HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 046 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, October 9, 2014

Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

Thursday, October 9, 2014

● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Good afternoon, ladies and gentlemen. I am going to call to order this meeting of the Standing Committee on Justice and Human Rights. This is meeting number 46. It is televised. The orders of the day are pursuant to the order of reference of Friday, June 20, 2014, Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts.

Appearing before us is the Honourable Peter MacKay, the Minister of Justice and Attorney General.

Before we go to the minister, everyone has in front of them the budget from our review of the prostitution bill that was before us in the summer. We had allocated $39,900. We are slightly over that. We have one more bill, I think, that just came in. We have approval for $39,900 and we are asking for approval for another $5,000 just to make sure we cover everything.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I'll move the motion.

(Motion agreed to)

The Chair: Thank you very much.

Thank you, Minister, for joining us. We're here to talk about Bill C-32.

The floor is yours for 10 minutes.

Hon. Peter MacKay (Minister of Justice and Attorney General of Canada): Thank you very much, Chair.

Colleagues,

[*Translation*]

I am pleased to appear before this committee today to talk about Bill C-32, which enacts the Canadian victims bill of rights and will entrench victims' rights in federal legislation.

[*English*]

I'm proud to say that this bill, the victims bill of rights act, has been a key priority for our government since 2006. I appreciate the support that has been received for this bill thus far at second reading from numerous groups of stakeholders, victims advocates, including members present, since the bill was tabled last April.

This bill reflects broad consultations and input received from over 500 stakeholders in person or online bringing forward reforms discussed at every federal-provincial-territorial forum, and best practices from international, provincial, and territorial legislation, and programs. There has been a tremendous amount of input. At its core, the victims bill of rights act complements existing measures for victims of crime while respecting constitutional divisions of power in the administration of justice and being very careful to avoid causing undue delay in the criminal justice process. That was an important consideration, I can assure you, which was raised often during our consultations.

I strongly believe that this bill strikes the appropriate balance between the rights of victims and the rights of the accused. Importantly, it extends rights for victims at every stage of the criminal justice process, from the beginning of the investigation to the consideration of the release of the offender on warrant expiry. It affords victims a true sense of inclusion, of respect and consideration, throughout the process. The proposed primacy clause stipulates that all federal legislation would be required, to the extent possible, to be interpreted in a way that is consistent with the Canadian victims bill of rights. Where there is a conflict between a federal law and the bill of rights, the provisions of this bill would prevail, with certain notable exceptions. Victims will benefit from general rules that will be entrenched, will be spelled out, will be cast in federal law for the first time.

We know that victims of crime often seek information about the criminal justice system and the role they play, about their case, about the decisions made by the justice professionals throughout the process. This bill creates a right to information. It brings amendments to the Criminal Code and Corrections and Conditional Release Act to provide more information to victims on things such as bail and prohibition orders, plea arrangements, victim-offender mediation, and parole board decisions. This proposal builds on existing laws, policies, and best practices.

● (1535)

[*Translation*]

We know that victims are looking for greater protection in their interactions with the criminal justice system. Bill C-32 will build on the many existing measures in federal law to better serve victims.

[*English*]

Specifically, amendments to the statutory scheme governing the disclosure of third party records in sexual assaults proceedings, in the testimonial aid provisions, would require courts to consider the particular security needs of victims who are witnesses. Similarly, proposed amendments to the Corrections and Conditional Release Act would allow the parole board to impose reasonable and necessary conditions on an offender serving a long-term supervision order, which would include a non-contact or geographical restriction if the victim presented to the board a statement about safety.

Studies on child victims have shown that publishing identifying information can exacerbate trauma, complicate recovery, and discourage children from reporting crimes to the police or impact on their cooperation with authorities. That's why the proposals relating to publication bans involving children and using pseudonyms are the logical next step in enhancing victim protection in our system.

The amendment on spousal immunity has sparked some interest. The proposed amendments would ensure that if a spouse has relevant evidence to give, the crown will not be able to call the spouse to testify. Bill C-32 would not, however, change the privilege regarding marital communication. A married person testifying at a trial may still refuse to disclose a communication made to them in the confidence of the spouse during their marriage.

[*Translation*]

We know that victims want to participate more in the criminal justice system. The right to participation set out in this bill recognizes that major concern.

[*English*]

Specifically, the measure to clarify and broaden the scope of the victim impact statement provisions in the Criminal Code would clarify that victims would be permitted to speak in their victim impact statement to the emotional, physical, and financial impacts of the offence. It could also include their taking a photograph with them, or using testimonial aids to present their statement to the court. These are compassionate measures that we think will aid in the ability of a person to give their evidence.

We know that victims are also concerned about the financial impact of a crime, which often places them in serious hardship. The amendments proposed would provide victims with the right to have courts consider restitution orders against the offender, as well as the right to enforce orders as civil judgments which could or would possibly avoid lengthy civil proceedings for the victim of crime.

We know as well, Mr. Chair, that victims were seeking enforceable and practical measures to address the harm and prevent similar harm to others.

I must pause for a moment to pay tribute to those very courageous individuals who took part in this process and helped with the presentation of this bill by sharing their experiences in the criminal justice system. For many it was a very painful experience to go back over what had happened to them, but I know that they did so with tremendous compassion in their hearts, in the hopes of preventing victimization in the future.

During the consultations, many victims advised that they did not want to see police or prosecutors impeded in the exercise of their authority, or punished. They simply wanted organizations to address problems up front and spare other victims and their families some of the unfortunate experiences they had undergone.

The proposed remedies approach would provide remedial action to victims more quickly than any external adjudicative process, and make federal departments and agencies proactive in addressing victims' needs. This remedial scheme provides a review mechanism with statutory powers and the operational expertise necessary to assess potential breaches of victims' rights, in the context of each department's or agency's operations, requiring that victims use existing oversight bodies with authority to oversee the operations of a department or agency. This is a cost-effective and timely approach, and it's consistent with the input that we received during consultations.

[*Translation*]

Many victims' rights advocates in Canada clearly supported creating enforceable rights for victims. In her initial report on Bill C-32, the federal ombudsman for victims of crime wrote that this significant step forward will help acknowledge and enshrine victims' role in the criminal justice system. That is very positive.

● (1540)

[*English*]

After talking about what this bill will do, allow me for a moment to touch on some of the elements that the bill will not address.

The bill doesn't propose to make victims a party to the criminal proceeding or give standing, nor does it give victims the right to receive legal aid automatically. These are areas we spent a great deal of time considering and reviewing. We believe we received significant feedback during the consultations on these specific suggestions. I might say many were concerned that it could lead to unintended negative consequences for victims, unnecessarily burden the justice system, and lead to significant costs and delays in criminal proceedings. For those reasons we have not proceeded in that direction.

The bill also does not give rise to a cause of action or claim in damages. Criminal justice officials noted during the consultations that imposing additional civil liability on officials responsible for implementing this bill would impact on the operations, cost, and functioning of the justice system. As similar clauses appear in provincial and territorial victims' rights legislation, other federal statutes, and related statutes in other countries, we are confident with the approach we've taken on this issue.

This bill will also not provide victims with the right to review or veto a crown decision to prosecute. Again, we've received tremendous input on this subject. Prosecutorial discretion is a constitutionally protected principle in our criminal justice system, and we are protecting it under clause 20 of this bill.

However, we have included amendments to the Criminal Code that would require the court to inquire if the crown had informed the victim of any plea arrangements for serious personal injuries offences, which we believe strikes the right balance and the right approach. Our focus here is giving victims consultation and a voice at a critical point in the criminal justice process, without creating undue cost or delay, or in any way undermining what we feel must be balance in a fair trial.

[*Translation*]

We will continue to work with our provincial and territorial partners as they implement this legislative measure in their respective jurisdictions.

[*English*]

In conclusion, Mr. Chair and colleagues, it is my hope we will continue to work together at the federal level to ensure this bill restores victims to their rightful place at the heart of our criminal justice system.

I thank you in advance for the work you are undertaking in looking at this bill in detail. I thank you for your diligence on a number of legislative agenda items you have before you, and I look forward to your questions.

The Chair: Thank you for coming, Minister.

We are going to go to questions now. You are joined by two officials from the Department of Justice: Madame Morency, director general and senior general counsel for the criminal law policy section, and Madame Arnott, director and senior counsel, policy centre for victims issues.

