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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1550)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, welcome to meeting number 78 of the Standing Committee on Justice and Human Rights on Wednesday, June 12. I apologize to our witnesses for the delay, but we were voting in the House.

Our meeting today is televised. 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, we have two panels, and then we're going to do clause-by-clause.

Our first panel is here. We have three groups of witnesses, each with 10 minutes. Our first witness is Mr. Thomas Frederick Shreeve, who is appearing as an individual.

You have 10 minutes, sir.

Mr. Thomas Frederick Shreeve (As an Individual): Good afternoon, Mr. Chair and committee members.

I am here today to ask for your consideration of my experiences in dealing first-hand with the mental health system in the province of Ontario, specifically related to “not criminally responsible” and its designation. The background I have to give you on this is a minute or so long.

I have a brother who is currently in the mental health system, having been determined to be not criminally responsible on two counts of second-degree murder. First-degree murder was not substantiated to the court's definition. He was withdrawn by nature, being a paranoid schizophrenic. It was, however, undisputed that the murder weapon used to kill the victims was taken from his house, some three-eighths of a mile from where the index offence occurred, on June 19, 1997.

The victims were my parents, Fred and Agnes Shreeve, who were in their mid-seventies at the time. The murders were extremely heinous in nature, both involving multiple stabbings causing death, with blunt force trauma, and post-death, strangulation and drowning in both of them. My brother's stay in the maximum secure unit at Oak Ridge, in Penetang, Ontario, began in the late 1990s. He has been in the medium secure unit at Ontario Shores in Whitby for the last six years.

My sister and I were in daily contact with the police as they investigated, with up to 24 officers involved in the investigation in the days after the index offence. We remained in contact with the police throughout their investigation and report prior to legal proceedings. I attended my brother's trial, his not criminally responsible hearing, and all but one of his review boards, both at Oak Ridge and at Ontario Shores.

I have yet to speak to my brother. However, I have been and continue to be his guardian regarding medication. Where options were provided to me, I have consciously made decisions along the way that resulted in medications that were more kind to his body. I have consistently offered to be available as a resource to provide some background history. I have consistently voiced my very deep concerns for my family's safety and also have reiterated my willingness to assist where it may be helpful.

I have a number of experiences that I would like to share with you.

Neither I nor the parents I represent have any standing at review board hearings. The crown attorney has respectfully asked for my thoughts and issues that I would like them to bring up on my family's behalf. I sit behind the crown attorney, as I am not afforded a seat at the table. I have been politely recognized for my attendance at past review boards. At past review boards, the crown has been spoken to strongly when they have restated my family's deep concern for our own safety, the chair indicating to the crown that the review board members were capable of reading and therefore did not need to be reminded of the family's concern for their safety.

I ask for status at the review board hearing to be available to the victim or the family of the victim, to be part of the discussion at their option.

Second, I observed over the time that my brother has been in the system a dilution of the briefs of the index offence and the background. There is no one on his treatment team who could locate or speak about any of the facts of the court proceedings. The trial brief and in-depth police report of some 2,500 pages, including, of course, many pages of photographs, had not even been read by one member of his treatment team. Further, when I inquired about this recently, I was informed that the court documentation and the police synopsis and briefs are not part of his file, as “this is a hospital”.

I ask that in index offences, particularly involving murder, the treatment team have a representative assigned to be knowledgeable on the facts and the documentation of the case, particularly the time around the index offence, as a point of reference, if for no other reason. As I indicated earlier, there were 24 police officers involved in the investigation. There was an awful lot of good work that went into this.

Third, I recently asked for the brief as it was presented last year so I could offer corrections to it. I was told that my brother's permission would be necessary for me to obtain a copy of it.

I ask that victims or their families have the right to pertinent documents without requiring notification of the accused.

Fourth, at the end of the proceedings that included both the trial and the not criminally responsible hearing, the court ordered that the local police service and the landowners of the properties related to the index offence were to be notified in the event that my brother was to be transferred or moved. I asked about this after my brother was moved from the maximum secure unit at Oak Ridge to the medium secure unit at Ontario Shores. These are both in Ontario. I distinctly remember being told something to the effect that “it was not their business”.

● (1555)

I remember this only because it was in direct contradiction to what the court requirement was, as I had input into what the crown requested and was granted at the end of the trial and the NCR hearing.

I ask that court orders be given strength so that someone is responsible, with real consequences. The court order was made as a result of the trial and the NCR hearing, backed up by 18 months of police and crown attorney work. It was not made without due consideration of the facts.

Fifth, my brother had the consistency of having the same lawyer as counsel for eight to ten years. His early clinical reports at Oak Ridge indicated that he did not attend any group events or participate in any activities. Over the years, he began to participate in group events and undertake very limited participation, listening to his lawyer's advice. Every year my brother's compliant behaviour was championed, even though there was very little psychiatric progress to understand how his mind worked.

I ask that good behaviour be recognized in its proper context, that it is, in fact, a small part of the formula to be cascaded down to the next level, particularly in index offences involving murder.

Sixth, last year his psychologist had no background information on my brother's behaviour prior to the index offence that he had committed at 40 years of age. She seemed unaware that he had no record of involvement with the local police, or that no physical altercations had occurred with my parents, while she very strongly advocated that he was not a management risk. My point here is that there was no prior activity or no prior violence.

It appears she was unaware that the psychiatrist at Oak Ridge in 2008 pointed out very clearly that my brother was a very unique individual, displaying none of the common symptoms of paranoid schizophrenia, of which he has been diagnosed. He also made it clear that, in his opinion, Mr. Shreeve will require a long period of living in a medium secure hospital unit. As a result, perhaps his model patient status, which the psychologist championed so highly, should have been discounted substantially or viewed with the background information to have a proper perspective.

I ask that a clear understanding that there is real progress on psychiatric understanding be recognized in its proper context, that it is in fact a proportional part of the formula to be cascaded to the next level, particularly in index offences involving murder.

Seventh, he was asked by one of his team members a few years ago if he had any interest in his siblings. There was a list of names found during the police investigation, brought up at trial. His response was no. I'm in disbelief that this has formed part of the basis for the psychologist's reasoning for strongly advocating that he be moved on to minimum secure. My name was on that list. The names of my siblings were on that list.

I ask that “least restrictive environment” be recognized proportionally to victims' rights, as well as the severity of the index offences, particularly index offences involving murder.

Eighth, in contemplating the move from Oak Ridge to Ontario Shores in 2007, no one in attendance could speak to how my brother's daily routine would be impacted. From what I gather, in many ways his daily routine is more restricted, not less. For example, now he has to be escorted off the unit to go to the cafeteria, as it is off the ward. At Oak Ridge he was free to go to the canteen on his own, as it and many other services and activities were all secure.

I ask that a member of the hospital team present at the review board hearing have a clear understanding of the setting that the patient may be moved into, and be available for the review board so that informed decisions can be made, rather than presuming, for example, that medium secure is less restrictive than maximum secure.

Ninth, the proposed legislation has discussion regarding the creation of a high-risk designation. It must be that the criteria for determining this designation be fairly designed, understanding that victims' rights also have a very significant place. This, considered with the risk to treatment teams, family members, and the general public, must also be given balanced consideration. Reliance on psychiatrists' professional opinions on the real rehabilitation progress of the accused must take precedence over good behaviour.

This process must also recognize that unique cases like those of my brother must have a different method of analysis—i.e., the above-noted reference to Oak Ridge diagnosis that my brother is a very unique individual, displaying none of the common symptoms of paranoid schizophrenia, of which he has been diagnosed. This is especially important when the standard testing scores are in the most acceptable range.

● (1600)

I ask that the development of criteria for determining a high-risk designation balance all of those affected both directly and indirectly, not just the accused, and accommodate properly unique circumstances.

Recently there has been press given to strengthening victims' rights. From my perspective, in the number of years that I have attended review board hearings, victims' rights have had precious little or no weight, while the term “least restrictive environment” has dominated every review board I have attended. Good behaviour has been recognized, while very little ground has been covered on the psychiatric side, resulting in constant pressure to cascade my brother along in the system.

I have been told to prepare for his eventual reintegration into society. The crown attorney has noted very clearly that my brother is an individual who just wants to be left alone.

Court orders regarding the whereabouts of my brother in order to notify the landowners and local police forces at the location of the index offence have been ignored, the implied recognition of my brother's rights deemed more important. There seems to be a real disconnect between the legal and policing systems and the health care system, whereas they should be working cooperatively.

In summary, I request your consideration of the above-noted things that I have observed in the mental health system. While they are specific to my experience, I expect that there are many commonalities. I would like to make it clear that the safety of my brother remains paramount, as well as the safety of our family, those who work in the health care system, and those who are in regular contact with him, as well as the public at large. While rehabilitation into society on some level is the goal for many of our citizens, it must be recognized when doing so will not be realistically attainable.

I thank you for the opportunity to be here today.

The Chair: Thank you for that presentation and for your testimony, Mr. Shreeve. Thank you for coming and joining us today. There will be questions after.

Our next presenter is from the Office of the Federal Ombudsman for Victims of Crime, Ms. O'Sullivan. You have 10 minutes.

[*Translation*]

Ms. Susan O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Good afternoon, Mr. Chair and esteemed committee members.

[*English*]

Thank you for inviting me here today to discuss Bill C-54, which seeks to enhance public safety and better meet the needs of victims in cases where an accused is determined to be not criminally responsible, or NCR.

To begin, I would like to take the opportunity to provide a brief overview of our office's mandate.

As you may know, the Office of the Federal Ombudsman for Victims of Crime was created in 2007 to provide a voice for victims at the federal level. We do this through our mandate by receiving and reviewing complaints from victims; promoting and facilitating access to federal programs and services for victims of crime; providing information and referrals; promoting the basic principles of justice for victims of crime; raising awareness among criminal justice personnel and policy-makers about the needs and concerns of victims; and identifying systemic and emerging issues that negatively impact on victims of crime.

In other words, we help victims individually and collectively. We help the victims individually by speaking with victims every day, answering their questions, and addressing their complaints. We help victims collectively by reviewing important issues and making recommendations to the federal government on how to improve its laws, policies, or programs to better support victims of crime.

I am pleased to be here today to bring a victim's perspective to this bill. I thank you for your part in wanting to ensure that victims' voices are heard.

Our discussion today focuses on legislation specific to those found to be not criminally responsible for serious personal injury offences, those who, in light of their mental condition, should not be held to account for the crimes they have committed. It is important to keep in mind the distinction between a convicted offender and someone found to be NCR and to ensure that those with mental illnesses are treated appropriately.

I believe strongly in increased supports to help those with mental illness in our communities, and in the importance of support as prevention by helping to address these issues before they result in tragedy. However, I also want to offer you another point to consider throughout your study of this bill. Following any violent crime, regardless of whether the accused is found to be not criminally responsible or a convicted offender, the trauma a victim experiences is, in all cases, devastating. Regardless of the mental condition of an accused, victims' needs must be met and their treatment and rights should be equitable. We know that all victims will need to be treated with respect, to be informed on how the process works and their role within it, to have their needs and input considered, and to be protected from intimidation or harm.

My office has on several occasions spoken with victims and victim advocates, who have brought their concerns regarding this issue to our attention. Through these discussions, we have identified several significant gaps in legislation and policy that ultimately carry negative impacts, on both victims directly and more broadly on public safety.

Two years ago, in June 2011, I wrote to the Minister of Justice recommending certain reforms in the not criminally responsible cases in order to ensure that the needs of victims of crime were met. These recommendations related to two items: the importance of considering both victim and public safety in all release decisions, and the lack of rights, policies, and support in place for victims of NCR cases.

In terms of public safety, my office recommended that review boards give paramount consideration to public safety and ensure that an inquiry is made about the whereabouts of the victims of the offence before making any release recommendations. With respect to the consideration of the victims, we recommended the provision of funding for victims to attend review board hearings and the implementation of notifications for victims regarding the transfer, release, or other status changes of the accused, as is currently available in the federal corrections system.

I am encouraged to see that Bill C-54 addresses a number of our recommendations, and I strongly support these proposed changes. Specifically, I am pleased to see, and strongly support, the prioritization of public safety as the paramount consideration for court and review board decision-making and the increased information provided to victims.

In addition to these elements, Bill C-54 also makes additional changes by proposing a high-risk designation that could be applied to accused persons who meet certain criteria. This particular section of the bill pertains to the effective management and treatment of those determined to be not criminally responsible, which falls outside the scope of the expertise of my office, so I will limit my remarks to the elements of the bill that specifically relate to the victims—the other two issues.

Bill C-54 proposes to ensure that public safety is the paramount consideration in the decision-making process for not criminally responsible cases. I think that considering the safety of the public just makes sense to most Canadians. Public safety is without a doubt an issue of concern for all victims. Many, if not most, of the victims I talk to tell me that above all else they do not want what happened to them to happen to anyone else. This increased emphasis on public safety will provide assurance to the victims that their safety is being considered in decisions and may help to further reduce victimization.

● (1605)

Bill C-54 also proposes measures specific to victim safety; namely, that the court and review board consider whether it is desirable in the interests of the safety and security of any person, particularly a victim or witness, to impose a non-communication order or to require that the accused refrain from going to particular locations. While the option for non-communication orders already exists, mandating the requirement to consider this option puts a specific and important emphasis on the consideration of a victim's needs and safety.

Bill C-54 also proposes that victims who request it be notified of conditional or absolute discharges. This change helps to enhance victims' treatment in the system by increasing their access to information, which may further contribute to their sense of safety.

I support these measures entirely.

As I mentioned at the beginning of my remarks, regardless of the mental state of the accused, victims have certain basic needs: the need to be informed of the process, including their rights within it, and the need to have their safety considered. Providing victims with information about the accused's progress and release into the community can significantly increase their sense of safety and may increase their confidence that the accused is accessing supports to promote and maintain mental health. This information may also help victims to address general feelings of anxiety and isolation that come from finding themselves in an unknown and unfamiliar system, to prepare up-to-date relevant victim statements for review board hearings, and to plan for their safety.

Additionally, having this type of information may help victims on their healing journey. Experts state that:

> In addition to the victim's need to feel safe, information about the offender's treatment plan and movement within the correctional system may promote the psychological healing of some victims, and may directly increase victim satisfaction with the justice process.

Though we must be careful to note that this relates to victims of an offender who is sentenced and who moves through the criminal justice process, it's not difficult to imagine how the same types of information could also assist victims in NCR cases.

Despite these benefits, victims in NCR cases have significantly fewer entitlements to information than do those offenders who move through the corrections and conditional release system. To address this gap, I recommend that Bill C-54 be further enhanced to ultimately provide victims in NCR cases with rights similar to those of victims in the criminal justice system.

Please note that all of the recommendations I am going to provide should apply only in cases where they do not pose a safety risk to the accused, the facility, or an individual, and only in cases where the victim requests the information.

Specifically I recommend that the following rights be added to the bill: that victims be advised of the location of the forensic facility where the accused is detained; that victims be given advance notice of any scheduled absence, either escorted or unescorted, from the hospital, and the general destination, city or town, to which the accused will be travelling; that victims be given advance notice of the destination of release or conditional discharge, or if the accused, on conditional discharge, will be travelling to the vicinity of the victims; that victims be informed of any conditions of release for the accused when they are conditionally discharged into the community —this may include such things as mandated medication or treatment, non-communication with children or others, the requirement to attend treatment sessions, general mobility restrictions, and more— and that victims be given advance notice of any scheduled transfer to another facility or change in the level of security of their ward, or move by the accused to another province or territory, for the purpose of treatment.

In addition to these measures, I would also recommend that upon request, victims be given a chance to view, but not retain, a photo of the accused at time of release; that victims be notified when there are additional or increased restrictions on liberties placed on the accused, such as when the accused is brought back into the facility or has been transferred from a minimum to a medium or maximum security unit; and that victims be notified when non-communication orders are put in place.

Finally, though it relates to the administration of justice and is therefore a provincial matter, I would also submit for consideration the need to ensure that these rights are implemented effectively and that there are clear roles and processes in place in each province or territory to ensure victims receive the notifications they are entitled to. Having requested and received information from the Department of Justice's Policy Centre for Victim Issues, our office became aware that not all provinces and territories necessarily have a system in place to ensure victim notification. Without these systems in place to ensure that victims are, in fact, being notified, a codified right to notification becomes notional.

In conclusion, I strongly support Bill C-54's proposal to ensure that public safety is a paramount consideration in the decision-making related to the release of an accused as well as the inclusion of further measures to enhance victims' rights. If the further measures recommended are included, I believe that Bill C-54 will help ensure more equitable rights for victims of crime in cases where an accused is found to be not criminally responsible. All victims of crime deserve to be informed, considered, and protected, regardless of the mental state of the person who harmed them.

● (1610)

Thank you for the opportunity to bring the victim perspective to the study of this bill and for your consideration of the recommendations I have provided today to further strengthen this proposed legislation.

Merci.

The Chair: Thank you, Ms. O'Sullivan.

Our next and final presenters for this panel are from the review boards of Canada: Mr. Schneider and Mr. Walter.

You have 10 minutes, gentlemen.

Mr. Bernd Walter (Chair, British Columbia Review Board, Association of Canadian Review Board Chairs): Thank you, Chair and honourable members of the committee, for the opportunity to come here today and speak to you.

Time is fleeting, so I'm going to speak very quickly. The synopsis of my remarks has been passed out. I want you to also hear from my colleague Justice Schneider, who is not only a respected jurist but also a psychologist. He has authored many of the leading texts in Canada in this field, so he is an expert indeed.

The review board chairs who do this work on a daily basis have no wish to be pitted against or to appear to be opposing the interests of victims. We're all on the same side here. But there are provisions in this bill that the justices and review board chairs do not support. As well, as there is a judicial role in the bill, I should say that at least five of the current justices or chairs of the review boards of Canada are in fact sitting justices.

The bill does seem to pit decision-makers and clinicians against victims. Bill C-54 diminishes opportunities for the current system of incremental, stable, and monitored reintegration into the community, which we all know is part of the system, and instead will encourage treatment avoidance, eventually followed by possibly untested and unsupervised release situations.

