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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Welcome, everyone, to meeting number 47 of the Standing Committee on Justice and Human Rights. The orders of the day are pursuant to the order of reference of Friday, June 20, 2014, for Bill C-32, an act to enact the Canadian victims bill of rights and to amend certain acts. We're beginning our study of that bill today.

We had the minister at our meeting before the break. Today we have from Mothers Against Drunk Driving, Andrew Murie, chief executive officer, national office; as individuals, Claude Laferrière, who is a lawyer, and Robert Hooper, who is a lawyer and a victims right advocate; Steve Sullivan, former Federal Ombudsman for Victims of Crime; and from Boost Child Abuse Prevention and Intervention, Karyn Kennedy, the executive director.

Thanks to all of you for joining us today.

In the order listed on the notice of meeting, we will have each witness give a presentation of up 10 minutes. Then we will go to a round of questions and answers from all parties.

We will start with Mothers Against Drunk Driving. Andrew, the floor is yours.

Mr. Andrew Murie (Chief Executive Officer, National Office, Mothers Against Drunk Driving): Mr. Chair, good afternoon.

I'd like to thank the committee for this opportunity to present MADD Canada's comments on Bill C-32. Impaired driving is the leading criminal cause of death in Canada. In 2010 there were 1,082 impairment-related crash deaths in Canada. That is almost double the homicide rate of 554 for the same year.

MADD Canada estimates that on average every day in Canada almost four people are killed in impairment-related driving crashes, and another 175 people are injured. As you will hear from many victims organizations throughout these hearings, losing a loved one as a result of a crime is a life-altering event. All aspects of your life are affected. Celebrations, religious occasions, and life milestones are never the same when your loved one is no longer there to share in these special moments. A lot of people never recover from their victimization and suffer from ongoing mental health issues such as depression and addiction.

An offender serves a sentence, but a victim is given a life sentence of sorrow and heartbreak. Most victims come into the criminal justice system expecting a system of fairness. Most victims leave the criminal justice system severely disappointed and frustrated. They are left wondering where their rights are as victims.

Previous government legislation gave victims the right to read victim impact statements in court, increased the victim surcharge fine, made the victim surcharge mandatory, and limited the credit for time served prior to sentencing. These were all steps in the right direction for victims' rights. However, there is still much work to be done before most victims of crime are treated fairly and see justice served by the criminal justice system.

I will now highlight some of the key provisions of Bill C-32 from the perspective of MADD Canada and its members.

Under the section dealing with right to information, we're very encouraged by the following provisions: victims will be given more specific information on the criminal investigation and on the accused offender; judges will be required to ask the prosecutor if reasonable steps have been taken to inform the victim of any plea agreements in cases involving murder or serious bodily injury; victims will be able to request copies of bail, sentence conditions, and probation orders; and amendments will be made to the Corrections and Conditional Release Act to increase the rights of registered victims to access information on offenders' parole board hearings, status, and progress. This includes providing victims with information about the offenders' release dates, destinations, and parole conditions.

Under the section dealing with the right to participation, we are pleased to hear that Bill C-32 will increase the rights of victims to state their views at various stages of the criminal justice process. Under the section dealing with remedies, we're very pleased that victims will have the right to make complaints if their rights are infringed. Those are all positive changes that in our opinion will serve to improve the rights of victims of crime.

However, we do have some concerns about the bill.

Under the right to information section, the provision that a prosecutor must take reasonable steps to inform the victim of a plea agreement in cases involving murder or serious bodily injury, we are concerned that there are no ramifications if this requirement is not met. There is no effect on the validity of the plea agreement. In other words, the prosecutor and judge have a responsibility to ensure the victim is informed of the plea agreement, but there is no sanction or recourse if the prosecutor or the judge fail in that responsibility.

With respect to victim surcharges, we are deeply disappointed at the recent court decision to strike down the increases to the victim surcharges and make them mandatory. These funds go into victim services organizations which are extremely underfunded as it is. The loss of these victim surcharges will have a serious negative impact on organizations that already struggle to provide services and support to victims of crime.