The floor now goes to Madame Boivin, for five minutes.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

Thank you, minister, for sharing your vision of Bill C-32 on the Canadian victims bill of rights.

I wanted to say right off the bat that I am happy that the process was expedited, insofar as the opposition was able to do so, so that the bill was referred to the committee for study.

In my opinion, there is no role more important than looking after the people we represent. Among the people we represent in our respective ridings are victims. There are all kinds of victims, and they are defined in different ways. I am glad that we can spend an unlimited number of meetings on this issue.

I am glad to hear what you have to say, but we are going to want to hear mainly from victims, the people who look after victims and those who deal with them in the justice system. We are finally going to be able to focus on that. Too often, these people feel that the justice system is not on their side and that they are forgotten. This is a good way to bring the focus back to them. However, it is clear that we have to do so properly, and not just on paper.

You talked about consultations, minister. Our partners, the provinces and territories, are the ones that are frequently going to have to enforce the victims bill of rights once it is passed.

That is why I would like to know whether you consulted the provinces and, if so, how.

Did they see the bill? Did they validate it? Were you able to discuss it?

Could you tell us how all this will be implemented?

● (1545)

Hon. Peter MacKay: Of course. Thank you, Ms. Boivin.

We had the opportunity to talk directly with some provincial justice ministers at the meeting in Whitehorse last fall. We did so in every province or territory where we held consultations. In Prince Edward Island, for example, the Minister of Justice took part in the meeting.

[*English*]

It was very much an attempt to bring as many people into that process as possible, not only our provincial and territorial partners, but many of the organizations that are involved in the front-line delivery of services for victims, of course lawyers, prosecutors, even some judges.

I should mention as well there was an online consultation, one of the first we've undertaken, and it led to a larger and even more inclusive consultation which took place in response in the Bedford case.

I would suggest to you that this was an effort to hear as many perspectives as possible, but most particularly and with emphasis, as you suggested, on victims themselves and hearing their experiences.

Ms. Françoise Boivin: Talking about the victims, the ombudsman for victims is doing exceptional work sometimes with limited means, and she didn't pay me to say that.

[*Translation*]

I am curious to know what role the ombudsman for victims will play under the victims bill of rights.

Will you expand her role? Has that been decided?

What role do you plan to give her in enforcing the act once it is passed?

Hon. Peter MacKay: You are right that the ombudsman is an exceptional person who has a great deal of experience in the justice system. She clearly plays an extraordinary role in enforcing victims' rights.

However, it is important to understand that other systems can play a role. For example, the RCMP has a complaint mechanism. The intent behind this bill is not to duplicate effort, but to respect the provinces' and territories' role and jurisdictions.

[*English*]

The Chair: Thank you, Madam Boivin and Minister, for those questions and answers.

The next questioner is Mr. Goguen, from the Conservative Party.

[*Translation*]

Mr. Robert Goguen: Thank you, Minister, for appearing today. It is always a pleasure to have you with us. I would also like to thank the departmental staff.

Thank you for all the hard work you have done to try to finally give victims a voice in the justice system. We know that victims are often thrust into a system they do not know or understand very well. The voice and the rights you are giving them are welcomed by the people in the system.

Could you explain how this law will really change victims' lives in Canada? I think you will agree that it is quite a change in approach.

Hon. Peter MacKay: Absolutely. Thank you for the question, and thank you for your work on this initiative and all justice initiatives.

In fact, this is a real paradigm shift. It is a change in how we see choices across the justice systems in Canada.

[*English*]

I think it's fair to say that by entrenching for the first time in federal law these rights for victims you will see a culture shift. It is our hope to bring about a greater sense of accountability throughout the system. It is our hope to bring about a greater recognition of what it is the various players within our justice system must do to include victims and reach out to them. They must ensure that the victims are in fact aware of their rights and aware of the obligation that exists, whether it's from the time of the investigation—the very first contact is most often with the police, as Mr. Wilks can attest to—to that very first court appearance, to officials within the justice system and throughout the process, from sentencing on through the process of corrections and release.

Entrenching these rights very much gives victims a greater sense of where they belong, what their ability is to ensure that their rights and their role are being respected and have remedy, have a place to go when things go wrong, which sadly they do.

It will take time to take hold. This effort, I believe, has been met with tremendous enthusiasm. It has been met with some trepidation on the part of some within the system. But I think as it is understood and as it is put in place, it will bring about what I believe will be a very positive change for victims in Canada.

● (1550)

Mr. Robert Goguen: Thank you, Minister.

I note your remarks that Bill C-32 actually reflects much the input of the stakeholders that were consulted. I note that there was extensive consultation and that this outreach was very important in coming to the final provisions that have been proposed.

I also noted your remarks with regard to the effort made to respect the constitutional jurisdiction of the provinces. I wonder if you could elaborate on the extent of the consultations which were undertaken.

Hon. Peter MacKay: It was the first undertaking I made after being sworn in as Minister of Justice. I was advised by my department that I should pack my bags, because I was going to every province and territory to meet with provincial representatives and many different advocacy organizations on behalf of victims, victims themselves, criminal justice professionals, territorial officials, and non-governmental organizations. I should point out that we met with first nations communities and representatives of Métis and Inuit organizations.

We heard some heart-wrenching stories, Mr. Goguen. I think you'll recall in New Brunswick that we heard from individuals—and I know that many of you have had similar experiences—who were feeling, and often used the term, re-victimized as a result of what had occurred.

This bill attempts to address many different elements, but many included lack of information or somebody had not given them proper information or not advised them of a decision that was being taken that very much impacted on them. They were not given information, in some cases, about the release of an offender. In one instance I recall vividly a woman telling us that while in line at the grocery store she met the person who had sexually assaulted her, and this brought back such horrendous emotions, fears, and anxieties.

It's my sincere hope, and I think you will all share this, that we will to the greatest extent possible, through the enforcement of these rights, prevent that re-victimization or sense that the system has somehow failed them. There is no perfect filter through which we can prevent every failing, but I do believe this bill will bring about a tremendous improvement, as I said earlier.

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

Our next questioner is Madam Bennett, from the Liberal Party of Canada.

Welcome, by the way.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you.

If the minister has any say on the makeup of this committee, we would hope that maybe the minister would think there should be some women representing the Conservatives, or maybe some indigenous representation, but I digress.

On this bill our ongoing concern is that any bill that enshrines rights needs to make sure that there's funding to ensure that the rights are well known and able to be exercised by all Canadians. We also want to make sure that the mechanisms in victims services are consistent across the provinces and territories, and particularly with first nations.

I would like to know what funding will come with this bill to make sure that people across Canada know about it, and that the mechanisms are in place to deliver the intent of the bill.

Hon. Peter MacKay: Thank you very much, Ms. Bennett.

The makeup of this committee, as you know, is not done at the direction of the Minister of Justice, although I do know that female members have attended.

With respect to the funding, in addition to the $120 million in the victims fund that was introduced by our government in 2006, specific funds have been earmarked to enhance victims services at the provincial and territorial levels.

With respect to funding attached to this bill, there will be funding. It was set out in last year's budget, confirming that more resources will be made available, especially as you point out, for the online and broader communications of the implementation, because rights, as we all know, are only as good as a person's understanding and ability to exercise them.

It's my hope that in addition to that effort to communicate about this new bill, the coverage of this committee hearing and the inclusion of many victims and victims groups and advocates who will appear before this committee will also spread the word about the improvements within the criminal justice system. More details will be forthcoming on the funding attached specifically to this bill, and for both the communications and the enhancement of victims' rights and victims services across the country.

● (1555)

Hon. Carolyn Bennett: As you know, Minister, this bill has been hailed as a significant component of the action plan for missing and murdered aboriginal women. From coast to coast to coast, we've heard from the families that they haven't had the support or the ability to navigate the system. Quite rightfully, many of them have had a distrust of authority stemming from colonization to racism, and other barriers. They don't feel comfortable in the system in complaining, so I think they require some special care.

I was concerned that the AFN felt there hadn't been sufficient consultation with indigenous stakeholders around this bill. Other than the online comments, I was wondering if you could let us know what consultations have occurred. Maybe you could table with this committee the list of consultations with indigenous stakeholders, including what you heard and how you think this bill deals with the concerns articulated in those consultations.