The bill does not, as currently framed, accord with treatment science, risk-prediction science, or fiscal prudence. It will see more mentally ill offenders in jail and untreated. It's based on no evidence.

I've been watching the committee's work with interest, on CPAC, and it seems to me that many of the speakers who you get in, many of the very compelling situations that you're confronted with, are actually dealing with how an offender gets into a system, with how he or she gets the NCRMD verdict, as opposed to any evidence of problems with the system once the offender is in. There is no evidence that there is premature release, or of recidivism, once the person is in the system under the very careful scrutiny of the review board, so we feel that the bill has the potential, at least, to make the community less safe.

I'm not going to quibble with the highlight on public safety. I could name at least five Supreme Court judgments since 1999 that make that absolutely clear, but I understand the codification argument.

The additional criteria of “necessary and appropriate in the circumstances” replacing the “least onerous and least restrictive” criterion really has no sensible meaning. It is vague and fraught with interpretation difficulties. I think it encourages detention and restriction disproportionate to the individual's actual assessed risk.

The definition of “significant threat” and the other criteria in the new provision have at least five different definitions of risk, from significant, to substantial, to risk simpliciter. I really think that is a real challenge to consistent interpretation. The definition of “significant threat”, which is of course the threshold determination that we have to make in every single case, converts probability, to possibility, to risk simpliciter. In other words, any risk whatsoever may serve to detain. I think that will impose detention in cases of minor or even speculative risk and will also encourage the utilization of costly thousand-dollar-a-day hospital beds beyond the point when they are actually required to manage an individual's actual presenting risk.

The “high-risk accused” designation must be applied for before absolute discharge. It applies in defined “serious personal injury” offences, which in my view would be indictable offences possibly requiring more jury trial, burdening our justice system. It also requires the “substantial likelihood” of future violence, endangering “life or safety”, and also considers the brutality of the index offence. Risk assessment literature will tell you that brutality or past behaviour is not a good predictor in terms of the severity of recidivism. It just doesn't capture the essence, we think, of what you're trying to achieve, or the kinds of outlier cases that are actually mobilizing this particular bill.

● (1615)

I won't speak to the 36-month provision. I do think the requirement to go back to court to stop the high-risk designation will mean that once a person comes back from the court with that designation revoked, it may actually mean he's entitled to an absolute discharge when he or she gets back to the board. I think that's problematic.

I should say that courts are not experts in risk prediction. Courts look back. They try to assess evidence to see if something happened, if an offence occurred beyond a reasonable doubt. The review boards, with psychiatrists and with community members already on them, are the experts in future risk prediction.

We have no quarrel with particularly the victim provisions, although I should say that those provisions have been around since 2005 in Ontario and B.C. Every victim is provided with notice initially, with an option to continue to receive notice of hearings or to waive that. Since 2005 not a single victim has asked to read a victim impact statement in B.C., even though they're constantly being provided with notice and a brochure of their rights.

Finally, we think there's no persuasive evidence that the current system is wanting.

We think it's charter challenge rich. It sacrifices proportionality. It drifts, unfortunately, from treatment to punishment, and the three-year term may actually decrease scrutiny of the most dangerous and most concerning individuals in the system. The bill is also, I should say, at odds with the Mental Health Commission's own study on recidivism by mentally disordered offenders.

I'd like Justice Schneider to have some time.

● (1620)

The Chair: You have four minutes, sir.

Mr. Justice Richard D. Schneider (Chair, Ministry of Health and Long-Term Care, Ontario Review Board, Review Boards Canada): Thank you, Mr. Chair, for inviting me here to make submissions to the committee.

At the outset, I should indicate that I endorse fully and echo the submissions of my colleague Bernd Walter.

I'll speak very generally, in a broad fashion, about the three or four main areas of the bill.

With respect to the new enhanced notice provisions to victims, the review boards of Canada really take no position, but would note parenthetically that it seems to be antithetical to some of what's been in the media about victims' desire to be less engaged and not revictimized annually. This set of provisions, to our mind, drags the victims into the system and enmeshes them more fully. In Ontario we have a system where the victims can waive off future notices, and that is indeed where many of them, if not most, go. They do not wish to be further engaged or enmeshed in the system.

With respect to public safety as a paramount concern, as Bernd Walter has indicated, that has been the law for a decade or more. The review boards take no position with that.

With respect to the threshold of “least onerous and least restrictive” being replaced by “necessary and appropriate”, we note that it's a conjunctive test, which most of the academics find puzzling more than anything. When would something be necessary but not appropriate, or the opposite?

The real problem, to our mind, comes with the “high-risk accused” designation. It's with respect to this that there is grave potential for the amendments to actually, contrary to their purported aim, make the public much less safe rather than more safe.

One must remember that individuals who are prospective HRAs are individuals who have elected to avail themselves of the NCR defence. By putting into part XX.1 provisions that might, for a lack of a better way of putting it, appear frightening to the accused—for example, the prospect of being locked up in a hospital, where clinically contraindicated, for up to three years with no opportunity for review—you will inevitably find many accused not availing themselves of the NCR defence. The result of that, of course, is that they will take their chances, take their lumps, in the regular prosecutorial stream. That same individual who might otherwise have gone through part XX.1 in the review board system will one day be dropped out onto the street with no supervision, no gradual reintegration, no treatment.

That, Mr. Chairman, is a much more dangerous situation. The potential here is that the amendments will scare individuals who are presently being very well looked after, and whose reintegration into the community is a very carefully monitored, titrated process, out of that system and into one that would simply have them out onto the street, with no controls in place whatsoever. As Mr. Walter indicated, this is in no way a contest between those who are for public safety as opposed to those who are for accused rights. All professionals engaged in the system recognize that public safety is the paramount concern. That is our collective objective. Our submission is that the amendments proposed in Bill C-54 will, however, take us the wrong way down that road.

● (1625)

The Chair: Thank you for those presentations.

We will now go to our rounds of questions.

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

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

Thank you to all the witnesses for being here today.

I especially thank you, Mr. Shreeve, for your testimony. Thank you as well for your courage in sharing your story with us. It helps us understand more in terms of victims.

Ms. O'Sullivan, you mentioned the fact that you want victims to be more informed, and we have procedures here. Do you think victims would also want to know, for instance, where the residence of the accused is once they are released? Is more information better for the victims? If they want to have it, is it something that would be beneficial for victims?

Ms. Susan O'Sullivan: You have touched on something very important, which is that victims need to feel safe. As you know, what determines how a victim feels safe will differ for different victims. You've already heard from many witnesses before this committee about that need to feel safe, and that includes information you have heard from witnesses who have come across the accused in the community, and they weren't even aware that the accused was out.

If we're going to ask victims to have confidence in the system, we need to make sure it's transparent and that they have the information they need so that they don't run into an accused in the community when they aren't even aware. As I said in my earlier testimony, I know many provinces, but not all, have notification systems in place, usually through victims services. This is the information I received from the Policy Centre for Victim Issues. For example, I know in one of the territories they don't. In others they are working toward that, and on a positive note, many of the provinces that don't have that system in place are working to do that.

We want to ensure that the victims are going to have confidence in the system, that they are informed. I won't go through the recommendations that I made in my testimony again, but all those issues about ensuring they feel they are included and are informed.

Mr. Hoang Mai: Thank you very much.

Justice Schneider and Mr. Walter, can you explain to us how the review board works with the court decision? If we give the final decision to the court but the court has the possibility to engage with the review board and listen to what the review board has to say in its decision, is that something you would be comfortable with?

Mr. Justice Richard D. Schneider: I don't understand the question.

Mr. Hoang Mai: When you evaluate the accused and there is a review decision, according to this bill, the decision comes to the court at the end of the day. The court makes a decision in terms of—

Mr. Justice Richard D. Schneider: Is that with respect to high-risk accused?

Mr. Hoang Mai: Exactly. Do you feel comfortable if the judge makes a decision in discussion with the review board?

Mr. Bernd Walter: The review board is a judicial body, chaired by a justice or a retired justice or someone eligible to be a justice, so it is invidious for two judicial bodies to be speaking to each other. Certainly the recommendation around revoking high-risk designation will be made by the review board, but for these two decision-making bodies to speak to each other, I can't quite understand how that would work.

Richard, maybe you understand the question differently.

Mr. Justice Richard D. Schneider: No, I don't think I have anything to add. I'm sorry.

Mr. Hoang Mai: Would you be in favour of giving more power to the review board, or making the final decision the review board's instead of the court's?

● (1630)

Mr. Justice Richard D. Schneider: The review boards currently handle these accused, as you know, and there is no suggestion or no evidence, no data whatsoever, that those individuals who, under the proposed amendments, might become HRAs.... There's no suggestion that this group of individuals is currently not being handled in a very appropriate manner. I don't see the advantage of bringing two judicial bodies into the fray, especially when there's no suggestion that the way things are currently operating is defective in any way.

Mr. Bernd Walter: There's no evidence that people are being released prematurely.

The Chair: Okay, thank you very much.

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

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

I guess that every one of the witnesses recognizes that this legislation is founded on two basic premises. The first one is making the security of the public the paramount consideration in releasing the not criminally responsible. I think everyone agrees on that. Of course, the second one is the involvement of the victims and their being informed.

In New Brunswick, for instance, at least when I left in 2011, the mental health commission was not chaired by a judge, so in essence, one of the things this legislation tries to accomplish is to ensure uniformity. I notice that both Judge Schneider and Mr. Walter said they agreed on the codification of security of the public being the paramount principle, the foundation of this thing. That's why it's there.

In New Brunswick I don't believe we have a judge sitting on the mental health commission. Do you believe this codification would be useful if only to serve the purpose of uniformity, making sure it's an overriding principle that is considered in all cases?

Mr. Justice Richard D. Schneider: Sir, as we were saying, that is the law today as we speak. Codifying the common law will not change the law in any way. It's for that reason that the review boards take no position on that amendment to section 672.54. The Supreme Court of Canada has told us—

Mr. Robert Goguen: You mean Conway.

Mr. Justice Richard D. Schneider: Various decisions through courts of appeal and the Supreme of Canada over the last decade or more have underlined that, of the four considerations at the front end of section 672.54, safety of the public is paramount. I can tell you, sir, that was the board's reflex prior to that articulation by the courts. So we take no position, because that is indeed the law. It won't change tomorrow if that's codified. As well, it's the way the review boards have always operated.

I might have missed your point, though, on the fact that some of the provincial or territorial review board chairs may not be judges. I think it's about half and half presently.

Mr. Robert Goguen: That's my point. They're not all presided over by judges of a superior court of what have you. If anything, my thought is that—and perhaps this is stating the obvious—not everyone is as well versed as a judge is in the actual state of the law.

Mr. Justice Richard D. Schneider: I don't know. Frankly I really can't say that when I was appointed to the bench I became more of a legal scholar. That may be the case. The chairmen of the provincial and territorial review boards are, by a statutory definition, either superior court justices, retired superior court justices, or individuals qualified to be superior court justices, which of course in Canada means lawyers with a minimum of 10 years' experience.

I take your point, but I really can't comment as to whether jurisdictions that have a judge as a chair are doing better on the legal front than are jurisdictions that don't.

Mr. Bernd Walter: For the record, sir, I've been chairing the review board for 17 years, and I'm also chair of the B.C. Human Rights Tribunal, and in our province at least, we probably do more business than the average court registry. While I have no objection to having a judge at the helm of the review board in our province, I think I've written my share of decisions that have withstood scrutiny at the Supreme Court of Canada and elsewhere.

Mr. Robert Goguen: Not to split hairs, but Mr. Justice Schneider is deemed to know the law, and the commoner, or perhaps the one who is maybe a lawyer, who's not a judge, is not deemed to know what the law is. On appeal sometimes that can be helpful, but that's really splitting hairs.

Thank you.

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

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

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

I'll begin with a question to Ms. O'Sullivan. It's good to have you with us, and I thought the testimony on all sides was very helpful.

During these hearings the committee has had the opportunity to hear from the victims themselves. Their testimony has been very moving and compelling, as we've heard today, particularly given their profound emotional attachment to the issues, and understandably so. But what I've noticed is that people, as we've heard today again with Mr. Shreeve, are not out for revenge. Indeed, while concerned, again understandably, with the needs of the victims and the need for public safety, they also recognize the importance of effective treatment for the mentally ill, including NCR-accused. At the same time, the mental health and legal groups who oppose this bill have demonstrated as well genuine compassion for the victims, while acknowledging the need for public safety to be, as our witnesses said today, in the legislation itself.

Do you believe that with consultation and good faith on all sides we can devise a framework, a system, that could meet with the general approval of all concerned?

● (1635)

Ms. Susan O'Sullivan: I think that when you talk about victims of crime—as I spoke to earlier, and I think everyone here has heard this at the committee—when it comes to public safety being paramount, and when it comes to more information for victims so they can have the information they need to feel safe, there is a consensus around that. What we hear where perhaps there is some divergence.... You've heard from many victims before this committee that in order to feel safe they feel the high-risk designation is important to them.

My answer to you is that what makes victims feel safe is something that is unique to those victims. They're going to come from their own experience. Many of the victims here have said they feel the high-risk designation is important, yet we've also heard from a victim who feels another way. What we all strongly support is that people with mental health illness in our communities across this country need to have the supports in place to ensure, in a timely way, that hopefully we can prevent any tragedies from happening in the future. So particularly when it comes to information, and it comes to the views of victims, they also need to have choice and options. I know there was a comment made here that most victims don't ask for the information. I will also tell you that I speak to victims across this country who aren't even aware they have the rights to access certain things.

That was my comment about needing to ensure consistency across the country. You are right to say some victims will choose not to participate in that. But in order to make that choice they must know about it. They must know what their rights are. They must know what they have access to. We also carry that responsibility. I did speak to the fact that it was provincial and federal.

To answer your question, we all have to continue to work. Legislation is one piece of what we're trying to do in this country to ensure healthy and safe communities. Victims will come from their own unique perspectives. You have seen that before this committee as well in terms of your question.

I would say that, yes, we all need to continue to work beyond legislation to ensure that in our communities we have supports in place for people with mental illness but that we also continue to have a victims' lens, continue to ensure they have the information they need, and that they can participate fully in the process.

Hon. Irwin Cotler: I have a quick question to either of the justices. The new high-risk designation created by this bill can only be imposed by a court and removed by a court. Is that appropriate, or in your view should review boards have the authority to impose and remove the designation themselves?

Mr. Justice Richard D. Schneider: As you may have gleaned, we don't think there should be the designation. Assuming the designation holds and the bill is amended somewhat, then for the reasons given by Bernd Walter earlier, and the awkwardness, if you will, of engaging two tribunals in one process, I would think all of it should be left to the review board.

The Chair: Thank you. Our final questioner for this panel, from the Conservative Party, is Mr. Albas.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you. I want to thank all of our guests here today for their testimony. Specifically I'd like to talk about the high-risk accused category, as well as some of the therapy that the review boards....

Justice Schneider, I'm going to start with you.

First of all, the application that is made for someone to be designated high risk is made from the crown asking for that application. Obviously they would do this in what they would believe would be the public's interest. Is that correct?

● (1640)

Mr. Justice Richard D. Schneider: I would trust so. I would expect the prosecutors are always operating with that as their guiding light.

Mr. Dan Albas: Second to that, a justice like yourself would then take in all the testimony of evidence from the crown, from the defendant, from experts. Then, just as the case is right now with not criminally responsible, they would make that choice based on the application. Is that not true?

Mr. Justice Richard D. Schneider: They would—

Mr. Dan Albas: Whether we're talking about NCR as a designation, or what I would say is a new tool that the crown can put forward in the public interest, which I would also say would empower the court for the high-risk accused…. That would be an additional empowerment of the court, would it not?

Mr. Justice Richard D. Schneider: It would just be the same. The courts now, for example, can make the initial disposition upon a verdict of unfit or NCR.

Mr. Dan Albas: In my mind, if they can give the designation of NCR—going back to Mr. Cotler's point—it seems to me reasonable that if they can set the conditions they would also be the receiving agency to release that and allow the review board to take it from that.

Let's switch gears and move on to the therapy comments of Mr. Walter.

Mr. Walter, you said you had some issues that this could actually prevent proper therapy of someone who's designated this, and is NCR. Sir, have you read the bill?

Mr. Bernd Walter: Yes, sir.

Mr. Dan Albas: On page 7, I'll just read it to you then:

> (3) If the court finds the accused to be a high-risk accused, the court shall make a disposition under paragraph 672.54(c), but the accused's detention must not be subject to any condition that would permit the accused to be absent from the hospital unless

—and this is where I get to the point—

> (a) it is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital for medical reasons or for any purpose that is necessary for the accused's treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and
>
> (b) a structured plan has been prepared to address any risk related to the accused's absence and, as a result, that absence will not present an undue risk to the public.

Would you say, sir, that this does address that therapy is important under this bill, but also that those people who are designated will work under a structure that also keeps in mind safety? So again, it balances the two. Is that fair to say?

Mr. Bernd Walter: If I may, I'd like to address your previous comment.

Mr. Dan Albas: Actually, sir, I'd like you just to focus on the task at hand.

Mr. Bernd Walter: Yes, NCR and HRA actually pertain to the same person. So a person gets NCR first and then gets HRA. Okay? Both of those—

Mr. Dan Albas: Would both of those allow for that balance, though, to have a structured plan and to have someone be escorted under the direction of the director of the hospital? Do you think that's a balanced way to approach this to make sure that person receives therapy?

Mr. Bernd Walter: Well, for the three years of that initial designation—

Mr. Dan Albas: I'm glad you've brought up the three years, sir, because you actually have, under the current Criminal Code, in section 672.81(1.2):

> (1.2) Despite subsection (1), at the conclusion of a hearing under this section the Review Board may, after making a disposition, extend the time for holding a subsequent hearing under this section to a maximum of twenty-four months if
>
> (a) the accused has been found not criminally responsible for a serious personal injury offence;

So right now you have that authority. This would just allow an extra 50% of what is currently mandated. It's up to but does not necessarily negate the flexibility of a review board. Again, it's up to 36 months.