Bill C-32 only deals with reasonable timeframes for payment of the victim surcharge. It is our opinion that victim surcharges need to be a key part of the criminal justice system. Under the right to participation, we believe victims should be allowed to make electronic or video presentations as part of their victim impact statements, both in court and at parole board hearings, rather than be limited to an oral presentation and a static photograph. Under the right to protection, when dealing with offenders in small communities, the parole board should consider the implications of having offenders go back into the same communities where the victims live.

● (1535)

We also believe there's a need to re-examine the definition of victim. Many victims never enter the criminal justice system because the offenders who killed their loved ones are also killed in those crashes or never formally charged. These victims suffer as much emotional trauma as victims who enter the criminal justice system, but a lot of times are denied most of their rights contained in Bill C-32, and many of these individuals are also denied victims services at the local level.

In conclusion, Bill C-32 expands the ability of victims to obtain information and to ensure their viewpoints are sought out at various stages of the criminal proceedings. Offenders will be held more accountable. The real impact of Bill C-32, however, will depend largely on the commitment of provinces and territories to strengthen their own victims' rights. For example, currently all the provincial and territorial criminal injury and compensation acts preclude impaired driving victims from recovering damages. Impaired driving is the single large criminal cause of death in Canada and is one of the leading criminal causes of injury. Victims of impaired driving are no less worthy or in need of compensation than victims of other crimes. Consequently, impaired driving victims should have the same right to compensation as victims of other crimes.

Thank you.

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

Our next present is, as an individual, Mr. Laferrière. The time is yours, sir.

[*Translation*]

Mr. Claude Laferrière (Lawyer, As an Individual): Mr. Chair, I would like to extend my sincere thanks to the House of Commons Standing Committee on Justice and Human Rights, and especially to Ms. Françoise Boivin, the member for Gatineau, for giving me the opportunity today to express my concerns about clause 20 of Bill C-32.

First, the cause of victims of crime must be separated from partisan politics and be based on a fair and complete interpretation of the law and the facts, and not on rhetoric.

Second, this new right of victims can be understood only in light of section 7 of the Canadian Charter of Rights and Freedoms, the Constitution of Canada, which states that everyone has the right to life, liberty and security of the person. In this case, we are talking about the right of victims of crime and their families to life and security.

Third, the provisions in Bill C-32 on victims' rights to information, participation, protection and restitution are purely declaratory and do not impose any specific obligations or responsibilities on justice system stakeholders, or create any enforcement procedure, timeframe or sanction in case of failure. Here I am referring to clauses 28 and 29 in particular.

These provisions are merely statements of principle that do not impose any constraints on anyone. One could almost be satisfied with them because our courts generally comply with these general principles, if it were not for the new provisions that are completely foreign to the cause of victims and cast doubt on the legislator's real intent, which in light of clause 20 in particular seems increasingly vague and ambiguous. One would be justified in asking the legislator who suggested clause 20 in a bill for victims, because whoever it was is clearly not a victim. In fact, that is my question for you. Who suggested this clause?

If the legislator had wanted to respond to calls from the police and crown attorneys, it could have proceeded differently and introduced a separate bill that could have been called the Police and Crown Immunity Bill. However, that would have been a clear indication of federal interference in the civil law of responsibility, which is a provincial jurisdiction. This would have led to another constitutional debate before our courts, in addition to giving our police officers and crown attorneys quasi-judicial status in the meantime.

Fortunately, in Canada we can still sue police officers and crown attorneys for professional misconduct in civil court, or go through their professional association. However, if a law on immunity of the police and the Crown were passed, or if clause 20 becomes law, which is what we anticipate, it will no longer be possible to sue them in civil court without causing a constitutional dispute.

Could it be that the government does not want to hold this debate openly and directly, yet still wants to create this immunity using the cause of victims?

Fourth, clause 20 of the bill is reminiscent of some Criminal Code provisions, which we will come back to. Regarding clause 20, I want to point to the impairment of the police's discretionary power, and the adverse effect on the prosecutor's discretionary power.

In addition to clause 20, there is part IV of the Criminal Code, entitled “Offenses Against the Administration of Law and Justice”, which applies to everyone without discrimination. These are provisions on corruption and perjury. These provisions have proven effective in court.