Hon. Peter MacKay: Well, I wouldn't take issue with what you said about the often very difficult experience that those in the first nations community have experienced over the years in the criminal justice system, and their disproportionate representation in terms of those who are incarcerated, those who are affected by violence.

To come back to your question as to who I met with specifically, in Yellowknife we met with the Dene First Nation representative, Native Women's Association of the Northwest Territories, Qulliit Nunavut Status of Women Council, Qimaavik Women's Shelter, Pauktuutit Inuit Women of Canada, Qikiqtani Inuit Association, Métis Nation of Ontario, Gignoo Transition House, and the Mi'kmaq Confederacy of Prince Edward Island.

This was during the summer round tables last year. You mentioned the online consultation. There was also input that we received.

Hon. Carolyn Bennett: Would you table the specific concerns that were raised by those particular participants and then how you think they're addressed?

Hon. Peter MacKay: Sure, we can provide a synopsis of the feedback that we received.

As far as the investment that is, I suppose, providing some linkage between the victims bill of rights and what we're attempting to do for aboriginal women and girls and violence against them, there is a program of $25 million over the next five years, aimed specifically at programming both on and off reserve to assist in deferring the violence and obviously the suffering that has been experienced in the community, an action plan to address family violence.

I know that as a member of that committee you're aware of those efforts.

Hon. Carolyn Bennett: There is some concern that the Gladue principle may well be weakened by this bill.

Have you had consultations about that, and could you let us know whether this again will be in conflict or contradict the Gladue principle?

Hon. Peter MacKay: We have contemplated that, and as you know, the Supreme Court has stated that courts are required to consider the imposition of restorative justice.

I had some experience previously as a prosecutor, in the early days of restorative justice and things such as sentencing circles, so I believe in the principle. I believe that they do work in some instances. However, there is also the ongoing need to balance those considerations when there is serious violent crime and sexual violence against individuals.

All of that is going to be considered by the judge. This is where the final determination will be made and how to calibrate the application of the Gladue principle with other considerations, such as the victim's background and the victim's experience to that point, which in many cases led them to find themselves in court as a victim.

We have to bring those sentencing principles in line when it comes to the final determination, but ultimately, I have great confidence in our judiciary to make good decisions in balancing out those existing precedents with what we believe is contained in the victims bill.

● (1600)

The Chair: Our next questioner, from the Conservative Party, is Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Minister, thank you for being here today.

I was really pleased to see the introduction of this victims bill of rights. I've had the opportunity to speak to victims of crime in my city of Mississauga and across Canada. Many times I heard that they suffered the assault, the harm; they made a statement to the police and heard nothing further until they were called to trial one day and treated like just another witness. They didn't know what was happening in the investigation, in the prosecution, yet the harm was done to them and to their family.

You mentioned in your opening statement that the victims bill of rights contains a right to information. That seems, from what I've heard.... I want to also say that I had the opportunity to serve on the Special Committee on Violence Against Indigenous Women, as did Ms. Bennett. We heard from some of those victims and the families of those victims, and this was a key concern of theirs. They hadn't received information both about the investigation into what happened to their loved one and about the prosecution. When someone was charged, they got very little information about the whole prosecutorial process.

I wonder if you could tell us a little more about what the right to information means in this bill and how it would make a difference in the lives of victims.

Hon. Peter MacKay: Thank you very much, Mr. Dechert. I know that you and many members of this committee took part in the consultation and in the formulation of the bill itself.

This was one of the glaring shortcomings, if I could put it that way: basic information for the victim was sometimes missing. It caused a profound sense of exaggerated harm, uncertainty, and anxiety, particularly when court dates were changed and no explanation was given, or, as I spoke of earlier, an offender may have been released into the community without proper notice.

In many cases I truly believe this is never done with any sense of malice or even out of error. There is sometimes a genuine disconnect; one department or one individual may think that somebody else has already informed the victim. We heard this often during the consultation: the police thought the crown had informed them, or the crown thought victims services had done so.

I believe this bill will clarify people's roles, bring about greater certainty of responsibility in the sharing of information, and to the greatest extent possible, provide victims with the firm understanding of the guarantee to the information they're entitled to. That information can now include such things as court orders of restitution; court orders of the conditions that attach to the offender upon release, for example, in a bail hearing; a picture, a recent photograph, a recent image, of the individuals if they had been incarcerated for some time; information, in some cases, where the victim is registered with corrections and conditional release, about how the offenders have responded to treatment or whether they have expressed remorse. These are sometimes things of great importance to the victims, to know how the offenders have responded or whether they have sought treatment, whether they have demonstrated an effort to rehabilitate themselves.

This bill sets out to the greatest extent possible what information should and must be available to the victims upon their request.

● (1605)

Mr. Bob Dechert: I believe this victims bill of rights will help to restore Canadians' faith in the criminal justice system, which I think is very important.

You mentioned the right to safety and security. That's very important. We hear that from victims, especially victims of assault, all the time.

Could you tell us a little about the right to safety and security measures that are in the bill, and in particular the right to access a recent picture of the offender before release?

Hon. Peter MacKay: I think, suffice it to say, there are few things that would be more important to a person than to be able to recognize or pick out the person who caused them harm. Where periods of time have elapsed or the individual may in fact have made deliberate efforts to change their appearance, there is, I think, a right that an individual should enjoy to be able to take whatever necessary steps to protect themselves. The very least is to be able to identify the offender.

As far as other steps are concerned, that knowledge of what those conditions of release may be, whether it be earlier in the process, during, for example, pretrial, pre-sentencing, or after release, the conditions that the individual has to adhere to, including stay-away orders and certain conditions that would apply directly to their residence, to their children, to their place of work, that type of information being relayed accurately and in a timely way to a victim is extremely important.

I might add, practically speaking, this does happen for the most part. Much of what we are entrenching in this bill is done regularly and routinely across the country. This is meant to bring together and consolidate a greater flow of information and a greater flow of confidence to victims and to those in the system and to the public at large, as you've just said.

I wouldn't want this to ever be construed as a damning criticism of those who are working hard in the system every day. This is all about ensuring that we're doing everything possible, and everything now through a federal bill, that will bring about greater compliance and greater protection for victims overall.

The Chair: Our next questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I agree that it is difficult to be against Bill C-32, but some criticism has been expressed, particularly about the bill's enforceability.

There seem to be quite a number of good statements of principle. Some things already exist in some provinces, where there are already victims bills of rights. In 2003 the federal government was a party to a sort of bill of rights with its provincial and territorial partners.

The question people often ask me is the following. You must have been asked it often as well, and I would like to hear your answer.

How is the Canadian victims bill of rights provided for in Bill C-32 enforceable? This 60-clause bill includes four very important sections: the right to information, which you talked about, the right to protection, the right to participation and the right to restitution.

Which of these provisions are really enforceable, formal, firm? There are not many; that is what victims are telling me. They say that there is something missing. It is good to project a certain image, but something actually has to be done. There are not many definitive things in this bill.

People are worried about funding. My colleague talked about this earlier. How many programs that helped victims have been eliminated in recent years? I have met with first nations groups that submitted projects or programs to help victims in their communities, but they were all refused. People have a hard time believing that this will change things. They are a bit distrustful, and I can understand why.

How do you react to that? How will this change things when many provinces already take this approach and they will have to enforce the law?

● (1610)

Hon. Peter MacKay: Thank you, Ms. Boivin.

You are right. There are similar bills in every province and territory.

[*English*]

This bill, however, goes further. This bill, for the first time in federal law, puts in place a system that is meant to enhance and protect victims' rights in a way that truly places victims' rights on a level that is consistent and fundamental with all other federal legislation within our criminal justice context.

Ms. Françoise Boivin: How will you enforce it? How will you make sure that it's applied uniformly in Quebec, Ontario, Newfoundland, and so on and so forth, when you're not in charge of the administration of justice, and when the courts already have problems with access to justice and so on?

Hon. Peter MacKay: The immediate enforcement and the mechanisms by which that will be achieved will happen over time. This won't be like flicking a switch; it will require some adaptation.

I would suggest that it will put in place a greater linkage between those other complaint mechanisms and the federal victims ombudsman office, which is a relatively new insertion into our criminal justice system, since 2006-07. That office will allow for oversight, and I suggest that over time it will develop a working relationship with those other mechanisms, those other complaint processes, at the provincial and territorial levels.

