accused scheme would apply to a small number of accused who have been found NCR and who pose a higher threat to public safety. A successful high-risk designation would follow certain steps.

First, an accused must be found NCR for a serious personal injury offence. This type of offence is currently defined in the mental disorder regime as an indictable offence involving the use or attempted use of violence or conduct intended to endanger the life or safety of another person, or a number of sexual offences. Second, the prosecutor must make an application to the court for a finding that the NCR-accused is a high-risk accused. Third, the court would hold a hearing to determine if the NCR-accused is high risk.

An NCR-accused may be found to be a high-risk NCR-accused in one of two situations. The first situation is that the court is satisfied that there is a "substantial likelihood" the accused will commit violence that could endanger the life or safety of another person. Substantially likely is a higher test or threshold than is currently required to maintain jurisdiction by a review board over an NCR-accused. This latter test is defined as "a significant threat to the safety of the public".

The second situation where a high-risk designation may be made is if the court is of the opinion that the serious personal injury offence was of "such a brutal nature as to indicate a risk of grave... harm" to the public. Although the level of risk posed by an NCR-accused designated under this category would be different from the first situation, the nature of the actions that form the basis for the application, coupled with the serious potential harm should the accused reoffend, indicate a need for increased protection and restrictions.

An important limitation on a high-risk NCR scheme is that it would only apply to those found NCR. It would not apply to those found to be unfit to stand trial. There are two reasons for this. First, an unfit accused has not yet been tried for the offence, and therefore it has not been proven that they committed the act. Second, an individual who is not fit to stand trial would also not be fit to participate in a hearing to determine whether they should be designated as a high-risk accused.

A second limitation on the scope of the high-risk NCR-accused designation is that it would only apply to an accused who is over the age of 18 years at the time of the offence. The Youth Criminal Justice Act contains special provisions to deal with youth accused who suffer from mental disorders, including the imposition of an intensive rehabilitative custody and supervision order on young people with mental health issues who have committed serious violent offences.

The result of a high-risk designation is that the accused must be detained in a hospital. The review board would not have the discretion to order an absolute or a conditional discharge, nor could a high-risk accused be absent from the hospital except for medical purposes or for any purpose that is necessary for their treatment. Any absence would require an escort and a structured plan to address any risk to the public related to the leave.

A high-risk designation may also impact the time period between review hearings. Currently, mentally disordered accused persons have their cases reviewed on an annual basis, though this may be extended up to two years in certain circumstances, i.e. upon the consent of the accused and the Attorney General, or if the review board is satisfied that the condition of the accused is not likely to improve and the detention remains necessary for the period of the extension. A high-risk NCR-accused may have their review period extended by the review board up to three years.

Finally, a high-risk NCR-accused designation would not be permanent. It may be revoked by a superior court of criminal jurisdiction. The process would begin with a recommendation by the review board that the high-risk NCR-accused no longer presents a substantial likelihood of committing violence that could endanger the life or safety of another person.

● (1540)

Upon the recommendation of the review board, the court would hold a revocation hearing. After considering all of the evidence, the court would determine whether there is no longer a substantial likelihood that the accused would commit violence that could endanger the life or safety of another person. If the court is satisfied that the high-risk accused no longer poses an elevated risk, the court must revoke the high-risk finding. Upon revocation of the high-risk finding, the accused would be dealt with as a regular NCR-accused and continue to be supervised by the review board as appropriate.

I would like to underscore the importance of these amendments for all Canadians, especially victims who desire that public safety should come first in the mental disorder regime. Bill C-54 intends to strike a better balance between the need to protect society against those who pose a significant threat to the public and the need to treat mentally disordered accused persons appropriately.

Thank you, Mr. Chairman.

The Chair: Thank you, Minister, for that presentation.

I'm sure there are questions.

Our first questioner is from the New Democratic Party, Mr. Mai.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

Mr. Minister, thank you for coming here today to give us your presentation and answer our questions.

Mental health and crime are difficult matters. As we know, they involve families, victims and the community. Divisions can occur. As you mentioned, public safety must be the priority, but there must also be respect for the rule of law and for the Canadian Charter of Rights and Freedoms.

You mentioned the need to protect victims. That is important for us too. We continue to examine it today in the context of this bill. But we also get the impression—and this often happens with the Conservatives—that a political game is being played. If I am not mistaken, there has been a fundraising campaign in connection with Bill C-54. On our side, we feel no politics must be played with such an important issue. The Guy Turcotte case affected us deeply in Quebec. The public asked a lot of questions.

Under Bill C-54, in your opinion, would the Guy Turcotte case be considered high-risk? With this bill, you are creating a new category of accused. Would it apply to Guy Turcotte?

[*English*]

Hon. Rob Nicholson: Again, I don't try any cases individually, but certainly there have been a number of high-profile cases in this country that have raised a number of questions, and indeed a number of issues with respect to the NCR designation. That being said, we have moved forward with this on a number of fronts. As you pointed out, we are concerned about victims. I'm very pleased with the provisions that deal specifically with respect to victims. Helping to ensure that victims are notified when an NCR-accused is discharged is an important component of this.

One of the things I've been careful with when I've spoken about it, Mr. Chairman, is that some victims do not want to be notified. They don't want to be a part of this. That is their prerogative. Again, I think this strikes the right balance in terms of protecting the public and ensuring the individual has the type of assistance they need. Again, that is consistent with the legislation we brought forward to better protect victims.

[*Translation*]

Mr. Hoang Mai: I understand that you do not really want to talk about specific cases, but, in press conferences, the Conservatives often refer to cases in the news. They put band-aids on major problems. Anything to do with the Criminal Code really is major. You have given us general explanations, but could you tell us what you consider would constitute a high-risk accused in not criminally responsible cases?

● (1545)

[*English*]

Hon. Rob Nicholson: Again, I don't agree with the premise of your question with respect to meeting with victims' groups. Yes, we do meet with victims' groups, and indeed a number of these individuals have come forward with their concerns and have enumerated and set out either the notification that they have received or the lack of notification in some instances.

So again, it's critical that we move forward on this. We have indicated, as you point out, that we have a special category now with respect to high-risk individuals, but there is a procedure in place. After an individual has been found to be NCR, the crown could bring forward the application. This of course will be considered by the court and I think that's entirely appropriate, Mr. Chairman, because it's the court that initially makes the decision that the individual is not criminally responsible. So I believe it's appropriate that, within that forum, the courts then would make that decision. As I pointed out in my opening remarks—as the member will remember—we're talking about a small group of individuals who are particularly dangerous, not just to the public—I always say this—but they're a danger to themselves as well.

So we've put certain parameters around that category. As I indicated, it's not a permanent designation, but nonetheless, it's one that is appropriate and reasonable under the circumstances.

[*Translation*]

Mr. Hoang Mai: Let’s cut to the chase. We know that victims are worried, particularly in the Guy Turcotte case. Psychologists tell us, in fact, that he is not ill and that he does not pose a danger to the public. Would Bill C-54 apply to him? Would Guy Turcotte be considered a high-risk accused?

[*English*]

Hon. Rob Nicholson: Again, I make no determination on any individual case, but needless to say, we are bringing forward a law, and it's my hope that it will be approved by this committee and enacted by Parliament. It will set out a regime for all those individuals who have found to be not criminally responsible or unfit to stand trial.

As you know, Mr. Chairman, it sets out the test in some detail for the individual to be found in the high-risk category. Again, these are all completely reviewed by the court, and indeed, for any individual who finds himself or herself in this, we of course have been very supportive of those individuals getting medical attention. That's obviously an important component, that individuals get the medical attention they need.

The Chair: Thank you, Minister.

Our next questioner is Monsieur Goguen from the Conservative Party.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you for appearing, Mr. Minister, and thank you for bringing your officials to cast some light on this important legislation.