Could you just state that—that there's currently a 24-month timeframe that you can extend up to 36 months?

The Chair: I'd like you to leave him a chance to answer. Your time is going to be up in a few seconds.

Mr. Dan Albas: Thank you, Mr. Chair.

Mr. Bernd Walter: There are so many questions there, I don't know how to answer other than to comment on the section you read to me about those very restricted times when a person can actually go out. For three years there's no less restriction on somebody's liberty. So they're not tested the way they currently are, and we're saying that spectre will cause people to avoid the NCR verdict and opt for a brief jail time as opposed to getting treatment.

The Chair: That's your time, sir.

Thank you, Mr. Albas.

Thank you, witnesses, for your presentations.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): I was invited by the committee. Am I allowed to ask any questions?

The Chair: I'll explain it to you.

The answer is no. The invitation was for you to sit and listen to the witnesses as an independent. If an independent wishes to ask a question of a witness within the timeframe, a party that has standing can give its time to you, or a motion can be passed by the committee to give you time. I obviously will respect the will of the committee, but in this case that did not happen in this first hour.

So thank you, witnesses, for coming, and we will suspend for two minutes while we get the next panel in place.

● (1640)

(Pause)

● (1645)

The Chair: I'd like to call this meeting back to order. It's our second panel.

While the panel is getting set up, I will let just let you know, as I'm sure members are aware, that the bells will start ringing at five o'clock. Our tradition during this study is to continue to sit through the bells.

My goal is that each group will get 10 minutes. We'll get through that and then we'll have to break to go and vote. It will take about eight or nine minutes to actually vote and get back here. Then we'll do one round of questions, as we have done with every panel.

If everybody is ready, our first panellist is Ms. Christine Russell, appearing as an individual.

Are you ready to go, Ms. Russell?

Ms. Christine Russell (As an Individual): Yes, absolutely.

The Chair: You have 10 minutes.

Ms. Christine Russell: Thank you.

Bonjour. My name is Christine Russell. Exactly two and a half years ago, my husband, Toronto police sergeant Ryan Russell, was murdered. At 34 years of age, I became a widow. Our two-year-old son Nolan lost his dad, perhaps the biggest crime of all. I'm going to show you a picture of my husband Ryan.

On January 12, 2011, Ryan was on duty, doing what he loved most: serving and protecting the people of Toronto. That morning, a man named Richard Kachkar stole a snowplow and went on a rampage. Richard Kachkar deliberately aimed the snowplow at Ryan and his police cruiser and drove into him. Ryan was dressed in full police uniform, and his police car was marked and had the lights flashing.

Ryan was killed in the line of duty. He was left to die alone on Avenue Road, while Kachkar drove off, continuing his acts of violence. When the snowplow was finally stopped by the emergency task force, Kachkar attempted to continue driving. Police tasers did not stop him. The only thing that stopped him that morning was being shot. This is how dangerous and violent Kachkar is.

Richard Kachkar's actions that day have led me here to speak to you about my loss and my experience, the impact this has had on me and my family, and the legal process concerning a verdict of not criminally responsible.

My husband Ryan was murdered. I was told this in the hospital, without any friends or family at my side. I was not allowed to touch Ryan, as his body was a crime scene. My family was immediately thrown into the public spotlight, and they continue to be. My life was in chaos, as I had to plan a funeral and handle all of the affairs. I did not return to work, as I had to care for my own well-being and for our two-year-old son, who is now growing up without a father. My life was put on hold in waiting for the trial to begin. It consumed me and caused me to grieve again.

On February 4, 2013, Richard Kachkar's first-degree murder trial began. Throughout the seven-week trial, the life of the accused was in the forefront. I had to endure hearing my husband's voice for the very last time. The last words he ever spoke were: “He's coming at me, hold on.” Painfully, I had to view the dashboard video of the crash, and I had to bear the graphic description of his severe injuries and relive these moments as they were replayed in the media.

On March 27, 2013, the jury found Richard Kachkar not criminally responsible for murdering my husband. Kachkar was 44 years old when he killed my husband. He had no history of mental illness and no diagnosis of mental health issues, yet there he was, not criminally responsible for murder.

Digesting this verdict has been very difficult. A verdict of not criminally responsible has far too many loose ends. There are no set guidelines or terms, no punishment, no accountability, and no criminal record.

Thirty days after Richard Kachkar was found not criminally responsible, he came before the Ontario Review Board for his first review board hearing. We were told that there was an agreement between the Attorney General of Ontario and the Kachkar defence attorney. The joint submission provided that Kachkar be detained pursuant to a detention order in the secure forensic unit at the Ontario Shores Centre for Mental Health Sciences in Whitby, with only hospital and hospital grounds privileges. There were to be no privileges to enter into the community.

The considered joint submission of the crown and the defence acknowledged and recognized that Richard Kachkar was dangerous and that he represented a significant threat to public safety and required a psychiatric assessment and treatment in a secure detention setting. That would occur over the next 12 months before a different disposition could be considered, if at all, at his next review board hearing.

We were quite concerned that Kachkar, having murdered my husband, was being sent to a medium secure facility rather than the maximum secure facility in Penetanguishene. We were powerless to influence this. We had to accept this joint submission. We thought that, at the very least, spending a year at a maximum secure facility until the true nature and the degree of his mental illness were assessed made sense.

At the hearing, I, along with my parents, Ryan's dad, and a representative of the Toronto Police Service, was finally given an opportunity to read a victim impact statement. We were not permitted to read victim impact statements at the trial because of the verdict of not criminally responsible. All of our statements were scrutinized and edited before the hearing, so as not to offend Mr. Kachkar. It just added insult to injury to not be able to truly voice our hurt and our pain.

● (1650)

I was appalled that the board was entirely unaware of and insensitive to the expectation that I had to actually sit next to my husband's murderer, only two feet away, while delivering my victim impact statement. Review boards should be alert to this painful and extremely uncomfortable dynamic.

On April 29, 2013, the Ontario Review Board delivered its disposition. I was stunned to learn that the board went beyond the joint submission without once questioning or challenging the joint submission and without ever alerting counsel for the Attorney General that the board intended to give privileges that Kachkar did not ask for. The Attorney General of Ontario did not have the opportunity to address the public safety issues and call evidence on the issue.

Notwithstanding that, the board agreed that Richard Kachkar was dangerous and represented a significant threat to public safety; he suffered from a major mental illness, namely psychosis not otherwise specified; he was paranoid and likely schizophrenic; and his major illness was complex, with much remaining unknown.

At the sole discretion of hospital staff, the board authorized Kachkar to enter the community of Whitby, either escorted by hospital staff one on one or escorted by hospital staff with one or two staff for five patients. These are hospital staff, not security guards or armed guards. If Kachkar takes off, all they can do is call 911, and this is a man who could only be brought down by bullets when tasering failed.

This is an absolute insult to my husband, an insult to me and my family, an insult to the police community, and an insult to our public. This is precisely the nonsense that creates public cynicism and disrespect towards the administration of justice.

The crown is appealing the decision, but it does serve to illustrate a serious and systematic problem. There is no public trust or confidence in this review board system when the board feels free and unrestrained to do as it pleases. After only 30 days post-verdict for Richard Kachkar, the man who brutally murdered my husband, left my son without his dad, and shattered our lives forever, this review board put him on a fast track to being discharged without proper diagnosis or any understanding of his mental illness.

You all need to understand how critical and essential it is for victims to attend review board hearings and read our victim impact statements at each annual hearing, year after year. To do otherwise is to abandon our loved ones and risk that the review board process becomes an academic exercise.

Victim impact statements provide for a critical reality check. Perhaps my family will be spared the trauma of annual review board hearings, because the board may be intent on only a short period of detention—an injustice in and of itself—but the issue of yearly reviews needs to be addressed. The victims of these violent and destructive acts need to have rights, and need to stop being revictimized. Changes are necessary to restore a level of trust and confidence in our justice system.

Bill C-54 is a necessary step in the right direction, particularly with the new designation of a high-risk offender. As you know, not all offenders are the same. People who murder police officers are not your typical “not criminally responsible” offenders. They need to be treated differently. A heightened level of security and scrutiny is necessary. The time they spend in secure detention for assessment, evaluation, and treatment for their own good and for public safety must be proportionate to the severity and brutality of their crime.

My husband is dead, and my child is fatherless. Whether Richard Kachkar was sane or insane does not matter; it will never change that fact. Either way, he is dangerous. The public has the right to be protected and feel that it is being protected. Without these changes, the public confidence and respect for this process evaporates, and the system continues to fail.

Thank you.

● (1655)

The Chair: Thank you, Ms. Russell, for sharing your story with us.

Our next presenter is Mike McCormack from the Toronto Police Association.

You have 10 minutes, sir.

Mr. Mike McCormack (President, Toronto Police Association): Good afternoon, everybody.

My name is Mike McCormack. I'm the president of the Toronto Police Association, where I represent 8,000 members of the Toronto Police Service.

First of all, I'd like to thank the Standing Committee on Justice and Human Rights for the opportunity to address the committee and to voice my association's and my membership's support for the proposed amendments to Bill C-54.

Before I start, I'd just like to put into context some of my comments regarding my support and my association's support for this bill. I'm just giving you a little bit about my background so you understand where I'm coming from.

I've been a police officer for almost 30 years. I've worked in the most difficult communities in downtown Toronto. A large percentage of the people living in these communities are living with mental disorders. I know first-hand the difficulties that the mentally ill deal with on a day-to-day basis and the challenges that police officers face when we are responding to persons who have mental illness issues.

I worked in 51 Division for most of my policing career. I've worked closely with the community, responding to crime issues, including drug trafficking, prostitution, gang activity, violent street crime offences. As I said, this area is home to a large transient population, families living below the poverty line, and individuals and their families dealing with problems created by substance abuse and treated and untreated mental illnesses. We have numerous halfway houses, hostels, shelters, and the police work closely with this community and with our partners in responding to the community's needs.

As a police officer, I have been directly involved in responding to the needs of the mentally ill. My experiences range from assisting mentally ill people in acquiring basic needs, such as food or shelter, to arresting or being in violent confrontations with people who are mentally ill simply because they had no access to medication and have committed violent criminal offences in a psychotic rage.

I share this information with you just to give you some context of my support and my association's support for the proposed amendments to Bill C-54. I'm going to reiterate some of the stuff that Christine spoke about involving one of our members, Sergeant Ryan Russell, and an offence committed against him by a person suffering from a major mental disorder. This is the case of Richard Kachkar, and as I said, Sergeant Ryan Russell.

As you heard, on January 12, 2011, Ryan died in the line of duty. He was standing in uniform beside his police vehicle, emergency lights flashing, when Richard Kachkar murdered him. Mr. Kachkar was arrested, charged, as you heard, with first-degree murder in Sergeant Ryan Russell's death. During a highly publicized trial, the jury found Mr. Kachkar neither had the mental capacity to appreciate the nature of the act, nor did he know that the act was wrong, and he was found not criminally responsible.

The evidence that we heard at the trial confirmed that Mr. Kachkar suffered from a major mental illness at the time of Sergeant Russell's death and that he suffered from depression, schizophrenia, and he may have suffered from a personality disorder.

In February 2013, Prime Minister Stephen Harper announced the introduction of Bill C-54, the not criminally responsible reform act. It appeared to us that the primary objective of this bill is to ensure that public safety is and should be a priority in the decision-making process with respect to accused persons who are found not criminally responsible. This would be a way to enhance victim safety and promote greater victim involvement in the Criminal Code mental disorder process.

First of all, I'd like to say the police association supports the reforms that Bill C-54 will make and agrees that public safety is and should be the overriding consideration when decisions are made about persons found not criminally responsible by the courts. The public has a right to feel safe in their communities and to be protected against dangerous and violent offenders like Mr. Kachkar.

Second, the association supports a new high-risk “not criminally responsible” designation introduced by Bill C-54, which proposes to allow the courts to designate the most violent not criminally responsible offenders as high risk. The NCR defence is rarely used. It appears only in two out of every 1,000 criminal cases and is less commonly linked to violent offenders, who account for an estimated 10% of all NCR cases. The high-risk NCR designation would only apply to the small number of accused who have been found not criminally responsible and who pose a higher threat to public safety.

● (1700)

The Hon. Rob Nicholson provided some interesting facts in the House of Commons debate on March 1, 2013, about persons found not criminally responsible, when he stated that:

> A little over 27% of individuals found not criminally responsible have had a past finding of not criminally responsible; 38% of those found not criminally responsible and accused of a sex offence had at least one prior NCR finding; 27% of those accused of attempted murder had at least one NCR finding; and, 19% of those accused of murder or homicide had at least one prior finding of not criminally responsible.

Under the proposed amendments to Bill C-54, high-risk offenders would not be discharged unless a court agreed to lift their high-risk designation, which we agree with; would be ineligible for unescorted passes into the community; and their mandatory review period could be extended from one year up to three years.

Having seen first-hand the revictimization of our victims going through this process year after year, we support all these amendments. The association endorses the enhancement of victim safety and victim involvement in the mental disorder process. This bill gives victims of crime a greater role by requiring that the courts and review boards consider the safety of the victim when they make decisions with respect to persons found NCR, and require the review board to notify the victim, upon request, if the accused person is to be released into the community.

I recently attended the ORB hearing with Christine and her family. I sat there for hours wondering what weight the victim impact statement currently had in this process, and I couldn't find any.

On April 29, 2013, after hearing his case, the review board ordered Mr. Kachkar to be sent to Ontario Shores Centre for Mental Health Sciences. This exposed serious systemic problems and serious flaws in the current review board system. The board was unanimous that Richard Kachkar suffered from serious mental illness and represented a significant threat to public safety. During the course of the hearing, a board psychiatrist asked Dr. Klassen, vice-president of medical affairs at Ontario Shores, why he was recommending putting Mr. Kachkar on anti-psychotic drugs at this time, 30 days after the NCR verdict, keeping in mind that this was not done in the previous two years that Mr. Kachkar was in custody, pending trial for Sergeant Russell's death.

In the absence of proper assessment, the review board gave the hospital—and this is key—the power to give Mr. Kachkar privileges in the community, escorted and accompanied by hospital staff. The hospital medical staff were going to be escorting this gentleman into the community if they felt they should do that—not security, not police.

The proposed legislation outlines that a high-risk NCR person would not be allowed to go into the community in this instance, and that they would not be able to go either unescorted or escorted, and only would be allowed in narrow circumstances, and subject—and this is key to us—to sufficient conditions to protect public safety.

What we found absolutely shocking was that these were conditions that Mr. Kachkar's counsel had not asked for, and they were granted without the understanding of the depth of his mental illness. He had not even been fully diagnosed. His mental health issues were major and he represented a significant threat to public safety, yet the ORB was going to allow him into the community.

Our concerns are that without discussion and without evidence, this is the way the board was behaving. He was going to be allowed back into the community in 30 days. In considering Bill C-54, we urge you to look at providing further statutory guidelines to the review board—the issues of public safety as well—guidelines that establish proper evidence-based balance between the need to protect the public and the requirement to treat people with mental illness who commit criminal offences.

The Toronto Police Association supports the initiatives reflected in Bill C-54. We are not insensitive to the difficulties of persons living with mental illnesses. We understand first-hand the devastating impact that mental illness has on the mentally ill, their families, their communities, and in this tragic case, Sergeant Ryan Russell, Christine, and her family, who became unwitting victims in this struggle with mental illness.

● (1705)

This bill does not target persons with mental disorders, those whose illnesses are non-threatening to others, nor does it seek to impose punitive consequences on persons found to be NCR due to mental illness. This bill speaks to the people who commit horrendous heinous crimes and who, like Mr. Kachkar, are found to be NCR.

We in the policing community are committed to protecting our communities. Our challenge is to find a way of reducing the potential for those found NCR to reoffend as well as to protect future victims.

As key stakeholders in the mental disorder regime, we want to ensure that people are taking their medications, that they do not have contact with victims, and that there is a support system in place to monitor mental health and reduce the likelihood of reoffending.

At least through the core process there should be an ability to impose conditions to assist in these protections—conditions that may include boundaries, living arrangements, participation in treatment plans, abstinence from illegal drugs and alcohol, and conditions to stay away from victims to prevent their revictimization.

● (1710)

The Chair: Wrap up please, Mr. McCormack.

Mr. Mike McCormack: Under the current NCR there is no ability to impose these conditions upon release. The proposed reforms are designated to protect the community and to protect the person suffering from the mental disorder from themselves.

Thank you.

The Chair: Thank you, sir.

As you see, ladies and gentlemen of the committee, the bells are ringing. According to my BlackBerry time, they started ringing at 5:02. It is 5:10 now, so that's eight minutes. I need unanimous consent to continue. I would like to hear our final witness and then we can decide what we do after that.

Is that agreed?

Some hon. members: Agreed.

The Chair: Very good.

Ms. Illingworth, you have 10 minutes. The floor is yours.

Ms. Heidi Illingworth (Executive Director, Canadian Resource Centre for Victims of Crime): Thank you.

I represent the Canadian Resource Centre for Victims of Crime and I'm grateful for the opportunity to appear before you this afternoon.

The CRCVC is a national, non-profit, non-government advocacy group for persons impacted by serious crime. We provide resources and emotional support to victims across the country, as well as advocating for public safety and improved services and rights for crime victims.

We are pleased to support Bill C-54 today. Our clientele includes families and individuals impacted by persons who have been found not criminally responsible. We remain very concerned about serious acts of violence committed by this small population of offenders and their lasting impacts on victims.

We believe mental illness should be treated as a medical and health issue outside of the criminal justice system, so that patients are stabilized and no longer suffer from symptoms. But we are particularly concerned with medication compliance and the ongoing community supervision of forensic mental health patients.

We support the amendment that would make public safety the paramount consideration by review boards in their decision-making process. Although there have been Supreme Court rulings in this matter, we understand the current approach basically balances four factors, namely the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society, and other needs of the accused.

We support the proposed reforms to codify the meaning of the phrase “significant threat to the safety of the public”, which is the test stated by the Criminal Code to determine whether the review board can maintain jurisdiction and continue to supervise a mentally disordered accused. Consistent with the Supreme Court of Canada’s interpretation, the phrase means a risk of physical or psychological harm to members of the public resulting from conduct that is criminal in nature, but not necessarily violent. The codification aims to ensure more consistency in the application of this test.