To come back to your question about funding, there is also increased funding from the federal level into things such as the aboriginal justice system and victim advocacy organizations.

I would suggest, Madame Boivin, if you have not had the opportunity, to please visit one of these child advocacy centres. This is perhaps one of the most innovative insertions of victims' rights that I've seen in my lifetime, as far as getting young people the type of help and support they need at the very front end of the system. It reduces victimization for them at that tender years stage.

I would suggest that there is—

Ms. Françoise Boivin: I do wish we could export that program and that way of doing things to many others. To this day, from your own department, it shows that it's still pretty much 80% of the total cost.

[*Translation*]

Victims themselves have to cover these costs, which are significant.

[*English*]

Hon. Peter MacKay: I find myself in agreement with you. I think there is very important change happening through those victim advocacy centres for children, which can be imported into the adult system. These improvements are happening. Obviously, it does always require resources.

The best part of this, and what I'm pleased to see, and I think you would agree, is the incredible dedication of the people who are devoting their time and effort to child victims. That is what is making the difference. It is because of the tremendous professionalism, lessons learned over many hard years for victims, that we are seeing changes in the counselling, the programming, the early intervention, and the lessening of trauma, particularly for children. Those mechanisms were in place but weren't always being uniformly used. There are testimonial aids, for example, something as simple as allowing a child to take their pet to a police interview or a court appearance, so it lessens their anxiety and their negative experience.

Those important steps forward are being made, and I think they will be translated across many other victims services.

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

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

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Minister, for being here today.

I'll centre my questions around restitution. If I may, Minister, I'll give you the four questions I have, and then I'll let you carry on.

First, can you tell us what restitution is? There are a lot of people who probably don't understand all of the types of restitution that can be involved. Why does the victims bill of rights include a right to access restitution?

Second, why is restitution important for victims?

Third, why are these changes important within the bill?

Fourth, if restitution is made in favour of the victim, what mechanisms are in place for non-compliance?

● (1615)

Hon. Peter MacKay: Thank you very much, Mr. Wilks. Those are really important questions.

Restitution, simply put, is part of the sentencing order to allow victims to be repaid or put back in a place to the greatest extent possible where they would have been had the crime not occurred. Restitution is an effort to cover losses, whether they be financial or property losses, that have been experienced. Where this becomes difficult, and some would say impossible, is in trying to restore any psychological or physical harm experienced by a victim. That's where counselling and deferring medical costs is part of a restitution order that can be made by the court. Losses must be calculated for a judge to make an accurate restitution order, and they must be directly attributable to the crime. That, in a nutshell, is restitution.

As far as why it is important, it's part of the healing. It's part of the sense of true justice that victims be given acknowledgement of and restitution for their loss. It's a very important principle within the justice system. We heard a lot during the consultation from individuals who felt that offenders didn't truly appreciate the impact the offences had on them. Restitution is a form of rehabilitation as well, I would suggest. The offender is giving back and trying to put the individual back in the place they would have been had they not been harmed.

Victims often talked about the out-of-pocket expenses throughout the process: they were required to commute back and forth to the courtroom; they had missed work; they had to make child care arrangements. They were out of pocket. It was costing them further. It was as if the crime continued to be committed. Restitution is a very important part that we felt necessary to ensconce in the bill and to bring about true effect for the victim and changes that would help at least blunt the impact of the crime, in terms of the financial and sometimes psychological and physical impact that victims experience.

Why is it important that we do this? Why were these changes necessarily included in this bill? It's already part of the Criminal Code. It's our hope that this will bring about greater enforcement. What are the mechanisms to do so? This will empower courts, we believe, to follow through, to make necessary adjustments in some cases. I'm going to go out on a bit of a limb in suggesting that some provinces should look at their victim fine surcharges, look at alternative measures, programs that can be put in place that will give victims a greater sense of satisfaction, so there are efforts to see true compensation and restitution. Also, of course, civil remedies can be put in place that will allow for greater compliance with these restitution orders.

That's a long answer to four specific questions, but we felt that restitution is a very important part of a victim's right throughout the entire process and we think this will give it greater teeth.

Mr. David Wilks: Thank you very much.

The Chair: Thank you for those questions and answers.

Our next questioner, from the New Democratic Party, is Madame Péclet.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

Thank you as well, Minister.

Today's discussion is extremely interesting, and I think it is necessary.

In the current justice system, the biggest obstacle that victims come up against in their search for justice is delays. I am not making this up. There was a report from the Canadian Bar Association and a report on access to justice from the Chief Justice of the Supreme Court. Many organization have also looked at the issue of access to justice.

We have heard of many cases where proceedings were stopped because of unreasonable delays. The Supreme Court is going to look at the definition of “reasonable delay”. The justice system is under so much pressure right now that the Supreme Court has to look at what a reasonable delay is.

Bill C-32 is very long and gives victims many rights. There is a great deal of pressure on justice system stakeholders. What will happen? Everyone agrees that there is a serious shortage of resources. Delays are unreasonable and access to justice has become completely ridiculous.

I understand that the government wants to give victims a very important role. That is quite legitimate, and victims have that right, but what will they do when they have to wait years before they get justice and they may not even have access to a lawyer? They may make more money, but not enough.

You know something about the problems that exist. How will you enforce this legislation? My colleague also asked you how you would ensure that each province has the resources it needs to enforce these rights. Right now, all the stakeholders in the justice system are saying that they do not have the money or the resources to do so.

● (1620)

[*English*]

Hon. Peter MacKay: It's a very good question in terms of the implementation. I'll come back to the fact that, as I said earlier to Madam Bennett, we do have funding attached to the bill for implementation and for ensuring greater awareness, in particular for victims but also at all levels: provincial, territorial, and non-governmental organizations.

As for the question about this contributing to further delays, or backlog, or exacerbating the issue of access to justice, I can assure you that we carefully balanced all efforts, and all that you see entrenched in this bill, with that in mind as a backdrop to every calibration we were making to insert or perhaps assert victims' rights.

We were always mindful that anything that was going to cause further delays or restrict a person's access to justice, or perhaps more appropriately, a fair outcome, was always present in our thinking, because it is counterintuitive to what we hope to achieve with this bill that it would actually cause delay. Delay, it goes without saying, is one of those old maxims: delay is the deadliest form of denial. That's what victims had often complained about: that from the initial reporting of the crime to an outcome, whether they were satisfied or not, it was this prolonged, torturous process.

For things such as consultation with the victim on a decision that a crown attorney has to make, or a police officer communicating that, it's my hope that this is actually going to accelerate the thought process throughout to communicate these things to a victim in a timely way. It's going to bring about, I believe, a greater sense of obligation on the part of everyone in the system to consult with that victim early and often.

It's important to understand, I say for emphasis, that victims were not asking for a veto. There was a report. I sat where you're sitting as a member of the opposition when these discussions were happening years ago. There was a report produced by a predecessor committee, called “Victims' Rights—A Voice, Not a Veto”. It underscored that victims were not saying, “Look, we want to be able to stand up in court and state our case in addition to what the prosecutor says”, or “We want our own counsel”. Some may advocate for that, but the vast of majority of victims are simply saying, “We want to know that our voice matters, that we've been heard, and that we are being given a meaningful right and access to justice throughout the process”.

I don't think that necessarily means slowing things down. I think it actually will help streamline in some cases. I think there is a tremendous commitment at the provincial and territorial levels, which are at the front end of the delivery of many of these services, to see that it happens. If it requires more resources, we're prepared to do that, as long as they're prepared to say, “Here's what it actually costs and here's the bill.”

● (1625)

The Chair: Thank you, Minister.

Thank you for those questions.

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

Monsieur Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Welcome, Minister. It's certainly a pleasure to have you here.

Minister, I can attest to the efficacy of the child advocacy centres and the wonderful work they do. I have the good fortune of having one in my riding. I just can't believe what they're doing for our youth, for our children. The whole legal system and the justice system, from police officers up, are so impressed with the impact it's having on our children. It's really nice to see. Having said that, I would encourage your department to promote in any way you can the expansion of these centres right across the country. It's so meaningful to our children.

On this victims bill of rights, it just happened that on Monday morning before I came to Ottawa I had the occasion to meet four constituents in my office. Believe it or not, two of them had been victims of crime, two out of four; it just happened that way. However, in regard to the ramifications of being victims in their particular cases—and both of them are adult men—it's just devastating to see what being the victims of these two crimes did to these people, so I can't encourage you to continue this more than that.