Obviously, protection of the public is always paramount in the mind of this government. Certainly what's interesting about this bill is that it also takes into account the right of victims to be made aware of the release of very dangerous individuals. The bill also balances the treatment component of the individuals who have been found not criminally responsible so they're not left unattended to.

The cases of Vince Li, Allan Schoenborn, and Guy Turcotte brought the issue of being not criminally responsible to the forefront in Canadian society. We know that it's a fundamental principle of criminal law that a person must possess a guilty mind, the *mens rea*, to be criminally responsible for a wrongful act. Of course, in order to be tried people must be able to communicate and give instructions to their lawyers and understand the nature and the consequences of a criminal trial, because their liberty is at stake.

So if a person is found to have committed an act that constitutes an offence, but lacks the capacity to appreciate why he or she committed the offence or know that it was wrong due to a mental disorder at the time, we understand the court makes a special verdict of not criminally responsible on account of mental disorder. Such people are not tried and they're not convicted.

Could you please explain what happens to someone who is found not criminally responsible, Minister?

Hon. Rob Nicholson: Again, an individual is turned over to provincial authorities and they become eligible for the kind of treatment that they have to have. In normal circumstances that individual will be assessed by a board that has been set up by the province, and they will make a number of determinations. The individual could be detained in the hospital, the individual could be absolutely discharged, or the individual could have a third finding, to be released with certain conditions. That is what happens to the individual. They have a review of the case involving them every year, or it can be extended up to two years, as I indicated in my opening remarks.

That is the regime. That's the framework we've had in place in Canada, to have individuals get the help they need within the provincial health system. What we have done for a small group is to have another designation with respect to the high-risk individual. As I indicated to your colleague across the aisle, there are a number of criteria to decide whether the individual comes within that category. This has complete judicial oversight. In fact, it's the courts that make that determination. If there's any change, the courts make that determination.

We do get the courts involved at the beginning. Indeed, with respect to high-risk individuals, we get them involved if there's any change to that. But the individual who loses the high-risk designation, or the individual who doesn't get it in the first place, is within the provincial health care system in terms of getting the treatment they need.

● (1550)

Mr. Robert Goguen: You talked about the high-risk designation. Of course, not everyone who's found not criminally responsible will have this designation. I believe you said that the crown had to make application to have this designation applied and they would bear the onus of proving that this person—

Hon. Rob Nicholson: Well, exactly. That's a very good point. They would have to demonstrate to the court that the individual should carry this high-risk designation. There are a number of elements to that. I think I indicated in my opening remarks that, first of all, it would have to be a serious personal injury offence. That's what we're talking about.

There are a number of criteria that you'll hear about and I'm sure you're completely aware of, Mr. Chairman, as to how and when this designation would be appropriate. But you're quite correct that it's the crown that will bring forward that designation. Again, that happens after the trial and after the individual has been found to be not criminally responsible.

It's a very reasonable proposal to make sure that the protection of the public, first of all, is paramount and that the individual gets the assistance they need. They are protecting the public, but indeed protecting the individual from committing some of these actions. It's been well received by my provincial counterparts, and I've been very pleased about that. On a number of occasions, as you know, they have come forward and asked us to move in this direction.

Mr. Robert Goguen: While I understand the crown will bear the onus for proving this, of course, the defence counsel will have the comfort of knowing that the test has been set out.

I understand that the test has been codified by the Supreme Court of Canada, Mr. Minister.

Hon. Rob Nicholson: That's a very good point.

Again, we were very careful in the drafting of the bill. Indeed, as you have pointed out, we have codified parts of the decisions that have been already rendered by the courts. I think that's entirely appropriate. As you say, this is a reasonable response to a challenge that we've been handed.

The Chair: Okay. Thank you for those questions and thank for those answers.

Our next questioner is from the Liberal Party, Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chairman.

Mr. Minister, several weeks ago there was an alliance of mental health groups who stated their opposition to this bill and complained that not one single mental health organization was consulted during the creation of Bill C-54.

My question, sir, is why not?

Hon. Rob Nicholson: Again, I do consult widely on these, and when I get together with my provincial counterparts, who have responsibility for the mental health components of this, I always ask them for their input because they ultimately have the responsibility for the hospitals. They set up the boards that review the dispositions of the individuals found to be not criminally responsible, and for the most part, the treatment these individuals receive is administered by provincial agencies. So I do consult very closely with them, and indeed I certainly appreciate and rely on the input they make to, quite frankly, not just this piece of legislation but a number of pieces of legislation that we have heard.

But quite apart from that, we do speak with victims' groups on a regular basis wherever I go in this country.

I would say to all individuals and groups having a look at this, look at the components of the bill. This is very reasonable in terms of clarifying what the law is, better protecting victims, and indeed, addressing the issue of a small number of high-risk individuals who are a risk to the public and a risk to themselves. That's all I'd say to groups that....

I have to say that I do appreciate the input I have had from provincial attorneys general and those who work with people in this area. It's been very satisfying and I've been very encouraged. Indeed, I've been very encouraged, since the introduction of this bill, that a number of them have come forward and said that they are supportive of the different elements of this.

The bill, overall, works and I hope, Mr. Casey—and I believe, Mr. Chairman, you'll be having a number of witnesses over the next couple of days—that certainly you'll come to the same conclusion I've had, that this is a very reasonable response to a number of issues that have been raised in this area.

● (1555)

Mr. Sean Casey: Do I understand you to say that the responsibility to consult with mental health groups is one that rests with provincial attorneys general and not with the Government of Canada, which is bringing the bill forward?

Hon. Rob Nicholson: No, certainly they have a huge role to play, I don't have to tell you that.

But as you know, this government has sponsored the Mental Health Commission. You'll know of all the different efforts we have had, working with our provincial counterparts, in the whole area of mental health. Mr. Chairman, I'm sure you've heard evidence of that over the years on this committee, which has been very important indeed. The Mental Health Commission, instituted by the Government of Canada, is a perfect example of a major financial commitment on behalf of this government.

That being said, I never underestimate or belittle in any way the huge responsibility that the provinces have with respect to health care. As you know, they have the constitutional responsibility for that.

But again, this is why we have to be so careful crafting these pieces of legislation. We all have a responsibility to deal with these individuals, and again, what we are doing is very reasonable and it addresses those individuals who have had mental health issues. We are better protecting them and indeed the public. Yes, I agree, we all have a role to play, but I certainly never underestimate the huge role that the provinces have in administering health care, as they do of course under the Constitution.

I know we've just had a budget recently. I always look to see what money goes towards assisting the provinces in health care, and I'm very pleased that we've increased those amounts again this year. So yes, we're giving more for health care to the provinces. We've taken that responsibility very seriously. I've been pleased with the relationship at that level, and certainly, with the coming together of a piece of legislation like this.

Mr. Sean Casey: Along that same line, Mr. Minister, you are aware that shortly after Bill C-54 was tabled in the House, my colleague, Mr. Cotler, brought forward an order paper question asking you about the treatment capacity in institutions where not criminally responsible individuals would be held. The government's answer to virtually every single aspect of his question was that only the provinces would have access to this information.

But a couple of the questions he asked, I would suggest to you, Mr. Minister, you should be able to answer. First, what steps are your government taking to ensure adequate capacity? Also, what analysis has your government performed of any potential need for increased capacity? I don't see why that type of information would be solely within the domain of the provinces.

So my question for you, Mr. Minister, is this. What, if any, analysis has the government performed to determine whether Bill C-54 will result in a need for increased capacity in treatment facilities?

Hon. Rob Nicholson: Certainly, I obviously discussed these with my counterparts in terms of their administration of them, and we were very careful not to come forward with legislation that isn't consistent with a number of the priorities they have with mental health and all health issues, as I indicated to you in my first answer. I'm one of those who looks when the budget gets tabled by Mr. Flaherty. I always check what are we doing in terms of transfers to the provinces, and I can tell you I've been very pleased that we've continued to increase them.