We are very supportive of the measures that will enhance victim safety and provide victims with opportunities for greater involvement under the Criminal Code mental disorder regime, namely, ensuring that they are notified, upon request, when the accused is discharged; allowing non-communication orders between the accused and the victim; and ensuring that the safety of the victims be considered when decisions are being made about an accused person.

We understand that currently there is not always consistent interpretation and application of the law across the country. We particularly want to ensure that the information needs of victims are met. This means that they are informed about the accused if they wish, as well as having their personal safety concerns heard and understood by review boards.

Given our work with family members across the country who've been impacted by NCR rulings, we want to reiterate what we hear from the victims themselves, which is that they do not want what happened to them or to their loved one to happen to anyone else. Public safety is their primary concern.

In the most horrific cases, where serious personal injury or death has occurred, victims are often very upset by the fact that the accused person was free in the community prior to their offence and had not received proper help and treatment for their mental illness. They deteriorated. They were unable to recognize the early symptoms of their deterioration, and they caused serious harm or took a life. Victims are fearful that this cycle will repeat itself, especially when it comes to ensuring that the offender will remain on their medication for the rest of their life.

We support the proposed high-risk designation, which would be applied where the accused person has been found NCR and there is substantial likelihood for further violence that would endanger the public, or in cases in which the acts are of such brutal nature as to indicate a risk of grave harm.

We support the fact that they would not be granted a conditional or absolute discharge, and that the designation could be revoked only by the court, following a recommendation by the review board. We understand that this would apply only to those found NCR and not to persons found unfit to stand trial.

Lastly, we feel this amendment would only apply in a very small handful of very serious cases across the country every year, and that is our interest in supporting it as well.

We furthermore agree with the proposed amendment that the review board may decide to extend. We support this. It's not that they must extend the review period for up to three years, but they can choose to.

● (1715)

Again, we're pleased to be here. We're pleased that this high-risk designation would not affect access to treatment by the accused, as has already been discussed.

Thank you.

The Chair: Thank you very much for your presentation.

It is now 5:15. My suggestion—I'd be happy to have input—is that we recess, go and vote, be back in our seats at perhaps 5:45, and do a round of questions then. It would be cutting it pretty close if we started now.

I know that some of you may have flights or something, but if you don't, great. If you can stay until 5:45, we'll be back for a round of questions.

Thank you very much.

With that, we will suspend.

● (1715)

(Pause)

● (1745)

The Chair: Thank you very much. We're back in session now for this last round of questioning on this panel. Thank you to our witnesses for hanging around and waiting for us to come back. Our first questioner is from the New Democratic Party and it's Mr. Mai.

You have five minutes, sir.

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

Thank you, witnesses, for being here and especially thank you, Ms. Russell, for your testimony. I know it must be difficult, but it's really important for us to hear about it. Thank you for your courage and thank you for sharing.

My first question would be to you. In terms of knowing once the accused has come out, in terms of victims being informed, would it be important for victims to know where the accused lives?

Ms. Christine Russell: Absolutely. I find it very important. Right now he's being housed in a facility that is very close to where I live and where a lot of my friends are living and a lot of the police officers who work in Toronto live. It is a bit alarming that this person could be out walking around in the community where I and my son may be going.

I think it's very important to know, if that individual is released, what community they're going to be living in, not only for community members but for me and my family. I don't want my son, who's only four, to have to run into somebody who I've told him is in jail. I don't want to have to re-explain that.

Mr. Hoang Mai: Thank you.

Mr. McCormack, thank you for your work and thank you to all the police officers for being there. I think you mentioned it in your testimony, but I think it's important to really emphasize why you think it's important for the safety of the public to be a paramount consideration. We believe in public safety. Why is it also important for you that this be in the bill?

Mr. Mike McCormack: It's important twofold. Public safety should be overarching any type of legislation like this. This is what we're all about, protecting the public, and the public has a right to be protected. It's very important for victims to have that sense of protection and to have some meaning in this system. Quite frankly, as I said earlier, going through this with Christine and watching what was happening at the ORB hearing, I think the victim in the current situation is marginalized even further through the current process. Public safety is not of paramount importance in the current process.

Mr. Hoang Mai: Ms. Illingworth, I want to ask you the same question I asked Ms. Russell. In terms of information respective to the accused, what else do you think we should do in terms of helping victims? First of all, do you agree it's important to know the residence of the accused, especially if the victim asks for it?

Ms. Heidi Illingworth: Yes, absolutely. It's really critical information for a lot of people who want to have an assurance of where the person is or the vicinity. Sometimes you might just know they're in a city like Ottawa, for example, or they're allowed to travel into a city on a pass or for a certain escorted period, something like that.

One of the problems now within this system is that victims aren't notified each time a person has been given privileges from the hospital. For example, I was at a review board hearing yesterday In Brockville. We learned in that hearing that the person is in a community basically every day working at a local agency, and also that the hospital has given him privileges to travel to visit family members in a certain cottage region outside of Ottawa. The victim will not be notified each time he travels on a pass like that to visit family members.

That's concerning when you don't know where you might bump into someone, especially someone who's caused such serious harm to you or your loved ones.

● (1750)

Mr. Hoang Mai: We've heard that a lot from the victims who came to this committee also. Something that's not necessarily in this bill in terms of helping the victims more.... We talk about funds, but what else do you think would be required in general?

Ms. Heidi Illingworth: In terms of NCR-accused, right now it can be very difficult for family members to actually attend hearings on an annual basis because there is no travel fund, as there is for federal parole hearings. If you're a family member who lives in Ontario but an accused person was found NCR in Alberta and the hearing is being held in the hospital out there, you would have to travel on an annual basis and cover those costs to be present at the hearing.

There are issues like that. People want to be heard. They want to have their security concerns heard, especially. A lot of times right now it's a feeling that you get to present an impact statement but it's not really taken into consideration by board members, and that they have a plan, which is to reintegrate the person as quickly as possible, whether that is the best thing for public safety or not.

A lot of family members have concerns about that. It's not always a quick reintegration process. Just because they've been stabilized in a hospital, doesn't guarantee they will be compliant with their medication out in the community.

The Chair: Thank you very much.

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

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair. Thank you to our witnesses for coming today.

My first question is for you, Ms. Russell, and it's in regard to your testimony. You caught my ear when you said that your victim impact statement was actually vetted, edited and changed before you were able to present it.

Could you enlighten this committee on how that happened and why it happened? Were you told why it happened? Who did it? Who edited that?

Can you also explain any further to this committee why this bill is so important insofar as providing victims more of a role in this process?

Ms. Christine Russell: Absolutely.

If you're going up there, you wholeheartedly think that you can say your piece, say how this has impacted you. That is absolutely not the case, and it is just disgusting.

What happens is that you're supposed to prepare your victim impact statement ahead of time. There is a process wherein the review board gets it 14 days ahead of time, or as close to that as possible before a hearing. Counsel for the accused can review it. They can vet it. Your crown can vet it. If there's something in there that they don't like, such as the word “murderer” or “killed”, or anything that they think goes beyond the scope of the purpose, they can cut and paste, and edit or chop up all your personal information —all the things you really wanted to say from your heart.

It's so offensive. Not only was my statement cut, but so were my mom's, my dad's, and my father-in-law's. Even the one from the member of the police service who worked with Ryan was edited. It just goes to show you that even though you think you have a right as a victim, you really don't. You're playing a game. It's terrible.

Thank you.

Mr. Blaine Calkins: That's very important for us to know. Thank you for answering that.

Mr. McCormack, I'm assuming that as a law enforcement officer you've had opportunities to go to trial and be present in courts. Opponents of this legislation are attempting to make a case that defence lawyers will opt not to go the “not criminally responsible” route in order to get a different sentence, to avoid stigmatization and so on, citing that the three years is written in stone, when it actually isn't. It's up to three years.

From your years of service, or from discussions you've had with your numerous colleagues, do you think that argument actually holds water, that a defence lawyer would actually opt for the stigmatization of murder for their client rather than not criminally responsible?

● (1755)

Mr. Mike McCormack: First of all, it's not only with my colleagues; in my role as the association president, I deal with many others. We have counsel on staff, and I deal with many counsel criminal lawyers. We've had lengthy discussions on NCR and what it means, and the interpretation, trying to get some understanding of what that means.

I would only say that I would find it very suspect if a counsel would ever prefer to go the criminal route than an NCR route.

Mr. Blaine Calkins: It doesn't make sense to me either.

Mr. Mike McCormack: No. I would probably bring a notice to the law society about that counsel. That's how strongly I feel about that.

Mr. Blaine Calkins: Thank you. I tend to agree with you. That's been my experience as well, as a former law enforcement officer. Even though I never dealt with an NCR case, that doesn't hold water with what I know.

Ms. Illingworth, my last question is for you. We obviously need to ensure that victims are supported and not revictimized by the system. Do you think the changes we have proposed in Bill C-54 will reduce the revictimization for victims who go through this process? Does it strengthen victims' rights and the victims' ability to have a say and be protected by the legislation after a serious incident like this happens?

Ms. Heidi Illingworth: Yes, I think it is a definite good first step. I think there are more improvements that we can make. We've lent our support to this as hopefully improving the voice that victims have and ensuring their safety concerns are met. This is a good first step.

Avoiding revictimization altogether will be very difficult in any sort of criminal justice or mental health process, just by its nature. If they want to be there, they will be there and will want to speak to the issues they face. But if we can start looking at justice and these sorts of issues from the perspective that we need to do less harm to victims, that's a very positive thing.

Mr. Blaine Calkins: Thank you.

I have a last question, if the chair will permit it. Not only must justice be done but justice must be seen to be done, and I think the improvements we're making right now will do that.

Ms. Russell, you talked about the cynicism of society at large when we see folks like Vince Li, and of course, the fellow here—I'm not familiar with him—Kachkar, out on a day pass or something like that, soon after they've killed somebody. Justice is not seen to be done.

Do you think the changes we're making here will improve the public's perception about justice being seen to be done?

Ms. Christine Russell: Absolutely I do. I think society in general needs to know that Canadians, and people who are being victimized...that there are rights for them as well, not just for the accused. It seems to always go the way of the accused. It's time that victims and their families and society feel protected and that we take a stand on this. I feel very strongly about that.

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

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

Hon. Irwin Cotler: Thank you, Mr. Chairman. I'll be giving over my time to Ms. May to ask the questions.

The Chair: Okay, Ms. May, the floor is yours. You have five minutes.

Ms. Elizabeth May: Thank you, Mr. Chair, and thank you, Mr. Cotler.

First of all, thank you to all the witnesses for being here. Your evidence is very helpful.

Do any of you see anything in Bill C-54 as currently drafted to deal with the circumstance that Christine Russell described in which her victim impact statement was changed?

I don't see anything here in Bill C-54 that would change that process or protect victims from having that occur to their statements.

Mr. Mike McCormack: Could I answer that?

I think the overarching principle of the bill, in the introduction of the bill, sets forth the premise or the principle that victims' rights and the public's right to public safety should take precedence over any part of this bill or issue. It speaks to that directly, that the victims do have a larger role.

As a mission statement or a statement of facts, that definitely speaks to that.

Ms. Elizabeth May: I guess it's my law school background. I look at the bill and I know that the Supreme Court of Canada has already said that the paramount concern is public safety, and still that happened to Christine. So I'm just looking at ways we could improve the bill, based on your evidence, and that seems to me to be a hole.

I wonder if any of you or all of you want to comment on the testimony of Sue O'Sullivan as federal ombudsman for victims' rights. She spelled out a number of things. Frankly, until she listed them—and I look to my colleagues in the Conservative party as well—on reading the bill, I had thought those things were there. But I went back and looked, and she's right. There's nothing in the bill right now that says victims should be advised of the forensic facility location, that victims should be advised in advance of movements, that victims should be given advance information on release. You were here in the room when she testified.

Do you have any comment on whether you would support the amendments that Sue O'Sullivan suggested to improve Bill C-54?

● (1800)

Ms. Christine Russell: I am just starting to go through this process. I'm in Ontario, and I have been advised, notified by mail, when there are going to be appearances and where this person is, etc. I don't know if that's consistent across this country. I don't believe that it is, so far, and I think it is important to include that kind of information.

Mr. Mike McCormack: Yes, definitely, and again, I'm reading the excerpts of the bill on ensuring that victims are notified upon request when the accused is discharged, and—this one I think is a very important one—allowing non-communication orders between the accused and the victim, and ensuring that the safety of victims be considered when decisions are being made about an accused person.

I think they are all relevant points.

Ms. Elizabeth May: I'll state right now for the chair that I'm concerned. I want to be able to present amendments that would bring forward Sue O'Sullivan's amendments, but I was told the deadline for my amendments was a few days ago. I don't know how I am going to be able to bring them forward, so I'm looking to government members who perhaps can figure out a way to do that.

The last thing I want to ask is kind of hypothetical, because the witnesses who made the point earlier aren't here to help explain their point. I'm referring to Bernd Walter's and Richard Schneider's testimony.

Let me just try this with you, Mr. McCormack. Obviously, if somebody has committed a murder, it's very unlikely that they would throw themselves into the criminal system as opposed to the NCR system, or that a lawyer would advise that. But wouldn't you agree with me that for a lesser crime—not lesser in the sense necessarily of trauma; I'm not diminishing the nature of a crime—for a sexual assault, scary assaults of all kinds, where the sentence in criminal justice might end up being less than three years, and the offender looks at the risk on the NCR system...?

I think that's what I understood the other witnesses to be explaining, that you might end up having a lawyer say that your chances may be better to roll the dice and go into the criminal justice system, and then the offender is released without control, without their medications, and so on.

I wonder if you would see that as being a risk at all?

Mr. Mike McCormack: Again, I'll go back to my original point. I don't see it as a risk.

In seeing the system and what we're talking about, I don't know too many people who would throw up their hands and say “put me in a federal or provincial institution”, and that it's a great place to be and they're going to get better treatment than they would in a hospital.

Again, quite frankly, counsel has a fiduciary duty where there is a mental health issue to bring it forward, so I think counsel would be in breach of the fiduciary duties to their clients. I can't see that happening.

When you're talking about the stigma of being designated a high-risk offender, well, in Mr. Kachkar's case, for instance, it was undisputed that he murdered Ryan Russell, so what's the difference whether...? Is it, “Well, I don't want to be called a high-risk offender, but I'd rather be called a murderer”...?

Ms. Elizabeth May: Mr. Chair, I actually don't think that any of the other witnesses, and I can go back over the committee Hansard—

Mr. Mike McCormack: Sure—

Ms. Elizabeth May: —used the term “stigma”. I think what they were referring to was a question of public safety and whether there was a risk that there would be people who would not go into the mental health stream, given the extended period of time here.

There's one last quick thing, Mr. Chair, if I have time.

Would you agree with the federal ombudsman on victims' rights, Sue O'Sullivan, that we need to focus—as well as on changes to the NCR system—on prevention? Really, for public safety, that's a key piece, because obviously Mr. Kachkar wasn't in the NCR system. He wasn't known to the system.

Mr. Mike McCormack: Well, again, I think that's something that came up as a constant theme. Prevention is something that we deal with. That's why, when there are conditions in the criminal system, there are conditions put on somebody who's being released into the community, conditions to not go near what the triggers are for their violent behaviour, whether that's alcohol, drugs, or children, whatever it is.

That's why it's important that this legislation speak to this, to where there are certain conditions not to go near the victims. That's our interest in law enforcement. We don't want to have people reoffend. We don't want to be dealing with offenders and we don't want to be dealing with victims. I think this legislation speaks to that.

The Chair: Thank you very much.

Thank you for those questions and those answers.

Our final questioner for today is from the Conservative Party.

Mr. Wilks.

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

I thank the witnesses for being here today.

I want to continue this conversation and go down that road with regard to the NCR versus going through the normal process of the court system, because it actually came up with our last witnesses. I believe it was Mr. Walter who said that more people may opt to go the criminal route and go to jail. That's a confusing statement to me, because if someone is actually NCR, they need help. There's no one in this room who would argue with that. They need help.

But to say that they're going to get less time in the jail system is a complete fallacy, because the reality is that for first-degree murder it's an automatic 25 years and you can't get out.... It's as simple as that. To go further than that, under the dangerous offenders section, for anyone under sections 753 or 754 who is found with 10 years or more in a sentence, it's mandatory long-term supervision. It's mandatory.

So I guess here's my question to you, Mr. McCormack. In your years of service with the Toronto police force, from the perspective of those who are not criminally responsible as opposed to those who have gone through the normal jail system, have you seen that most who have been found NCR need to be there, as opposed to a defence lawyer urging their client to go through the criminal system “just because”?

● (1805)

Mr. Mike McCormack: Well, I think we just spoke to that issue. Again, I know that lawyers take an oath, and they have a responsibility to represent their clients. I think that, first of all, if there is a mental defect or a mental health issue, then it's that lawyer's responsibility to bring forward the appropriate defence. If they're not doing that, then they're not performing their fiduciary duties.

When you talk about going through the criminal system, there is a finite set of terms—as you've said, 25 years—and these are actual terms that people will have to serve. There is a totally subjective test in NCR—it might be this but it might not be this—and that's where we get into the uncertainty. Again, what does that look like? There is no certainty for the victims, and there is no certainty for the public.

Mr. David Wilks: Thank you.

Mrs. Illingworth, a couple of things mentioned in the last testimony jumped out at me. One was that past behaviour should not be taken into account or does not mean that the person is going to be commencing violence.

It's my belief, as a retired police officer, from looking at criminal record after criminal record, that violence does become more evident through that person's career in some cases—not all, but some. Would you agree with that statement?

Ms. Heidi Illingworth: I don't know that I have enough knowledge to speak about that. I understand that it's a risk reduction sort of model. Of course, trying to prevent any further violence from happening is what the review boards are trying to do. I think the last witness said something like it doesn't predict the severity of future recidivism. But I don't think I'm the expert to answer that.