As for my question, maybe you could expand on the right of participation and tell us a little more about the specific changes that might be brought about by the victims bill of rights.

Hon. Peter MacKay: First, Mr. Lauzon, I'm familiar with the child advocacy centre in your area in Cornwall, and it's one of the best, as I've said to you previously. We now have 20 operating in the country or in the process of being fully operational. It has been, in my view, again for emphasis, one of the most important innovations that we've seen in decades in the criminal justice system.

It's important to keep in mind, as I'm sure members of this committee are aware, that this is one area where crime rates are not falling. Child sexual abuse and offences against children are actually on the rise in Canada, so the need for these child advocacy centres and the need for further efforts and legislation in that regard cannot be overstated.

As far as participation goes, this bill is very much about requiring, as I said earlier, all actors within the system, including judges, to recognize the important role of victims and the right of victims to have not only the information but the ability to access services like victim services and child advocacy centres, and the ability to enhance their participation through important appearances on sentencing with victim impact statements.

I remember practising law when, much like Mr. Dechert said earlier, victims were treated like a regular witness. They were to give their testimony and go home. Now, through the introduction of victim impact statements, through their participation, and their greater support through the wonderful work that's done by victims services across the country, their participation is more meaningful, more impactful, and I think more satisfactory to them at the end, if you can say that about having to go through the system through no fault of your own.

Adding acknowledgement to the harm that has been done to them and having greater affirmation of their importance in the system is all part of what this bill is aimed to accomplish. I mentioned something that should never been seen as trivial: to be able to bring to court a photograph of your loved one and to be able to express personally how this crime impacted you and those around you is significant. Courts and our entire justice system have to recognize and embrace that change.

That's what this bill I hope will accomplish. It will entrench that type of culture shift towards victims, embracing and putting them very much front and centre when it comes to their rights. I really do believe that we have, through a very non-partisan and inclusive process, moved the criminal justice system a long way.

If I might, Mr. Chair, I want to acknowledge Carole and Pam, as you did at the outset. These two women have done extraordinary work in the last number of years to bring this bill to fruition. It couldn't have happened without both of them.

● (1630)

The Chair: That's good to know, Minister, because they'll be on the hot seat in the next hour.

Hon. Peter MacKay: I know. That's why I'm saying to go easy on them.

Voices: Oh, oh!

The Chair: They'll be happy that you set them up like that.

That is the end of our time with the minister.

Thank you, everyone, for your questions.

Thank you, Minister, for joining us for that hour. Just so you know, we've set aside the next six meetings, as a minimum, to deal with this bill. The witness lists are in from all the parties and the clerk is working very hard in making sure that we get everybody here. Hopefully over the next month or so this committee will be dealing with that item. With that, thank you.

We'll suspend for about two minutes while we switch over our panels. Thank you very much.

Hon. Peter MacKay: Thank you, Chair.

● _____ (Pause) _____

●

● (1635)

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

It's the second hour of the start of our review of Bill C-32.

For the second panel we have a number of witnesses.

We have witnesses from the Department of Justice, who were previously introduced.

From the Department of Public Safety and Emergency Preparedness, Ms. Thompson is here. She's the assistant deputy minister, community safety and countering crime branch. Also here is Mr. Churney, director of corrections policy. From the Correctional Service of Canada, we have Don Head, commissioner. He's the head commissioner.

Voices: Oh, oh!

The Chair: It's late, I'm sorry.

The Chair: From the Parole Board of Canada, Monsieur Clair is here. He's the executive director general.

I've asked, and there are actually no presentations. They're here to answer questions about Bill C-32, so we're going to go right to questions.

I'm assuming that from the New Democratic Party it's going to be Madam Boivin.

Ms. Françoise Boivin: You are assuming right—and "Boivin" means "drink wine", to stick with your "head" joke, but anyway....

[*Translation*]

We are happy to welcome you to the committee. However, time is marching on, and I have many questions for you all, although I know I won't have enough time to ask all of them.

My first question is for the representatives of the Department of Justice, Ms. Morency and Ms. Arnott. Clause 2 of the bill reads as follows:

> "offence" means an offence under the Criminal Code, the Youth Criminal Justice Act or the Crimes Against Humanity and War Crimes Act, a designated substance offence as defined in subsection 2(1) of the Controlled Drugs and Substances Act or an offence under section 91 or Part 3 of the Immigration and Refugee Protection Act.

That seems like quite a lot, but in spite of everything, the Canadian victims bill of rights does not apply to some laws. For example, why doesn't it apply to the Competition Act? I am thinking about how there are more and more victims of telemarketing fraud, for example. Why leave out the National Defence Act? I am trying not to generalize, but there are offences we hear about. It is as though this is a separate system. Are these victims second-class victims?

Ms. Pamela Arnott (Director and Senior Counsel, Policy Centre for Victim Issues, Department of Justice): Thank you for your question.

I will deal with the application issue first. We chose the laws outlined in the bill because offences committed under these acts create by far the most victims in Canada. As the minister was saying, this is a first step for Canada. Based on our analysis, we determined that this bill could cover the vast majority of victims in our country.

Ms. Françoise Boivin: Wouldn't it be better to cover all the victims? Wouldn't this create a system with second-class victims?

Ms. Pamela Arnott: We do not think so. We considered whether we could make this bill apply to all federal legislation. We found that we had to start by taking a first step to ensure that the vast majority of victims in Canada were covered.

In terms of applying this bill to the military justice system, I can say that we are working very closely with our colleagues at National Defence. They have a separate and quite distinct justice system, for a variety of reasons. Given the time we had to draft the bill, we were unable to continue with that step, but we are still actively working on it.

Ms. Françoise Boivin: During the debate at second reading, the minister spoke of a bill with quasi-constitutional status. Could you explain what this means? How would that apply? What kind of precedence could this have over other legislation? Would it prevail over the Charter of Rights and Freedoms? How would all of this be interpreted?

● (1640)

Ms. Pamela Arnott: The term "quasi-constitutional" means that, according to the government, this is a bill that incorporates values and principles that have some primacy in Canadian society. There are a few other laws that have this status, including the Privacy Act, the Canadian Human Rights Act and the Official Languages Act, for example. That is why we are proposing in clause 19 of the bill that in cases where this bill is inconsistent with other quasi-constitutional provisions, the courts are responsible for ensuring that these values can be integrated and balanced.

Ms. Françoise Boivin: Could you give us an example of that? I'm having trouble visualizing what you are talking about. You must have foreseen the particular context of what could arise.

Ms. Pamela Arnott: I will use an example based on official languages.

An offender requests that his trial be conducted in their official language, either English or French, while the victim prefers to submit his impact statement in the other official language. We are therefore faced with the victim's right to submit a statement and the accused's right to a trial in a language of his choice. We are asking, through the application of clause 19, that the courts consider these two fundamental values and strike the right balance between the two.

Ms. Françoise Boivin: That would not necessarily preclude the application of the Official Languages Act. In such a case, the judge would probably have to find a translator or an interpreter to ensure compliance with both acts.

Ms. Pamela Arnott: That's right.

Ms. Françoise Boivin: I understood that we were giving a certain primacy to the bill, which in this case would mean that francophones could be denied certain rights. You are telling me that this is not the case. Essentially, the message sent to the courts is that they should try to apply these quasi-constitutional laws equally.

Ms. Pamela Arnott: Yes.

I would like to clarify that we are talking about laws with quasi-constitutional status. When it comes to other federal legislatures, the law provides for the primacy of the bill of rights.

Ms. Françoise Boivin: I really like to work with examples to see how all of this applies. If you happen to think of an example, I would appreciate it if you would tell us about it.

Ms. Pamela Arnott: Okay.

The Chair: Thank you.

[*English*]

Thank you for those answers.

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

I encourage all committee members, if you have questions for specific witnesses, to let them know who you're actually asking. Thank you very much.

The time is yours.

Mr. Bob Dechert: Thanks to each of our officials for being here today.

I just want to say that I'm always very impressed with the quality of the professionalism of our public servants and officials who appear before our committee. I want to thank each of you for the good work you do every day on behalf of Canadians.

My first question is for Ms. Morency. It's good to see you again.