However the wording of this new clause 20, which purports to protect police and prosecutorial discretion, is indicative of a spectacular shift, because the legislator is confirming the immunity of the police and the Crown from potential complaints or recriminations by victims of crime and their families for professional misconduct or negligence, without saying so in so many words. This could even open the door to criminal prosecutions of victims and their families if the police or the Crown, or both, should be offended by their statements in the media, for example.

How did we get to this point? Simply put, the victim must not interfere with the discretion of the police, the Crown, and so on. Otherwise, the victim risks being charged with interfering with the administration of justice, according to clause 20.

● (1540)

And since the bill does not set out any objective criterion for determining what constitutes interference with the administration of justice by a victim, for example, we are to understand that the criterion is subjective and therefore left to the discretion of the police and the Crown.

If this bill were passed as is, there would be a significant reduction in victims' rights when it comes to their freedom to express their opinions publicly or privately. Public debate demands that victims and public commentators, journalists, editorial writers, lawyers and other stakeholders be able to express their opinions and even their anger or dissatisfaction regarding legal matters freely and publicly.

The reasons for including this provision in a bill to help victims of crime and their families are unclear, but it is reasonable to think that they have something to do with a hidden agenda whose implications are impossible to know. Based on subjective criteria, clause 20 seeks to limit the scope of a bill that does not offer anything new.

Did this provision come out of some sort of union agenda of police officers or crown attorneys? It is reasonable to think so. In Quebec, we are all aware of what police officers and crown attorneys are capable of when it comes to strikes or work slowdowns. I will come back to this with some examples.

I therefore submit that clause 20 is an attempt to abuse the law and is designed to derail a bill whose purpose was to help vulnerable people: victims of crime and their families. But what is most disturbing is that the police and crown attorneys will be able to use this bill to protect themselves if they are sued for professional misconduct in connection with high-profile criminal trials and labour relations conflicts. Ultimately, the police and crown attorneys will have used victims to serve their own ends.

I would now like to make a some separate comments regarding the 2012 symposium.

Quebec's main contribution to standing up for victims came out of the 2012 symposium organized by Marc Bellemare, the former Minister of Justice and Attorney General in the Liberal government of the Right Honourable Jean Charest, and attended by the Honourable Christian Paradis, then minister and Quebec lieutenant, and the Honourable Bertrand Saint-Arnaud, Minister of Justice and Attorney General in the Parti Québécois government, as guests of honour. The governments of Quebec and Canada were sponsors of the event. I assisted senator Pierre-Hughes Boisvenu, who led the workshop on a bill of rights for victims and their families. In my opinion, the symposium was an historic event, a clear indication that vulnerable people rightfully want rights, dignity and legitimacy, both because of the exceptional number of participants and because of the quality of the speakers.

The main conclusions of the symposium were that victims or their families should have the right to representation by a lawyer whose fees and expenses would potentially be covered by provincial legal aid, and who would potentially exercise a veto in a plea bargain, and even appeal a verdict or sentence in a criminal case on their behalf. However, all the recommendations that came out of the symposium organized by Marc Bellemare were ignored.

To illustrate the importance and appropriateness of having an independent attorney for victims, I submit the following two cases to you orally. The first case is the murder of the late Jacques Jong and the fictitious case of Stéphanie. However, since I am running out of time, I will simply conclude by saying that for now, the goal of my testimony today is much more humble than trying to bring about the recommendations of the 2012 symposium. I simply ask that you remove clause 20 from Bill C-32. This clause is not relevant or useful or appropriate for a law that has to do with victims. Moreover, if police and crown attorneys want a debate on their immunity, they can do so in the context of an independent, separate bill, and not in the context of Bill C-32.

Thank you.

● (1545)

[*English*]

The Chair: Thank you very much.

Our next presenter for 10 minutes is Mr. Hooper.

Mr. Robert Hooper (Lawyer, Victims' Rights Advocate, As an Individual): Thank you, Mr. Chair, and members of the committee, for allowing me to speak today.

I'm a personal injury lawyer and victim rights advocate. My law practice since 1992 in Ontario and 2007 in New Brunswick encounters victims of various crimes, including but not limited to assault, sexual crimes, and murder, on a daily basis. In my representation of these parties in the civil justice system, I give information and guidance daily concerning the involvement, or lack thereof, in the criminal justice system in Canada as a victim. Also, I come before you as the chairperson of Walk With Me Canada Victim Services, a front-line service organization to trafficked victims.