Mr. David Wilks: One more thing that took me back was you mentioned $1,000 a day for beds in a psychiatric hospital and that those with minor or speculative risk could be released into society once they obtain that level of trust, shall we say, with those who are taking care of them.

I was really taken aback by this. Cost shouldn't mean anything here. Maybe you could comment on that. The fact of the matter is that if there is someone who has been found NCR they need to stay in that facility as long as is required to ensure that they get better. Cost should not be a factor.

Ms. Heidi Illingworth: I absolutely agree with that. Obviously it is in all of society's interest to ensure that people get medication and get stabilized and do not commit such acts again. There are many people who can return to the community but there are certain very violent individuals who will have to remain in a hospital setting for the rest of their lives and that's just a fact.

The Chair: Thank you, Mr. Wilks. Thank you for those answers.

Thank you, guests, for coming and being witnesses here today. You are the final set of witnesses on this bill that we are dealing with today. So I appreciate you taking the time and tolerating our voting habits. We appreciate the input.

What I thought I would do is recess for about 10 minutes so we could all get something and bring it back to the table because I don't want to be interrupted during the clause-by-clause piece.

In addition, you have a budget that has been put in front of you and I need a motion to approve the budget.

The budget has been moved. All those in favour?

(Motion agreed to)

The Chair: With that we will suspend for 10 minutes.

● (1805)

(Pause)

● (1825)

The Chair: I call this meeting back to order.

I want to thank everyone for being here. First of all, let me thank the officials from the Department of Justice, who are here with us to answer any questions we have along the way.

As the committee knows, we passed a motion previously that during clause-by-clause consideration, at the relevant time, amendments that have been filed by the clerk by the time prescribed can be spoken to by the member who moved them. That's why we've invited Madam May to the table. She has provided amendments, and I will call on her to speak to her amendments at the time.

We normally spend only a few minutes each introducing our amendments, then we have debate, and then we vote on them.

Ms. May can move her motions forward, but she is not a voting member of the committee.

Ms. Elizabeth May: Mr. Chair, did you just say that I'm allowed to move my amendments?

The Chair: They're considered to have been moved.

Ms. Elizabeth May: Okay, so they're deemed moved, but I don't get to move them.

The Chair: No, but I'm going to give you a minute or two to speak to them.

Ms. Elizabeth May: Thank you.

If someone asks a question on them, am I allowed to answer questions on them?

The Chair: If someone directs a question to you, I will allow that to happen.

Ms. Elizabeth May: Thank you.

The Chair: We're on clause-by-clause consideration of Bill C-54. Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

The chair then calls on clause 2. Shall clause 2 carry?

An hon. member: [*Inaudible—Editor*]

The Chair: We have started. We're on the sheet, just so you know. We have started calling the clause-by-clause, and we will do the amendments as we come to the clause that is being amended.

(Clauses 2 to 6 inclusive agreed to)

(On clause 7)

The Chair: On clause 7 we have an amendment. It is in your package as NDP-1.

I will call on the NDP to discuss their amendment.

[*Translation*]

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

As we have already mentioned, we believe that victims should be given more prominence. Everyone here is in agreement. All the witnesses we have heard from, including those from the Bar, believe that more information should be provided to the victims.

Ms. Gaston, whom we heard from at length, explained to us clearly that it was important for victims to know where the accused was going to live after release. Ms. Gaston was not the only one to express that opinion, actually. All the victims, and all the other groups did too. That is why amendment NDP-1 proposes that victims be given information as to the accused's residence.

But first, Mr. Chair, I would like to know if we can make a subamendment to the amendment.

● (1830)

[*English*]

The Chair: You can, as long as it relates to this piece.

[*Translation*]

Mr. Hoang Mai: As we have already told you, we were given a deadline for our amendments even before we had heard from all the witnesses. Once again, there seems to be a desire to reduce speaking time. We have had difficulties in this committee. On several occasions, we have moved to clause-by-clause study even before hearing from all the witnesses.

In this case, we had until Monday at 4:00 p.m. to submit all our amendments. But we are still hearing from witnesses today, including Ms. O'Sullivan, the Federal Ombudsman for Victims of Crime.

[*English*]

In her statement, there was information that we thought was interesting and is related to this amendment we're putting forward. We've asked for the residence of the accused to be put forward, but she also had specific recommendations, including:

> ...that victims be advised of the location of the forensic facility where the accused is detained; that victims be given advance notice of any scheduled absence, either escorted or unescorted, from the hospital, and the general destination, city or town, to which the accused will be travelling; that victims be given advance notice of the destination of release or conditional discharge, or if the accused, on conditional discharge, will be travelling to the vicinity of the victims; that victims be informed of any conditions of release for the accused when they are conditionally discharged into the community—this may include such things as mandated medication or treatment, non-communication with children or others, the requirement to attend treatment sessions, general mobility restrictions, and more—and that victims be given advance notice of any scheduled transfer to another facility or change in the level of security of their ward, or move by the accused to another province or territory, for the purpose of treatment.

The Chair: Are you moving that word for word, those changes, as a subamendment to your amendment?

Mr. Hoang Mai: I would maybe ask, with the analysts, so that we can—

The Chair: I'm telling you that if this is the case we would need that in writing so that we would be able to analyze it. It's only fair to other members of the committee. If you have it in writing, if that is exactly what you're moving, you could cut it out and photocopy it, or whatever, and refer them to it—I have you on the list, don't worry—but I need to understand.

Are you moving that as a subamendment?

Mr. Hoang Mai: I will if you give me the time, and if I can work with the analysts, in terms of just taking it out so that we can use the correct language. It is in both French and English and it is part of the brief that the witness gave us today.

The Chair: Okay.

We have other commenters, so we can go there.

Monsieur Goguen, on the subamendment.

Mr. Robert Goguen: Maybe we could set the clause aside, let you prepare it, and come back to it. We may as well have it so we can appreciate what you're moving. Without passing judgment on it, good or bad or otherwise, let's just get it in writing.

The Chair: So do you want me, as the chair, to bypass clause 7 and come back to it?

Mr. Robert Goguen: That's what I'd suggest. That would get you the chance to put your stuff together.

The Chair: Okay, that's a recommendation.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Just on that, when we get amendments they're very specific. With amendment NDP-1, it talks about "replacing line 14 on page 3 with the following". We're able to look at that, and then look at the section, and see what the section looks like when it's done. When somebody just reads something into the record, we don't necessarily have the opportunity to do that, to see how it's going to look.

We also have to understand how it's going to fit into the section. The section has a subtitle called "Notice of discharge". Does it fit within that? Does it have to be a new section? I'm not saying this a bad idea. I agree this is testimony we've heard. But there's a danger in just throwing something into a statute by reading something into the record. I don't think it's an effective way to draft legislation for the country.

● (1835)

The Chair: So what I'll do—Mr. Albas, I'll come to you next—based on the input from the committee, I will set this aside, and we'll come back to it at the end of the meeting.

Mr. Albas.

Mr. Dan Albas: I just have a follow-up on Mr. Seeback's comments.

One of the challenges you have is that these are the concepts that, obviously, Ms. O'Sullivan thought necessary to bring to the committee's attention. The problem is that we've had other bills come to this committee where we say, "Are we going to be creating tension because there may be terms that are not defined in the Criminal Code that may conflict with other parts of the Criminal Code?" Again, this may cause unintended consequences that will not serve the public interest.

As much as I understand what the member has asked for, and as much as I know that the parliamentary secretary is always willing to work with people on good ideas, one of the challenges here is that these words have not been vetted, at least in my opinion, to such an extent where I could feel comfortable taking them and literally sticking them into my Criminal Code, knowing that it's going to be, at the end of the day, a better Criminal Code for it. I just hope the opposition recognizes that fact.

Again, not to take away from what the parliamentary secretary says, I just have a real concern when we are making amendments on the fly and not studying them as measured legislators.

Thank you.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen: We did however have a chance to look at NDP-1, which is fine.

The Chair: My point, Mr. Mai, not just in this committee but in all committees is that we ask for amendments in advance so legal can look at these things. Those are the kinds of items that get looked at in between times.

I agree. In my view committees need to decide whether there needs to be a break between witnesses and clause-by-clause. We decided not in this case, but maybe in the future it's something to look at.

We'll ask the ministry to comment.

Ms. Carole Morency (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): Mr. Chairman, I wasn't sure if the decision is to come back to this, but it may assist the committee in deciding the way forward. We obviously would need some time to look at these details as well but it might help the committee to understand that, for example, the ombudsman's submission says that victims should be advised of the location of the forensic facility where the accused is detained. This information is available right now in the disposition decision that is made publicly available. It's the type of thing that you wouldn't necessarily want to see in the Criminal Code or without thinking it through more thoroughly.

We're looking at this at the same time—we just got it at the break—about providing advanced notice to the victim when there might be an escorted absence into the community. In my understanding those are the types of decisions that are made at the clinical level, at the hospital that's managing the care and treatment of the NCR-accused. Those are decisions that might be made with very little notice. It might be because an opportunity presents itself. It might have broader implications than we've had an opportunity to consider. But if it assists the committee, I'd offer that at this time.

The Chair: Thank you for that advice.

Mr. Mai and then Mr. Goguen.

Mr. Hoang Mai: Thank you very much to everyone here for your understanding.

Again, I appreciate that we need to have all the information before, that we need to have some of the amendments before we can have something looked at and not have something on the fly as I just moved.

I'd like to remind you that we had our deadline for the amendments before we heard all the witnesses. That was because of a motion that was brought forward by the Conservatives with respect to forcing the opposition, or us, to bring forward all the amendments even before we heard witnesses, even today. Does that mean that witnesses who come after the deadline are not as important?

I know you're not saying that, but I'm saying that if we want to have amendments, we should listen to all the witnesses before we can put forward amendments. In this case, according to the motion, we had to put forward amendments before we heard all the witnesses. That's why we're working on the fly. I appreciate that it is not the way we should do it.

Honestly, the idea here, when we reacted to what the witnesses said, is we need to have more information for victims. That was very clear. All the victims have said that. The victims' associations have said they need more information to protect victims. This is why in reaction to that we have come up with the amendments.

I appreciate that it is on the fly because of the motion the Conservatives put forward, which is not allowing us to look at all the testimony before we can make amendments.

● (1840)

The Chair: Thank you for that.

Mr. Goguen.

Mr. Robert Goguen: Officials, could some of this stuff be incorporated by a regulation under the act?

Mr. Kyle Seeback: The section is 672.44 under rules made by a review board. It authorizes under subsection (3) that:

> Notwithstanding anything in this section, the Governor in Council may make regulations to provide for the practice and procedure before Review Boards, in particular to make the rules of Review Boards uniform, and all regulations made under this subsection prevail over any rules made under subsection (1).

I just throw that out. Could that be the place where we perhaps say that maybe the committee can make the recommendation that some of these things be put forward in that? I don't know if that's the proper place for it or not, so I'm going to put you two on the spot and ask you your thoughts about that.

Ms. Julie Besner (Counsel, Criminal Law Policy Section, Department of Justice): Thanks very much for the question.

Yes, it's true that there's an empowering provision in the code for the review boards to make rules, and they do so. I would like to add —and of course it's up to the committee if they wish to make that kind of recommendation—that they should just bear in mind, however, that those regulations are not federal regulations. They are regulations made by the review boards to govern their own procedures.

Another contextual point I think the committee should bear in mind is that the subsection that's being amended here is within a section of the Criminal Code that deals with the procedure to follow during hearings before the review boards.

That's just something to bear in mind when you consider the subject matter of the floor motion here and whether it fits into that overall scheme.

Mr. Robert Goguen: Would it fit into that section, in your view?

Ms. Julie Besner: The list is very detailed. It doesn't fit naturally, I think, with the other types of rules that are applicable during hearings in which there are two parties being heard and the decision-maker is coming to a decision, so it's difficult.

The Chair: Mr. Wilks.

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

I believe the subamendments are outside the scope of the intent of the amendment, because I believe—and I would ask for clarification from those who are here—that we are trouncing in on provincial jurisdiction as well, especially from the perspective of some of the points that have been brought out.

When we were talking about forensic facilities, for the most part those are under provincial jurisdiction and not federal. As a result of that, I would like clarification.

The Chair: Can someone from the Justice Department answer that?

Ms. Julie Besner: Certainly the hospitals are governed by the provinces. However, part XX.1 of the Criminal Code does set out a whole regime to deal with mentally disordered accused who fall under their purview. It's one of those areas of the law that's very much intertwined. It's a mix of federal legislation, provincial legislation, and medical practice.

The Chair: As chair, I suggest that amendment NDP-1 affects amendment NDP-14 and also clause 32. We have two choices in my view.

We can set it aside and come back to it later, and in the meantime have discussions and so on, or we can move forward and you can vote as to whether you want the subamendment to move forward, and then we would move to the amendment.

I will take some advice, and then we can move on to the other piece, and we can come back to this after further study.

Mr. Cotler's first on this.

● (1845)

Hon. Irwin Cotler: Mr. Chair, I wanted to add to the mix. I also want to concur with what was just said. I think the concern with the provincial is that it is really ancillary to a federal regime, and we have this type of approach regarding the criminal law.

I have a concern about something that could occur, and I'd also like the witnesses to comment on that. That might be an additional reason to adjourn and come back. There might be some prospective privacy concerns on this issue. I think we might need to have some advice because those could prospectively invite a legal challenge. I agree with the amendments based on their merits, but I think the privacy issues may raise prospective legal concerns.

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas: Mr. Chair, I thought I had put my hand up earlier so I'm just going to ask a question.

Based on what Ms. Besner said, earlier you mentioned that as amended the amendment would not fit naturally within the area. Would the original one we wrote, amendment NDP-1, which we have in front of us, without the additional amendments that Mr. Mai has put forward, fit naturally in that section?

Ms. Julie Besner: The proposed subsection in Bill C-54 deals with providing notice to the victim regarding a discharge, so it is closely related to that specific amendment in that subsection.

Mr. Dan Albas: Again, Mr. Chair, I'm very comfortable with this, and I'm not sure how to proceed other than to say I guess it's up to the committee how it wants to do it. I would look very favourably at the original one, because I think due diligence has been done. I'm not quite certain, and I do understand the position of the committee and where Mr. Mai is coming from.

The Chair: Mr. Seeback.

Mr. Kyle Seeback: I would just say that it looks as if there are some good conversations going on over there. Some of the analysts are talking. I think we should defer it. We can come back to it, see what they've come up with, and at that point it's either yes, let's go with it, or no. Then we'll go back to the original amendment.

That would be my—

The Chair: Are you okay with that, everyone? I'm trying to work on consensus here.

Some hon. members: Agreed.

(Clause 7 allowed to stand)

The Chair: We're deferring clause 7 until we deal with all the other clauses, and we'll come back to it. That will also affect amendment NDP-14, and clause 32.

Now, just so everybody's on the same page, we're moving to clause 8.

(Clause 8 agreed to)

(On clause 9)

The Chair: We have Liberal amendment 1.

Mr. Cotler, do you want to speak to your amendment? It also applies to Liberal amendment 14.

Hon. Irwin Cotler: Mr. Chairman, this specifies that in deciding what conditions, if any, to impose on an NCR-accused, the factors to be considered by the court or review board must be based on medical evidence and expert testimony.

Mr. Chairman, Bill C-54, as proposed, establishes that public safety is a paramount consideration for decisions of review boards and courts with respect to NCR-accused. I want to make it clear that my proposed amendment does not change that. Rather, it clarifies that the determination of such public safety considerations must be, “on the basis of medical evidence and expert testimony”. I believe that without this, we might allow the impression to be had—and I don't think we'd want that impression to be had—that such determinations can be based on subjectivities of fear, or perhaps even reliance on stigma. Certainly, this cannot be Parliament's intention.

In a word, we must have expert testimony and medical evidence before us when such determinations are made, and this amendment seeks to clarify that this is indeed Parliament's intention with this provision.

The Chair: Thank you.

To that amendment, Mr. Goguen.

Mr. Robert Goguen: We're opposed to this amendment, Mr. Chair.

The motion being proposed will require a court or review board, when making a disposition, to base its decision only on medical evidence and expert testimony. This would be too limiting. There are other types of evidence that should be considered, for example, the victim impact statement.

When the court relies on this provision to make a disposition—i. e., right after it has found the accused not criminally responsible or unfit to stand trial—it's for a short duration. It is in its essence an interim order that lasts no longer than 90 days. After that, the review board holds a hearing and makes the disposition that will be in place for the following year. Requiring the consideration of medical and expert evidence by a court at this point would likely cause court delays, given that the task of qualifying an expert witness in court is often protracted and contested.

● (1850)

The Chair: Thank you, sir.

Is there anything else on this amendment?

(Amendment negatived)

The Chair: As amendment Liberal-1 fails, is also applies to Liberal-14. Instead of our voting on it, Liberal-14 will be defeated also.

Now we'll move to private member amendment 1, and it has been presented by Madam May.

I'll give you a couple of minutes to introduce your amendment.

Ms. Elizabeth May: Thank you, Mr. Chair.

I think they've used the term “PV” here for *Parti vert*. So it's actually not in the name of a private member. It's actually here as Green Party amendment 1.

As you see, it is on clause 9, which is amending section 672.54. You can follow it on page 4, at lines 35 to 40.

I'm proposing this amendment based on testimony that was received by the committee from the Canadian Bar Association to reinstate the “least onerous and least restrictive” requirement that has been used in not criminally responsible cases in the past.

I just want to cite this from the Canadian Bar Association evidence, at page 5:

> Currently, the Court or Review Board must discharge absolutely any accused found not criminally responsible, unless they pose a significant threat to the safety of the public.... In making this decision, the Court or Review Board must consider the need to protect the public from dangerous persons,

—we certainly want to do that—

> the mental condition of the accused, the reintegration of the accused into society and other needs of the accused. Where an accused does pose a significant threat to the safety of the public, the Court or Review Board must select the "least onerous and least restrictive" form of disposition....

Now that Bill C-54 makes it very clear and codifies what's already the law under the Supreme Court of Canada—that the safety of the public is the paramount consideration—I'm putting forward this amendment to say that certainly the balancing is very strongly in favour of the paramount consideration being public safety. The least onerous and restrictive qualification is now balanced against that paramountcy of public safety and security.

