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Chair

Mr. Mike Wallace

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● (1540)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I call to order meeting number 76 of the Standing Committee on Justice and Human Rights. Today we're televised.

Our orders of the day are pursuant to the order of reference of Tuesday, May 28, 2013, Bill C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder).

We have three panels and a number of witnesses today. As I said before to members of the committee, each presenter has been offered 10 minutes. I will be a little flexible on that but still make sure they get their presentations in. Then we will have questions. Then we'll go on to the next panel.

We have lost a little time, so we may run this one a couple of minutes past, just to make sure we hear everyone.

I want committee to be aware, so that there are no surprises, that we passed a motion on Monday of last week that independents could come to the committee and move amendments during clause-by-clause consideration. Amendments need to be in prior to that. They've asked whether they can come.

The precedent is this, and this is my ruling on it. They are more than welcome to sit at the table with us. They can listen to the discussion and the presentations. If a member of the committee from one of the recognized parties wants to share some of their time with independents, they're more than welcome to do so. I'll recognize that. Otherwise I'll need unanimous consent of the committee to provide a speaking turn to those individuals. When it comes to clause-by-clause study, I will provide approximately two minutes to those independent individuals to present their amendments, if they have any. They will not be voting, but they can present their amendments at that time.

That is the ruling. They have been made aware of that through correspondence.

Let's begin. We have two individuals and one organization. Ms. Isabelle Gaston is here as an individual. From the Canadian Psychiatric Association we have Mr. Paul Fedoroff. As an individual, we have Carol de Delley. We'll follow the names on the orders of the day.

Madame Gaston, you're first to speak to us. The floor is yours.

[*Translation*]

Dr. Isabelle Gaston (As an Individual): Good afternoon.

Thank you for having invited me to participate in this meeting of the Standing Committee on Justice and Human Rights.

I am sure my experience within the system will help you to recognize the importance of Bill C-54, a bill which I support.

I thank Prime Minister Harper for allowing the victims to be heard at long last.

I am an emergency room physician. I practise in a regional hospital centre and our hospital houses the third largest psychiatric department in Quebec. Consequently, many patients with psychiatric illnesses come to my emergency department for treatment.

One fact is more relevant for this committee. I was the mother of Olivier, 5 years old, and Anne-Sophie, 3 years old, who were murdered on February 20, 2009. I was present at all of the legal proceedings and on July 5, 2011, my former husband was found to be not criminally responsible for the death of my children. Afterwards, the work of a fastidious commission of inquiry into mental disorders led to the release on parole of the man who took the life not only of my children, but, by the same token, of two Canadian citizens.

Even though I am at the centre of a terrible tragedy, I hope that you will understand that my testimony is no more and no less biased than that of certain lawyers, psychiatrists or other witnesses who will appear before you. Indeed, some of them seem to forget that there are two sides to every coin. You were elected and you will have to vote on this bill. This topic is too important to be allowed to become a partisan issue, identified with a single party.

No law is entirely perfect and none will ever please everyone. However, I think that a good law is a law that tends to be as fair as possible for the majority of the citizens of a country. Bill C-54 gives priority to public safety.

While rereading the Canadian Charter of Rights and Freedoms, I realized that defending the right to life and safety is far from easy in Canada. It sounds good on paper, but when someone is dead, I get the impression that we tend to forget them. In Canada, all human beings are considered to be equal in value and dignity. Everyone is supposed to have an equal right to protection before the law. Actually, that is not the reality. This bill will give everyone the protection they are entitled to, not only to us, the victims, but to everyone in society.

When people object that the bill will do nothing to further prevention, that the rate of recidivism is low and that it will stigmatize those with a mental illness, I think that they are straying from the topic. They are forgetting to draw a distinction between primary prevention and secondary prevention. They forget that a serious crime was committed. That cannot be just set aside. They forget that someone else was the victim of a crime and someone else will be a victim if there is a subsequent offence.

People have to stop accusing those who are in favour of the bill—people like myself, for instance—of lacking empathy for those dealing with mental illness. That is a false argument. I am not lacking in empathy, quite the opposite. I am in favour of rehabilitation and I understand the suffering caused by a mental illness. I treat patients who are psychotic, depressive or suicidal with the same energy as those who come in with a heart attack.

It would be fairer, in order to really understand my position, to know the hierarchy of my values. I find it unfortunate that a person suffering from a mental illness commits a crime, but I find it even more unfortunate that someone loses their life or well-being because of that crime. For me, the death of Olivier and Anne-Sophie demands that I require that the system protect my life, my well-being and that of others, because it is when you lose those you love that you realize that being alive and healthy is a privilege.

Certain psychiatrists claim that this act will undo years of progress and that it is very unfair. Unfair to whom? According to you, is it unfair to demand that we be cautious? I do not agree with those who claim that the defenders of this bill are trying to be punitive with people who are not criminally responsible. Injustice is sustained by everyone, myself, my children and all of society. If you believe that demanding that the person who took someone's life receive care and at least short-term supervision is punitive, we do not have the same vision of the work done by mental health workers.

● (1545)

I am quite willing to be sensitive and acknowledge that it is not always easy to be in a psychiatric institution, but it is much better than being six feet underground. The atrocious death of my children demands that the system not cut corners with my safety and that of other citizens. A non-criminally responsible person will be able to take up their life at the completion of their mental rehabilitation.

If Bill C-54 is passed, certain patients will be declared “high risk” if they have committed a very serious crime, if they have been guilty of serious physical mistreatment of others, or if there is a strong possibility that they may commit other acts of violence. This makes perfect sense to me.

It is time for things to change, because the current state of the system is not very reassuring. In December 2012, even if the commission of inquiry into mental disorders felt that the murderer of my children still presented a serious risk because of his mental state, he was nevertheless released without supervision.

I do not understand the rationale behind such a decision. I have the impression that people are playing Russian roulette with my life. I don't feel protected, really, at this time. People try to reassure me by telling me not to worry, but out of millions of Quebeckers, it was nevertheless my sister and my niece who came face to face with the man who killed my children, in a shopping centre near their home, last February 18. That morning, I had declined the invitation to go shopping with them because I was working that day at 4 o'clock. Why?

I think that all families that are in my position have the right to feel safe, especially in their immediate neighbourhood. On the contrary, we are not informed about anything and we do not have access to the information that would allow us to know what point in the process our aggressor has reached. I have no idea how my former spouse would have reacted to me that day, nor how I would have reacted to him. What I do know however, is that I am afraid. I know that the current system is not there for me. I also know that should there be such a meeting, I would be alone to defend myself before, during, and after that encounter.

It is wise to let a judge decide to release or not release an individual deemed to be “high-risk”. The members of the commission of inquiry into mental illness probably do good work, but as a physician, I know it can be difficult to be both physician and judge. In my opinion, the biggest precaution that should accompany this change in the legislation is that the professional corporations should remind their members of their code of professional conduct and of the ethical rules that govern medico-legal assessment. Professional corporations should also point out that there is a major difference between medical evaluators and practising physicians. Under no circumstances should any physician be authorized to wear both hats. This seriously undermines the confidence of victims.

It would be desirable to increase the length of hospitalization in a psychiatric facility to three years. Even if you cannot force an individual to undergo treatment, you would thereby certainly increase his chances of eventually participating in the rehabilitation activities available to him. At the very least, this would allow for a longer period of observation, so as to permit a better assessment of the person who has committed a serious crime.

In my situation, it took one year before the murderer of Olivier and Anne-Sophie decided to begin therapy. Unfortunately, that therapy was at an “embryonic” stage, according to his physician, when he was paroled in December 2012. At the hearing that preceded that parole, the patient admitted that he had made a great deal of progress, thanks to his stay in hospital, even though he had wanted to be released a year earlier. I would also like to remind you that the expert who testified a year before that parole suggested that the patient be released without any kind of condition. That example is a good illustration of the fact that aside from the patient, the health care team and the experts can also benefit from a longer assessment period.

In conclusion, this bill gives me greater hope that one day, the scales that are the symbol of our justice system will once again attain a certain balance for the parties involved. However, it remains essential in my opinion that a national or at least a provincial reform be brought about to guide the experts who testify before the court. No matter how often the expression “not criminally responsible” is redefined, or how rigorous the follow-up of those who are deemed not criminally responsible by the board responsible for that follow-up, those who interpret the legislation are the ones who can weaken our legal system and generate injustice, both for the accused and for the victims.

That is why it is urgent that rules and procedures be brought in as frames of reference for the experts who testify before the courts. The quality of the expert assessments presented to the judges and jury members must be monitored. Even if most of these expert assessments are of good quality, we must ensure that they respect all the rules of proper practice.

● (1550)

We must require at the very least that these assessments be rigorous, impartial and objective. The trust the general population, and victims, place in our justice system depends on it.

Thank you. I am available to reply to your questions.

[*English*]

The Chair: Merci, Madame.

Our next presenter is Mr. Fedoroff from the Canadian Psychiatric Association.

You have 10 minutes, sir.

Dr. J. Paul Fedoroff (President, Canadian Academy of Psychiatry and the Law, Canadian Psychiatric Association): Thank you very much for this kind invitation to present to you on behalf of the Canadian Psychiatric Association, and to sit next to Dr. Gaston, to whom I extend my sincere condolences.

I believe I was chosen for this honour because I am president of the Canadian Academy of Psychiatry and the Law, which is the largest organization of psychiatrists who specialize in assessing, managing, and treating the population that Bill C-54 will directly impact. However, I may also have qualifications on the basis that I am a practising psychiatrist at the Royal in Ottawa.

This legislation is about victims. Looking around this room, I know that some of you will be affected by this legislation. I know this because one in five Canadians is affected by a significant mental health problem. That means that virtually everyone in this room has at least one family member with this problem. In the same way that not every person with mental illness is honoured to have a family member in the House of Commons, most people with mental health problems do not commit crimes. In fact, most violent crimes are committed by people with no mental illness. Bill C-54 will not affect the majority of violent crimes against Canadians because they are committed by criminals who intend to break the law. Even among the people with mental health problems, the small percentage of whom commit crimes, most will not be affected in any way by Bill C-54. The legislation itself acknowledges this fact and states it applies only to a small proportion of accused with mental health problems.

Who are these people with mental health problems which Bill C-54 applies to? They are people with mental illnesses so severe that a judge in a court of law has determined that at the time of the crime, because of their mental illness, they were unable to appreciate the nature or consequences of what they were doing, or to know that what they were doing was wrong.

The Criminal Code of Canada, as in all civilized countries, recognizes that it is an injustice to hold a person responsible for their actions if their mind was so impaired they did not know what they were doing. These people are declared NCR, not criminally responsible, in a court of law by a judge, not a psychiatrist, and are referred to as "NCR accused". Any one of you at this table could have a relative who is declared an NCR accused. I say this with the greatest respect because becoming an NCR accused has nothing to do with your personal character or the integrity or respectability of your family. It has to do solely with having a mental illness that prevents you from knowing that what you are doing is against the law and wrong. This is who Bill C-54 affects.

I began by saying that Bill C-54 is about victims. I and everyone in this room agree victims deserve the utmost in respect and care. Now imagine that your relative with a mental health problem, which they did not ask for, commits a violent offence and is found NCR. Who are the victims? The person who was attacked is, for certain, but also the family members of both the victim and the accused, as well as the community. What will Bill C-54 do for victims? It will not increase victim notification. That already happens always. It will not delay the speed with which NCR accused are returned to the community. Most NCRs are followed for longer than three years. It will not change the frequency of board reviews. High-risk offenders typically are seen more frequently, and it would seem bad practice to decrease the hearing times.

Here is what Bill C-54 will do. It will increase the burden on the criminal justice system in the process of designating so-called "high risk". It will make it harder to transition NCRs safely back to the community since passes, which begin as escorted and lead to unescorted, assist in assessing true risk. It will risk stigmatizing people with significant mental health problems.

For the sake of all victims, including potentially your own relatives, I hope you will reconsider the merits of this bill carefully.

● (1555)

I will finish with a brief anecdote. Suppose a woman suffers from a delusion that a very severe poison is actually healthy. She gives it to her husband and her husband becomes upset or mildly ill. Now, suppose that same woman with the same delusion gives the same poison to her entire family at a birthday party and kills her entire family and all her children. Suppose another person who is a criminal, who intends to kill people, intentionally poisons someone. Ask yourself, is it just, is it fair to treat all those individuals the same way?

Bill C-54 moves us towards treating a person with a delusion as though they were a criminal.

Thank you.

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

Our next presenter, as an individual, is Ms. de Delley. Thank you for making the trip here from Manitoba. You have 10 minutes.

Ms. Carol de Delley (As an Individual): Good afternoon and thank you for providing me with this opportunity.

Today I represent many victims of NCR offenders as I call upon members of the House of Commons of Canada, regardless of what party they belong to, to join together to unanimously pass this legislation.

In July 2008 my 22-year-old son, Timothy Richard McLean, had his basic human right to life violated when he was sleeping and he became a victim of an NCR offender. I believe that my son died in the horrific and very public manner that he did to shed light on the issue of NCR so that positive change could result and the safety of the public would be ensured.

My family and I have had to endure the trial and five annual review board hearings, and Timothy will not even have been dead for five years until the end of July. This has left us with no opportunity to grieve our loss. I have spent the time since Timothy's gruesome death trying to raise awareness in the public about what NCR is and why I believe it needs to change.

I have had the support of Manitoba cabinet ministers Eric Robinson and Andrew Swan as well as MPs Shelly Glover, Candice Bergen, and James Bezan, and I thank them for that support. There is a seemingly endless team of professionals providing for every need of the offender. While in care and with regularly administered medication and intense therapy in a controlled environment, paid for and provided by the taxpayer, I would be surprised if the offender did not show remarkable improvement. What about the victims? In our particular case, along with our very large family, there were 40 or so civilian witnesses and almost as many police officers who were witnesses to this horrible experience. Who speaks for and represents all of them? Today, I do.

We are all the living victims of an NCR offender. The psychiatric community and the Schizophrenia Society claim that with this legislation we are stigmatizing the mentally ill. They have much to say in the defence of what they claim is a very small number of extremely ill individuals. I ask, where were all these professionals when these very disturbed individuals or their loved ones were trying to get help? In most cases the offender has a history of mental illness, often diagnosed but usually untreated. The crucial reason for the lack of treatment is that the person with the mental illness does not believe they have a problem and therefore refuse to get help. The reality in Canada is that even when close family members or associates have verifiable proof that an individual is suffering from severe psychosis or mental health issues, if that disturbed individual is resistant to treatment, they are under no obligation to get treatment.