I know the provinces are looking to make their requests for additional funds every year, so I've been very pleased that not only has the funding been maintained, but it has been increased every year, as you will know from the budgetary process. I think a lot of people recognize that this is helpful. Of course, it's not just dealing with mental health. Individuals and the provinces are confronted with a wide range of health issues.

● (1600)

The Chair: Thanks for that answer. Thank for those questions.

Our next questioner from the Conservative Party is Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Minister, I know that one of the things that we consistently try to work on is keeping citizens safe. It's a priority for our government. We brought forward a number of pieces of legislation in this Parliament, the Safe Streets and Communities Act being one of them. I think this is another important piece of legislation when we think about community safety. Maybe you could explain for us why this bill is so important and what it will do to help protect Canadians.

Hon. Rob Nicholson: Again, I think this is an important component of what we do. You're quite correct. We've introduced dozens of pieces of legislation, all with the aim of better protecting the public, and at the same time, making sure that the interests of victims are heard and considered. This bill is consistent with our efforts to better represent victims across this country. This is why I believe that so many victims are pleased and supportive of what we are proposing in Bill C-54

As I indicated in an answer to an earlier question, ensuring that the victims are notified when an individual is being discharged, I think is only fair and appropriate. Again as I indicated to you, this is “if requested”, if they want to be notified. Victims sometimes say to me that they don't want to hear about this, and that's fair enough. But for those victims who do want to be notified, I think it's fair and reasonable that there's a regime in place to have the ability to have a non-communication order between that individual and the victim, If an individual gets released into the community. This is one of the important components of this particular bill, to ensure that the safety of victims is considered when decisions are being made.

We don't want anybody to be victimized in this country over and over again. So, yes, a major component of what we are doing here is ensuring that the individual concerns of victims are recognized.

I indicated three different components of what we are doing for victims, and again, I believe these are all very reasonable. I think they will stand the test of time. I hope that when you have individuals or groups before this committee, this comes up for discussion, because again, I've been very encouraged by the comments I have heard and the comments from my provincial counterparts for that matter as well.

Mr. Kyle Seeback: When you say “reasonable”, I think in a lot of circumstances specifically what you are talking about is just common sense. If you talked to the average person on the street and let them know these are the kinds of things that are going to be included in this bill, I think they'd say they couldn't believe that wasn't part of the system before. So I think those changes are going to be quite welcomed by the vast majority of Canadians.

One other thing I quickly want to talk about is that in one of the sections we amend, we talk about making public safety a stronger consideration. Maybe you could comment on that a little.

Hon. Rob Nicholson: That's a very good point.

What we say is that public safety will be the paramount consideration when the boards make a decision with respect to a not criminally responsible individual. Now there are individuals who will say that actually it was one of the considerations. That's on the list. I appreciate that, and you appreciate that. But what we're saying is that this should be the number one, the paramount, consideration, to begin with, in terms of making sure the public is protected.

Again, what we have found on other pieces of legislation.... You're not just protecting the public, you're protecting the individual from getting involved with something like that again. Everybody has a stake. Everybody has an interest in that. So yes, you're quite correct. We have made that very clear. That's in addition, of course, to the other provisions that I believe better protect people, and the ones that are specific to victims. So you have that, but again, that's something you will hear in your discussion of this.

Again, I believe that's one of the very reasonable propositions we have put in this bill. The protection of the public is the paramount consideration when a decision is being made with respect to an NCR-accused. That's only fair and reasonable, and I think you will hear support of that. Certainly I hope it gets your support, as I'm sure it will.

● (1605)

The Chair: Thank you very much, Mr. Seeback. Thank you, Minister.

Our next questioner, for five minutes, is Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

Thank you for being here this afternoon, Mr. Minister.

Let me remind you that we supported this bill at second reading. But that was not to give you a blank cheque, it was to achieve a balanced approach. We recognize that this is a very difficult issue for victims, families and communities. Of course, as my colleague said, public safety must be the top priority, within the context of respect for the rule of law and for the Canadian Charter of Rights and Freedoms. So we will be studying this bill closely.

We have been clear that we are open to change. We must be sure of the way in which we manage cases in which the accused suffers from a mental illness. So there must be effective mental health care. We also want to know, very specifically, how we can help victims through this process.

In the coming weeks, we will be speaking to victims, to mental health experts, to representatives of the provinces, and so on. A number of witnesses will shed light on this for us and we will choose the best solution, the most balanced approach. We will not get involved in political games; we will examine the issue on its merits, case by case.

Mr. Minister, a number of victims have told us, not once, twice or ten times, but hundreds of times, that what they are looking for first and foremost is (a) psychological support and (b) financial support. Will Bill C-54 provide victims with psychological and financial support?

[*English*]

Hon. Rob Nicholson: I'm encouraged, Monsieur Jacob. I think you said that you support the bill and you support a balanced approach, and about a minute or so later you said you're open to the bill. I hope that's not changed and that you will continue to support the bill. I think that's very important, for the reasons you've enumerated with respect to the interests of victims. This would be good. I hope you work on your colleagues in the Liberal Party, as well, and speak to them about perhaps getting together and unanimously moving forward on this. That would be very encouraging for everyone who worries about victims in this country.

You talked about some of the monetary issues. This is one of the reasons I have been such a supporter of the victims fund and the tens of millions of dollars that the government has put into it. We've funded many groups and individuals. We've better assisted people who have been victimized. I tell people that the money we have put toward these issues is taxpayers' money well spent.

Mr. Chairman, you know that I'm a big fan and a big supporter of child advocacy centres, which are to provide for children who are victims of crime. Again, all those people who find themselves victimized, I think should agree with me that there's much better support at the federal level for them, on a number of different levels.

As I pointed out to Mr. Casey, this is not in any way to diminish the huge responsibility that the provinces have with respect to health care. Indeed, that is their constitutional responsibility. But I always say that we have a responsibility as well. When you have a look at estimates and you see things for the victims fund, you don't even have to ask. You know I'm a big supporter of that because I think these things are appropriate.

Again, getting back to your initial comments, I would certainly hope that this bill moves through expeditiously. I hope all the opposition members stand up and say they're going to support victims in this country and that they're going to move forward on this important, and at the same time very reasonable, legislation. Certainly I look forward to your support.

● (1610)

[*Translation*]

Mr. Pierre Jacob: I add that we are supporting the bill at second reading, but that does not mean we are giving you a blank cheque.

[*English*]

Hon. Rob Nicholson: I know, but—

[*Translation*]

Mr. Pierre Jacob: As I understand it, Bill C-54 provides no additional psychological or financial assistance.

The Canadian Alliance on Mental Illness and Mental Health said that Bill C-54 was going to continue to perpetuate the myth that people suffering from mental disorders are violent. As we know, it is prevention that protects victims more.

What do you think of that statement?

[*English*]

Hon. Rob Nicholson: In answer to your first comment, this is not a budget bill. I have been very supportive over the years of the different efforts this government has made—too many, quite frankly, to enumerate here. There have been all the different financial supports we made to people either with mental health issues or people who find themselves victimized.

As I indicated in my opening comments—and I'm hoping that you and others will make sure we get that message out—not all mentally ill individuals commit crimes, and of those who do commit crimes, not all are violent or dangerous. This is why we are continuing with the not criminally responsible health regime and designation that's within the system. We're continuing with that. But as I indicated in my opening comments, we are also focusing on a relatively small group of violent individuals who may qualify for the high-risk category.

The good thing about it, which is something on which we can all agree, is that this has complete judicial oversight. When the crown makes the application, the judge who is in the position to make the not criminally responsible designation will also have that decision as well. I think that is something we can all support.

The Chair: Thank you for those answers and thanks for those questions.

The next questioner from the Conservative Party is Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Chair.

Minister, thank you very much for being here today to speak about this very important piece of legislation before us. From my reading of the legislation, I don't think there is any concern that the passage of this bill will see accused persons being kept in custody longer or indefinitely, regardless of whether they continue to pose a risk to society.