That provision, as the Canadian Bar Association recommends, can be reintroduced into the legislation very simply—through the mechanism of my Green Party amendment 1.

Thank you.

The Chair: Thank you very much.

I'm going to rule on this....

Oh, sorry; you have a point of order.

Mr. Blaine Calkins: Chair, I just want some clarification from you, or from the clerk, through you.

My understanding, based on what you had mentioned earlier, was that independent members were welcome to sit at the committee to introduce their amendments. I would like some clarification on what "PV" means, because Ms. May is claiming it means *Parti vert*, which is the Green Party, which does not have official party status.

But I'm not trying to make that point. The point I'm making is technical in nature.

To go back, if that's the case, then we actually have an issue here. If the Green Party doesn't actually have official party status, then technically they cannot be making amendments at this particular committee, whereas private members actually can. So I would ask for clarification, through you, Mr. Chair, on whether or not this amendment is in order.

The Chair: First of all, I will rule on the amendment, whether it's in order or not.

Just so members know, and it was news to me also, "PV" is an internal piece that our bureaucracy uses to identify the party. I also, in considering any non-official party...so the Bloc, they're independents. We have other independent members.

So PV is an internal piece that they've used on here. I would like to have seen...or my recommendation to them is that in future it should be "IND"—

Ms. Elizabeth May: No, I'm not an independent. I represent the Green Party. All the House of Commons documentation makes it clear.

The Chair: Ms. May, at this committee you are an independent member of Parliament.

Ms. Elizabeth May: No, I'm not.

The Chair: You can call yourself green, blue, yellow, I don't care, but what happens is that you're here as an independent member. You've put amendments—

● (1855)

Ms. Elizabeth May: Then I'll have to leave.

The Chair: —to this bill.

To your point, the motion that we had states:

> the Chair may call upon the member

—not the party, but the member—

> who filed the proposed amendment to offer brief remarks in support of it.

That's why I called on the member, on Madam May, to make brief remarks to her piece.

Now, to your second point, I am making a ruling on PV-1. I'm going to call them "PV" because that's the way they are now, and that's the way they will be for the rest of the evening. In future, they may change them to independents, I don't know; that's not my doing.

The goal of Bill C-54 in clause 9 aims to remove from the Criminal Code the concept of a disposition that is "the least onerous and least restrictive to the accused" person.

The goal of the proposed amendment PV-1 is to bring that concept back, which is against the principle of the bill.

House of Commons Procedure and Practice, second edition, states on page 766 that:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the amendment attempts to revert to what was in the parent act, which is contrary to the principle of Bill C-54, and is therefore inadmissible. This ruling will apply to amendments NDP-2, Liberal-3, PV-12, NDP-11, PV-13, NDP-12, and Liberal-22.

Does anybody need that repeated?

Are you challenging the chair, Mr. Cotler?

Hon. Irwin Cotler: Yes.

The Chair: There has been a motion to challenge the chair on that ruling. There is no debate.

You are voting in favour of sustaining the chair's ruling. Am I not correct?

An hon. member: And overturning the Supreme Court verdict too.

The Chair: All those in favour of sustaining the chair's ruling? All those opposed?

(Ruling of the chair sustained)

The Chair: The chair is sustained, so those are out. NDP-2 is out.

Shall clause 9 carry?

(Clause 9 agreed to)

The Chair: That's carried. There was a new clause 9.1—it was amendment Liberal-2—but it has been withdrawn, so that's all that matters.

Liberal-3 was consequential to amendment PV-1, which I just ruled on, so it is out of order. Let's keep going here.

(On clause 10)

The Chair: On clause 10, we have amendment PV-2.

Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

Not to reopen a difficult point, but I do think members need to look at the seating chart when they get back to their desks in the House, and they will find that the Green Party is acknowledged as the party I represent here in the House of Commons. It's not an error that clerks in every committee in which I have presented amendments, at the invitation of committees—not at my request but at the invitation of committees—have designated them with PV, for *Parti vert*.

This amendment, *Parti vert*-2, is an amendment to clause 10, replacing line 45 on page 4. What this is looking at is a recommendation that the committee previously heard from the Canadian Forensic Mental Health Network to remove the somewhat vague and arbitrary definition of "significant threat" and to replace it with the definition that was articulated in the Supreme Court in the McLachlin Winko v. B.C. decision.

I've duplicated it with some small drafting differences, but I think this committee is very familiar with the Winko case. So that line would now read that a threat to the safety of the "public means a real and substantial risk of physical or psychological harm to members of the public that is serious and that results from conduct that is criminal in nature".

That takes you to the top of page 5. You start at page 4, and then we're at the top of page 5 with that replaced wording. Again, it's to clarify and avoid vagueness. I think it will certainly help the court in the future, in dealing with this legislation, to tie it to existing jurisprudence.

● (1900)

The Chair: Thank you for that, Ms. May.

Mr. Goguen, on PV-2.

Mr. Robert Goguen: Thank you, Mr. Chair.

We're not prepared to support this motion submitted by the independent member. The motion would delete the reference to the fact that the risk to the public safety need not be violent in nature. Clarifying this element is an important proposal of the bill. The same can be said for specific considerations to the risk to victims, witnesses, and young persons.

Further, the motion introduces notions of "substantial risk" and "serious" harm. This would create confusion, as similar words are used in the test for the high-risk designation. The threshold in the regular disposition-making disposition provisions is intended to be lower than the risk threshold in the high-risk designation.

The Chair: Thank you.

I want to make committee members aware that if amendment PV-2 fails, it will affect amendments NDP-3, PV-11 and NDP-10.

Monsieur Mai.

[*Translation*]

Mr. Hoang Mai: You said that, if amendment PV-2 fails, amendment NDP-3 would fail as well. You have made a decision that has prevented us from discussing the amendments we wanted to make. The Canadian Bar Association and the Quebec Bar have provided us with a lot of legal information. The way in which the bill has been drafted poses a number of problems, including some related to the charter, and they may well come up. There are also court decisions. Ms. May mentioned the Supreme Court decision in *Winko*, which sets out certain criteria. That is the reason for our proposal, which is very similar to Ms. May's. We want the clause to say "serious risk" rather than "risk" and we want the words "but not necessarily violent" to be removed.

We have listened to Parliamentary Secretary Goguen's remarks, but we still feel that the amendment is reasonable. In our opinion, this is a simple matter of considering the legal questions raised by the witnesses. We want this bill to be properly amended so that it will meet a test under the charter. For us, the amendment is important and we are hoping for support from Mr. Goguen and the Conservatives. But it does not look like we will get it.

[*English*]

The Chair: Thank you very much.

Mr. Cotler, did you want to speak to PV-2?

Hon. Irwin Cotler: Yes, Mr. Chairman.

Real and substantial is indeed a helpful addition to ensure the concern for public safety is well-founded. We're not quarrelling with that particular criteria. One might otherwise wonder how exactly public safety is threatened by non-violent behaviour such that it would be justified to limit the freedoms of a person who has not been convicted of a crime.

That is why I welcome this amendment. I just want to add, parenthetically, Mr. Chairman, that during the testimony of the various groups that made this recommendation, when I asked them if they were consulted with respect to this legislation, they answered no. Maybe if they had been consulted, we would not be in a position of having to move an amendment, which the government itself would have appreciated to begin with.

The Chair: Thank you very much.

All those in favour of PV-2?

(Amendment negatived)

The Chair: That means that NDP-3 is removed.

We're on to, under clause 10, Liberal-4.

Would you like to present the amendment, Mr. Cotler?

Hon. Irwin Cotler: Yes, Mr. Chairman.

This is a “for a greater certainty” clause, a phraseology not unknown, ensuring that court and review board decisions accord with the following principles, again, as set out by the Supreme Court, that NCR-accused must be treated with the utmost dignity and afforded the utmost liberty compatible with their situation and that NCR-accused are not to be “punished or left to languish in custody”.

Mr. Chair, I note that some members may wonder where the eloquent phrasing of “the accused who has been declared not criminally responsible is to be treated with the utmost dignity and afforded the utmost liberty compatible with his or her situation, and is not to be punished or left to languish in custody” comes from. Lest members think that I have penned these words, they actually come—I think it's important to appreciate this, Mr. Chairman—from Supreme Court jurisprudence, reiterated by that body time and again. It was not a one-time situation. We're talking about a principle embedded in Supreme Court jurisprudence.

The same goes for the admonishment that an NCR-accused “is not to be punished or left to languish in custody”. In a word, Mr. Chairman, this amendment seeks to codify the language of the Supreme Court of Canada to make clear to review boards and courts of Parliament's intention to respect the rights flowing from the charter toward NCR-accused, who, it should be recalled, have neither been found guilty nor innocent of any offence.

I would hope that Parliament would seek to reflect and represent foundational principles of Canadian jurisprudence that have been set down time and again, and not sort of pre-emptively reject these amendments as if they have no meaning or substance.

● (1905)

The Chair: Thank you.

On Liberal-4, we have Mr. Goguen.

Mr. Robert Goguen: These principles are embedded. That's why we're not supporting the motion. Codification of the principles that were enunciated by the Supreme Court of Canada is not necessary, as they are already clear. They are not the subject of any confusion. Further, the motion only addresses accused persons found not criminally responsible on account of mental disorder. However, this part of the Criminal Code applies equally to an unfit accused. The motion would create a significant unintended gap in the legislation.

The Chair: Thank you.

Anything else to Liberal-4?

(Amendment negatived)

The Chair: The amendment also applies to Liberal-24, which I will announce when we get to it.

(Clause 10 agreed to)

(Clause 11 agreed to)

(On clause 12)

The Chair: We have Liberal-5. It applies to Liberal-15, just so you know.

Mr. Cotler, would you like to speak to the amendment and clause?

Hon. Irwin Cotler: Yes, Mr. Chairman.

This amendment is fairly straightforward. Many witnesses have testified that "brutal nature" is a problematic concept that does not necessarily clarify the matter. We heard this again and again from expert witness testimony. This amendment leaves intact the consideration regarding cases where there is a substantial likelihood of violence endangering the life or safety of another person, which appear in paragraph (a).

My changes to paragraph (b) say that we also take into account cases where there is a serious risk of psychological, as opposed to physical, harm. By leaving in the reference to psychological harm, I believe this amendment captures the essential element of what was proposed in C-54, without the addition of the "brutal nature" factor, which many witnesses, particularly the experts, found to be highly problematic.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen: This motion should not be supported. The motion is not consistent with the intent of the bill, specifically with respect to creating a lower test to guard against potential grave harm that could be either physical or psychological. The term “immediate” in regard to the nature of the risk is potentially vague and imprecise. It may not accord with an individual's level of risk, which may vary at certain points in time.

The Chair: Thank you.

Mr. Seeback.

Mr. Kyle Seeback: It's interesting that Mr. Cotler said witnesses were saying that the problem was with "brutal". I'm going to respond to that, because quite frankly, when I directed my questions to them I pointed out quite clearly that it's not just “brutal”. There's far more in that proposed section related to this.

The proposed section actually reads, “a brutal nature as to indicate a risk of grave physical or psychological harm to another person”. Then, it goes on to say, “In deciding whether to find that the accused is a high-risk accused, the court shall consider all relevant evidence”. That is a grab bag. It's not just the things that are listed below. It's anything else. It's all relevant evidence. It goes on to include things such as “the accused’s current mental condition” and “the opinions of experts who have examined the accused”.

When I pointed that out to people who had said the problem was with “brutal”, they acknowledged that, in fact, “brutal” is not the test. It's a far more encompassing test. For that reason, I think this proposed section should stand, and I certainly do not support the amendment.

● (1910)

The Chair: Thank you.

Mr. Mai.

Mr. Hoang Mai: I'll wait for NDP-5.

The Chair: That's Liberal-5. As I've said before, it also applies to Liberal-15.

All those in favour of amendment Liberal amendment 5.

(Amendment negatived)

The Chair: We're on to Liberal-6.

Liberal-6 also applies to PV-3, NDP-4, Liberal-16, and PV-14.

Mr. Cotler, I'm sure you'd like to speak to Liberal-6.

Hon. Irwin Cotler: Yes, Mr. Chairman.

Effectively, this amendment removes the proposed paragraph that allows the brutal nature of the offence to serve as the basis for a high-risk finding. Similar to the previous amendment, this addresses the concern regarding “brutal nature” by removing the entire paragraph in which it is mentioned. Besides the fact that “brutal nature” is arguably an overly broad phrase, which might itself invite charter concerns, it is problematic from a policy standpoint because the brutality of an act may indicate neither future risk or likelihood of recurrence.

I need not repeat the full testimony that we heard on this point, but I will cite the words of the Canadian Bar Association, which put it as follows:

> ...the high-risk designation is not only unnecessary, but self-defeating and counterproductive.

Therefore, this amendment seeks to remove it.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen: We're not capable of supporting this motion. The motion is not consistent with the intent of the bill, specifically to provide two possible options for the court to make a high-risk accused designation. The second branch of the high-risk accused scheme, whereby the brutal nature of an index offence may indicate a risk of harm to another person, is an important element of the bill that should be retained.

The Chair: Thank you.

We have Mr. Mai.

[*Translation*]

Mr. Hoang Mai: We support the Liberal amendment because it proposes the same thing as amendment NDP-4. Mr. Cotler, as well as the experts we have heard from, pointed out the need to remove this provision because of the possible danger with it. When the Minister of Justice appeared before this committee, we asked him about it, but we got no answer. We asked witnesses, including the witnesses from the department, for the definition of “brutality” and we now know that there is none. We know that it would be something new in terms of the case law.

A number of witnesses expressed their concerns about this new concept, including the Canadian Bar Association and the Canadian Mental Health Association. So we would like to remove the idea of brutality. Indeed, we must not forget that this criterion would not affect the case of Guy Turcotte—as the minister more or less confirmed. But he is one of those whom this bill sets out to target.

In a word, this new concept creates a good amount of uncertainty and constitutional risks in terms of the Canadian Charter of Rights and Freedoms.

The Chair: Thank you, sir.

[*English*]

Is there anything further on Liberal-6?

(Amendment negatived)

The Chair: With that, as we know, PV-3 has been withdrawn because it is consequential to PV-2, which failed. NDP-4, because of Liberal-6 failing, also fails.

So now we're on NDP-5.

I'm assuming, Mr. Mai, you would like to introduce your amendment.

[*Translation*]

Mr. Hoang Mai: I certainly would, Mr. Chair. Thank you again for letting me speak.

Unfortunately, amendment NDP-4 failed. We wanted the concept of brutality to be removed, but, since that is not going to happen, we suggest an already well-known definition that reflects the Criminal Code and the case law. With this amendment, we are proposing to refer to grave harm to another person, which has already been defined in the Criminal Code.

If we do that, we will comply with the charter. It would also allow for a better understanding of the bill. We feel that it could really help to improve the bill and prevent both cases going to the Supreme Court and challenges to the constitutionality of certain provisions. In a word, it reflects the opinion of several experts who have come to meetings of this committee to tell us that it is a step in the right direction.

● (1915)

The Chair: Thank you, sir.

[*English*]

We have Mr. Goguen on NDP-5.

Mr. Robert Goguen: Thank you, Mr. Chair.

We're not capable of supporting this motion. The motion introduces a redundancy with the *chapeau* of the provision that already states that the index offence must be a serious personal injury before an application for a high-risk designation can be made. Adding the word “future” is also superfluous as the provision is currently drafted. It's prospective with respect to the possible risk.

The Chair: Okay, is there anything further?

This vote on NDP-5 obviously applies also to NDP-13, I believe. Just so committee members know, we are changing two bills. We're changing the Criminal Code and the National Defence Act, so the same thing has to be in both bills. That's why if it fails, both amendments are removed—or passed.

You can speak more to your amendment, if you like.

[*Translation*]

Mr. Hoang Mai: Mr. Goguen said that considering the future aspect of the risk is redundant. We do not share that opinion. A reference to brutality is a reference to a specific act that has been committed. But let us not forget that we are also talking about mental health here. We are proposing the use of the word “future” so that we are not just looking at the past, but also at what may happen in the future, such as a repeat offence. That is important, I feel. It is one of the topics that was debated when we studied this bill.

Suppose that a totally brutal act has been committed. As witnesses told us, the mere fact of killing someone is brutal. We agree with that. But when a judgment deals with brutality in the case of a person with a mental illness, the word loses its meaning. The experts were very eloquent on that. They said clearly that it had no automatic effect on the future. That is why we do not agree that this idea of future risk is redundant.

[*English*]

The Chair: Thank you very much.

Anything else on NDP-5?

Mr. Wilks, go ahead.

Mr. David Wilks: I want to respond to the comment on future risk. It seems to be an extremely redundant remark because the fact of the matter is that no NCR patient would, in my opinion, be released into any form of insecure custody if there was any suggestion of a future risk.

The Chair: Shall NDP-5 carry?

(Amendment negatived)

The Chair: Liberal-7.

Monsieur Cotler, go ahead.

Hon. Irwin Cotler: Mr. Chairman, if we are leaving in “brutal nature”, which my previous amendments sought to delete but which have been defeated, then we ought to at least define it. This proposed definition, “an act of violence that is out of the ordinary due to its exceptionally cruel and savage character”, at least provides some clarity and ensures that such acts are understood as being exceptional, even for serious personal injury offences.

I might add, Mr. Chairman, that the phrases “cruel and savage character” and “out of the ordinary” are not of my own penning but come out of several court rulings, notably the 2004 Ontario case, R. v. Campbell.

The Chair: Monsieur Goguen, go ahead, with a reminder that this also affects Liberal-17.

Mr. Robert Goguen: Mr. Chair, we're not capable of supporting this motion.

The amendment attempts to define brutal nature for the purposes of a high-risk accused NCR scheme. However, the term is used elsewhere in the Criminal Code, i.e., the dangerous offender provisions in subparagraph 753(1)(a)(iii).

By defining the term for the purpose of this bill and not defining it elsewhere in the Criminal Code, it could lead to disparate definitions of the term.