Candidly and honestly, there is no uniform bill which will satisfy all victims. I only speak for the victims I encounter in the two spheres mentioned above, and even in that case some of them would look for different provisions in a victims bill of rights.

As a general overview, I take the position that the bill strikes the appropriate balance among the rights of the victim, the rights of the accused, and the administration of justice in this country. In particular, it is my view that the bill looks at the Charter of Rights and Freedoms, the accused offender and for the first time looks at the rights of the victim of crime and places at least some emphasis on his or her right to gain information and to be heard before the criminal justice system in this country.

The overarching complement of this bill is that the provisions do not lengthen the criminal justice process. I tell you that uniformly and unilaterally victims indicate to me on a daily basis that they do not want a bill of rights, or any other piece of legislation for that matter, that lengthens the process by which the alleged offender is brought to justice and sentencing takes place. Efficiency and timeliness in the process is in order for those victims. I am told this will allow the true healing process to commence, and that is a very important component to the victims I represent on a daily basis.

It is my view that clauses 6, 7, and 8 are the cornerstones and stepping stones to a system that will start to show compassion, empathy, and respect for victims of crime in this country. In particular, subclauses 7(a) and 7(b) are germane to the success of this process.

One of the most common complaints raised by my clients and those involved with Walk With Me Canada is that they are not kept apprised of the investigation and the criminal proceedings. In other words, they are not alerted by the court system, being the arresting police force, the crown attorney, or the victim services office, of ongoing court dates, adjournments, and vital information to allow the victims themselves to decide on their own whether or not they would like to be part of the process on that day or future days. It's key that if they don't attend on one occasion, they're still kept apprised of the next occasion. That should be their choice, as I hear it from them, not the choice of a representative of the court system. It is most important to the people I serve that they be given the information and be allowed to make a decision themselves as to whether or not they attend and how they involve themselves in the criminal justice process.

I will share with you a story of a sexual assault victim who was assaulted in a community in Ontario in which she now does not reside. The alleged perpetrator is her former stepfather. The criminal charges are ongoing presently. I spent a lengthy period of time with this young woman and her biological father. Over and over again, the key piece of information that bothered this young woman was the fact that she had no access to the status of the criminal charges against her perpetrator, or the status of his attempt to change his bail conditions. In fact, she had so little information about the criminal justice system in general that she was afraid because she no longer lived in that community the accused person, with his power, would be able to negotiate the charges being withdrawn or in her words, ”they would disappear”.

I was there to gain information about whether she was going to commence a civil litigation case. In the two and a half hours I was with her, the overriding theme from this young 17-year-old woman to me over and over again was, "What if he goes down to the police station and tells them to withdraw the charges because I've left town because I don't care about this any more?" She told me that she and her biological father had both made numerous attempts to gain that information from various sources in the system, so I applaud subclauses 7(a) and 7(b) in the belief that if that information is actually carried out by the provincial authorities, the experience of this young woman in the future will not exist, or a lot fewer similar cases will exist in our system.

Accordingly, on behalf of the victims whom I have the privilege to interact with on a daily basis, I strongly support the clauses on the right to information, most importantly the right to timely and accurate information, in order that the victims may start to make their own choices about how they deal with the criminal justice system and their perpetrators.

● (1550)

The parts of the bill concerning the protection of the victim, in particular their identities, is also important to the people I serve. One of the ongoing themes and concerns is intimidation, particularly in the human trafficking world. A lot of human trafficked victims and sexual abuse and sexual assault victims are concerned about the requirement of being in a courtroom with the very person who breached their trust, intimidated them and took advantage of them through the system. Having the ability to be protected and not be intimidated in the process by the use of testimonial aids as an enshrined and guaranteed right, as opposed to requiring the crown attorney to bring a motion before the court, is an advancement of rights that I strongly support.

With respect to the participation section, it is my view that clauses 14 and 15 are a step in the right direction. Clause 14 is a very good step that allows the victim to participate in the ongoing proceedings outside the courtroom when plea bargains and arrangements for sentencing are being discussed. It would be very helpful if that clause were to set out a list with a minimum number of times where a party may or should be involved, for example, that their views at least be heard on the issue of the withdrawal of a charge, or a plea to a lesser but included offence, and of course, on sentencing. Here I pause. In the summary, paragraph (k), which I overlooked when I made my notes, will guarantee in the Criminal Code, hopefully under section 718, that sentencing principles will be amended to include that.