In her book, *Changing My Mind*, Margaret Trudeau states:

> A person with a mental illness needs an advocate—someone to chart the waters, interpret possible side effects of drugs and provide reassurance when recovery seems so terribly slow.

I concur that what mentally ill individuals need more than anything is an advocate to act in their best interests, because the afflicted person is incapable of making such decisions for themselves.

An NCR designation removes the offender from the criminal justice system and places them in the provincial health care system. The accused then receives the treatment and medication they should have received in the first place, and the issue of the murder is never addressed. A Criminal Code provincial review board by its very name is misleading. Most Canadians believe that the crime is reviewed at these hearings and that the accused or offender is still considered a criminal. That is not the case. There will be no criminal record for these offenders. The accused is now referred to as the patient, and the only thing being reviewed is the patient's mental status. It should be called what it is, a mental health review board.

I can understand that these extremely ill individuals may not be psychologically accountable; however, they are, without question or doubt, still responsible for killing another human being. The rights of the accused should not overshadow those of the innocent victims. The suffering of the victims and their families should not go unnoticed in our society. Provincial review boards ought to make it mandatory for the health facilities to release information on NCR patients. Victims should have the right to all information regarding the treatment and movements of those found not criminally responsible. I recognize the controversy and complexity of these issues. I believe that we as a society need to work together to create a Canada that is balanced and equal, a country that provides timely and tangible support to the victims and to enable seriously ill individuals to get the help they need but may not necessarily want.

I also believe it is crucial to protect all citizens, including the afflicted. I want to know when they are released back into our neighbourhoods and what we are doing to ensure these individuals are taking their medications. What programs are in place? How exactly are they being monitored? Whom do they report to?

● (1600)

If they reoffend, who will be responsible? We know it's not going to be the mentally ill individual, the provincial review board members, the psychiatrists, or the Schizophrenia Society of Canada.

Ekosi. Meegwetch. Thank you. Merci, with respect.

The Chair: Thank you for that presentation.

We will now go to questions. Members, I am going to keep you to your five minutes so we can get in as many questioners as possible in every hour.

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

● (1605)

Mr. Hoang Mai (Brossard—La Prairie, NDP): Ms. de Delley and Madame Gaston, our thoughts are with you.

[*Translation*]

It is very difficult for us to hear all of that. That said, it is an honour to have you here. I thank you for having taken the time to come and testify. We congratulate you on your courage. Sharing your experience allows us to better understand what is going on. It is very meaningful for us to hear people like you tell us about their experience.

I would like to begin with Ms. Gaston.

Last Monday, when the Minister of Justice was here, I asked him whether in this specific case of Mr. Turcotte, Bill C-54 would apply, especially as concerns the definition of a high-risk individual. The minister and the officials representing the Department of Justice were unable to answer the question. It is possible that that definition would not apply in this case.

Does that change your perspective on the bill to some extent? I think that you raised — and we understand that — the issue of notification. That really wasn't discussed. This is more in connection with the fact that in the case of a high-risk individual such as Guy Turcotte, the bill would not apply.

Dr. Isabelle Gaston: I always say that on February 20, when my children were murdered, the person who existed that day died with them.

In what I do, I know now that being alive is a privilege. Whether this has an impact on me or not, I know that it will be a good thing for the other families who may follow me, because, unfortunately, there will be other crimes.

One important element in the bill would be the victim's statement. That seems to me to be an important point in Bill C-54. I was interrupted because all of this was very rules-bound. I wanted to show the photograph of my children, but my freedom of expression was curtailed. I think that this bill could lead to some changes.

There's also the fact of having to go back before a judge. Ideally, I would see the trial judge because currently, people wash their hands of things to some extent. They feel they are there only to assess the person who was found not criminally responsible. In my situation, I found it quite remarkable that the individual would have made progress in only one month, when he was assessed by the same psychiatrist. According to me, this would allow for a more critical perspective. I am aware of the fact that the board does very good work, but sometimes, because of regulations related to the right to information, it is difficult to assess the work these people do.

In Quebec, you see, these things are done behind closed doors. There are people at the Institut Philippe-Pinel in Montreal, there are some in Trois-Rivières and some in Quebec, but those who committed the most serious crimes are mostly sent to the Montreal Philippe-Pinel Institute and no one evaluates the work the people involved do in that regard.

To answer your question, I think that this bill offers a certain protection because of the fact that the accused would return before the same judge.

In my situation, we would have to see. I don't think it would apply.

Mr. Hoang Mai: That's right.

[*English*]

Dr. Fedoroff, some of the questions we had initially for the minister were in terms of consultation.

Can you tell me how many psychiatrists your association represents?

Dr. J. Paul Fedoroff: There are about 130 full-time members.

Mr. Hoang Mai: Was your association consulted with respect to this bill before coming here?

Dr. J. Paul Fedoroff: Neither CAPL nor the Canadian Psychiatric Association, which is a much larger association, was consulted.

Mr. Hoang Mai: One of the things we did say was in terms of the government coming up with a bill where people working with respect to mental health, mental illness were not consulted.

Quickly, because I don't think I have much time, what is your view of what might happen in terms of implications for the justice system?

Dr. J. Paul Fedoroff: The criminal justice system, especially in terms of dealing with people with severe mental illness, is overloaded already. Adding extra measures would backlog the system and would almost certainly result in mentally ill people being placed in jail, spending time in jail, not being treated, rather than being heard and treated.

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

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

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

Thank you to the witnesses for testifying.

Certainly our thoughts and prayers go out to both of you, Mrs. de Delley and

● (1610)

[*Translation*]

Dr. Gaston, thank you.

My question is for Dr. Gaston.

You are a physician and you work in an emergency department. Is that correct?

Dr. Isabelle Gaston: Precisely, I work at the Saint-Jérôme CSSS.

Mr. Robert Goguen: Is that an emergency centre that specializes in treating trauma?

Dr. Isabelle Gaston: Yes, the Saint-Jérôme CSSS is a trauma centre, but it is also the third biggest psychiatric centre.

Mr. Robert Goguen: You heard Dr. Fedoroff's testimony. I reread his brief carefully and he seems to say that there is no urgent need for reform regarding lack of criminal responsibility. Do you share his opinion? Do you agree that bringing in this reform at this time is not urgent?

Dr. Isabelle Gaston: Why is he opposed to this reform if he thinks that it does not really change things?

Dr. Fedoroff says that it is unfair to those who have a family member with a mental disorder. What I can say is that even a member of your family could be murdered. Do you understand? There are two sides to every story. By constantly being in contact with people with a mental disorder, perhaps we end up finding them nice and forget that there are other people in society. We forget that our decisions can affect an entire community and many families.

My brother's best friend is schizophrenic. It is surprising to see schizophrenics and people who suffered from depression and were very ill support these measures. In fact, millions of Canadians suffer from a mental illness, but most of them will never commit a crime. I think Bill C-54 is really a minor precaution in the sense that it will only affect a very small number of people. So I don't see why we are creating a tempest in a teapot.

They are still people who committed horrible crimes, and I invite you to read the definition. I will not go into the details of what I went through as a mother and what my children went through. When I see the only report card my child had, I find it hard not to feel that it is unfair. I would feel blessed if I could go visit my son or daughter in a psychiatric institution.

There is a whole range of activities and services offered at the Institut Philippe-Pinel, such as macramé, psychological and criminal law services, a pool, mini-golf, and pool tables. Perhaps they feel it is unfair. However, if I could give them a choice, I don't think Olivier and Anne-Sophie would find it unfair that they are required to be treated in an institution. We are not punishing people. Rather, we are asking them to get treatment and to be careful. That is the least we can do for those who have lost their lives or whose integrity has been damaged.

In addition, we are not talking about 40 years. It has already been four years since my children died. It would be a good idea to enforce this law. I don't understand why anyone would be opposed to it. I think this legislation is one more step in protecting everyone.

Mr. Robert Goguen: Just like me, do you agree that there is usually some stigma attached to those with mental disorders?

Dr. Isabelle Gaston: On the contrary, the people I know who have a mental illness keep saying that they want to have a normal life and that they want to be recognized as being normal in a sense. But I feel that failing to provide better supervision to those who commit the worst crime of all will stigmatize the people who live good lives despite their mental disorders.

I have personally dealt with depression and I suffer from post-traumatic stress. It is very difficult for me to get back to my normal life. I haven't killed anyone. We must not forget that a crime was committed. I think that is part of the reality. So those people need to have better support.

We are told that the risk of recidivism is low. We are talking about a recidivism rate of 1%. Would you want your wife, your children or your grandchildren to be part of that 1% or 2%? When I think about what happened to me, I think that the number is high compared to how little we are asking for.

[*English*]

The Chair: Thank you for those questions and answers.

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

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

I also want to commend the witnesses, particularly those who suffered as a result of these brutal acts, for coming here and testifying to us.

I'm going to begin with my first question to Mr. Fedoroff and, if time permits,

[*Translation*]

I also have a question for Ms. Gaston.

[*English*]

Mr. Fedoroff, in your brief to the committee, your association says that the recidivism rate for those found NCR is five to six times lower than for offenders found criminally responsible. What explains that discrepancy in the rates of reoffending? Are there measures that might be effective in reducing the recidivism rates even further?

● (1615)

Dr. J. Paul Fedoroff: There's a difference because people who are found NCR are people who have a mental illness, which is the reason they committed their offence. Mental illness is treatable, so when they are treated, their risk drops. In contrast, people who are not NCR are criminals who committed a crime intentionally, and of course we do not have treatment for criminality, so that explains the difference in the rates.

Of course, we're also working on decreasing recidivism rates. The way to do that, in my view, is to treat people more quickly and earlier on. Part of that involves education about the facts of mental illness and the fact that there is treatment.

One of the reasons the Canadian Psychiatric Association is objecting to this bill is that we're worried that resources are going to be turned into putting people into facilities where they won't get treatment, rather than diverting them to victims and increasing victim compensation, education, and treatment, as well as treatment of the mentally ill.

Hon. Irwin Cotler: Is there any correlation between what has been called the "brutal nature" of the act committed by an NCR accused and the likelihood that they will reoffend?

Dr. J. Paul Fedoroff: No, there isn't. I gave you the analogy of a woman who, because of a delusion, thinks that she's giving people something to make them better, but it turns out to be poison. As you can see, the consequences of that delusion depend on many other factors, so deciding what to do with that person on the basis of what happened, of how many people took the poison, is really a wrong way to do it.

That's very different from a person who intentionally commits a crime in which what they did is an example of what they're willing to do. In the case of a person who commits a crime because they didn't know that what they were doing was wrong, the dangerousness has to do with whether they can still have the delusion, and not with the brutality of the actual act.

[*Translation*]

Hon. Irwin Cotler: Ms. Gaston, the bill includes measures for non-communication orders between the accused and the families of victims. It also contains measures asking that the families of victims be better informed during the process. I think there is unanimous support for those measures. Would you like to suggest any other measures that might make the process a little less difficult for the families of victims?

Dr. Isabelle Gaston: Yes, there are some measures to consider. You see, when someone is released unconditionally, that person could basically come to live on my street, consume alcohol and go back to work. Do you understand? I think the non-communication order provides some distance.

If I knew where the person was going to live, I would perhaps limit my trips to that area.

You must understand that I am lucky that I don't stay angry. I was angry and I still am sometimes, but my anger does not last. I am not really sure how I would react if I came face to face with my aggressor without a judge, a lawyer or police officer. I have no idea. I dream about that and imagine what it would be like. Would I run? I think knowing where the person is, what stage the person is at, is part of the right to information. There is a need for transparency and we must know the truth. That would reassure us. Knowing that the person was biking or playing volleyball and broke their ankle, and, subsequently, started therapy does not reassure me. It is a little like that.

I have one more thing to add. Dr. Fedoroff talks about people with psychosis, but clause 16 is much broader. Even now we recognize disorders related to adaptation. I feel that there are personality disorders and many other things that could be assessed in the longer term.

● (1620)

[*English*]

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

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

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Mr. Chair, and I thank the witnesses for being here today.

Ms. Gaston, you mentioned in your testimony an incident that occurred with your sister and her children on February 18 in a face-to-face meeting with your former husband. Could you elaborate on that from the perspective of how your sister felt and what this legislation potentially could do to limit access to family members, which would include your sister? It seems to me that this rarely happens, but it did happen, and I'd like to hear more about it.

I don't wish to upset you, but I think this committee needs to hear what happened on February 18.

Dr. Isabelle Gaston: What happened is that in the morning on that day—

Mr. David Wilks: You can go to French if you want.

Dr. Isabelle Gaston: You want me to speak in French?

Mr. David Wilks: Sure, yes.

Dr. Isabelle Gaston: Okay.

[*Translation*]

Four years less two days after my children were murdered, my sister and her daughter, who just had a baby, went shopping in Montreal, at the Rockland Centre. I did not include the baby in my description, but her baby was with them as well. We heard in the media that Mr. Turcotte was somewhere else, in L'Épiphanie, outside Montreal.

My sister told me that she was about two metres behind her daughter and the baby stroller when they came face to face with him. They were so close to Mr. Turcotte that the stroller could have hit him. They looked at each other and then my niece started screaming: "Criminal! Criminal! Criminal!". All the security officers came. He turned away and my sister followed him. She said something to him and they had a short conversation. You can understand that, after that incident, we lived under stress for four, five or six days. I wondered how that was possible and whether he had followed her. Those are the types of questions that go through our heads. In moments like that, we have no idea what to do or who to turn to.

To answer the question, I think that, if a minimum contact distance were set and we were told where the person is, we would feel safer. That morning, I turned down the invitation to go shopping. I could have very well been there. That is not very reassuring, especially since, according to the board, he still poses a major risk.

This bill would ensure that the individual is released only when it is established that he or she is no longer a threat to society. That would really change everything.

[*English*]

Mr. David Wilks: Thank you very much.

Being a retired police officer, my sympathy leans far more toward the victims than to those who commit the crime, and it is a crime. There may be a basis for the courts to determine NCR, but having seen, as you have, some horrific things, it certainly is a hard pill to swallow. Let's put it that way.

Carol, you hit the nail on the head a couple of times. You said that the rights of the accused should not supersede those of the victim. I completely agree with you. You also said that there needs to be some way of watching the patient after release. That seems to be a critical part of your testimony and that seems concerning.