(Amendment negatived)

● (1920)

The Chair: Now we're on to PV-4.

Madam May, go ahead.

Ms. Elizabeth May: Thank you, Mr. Chair.

On a parenthetical note, wouldn't it be fun if I could vote and then you'd have to break every tie?

In any case, moving on to PV-4, I think it's very clear that as a matter of statutory interpretation, lists are difficult. Lists can be viewed later on by a court as suggesting an exclusivity because certain elements are listed and others are left out.

In this case, what I'm proposing in PV-4 is that we delete, in clause 12, proposed paragraphs (a) through (e) under proposed subsection 672.64(2), which are the specifics to try, I suppose, to set out for a court what all relevant evidence would be.

My position on this is that a court will know what “all relevant evidence” is, and by listing, we might accidentally leave out other factors that I think even Conservative members of this committee would want the court to consider, such as the concerns of victims, which aren't part of this list.

They cannot suggest here that there might be mitigating factors. There might be other evidence that would be open to a court if it merely said “all relevant evidence”, but by listing (a) through (e), we have suggested and prejudged for a court what's relevant. It could give rise to an appeal because the court might be seen to have gone beyond what was an exclusive list for consideration when, in fact, the term “all relevant evidence” is all one needs to ensure that the judiciary can, in the light of all the other sections of the act, make the determination of which accused is a high-risk accused.

In other words, we shouldn't put forward a list that could be seen later as exclusive of other factors.

The Chair: Thank you very much for that.

Monsieur Goguen, go ahead.

Mr. Robert Goguen: We disagree.

The Chair: You disagree.

Mr. Robert Goguen: We can't support the motion. Clause 12 currently provides a non-exhaustive list of factors to provide greater guidance to both the prosecutor making the application and the court hearing the matter on the kind of evidence that should be considered. The list of factors should therefore be retained.

The Chair: Mr. Albas, go ahead.

Mr. Dan Albas: Thank you, Mr. Chair.

On that point, if you read it, “the court shall consider all relevant evidence, including” and then it gives (a), (b), (c), (d), and (e) as some of them. Again, “including” means including those but not exclusive of. I would point out that “all relevant evidence” is included among the included.

The Chair: Mr. Seeback, go ahead.

Mr. Kyle Seeback: I would agree with that. For Ms. May's position to make any sense, the proposed subsection would have to say that “courts shall include the following evidence”, and list it. Then her argument would make sense. But when you make a non-exhaustive list—her point actually—no judge would look at that and say, “Because it's not enumerated here, I can't consider it”.

Ms. Elizabeth May: Actually, there are a lot of court cases like that where, if you want to be clear, you can say, “including, but not limited to”. There have been cases where this kind of language has been seen as exclusive. I don't think that's the intent of the drafters. I'll stop here because I know I'm intruding on my time, Mr. Chair.

The Chair: Okay. Thank you very much.

Anything further on PV-4?

(Amendment negatived)

The Chair: Liberal amendment 8, and Liberal-8 applies to Liberal-18.

Mr. Cotler.

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

This amendment specifies that the experts on whose examinations of the accused a high-risk finding may be based are to be medical experts. In other words, Mr. Chairman, the list of factors in proposed subsection 672.64(2) is open-ended, but serves to give the courts a sense of the kind of evidence they should be considering when deciding whether to designate an individual as high risk. As such, it's important to specify that any examination of the accused is to be part of a medically sound and evidence-based evaluation of risk.

Mr. Chairman, in my view, this addition not only helps decision-makers by encouraging them to seek expert advice, but it also helps ensure that their determinations are grounded in the best available evidence.

● (1925)

The Chair: Thank you, sir.

Monsieur Goguen, would you like to speak to Liberal-8?

Mr. Robert Goguen: We oppose the Liberal-8 amendment as it could lead to this provision being unnecessarily restrictive. For example, it could result in the court only being able to consider the opinion of medical experts and not other experts outside the medical field. For example, psychologists may not be considered medical experts as they do not practise medicine.

Further, subsection 672.1 of the Criminal Code, defines the term medical practitioner as someone licensed to practise medicine in a province. I think the term medical expert could lead to confusion as to the meaning of each term. Further, the term medical expert is not a term known to criminal law, but the term expert has a well-understood meaning. There are tools and procedures in criminal law to determine whether someone is an expert. These tools may not be adaptable to determine if someone is a medical expert.

The Chair: Okay. Anything further to Liberal-8?

(Amendment negatived)

The Chair: Liberal-9, Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I believe that this amendment adds an important factor to the list that we are considering regarding high-risk accused. Mental health experts made clear in their briefs and in their testimony before us that the risk posed by an individual with mental illness is significantly diminished if the individual benefits from adequate resources and supports. Thus, we believe the availability of such resources should be taken into account when making determinations with respect to an NCR-accused.

The Chair: Thank you, sir.

Does anyone want to speak to Liberal-9?

Monsieur Goguen.

Mr. Robert Goguen: We don't support the amendment. The availability of resources and support to mitigate the risk can be considered by the court without explicitly setting it out. The provision is currently open-ended. The evidentiary burden in the high-risk accused application process falls to the crown. The nature of the evidence suggests it would likely only be available to the defence; otherwise, the crown would have to prove a negative, for example, no resources.

As introduced, there is nothing in BillC-54 that would prevent the court from receiving evidence on the availability of resources and support to mitigate the risk of public safety. An amendment to that effect is not necessary.

The Chair: Anything further on Liberal-9?

(Amendment negatived)

The Chair: PV-5, Madam May.

Ms. Elizabeth May: Thank you, Mr. Chair.

This is also, of course, within clause 12. We're now looking at proposed paragraph 672.64(3)(a).

As Bill C-54 is now written, the person who has been designated as a high-risk accused under this provision would be allowed to be discharged from the hospital and absent from the hospital for any purpose relating to treatment or for other medical reasons at the discretion of the person who is in charge of the hospital.

My amendment inserts “the Review Board”, which is in the position to know all of the relevant evidence about the high-risk accused, including conditions around the original determination of high risk, as well as whether this would be appropriate. I've also inserted the concept of that being “based on all available evidence”. Given the concerns about high-risk accused and their movements, which the Conservative government has expressed in putting this bill forward, it seems to me this is much too important a decision for it to be delegated to the person in charge of the hospital as opposed to being delegated to the most qualified agency, which is the review board.

The Chair: Okay. Thank you.

I'm going to make a ruling on this PV amendment. Clause 12 of Bill C-54 does not provide any powers to a review board. The proposed amendment aims to provide specific powers to the review board that are not envisioned in the bill. We refer to page 766 of the *House of Commons Procedure and Practice*, edition two.

In the opinion of the chair, the amendment attempts to introduce a new concept that is beyond the scope of Bill C-54 and is therefore inadmissible. This ruling applies to amendments PV-6 and NDP-14. So that amendment is inadmissible. It's out of order.

There's nobody challenging the chair, so we're moving on.

Amendment PV-6, as just read, is therefore inadmissible as well. NDP-6 is also inadmissible due to PV-5 being inadmissible.

We're now on amendment Liberal-10. Liberal-10 also applies to Liberal-21.

Mr. Cotler, you have the floor.

● (1930)

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

The mystery wordsmith behind the phrase that a high-risk designation “does not create a presumption of dangerousness and does not impose a burden of proving lack of dangerousness” comes yet again from the Supreme Court of Canada, and the oft-cited Winko decision. That being the case, I would seek to codify that—even with the new high-risk regime and a designation under it—it must be made clear that the burden of proof remains on the crown to continue to demonstrate dangerousness at subsequent hearings.

The Chair: Monsieur Goguen.

Mr. Robert Goguen: We're not able to support the amendment. The first part of the amendment seeks to clarify that a high-risk accused finding does not create a presumption of dangerousness. While it is true that the existing law in the bill does not create any presumption of dangerousness, the bill does not create a court hearing process to lead to a judicial finding to confirm whether a particular accused is dangerous.

The second part of the amendment is unnecessary. The bill puts the burden on the prosecution to make the application and satisfy the court that the accused meets the test for the finding of high risk.

The Chair: Is there any further discussion on amendment Liberal-10?

Seeing none, all those in...did you want to speak to it again?

Mr. Irwin: Cotler: No. I know what you're up to.

The Chair: All those in favour?

(Amendment negatived)

Hon. Irwin Cotler: I will say that there's a consistent record of the government opposing Supreme Court judgments, but I'll leave it at that.

The Chair: Thank you for that input.

We're on amendment Liberal-11.

Mr. Cotler.

Mr. Kyle Seeback: Let me clarify here. We're not opposing Supreme Court judges' decisions. You're taking snippets out of judgments and suggesting that somehow that means we're opposing Supreme Court judges' decisions, which is not accurate.

The Chair: Thank you for that. It's not a point of order.

Hon. Irwin Cotler: I just want to respond.

The Chair: No, let's move on.

We're on amendment Liberal-11.

Hon. Irwin Cotler: Mr. Chair, I'll be brief.

Taking into account the principle of double jeopardy and the related notion of *res judicata* in the civil context, while an accused person may be designated high risk upon his or her first contact with the system and treated as such, it would not be appropriate for the crown to make repeated applications before the board in this regard, thereby prejudicing not only the rights of the NCR-accused, but abusing the process through repeated vexatious attempts at securing such a designation where it has been determined, upon first hearing of the matter, the designation was not warranted.

The Chair: Thank you for that.

I'm going to rule on that amendment regarding its admissibility. Clause 12 of Bill C-54 provides for the possibility of an unlimited number of hearings for the determination of high-risk accused.

The goal of the proposed amendment, Liberal-11, is to limit the number of hearings to one, which is against the principle of the bill. Again, according to page 766, in the opinion of the chair, the amendment attempts to limit the number of hearings, and therefore is inadmissible. This ruling also applies to Liberal-23.

No one is challenging the chair on that. Let's move on.

We're done with clause 12 amendments.

Shall clause 12 carry?

(Clause 12 agreed to)

(Clause 13 agreed to)

(On clause 14)

The Chair: On clause 14, we have a government amendment.

Mr. Goguen.

Mr. Robert Goguen: Basically, this is a housekeeping amendment, Mr. Chair. In essence, the numbers in section 672.54(a) were reversed and clause 14 should be amended by replacing, in the English version, line 17 on page 8 with the following: “under paragraph 672.54(a) be suspended”.

It was correct in the French version, but wrong in the English. This is housekeeping.

● (1935)

The Chair: Any questions to that?

(Amendment agreed to)

The Chair: Shall clause 14 carry as amended?

(Clause 14 as amended agreed to)

(On clause 15)

The Chair: We're on to clause 15.

There are a number of amendments on clause 15 and they are all in order.

We'll start with PV-7 with Ms. May

Ms. Elizabeth May: Thank you, Mr. Chair.

PV-7, if you go to line 24 of clause 15, is a very simple change. It reverts to 12 months instead of 36 months in which the review board can extend the time for holding a hearing in respect of a high-risk accused, to a maximum of 12 months.

The Chair: Monsieur Goguen on PV-7.

Mr. Robert Goguen: We are unable to support the amendment, Mr. Chair.

The default review period in the Criminal Code is 12 months. The clause this motion seeks to amend is intended to require the accused's consent for an extension of the 12-month review period. As an accused's consent is not required to maintain the review period at 12 months, the amendment is superfluous and should not be supported.

The Chair: Anybody else on PV-7?

Mr. Albas.

Mr. Dan Albas: I would point out that in earlier testimony today the witnesses confirmed that right now it does allow for 24 months, subject to the review board's decision on that.

Mr. Chair, this would actually be a step back. Rather than offering more flexibility to review boards, this would be actually taking it away.

The Chair: Anything further to PV-7?

(Amendment negatived)

The Chair: NDP-7.

Monsieur Mai.

[*Translation*]

Mr. Hoang Mai: As Mr. Albas mentioned, the goal of amendment NDP-7 is to change the period from 36 months to 24 months. In our opinion, that is a little more balanced than what is there at the moment.

We understand that it is a problem for those involved to appear at annual hearings and that is why we wanted to amend the current measure. But the 36-month period may seem a little much for some people. Some witnesses have even told us that the 36-month period would put more mentally ill people into the prison system because people might prefer to go to prison rather than going into the system reserved for people found not criminally responsible.

So we are trying to find a better balance. We want a review hearing every 24 months, rather than the proposed 36 months. That is what is presently in the Criminal Code under subsections 672.81 (1.1) and 672.81(1.2), a 24-month period at most. We think that is more reasonable.

[*English*]

The Chair: Mr. Goguen on NDP-7.

Mr. Robert Goguen: We're not prepared to support this amendment. In essence, the same comments as were previously made apply.

The default period in the Criminal Code is actually 12 months. The proposed subsection this motion seeks to amend is intended to require the accused's consent for an extension of the 12-month review period. It's superfluous, as the current law already provides for the accused to consent to an extension of the review board to a maximum of 24 months. That is the state of the law as it stands.

The Chair: Thank you.

Is there anything further?

(Amendment negatived)

The Chair: Next is amendment PV-8.

Madam May.

Ms. Elizabeth May: Thank you, Mr. Chair.

This goes to the question of who may revoke a high-risk accused designation.

For this amendment I drew on the testimony of the Community Legal Assistance Society. Their point, which is found in page 3 of their brief, is that the review board should also have the power to remove the high-risk assessment designation without referring the matter back to the court, and that the review board is better placed to perform the complicated risk assessments. Sending the accused back to court when an expert panel has already reviewed the evidence and determined that the individual is no longer a high-risk accused serves no useful purpose, especially given that a right of full appeal to the highest court in each province exists, should the prosecutor or the hospital disagree with the review board's determination.

This is an amendment to reduce repetition and delay that go beyond the bill's purpose of ensuring that the safety of the public is the paramount concern.

● (1940)

The Chair: We have a point of order, Madam May.

Mr. Kyle Seeback: I think you're talking about amendment PV-9. You're supposed to be talking to amendment PV-8.

The Chair: Yes. We're on amendment PV-8, Madam.

Ms. Elizabeth May: I'm sorry, Mr. Seeback. I thought I was on PV-9 already.

The Chair: No; I'm sorry.

Ms. Elizabeth May: Amendment PV-8 is to the same effect as amendment PV-7—I'll go back to it—which was to reduce the amount of time that appears in the bill from 36 months to 12 months.

I apologize for getting ahead of myself. I'll try to make it really interesting when we get to amendment PV-9 next time.

The Chair: That sounds good.

Monsieur Goguen, do you wish to speak to PV-8?

Mr. Robert Goguen: We'd be opposing this motion, Mr. Chair, for the same reasons as given for the two previous motions, amendments NDP-7 and PV-7.

The Chair: Is there anything further on amendment PV-8?

Yes, Mr. Seeback.

Mr. Kyle Seeback: I want to point out that with all of the amendments, when we look at the proposed sections or subsections they're trying to amend, these are optional things for a board, not mandatory.

We had a witness suggest today that these things would mandatorily kick in for 36 months. They don't. They only kick in when the accused's condition is not likely to improve and the detention remains necessary for the period of extension. The bill is giving more flexibility to the board to make those kinds of determinations, and these amendments seek to give less.

The Chair: Thank you.

Is there any further discussion on amendment PV-8?

(Amendment negatived)

The Chair: Next is amendment NDP-8.

Monsieur Mai.

[*Translation*]

Mr. Hoang Mai: This is the same argument as we made for amendment NDP-7. The goal is to change the period from 36 months to 24 months.

[*English*]

The Chair: Is there anything further?

Monsieur Goguen.

Mr. Robert Goguen: We oppose it for the same reasons as we did the three previous.

The Chair: That sounds reasonable.

(Amendment negatived)

(Clause 15 agreed to)

(On clause 16)

The Chair: We are on amendment PV-9, Madam May.

Ms. Elizabeth May: Thank you, Mr. Chair.

Assuming you all have a very good memory, I won't repeat what I said earlier about amendment PV-9, except to add these other points.

At the point at which a determination has been made by the review board that, based on all the available evidence, the high-risk accused no longer meets that definition and that the person is in fact no longer considered high-risk accused, the current Bill C-54 drafting would refer the formerly high-risk accused person back to a superior court of criminal jurisdiction.

There is an interesting legal point here, because there will be no criminal charges active at that point. There will not be any criminal court seized of the matter, whereas the review board has the expertise, has just reviewed the complex information, and has made a determination, as the act requires, based on all the available information involving expert assessments, that it is satisfied that there is not a substantial likelihood that the accused, whether the high-risk accused "will use violence that could endanger the life or safety of another person".

At that point, it is both, as I mentioned earlier, an unnecessary expense and unnecessary cost of the court's time, unnecessarily repetitious. In fact it asks the court to be seized of something for which there are no current criminal charges. I therefore strongly recommend that we revert, as I propose in amendment PV-9, to the review board itself making the determination and not referring it further to a superior court of criminal jurisdiction.

The Chair: Thank you, Ms. May.

I'm going to rule on this one.

On clause 16, Bill C-54 provides that the review board in some cases refer the finding for review to a superior court of criminal jurisdiction. The goal of the proposed amendment PV-9 is to give full power to the review board.

Then, referring to page 766 again, in the opinion of the chair, the amendment PV-9 attempts to give full power to the review board in cases where the power to review belongs to a superior court of criminal jurisdiction, and is therefore inadmissible. This ruling also applies to amendment PV-10.

Is anybody challenging the chair on that? Seeing none, that's looked after, then.

Amendment PV-10 is inadmissible based on the ruling I just made.

Shall clause 16 carry? All those in favour?

(Clause 16 agreed to)

(Clause 17 agreed to)

(On clause 18)

The Chair: On clause 18, we have amendment Liberal-12.

Mr. Cotler.

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

This amendment would require the Attorney General to consult annually with the relevant federal and provincial ministers and agencies about the implementation of the NCR regime. The Attorney General would also be required to table an annual report on these consultations.

Mr. Chairman, one of my biggest concerns with Bill C-54 is that we might well run out of space in provincial treatment facilities. As witnesses testified, overcrowding not only impacts on treatment, but it also reduces public safety which, after all, is a paramount consideration underpinning this legislation. Moreover, overcrowding also raises serious charter concerns. Particularly also, as I've noted, NCR-accused have not been found guilty of any offence.