Could you expand a bit on that? If someone is incarcerated or in some sort of treatment facility and no longer poses a risk, can you satisfy those concerns that many people may have?

Hon. Rob Nicholson: You've made a good point. Sometimes you can get confusion when you're talking with people in this area. They don't go to prison, they don't go to jail, if they've been found not criminally responsible. In fact, they go to a hospital and that's entirely appropriate.

The boards that are set up under provincial auspices include people who will have a look at this individual to see what the best way of dealing with the individual is. Keeping the individual detained is one of the options, of course, but conditional release is another one, or an absolute discharge if in fact it's determined that the individual doesn't need to be detained. These medical questions come into play but there are certain guidelines that are given to these boards. Again, they're modified within this particular bill.

Your colleague mentioned making sure the protection of the public is the paramount consideration before we get into this. So there are a number of considerations taken into account, as they should be. But again, nobody should be confused about this. People aren't being jailed. This is not part of the prison system.

My colleague, Vic Toews, will tell you that he is very determined and very supportive of the efforts within the Canadian prison system to get these individuals the kind of mental health treatment that they need. Again that's another expenditure from the federal government in the whole area of mental health, and one, of course, that I support as well.

But that's not what we're talking about here. We're talking about people who have been hospitalized within the provincial system. I'm a big supporter of giving more money to the provinces to assist them in health care, but that being said, they are within this system and we want to get them the help they need, because everybody benefits from that. The individual benefits, and certainly society benefits. It's a safer, better place in which to live when they do get that kind of help.

● (1615)

Mr. Scott Armstrong: Because these people have neither been acquitted nor convicted, they're not involved in the criminal justice system at that level. But we are talking about a very small percentage of high-risk offenders. I don't need any numbers. You probably don't know the exact number, but when you're talking about a small sample of people with mental illness who have committed a crime actually getting to this position of being high-risk offenders, what types of crimes have they committed to qualify for that type of risk?

Hon. Rob Nicholson: These are the most serious of offences. As I indicated in my opening remarks, things like certain sexual offences, offences that are involved with intending to endanger the life or safety of another person, again, sexual offences involving violence or attempted violence. We're talking about the most serious personal injury offences as found in the Criminal Code, and again, that's entirely appropriate.

This is not directed against the individual who, unfortunately, has become mentally disabled. That's not what it's about. We want that individual to get treatment and everybody supports that. As you pointed out, we're talking about a small number of individuals who have been found to be NCR. A small group of them would get this high-risk category, but again, we're talking about individuals who have committed serious personal injury offences as defined within the Criminal Code. I've enumerated some of them, but as you pointed out, this is a relatively small group.

Mr. Scott Armstrong: In your consultations with victims' groups, what was their opinion on this path you're taking forward with the not criminally responsible.

Hon. Rob Nicholson: They tell me they want to be notified. They say they don't want to see the individual who has caused horrible tragedy to their families in the grocery store or sitting in church with them next Sunday. They'd have a problem with that. As one of your colleagues said, a lot of these things just make common sense.

Again, this is what we are doing at the federal level with respect to victims across this country. We're looking at all aspects of the criminal justice system and within this regime as well, to make sure that victims are heard, that their priorities are taken into consideration. This is why I say to people, when they want to look at this, to have a look at what we're doing for victims. Yes, they should be notified if that's what they want. Yes, there should be provision for non-communication orders. Wouldn't that be reasonable if somebody has been victimized, that there should be an order out there that this individual shouldn't be communicating with them?

When I have met with victims, these are the kinds of stories they tell me. It's very disconcerting, quite frankly, when people start telling you about some of the things they have gone through. I always tell them the same thing, that they have the right group in Ottawa today. We are determined to do something about that. We will stand up with victims and that's exactly what's taking place in this piece of legislation.

The Chair: Thank you for those answers.

Madame Day, welcome to the committee, you have five minutes.

[*Translation*]

Mrs. Anne-Marie Day (Charlesbourg—Haute-Saint-Charles, NDP): Thank you, Mr. Chair.

My thanks to the minister for kindly agreeing to answer our questions. It really is much appreciated.

Mr. Minister, in reply to a question from Mr. Armstrong, you said that groups had been consulted. Could you tell us if provincial and territorial review boards, as well as community groups that provide assistance to victims, have been consulted?

[*English*]

Hon. Rob Nicholson: Again, I undertake consultations across this country, and I believe I've been to every capital in every province and territory. I've sat down with individuals, and quite frankly, it's true. A lot of the groups that come to see me are victims' groups that want to have their voices heard. I can tell you they have been very welcomed by me and my colleagues.

I meet on a regular basis with my provincial counterparts, the provincial and territorial attorneys general. The Attorney General of Manitoba has come out in support of what we're doing. I always tell them the same thing, that I'm very appreciative, regardless of their political affiliation. I welcome their coming forward and getting their support for the reasonable proposals that we've made. They've been very good at the provincial level.

● (1620)

[*Translation*]

Mrs. Anne-Marie Day: Thank you, Mr. Minister. I have another question for you.

It is said that victims will be advised, by request, when an NCR accused is released. Since I worked with women's groups for a long time, I am going to discuss those victims with you.

How will they be advised? Who will do it, and when? Are measures in place to protect people in that situation when an NCR accused is released from prison?

I would appreciate a quick answer because I have another question for you. Thank you.

[*English*]

Hon. Rob Nicholson: That's assuming that quick answers are in order. I have full confidence in the regime set up by the provinces, that they will do this once they've had this direction. What ongoing protection will they have? One of them I just mentioned to my colleague is the non-communication order that can be a part of the order in releasing this individual, that they are not to contact the individual who has been victimized by them. It's not just a question of their being notified, as you pointed out. It's wonderful that they're being notified that the individual is out, but it goes farther than that. The non-communication order can be an order by the provincial tribunal to stay away from these people, to not communicate with them. As I indicated to my colleague, I think this is common sense.

[*Translation*]

Mrs. Anne-Marie Day: We are talking about public safety, so it is very important. Let me tell you a quick story.

In Baie-Comeau, a woman with a 16-year-old child was advised that the person who had been charged with, and imprisoned for, domestic assault against her had been released. Subsequently, she and her 16-year-old son were murdered.

The public has to be protected. What protection will be provided to people when those found not criminally responsible get out of prison?

[*English*]

Hon. Rob Nicholson: That's one of the good things about this. Before this individual is even released it's very clear to the board that the protection of the public is paramount. That's the first consideration. It's not enough to say that's one of the considerations, there are a number of things they'll look into. No, this is the paramount consideration, and I think that is absolutely important. In cases similar to the type that you're talking about, the non-communication orders that can be imposed on these individuals I think are an essential part of what we have to do to better represent the interests of victims in this country.

First of all, the case has to be made that the protection of the public is not being compromised by the release of that individual. I'm very interested in and very supportive of the measures we are taking to better protect victims. Again, when you go through this you'll see these issues. I'm sure you'll agree with me.

I'm sure second reading support is a wonderful thing. We have to go beyond second reading support. We have to get these things passed. It's not enough to say we support victims, but that's it, that's as far as it goes at second reading. No, we have to go further. We have to get this passed. We have to get this through the Senate. We have to get royal assent.

The Chair: You have one minute.

[*Translation*]

Mrs. Anne-Marie Day: In the past, people found not criminally responsible were those with intellectual disabilities or schizophrenia, for example. But now, when people who take drugs or alcohol cause the death or another person, they are declared not criminally responsible because they were under the influence of one or other substance.

How will that new factor be handled? How do you define a person who is not criminally responsible?

[*English*]

Hon. Rob Nicholson: Again, that regime remains relatively unchanged in this, except for one major difference, which is the protection of the public. This is a determination that will be made in the court for an individual whose solicitor comes forward with the claim that the individual is not criminally responsible.