I know that you worked very significantly on the victims bill of rights. When the victims bill of rights was being considered, a number of victims groups mentioned that they would like to see victims have some kind of standing in criminal court proceedings, perhaps to be able to participate in plea bargain discussions and things of that nature.

I wonder if you could tell us what problems, if any, you saw in granting such standing to victims. What impact would it have had and what would the positions have been of the provinces if something like that had been included?

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): As the minister said in his remarks, victims do not currently have standing in a criminal process. To provide victims with standing would be to essentially introduce a whole new party to the process. Right now the criminal process consists of the state and the offender, and the crown represents the victim, the state at large. It's true, as the minister said, that some victims or organizations representing victims were supportive of receiving standing throughout the criminal justice process, but many victims also said that they didn't want to cause upset to the overall system, cause further delays and impede the efficiency of the process. That was one of the considerations taken into account, as the minister said. That was a challenge.

Was there a different way to achieve the voice that victims were asking for, to be represented throughout the system? I think that's in some of the measures the minister mentioned: giving victims a stronger voice through the victim impact statement and community impact statement, and requiring the crown to take reasonable steps to consult with victims before a plea is accepted.

The balance that the bill seeks to achieve is to recognize what is at the heart of the victim's seeking standing and ask if there is a different way to achieve this, in a way that won't upset or impede the efficiency of the system.

● (1645)

Mr. Bob Dechert: Thank you very much.

My next question, Mr. Chair, is for the Department of Public Safety, either Ms. Thompson or Mr. Churney, whoever wishes to answer.

The victims bill of rights contains rights to information. A lot of what we heard through the consultation process and we hear just generally from victims of crime all the time—and we heard it from the families of victims of violence against indigenous women at that committee's proceedings—is that when a terrible assault or some other kind of crime is committed on a person or a family member, individuals make a statement to the police, and they hear nothing further about the case until maybe somebody is charged, and they'll find that out, and then they'll find out maybe when there's a trial.

I wonder if you could talk about the provisions of the victims bill of rights that would provide more information to victims about the process, from the day the investigation starts to the end of the trial process.

Ms. Kathy Thompson (Assistant Deputy Minister, Community Safety and Countering Crime Branch, Department of Public Safety and Emergency Preparedness): Thank you for the question. I'll start, and then I'll invite Mr. Churney to add anything to my remarks.

With respect to the investigation, certainly the victim will have a right to have information with respect to the ongoing investigation, as Ms. Morency said, not to impede in any way the investigation—there is always the independence of the police—but they will have the right to be kept informed of the investigation.

With respect to an offender serving a sentence, they will have a right to have information on the progress of the offender with respect to their correctional plan, for example, programming that they're following, progress that they're making. As well, they will have a right to be informed of mediation, victim-offender mediation services that are available through Correctional Services Canada.

They will also, as the minister said a few moments ago, have a right when an offender is released to have access through a secure portal to a recent photograph of the offender. Assuming there are no public safety risks to disclosing information, 14 days prior to the release of the offender they will have a right to have information with respect to the date, the location, and any conditions on the release of the offender.

With respect to the parole hearing, they will have a right to present a statement and to designate an official to receive information for them. As well, they will automatically receive a copy of the parole decision.

Mr. Daryl Churney (Director, Corrections Policy, Department of Public Safety and Emergency Preparedness): There's not much to add beyond that. Ms. Thompson was pretty comprehensive.

I would just say that, as the minister alluded to in his remarks, the intent of the victims bill of rights really is to build on a pretty strong, solid foundation that already exists. I would say within the Corrections and Conditional Release Act as it stands right now there is a wide range of information that is disclosable to victims.

We were quite conscientious as we were drafting the bill to think about what else we could provide to victims and what other kinds of information they are looking for. We did pay very close attention during the consultations to anything else that we could think to add into the act. As Ms. Thompson said, that includes things like a photograph of the offender. We will make mandatory the release of information related to date, destination of release, victim-offender remediations.

I would just say that we're really building on a pretty good foundation.

● (1650)

The Chair: Thank you for those questions and answers.

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

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you very much. It's a pleasure to be here. Actually, I'm not a regular member of this committee, but I spoke to the bill at second or third reading a few months back.

The Chair: It wouldn't be third reading, or why would we be here?

Voices: Oh, oh!

Mr. Francis Scarpaleggia: It has been a long day, Mr. Chair. It was second reading, of course.

I have a few questions.

You mentioned the right of the victim to a whole list of things, Mr. Churney. I recall meeting a victim in my office a few years back, and he was very concerned about the release or the whereabouts of the offender. He seemed to know what was going on, more or less. He seemed to know that the offender had been transferred to another penitentiary. He seemed to know, if I recall correctly, that the offender maybe wasn't necessarily embracing his correctional plan.

Has it been more of a hit-and-miss thing up until now? Has the release of information not been consistent ? Is that what this bill accomplishes: it codifies certain things, and makes sure there is consistency where before it really depended on circumstances, or the province, or what have you? Is that what you're saying when you say that the bill builds on an already good foundation?

Mr. Daryl Churney: Indeed, I would say that the legislation as it's crafted right now with respect to the release of information to victims really does err on the side of disclosure to victims, unless there's a credible reason not to provide that information, or there's some clear evidence that disclosing that information would somehow impair public safety. I'm not sure the track record has been hit-and-miss, but I think the VBR will certainly emphasize for all federal departments and agencies to always be mindful of the place of the victim and the imperative to as much as possible disclose information when it's requested.

I think it certainly will bring more consistency.

Mr. Francis Scarpaleggia: It's more specific in terms of the information that must be disclosed, if asked for, than is currently the case. Am I correct in my understanding? It's very specific that you have to provide this if they ask for it, whereas before maybe it was more of a policy issue.

Mr. Daryl Churney: Yes.

As it exists right now in the CCRA, there are two categories of information. There is what we call the mandatory class of information that must be disclosed to the victim, and that is generally already public information, information that would have already been available through the trial process, for instance, the name of the offender and the location of the penitentiary where they're serving their sentence.

The second category is what we refer to as the discretionary category of information that may be disclosed to the victim. That's a bit of a longer list of information that may be disclosed at the discretion of the commissioner or the chairperson of the parole board. It's that second category of information that is subject to a privacy test to ensure that releasing that information is on a case-by-case basis, and that it is always appropriate to do so in the instant case.

I would certainly say that this bill would certainly strengthen those measures in ensuring that the onus would always veer toward disclosure, although requests for information are always going to be treated on a case-by-case basis.

Mr. Francis Scarpaleggia: I see.

There was another point you made that I didn't quite understand. It was actually in response to a question from Madame Boivin on two classes of victims, that this doesn't cover all classes of victims. I didn't quite understand that. I was wondering if you could elaborate on that for me.

Ms. Pamela Arnott: If I can paraphrase, Madame Boivin was asking why the bill only applies to a listed number of federal statutes, and that if by implication a person was a victim of another federal statute, was this legislation creating different classes of victims, some victims with more rights than others. If I can be so bold as to paraphrase for you, Madame Boivin....

● (1655)

Mr. Francis Scarpaleggia: What kind of victim would not be covered? Do you have an example?

Ms. Pamela Arnott: Yes. A victim of an offence under the transportation act or under an environmental protection act—

Mr. Francis Scarpaleggia: Oh, I see. I understand.

Ms. Pamela Arnott: This bill is focusing on victims of crime. As I mentioned, it was our view that we were capturing the vast majority of offences that create victimization.

Mr. Francis Scarpaleggia: On the issue of standing, in the United States I believe that the victim has a right to have a say in the sentencing, but obviously the judge would decide. Is that correct? Is my understanding correct? The victim actually can intervene at that level, whereas here it would be limited to victim impact statements, which are important, of course. Is that a correct understanding?

Ms. Pamela Arnott: In the U.S., a limited number of states—my understanding is that it's eight of fifty—have some form of standing for victims of some offences at some opportunities. I'm sorry to be so vague.

Mr. Francis Scarpaleggia: Do they get to have their say in sentencing, or what specifically do they have a say in?

Ms. Pamela Arnott: I don't have that information with me.

Mr. Francis Scarpaleggia: That's fine. Thank you for your time.

The Chair: Thank you for those questions and answers.

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

Mr. David Wilks: Thank you to the witnesses for being here.