As such, to ensure that the NCR regime is being implemented effectively, consultation with the provinces are necessary and ought to be mandated in statute. We ought not to create burdens on the provinces without assistance, and thus this mechanism helps to ensure that capacity and resources to implement the system are in place and working.

I might add, Mr. Chair, and I close with this, that effectively, this amendment seeks to secure the very objective that the legislation itself seeks.

● (1945)

The Chair: Okay, thank you.

Monsieur Goguen.

Mr. Robert Goguen: We're not prepared to support this motion. The Department of Justice already has an internal federal-provincial-territorial process that provides an opportunity for direct feedback on a broad range of issues relating to the Criminal Code. The motion may have an unintended consequence of binding our provincial and territorial counterparts to take part in a consultation that they may not have the desire nor the resources to participate in.

The Chair: Thank you.

Does anyone have anything further to add to amendment Liberal-12?

Seeing none, all those in favour?

(Amendment negatived)

(Clause 18 agreed to)

(Clauses 19 and 20 agreed to)

The Chair: We'll now go to a new clause 20.1—is that all right?—a new clause based on amendments.

There's a new clause being created. The first amendment we have on this is amendment Liberal-13.

Mr. Cotler.

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

This amendment mandates a comprehensive review of the NCR regime by a parliamentary committee within five years of Bill C-54 coming into force, and the committee would submit a report to Parliament within a year of the review. In other words, Mr. Chairman, Bill C-54 makes significant changes to the NCR regime and concerns have been raised by experts about the possibility that these changes may have unintended consequences—even some of those in favour of the legislation made reference to this. As such, it would be incumbent upon Parliament to consider the impact of this legislation in the medium and the long term so as to understand whether it had the desired result, or whether refinements are necessary.

I hope we can have a consensus around this table to have a review conducted and the reports prepared on this point to ensure that the legislation is operating as envisaged by the government and the proponents of this legislation.

The Chair: Thank you.

Before we move to Mr. Goguen on this, I'll let our friends from the NDP know that if amendment Liberal-13 actually passes, it will null and void amendment NDP-9. If it fails, I'll ask you to introduce amendment NDP-9. If not, it will be withdrawn, because it's basically the same thing with some small differences. That's how it will work.

We'll put you on the speakers' list if you want to speak to it, but Monsieur Goguen is first.

Mr. Robert Goguen: I don't want Mr. Mai to get the wrong idea, but I like Mr. Cotler's idea. I think we're going to support it because it makes sense to periodically review such important amendments to see if they're hitting the mark, so we're prepared to support Mr. Cotler's amendment.

The Chair: Wow, okay, great.

Some hon. members: Oh, oh!

The Chair: I don't know what to do now.

Hon. Irwin Cotler: My streak of rejected amendments has been broken.

Some hon. members: Oh, oh!

The Chair: Mr. Mai.

[*Translation*]

Mr. Hoang Mai: Actually, we are going to support this amendment. As you mentioned, Mr. Chair, amendment NDP-9 is very similar to amendment LIB-13.

Some problems need to be pointed out, and some witnesses clearly did so.

[*English*]

I'll mention a few of them. One of the main problems we had with this bill was the lack of consultation. The fact that 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, the Schizophrenia Society of Canada, the Canadian Alliance on Mental Illness and Mental Health—all those major organizations work directly with mental illness and were not consulted when we were talking about a bill that directly deals with mental illness.

That's why we had a lot of issues with this bill in terms of lack of consultation, and that's why we are happy to see that the government has learned from the fact that it needs to have better consultation. The fact that we'll have that put in place is something we support, and we are really happy that the government is also supportive of it.

● (1950)

The Chair: Thank you very much.

Do we have other comments on this?

Mr. Seeback, and then Mr. Albas.

Mr. Kyle Seeback: I agree. I think it's good to be.... But one thing I want to take some issue with, and it was raised in some of the questions today, is this assertion that there could be unintended consequences such as NCR-accused not going down the NCR-accused road.

I think that's a very dangerous commentary to make at this committee, because you're suggesting that criminal defence lawyers are going to counsel NCR-accused, who they know are NCR-accused, to not plead to that because they might think there's a softer sentence by not doing it. I think those kinds of statements at this committee are very dangerous, and we should be very careful when we're effectively impugning members of the criminal defence bar, that they may engage in that kind of conduct.

The Chair: Mr. Albas.

Mr. Dan Albas: Thank you, Mr. Chair.

I find it helpful that the NDP are going to be supporting this because I think there are some things we can all agree on, regardless of party stripe. However, I would like to take issue with the point of consultation. If Mr. Mai were to read, as presented by Mr. Cotler, other than the parliamentary process there is no talk about consultation outside of Parliament. By supporting this amendment, you are saying that parliamentarians should conduct those consultations, which was done through this process. So, Mr. Chair, I would say by their support of this particular amendment, they are supporting the consultation process we've had with Canadians through consulting with the Minister of Justice, different stakeholders, victims' groups. I would simply point out that by voting for this he's affirming this is a good process to go through.

I have to say, through you, Mr. Chair, I enjoy working with Mr. Mai.

I have just one other point, Mr. Chair. We also have had legislation come forward—for example, Bill S-209, that was on the prize fighting provisions—and again that particular...dates back to 1903. So I think it's helpful from time to time, and as Ms. May will probably attest even on my Bill C-311, governments should review their legislation to ensure it is timely, up to date, and giving the best service to Canadians.

Thank you.

The Chair: Thank you for that input.

Mr. Mai.

Mr. Hoang Mai: The reason we're supporting Liberal-13 is, as the chair has said, if Liberal-13 passes, then NDP-9 is null. With respect to NDP-9, we want to have consultation with experts and victims' groups, and this is what was important for us.

When we talk about consultation, which we have now, after we've submitted amendments, we find there's an issue. We want to make sure there is a mechanism that allows us to look at all the problems or how this bill will be applied before it comes into force. In this case, once it comes into force, we can look at it. I think it's important to have a mechanism. That's why we are supporting Liberal-13.

The Chair: Thank you very much.

All those in favour of Liberal amendment 13?

(Amendment agreed to)

The Chair: We now have a new clause 20.1, which is what we just passed, so NDP-9 is withdrawn.

On clause 21, PV-11 was defeated as a part of PV-2. NDP-10 was defeated as part of PV-2.

(Clause 21 agreed to)

The Chair: Under clause 22, PV-12 was ruled inadmissible, so there's nothing happening there. NDP-11 was also ruled inadmissible.

(Clause 22 agreed to)

(Clause 23 agreed to)

The Chair: On clause 24, we had Liberal-14 but it was defeated consequential to the defeat of Liberal-1. PV-13 was inadmissible. NDP-12 was inadmissible.

(Clause 24 agreed to)

The Chair: Liberal-15 is removed because of the defeat of Liberal-5. Liberal-16 is removed because of the defeat of Liberal-6. PV-14 is defeated because of Liberal-6. NDP-13 is removed because of the defeat of NDP-5. Liberal-17 is removed because of the defeat of Liberal-7. PV-15 is defeated because of PV-4 being defeated. Liberal-18 is defeated because of the defeat of Liberal-8. Liberal-19 is defeated because of the defeat of Liberal-9. Liberal-20 was withdrawn by the Liberal Party. Liberal-21 was defeated because Liberal-10 was defeated. Liberal-22 was inadmissible due to the PV-1 ruling. Liberal-23 was inadmissible due to the Liberal-11 ruling. That will bring us to the actual clause 25.

Shall clause 25 carry?

(Clause 25 agreed to)

The Chair: On clause 26, we had NDP-14, which is tied to NDP-1 being inadmissible. NDP-1 has not been dealt with yet. We're standing it down, so all of clause 26 is stood down.

(Clause 26 allowed to stand)

(Clauses 27 to 31 inclusive agreed to)

The Chair: We now have a new clause 31.1 because the Liberal-25 passed. So NDP-15 has been withdrawn.

(Clause 32 allowed to stand)

(Clause 33 agreed to)

The Chair: We're down to the short title already.

Let's go back to NDP-1 and then all the clauses that it affects. My clerk will help me with that.

I'm going to turn the floor over to you, Mr. Mai, because this is on your subamendment to the amendments.

● (1955)

[*Translation*]

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

As all members of the committee will recall, we made a subamendment to our amendment NDP-1. It will have an effect on one other amendment, but, at the moment, let us stay with amendment NDP-1. We move that the text be amended by substituting:

> "discharge, any conditions of release and accused's intended place of residence shall, at the victim's request, be given."

[*English*]

What we added from NDP-1 was "any conditions of release".

We feel that includes what we tried to bring forward, in terms of giving more information to the victims. If you look at what happened in the past in this Parliament.... It refers also to language that was used and things that were used in Bill C-10, clause 57,

[*Translation*]

about conditional release.

I just want you to recall some information. According to the language used in Bill C-10, when an accused is convicted in the criminal system, victims are informed about the conditions of release. When a person is deemed not criminally responsible, it is the opposite. That information is not provided to victims.

Although it passes the privacy test in Bill C-10, we believe that victims should be given the same rights whether the accused is convicted or declared not criminally responsible, as stipulated in the Criminal Code under the changes made as a result of Bill C-10.

Could we perhaps ask the witnesses we have with us here today?

Are you in favour of the amendment you have before you in terms of its vision and validity?

● (2000)

[*English*]

Ms. Carole Morency: Yes. I do have the NDP-1 subamendment before us.

Our initial reaction would probably be as follows. We understand that the reference to any conditions of release is intended to be generic and not get into the detailed approach. That's understood.

That does still raise some concerns that the committee should take into account. For example, this may still get into whether there are some privacy implications. If it's a review board issue, then it would be subject to privacy legislation at play in the provinces and territories.

There would also be concern that I think would be quite significant to take into account, which is what this additional burden would add to the workload of the review boards. Bear in mind that you heard from chairs of the boards, which were amongst the larger ones. There are smaller ones in the country with less resources to discharge whatever additional responsibilities you might be looking to support here.

Those would be some of the preliminary reactions we would have that the committee could take into account, if you're looking at this at this moment.

Mr. Hoang Mai: If I can follow up, is it correct that right now, according to the Criminal Code, or Bill C-10, clause 57, that type of information is already required to be given to victims by review boards?

Ms. Carole Morency: I should have Bill C-10 burned in my memory, but I think you're referring to the provision that was added as an amendment to the Corrections and Conditional Release Act, that federal correctional authorities were directed, as a result of some of those amendments, to provide additional types of information.

That's something within the federal domain. It's something that to some degree was happening, but perhaps not as consistently as what some victims were looking for.

The point that I made before was that the impact that this might have would probably be more greatly felt by review boards. It goes well beyond what we've been in a position to comment on.

The Chair: Do you want me to move on to the next speaker, Mr. Mai, and come back to you?

Yes, okay.

● (2005)

Ms. Julie Besner: I can elaborate further if it assists the committee, as well.

The Chair: Sure.

Ms. Julie Besner: Oftentimes the review boards will make their decisions public. Part of the dispositions is the conditions that they impose. There's the open court principle that applies. What the motion seeks to do, however, is create a requirement that they provide it directly to the victim. That may be what my colleague was describing as being a burden that might be difficult for them to achieve. But it doesn't mean that the information may not be available if the victim does request it as part of public decisions that are made.

The Chair: Thank you.

Monsieur Goguen, to the subamendment.

Mr. Robert Goguen: Thank you.

We're not prepared to support the subamendment, based on the comments made by the witnesses. There are obviously privacy concerns. Certainly, we've been criticized about jamming additional responsibilities down onto the provinces. I understand at the last federal-provincial-territorial meetings there was an agreement to minimize that. So we won't be supporting the amended NDP-1. However, the perfect should not be the enemy of the good, and certainly we'd be willing to revisit the initial motion to amend.

The Chair: Thank you for that.

Mr. Seeback.

Mr. Kyle Seeback: I'd just point out something. We just accepted Mr. Cotler's amendment to add in a review. It's certainly something that we could look at in the review of this legislation. If there are any gaps in that area, we can look at it then.

The Chair: Okay, thank you.

Is there any further comment on the subamendment?

Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, as I said at the outset when we were considering this, I appreciate the spirit of this amendment, but I do have concerns regarding the privacy laws and the obligations of the government. While the first version of amendment NDP-1 would have released only the address of the NCR-accused, this revision now adds the conditions of release. It's problematic from a privacy point of view because some conditions may be of a more private nature and not pertinent to the victim's needs—for example, conditions respecting particular elements of a treatment plan.

While I feel the spirit is correct on this amendment, I think it might be proper for the Privacy Commissioner to be consulted, perhaps in relation to similar amendments, at either report stage or in the Senate. Therefore, in that regard and by way of conclusion, if we cannot agree on this tonight, it might be appropriate for the committee to include in its report to the House that it seeks to clarify this matter at report stage, lest the Speaker reject a similar amendment at report stage as being a matter that ought to have been considered at committee.

The Chair: Mr. Mai, for the last word on the subamendment.

Mr. Hoang Mai: In consideration of all the wise advice from my colleagues on the committee and also from the witnesses, the intention—and Mr. Cotler mentioned it—was to give more information to the victims. But obviously, when we work on the fly because of lack of time to react to what a witness has said....

Considering some of the consequences or unintended consequences, we'll withdraw the subamendment.

(Subamendment withdrawn)

The Chair: Thank you very much.

The subamendment has been withdrawn, so you can speak now to your amendment NDP-1, which will affect clauses 7 and 26. Then I understand that if it passes, clause 32 will also have to be amended, and the government has a motion to that effect, I believe.

For amendment NDP-1, you have the floor, if you wish, Mr. Mai.

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

I mentioned from the outset, when we first started talking about amendment NDP-1, how important it is for victims to know where the residence of the accused is. Everyone agreed, and I appreciate that the government also agrees on that front.

The Chair: Okay, thank you.

Is there anything further on amendment NDP-1?

Mr. Robert Goguen: It respects the spirit of the bill.

The Chair: Okay, all those in favour?

(Amendment agreed to)

The Chair: Unanimously carried. That's two amendments—wow, one for each party.

Voices: Oh, oh!

The Chair: What has happened to this place?

We have to now approve clause 7.

(Clause 7 as amended agreed to)

The Chair: We have to move to clause 26 because of the amendment we just made.

(Clause 26 as amended agreed to)

(On clause 32)

The Chair: Now we'll move to clause 32. I believe there's an amendment from the government on clause 32.

● (2010)

Mr. Robert Goguen: There's a consequential amendment, but I'd like to go to the two expert witnesses and get their response as to the need for the amendment, and the effect on clause 32.

Ms. Julie Besner: Sorry, you would like an explanation that would assist the committee, is that right?

The Chair: Yes. Why do we need an amendment on clause 32 based on what we've just done with NDP-1? I believe it was clause 7.

Ms. Julie Besner: I believe it's as a result of motion NDP-14 with respect to the address of the accused being provided to the victim. That motion amended the National Defence Act provision that provides for that amendment.

There is also in clause 32 a coordinating amendment with Bill C-15, which also amends the National Defence Act. It is currently in third reading in the Senate, if I'm not mistaken. An amendment to that—

The Chair: It's coordinating with that legislation that's already in process, is that correct?

Ms. Julie Besner: Essentially, it's the same amendment as NDP-14.

Mr. Robert Goguen: To the National Defence Act.

The Chair: Okay. Is that a good enough explanation for everybody?

Mr. Robert Goguen: Is everyone happy with that?

An hon. member: Yes.

The Chair: All those in favour of G-2—

Mr. Robert Goguen: I haven't moved the amendment yet.

The Chair: Oh, you haven't moved it yet.

Mr. Robert Goguen: Not yet, but I will.

The Chair: Sorry.

Mr. Robert Goguen: I move that Bill C-54 in clause 32, be amended by replacing line 11 on page 22 with the following, “and the accused person's intended place of residence shall, at the victim's request, be given to the”.

[*Translation*]

Do you want me to read it in French? No? Okay.

[*English*]

That's it.

The Chair: Thank you for moving that. I'm sorry, I thought you had been asked.

Mr. Robert Goguen: That's okay. It's getting late.

The Chair: All those in favour of that amendment?

(Amendment agreed to)

The Chair: All those in favour of clause 32, as amended?

(Clause 32 as amended agreed to)

The Chair: Thank you very much.

Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Hon. Irwin Cotler: May I have a recorded vote on this one, Mr. Chair?

[*Translation*]

The Chair: Absolutely.

[*English*]

It has been asked for the vote to be recorded. My trusty clerk will call the roll.

(Bill C-54 agreed to: yeas 10; nays 1)

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you very much.

I was hoping we would be done by eight o'clock and we came very close. It's 8:13 p.m.

Ms. Elizabeth May: Mr. Chair, for the record, I want to thank you for being so welcoming. I appreciate it very much.

The Chair: My pleasure.

Before we adjourn, because there's the potential of another government bill coming to this committee but it won't get here until probably Thursday or Friday, there's no chance really of getting witnesses.

My plan, as chair, was not to have any meetings next week as we don't know what the schedule of the House will be.

Mr. Mai.

Mr. Hoang Mai: I understand that, but I think we have to work, regardless of what we think is going to happen next week. This committee is really very busy. We could see that today, making amendments when we don't even have the time to listen to the witnesses.

My suggestion would be for the justice committee to work as planned and to hold meetings next week, so we can actually move forward on some of the bills that are important for the government or for members who are presenting the bills.

The Chair: Mr. Goguen.

Mr. Robert Goguen: We should maybe go in camera to discuss this, if we're going to get into the details. Perhaps we could hold a subcommittee meeting and discuss it now.

The Chair: Are you moving to move in camera for a subcommittee meeting on the agenda?

● (2015)

Mr. Robert Goguen: Yes.

The Chair: All those in favour of that motion?

(Motion agreed to)

The Chair: We'll take a few minutes to go in camera.

Those who are on the subcommittee, please remain back, and we'll have a discussion on agenda items since we have no agenda items for next week at this particular moment.

[*Proceedings continue in camera*]

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