Clause 15 dealing with the victim impact statements is a positive development for victims in Canada. The use of a common victim impact statement and a community impact statement will certainly add to the use of victim impact statements. I am told by the victims I represent that the more tools they have, the better. If you simply give them a pen and a blank piece of paper, they're less likely to do a victim impact statement, so I applaud that there are provisions for a common victim impact statement. It may not be one size fits all, but it's certainly a document that I am told by the victims I represent will be of assistance in getting the ink flowing toward the victim impact statement.

Having a specific restitution order enshrined in the victims bill of rights will be of assistance to victims. For example, the court having the ability to assist in obtaining a civil judgment against a labour trafficker will, as I understand from the victims, allow them to regain some dignity and potentially provide some financial stability to restart their lives. It is trite to say that putting any streamline in the process that would allow the victim to recover financially from the devastation of a crime is a good thing.

The complaints process set out and known as the remedy section comprising of clauses 25 through 29 is also one that I support. Having the ability to complain to a body which has the right to remedy the infringement and/or the denial of the right under the victims bill of rights will, in my view, give the document some teeth.

It is my view that having the ability to complain to a body that has the duty, the power and the knowledge to remedy the infringement is a step in the right direction. I know that some of my colleagues and some of the people who testify would like a uniformed body, but as I understand the British North American Act and the Constitution of this country, it would be virtually impossible for a federal body and a federal piece of legislation to have any teeth against, for example, a municipal police officer who decided not to carry out his duties of informing that the offender had been let go on bail. It would be beautiful if we could do that, but by virtue of the legislation we have in this country right now and how we carry out the rule of law, that is virtually impossible in my view.

I anticipate that clause 27 will be somewhat controversial and some witnesses will want status in the criminal proceedings. As indicated at the commencement of my comments, the victims whom I represent and have interaction with through Walk With Me Canada do not want status, nor do they want to be involved directly in the criminal justice system with a lawyer as an official intervenor, or be given standing. The delay of the process is the paramount concern of the people that I represent.

I could go on about how I don't think that would work with the rule of law in our Constitution and our Charter of Rights. With the greatest respect to my profession, adding another lawyer's voice to each and every criminal proceeding is, perhaps, not consistent with the rule of law, but more importantly would bring the administration of justice to a grinding halt. The amount of time it takes at this moment to process a case borders on delay in many jurisdictions, and having the victim represented by a lawyer and allowed to make submissions at each and every turn of the case would, in my view, revictimize the person as they would be dragged through a more lengthy court proceeding.

The second question that would be asked on the right to counsel would be where the funding would come from, and, as Mr. Murie has indicated, if the provinces would like to move that along—because that's probably in their jurisdiction, provincial legal aid—there may be an ability to set up a system, but presently, the way we govern this country, it would be an impossibility. My respectful submission is that in the administration of justice, we would be hearing about Mr. Askov a lot more often in our court system than we would care to. There would be many more offenders going loose because the delay was too long.

● (1555)

Those are my submissions, that I think giving the victims the right to participate, to give information, and have a remedy for restitution are all appropriate steps in the right direction.

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

Our next presenter is Mr. Sullivan. The floor is yours for 10 minutes, sir.

Mr. Steve Sullivan (Former Federal Ombudsman for Victims of Crime, As an Individual): Mr. Chair, thank you to the committee for allowing me to come to testify on Bill C-32.

I am here as an individual, but I come with a wide range of experience. I was formerly the federal ombudsman for victims of crime. I currently work in an organization called Ottawa Victim Services, which is a front line, community-based agency that works with victims of crime. I also teach at Algonquin College in the victimology program. I am here as an individual, and so I don't represent any of those organizations but am happy to draw on the experiences of that work.

There are many positive aspects to Bill C-32. Frankly, I think much of the positive stuff isn't so much found in the victims bill of rights as in the changes to the Criminal Code and the CCRA. I'm not trying to say there is something wrong with the victims bill of rights, but what concerns me is more what people are saying about the bill than what the bill actually says.