My question for you is twofold. When Mr. Li was released, what was your initial reaction? On top of that, would you have any recommendations with regard to whether, after release, a patient should be under some form of supervision, either mandatory or whatever the case may be?

Ms. Carol de Delley: Vince Li has not been released. He is still in a psychiatric facility in Manitoba. However, he has just been granted unsupervised grounds passes. These are grounds that are not fenced. Also, he has been granted escorted passes within the community of Selkirk where he is detained, as well as in the city of Winnipeg, now including the surrounding beaches. This means that families who are spending time at the beach on a Sunday could actually run into him. Mine could too. I have a place at the beach. That's very disconcerting to me.

I have received information from people involved in many other NCR cases. Because I've been so vocal, they've all been sending me their cases, their information, and their experience. In many of these cases, the offenders and victims have come face to face. These people are living in the same communities. It's a very frightening thing.

In one particular case, when a woman ran into her daughter's killer, she was thrown right back. It retraumatized her. She began drinking heavily, lost her job, lost her income. She's tried to kill herself three times now. I question how many more victims one offender creates.

As far as recommendations go, I don't think I'm qualified to make recommendations as to how these people should be handled after the fact. Clearly, what's in place is not adequate. If you think of what is in place in a very major centre and how it can't keep up, then what about rural areas? What about way up north where the resources and programs and the individuals that you would want these people reporting to don't exist?

There's much work to be done there. I don't have all the answers, and I've never claimed to have all the answers. I'm a grieving parent or trying to be one. I'm trying to bring this to the attention of the powers that be so that something can be rectified.

● (1625)

The Chair: Thank you for all of those questions and answers.

Mr. Marston, you have five minutes.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Thank you, Mr. Chair.

This is going to be one of the tougher ones for me. I can really relate to both of your stories. I suffer from post-traumatic stress syndrome myself from an incident at a car accident scene, so I relate to that.

In 1949 my mother strangled my sister to death. She was designated not criminally responsible. I didn't know it until I was 12 years old. She spent 10 years in hospital for treatment. I can recall spending a weekend with her when she was given one of her first releases. I can recall going to my father seeking reassurance, wondering whether I was safe.

It's a really hard balance when you talk about a sick person as opposed to a criminal. The act was certainly criminal, and in your cases, horrifically so, but it's still a sick person, and it's really troubling. Our duty here is to try to craft the best legislation to meet the needs of the community as well as the needs of others who are ill people.

I'm going to put my questions more to Dr. Fedoroff, but I wanted to say that you're right. There are people who feel many things that are similar.

Mr. Cotler spoke to you about reoffences. Do you have any statistics on the reoffences of people who have been designated?

Dr. J. Paul Fedoroff: I'm not prepared to go into details on that. I think you'll be hearing from the Mental Health Commission, which will have much better details on that. I can tell you that the reoffence rates for NCR accused are far lower than they are for people who are criminals who go through the criminal justice system.

Mr. Wayne Marston: The thing that strikes all of us is that a successful treatment is only as good as the commitment of the patient to that treatment. I think that's where a lot of the fear comes from. The belief is that they may be faking a lot of this and that when they get out, they'll still be at risk. There are so many things in the area of the expertise of the psychiatrist. That's why I was shocked to hear that your group had not been consulted on this. This is a critically important piece of legislation to meet the needs of the public and to address their concerns. That troubles me. I'm looking forward to hearing the rest of our witnesses.

Do you have any suggestions for additional tools that would be advantageous to treatment that could be put into legislation?

● (1630)

Dr. J. Paul Fedoroff: Yes. Bill C-54 will do absolutely nothing to reduce the risk of first-time offenders, who are the main offenders. It will do nothing in terms of reducing the risk of returning people who are NCR back into the community. In fact, it may increase the risk, because the bill makes it impossible to test somebody by giving them unescorted passes on grounds before giving them more greater levels of privileges. It's going to delay treatment and make it more difficult to be sure that the person isn't just saying something that we might want to hear.

As I said before, to address the larger issue, what we need is better education of the public and victims to understand that these people are very different, that your mother is very different from a criminal who may have committed the same crime. People with mental illness, by all the principles of jurisprudence, need to be dealt with differently because they don't understand what they are doing at the time.

Mr. Wayne Marston: There's the issue of stigmatization. In my mother's instance, we were from a small town in New Brunswick and she was never able to return. She passed away in her eighties, but she was never able to return to that community, and it wasn't anybody particularly who was being aggressive about it, but it was kind of an undercurrent.

I'm concerned that perhaps this bill might increase the stigmatization of people. We have to find that balance because the needs are real. Nobody is doubting the needs of the victims' families and all of that, but how do we balance that?

Dr. J. Paul Fedoroff: Well, you're right. Review boards, which by the way also were not consulted in the drafting of this bill, always take into account the dangerousness of the person, and protection of the public is one of its major issues. They always do that. To add another designation of high risk based on something which is not scientifically verified, and which is not dependent on the assessment by an entire team who know the person, who actually live with the person, seems to me to be dangerous and will add unnecessary stigma to a very marginalized group.

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

Our final question for this panel will be from Mr. Seeback of the Conservative Party, only for three minutes.

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

Isabelle and Carol, I appreciate your testimony. I have limited time. I want to talk to Mr. Fedoroff because of some of the comments that he's made today. I wish I could ask you questions, but I don't have the time.

Mr. Fedoroff, have you read the actual amendments to the Criminal Code?

Dr. J. Paul Fedoroff: Yes.

Mr. Kyle Seeback: One of the comments that you made at this committee today is that this legislation will cause people who have a high-risk designation to go to jail, or there's an increased likelihood that they will be put in jail. What section did you find that in?

Dr. J. Paul Fedoroff: That's my prediction based on the fact that the criminal justice system will now have to do extra things such as designate someone as high risk and deal with changes in status.

Mr. Kyle Seeback: Well, the legislation says the exact opposite, and I quote, "If the court finds the accused to be a high-risk accused, the court shall make a disposition under paragraph 672.54(c)...", and that paragraph says, "...by order, direct that the accused person be detained in custody in a hospital...".

A hospital is not jail.

Dr. J. Paul Fedoroff: In order to make that designation, the court is going to have to come to a determination that the person is high risk.

Mr. Kyle Seeback: Right, and then send them to a hospital.

Dr. J. Paul Fedoroff: Right, but before they get to a hospital, they will be in a jail.

Mr. Kyle Seeback: If that were true, that would not change the system as it currently exists.

The other comment that you're making, in that this is going to increase because there's not going to be treatment, I also find that to not make sense or jibe with the legislation. The legislation is quite clear regarding a person under proposed subsection 672.84(1). It states, "if it is satisfied that there is not a substantial likelihood that the accused—whether found to be a high-risk...".

If a review board says that they don't think the person is going to be high risk anymore and then gets sent to a court and the court agrees, then that person goes back to the conditions under the review board which could be supervised release, but it's only when they are not considered to be a risk to the public.

I don't see how you see that as saying the person is not going to be treated, or treated less fairly. It combines the safety of the public with making sure the person gets treatment.

● (1635)

Dr. J. Paul Fedoroff: The reason I say that is that currently when a person is an NCR accused and they are put into a detention that is a psychiatric hospital, it's on the basis of their mental illness. This legislation will change that to being put into detention on the basis of the brutality of the crime.

Mr. Kyle Seeback: No. I'm going to disagree with you. That's not what the legislation says.

The Chair: Thank you for the questions and answers.

I want to thank our panel for sharing their personal stories today. It's very important for us to do that, and I know it was very hard for you.

I also want to thank you, Mr. Fedoroff. You were up against the witnesses who have very personal stories. Thank you very much for your evidence this afternoon.

We're going to suspend to move from one panel to the next.

● (1635)

(Pause)

● (1635)

The Chair: Ladies and gentlemen, I call this meeting back to order.

We're on our second panel. With us today we have Kim Pate from the Elizabeth Fry Society of Canada. From the Criminal Lawyers' Association, we have Paul Burstein and Erin Dann. From the Canadian Bar Association, we have David Parry and Terry Hancock.

Each organization has 10 minutes. We'll go by the listing on our order paper. Our first presenter will be Kim Pate from the Elizabeth Fry Society of Canada.

Ms. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Thank you very much for the opportunity to appear before the committee.

I attend on behalf of the Canadian Association of Elizabeth Fry Societies, an association of 26 members who work with and on behalf of marginalized, victimized, criminalized, and institutionalized women and girls throughout the country. As many of you know, we provide services that range from early intervention for those who have been victimized right through to and including prison resettlement and after-care programs. My presentation will be very brief.

While the legislation provides an opportunity to shine a light on a very important issue, an issue that is underscored by some horrible tragedies that have been experienced by Canadians, the reality is that beyond that, there is a consensus that applying a new label of "high risk" will not be particularly helpful, and that unless there are additional resources to ensure there are supports in place to assist individuals who are given that label, they will likely end up with an unnecessarily long period of being incarcerated, or institutionalized —my apologies—in centres that will not necessarily be able to provide the sort of treatment that needs to be provided to individuals who have been labelled "not criminally responsible".

We would hate to see a return to the asylums of the past or to institutionalized settings in which people remain for very long periods with limited review processes and few opportunities to access the treatment they require. We think it has implications for many others who might not necessarily be labelled as not criminally responsible, but might be identified as high risk.

I have several examples of those, and I'd be happy to talk more about that in answer to questions. That in sum is our submission.

Thank you.

● (1640)

The Chair: Thank you very much for that presentation. Our next presenter is the Criminal Lawyers' Association.

Mr. Burstein.

Mr. Paul Burstein (Director, Criminal Lawyers' Association): Mr. Chair, on behalf of the Criminal Lawyers' Association, I want to thank this committee for the opportunity to comment on this very important issue.

It's personally a privilege and a pleasure to once again appear before this committee. My name is Paul Burstein. I'm the immediate past president of the Criminal Lawyers' Association, an association with over 1,200 criminal lawyers. We are one of Canada's largest specialist legal organizations. Like me and my colleague Ms. Dann, most of our members have regular contact with mentally ill people who, after falling through the cracks in our system of mental health, end up embroiled in the criminal justice system.

Personally, I've been working with mentally disordered offenders for over 20 years, since part XX.1 of the Criminal Code was first enacted. That legislation came into force on February 4, 1992. I became a lawyer three days later and have been working under that regime ever since. I've represented many mentally disordered offenders before the Ontario Review Board and on appeals to the courts of appeal against those dispositions.

For almost 20 years I've been part of a small roster of lawyers that the Ontario Court of Appeal appoints to assist it in dealing with mentally disordered offenders who have filed their own appeals against ORB dispositions. I've appeared before the Supreme Court of Canada on a number of very important cases that have dealt with the subject matter of Bill C-54. I've taught courses dealing with mentally disordered offenders. Most important, like so many millions of Canadians, I'm a parent of a child who has long suffered from a major mental illness. I can well appreciate how families are also victims of mental illness in having to deal with the person afflicted with the mental illness and how they act out as a result of their illness.

My colleague Ms. Dann is a former clerk for the Supreme Court of Canada. She also works with a firm that does much work with mentally disordered offenders. She devotes much of her practice to that. On behalf of our association, Ms. Dann will make some brief comments on what our members believe this committee must consider before moving forward with Bill C-54. Then she and I will answer any questions the committee might have. We've left the clerk with some written submissions that further outline our submissions.

Ms. Dann.

Ms. Erin Dann (Member, Criminal Lawyers' Association): Thank you for the opportunity to address the committee.

I had the opportunity to listen to the last panel and the compelling testimony of both Ms. de Delley and Dr. Gaston. I was moved, as I expect all of you were, by that testimony. Their testimony and the testimony of other victims and family members who come before you highlight the very difficult task that this committee has before it.

As legislators, you are responsible for looking beyond the sometimes horrific nature of these offences and perhaps our natural inclination to want to see a perpetrator punished. By definition, people who are found NCR are not morally culpable for their crimes. As our Supreme Court has said and as our jurisprudence has decided, they did not appreciate what they were doing, or they did not understand it was morally wrong, and these individuals may have their liberty restricted only for reasons of public protection and for treatment, but not for punishment.

The Criminal Lawyers' Association applauds Parliament's desire to ensure that victims and all Canadians are adequately protected from the involuntary misconduct of seriously mentally disordered persons. For that reason, we support the provisions of Bill C-54 aimed at increasing victim engagement and notice to victims and the other related provisions.

Unfortunately, in our view, the remainder of the amendments contained in the bill do not further Parliament's laudable goal. We say that because they aim at the post-verdict treatment rather than the pre-offence circumstances of these seriously mentally disordered persons.

In the words of Justice Richard Schneider, who is the head of the Ontario Review Board and one of this country's leading thinkers on the issues of mental illness and criminal law, “Assuming there was a real problem with the current scheme, the proposed amendments completely miss the target.”

I think consideration of the case of Vince Li perhaps will demonstrate some of the shortcomings of the legislation. It also is instructive because it is clearly one of the most difficult and traumatic cases that we in the public have heard about. When Mr. Li killed Mr. McLean, he was not subject to any review board disposition. He had never had contact with any review board system at all. He was, however, actively psychotic, and his mental illness, schizophrenia, was untreated.

By all public accounts, he has done well in treatment. He has gained insight into his illness, understands that he will need to take medication for the rest of his life, and is open to a court order requiring him to do so. While initially confined to a locked wing of a hospital, in 2010 he was granted grounds privileges. Last year, he was given the privilege of escorted passes in the community and just last month was granted further privileges allowing supervised full-day trips into the community, on the recommendation of his treatment team.

At the hearing, the crown, the representative of the Attorney General of Manitoba, did not oppose the increase in privileges, and we can assume that he or she did that because they accepted the evidence that those privileges would not be a risk to the public. Under the current regime as it stands, Mr. Li will remain detained until releasing him would not present a risk to the public. There is no need for him to be designated a high risk.

The CLA urges the committee to consider the possible negative impacts that such a designation could have, particularly the second pathway to this designation, whereby the court can make the designation on the basis that the offences "were of such a brutal nature as to indicate a risk of grave...harm to another person". Whatever the definition of "brutal" is—and the CLA submits in our written submissions that there may be a problem with the vagueness of that term—Mr. Li's case would seem likely to meet it.

The problems with this provision are multifold.

First, the CLA is aware of no evidence that the brutality of the index offence is connected to the rate of reoffending or recidivism.