We have to have confidence in the judiciary and the judicial process in this country, and that's exactly who will do it. We're giving greater guidelines to the courts in terms of what happens to these individuals after they have been found.... But it is a judicial decision to begin with. With respect to the high-risk individuals, that's another consideration, but it is under the complete auspices of the courts.

● (1625)

The Chair: Thank you, Minister.

Thank you for those questions.

Our final questioner for the minister this afternoon is from the Conservative Party, Mr. Wilks.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Chair.

Thank you, Minister, for being here today.

This has been a much-needed piece of legislation, which is recognized by both victims and also those who need the care. I have a couple of questions. I wonder if you could clarify for everyone why the high-risk NCR designation doesn't apply to those who are found unfit to stand trial.

Hon. Rob Nicholson: As you pointed out, Mr. Wilks, these individuals haven't been convicted of an offence. For the high-risk individuals to be considered at all for that designation, they have to have committed one of a number of the serious offences that I touched on in my opening remarks. Right off the bat the individual doesn't fit into that category because they haven't been tried. They haven't been found to have been responsible for their actions. There is a regime in place for those individuals within the provincial health system, and that will continue.

But I think you have made a valid point that the not criminally responsible designation applies specifically to those individuals who have been found guilty of the serious offences.

Mr. David Wilks: Thank you.

Minister, I wonder if you could clarify one question that hasn't been asked here today. Why is the National Defence Act being amended in concert with this bill?

Hon. Rob Nicholson: I think it's important to have all legislation consistent, quite frankly. It's not enough to have one regime for individuals who are civilians and a different one for individuals who may be in the military.

Whenever we look at these pieces of legislation, or changes, or reforms, I think it's appropriate to look at what happens on the military side. There have been a number of pieces of legislation that may not have come to this committee. They may have gone before the national defence committee. But we have reformed a number of areas of justice with respect to individuals in the armed forces. That being said, we want to make sure that any updates or changes here apply right across the board, to everyone. I think it's entirely appropriate.

Just so you know, the Minister of National Defence is completely supportive, and indeed my other cabinet colleagues are very enthusiastic about this legislation.

Mr. David Wilks: Thank you.

Minister, certainly police officers across Canada, including me, though I'm retired now, welcome this. At times it is difficult for police officers to recognize that they have an individual who needs care. Sometimes they are doing offences that they don't recognize at that point are wrong, and they need to have that assistance.

It was asked earlier with regard to the requirement between provincial and federal jurisdiction, but I wonder if you could clarify, again, the importance of this bill to the NCRs and their ability to get help.

Hon. Rob Nicholson: As I indicated to your colleague across the aisle, the designation of whether an individual is not criminally responsible is a question of fact and evidence that is decided at the criminal trial. There are no changes to that.

The changes come within the mental health regime that the individual is then referred to. The disposition of that individual, where we want to take the protection of the public as the paramount consideration.... But again, we want that individual to get the kind of help that they have to have. It's in everyone's interest. This is why, as I indicated on a number of occasions, I discussed these matters with my provincial counterparts. This is an essential component of what we want to do with these people.

As I pointed out to Mr. Casey, we do work a lot in the area of mental health, mental health assistance in the prison system, the Mental Health Commission, and a number of different areas. It's working with the provinces that have the responsibility within the hospital system of this country to make sure these individuals get the kind of treatment they need. These changes don't take away from the need for an individual to get that help. Nothing does that. I believe there's an encouragement for everyone to work together to get these individuals the kind of assistance they need.

● (1630)

The Chair: Thank you very much.

Thank you for those questions, Mr. Wilks. Thanks for those answers, Minister. That is the time you've allotted to us. Thank you, Minister, for joining us today.

We have added an hour of committee time over the next number of committee meetings. We've filled all the spots with 24 witnesses. The clerk has done a fantastic job of contacting people, and we're ready to deal with this. Thank you for your passion for this bill, which was obvious today.

With that I will suspend for a minute while we change over to the next panel.

● (1630)

(Pause)

● (1630)

The Chair: I call the second half our meeting back to order.

Mr. Goguen, you would like the floor.

Mr. Robert Goguen: Mr. Chair, as you know, in subcommittee we added some hours to accommodate more witnesses in the study of this bill. Also I believe we agreed we would do the clause-by-clause on June 12. I'd like to propose a motion that the amendments be presented within a certain timeframe, no later than 4 p.m. on June 10, which is of course a couple of days prior to June 12, when we're going to do the clause-by-clause.

Also in the context of this amendment I would like to permit a broader consultation and permit the participation of all members of Parliament, including those who are not represented on the committee, and of course those would be the independents, the Bloc, and Ms. May of the Green Party. It's about giving them some input, some inclusion into this whole process.

So if you permit me, Mr. Chair, I'll read the motion.

> That, in relation to the Order of Reference of Tuesday, May 28, 2013, respecting Bill C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder),
>
> (a) amendments shall be submitted to the clerk of the Committee no later than 4:00 p.m. on June 10, 2013, for the clause-by-clause consideration of the Bill, which is to be completed on June 12, 2013, and be distributed to the members in both official languages;
>
> (b) the Chair shall forthwith write to each Member of Parliament who is not a member of a caucus represented on the Committee to invite those Members to file with the clerk of the Committee any amendments to the Bill which they would propose that the Committee consider:
>
> (c) any proposed amendment filed with the clerk, pursuant to paragraph (b), shall be filed, in both official languages, no later than 4:00 p.m. on June 10, 2013, for the clause-by-clause consideration of the Bill and shall be presented together with any amendments which may have been filed by members of the Committee; and
>
> (d) during the clause-by-clause consideration, at the relevant time, (i) an amendment filed with clerk pursuant to paragraph (b), and presented to the Committee pursuant to paragraph (c), shall be deemed to have been moved, and (ii) the Chair may call upon the member who filed the proposed amendment to offer brief remarks in support of it.

The French version follows. I don't intend to repeat it.

● (1635)

The Chair: Thank you, sir. I appreciate your giving us the motion in both official languages, that's very nice. On a personal note, I think it's very nice of us to include independent members in motions on bills. I think that's a very good item.

Would somebody like to speak to this?

Mr. Mai.

[*Translation*]

Mr. Hoang Mai: I would like to speak to the motion.

We know that the other parties who are not represented at this committee cannot participate in the debate or the discussion. We know that their normal avenue is to express their views in the House. That is a democratic way of doing it because they are not represented on the committee.

In one sense, what the government is doing here is what it always does: introducing closure motions and limiting debate. We understand why it is doing that. But we do not support that approach. If we look around us, we can see no one from the unrecognized parties. But one of the parliamentary procedures they can use is to make amendments and participate in debate in the House.

So we will not be supporting the motion.

[*English*]

The Chair: Thank you.

[*Translation*]

Mrs. Anne-Marie Day: Mr. Chair, I request a recorded vote.

[*English*]

The Chair: Sure, no problem.

Any other discussion on the motion?

The clerk will do the role call on the recorded division.

(Motion agreed to: yeas 6; nays 5)

The Chair: Is there anything else before I move to the official orders of the day?

Ms. Morency and Ms. Besner, thank you for joining us from the Department of Justice. Do you have an opening statement you'd like to make? Or are you just here to answer questions?

Ms. Carole Morency (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): That's correct.

The Chair: Who would like to start?

Mr. Mai.

[*Translation*]

Mr. Hoang Mai: Good afternoon, ladies. Thank you for being here today to shed light on this bill for us.

The bill creates a new category and the minister spoke to us about it briefly.

In your view, what are the specific procedures that will have to be discussed for high-risk offenders who are deemed to be not criminally responsible?

Ms. Julie Besner (Counsel, Criminal Law Policy Section, Department of Justice): The bill requires that several stages have to be gone through in order to submit a request to the court. Subsequently, the case will be heard by the court that has the file, either the provincial court or the superior court.

As defined in the Criminal Code—and the minister mentioned this just now—when an accused is found not criminally responsible for a serious offence, a serious personal injury offence, the crown may make a special request for a hearing to be held on the matter. During that hearing, a number of aspects of evidence have to be presented.