My questions are directed to Ms. Morency or Ms. Arnott. I want to raise the issue of identity protection and the accused's right to make full answer and defence under sections 7 and 11(d) of the Charter of Rights and Freedoms.

It's a four-part question, so I'll just ask the questions, and then you can just fly at it and I'll be quiet.

With regard to sections 7 and 11(d) of the Canadian Charter of Rights and Freedoms, particularly where the identity of the witness is not disclosed to the accused, first, is this why clause 12 of the Canadian victims bill of rights would provide for requests to be made for the protection of the identity of the victims, complainants, or witnesses rather than for orders to be automatically granted upon such requests being made?

Second, who would be the decision-maker where a victim has requested that his or her identity be protected?

Third, on what basis would a decision-maker consider whether to take measures to protect the identity of the victim?

Fourth, would the police and security intelligence agencies know in advance whether anonymous testimony would be allowed, and would they be in a position to give assurances to a witness that he or she would ultimately be permitted by a court to testify anonymously?

Ms. Carole Morency: I'll try to take the questions in order.

On the way that Bill C-32 is proposing amendments to permit some witnesses to testify through a pseudonym, right now that ability exists, but it's not codified. It's not in the Criminal Code. Some courts have made the decision, depending on the facts and circumstances, to allow a particular witness to do so.

I can give you an example. In the 2002 decision in Mousseau, there was a victim in a sexual assault case who was concerned.... There were a number of other victims. Apparently the accused was believed to be harassing some of the other complainants and because he knew their names was alleged to be engaging in those kinds of communications. This last victim complainant who was testifying in the proceedings did not wish to be exposed to the same kind of harassment communications, so in that case, the court determined that the witness could testify through a pseudonym. The jury didn't know how the victim was testifying.

Basically, in that case, the court is always going to have to consider the facts and circumstances, so the test that would be applied under the VBR would be the same as what the courts are doing in practice right now. They'll look at it in terms of the importance of the charter right of the defendant to be able to make a full answer in defence and the proper administration of justice principle of open court. The court can take a number of steps. It's going to be the court that will make the decision, and the court can take a decision based on a consideration of all of those factors and what measures could be taken that will secure or safeguard the accused's right to make full answer in defence.

Could the victim testify through a pseudonym and also through, for example, the use of a testimonial aid where the accused can still see the witness complainant? Basically, it's going to be the court in those circumstances that is going to take the decision on what measures are needed to enable that victim in that situation to testify through the use of a pseudonym and still preserve and protect the right of the accused to make full answer in defence.

● (1700)

Mr. David Wilks: I can give you another question.

Ms. Carole Morency: Because the decision-maker would be the court, it wouldn't be possible to know with certainty in advance, but what would happen is that the victim or the complainant would make the request through the crown, and the court would be able to make the determination.

Mr. David Wilks: I have one minute, so if I could, I'll just change gears quickly with regard to spousal competency and compellability rules.

Bill C-32 proposes amendments that would create a general rule of witness competency and compellability, whereby the common-law rule of spousal incompetence would be eliminated and spouses would be competent and compellable by the prosecution to testify against their spouses. However, spousal privilege under subsection 4 (3) of the Canada Evidence Act would remain, so a husband would continue to be uncompellable to disclose communications made by his wife during the marriage, and vice versa. Would these rules still apply to common-law spouses?

Ms. Carole Morency: Currently we have a mix of statutory provisions that protect against compellability for spouses and also some common-law rules. These are in the Canada Evidence Act. The bill is seeking to abolish that rule so that all spouses would be competent to testify against their spouse, and compellable, and right now for common law it does apply. For example, in the situation of spousal abuse, that would be covered now under common law, so yes, it would still apply in that sense.

Basically what would happen is that the crown would make a decision in a particular case: would calling this spouse to testify against the accused provide evidence that the crown cannot otherwise bring before the court? The crown would normally take into consideration whether there are other sources of evidence to provide this. If not, if that's the major witness, then that would be an option.

For example, in an impaired driving case, the spouse who sees the accused driving would be able to say what she observed her spouse to be doing, but she would not be required under the victims bill of rights to communicate what had been communicated to her in confidence by her spouse. The communication privilege would be preserved by Bill C-32, but she could still be compelled to testify as to her own observations.

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

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

[*Translation*]

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you, Mr. Chair.

I would also like to thank the witnesses. It has been a pleasure. This is very interesting.

I would like to continue on the same topic. The minister himself raised this issue during his testimony. I would also like to point out that section 4(3) of the Canada Evidence Act does deal with couples, but only opposite-sex couples.

In Canada, same-sex marriage is legal. However, section 4(3) bothers me. I will quote the English version, which reads as follows:

[*English*]

> No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

[*Translation*]

It seems that the bill under consideration did not address the fact that there is an inconsistency in the law. Moreover, in light of section 15 of the Canadian Charter of Rights and Freedoms and its interpretation by the Supreme Court, I think that there is a constitutional problem here.

Could you please comment on this?

● (1705)

[*English*]

Ms. Carole Morency: I would agree that that is an issue, and it is an issue that is currently being litigated before some of the courts. Bill C-32 is not addressing that other broader consideration, but it is looking to make the evidence of any spouse available.

[*Translation*]

Mr. Philip Toone: Even if that is before the courts, don't we have an opportunity today to correct this error?

[*English*]

Ms. Carole Morency: That would be a question for the minister.

Mr. Philip Toone: Seeing as the minister isn't here right now, I was hoping that maybe one of you could answer it.

The Chair: It doesn't work like that.

Mr. Philip Toone: I see. We're back to question period quality of debates, I guess. Sorry about that, but—

The Chair: That really wasn't fair, Mr. Toone. The officials are here to answer the questions they are entitled to answer. If there is a question that should have been asked of the minister, they will often tell us that it is not within their purview or their responsibility to answer. That has nothing to do with their not being willing to answer. It is their legal responsibility, and that is what they're doing.

Mr. Philip Toone: Very good, Mr. Chair.

[*Translation*]

I will continue with another question, a bit more specific, on clause 3 of the proposed bill of rights. The French version of this clause seems to be more restrictive than the English version.

I would like to hear your thoughts on this. According to the French version, only one individual is authorized to act on behalf of the victim if the victim is dead or incapable of acting on their own behalf.

However, the English version appears to authorize more than one individual to act on behalf of the victim, as it reads, “Any of the following individuals...”. The French version is therefore much more restrictive than the English version.

Do you have any thoughts on this?

Ms. Pamela Arnott: Thank you for your question.

That is not how I understand the bill, but now that you've asked that question, I can see that there is some room for interpretation.

For us, the intent of this provision is that anyone in the list may act on behalf of the victim if the victim is dead or incapable of acting on their own behalf.

Mr. Philip Toone: The legislative intent is then to broadly identify the people who could act on behalf of the victims when the victims are incapable of doing so.

Ms. Pamela Arnott: Yes, that's it.

I can also assure the committee that Justice Canada always conducts a bijural and bilingual analysis of bills before introducing them.

Mr. Philip Toone: That's fine.

The intent is clear and I think that's the most important thing.

[*English*]

In this case I'll go to a wider question.

The proposed bill of rights speaks often of rights. It doesn't really speak of principles; it's speaking of rights. At the same time, it doesn't create any cause of action. If somebody feels that their right has been breached, they don't seem to have any recourse. It's a particular kind of right that we seem to be creating here.

Could you explain to me what kind of rights we're dealing with? Maybe the question could be in this case, are we not giving them right of recourse because it exists already at the provincial level? Is it because jurisdictionally we're having a problem? Or is it because we really didn't want to give them any recourse if we feel that the rights we are affording in the new bill have been breached and we really don't want them to be able to pursue the federal government, for instance?

Ms. Pamela Arnott: As the minister indicated, I think the intention of the government is to create enforceable rights. The choice that the government made was that those rights would be enforceable through a complaint mechanism. The bill provides what that complaint mechanism must include: an ability to receive the complaint, review the complaint, make recommendations, and report back to the victim.

This bill differs quite significantly from provincial and territorial legislation that you might be familiar with in that the rights here are very clearly stated as rights. Provincial and territorial legislation includes language such as “victim should” and “government should”. One of the key differences here, which indicates the character of the rights that the government is wanting to create, is that rights are expressed that way, that victims “have a right to...”.