Second, the brutality of the index offence will not change, no matter the progress the offender makes. As currently worded, the provision suggests that even where a court concludes that Mr. Li poses no risk of violence, pursuant to proposed paragraph 672.64(1)(a) of that provision, the designation could remain under proposed paragraph 672.64(1)(b) because of his past act.

Third, where this designation is made, the NCR accused is deprived of rehabilitative privileges, such as passes into the community, even where the exercise of such privileges would not present a risk to the public.

● (1645)

This has a potentially disrupting effect on the therapeutic nature of the psychiatrist-patient relationship, increasing frustration and providing less motivation for rehabilitation, paradoxically potentially increasing public risk.

What the high-risk designation would not do is ensure that someone like Mr. Li is identified, treated, and monitored before he deteriorates to a point where his illness produces a serious violent crime.

The CLA's position is that if this government is committed to preventing the criminal consequences of serious mental illness, it must devote more resources and support to the provincial authorities responsible for mental health. The government has established the Mental Health Commission of Canada, which we applaud and view as an excellent initiative. What we would ask is that you listen to their sage advice.

In their policy documents and strategy documents they say that the way to reduce the overrepresentation of people with mental illness in our criminal justice system is a robust mental health care system aimed at prevention. We need to increase the role of the civil mental health system in providing services, treatment, and supports to individuals in the criminal justice system before they commit these horrific acts.

We need to provide training to police about mental health problems and illnesses, how to respond to mental health crises, and information about the services available to them.

If the high-risk designation regime is enacted, the CLA recommends some specific changes to the legislation. They are in our written submission.

In concluding, I want to answer some of the concerns expressed by questions asked of the minister and the Department of Justice on Monday and earlier today.

In terms of recidivism, the Department of Justice commissioned a study by Professor Anne Crocker. It's referred to in our written submissions, and also in the written submissions of the Canadian Bar Association. It sets out some of the statistics on recidivism for NCR accused people.

I also want to suggest that it is crucial for this committee to consider the impact the legislation will have on the capacity of provincial institutions. On this point, I note that this committee back in 2002 reviewed the mental disorder provisions of the Criminal Code, held public hearings, and at that time, 10 years ago, found that the forensic mental health system was strained to the limit and that given the lack of adequate resources it would be irresponsible and unrealistic to recommend the implementation of provisions that would place greater burdens on institutions that are the legal and fiscal responsibility of another government.

The situation, I can tell this committee, has not improved in the last 10 years. The Chief Justice of Canada, Beverley McLachlin, is among the many who have observed that the lack of adequate forensic treatment facilities for mentally disordered offenders is a persistent problem, and a problem that results in individuals waiting extended and lengthy periods of time in custody in a jail facility before they are able to enter into the forensic mental health system.

Our written submission, particularly on pages 9 and 10, highlight many of the cases where this problem has been documented.

Thank you.

● (1650)

The Chair: Ms. Dann, thank you very much.

Our final presenter for this panel is the Canadian Bar Association. Madam Hancock is giving the presentation.

The floor is yours.

[*Translation*]

Ms. Terry Hancock (Staff Lawyer, Law Reform, Canadian Bar Association): Thank you, Mr. Chair and members of the committee.

The Canadian Bar Association is very pleased to appear before you this afternoon and discuss Bill C-54. The CBA is a national association representing 37,000 lawyers across Canada.

One of the Canadian Bar Association's objectives is to improve the law and the administration of justice. That is the approach we used in examining Bill C-54.

The submissions you have received were prepared by the National Criminal Justice Section of the Canadian Bar Association. The section includes defence lawyers, prosecutors and law professors from each province and territory in Canada.

[*English*]

With that I'm very pleased to introduce you to Mr. David Parry, a member of our national criminal justice section, who will provide you with the salient points of our submission.

Thank you.

Mr. David M. Parry (Member, National Criminal Justice Section, Canadian Bar Association): Good afternoon, Mr. Chair and members of the committee. It is a true honour to speak to you today and to be part of this very important conversation we're having this afternoon.

I feel that Bill C-54 presents many unique opportunities to change the law in this area, and I want to discuss the implications of this bill and some of the potential consequences it could have.

When Minister Nicholson was before this committee on Monday, he spoke about a need for a balance in what the Supreme Court has called the "twin goals" of the NCR regime. That is on the one hand public safety, and on the other hand, fair treatment of the NCR accused.

However, if balance is the issue, then the Canadian Bar Association respectfully submits that Bill C-54 gets that balance wrong. This imbalance here is significant, because getting it wrong ultimately puts long-term public safety in jeopardy.

No one denies the pressing need for adequate protection of the public. However, true protection of the public requires much more than detaining the NCR accused. Long-term public safety is best achieved through treatment and reintegration into society. Unfortunately, Bill C-54 does little to encourage this. The CBA supports some provisions of Bill C-54 but recommends against others.

I will now discuss the three major amendments proposed by the bill.

First, the CBA supports the proposed requirement that victims be notified, if they so choose, of the NCR accused's discharge, as well as the option for review boards to issue no-contact orders.These amendments fill a gap and have the laudable goal of addressing the needs of victims in the NCR regime. These build upon the introduction of victim impact statements in 2005, and the CBA fully supports them.

The second amendment I want to discuss is the removal of the "least onerous and least restrictive" requirement. The CBA recommends against this.

Under the current regime, review boards must make a disposition that is the least onerous and restrictive to the NCR accused, taking into consideration public safety, the mental condition of the accused, their reintegration into society, and their other needs. Public safety is already a fundamental consideration for review boards when deciding whether to release or detain an NCR accused. It's front and centre.

In the words of then Justice McLachlin in the Winko decision, "it ensures that the NCR accused's liberty will be trammelled no more than is necessary to protect public safety".

This requirement of being the least onerous and least restrictive is thus an important component of the balanced approach of the current regime. The Supreme Court has repeatedly said that the "least onerous and restrictive" requirement is at the heart of the constitutional validity of the NCR regime. Several cases going back nearly 15 years have affirmed this standard as essential for compliance with the Charter of Rights and Freedoms.

The proposed amendment to remove this language would bring that constitutional validity into question. Introducing the new and untested language of "reasonable" and "necessary" in the circumstances serves to negate the goal of consistent application of the law by review boards across the country.

Likewise, the proposal to make public safety the primary consideration in the bill disturbs the crucial balance between public safety and fair treatment of the NCR accused by making one more important than the other. This is another component that the Supreme Court has repeatedly identified as central to the current regime.

The CBA therefore recommends that the committee not remove the "least onerous and the least restrictive" requirement.

The third and final amendment I wish to discuss is the proposed addition of a designation of high risk that would apply to some NCR accused. The CBA submits that this addition is not only self-defeating but counterproductive to the goal of enhancing public safety.

First, the proposed high risk regime suggests that just because the NCR accused has committed one serious offence, they will do so again. Existing evidence suggests the exact opposite. Furthermore, the Winko decision is clear that there can be no presumption of dangerousness. We moved away from the stereotype of the mad offender in the Swain decision nearly 20 years ago.

Second, the proposal risks being overbroad. That means the means to achieve its objectives are broader than necessary. This brings its constitutionality into question. The consequence of being designated high risk is that the NCR accused falls into a different custody regime.

● (1655)

It is unclear how this furthers the goal of enhancing public safety. The extra restrictions placed upon a high risk NCR accused could be characterized as punitive in nature. The objective ought not to be punishment because the accused has not been convicted of a crime.

However, if enacted, what does the CBA propose? We have three recommendations.

First, we recommend eliminating the proposed subsection enabling courts to designate an NCR accused as high risk if it is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

Second, if this proposed subsection is not eliminated, then the CBA recommends that it should be redrafted to provide greater clarity, including a definition of "brutal nature" and a statement that the focus is on future conduct.

Finally, if the high risk regime is enacted, the CBA recommends adding a procedural mechanism to permit the NCR accused to apply directly to the court on an annual basis to remove the designation. This would encourage his or her progress and treatment.

I'd like now to offer some concluding remarks for the committee's consideration.

Our understanding of treatment and societal acceptance of mental illness have come a long way. We must always remember that the NCR accused is not a prisoner but a patient who needs effective treatment. That treatment is how we ensure public safety in the long term. Bill C-54 must recognize this essential point: an NCR verdict is not an opportunity to exact retribution on an immensely ill offender.

Thank you, Mr. Chair. I look forward to the committee's questions.

● (1700)

The Chair: Thank you very much.

Thank you for those presentations.

We are going to move to questioning now. I will remind my committee members that it's five minutes.

Mr. Jacob.

[*Translation*]

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

My thanks to our witnesses for coming here to shed some light for us on these matters.

I would like to start with a short preamble. We are particularly interested in how we can help victims in this process. Over the next few weeks, we will try to determine which approach is best and we will talk to law experts, such as yourself, and mental health experts. We are also going to hear from victims we have previously talked to and representatives from the provinces.

That said, we must not play political games. We want to study all the arguments of each party on their own merits to find a solution that is as balanced as possible. Of course, this would be done by respecting the rule of law and the Canadian charters of rights and freedoms.

I have a question for Mr. Burstein and Ms. Dann.

You said that Bill C-54 was not heading in the right direction. Could you tell me what suggestions or recommendations you would make to ensure that it does head in the right direction?

[*English*]

Mr. Paul Burstein: The problem with trying to do something for victims of mentally ill persons or mentally disordered offenders is that they start being victims long before an actual offence has been committed. If you look at the Crocker study, the vast majority of actual victims, that is the people who suffer physical harm in the sense that we understand a crime to be, are close family members or persons known to the mentally disordered person.

More importantly, I can guarantee, and I speak from experience as a criminal defence lawyer.... As I said before, I don't like doing this, but obviously the personal experience here has some bearing. As a parent, you're a victim in just having to deal with a loved one who is suffering, who acts out, who won't do what you want them to, even though you know it's in their best interest. For any number of reasons, they won't listen. The problem is that there just aren't enough resources in the community.

We're not here to blame the federal government. Health isn't your primary role; we understand that. But there's a shortage of money in the system, both in terms of the forensic system and the civil mental health system, and it just all gets backed up. It's all connected. If there's not enough resources in the civil mental health system—you've already heard this from other people—then the jails become the mental health facility.

You don't need the words on paper that this legislation represents. It is most certainly a laudable objective that you want to prevent crime, that you want to help victims avoid being victims, but this isn't going to do very much to do that. That is why we say you need to focus on the front end, which unfortunately is going to require a financial commitment more than just a legislative commitment.

That's what we would say.

[*Translation*]

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

I would like to ask Ms. Pate a question.

Victims have often told us that what matters to them is to have financial and psychological support.

In your view, how will Bill C-54 provide victims with financial and psychological support?

● (1705)

Ms. Kim Pate: I am sorry, but I will speak in English.

Mr. Pierre Jacob: No problem, go ahead.

[*English*]

Ms. Kim Pate: Unfortunately, I can't see any manner in which this would assist victims to have monetary or psychological support.

I would echo the comments of my colleagues on the panel and my own comments at the beginning, that really what we need to be seeing is more resources placed into health services. While I recognize that because of the division of powers this is not the jurisdiction of the federal government per se, through the transfer of tax dollars and the creation of health guidelines we could be seeing those supports.

Following the recommendations of the Mental Health Commission, as well as of many professionals in all the evidence that will likely be put forward and that has already been put before this committee, as well as the evidence that is out there, what we need is a resourcing of what Senator Kirby, as he then was, called the “poor cousin” of health care in this country, which is mental health care.

I'm sure there isn't one person in this room who doesn't have experience of a family member with mental health issues. As someone who has had to resort to using committal procedures for family in the past, I can say that it's certainly not something any of us wants to do. But one of the most problematic components of using those provisions is the lack of resources, once you get the person into the system.

I would urge that at every level there be a commitment to address these issues for victims, for those individuals who have mental health issues for which they are declared not criminally responsible, and for many more with whom I am vastly more familiar than those who have been declared not criminally responsible, who are in the prison system with mental health issues and who require support so that they do not end up in isolated conditions.

The Chair: Thank you very much.

Ms. Kim Pate: We're in the midst of the Ashley Smith inquest. I guess I don't have to say more about how that—

The Chair: Thank you very much.

Our next questioner is from the Conservative Party.

Mr. Albas.

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

I appreciate the testimony we've heard both from the previous panel and from those here now. This is a topic on which, as Ms. Dann pointed out, legislators need to take into consideration many different views and have panels reflecting a wide diversity of ideas and thoughts. I appreciate your testimony.

Ms. Dann, you mentioned that there are a number of issues. From your association's viewpoint, funding is an issue for other priorities. As Ms. Pate has pointed out, many of them are provincial. There is a tension between federal and provincial responsibilities.

As a legislator, I can't pretend to know what resources the Province of Ontario devotes to it, because I'm not in that particular area. From what I've seen, based on this piece of legislation, this is really the area in which as legislators.... We can only tackle what's in front of us.

I imagine that a judge would have the same kind of issues. It's my understanding that it's the judge who would actually give the designation “NCR”.

Is that correct, Ms. Dann?

Ms. Erin Dann: It is generally a judge; sometimes a jury will make the NCR finding.

Mr. Dan Albas: That is based on evidence produced to show that the person did not understand, going back to the legal principle of *mens rea* or guilty mind under our principles. Is that correct?

Ms. Erin Dann: It's one of two things. Either they don't understand the nature and quality of their acts or they don't understand that what they are doing is wrong. That's defined in our Criminal Code.

Mr. Dan Albas: Under the current structure and the way the legislation works, someone would look at the evidence, but they'd also look to the legislation or statute and then determine what, in that particular case, the law would be. Is that correct, that this is what they would determine?

Ms. Erin Dann: When they are making the decision whether or not the person is criminally responsible, they would likely consider medical evidence about the person's mental disorder. They first have to establish that the person suffers from a major mental disorder. Then they have to determine whether that mental disorder renders the person incapable of understanding the moral wrongfulness of their act or the nature and quality of the act.

Once that decision has been made, they are found NCR, and that's when we get into the regime we're discussing today, which is the review board regime.

Mr. Dan Albas: Yes.

Once they go into that regime, from what we heard before in witness testimony, and from what some of the witnesses in the previous panel seemed to say, if the judge and the court or the jury put that NCR designation in place, what would be wrong with that same authority being able to designate them as a high-risk offender?