If I am not mistaken, this is mentioned in clause 12 of the bill, where the court is asked to consider evidence such as the nature and circumstances of the offence, the accused's current mental condition, the past and expected course of the accused's treatment, and, something that is likely to be very relevant for the court, the opinions of expert witnesses and psychiatrists appearing to provide evidence.

As the minister mentioned just now, after examining the evidence, the court may invoke one of two situations if the court is satisfied that there is a substantial likelihood that the accused will commit violence that could endanger the life or safety of another person and if it is of the opinion that the original offence for which the accused was found not criminally responsible was of such a brutal nature as to indicate a risk of grave harm to others.

In either of those situations, the court may declare that an accused is high-risk. At that point, the accused will be subject to a detention order and the case will be sent to the review board that will review it. Reviews can be conducted annually, or every two or three years, depending on the particular circumstances of each case. If, at a later date, the review board is of the opinion that the danger has decreased, the court may reconsider the case to see if there are grounds for revoking the high-risk accused designation. Actually, the review board may send the case back to the court, which will hold a new hearing to determine if the threshold is still met or if, on the other hand, the designation may be revoked.

● (1640)

Mr. Hoang Mai: So you mention that there are two situations and, in the first instance, checks are done. If psychiatrists say that the person is not ill and no longer represents a danger for society, the person will then not be considered at high risk, unless the crime was brutal. Do I have that right? Those who have committed a brutal crime would be considered high-risk accused. Is that correct?

Ms. Julie Besner: As I explained, the courts will have to consider various elements of evidence. Among them, there is the testimony of experts and of psychiatrists. However, the decision remains with the court. The decision is not made by psychiatrists.

Mr. Hoang Mai: As I see it, brutality is quite subjective. Can you give us a definition of a brutal crime or action, with reference to other parts of the Criminal Code? Since this is a new criterion for a new category of accused, can you tell us how brutal is defined?

Ms. Julie Besner: The bill does not contain any definition of brutality; it simply sets out a provision requiring the court to consider the nature and circumstances of the offence. So the bill contains no definition of brutality as such. It would be up to the court to decide that case by case.

Mr. Hoang Mai: Is this already covered by case law, or other provisions of the Criminal Code, or is it completely new?

Ms. Julie Besner: It is not completely new. The concept actually appears in the part of the Criminal Code that deals with dangerous offenders. Perhaps it was interpreted in that context. In the future, it may well be interpreted in the context of people with mental disorders.

[*English*]

The Chair: Okay. Thank you very much for those questions and those answers.

Our next questioner is Mr. Albas from the Conservative Party

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

I certainly appreciate our testimony from the witnesses today. I've actually received some correspondence from some of my constituents. I was actually hoping to ask the minister, but obviously, I am very happy to have you here. Some of the questions that have been brought up in regard to some of this legislation....

Again, I want to thank the analysts, Mr. Chair, for putting together so many good questions for us, because there are a number of questions I'd like to ask. Part XX.1 of the code came into force in 1992. This was in response to the Supreme Court decision in R. v. Swain. It was amended in 2005 in response to the court's decision in R. v. Demers and the parliamentary review undertaken by the Committee on Justice and Human Rights in 2002.

The minister gave a very good analysis in his testimony, and actually, I think I'm going to take that testimony and send it to one of my constituents.

In your opinion, what impact would Bill C-54 have on cases like we've seen, such as Vince Li, Allan Schoenborn, and Guy Turcotte?

● (1645)

Ms. Julie Besner: I think the minister explained that he was not going to opine on any specific cases and on how the court would handle those cases. The legislation is intended to provide quite a bit of guidance on certain tests and thresholds for the new designation of high risk, or whether it's not in that designation but just in the paramountcy of public safety. I don't think I can elaborate beyond what the minister has already said in that regard.

Mr. Dan Albas: Okay.

I had some consultations on Bill C-54. I know the minister had mentioned that he had quite a bit of support expressed by his provincial and territorial counterparts. Specifically, he did mention some victims' groups. Do you have any specific groups that were consulted on some of the provisions in Bill C-54?

Ms. Julie Besner: I can speak to some consultations that we held with our provincial and territorial counterparts. There is an FPT forum of senior officials, the Coordinating Committee of Senior Officials. Some of you may be familiar with that committee. It is represented by attorney general officials from the various jurisdictions. Some of the provisions in the bill were discussed at length with them, since around 2010. I think the minister indicated that the Attorney General of Manitoba had expressed a great interest in the importance of the paramountcy of public safety. That issue has been discussed at length in that FPT process.

In terms of victims' groups, I don't have a list, exactly, of all the victims' groups. I've read some reports of the minister and other officials having travelled to different parts of Canada. I'm not in a position to provide a detailed list in that regard of all the people they may have met with.

Mr. Dan Albas: Okay. Thank you.

The Chair: Thank you for those questions. Thanks for those answers.

Our next questioner from the Liberal Party is Mr. Casey.

Mr. Sean Casey: Thank you, Mr. Chair.

We tried in writing, and we tried with the minister. I'm going to try again. I think it's a simple question that just requires a yes or no answer. Has the government done any analysis to determine what the impact will be of the bill on the capacity of mental health care facilities? Yes or no.

Ms. Julie Besner: I heard the minister explain that he discussed with his AG counterparts the subject matter of the bill and that they shared the importance of moving forward with these amendments. That's what I heard earlier. In our forum, in the Coordinating Committee of Senior Officials, we discuss legal policy issues, legislative matters, with prosecutors. In this case we consulted with prosecutors who regularly appear before our review boards. Our consultations focused primarily on legislative, legal policy matters.

That's all I can add to what the minister said.

Mr. Sean Casey: So if any has been done, it doesn't fall within your bailiwick, within your job description.

Ms. Julie Besner: We don't meet regularly or even not regularly with hospital officials, if that's what you mean.

Mr. Sean Casey: Do you know whether any provincial jurisdiction has done any analysis into the impact that these changes will have on the adequacy of the capacity in those institutions?

Ms. Julie Besner: I don't know the internal discussions the provinces had with their counterparts in other departments. I'm not in those other governments.

Mr. Sean Casey: So if we don't know of any analysis that has been done at the federal or the provincial level, can you tell me how much time the provinces are going to have to prepare for these unknown changes and challenges to capacity?

● (1650)

Ms. Julie Besner: Bill C-54 provides a coming-into-force date of three months after royal assent.

Mr. Sean Casey: Three months.

Ms. Julie Besner: That's what's provided in the bill.

Mr. Sean Casey: I'm going to step away from the issues of capacity in health care institutions and talk to you a little about constitutionality.

I'd like your comments on constitutional concerns in two respects. One, as my initial question suggests, if these changes result in an overburdening of mental health care facilities with more patients than they're equipped to accommodate, what are the constitutional concerns there? Two, are there any constitutional concerns with respect to continuing to detain an individual with a mental illness after that person has been found by experts not to pose a significant public safety risk?

Ms. Carole Morency: If I understand the question correctly, when the minister introduced the bill...it is introduced on behalf of the government and he has satisfied himself that the bill is constitutional. To the extent that there may be a challenge to a provision, which we see when criminal law reforms or other reforms come forward, the government can and will mount a vigorous and credible defence in support of these provisions.

We're not in a position to provide any analysis, for example, in response to your question of what would happen if there were a charter challenge as a result of the overburden, I think you said, on the forensic services in the provinces. Obviously, the government would defend in support of the legislation and presumably the provinces would as well. Remember, as the minister said, the provincial attorneys general have been supportive of coming forward with amendments, in particular to ensure that safety is given the paramount consideration.

So this is an issue of importance not just to the federal government but also to provincial governments and communities.

The Chair: Mr. Casey, that is your time. Thank you very much.

We go now to Mr. Seeback from the Conservative Party.