We were told that the bill would put victims at the heart of the justice system. It doesn't do that. We were told that the victims would have enforceable rights. They don't have those. This is an important bill. I think it's important for Parliament to take the opportunity, as provincial legislatures have, to pass their comments on and give direction to the courts and to those in the system on how they expect victims of crime to be treated, but to be honest, I don't think the bill is going to change very much in the everyday aspect of our court system, our police stations, and our victims service offices.

Before I get to that, let me talk about some of the positive things that are in here. To be honest, I'm pleased to see some of the initiatives that we started during my short time at the ombudsman's office, such as the amendments to the CCRA to let victims see a photo of the offender, if he or she is about to be released. That can be really important for people. If someone has been in prison for a long time, their appearance may have changed and you don't know whether they are coming back to your community, so it would be nice to know what the person looks like. To have access to that photo is very positive. That's one of the recommendations we made when I was at the ombudsman's office.

The ability to have that, and the suggestion Andy made about having the photo as part of the victim impact statement, but maybe doing more than that.... I think those are important, really positive changes for victims who are there to represent their loved ones. I don't think they would change anything in the sentencing process.

I think it's important to have information about immigration for victims, and there are some changes to the CCRA here. That was one of the recommendations we made as well.

I wouldn't limit it so much. The bill limits information, if the offender has been removed from the country while under sentence. I would not put that limitation on, because if the Correctional Service of Canada transfers the offender to the custody of the Canada Border Services Agency, and while they have them—it's not a quick process—the sentence ends, then the victim wouldn't necessarily be notified if the offender were removed from the country. I think some expansion there would be appropriate.

The changes to restitution are positive, although I'm hesitant to suggest that we're going to see any real, significant change in it. Restitution is really complicated and very difficult. It's relatively easy if you have a broken television or you have a computer that was stolen, but when it gets into having counselling and losing time at work—some of the things the minister talked about—the expenses are sometimes very hard to capture, if there is going to be a plea bargain, because these things happen really quickly. The court requires your expenses to be readily ascertainable.

There is a provision, and I think it's positive, that the crown can ask for an adjournment to help collect those costs, but the victim has no ability to ask for such an adjournment. I think that would be a positive amendment as well.

Having said that, restitution is very challenging. Even though there is the civil process to have the order enforced, it becomes very challenging for victims to have to go to civil court to have the order enforced.

Saskatchewan has, as far as I know, a very well run restitution program that supports victims through this process. It might be something you would want to look at.

The complaints process is a very good idea, usually not through the ombudsman's office. It allows tracking of problems. if there are recurring issues, if there are systemic issues, you can address those. In smaller jurisdictions, it can be used as an educational tool.

I think the notion that a complaints process makes a right enforceable is a bit of a stretch. The right to complain doesn't give you a right to anything, really. This is not to say that it is not a positive addition, but it really doesn't give you, I think, what the government says that would equal enforceable rights.

● (1600)

In a lot of the bill, with the limitations in the bill again, there are important jurisdictional issues and important charter issues to consider, so I'm not suggesting to you that the limits that are in the bill are wrong. I think if you wanted to remove those and give victims standing and let them be a party, those are bigger discussions than you'd want to have in this bill, but as long as those restrictions are in there, I don't think anyone can suggest this puts victims at the centre, at the heart of the justice system.

Let me give you one example. We've heard already about the right to be notified of the plea, and so the judge, he or she, will have to ask the crown whether they notified the victim about this plea arrangement, but the bill actually says that the judge has to ask that question after he or she has accepted the plea. Crown and defence make their submissions. The judge accepts it. At that point the judge is required to ask the crown whether they talked to the victim about this. As Andy mentioned, if the crown says no, he or she should go and do that, but if they don't, nothing really happens. Keep in mind also, before the judge is to give the sentence, he or she is required to ask the crown if the victim wants to give a victim impact statement.

There's a series of these things. The last research I saw suggested that about one-third of judges actually ask crowns if they canvass victims for impact statements. It's in the Criminal Code, and it says they shall do it, but we know they often don't. There is no remedy or fallback from that, so I think it's important as we talk about the bill of rights to put it into context.