The reason I bring this up is simple. I want to empower judges to be able to look at the law, to look at a particular case, and to make a distinction in order to serve all the interests, not just taking into account the NCR but also taking into account the victims and taking into account the public interest.

I do know that the term “public interest” sometimes gets thrown around, but again, it evolves with the situation. I would hope that your organization would also see that as an empowerment of our judiciary, to be able to show discretion and to be able to move with the particular case.

Would you agree with that?

● (1710)

Ms. Erin Dann: I think our judiciary does exercise that power, and would do so responsibly. I do note that in our current jurisprudence, it's quite clear that our judges view our review boards as much better at determining the issue of significant risk.

In terms of jurisprudence—Mr. Burstein is perhaps more capable than I, as he's been present in many of those cases—our Supreme Court has said, in cases like Owen and others, that great deference is owed to the review boards, that the review boards consist of psychiatric, legal, and lay people who are experts in their field at determining the issue of risk.

I'm not suggesting that it's impossible for judges to make that determination—

Mr. Dan Albas: I'll interrupt you, if you don't mind. I'm looking at the time.

Ms. Erin Dann: I'm sorry.

Mr. Dan Albas: Basically, I'm going to be asking this of as many people who can answer.

One thing I didn't hear from any of the groups was a mention of victims, other than just in answering questions. I find that interesting, because we want to take into account as many as we can.

These proposed changes include notifying victims on request when a discharge order has been made with respect to a mentally disordered individual.

Could you quickly say if you agree with that change? I do think victims need to be taken into account.

Ms. Erin Dann: Yes.

Mr. David M. Parry: We support it as well.

Mr. Dan Albas: Okay.

Thank you.

The Chair: Thanks for those questions and answers.

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

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I also want to commend the witnesses for appearing before us and for their witness testimony, particularly as they each represent organizations that have a repository of experience and expertise in the area of their testimony.

I want to begin by putting a similar question to each of you in turn. I'll begin with Ms. Pate.

Has the Elizabeth Fry Society been consulted by the government on this legislation?

Ms. Kim Pate: No, we have not.

Hon. Irwin Cotler: Mr. Burstein, has the Criminal Lawyers' Association been consulted by the government on this legislation?

Mr. Paul Burstein: Other than being invited here, no.

Hon. Irwin Cotler: Mr. Parry, has the Canadian Bar Association been consulted by the government on this legislation?

Mr. David M. Parry: No, we have not.

Hon. Irwin Cotler: Thank you.

I'll now go to a different set of questions, and I'll begin with Mr. Burstein.

Would those who might otherwise plead NCR be less likely to do so as a result of this legislation, and would they therefore be more likely to plead not guilty? If so, how would this affect their prospects for proper treatment?

Mr. Paul Burstein: That's an excellent question.

Part of the concern of the high-risk offender designation is that it really is overly broad. By incorporating the definition of “serious personal injury offence” in, and I can't remember the section, but it's the one that's in proposed section 202.161, which includes use of violence or threatened use of violence. Incorporating that will capture anyone who is up on a charge of assault, simple assault, who arguably could benefit from perhaps an NCR verdict in terms of getting into the mental health system.

Now, with their being at risk of being designated as a high-risk offender and thereby being disentitled from a review until three years down the road, I can't imagine a single defence lawyer advising their client facing a simple assault charge where, if they are found guilty, they are unlikely to go to jail for anything more than six months—these are summary conviction offences—to take an NCR verdict where they were going to end up with a high-risk offender designation and be detained for three years. It will most certainly deprive a significant number of accused who are in need of an NCR designation and treatment from pursuing that kind of verdict.

If you look at Crocker's report, for a significant number of offenders, about 40%, their first contact before they committed a very serious offence was for some minor offence, assault, theft, or something like that, something that otherwise they could have been caught up with in the mental health system if they had voluntarily sought an NCR verdict.

So it's a bad idea.

● (1715)

Hon. Irwin Cotler: —and ultimately prejudicial to the public safety?

Mr. Paul Burstein: Absolutely.

Hon. Irwin Cotler: I have a question now for Mr. Parry.

The minister, when he came before this committee on Monday, said that the high-risk designation is sure to be narrowly applied. You mentioned today that the high-risk designation could be characterized as overly broad.

On what basis do you think the minister could have made such a statement, and would you agree with that statement?

Mr. David M. Parry: The reason the CBA thinks that this could be overly broad is that there is no specific definition given to the brutal nature of the offence. That is extremely problematic, because one of the fundamental principles of our Canadian criminal law is that the law has to be certain; otherwise, one of our fundamental concepts in criminal law, that the law has to be clear for you to be convicted of breaking it, just won't be present.

I think the danger with the high-risk designation is that because it is unclear, it could start to be applied to more and more offences. That is problematic, because we're then shifting the focus away from looking at the treatment of the accused—what the accused's mental condition actually is—towards the nature of the offence that was committed. That goes against the whole purpose behind Bill C-54, which is to shift attention to public safety.

Hon. Irwin Cotler: What would give the minister a basis to believe that the high-risk designation would assuredly be narrowly applied?

Mr. David M. Parry: When the minister spoke here on Monday, he said that the high-risk designation would really apply to a very small percentage of the NCR population. As we've heard from the witnesses today and as we all hear in the news, there are individuals who commit horrible acts and create victims who have to suffer serious psychological distress, but we have to remember that this is a very small percentage of the NCR population, and we cannot use that small percentage of the NCR population to set policy for the vast majority of other NCR accused who are out there.

The Chair: That's your time. Thank you very much.

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

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Chair, and I want to thank our witnesses for being here.

Mr. Burstein, you said you have been working with those with mental deficiencies since the start of your career, a day after you started as a lawyer. How many years is that, again?

Mr. Paul Burstein: It's more than 20 years, 21 or 22 years.

Mr. Scott Armstrong: Over that time, can you roughly guess how many offenders you would have worked with as a defence attorney?

Mr. Paul Burstein: It might be between 100 and 200.

Mr. Scott Armstrong: It's up to 200. Of those, I'm assuming many were eventually released back into society after they had received their treatment.

Mr. Paul Burstein: I wouldn't say many, but some yes, some no.

Mr. Scott Armstrong: Did any reoffend? Did any leave and then reoffend and stand defended again?

Mr. Paul Burstein: Typically, those at greatest risk of reoffending are those who, I'll say, are often living on the streets. Absolutely they reoffend. But we're talking about people who come up....

There's a court in Toronto at the downtown courthouse called Old City Hall, which is a designated mental health court. They come there on an assault charge, or a cause disturbance charge, or something like that. They get a sort of mental health diversion program put in place for them, and then they fall off the radar, fall off their medication, and yes, they reoffend. But in cases of serious offences, when they have proper support and treatment, no, I don't know of any who have.

Mr. Scott Armstrong: You brought up the Crocker report. I have in front of me a copy of the Crocker report, which was tabled in the House of Commons. I'm going to read a section of it from page 17. It says that of the total SVO, serious violent offence, sample that was looked at by Crocker, 46.1% had been previously convicted or found not criminally responsible. More specifically, 40.6% of the serious violent offence sample had at least one past conviction, and 27.3% had a past finding of NCR. Half of those that were accused of a sex offence had a previous conviction or NCR finding, 50% had at least one past conviction, and 38.1% a prior NCR finding. So among NCR individuals accused of murder or attempted murder, 44.6% had been previously convicted or found NCR. More specifically, 35.4% had at least one prior conviction, and 27.7% had at least one prior NCR finding. Finally, among NCR individuals accused of murder or homicide, 44.8% had a criminal history, 39.7% had at least one conviction, and 19% had at least one previous finding

There's a chart in this report that you have probably looked at before.

This shows that many of these individuals, even though they have received some treatment, are going back into society and reoffending. The ones that have been convicted of the most serious crimes, such as sexual offences and murder, are sometimes getting back into society and are reoffending. They have had previous convictions.

Don't you think that this legislation is going to protect society from some of these individuals who have previously been getting out and reoffending and who pose a threat to society?

● (1720)

Mr. Paul Burstein: I agree that's a very important statistic to look at. With respect, I just don't think you're reading it entirely correctly. You have to go to the appendices and break it down.

The vast majority of those percentages you're citing about people who have previously been convicted or had an NCR finding are previous convictions. There are a handful, yes, who have had a prior NCR finding, but most are just prior convictions, which is the very point I'm trying to make.

People come in contact with the criminal justice system, and they're identified as having a serious mental illness that was a factor in their offending on a lower level, certainly not something as serious as murder, assault, bodily harm, theft, robbery, and they don't get the treatment they need. They're let out back into society, unsupervised, unsupported, and they become very ill again. They deteriorate and then their crime escalates to something more serious.

If there were adequate resources to make sure those people were supported not just for the first six months after they come in contact with the criminal justice system but beyond that, they wouldn't then escalate and commit more serious crimes.

It actually makes my point, I think.

Mr. Scott Armstrong: Here's one more: 38% of people who previously have been found with an NCR designation, who have committed some sexual offences, had a subsequent offence once they emerged. That's when they come out of treatment. They come out and the medical society has deemed them as not being a threat to society. They're released back into society and they reoffend, 38% of them, based on Crocker's numbers.

I think there have to be steps taken to make sure society is protected. Obviously, the regime we have in place now doesn't do it. You're saying what we need is more money at the front end, but these are people who have gone into the system, have had treatment, have gone back into society and have reoffended.

Don't you think that for the ones who have committed the most serious, violent offences, we have to change the system, once we give them that designation, to make sure there's a higher standard before they re-enter society?

Mr. Paul Burstein: I can only tell you from my experience appearing in front of the review board, that's applied. Anyone who's found NCR for murder or a really serious offence, there is a very high threshold that a review board applies before they ever let them back into society.

Mr. Scott Armstrong: But they're getting out; they are.

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

Our next questioner is Mr. Rankin from the New Democratic Party.

Mr. Murray Rankin (Victoria, NDP): Thank you very much, Chair.

Thank you to all the witnesses for coming today.

I want to start with Mr. Burstein and Ms. Dann. I used to act for the B.C. Review Board, and I know of your reputation. I really welcome you to the committee.

I agree with Ms. Dann that review boards are often given deference by the courts in determining risk; there's just no doubt about that in the case law.

I want to ask both the CLA and the CBA a very simple question. If there were no amendments to Bill C-54, would you support this bill?

Ms. Erin Dann: If there were no amendments?

Mr. Murray Rankin: If there were no amendments as you proposed in your submission, would you support the bill in its present state?

Ms. Erin Dann: No.

Mr. Murray Rankin: Would the Canadian Bar Association?

Mr. David M. Parry: No. If there were no amendments, we would not support it.

Mr. Murray Rankin: Okay.

I want to go to your report. Your submission is excellent, by the way, CLA.

I look at page 4, and building on what Mr. Armstrong just asked, I'll refer to Dr. Crocker who worked for the Department of Justice. On page 4, you refer to her work and you quote her as saying, “there's no current evidence indicating the need for changing the way things are being done at the moment”.

Then you go on in the following paragraph to say this, and I want you to demystify this for me: Moreover, recidivism rates for NCR accused who have committed serious violent offences are quite low. Only 7.3 % of NCR accused who fall into this category actually committed another violent offence in the following three years. When only looking at those who are absolutely discharged, the recidivism rate for another violent offence falls to 4.1 %.

Just to be clear—

● (1725)

Mr. David M. Parry: That's the CBA's.

Mr. Murray Rankin: Oh, it's the submission of the Canadian justice section of the Canadian Bar Association. My apologies.

Mr. Parry, I apologize. It's an excellent submission you've given to this committee. I've just read that into the record.

If 4.1% is the recidivism rate for another violent offence, does that mean that's the number of people who reoffend? Is that what recidivism means?

Mr. David M. Parry: Yes, exactly.

Mr. Murray Rankin: Does that mean 96 out of 100 do not reoffend, if 4% do? Is that what those figures mean?

Mr. David M. Parry: Yes, that's right.

Mr. Murray Rankin: All right.

I want to ask the Criminal Lawyers' Association. I think you said, Ms. Dann, that the problem with the definition of “brutal” was its vagueness. Mr. Parry, you said it was extremely problematic.

Presumably, do you mean it could be struck down under the charter for vagueness? Is that what you were getting at when you said it's problematic, or the like?

Mr. David M. Parry: That's correct. Section 7 of the charter could be used to mount a charter challenge on the basis of vagueness and arbitrariness.

Mr. Murray Rankin: Therefore, it could be struck down as being contrary to the charter.

Mr. David M. Parry: Yes.

Mr. Murray Rankin: This question is for Ms. Pate.

I want to invite you to say what you said you might say in answers. You said you had several examples you were going to give the committee. I wonder if you could explain what those examples were and perhaps give us one or two in the time available.

Ms. Kim Pate: Sure. I'll start with one about a woman who actually, under this provision, even regardless of the definition, would likely come under this definition of high risk, not because of anything she'd done while she was considered NCR, but in fact, all based on her illness and how she was treated when she got into prison.

This was a young woman who was first raped in juvenile custody when she was put into custody because she ran away. She's 41 now, so she's been through the system. She was raped in custody, escaped custody, and then tried to find her birth family. She found her birth family, was raped by her father, escaped her father, and broke into a school.

She was first put in adult jail for breaking and entering, was strip searched, fought back, accumulated assault charges, and accumulated more charges inside. Her first-ever violent charges were actually in custody. She accumulated 10 years of sentences for violent charges in custody. When she got out she had been labelled as having personality disorders, much the same as we've seen with Ashley Smith. When she got out, and we managed to get her into proper psychiatric care, she was actually labelled schizophrenic and was put on medication. As with many people, she went on and off medication. Her first violent offence in the community was when she went off medication. She first tried to go into hospital. She called the police and the police knew her and they took her to the hospital, in fact. They took her to two different hospitals which wouldn't take her on the basis of her criminal record. On the basis of the record she'd accumulated in prison, she was not accepted.

She then told the police she was afraid she was going to do something to herself or somebody else. They stood there and watched as she said that she was sure that somebody was watching her. She was clearly full-blown psychotic and she stabbed her roommate as the police watched. She told them to look and they would see springs come out of her. When blood came out, she was jolted into some other kind of state and walked over and put her hands out to be arrested. They took her to the jail, unshackled, in the front seat of the car. Clearly she was not perceived as a risk, but she was immediately put in isolation.