Mr. Kyle Seeback: Thank you, Mr. Chair.

I find some of the lines of questioning curious, this assessment of strain to the provinces. When you look at this, you look at the fact that you're talking about an individual who will be deemed by a court to be a high-risk offender. That's when these provisions kick in.

Is that not accurate? These are for high-risk offenders?

Ms. Julie Besner: A new designation process is proposed in the bill for certain individuals to be determined to be high risk. The minister mentioned it's not expected that a large number of individuals will be affected, because this is a smaller subset of the already small group of individuals who are found not criminally responsible. So that's one aspect of what the bill does.

Mr. Kyle Seeback: Right. So we're not talking about anybody who might be found to be NCR. We're talking about high-risk offenders who—I don't have the exact wording in front of me—are likely to reoffend, or people who have committed a brutal offence. That's what this is dealing with.

I know some people are wondering what the definition is. The definition to me...in a number of cases that we hear about in the media, what would qualify as "brutal" is quite clear. So again, I believe these would be fairly narrow applications.

This is a discretionary application put forward by a crown attorney. So you put that on top of it as well. To me, this is not going to be the broad stroke of a brush going across everybody who has been found not criminally responsible. It's going to be a narrowly focused issue dealing with some of the most serious cases.

Is that a fair and accurate assessment?

Ms. Julie Besner: Yes.

Mr. Kyle Seeback: Those are my questions.

The Chair: Thank you, sir, for those questions.

Thank you for those answers.

Our next questioner from the New Democratic Party is Madame Day.

● (1655)

[*Translation*]

Mrs. Anne-Marie Day: Thank you, Mr. Chair.

I am going to pick up on Mr. Seeback's question. Does this apply only to people at high risk, yes or no?

Ms. Julie Besner: The bill proposes a number of things. One of its parts deals with the new designation of "high risk". The threshold has been moved up. In other words, it is more difficult for a prosecutor to show that a person meets the criteria for a high-risk designation. However, other elements of the bill deal with accused found not criminally responsible or unfit to stand trial. It depends on which amendment we are dealing with. In any event, the high-risk accused designation is one quite specific element.

Mrs. Anne-Marie Day: Thank you. That answer is all I need.

The bill's title is "An Act to amend the Criminal Code and the National Defence Act". What does National Defence have to do with it? Is it because of post-traumatic stress syndrome? Why is there no mention of the RCMP?

Ms. Julie Besner: The National Defence Act has a parallel regime for accused who appear before the military justice system. In Canada, as a general rule, people appear before provincial or superior courts when they are accused of a crime under the Criminal Code. But members of the Canadian Forces stand trial before a court martial.

In that act, a parallel regime governs the way in which those people are treated. The amendments are simply in order to reflect the same concepts and to make the two regimes consistent.

Mrs. Anne-Marie Day: So members of the RCMP are treated like everyone else?

Ms. Julie Besner: To my knowledge, yes, but I am not very familiar with the courts before which RCMP members appear. I seem to recall that they are criminal courts, just like for everyone else.

Mrs. Anne-Marie Day: The minister has said that victims can be advised, on request, when an NCR accused is released. At what point is that request made? Is it when the accused is released or when he is declared guilty? When and how? Do victims sign a form or do they make an official request to a court?

Ms. Julie Besner: It happens when a person's file is sent to the review board. When the criminal court has finished the trial, with a verdict of not criminally responsible or unfit to stand trial, the individual's file is sent to the review board. At that point, the board takes over the individual's file and checks whether a victim wants to be made aware of the hearings that will take place in subsequent years. They keep a registry.

Each board has its own procedures, but, as a general rule, it gathers that information and sets up a registry when it takes on a new file. I also believe that victims' support services, which can be found across Canada, provide their assistance in those situations.

Mrs. Anne-Marie Day: Okay.

So it is not done in writing. But the victim still has to be contacted. I imagine they do not provide the NCR accused with the victim's address or whereabouts.

You may smile, Mr. Chair, but that is what happened with the lady and her son whom I mentioned earlier. There is nothing funny about it.

I imagine that victims have the right to ask that their addresses not be disclosed.

Ms. Julie Besner: Each review board is responsible for its own registry of victims, the procedures to contact the victims and to notify them of upcoming hearings, and so on.

Mrs. Anne-Marie Day: Does the legislation provide for additional protection for those who feel that they are likely to be victims again once the accused is released?

Ms. Julie Besner: Yes, it does. The bill proposes new measures so that review boards give consideration to any safety concerns victims may have.

If you read the new provisions 672.541 and 672.542 under clause 10 of the bill, you will see that those are the key provisions that remind review boards to specifically take into consideration the safety concerns of victims.

● (1700)

[*English*]

The Chair: Thank you very much for those questions, and thank you for those answers.

Our next questioner is Mr. Wilks, from the Conservative Party.

Mr. David Wilks: Thank you, Mr. Chair.

Thank you to the witnesses for appearing here today.

You had mentioned earlier, and I just want to clarify this, that although there has been no discussion with regard to high-risk versus dangerous offenders, certainly the dangerous offender classification has been in the code for some time. It recognizes that a person who continually repeats a criminal offence could, under certain circumstances, be found to be a dangerous offender. Those offences stream from murder to infanticide to a number of the most serious and grievous crimes that are found in the Criminal Code.

Would you agree that a person who is NCR under high risk, who commits a crime that would be designated as a dangerous offender crime in the Criminal Code, would be recognized as having committed one of those crimes in which the accused would fall under one of the amendments to the code under which they could be held for up to 36 months or three years?

Could you explain to this committee, if you are able to, how we came to that three-year requirement to be held, as opposed to the one year now?

Ms. Julie Besner: Just to start I'd like to request that you have a little bit of caution in comparing the dangerous offender scheme and this scheme. They're not meant to replicate one another.

Mr. David Wilks: Yes, I clearly understand that.

Ms. Julie Besner: So I'd rather focus on what's proposed in Bill C-54 with respect to the mental disorder regime. I think the specific question you had was, why possibly up to three years—

Mr. David Wilks: How did we get there?

Ms. Julie Besner: —while currently one year is the standard. It was in 2005 and in that set of reforms, if I'm not mistaken, that it was made possible to extend that period to two years in cases of a serious personal injury offence.

With the high-risk designation, for an individual who is found to be high risk, it can be extended to three years. It can also still be just the one year, so it's a discretionary review period that can be extended. It could be one year longer, but the requirement is that the decision-maker has to be of the view that there is not likely going to be a substantial change in the person's mental condition in that period of time. Otherwise, it stays on a shorter review cycle.

Even if it is set to three years it can be on consent, which sometimes happens. In the event that there is significant improvement within the review period, there is an ability for the parties to request a hearing at an earlier date if that's deemed to be necessary.

Mr. David Wilks: Thank you, Mr. Chair.

That was my next question. If a person is designated to a three-year review and in that period of time there is evidence to show clinically that the person has improved, they could request a review by the review board to be redesignated, if that's a word I could use. How would that process work?

Ms. Julie Besner: I'm glad you asked the question.

It's actually not going to be a redesignation by the review board. The court, in this bill, is empowered to make the high-risk designation, and the court is empowered to revoke the high-risk designation.

After someone is designated as high risk and they're supervised and managed by the review boards, they will have reviews—whether annually or every two or three years—and the review board will look at their progress and how they're doing. If the review board then becomes of the opinion that the person no longer poses a substantial likelihood of committing further violence, the board can refer the matter back to the court with a recommendation to the court that perhaps the designation should be revoked.

● (1705)

Mr. David Wilks: To be clear, if the review is to be revoked it's a judicial decision. It's not made by a review board; it's a judicial decision.

Ms. Julie Besner: Right.

Mr. David Wilks: Does it go before the court of origin?

Ms. Julie Besner: No. It goes to a superior court of criminal jurisdiction.

Mr. David Wilks: Okay.