With regard to a question one of your colleagues asked about standing, the government's intention in creating the complaint mechanism was that, one, it reflected what had been heard in consultations, and two, it empowers employees to make changes in their thinking and in their approach to their duties that will reflect the fact that the concerns of victims and the needs of victims should be part of the exercise of those duties.

● (1710)

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

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

Mr. Robert Goguen: Thank you for your testimony. I know it's hard to answer a lot of these technical questions. I suspect a number of you are lawyers, and it's always more fun to ask the question than to answer it, for sure.

In any event, I'm looking at clause 9 of the Canadian victims bill of rights, which recognizes that all victims have “the right to have their security considered by the appropriate authorities in the criminal justice system”.

The question is to what extent the appropriate authorities would be obligated to take measures to provide for the security of victims.

As a sub-question, are the Parole Board of Canada and Correctional Service of Canada appropriate authorities obligated to take these measures to provide the security of victims?

Ms. Kathy Thompson: With respect to the security, for example, I think I made mention of the fact that the parole board will be required to impose reasonable and necessary safety conditions following a victim impact statement that highlights concerns over security, provided those measures are necessary and reasonable. Those would be measures such as non-contact orders or geographic restrictions, for example. The parole board is required to go forward with those considerations. If they have safety or security concerns and do not proceed with imposing such restrictions, they have to make sure they provide that in writing.

I don't know if the commissioner would like to respond on behalf of Corrections.

Mr. Don Head (Commissioner, Correctional Service of Canada): Sure. Thank you.

I have just a couple of points to add.

We have victims who come into our institutions now to attend parole board hearings. One of the things we're very conscious of is their safety and security while they're in the institution. We have a good track record around providing physical protection for victims but also of providing emotional support for them as well. As you can well imagine, walking into that kind of environment and facing somebody who has committed a harm to you can result in a significant emotional reaction. We also have that kind of support.

As was pointed out, in terms of individuals out in the community, decisions that are made by our wardens of the institutions have to take into account any issues raised by the victims regarding their safety, in terms of decisions they may be able to make around escorted temporary absences or even unescorted temporary absences. In addition, as we go forward we'll be looking at how we can use technology to help enhance our ability to monitor offenders who may be out in the community under conditional release, so if they have those kinds of geographic restrictions, we can stay on top of those and ultimately provide the safety and security that victims are looking for from us.

Mr. Robert Goguen: There was talk earlier about mediation. One can imagine how difficult it would be for someone who is a victim to confront their accused, but there seems to be more and more demand for mediation services. Victims do not automatically receive information about the offenders who harm them. I guess they have to submit a written request to the Correctional Service of Canada or the parole board.

I'm wondering about victims who have just submitted a general request for information to Correctional Service of Canada or the parole board. Will they be advised if they just submit a general request about the availability of mediation services?

● (1715)

Mr. Don Head: As an organization, we're going to be proactive in that regard. Currently, we have just over 7,700 registered victims in relation to about 4,000 offenders. Through our victim service officers, we have been advising them of the opportunities for victim-offender mediation for restorative justice opportunities. We're going to continue to pursue that proactively and allow them to be aware of the kinds of services that can be made available and that they may want to access.

This is one where we're going to be out in front and with the work that we're going to be doing jointly with the Parole Board of Canada, in terms of creating a web portal, that information will also be available to them on the net.

Mr. Richard Clair (Executive Director General, Parole Board of Canada): The Parole Board of Canada doesn't provide mediation. That's a service provided by Correctional Service of Canada. We have about the same number of registered victims. We have over 7,500 and we have specialized staff, as does the Correctional Service of Canada, cross-country, who provide information to victims.

Whatever information we can disclose, or may disclose, we do so. Not everybody wants to attend a parole board hearing. Last year, we had about 250 people attending. We can provide them with information if they request it.

The Chair: Our next questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

My questions will deal with the much-despised victim surcharge. I'm thinking of clause 31.

In your opinion, do the amendments proposed in this regard address the cases currently before the courts, specifically, certain disputes concerning the method or time of payment? Will this have an impact on cases that are now before various courts, including the Court of Appeal of Quebec?

Does the term "reasonable time" afford the court enough discretion? I'm trying to understand what this provision is designed to do.

Ms. Pamela Arnott: With respect to the litigation, we are aware of some thirty cases related to the application of the surcharge. The provision, or the proposed amendment, only deals with the aspect of payment within a reasonable time.

The cases before the courts deal with not only this issue but also the offender's ability to pay this surcharge. In terms of the time to pay, we proposed the amendment to make it clear to the courts that a payment cannot be extended over dozens or hundreds of years, as was ruled by a number of courts.

Ms. Françoise Boivin: Are you sure it will be interpreted that way? Aren't people going to think, instead, that this is a way of codifying in law what the courts have found, namely that people had to be given a reasonable time to pay?

When I read "reasonable time", I wondered whether you weren't solving your problem, but rather opening another can of worms.

The courts might say instead that the legislature, through Bill C-32 understood that there was little hesitation, under the circumstances, to apply the surcharge in a situation where we have a person who is not necessarily unable to pay, but who would find it extremely onerous to pay $100 or $200—which is perhaps very little to some others. Some people have extremely limited budgets.

What makes you say that this solves the problem? I find that the term itself is questionable.

● (1720)

Ms. Pamela Arnott: The term "reasonable time" appears in nine provisions of the Criminal Code.

Naturally, we studied the legal interpretation of these terms. The factors that the courts rely on to interpret this concept are the circumstances of the parties and the fact that the period set for payment gives the offender a reasonable opportunity to repay their debt. There is therefore an interpretation of this concept that has been quite well established in the jurisprudence from the 1920s to today.

Ms. Françoise Boivin: In this context, do you think this will confirm the rulings handed down by the courts to extend these periods of time? Won't they rather use this as support?

From what you're saying, the unique situation of the parties constitutes precisely the argument used by the judges to determine the amount payable over, I don't know, a period of 100 months. In one particular case, this period was quite long.

Moreover, in my view, the decision was very thorough and carefully explained, under the circumstances, and included the factors you just mentioned. This is why, to my way of thinking, the government took note, if you will, of the problems that started emerging in the courts.

Ms. Pamela Arnott: I am quite familiar with the cases you are talking about.

The result was that the offender was asked to pay a few cents a day for a dozen years or a hundred years. We do not consider that this reflects the purpose of the surcharge, which is first to ensure offender accountability, and second to contribute to victim services. I would argue that a payment of about 30 cents for years does not meet the objectives of the reasonable time provision.

Ms. Françoise Boivin: I will ask you a very specific question. The amendment you are proposing to the section dealing with the surcharge and with reasonable time should, in your opinion, resolve the problems we are currently seeing in the courts. Is this correct?

Ms. Pamela Arnott: Yes.

The amendment clarifies the legislative intent with regard to this aspect of the victim surcharge.

Ms. Françoise Boivin: Under proposed section 739.1 of the Criminal Code, an offender's financial means or ability to pay would not prevent a court from making of a restitution order.

You studied this provision on the basis of the jurisprudence and you deemed that it met the Supreme Court requirements in similar cases. You are therefore setting aside the concept of the offender's ability to pay, which is no longer considered important. What happens to people who can't pay? Are they sent to prison?

Ms. Pamela Arnott: The bill stipulates that this is not a determining factor in the court's decision to impose a restitution order. It is one of the factors, but not the determining one. This represents a codification of the decisions of appellate courts in several provinces and decisions dating back a number of years.

Ms. Françoise Boivin: If I'm understanding you properly, the courts will still be able to consider the offender's ability to pay. This might not be the sole factor, but the courts will be able to continue taking this factor into account.

Ms. Pamela Arnott: That is correct.

[*English*]

The Chair: Thank you very much.

I have no other speakers on my list.

I know Mr. Dechert thanked each and every one of you for the work you do as civil servants. You are from the Department of Justice, the Department of Public Safety and Emergency Preparedness, Correctional Service of Canada, and the Parole Board of Canada, so please pass on to your colleagues and those who work in those departments that we appreciate the work you do as civil servants. Some of those areas are very tough areas to be working in. We really appreciate the effort that each and every one of our civil servants makes.

You don't get too many thanks and at our level we don't get to meet too many people who actually do the work for the Government of Canada, so on behalf of the justice committee, we want to thank you for all that.

With that, we'll adjourn. Happy Thanksgiving everyone.