When we intervened to have her moved to the forensic unit to be assessed, the initial assessment was that she would not be found NCR, because she was on her meds and she was perfectly capable of describing what had gone wrong, but when we asked them to go back and look at the assessment based on what the police report said, they re-examined that and realized, clearly, there were some major problems.

She was then placed into—

● (1730)

The Chair: Ms. Pate, that's the time. I'm sorry, but we're way over at six and a half minutes.

Thank you for those questions and answers.

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

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Chair.

Obviously, this is a very delicate and very sensitive issue and we've heard some very emotional testimony from the previous set of witnesses that were here.

As a member of parliament, I put myself in the shoes of somebody who is before me telling me their story. I just heard a couple of stories before you guys were here that were pretty compelling and very much brought home what it's like to live with some of the issues when we don't get it completely right.

I just want to make sure. I've heard you all say that you wouldn't support the bill in its current form, but I want to be very clear about which aspects of the bill you do support.

Mr. Parry, I've heard you say that you support the victim notification and the no-contact order components of that. Is that right?

Mr. David M. Parry: That's correct.

Mr. Blaine Calkins: Ms. Pate, is that true for your society as well?

Ms. Kim Pate: Yes. That's already possible, and yes, we would support that.

Mr. Blaine Calkins: So that's okay.

Mr. Burstein, are you okay with that?

Mr. Paul Burstein: Yes. I think that's the practice in Ontario, even though it may not be legislated.

Mr. Blaine Calkins: It might just be a practice, so we're codifying it in this particular case, and you don't have any concerns with that.

Mr. Parry, for some reason you said that public safety was already the paramount consideration throughout the assessment process, yet when we try to codify that in this legislation, you seem to have concerns about that. I'm wondering, for the rest of you, if we're not so concerned about codifying what is an existing practice already when it comes to victim notification and no-contact orders, why codifying the public safety component would be any different an issue. Could you please explain that to me?

Mr. David M. Parry: I would just like to clarify that I did not say that public safety is already the paramount consideration. I said it's already front and centre of the considerations that the review board looks at.

Mr. Blaine Calkins: I apologize for paraphrasing. I wasn't trying...I was simply paraphrasing; I've heard a lot of words here today.

So “front and centre” somehow means something different from “paramount”. Can you explain what that means? Front and centre to me means the first thing. The first thing means paramount. I'm a little confused.

Mr. David M. Parry: Front and centre means it is part of the essential balance that the NCR regime strives to reach. It's a question of the mental state of the accused. It's a question of the needs of the accused. It's a question of public safety. It's a question of societal interest in the reintegration of the accused into the community.

Mr. Blaine Calkins: That's good. We have you on the record as being really concerned about the accused.

Ms. Pate.

Ms. Kim Pate: Building on this with the woman I was talking about, the paramountcy of public safety has been served by her now being in the forensic mental health system. If she had been placed in the prison system, as was likely to happen, she would still be in isolation. She would still be accumulating sentences. The human and social costs would not be serving public safety, nor would it be fiscally responsible.

Mr. Blaine Calkins: But in either scenario the public is safe because there's no opportunity for the individual to commit another act—

Ms. Kim Pate: That's not true.

Mr. Blaine Calkins: —notwithstanding the low recidivism rates that are already out there.

Ms. Kim Pate: I'm sorry to interrupt you, but that's not true.

Mr. Blaine Calkins: I've never been attacked by anybody in isolation, Ms. Pate.

Ms. Kim Pate: But you are dealing with charges all the time, of people being charged, being held criminally responsible, while they're in isolation. Ashley Smith accumulated almost 100 charges and new sentences, while she was in isolation—

Mr. Blaine Calkins: I understand.

Ms. Kim Pate: —even though she wasn't maybe even physically attacked, and so did this woman, and so have others.

The point is that if this were in place, neither her lawyer nor I would have encouraged her to pursue an NCR designation because of the risk of her being held without resources. We did it in a province where we knew there would be resources applied, where we knew we could monitor it.

One of the issues that comes up frequently for us in cases is that individuals go into the system, and if they're in a province or territory that has the least resources, then the ability to monitor, document, and ensure that the review process is able to function is problematic. The lack of services is huge.

Mr. Blaine Calkins: That's appreciated. That's need-to-know information. I appreciate that. There are a lot of discrepancies in what various provinces have the ability to do.

I want to get some clarification from you, Mr. Burstein.

Is the codification of the public safety okay?

● (1735)

Mr. Paul Burstein: No, it's not, for this simple reason. The natural inclination when dealing with mentally disordered persons who have committed an offence is to presume that they're dangerous. The courts have recognized that. There are lots of studies. The public perceives it that way.

The reason codification of “least onerous” and “least restrictive” is important is that it's a statutory reminder to the review board to not forget that this person shouldn't be thrown out with the bathwater. By taking that out and going back to saying public safety is paramount, it essentially takes away that precautionary measure and refocuses them on stereotyping mentally ill people as dangerous. That's the problem.

Mr. Blaine Calkins: I understand.

Do I have any time?

The Chair: Sorry, no.

Thank you for those questions. Thank you for those answers. That is our hour.

I want to thank each one of you for presenting and for providing the information to the committee as we consider this legislation.

I'll suspend the meeting while we get the next panel in line.

Thank you.

● (1735)

(Pause)

● (1740)

The Chair: Ladies and gentlemen, I want to call this meeting back to order.

This is our third panel. I appreciate everyone hanging in here. I know it's getting a little late. We've been giving each panel an hour.

For the last panel, we're joined by Chris Summerville of the Schizophrenia Society of Canada, and Catherine Latimer of the John Howard Society. As an individual, we have Lori Triano-Antidormi.

We're going to go through as presented.

Mr. Summerville, the floor is yours for 10 minutes.

Mr. Chris Summerville (Chief Executive Officer, Alliance Facilitator, Schizophrenia Society of Canada): I would like to thank the committee for providing me with the opportunity to testify on Bill C-54, the not criminally responsible reform act.

My name is Chris Summerville and I've been the CEO of the Schizophrenia Society of Canada for seven years, as well as the executive director of the Manitoba Schizophrenia Society for nearly 18 years.

I am here not only on behalf of the Schizophrenia Society of Canada and all of its provincial counterparts, but also on behalf of eight national mental health organizations and Canada's largest mental health hospital, CAMH. They see the necessity of working together to minimize the negative impact of Bill C-54.

As well, I am a family member who grew up in the presence of mental illness—a brother with schizophrenia, another brother and my own father who lived with bipolar disorder. All three came into conflict with the criminal justice system due to untreated mental illness. Two of the three eventually committed suicide. I know mental illness inside and out. I could tell you of many personal traumatic horror stories due to untreated mental illness—physical, emotional, and sexual abuse.

Now let me be crystal clear. There are negative impacts and unintended consequences of this bill. Mental health and mental illness are complex, as the government is aware with its establishment of the Mental Health Commission of Canada, of which I am honoured to be a board member.

Understanding mental illness requires a commitment that will lead to overcoming barriers to treatment and recovery. Bill C-54 does little to understand mental illness in order to protect Canadians, and therefore it will not protect Canadians. It's as simple as that.

First and foremost we wholeheartedly support changes that create greater involvement for victims in the process. Without a doubt we want all victims affected by crime to be part of the process. It is our goal and desire to have fewer victims of crimes committed by, and on, people living with a mental illness, and that is why we are here today.

That being said, there are missed opportunities in this bill for victims, such as enhanced trauma-informed psychological support and services. The government has an opportunity to make changes that will result in fewer crimes being committed by people living with a mental illness. I would remind you that only 3% of people with a mental illness come in conflict with the law, let alone commit a serious crime. This means ensuring that people living with a mental illness have access to the services they need. How many times do we hear about a person living with a mental illness trying to find help before they fall through the cracks or commit a crime? Too many.

Instead of focusing on preventing the crime in the first place, Bill C-54 focuses on punitive and stigmatizing measures that undermine the purpose of the not criminally responsible designation in the first place.

We should be here today discussing a bill that would enhance mental health services for all: early identification; early intervention; and early treatment options. Mental illnesses are treatable and recovery is possible. This includes schizophrenia and psychosis.

I can honestly say it is awkward for me to be pleading with the Government of Canada to work with the mental health community on a bill about people living with mental illness. None of the nine organizations were consulted before the announcement of this bill. This should be common sense, but now I am in front of all of you today trying to make sure changes are not made that will actually jeopardize the safety of Canadians, while further stigmatizing people living with a mental illness.

Our primary request today is not to rush such an important bill, but for you to work with the mental health community in collaboration with victims. If the government chooses not to, we revert to the following recommendations to minimize unintended consequences.

Number one, remove the creation of a high-risk category based on the brutality of the crime. This is simply not evidence-based and there is no correlation between high risk and the nature of the crime and the response to treatment. We want individuals reintegrated into the community at the right time, as medically decided by the patient's health care team, which includes forensic psychologists and psychiatrists. Creating categories and labels that have no evidence behind them will prevent the patient from getting the help that he or she requires.

Number two, expand the criteria around supervised passes from “medically necessary” to “for any purposes related to the accused's treatment plan and recovery”. This would allow for easier access to treatment-related visits.

● (1745)

Number three, eliminate retroactivity of the bill. Again, the purpose of the NCR designation is to provide treatment for the individuals so they may recover and successfully live life in the community with the appropriate supports and services. They are patients, not criminals.

If retroactivity continues to be the goal, then retroactivity may prevent a patient on conditional discharge and anyone moving toward discharge from reintegrating into society at the right time. Holding them longer than they need to stay when having responded successfully to treatment will not only hinder their care, it will mean the longer detainment is for punitive reasons and not to protect the public or better their mental health.

Number four, include the requirement for research to evaluate the impacts of the proposed changes. Too many people, such as Dr. Crocker, have expressed their concerns over the proposed changes. To encourage transparency and accountability, research should be conducted before the bill takes effect, and if the bill is passed, certainly research after the bill takes effect.

I want to conclude by asking you to give more credit to Canadians. They want an effective, recovery-oriented working mental health system. Most Canadians fully recognize that rushing this bill is in no one's best interest. They recognize that further shaping this bill by working in partnership with mental health organizations will not jeopardize their safety because certain high-profile NCR individuals are soon to be before the review board.

If these individuals are not fully ready to be reintegrated into society, the review board will not allow it. Please give greater credit to the review boards and the medical service providers—the professional experts. Evidence shows the work they do is producing successful results. Let's not interfere with this with a bill that will not render any positive results.

Thank you.

The Chair: Thank you, sir, for that presentation. Our next presenter, from the John Howard Society of Canada, is Catherine Latimer.

Ms. Catherine Latimer (Executive Director, John Howard Society of Canada): Thank you very much.

It's a great pleasure to be here today to talk to you about Bill C-54.

I'm speaking on behalf of the John Howard Society of Canada, which is a community-based charity committed to supporting effective, just, and humane responses to the causes and consequences of crime. The society has more than 60 front-line offices across the country, with programs and services that help to make communities safer.

You've already heard a number of witnesses who have parsed the content of Bill C-54 for you. I won't go into that in detail, except to say that the John Howard Society of Canada has no problems with the elements of the bill that are designed to assist victims, particularly in notification and providing no-contact orders. But as an evidence-based organization that is principally driven, we are unaware of any evidence suggesting that the existing review board procedures dealing with "not criminally responsible" are flawed. We would welcome seeing the basis for these proposed changes.

One of the key elements of a fair justice system is an ability to differentiate between the criminal and the medical dynamic in certain incidents. At the heart of fairness in the criminal law is that to be held responsible and liable to punishment, the perpetrator must not only do the act, but must also have criminal capacity, that is, to have understood the nature and consequences of the behaviour and to have appreciated that it was wrong. Factors such as mental illness, brain injury, and age can render a person incapable of having the necessary criminal intent, and therefore the person is not blameworthy or punishable for the act.

Many people, when they see a horrific act done by someone who is later found not to be criminally responsible, continue to refer to it as being a crime. It is a tragedy, but it doesn't hit the Criminal Code standard of being a crime because the perpetrator is not criminally responsible.

We are very concerned to make sure that those who have committed acts and are found NCR and no longer a danger to the public are not punished but are treated and reintegrated safely back into the community. The treatment and release regime in this area is delivered with much greater success than the treatment, release, and rehabilitation regime of the criminal justice system generally in terms of reduction in recidivism.

I had the benefit of reading the Canadian Bar Association's brief. We are very supportive of their charter jurisprudence dealing with the mentally ill accused and some of the issues that they raised. Our concerns are concentrated on two fronts. One is the adverse impact on the NCR regime. Our first concern is the high-risk designation under proposed paragraph 672.64(1)(b), which allows there to be a designation of high risk based on a single act. No matter how brutal, a single act is not an indicator of future risk. To impose additional restrictions on liberty based on this labelling is unfair and would likely violate section 7 of the charter and fail to meet a rational connection test under section 1.

Moreover, the high-risk designation and personal injury offence both could be based on psychological harm. To allow psychological harm as a trigger for a high-risk designation invites what the Supreme Court of Canada identified in Swain as "an irrational fear of the mentally ill" to influence the labelling and the treatment of the NCR.

The problem with the designation, and the regime that follows is it may be that people who can be quickly treated with psychotropic drugs and are able to be successfully and safely reintegrated into the community would have to wait an additional two years. Instead of the annual review, there would now be a three-year review. This would be an unfortunate and arbitrary detention of someone who does not need to be detained based on their mental health status.

Moreover, those designated as high risk who have permanent brain injuries and conditions that are not treatable, such as FASD and senile dementia, could be subject to indeterminate detention.

● (1750)

There are many community-based regimes which allow for people with certain brain injuries to function in a safe way in a community. It would avoid them taking up space in very expensive, highly limited forensic psychiatric institutions if there was some ability to look at their ability to be dealt with in the community in a safe way.

The regime really only has two categories: you're either in the regime or you're no longer designated high risk, and that presents another slight problem for us.

We also would prefer that the designation of high risk be done by the review board, rather than it being a judicial determination. The review boards are equipped with psychiatrists and the medical expertise to actually make a fair assessment as to whether or not someone constitutes a future risk. It would be beneficial to leave the expertise in the review board for that purpose.

The other concern of the John Howard Society is the adverse impact on the justice and correctional system and on scarce mental health resources. There is a legitimate concern that fewer mentally ill accused will raise an NCR defence. To get to the gate of a judge determining that you should be designated high risk, you would first have to be found to be NCR, which is usually a hearing which is kicked off by the accused or the accused's lawyer because they have identified certain psychiatric problems.