So it goes—

Ms. Julie Besner: It could have been a superior court of criminal jurisdiction that made the order to begin with, or it could have been a provincial court that made the order. But certainly for the revocation it's a superior court of criminal jurisdiction.

Mr. David Wilks: That's good to hear because that means it is going to the highest court possible in that jurisdiction.

Is that correct?

Ms. Julie Besner: There are courts of appeal that are higher courts of jurisdiction. We're talking about it being a trial-level court, let's say.

The Chair: Thank you for those questions and thank you for those answers.

The final questioner I have on my list is Mr. Jacob from the New Democratic Party.

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Chair.

My thanks to the witnesses for joining us today.

Following the study conducted in 2002 by the Standing Committee on Justice and Human Rights, the federal Department of Justice set up a data collection system for mentally disordered accused. According to those data, almost 50% of the accused found not criminally responsible or unfit to stand trial do not have a criminal record and a large majority of violent accused are suffering from schizophrenia (up to 75%), organic brain disorders (71%) or disorders related to the abuse of alcohol or other substances (82%).

Could you tell me what the recidivism rate is for the accused found not criminally responsible and whether it is higher than the rate for offenders who have served time in prison.

Ms. Julie Besner: Unfortunately, I am not a statistician. The Canadian Centre for Justice Statistics does not keep track of those types of data.

The Department of Justice did start to collect data after 2002. You are no doubt aware of the report that was prepared in 2006, I believe, by Mr. Latimer and Mr. Lawrence. Even though it is a very thorough report, it has no data on recidivism. That was not part of the existing data held by the review boards. The data was collected from all the review boards. So I don't have any other information to give you on that.

Mr. Pierre Jacob: If the regime dealing with high-risk accused is adopted, will a procedural mechanism need to be provided so that an NCR accused can directly ask a court of competent jurisdiction to remove the high-risk designation once a year?

Ms. Julie Besner: Are you asking whether the accused themselves can ask to have a hearing? Is that right?

Mr. Pierre Jacob: Let me repeat my question. If the regime dealing with high-risk accused is adopted, will a procedural mechanism need to be provided so that an NCR accused can directly ask a court of competent jurisdiction to remove the high-risk designation once a year?

Ms. Julie Besner: Bill C-54 states that the review board first looks at the risk aspect and, if it is of the opinion that the person no longer represents a serious danger—we are talking about serious and violent offences—to public safety, it refers the case back to court. That is what is set out in Bill C-54.

Mr. Pierre Jacob: Are victims entitled to additional psychological support or additional funding to exercise their rights as set out in Bill C-54?

● (1710)

Ms. Julie Besner: I think the minister answered that question.

Mr. Pierre Jacob: He did not.

Ms. Julie Besner: I did not get that.

The bill does not provide for financial measures for victims, but I think the minister said it in a different way.

Mr. Pierre Jacob: I wanted to hear you say it.

[*English*]

The Chair: Thank you.

We've spurred on a few other questioners, so next, from the Conservative Party, is Mr. Armstrong.

Mr. Scott Armstrong: Thank you, Mr. Chair.

I'm going to ask a couple of questions surrounding clause 7. It's more about the process between the review board and the possibility at the judicial level of the disposition being revoked, and the impact that would have on a victim impact statement.

What would trigger a review board to review a case before they send it to the court for possible revocation? What triggers that review?

Ms. Julie Besner: It would be the standard review, whether the person is on a one-year cycle, two-year cycle, or a three-year cycle. By and large, it would be when they're up for review. The review board holds the hearing and hears the evidence from all the parties, and there's invariably psychiatric evidence presented there. So that's the trigger.

Mr. Scott Armstrong: The trigger is just the standard review. It's based on that timeline.

Ms. Julie Besner: It's a cycle.

Mr. Scott Armstrong: Say someone is on a two-year review cycle and they receive a psychological evaluation that says maybe they should take a look at this, is there no way to speed that review up? Do you have to wait until your assessment time?

Ms. Julie Besner: There is the possibility of asking for a review before the next scheduled review. There is provision in the code that currently exists and that will apply as well.

Mr. Scott Armstrong: If that were to occur, based on this legislation the victim is still going to be informed.

Is that correct?

Ms. Julie Besner: That's correct.

Mr. Scott Armstrong: How much lead time would the victim have? Roughly how long would they have to be aware that the review is going to take place, if it was non-statutory?

Ms. Julie Besner: I'm sorry, I couldn't tell you. As I mentioned earlier, the review boards themselves govern their technical procedures about communicating with the parties and the victims, and—

Mr. Scott Armstrong: Would it be safe to say that they would be informed far enough ahead that they could take some sort of action to make a victim impact statement? They would have to have that much time for sure, would they not?

Ms. Julie Besner: Yes.

I think there's also provision in the code for the review board to adjourn to ensure the victim has the ability to prepare a victim impact statement.

Mr. Scott Armstrong: Say the review board had evidence that they were going to forward to the court for revocation, at what point in the review does the victim impact statement take place? Is it one of the first things they look at, or is it one of the last things they look at?

I'm wondering at what point the victim impact statement takes place. Or does the review board set their own schedule based on the —

Ms. Julie Besner: Well, they hold a hearing and all the evidence is considered at the hearing. It's very possible that some of the evidence is in writing and some is orally presented, so it's during the hearing.

Mr. Scott Armstrong: But if the victim impact statement comes at the front end of that hearing, they may have to make their statement prior to hearing all the new evidence or the new psychological reports or whatever is in there.

Could the victim impact statement come at the end of the process, or is that up to the review board to decide where that takes place?

Ms. Julie Besner: The process at the review board, contrary to a traditional court, is very informal. In a court, often the prosecution will make its case first, and after the prosecution presents evidence then it goes to the defence. That's not at all how it happens before the review boards. It's very informal in nature, and it probably varies across the jurisdictions and on a case-by-case basis. It's very difficult to answer that question with any more precision.

Mr. Scott Armstrong: So we're not sure where that could occur.

What we do know is that there is the opportunity for the victim to actually make a victim impact statement at some point in that process. Hopefully they would treat the victim's rights reasonably at the review board level.

Would that be safe to say?

Ms. Julie Besner: Yes, and there's provision in the code for that.

Mr. Scott Armstrong: Thank you.

The Chair: Thank you.

Monsieur Goguen, you had your hand up.

There's a minute left in the timeframe, would you like to ask your question?

Mr. Robert Goguen: Yes, just very quickly.

[*Translation*]

I would like to go back to Mr. Jacob's questions. He asked about the procedure. My understanding is that the key aspect of the bill is to ensure public safety first and foremost. If I understand correctly, the person who wants to make a request to have the designation of high-risk NCR accused removed must go through two levels to have it removed. First, the person must convince the review board to make the recommendation and, second, it is up to a judge from the superior court to decide whether to accept or deny the request. So there are two levels to go through.

● (1715)

Ms. Julie Besner: There are two hearings. The first one is before the review board. I would like to clarify that the first hearing is not a burden on the accused. As I explained just a moment ago, the proceedings before review boards are very informal and neither party has to carry the burden. The board carries more of the burden because it has to gather all the information and relevant evidence to make its decisions. Then it can actually make a recommendation to the court to hold another hearing.

Mr. Robert Goguen: For public safety.

Ms. Julie Besner: Yes.

So there are two hearings.

[*English*]

The Chair: Thank you very much.

Thank you, witnesses from the justice department, for being here. You have provided excellent answers to the questions.

I want to let the committee know that, based on what has been approved, we will be meeting for a three-hour session.

As you know, we are going through lots of votes in the House of Commons. All the meetings are here in Centre Block. My goal as chair is to make sure we hear the evidence provided by the witnesses. We will vote if we have to, then come back and hear witnesses to make sure we get the witnesses' testimony on the record. Some are coming a long way. We may not get to everyone's questions but I want to make sure we hear the witnesses.

That will start on Wednesday. We look forward to it.

With that, the meeting is adjourned.