If they choose not to go with an NCR defence, it would be likely that they would be dealt with in the formal justice system, even though they may not have been capable of framing a criminal intent. The result would be that it would be unjust to punish them for an offence for which they lack the *mens rea*, but opted not to pursue an NCR defence because they did not want to be labelled with the high-risk designation and risk longer periods of confinement.

This could mean that more people with serious mental health conditions would end up in our corrections system, which is ill-equipped to address their needs. This is a high priority for many organizations, including the Correctional Service of Canada, to improve the capacity to deal with people who have serious mental illnesses and who are in the correctional system now. Adding to those numbers will make this challenge all the more difficult.

The other concern is with people who are designated as high risk and detained for longer periods in forensic psychiatric facilities. You're giving priority to people for scarce limited resources who may not pose the highest need or the most risk to the community, and most legitimately need that particular set of services.

In conclusion, the John Howard Society strongly supports the policy objective of limiting the harms caused by mental illness, both to the primary victims, those afflicted with the disease, and to others, including their family members.

Bill C-54, however, will not achieve that objective. It will impose labels inconsistent with therapeutic goals of treatment and public safety. It will remove therapeutic expertise by making the labelling and associated regime a judicial process or a judicial determination. It will require that limited psychiatric hospital space be allocated on the basis of the designation, and it will have the effect of compounding the serious challenges posed by those with mental health issues in the corrections system.

The real challenge for public safety is the number of inadequately treated prisoners with mental health issues who will be returning to communities. This is where as a society we need to marshal our efforts and our resources. The review board process for the NCR is working well and does not need, in our view, to be changed.

Thank you.

● (1755)

The Chair: Thank you for that presentation.

Our next presenter, as an individual, is Lori Triano-Antidormi, a psychologist, I believe.

Dr. Lori Triano-Antidormi (Psychologist, As an Individual): Thank you for the opportunity to speak before you today on Bill C-54.

I am a mother, a victim impacted by a crime committed by someone found NCR, and a practising psychologist.

l am the mother of Zachary Lawrence Antidormi. Zachary was murdered on March 27, 1997, at the age of two and a half. Zachary was playing with his best friend when our neighbour, Ms. Lucia Piovesan, came out of her house with a large kitchen knife tucked under her cape and stabbed my little Zachary 12 times. My beautiful Zachary died as a result of his injuries and, as you can imagine, my life was changed forever. I did not have my beautiful boy. I was rendered non-functional for almost a year, and people have now come to call me a bereaved mother and a victim.

Ms. Piovesan, who was 60 years old at the time of the act, suffered from a serious mental illness. She suffered from paranoid schizophrenia. Her delusions led her to believe that the spirit of her own dead son lived within my Zachary. She stabbed Zachary numerous times to release her son's spirit from Zachary. Ms. Piovesan was found not criminally responsible.

Ms. Piovesan had a history of erratic behaviour. Over the years, she had come in contact with hospitals, various doctors and psychiatrists, and the police, but she was never properly assessed or treated. We had called the police to our home more than a dozen times with the hope of having her apprehended and assessed. Ms. Piovesan's daughter also tried, without success, to have her mother apprehended, assessed, and put into treatment, but she, too, continually hit barriers.

Ms. Piovesan's daughter, as is true for much of the public, did not understand her mother's thinking or her mother's behaviour. She did not understand her mother's mental illness, and she did not appreciate the quality of her mother's delusional thinking. She tried to correct it and challenge it. In the end it was her mother's delusional thinking that formed the basis of her actions to murder my son to release the spirit of hers.

This year, on March 27, I was home from work owing to the fact that since Zachary's death, I have taken that day off, mainly for self-care. It was on March 27, 2013 that a verdict of not criminally responsible was reached in a tragic case in Ontario. It was determined that the individual who committed the crime suffers from a serious mental illness, and owing to the nature of his illness, he engaged in a behaviour that led to the death of another human being. The media coverage on this case and on Bill C-54 stirred feelings in me that surprised me, given their intensity. Given the intensity of these feelings, I felt compelled to explore them further.

Bill C-54 stirs in me feelings of upset in that the bill is very stigmatizing and punitive and does not reflect an accurate understanding of serious mental illness. The creation of a high-risk category based on brutality of the crime, for example, is not founded in any evidence. Brutality of the crime does not determine risk. Drawing attention to the brutality of the crime serves, instead, to perpetuate a myth that people with mental illness are violent. Further, lengthening the review from one year to three years for the high-risk accused is, in my opinion, punitive, not rehabilitative.

l do not understand how this bill will accomplish what it claims to be one of its main goals, namely, to enhance public safety. It is my understanding and experience that the review boards, which review cases annually and determine the level of security for those found NCR, work very hard to balance public safety with the rights of those with mental illness, and their efforts seem to be working.

My family was not protected. The lack of protection was not, however, due to flaws in current NCR legislation, but to a mental health system that is not working and has many gaps. Bill C-54 would not have protected my family, but an improved mental health system might have.

● (1800)

As already stated, the current NCR legislation appears to be working, with recidivism rates of NCR accused lower than those of persons found criminally responsible and managed by the corrections system. I find myself repeatedly asking, “Why target individuals after their crime is committed rather than directing more attention to preventing such crimes in the first place?”

When I read about the high-profile NCR case in the paper and learned that people had noticed the mental health of this individual deteriorating, and that he attended a walk-in clinic just a day before the killing with his main presenting complaint related to his thinking, I could not help but wonder what happened at that walk-in clinic.

Disordered thinking is a main characteristic of schizophrenia and this man was seeking assistance given his disordered thinking. Why was he not admitted for further assessment and treatment of his complaints and psychiatric status? Would it have taken too much time and effort? Were there no psychiatric beds available? Did the attending physician carry out a proper assessment? Did he have the knowledge to make an accurate diagnosis, or did he consider a referral? I can't help but ask, as I did some 16 years ago, did a faulty mental health system fail the families of the victim and the individual who committed the crime due to his mental illness? We must remember both families are victims.

Bill C-54 seeks—it claims—to protect the public and support victims. The mental health community supports the amendments related to victims' involvement. To this end, I can say that as a victim, I have been treated with respect and consideration. No one is arguing against the amendments pertaining to victims' involvement. Other components of the bill, however, are ill-informed and not evidence-based. As I have already indicated, they are stigmatizing and punitive and lead the public to believe that people with mental illness commit these acts because of ill intent created out of a sound mind. It is the mental illness that leads to the act.

Understanding Zachary's murder was not easy for me even as a psychologist. Understanding mental illness is complicated, and for victims such as myself, there is a strong need to hold someone accountable for the murder of their loved ones. The “lock 'em up and throw away the key” approach, however, has a vengeful nature and points the finger in the wrong direction. It does not reflect any attempt to understand the complexity of mental illness. Until the government directs its efforts at improving the mental health system versus creating a bill like Bill C-54 which will not protect Canadians, we are no better off.

Zachary was murdered over 16 years ago. Over these years, I strongly hoped our government would take leadership in helping people with mental illness so they would never get to the point of committing a crime. Instead, Canadians are presented with a bill that will not protect the public or help prevent a crime committed by someone with a mental illness.

As a victim, I ask this government to work with both the mental health community and victims to create a bill that will actually be effective in enhancing public safety rather than one that will only negatively impact people with mental illness.

Thank you.

● (1805)

The Chair: Thank you very much for your presentation.

We'll go to questions now. Our first questioner, from the New Democratic Party, is Mr. Mai.

Mr. Hoang Mai: Thank you, Mr. Chair.

Thank you to all the witnesses for being here and especially, thank you, Dr. Triano-Antidormi. I'll let Mr. Marston ask some questions later, but I just wanted to say how lucid your testimony was. I really appreciate it.

I'll start with Dr. Summerville. You mentioned that nine other organizations were not consulted. I think what we heard from all the witnesses here is that this bill is not evidence-based in terms of how they put things forward.

Can you talk to me about which organizations were not consulted, and maybe why?

Mr. Chris Summerville: The organizations were the Canadian Psychiatric Association, the Canadian Psychological Association, the Canadian Mental Health Association, the Mood Disorders Society of Canada, the Canadian Association of Social Workers, the Canadian Association for Suicide Prevention, the National Network for Mental Health, the Centre for Addiction and Mental Health, and the Schizophrenia Society of Canada. Furthermore, the 19 members of CAMIMH, the Canadian Alliance on Mental Illness and Mental Health, of which all of these are members, were not consulted either.

I cannot tell you why the federal minister did not consult with us.

Mr. Hoang Mai: When we look at a bill that technically deals with mental illness, this is what it's all about. We've talked about crime. We've talked about public safety which is obviously very important. We've also spoken about victims. When we talk about what's happening here, it's mental illness.

Dr. Latimer, can you talk to us a little bit more about consultation? I'll ask Dr. Summerville to also talk about why it is important for us to have consultations, especially when we deal with a bill like this.

Ms. Catherine Latimer: The John Howard Society was not consulted. It's important for you to have a variety of voices offering different perspectives to give you an opportunity to make adjustments and improve the quality of the legislative framework that you're dealing with.

Mr. Hoang Mai: Dr. Summerville.

Mr. Chris Summerville: This is the year 2013 not 1013. We know far more today about how to help people with enduring mental illnesses which are treatable and also how to recover. Up to 65% of people with schizophrenia recover. What does that mean? They learn how to manage their illness and live beyond the limitations of the illness.

You have all these professional organizations, family organizations, and people in experienced organizations who have studied and who have lived through the experience. You have this huge body of information in the year 2013. Unfortunately, that vast amount of knowledge has not been utilized.

Even Dr. Anne Crocker is quoted in the press as saying, “Hasn't the government read the research I did for you?”

● (1810)

Mr. Hoang Mai: I'll share my time with Mr. Marston.

Mr. Wayne Marston: This will be quick.

Lori, was Zachary in Hamilton?

Dr. Lori Triano-Antidormi: Yes.

Mr. Wayne Marston: I lived on Afton Avenue when that happened, just a few blocks from where it happened. We knew the stories in our neighbourhood about this particular lady. It was beyond tragic because the evidence was there.

Dr. Summerville, my mother was institutionalized for 10 years. To your point about people not being able to get out when their treatment reaches that optimum place, I can remember my mother saying that she was better because now she could hear them locking the doors. When she was delusional and all that, she did not perceive that. I hope our friends across the way are listening because this is so compelling.

In your case, with what you've lived through and what you live with every day, it is very important the fact that you were able to put together this comprehensive response when every bone in your body and every emotion you have is with Zachary. I want to thank you for that.

I hope my friends across the way will take the time to take it in. This is a flawed bill. We can do better. Let's do better.

Thank you.

The Chair: Thank you for those questions and answers.

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

Mr. Robert Goguen: Thank you to the witnesses for testifying.

Our sympathies to you, Ms. Triano-Antidormi. I think I said your name close to right, but I know it's Lori.

We heard some testimony, and we're led to the impression this bill radically changes the whole mental health way of dealing with those not criminally responsible. In essence, it does two things. It ensures that public safety is first in releasing those who are held not criminally responsible to the public and it enhances the victims' rights and gives them notification so they can avoid, perhaps, meeting the perpetrator.

How does it do this? Basically, there's the possibility of a not criminally responsible person being designated a high-risk person. In doing so, that person's case would be reviewed after three years, during which time, of course, they would receive treatment. Under the current regime, people can be held indefinitely. I believe the perpetrator in your case, Lori, is still being held. It was back in 1998. This is nothing new. 1998 is longer than three years ago. In both cases treatment is followed. In this new format, treatment is followed.

One can argue that very few of the not criminally responsible will be given a high-risk designation. Why? The tests to have that designation are relatively serious. The court can only make the finding if it is satisfied that there is a substantial likelihood the not criminally responsible accused will use violence; that they could endanger the life or safety of another person, if discharged absolutely or conditionally; or that the court is of the opinion the offence was particularly brutal as to indicate a risk of grave harm to another person.

Who would be the not criminally responsible who might be found of this? The cases of Vincent Li, Allan Schoenborn, Andre Denny, and Guy Turcotte come to mind. There are not millions of cases; there are very few. With that in mind, what we're doing here, in essence, is putting public safety first. It's making sure that these criminals are treated for whatever time is needed. There's no one-size-fits-all because some may need more time than that. It may be more than three years. Prior to their being released into society, they have to satisfy not only the Mental Health Commission, but they also have to satisfy a second level of scrutiny from the judge of the superior court.

Don't you think that in the minds of average Canadians sitting at home, they would take some comfort knowing that prior to Vincent Li, prior to Allan Schoenborn, prior to Andre Denny, and prior to Guy Turcotte being released into their society, in their hometown, that there's been not one, but two levels of scrutiny to ensure that maybe—just maybe—the incidents that these perpetrators have caused will not recur in their community?

Dr. Lori Triano-Antidormi: I think the level of scrutiny is what's ill-informed. I think the high-risk designation is ill-informed. There are other factors that determine risk, such as the person's personal history. The NCR accused in our case had a history. It's ill-informed. I think part of that is probably because the mental health community wasn't consulted. It's just an effort to work together to define the terms properly based on evidence.

The woman who killed my son remains high risk, and that was determined by a review board. So they are working because she's still a risk.

● (1815)

Mr. Robert Goguen: Ms. Latimer.

Ms. Catherine Latimer: The evidence I've seen is the review boards are pretty good at determining whether somebody constitutes an ongoing risk, and if they do, they don't release them. The perpetrator in Lori's offence would be a good example of that.

I think it's also important, though, to be able to release them in a graduated way, which this scheme doesn't contemplate. It's a good idea to figure out what their triggers are to ensure they can follow a medical regime, that they stay on their medications, that they don't cross the path of the victims when they've been asked not to. You can do that better when you have a release with conditions.

This regime seems to only contemplate in the hospital or not. I may be misreading it, but I think you probably need that tri-level of graduated release, particularly if someone is known to pose a particular risk. The real problem with the designation is that the proposed paragraph 672.64(1)(b) component which allows you to make a determination based on a single brutal incident that the person is high risk will not hold up. You will not find adequate evidence to suggest and to be able to predict from a single brutal act that this will constitute a future risk of harm. You would know if it happened again it would be very serious, but what you often find is that the more serious the incident, the less likely it is to recur; the less serious the incident, the more likely it is to recur. It's not a straight line.

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

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

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

Dr. Triano-Antidormi, I came in just as you were starting your testimony. It was very compelling. I want to say first to you, thank you very much for telling your story, and thanks for having the courage to do it in such a public way.

In furtherance of your story, my question directly relates to the woman who murdered Zachary. Has she responded to treatment? Where is she now, 16 years later?

Dr. Lori Triano-Antidormi: She hasn't responded very well to treatment, and she's still in a psychiatric institution.

Mr. Sean Casey: Thank you.

Mr. Summerville and Ms. Latimer, I apologize in advance if my questions were already covered in your testimony because, as I indicated, I just came in when Dr. Triano-Antidormi started to speak.

Mr. Summerville, have you or any member of the Schizophrenia Society of Canada been consulted by the government on this legislation?

Mr. Chris Summerville: No.

Mr. Sean Casey: On Monday, the minister appeared before this committee. I had the chance to question him about the lack of consultation with mental health groups. In his answer, he basically said that he had consulted extensively with provincial attorneys general and that health care, and mental health in particular, are within the purview of provincial governments.

In your view, is that sufficient?

Mr. Chris Summerville: I don't think it's sufficient. If I understand your question correctly, I think it's important to talk with the people who work really closely with mental health patients. What I've learned through this whole process is that the public and unfortunately I think, some politicians, don't understand what NCR really means, what the review board does in its process, and how risk assessments are done. Mr. Li's name has been brought up a number of times. I visit him since I'm in Manitoba. Contrary to what people want to believe, he's doing marvellously well in terms of response to the treatments.

Risk assessments are based on insight and that the person understands that they have competency, they're adhering to medication, cognitive behavioural therapy. The session is based on how you respond to other patients and staff. Are there any unresolved trauma issues, addiction issues, psychopathology, social pathology, criminal history? An example again, since the name was brought up, Mr. Li is not characterized by any of those things, so he's not deemed high risk as such. But we're not trying to make him the poster person of the Schizophrenia Society of Canada. I'm simply trying to illustrate that to create a bill that will do what it ought to do, and do what the Supreme Court said, and that is public safety and therapeutic treatment, mental health professionals and experts and family members should have been, and ought to be, consulted with. Might I dare say this is somewhat political in Manitoba. Even with an NDP government, the polls are very close, and I won't say any more.

● (1820)

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

Ms. Latimer, I'd be interested in your views on this topic as well. I did hear you say that the John Howard Society of Canada had not been consulted. Now that you know the minister's response to a question regarding consultation was essentially to reference the involvement of provincial governments, how do you react to that?

Ms. Catherine Latimer: I'd be very interested to know who the provincial governments consulted with if they perceive that they're carrying the entire mental health input with them to this particular forum and comments and bringing it to this particular bill. The attorneys general.... You'd probably want some kind of a joint FPT forum which includes the health ministries, not just the attorneys general, I think, if you really want good input. Even then I think you'd probably need to consult with some of the national organizations as well.

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

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

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

Catherine, I wrote down one of your quotes, because I think it's important with one of the statements you made earlier. You said that the review boards are pretty good. I know you were here because I saw you sitting in the back, so you heard the previous panels. They also said they think the review boards do a very good job in these cases. I think there's general agreement to that.

You said that this legislation will push off reviews for three years. I take it you've read the legislation when making that statement. You're nodding your head, so would you agree with me?

Ms. Catherine Latimer: Yes, and I think I know where you're going with this, which is up to three years.

Mr. Kyle Seeback: First of all, it is up to three years.

Ms. Catherine Latimer: Right.

Mr. Kyle Seeback: It's not automatically three years.

Ms. Catherine Latimer: No.

Mr. Kyle Seeback: Did you also know that it's only three years if the review board says it should be three years?

Ms. Catherine Latimer: Yes, I noticed that. But you will find that if you give very burdened organizations like parole boards and review boards an option to extend the review periods, they always take it to the outer limit. At least this is certainly the case with the parole boards, even though they could have capacity to—

Mr. Kyle Seeback: Are you suggesting that the review boards aren't going to do their job properly because they don't want to work?

Ms. Catherine Latimer: I'm saying that they will likely have more people there for extended periods of time and therefore more pressure on them to do reviews.

Mr. Kyle Seeback: I don't see how that jibes with your statements and previous statements that the review board is doing a very good job.

You talked about how you think this legislation will say that a person can be designated high risk by one brutal event.

Ms. Catherine Latimer: Right.

Mr. Kyle Seeback: People have been saying that at the committee today, and I think they're cherry-picking words in the legislation. I don't think that's accurate.

The proposed section actually says if “the court is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person”. So it's not just brutal, first of all. Second, it then goes on to say that in deciding whether to define the person as high risk, which dovetails back to brutal, the court has to look at a whole host of circumstances, which include “any pattern of repetitive behaviour”, for example, “the accused's current medical condition,” and “the opinions of experts who have examined the accused”.

It's actually not going to be based on just one brutal event. It's not what the statute says, and it's not accurate.

Ms. Catherine Latimer: But it could be, and that is what the statute says.

In fact the statute doesn't even suggest, by my reading of proposed paragraph 672.64(1)(b), that you're looking at future behaviour. You're looking at a past incident. At least in proposed paragraph 672.64(1)(a) you are looking at the likelihood that a person would “use violence that could endanger the life or safety of another”. It has “will use violence”.

Here you have a retrospective observation saying “...the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person”.

You have one incident causing harm.

● (1825)

Mr. Kyle Seeback: The judges are going to make that assessment based on.... It's not a limited section. It doesn't say that it's based on these factors alone; it says, "consider all relevant evidence, including...".

What I find curious is—and I know you've come to the committee before to oppose things like mandatory minimum sentences, because you say that judges should have discretion to make decisions—this section gives judges incredible discretion. They can look at a whole host of factors before they make that determination. Now you're saying that we shouldn't give the judges discretion to make decisions.

Ms. Catherine Latimer: The point of the John Howard Society is that when it's within their range of expertise, they should be the ones making the determination. With sentencing, a judge is aware of the particular set of factors and the individual. They're in the best position to shape a sentence that best reflects the severity of the offence and the degree of responsibility.

Mr. Kyle Seeback: Proposed paragraph 672.64(2)(e) says that. It says, “the opinions of experts who have examined the accused”. The experts are going to give opinions that the judge is going to use before making that decision.

Ms. Catherine Latimer: He's not necessarily bound by them. He only needs to consider them.

Mr. Kyle Seeback: Well, they're not bound by them. We're giving judges discretion, which is what you think judges should have.

Ms. Catherine Latimer: I do think that they should have discretion, but I think that the efficiency and economy of the courts are best served by allowing boards to make determinations in specialized cases where specialized knowledge is needed. The review boards are ones where particular knowledge of causality, likely future risk, and mental health issues is vested.

Mr. Kyle Seeback: But the review board will make that decision. If the person is declared high risk, the review board will then determine a year later or—

Ms. Catherine Latimer: Three years later.

Mr. Kyle Seeback: No. They have to make that decision that it's three years later, and they only do that if they think the person is a substantial risk. Within a year, a review board can say that a person is no longer a high-risk offender and that they're going to transition them back to the former system. I don't see how that is such a terrible imposition.

The Chair: That's the time.

I'll give you a chance to respond to that question.

Ms. Catherine Latimer: I was just going to ask why you need it, then. What you're describing is pretty consistent with the existing structure, so that the review board would make the determination. I don't understand why this is an advance.

The Chair: Thank you, ladies and gentlemen. Thank you for those questions and answers.

Our next questioner, from the New Democratic Party, is Mr. Rankin. It looks like he's going to share his time.

Mr. Murray Rankin: Thank you, Chair. I'm going to share my time with Mr. Jacob.

I want to say to all three presenters how thoughtful your presentations were". In particular, Dr. Triano-Antidormi, I was really moved by what you had to say. Thank you for coming and saying it.

My first question is for Ms. Latimer. It's a very simple question, and I have asked other witnesses the same one.

Having analyzed the bill in its current form, would the John Howard Society support Bill C-54?

Ms. Catherine Latimer: No, the John Howard Society would not support the bill in its current form.

Mr. Murray Rankin: My other question is for Mr. Summerville, and Lori, if I may.

Mr. Summerville, you spoke about what you termed "stigmatizing measures" in the bill, and Lori you said the bill is "very stigmatizing and punitive".

I wonder if you could each spend a little time elaborating, perhaps with examples, on why you think the measures in the bill are stigmatizing.

I'll start with you, Mr. Summerville, please.

Mr. Chris Summerville: What I would have hoped the government would have done when they began talking about this bill is that they would have had disclaimers. I would have hoped they would have told Canadians about the 3% of people with mental illness who come in contact with the law, that the percentage of those who get an NCR designation is 0.001%, that the recidivism rate, according to CAMH, in Toronto, is 7.35%, and that it's up to 45% for the people released from the federal correctional system.

Just the emphasis on heinousness and brutality and mental illness, and putting all that together.... I mean, all of you already know that social prejudice is a huge problem in our society. It's the number one reason that people do not get help and treatment. I didn't do it myself for nearly 40 years.

Mr. Murray Rankin: Thank you.

Lori.

Dr. Lori Triano-Antidormi: I think in terms of the stigmatizing, it has to do with the focus on the brutality of the act. It really does perpetuate the myth that people with mental illness are violent. We were well treated by the forensic community and educated that this is not the case. When I saw the media on the bill, it just struck me as very stigmatizing because of that attitude to lock them up for three years and don't review them again, and the punitive nature as well.

● (1830)

[*Translation*]

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

I would like to thank our witnesses for joining us today. I thank Ms. Triano-Antidormi for her remarks.

You are both a victim and an expert and, as a result, you are in a good position to say that Bill C-54 does not have a solid foundation. This is how you summarized the thoughts of our other two guests.

You said that the bill is vengeful in nature, stigmatizing, punitive and focused on brutality. You reiterated that this perpetuates the myth that people with mental illness are violent, whereas the reality is completely different. The recidivism rate is very low for patients.

You also pointed out that understanding mental illness is complicated. In your view, the solution is to have a better system that deals with mental health issues. Could you tell us what you think about rehabilitation and reintegration into society, which might be the best way to effectively ensure public safety over the long term?

[*English*]

Dr. Lori Triano-Antidormi: I think that's what the current focus of the legislation is in terms of providing treatment and then every year reviewing how the treatment is working, and gradually loosening the restrictions to see how the people are responding to treatment.

As I said, it's not a person of sound mind who has committed the act. It's someone whose mind was not working, as I describe it to my children.

I think the current approach is to try to provide treatment and rehabilitation, not take away that opportunity.

The Chair: Thank you very much.

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

Mr. David Wilks: Thank you very much, Mr. Chair, and I thank the witnesses for being here today.

It's interesting that all of the witnesses today, whether they come from the medical side or as a victim, have mentioned the police in one sense or another. That's my background; I am retired from the RCMP. It's normally the police who have to deal with these individuals time and time again.

I've heard today that we don't want to stigmatize those who do the minor crime, and I completely agree with that. But the fact of the matter is that this is the only book the police can go by; they cannot go by any other book. The minor crimes don't allow them to do anything. If I arrest someone for theft under $5,000, I'm immediately going to release the person. I can't hold them; I have no authority to do it.

We talked about brutality. The police act on brutality. That's how they act. That's how it works. We in this room may not like it, but that's how it works. I heard Lori say that they've called the police many times, but the police were probably saying, "There's nothing we can do. Call a hospital; call a doctor; call someone." The police get to the point at which they say, "You need to fix this so that we can do something."

We get to section 670 of the code, which has been there for many a year. The police recognize there's something broken there, because it's a revolving door for these people, whether it's those in east Vancouver who have severe mental illnesses, who we all recognize shouldn't be where they are, who need to get help, or others. The only help they get is from the police. It's the only help they get.

My question to you is from the perspective of police. What do you expect them to do? There's so much expectation put on them, and yet there's nothing they can do, but they are the ones who will decide.... I had this happen so many times in my career. I have gone to the hospital and said, "Please, I hope there are two doctors who will commit this person, because if there's only one, the person is not going to be committed." In British Columbia that's the rule.

You're hoping that two will commit, but they don't, and you're going.... You have to let them go. We know what is going to happen within 24 hours. We know.

I think personally that these proposed sections are what is needed. Otherwise people, such as me in my former position, are going to ask, "What are you guys doing?" This is not, with all due respect, a bleeding heart society. Sometimes we have to take the bull by the horns. Even though it's uncomfortable, we have to put them in there for their own safety, recognizing that they will come gradually back into society, but we need to get them there first.

What suggestions do you have for the police? Is it to do nothing?

● (1835)

Dr. Lori Triano-Antidormi: I was just going to say that I'm not sure how the current legislation is going to target that issue. This is on the front end again. The police could have apprehended her under the Mental Health Act, in our case, many times. The Mental Health Act has changed.

Mr. David Wilks: They could only if they have the consent of two doctors.

Dr. Lori Triano-Antidormi: The police can apprehend under the Mental Health Act in Ontario.

Ms. Catherine Latimer: I think you raise a very interesting point. It is one of the great challenges for police to decide how to deal with people with mental illness, because you will be first on the scene. They are the ones who are called when there is an incident and a problem.

I know that the Mental Health Commission has been working and has a stream that is trying to work with police to give them some help to deal with the front-end issues, but you will need some comprehensive reforms of the provincial mental health legislation.

Mr. David Wilks: This is the question for them. This is how it is.

Ms. Catherine Latimer: It is the front end, but if you look at the YCJA, the Youth Criminal Justice Act, for example, which is tucked in the back, the police can make referrals. They can do things. But you are powerless. You could refer them to the CAMH or to an addictions organization, but if the addictions organization doesn't pick up your referral and deal with the young person, you as a police officer don't have recourse.

There are things that can be done. I have spoken to people who have had mental health conditions, and their ray of assistance has come from a police officer who took the time to say, "I think you need some help. Here is somebody who can help you," and gave them a card.

To suggest that the police aren't big players at the front end of the system in terms of trying to get some assistance particularly to the chronic offenders—and you know who I'm talking about.... I think there is a lot more that needs to be done at that end, and probably more that needs to be done, but—

Mr. David Wilks: It's always the criminal acts—

The Chair: Mr. Wilks, that's your time. Thank you very much.

I want to thank our witnesses for their presentations today. I want to thank the committee members for their questions.

It's been three hours. We will do this again on Monday after question period. The meeting is adjourned.