If you really want to understand what change this bill will make, you really should be hearing from the provinces; 90% of this falls under their jurisdiction. If they were to come to you and you were to ask them—because they all have their own provincial legislation—what the difference would be in their province, my guess is they would probably say, “not much”. If you were to ask police officers, if you were to ask the crown attorneys association, how they are going to do their job differently, I'm pretty sure they would say that not really much is going to change.

On the other hand, if I'm wrong, and I've been wrong before, if they were to say, “No, absolutely a lot is going to change: as crowns we're going to have to do all these things; as police we're going to have to do these things”, the question then becomes who's going to pay for all that. We hear constantly that our crowns are over-burdened, and our police services budgets are really high. I can tell you in the Province of Ontario they're undergoing a modernization process for their victims services. This bill has not come up. In fact, they are cutting some victims services, and no new money is going to be put into victims services is the message that's being given in Ontario.

Also, with the concerns about victim-client surcharge, if we get a court of appeal that comes forward and says those lower court of appeal decisions are correct, that means they'll stop imposing the victim-client surcharge. In Ottawa, we've had lower court decisions that have said it's unconstitutional, and some judges, even when offenders can pay, have chosen not to impose the surcharge. Programs like Ottawa Victims Services that exist across the province get all of their funding from victim surcharges; it doesn't come from general revenue. If there is no surcharge money, that will have an impact on how those services operate.

Quickly, I would suggest a couple of things the committee might want to consider. The minister has talked about the ombudsman's office having some kind of oversight role. I've read the bill, but I don't see the office of the ombudsman actually mentioned in the bill at all, and I think certainly for provincial jurisdiction, that wouldn't be appropriate. I know when I was there we were told in no uncertain terms we were not to look over the shoulders of the provinces.

I think if there are going to be federal agencies that have their own complaints process, I would hope that the last point of appeal for a victim would be to the ombudsman's office. If it was the RCMP or corrections, and they didn't get a resolution, they could go to the ombudsman's office. I would also hope that all the departments would report back to the ombudsman's office so that it could track the kinds of complaints they're seeing and make recommendations to the government.

I would echo something Andy said as well about those victims. In our case, in a lot of the cases in the front-line victim services, many clients who we see don't report to the police. Some 90% of women who are sexually assaulted don't report to the police. Most domestic violence victims don't report. Hate crime victims and male victims don't report to the police. If this bill were to have the kind of change in the system the government suggests it would, I think in victim services we'd be putting a lot of resources into those victims in the system, which means that those victims who don't report would be left out in the cold. I wouldn't want to see that happen.

● (1605)

On immigration I talked a bit about that.

I was struck by the minister's comments that the bill wouldn't apply to the military; it wouldn't apply to the military justice system. I find that quite concerning, especially given what we've heard in recent years about the treatment of sexual assault victims in the military. I would hope that if it can't be remedied in this bill, the rights and the provisions and the approach that is provided to victims, that kind of recognition, would also be given to victims in the military justice system.

Thank you.

The Chair: Thank you, Mr. Sullivan, for that presentation.

Our last presentation for this afternoon is from Boost Child Abuse Prevention and Intervention.

Ms. Kennedy, the floor is yours for 10 minutes.

Ms. Karyn Kennedy (Executive Director, Boost Child Abuse Prevention and Intervention): Good afternoon. Thank you for this opportunity to speak to you today about Bill C-32, the Canadian victims bill of rights.

Boost has worked in Toronto for more than 30 years to support children who have been abused. We have worked with tens of thousands of child victims to offer prevention and education, counselling, and court preparation and support.

Boost developed the first protocol in Canada to provide guidelines on investigating and responding to cases of child abuse, implemented one of the first specialized court preparation programs for child victims and witnesses, and participated in the development of Ontario's first child-friendly courtroom with a special prosecution team dedicated to cases of child abuse.

Boost is seen as a leader in the field in terms of support for victims and in October 2013 opened Toronto's first, and one of Canada's largest, child and youth advocacy centres for victims of abuse and violence.

I would first like to speak to the strengths of the bill. I believe there are a number of ways in which the bill will promote and protect the rights of child victims, and I applaud the creation of a bill that is specifically for victims and highlights victims' rights that will be enshrined in law.

The bill provides important recognition of the unique status of victims, in that victims are more than just witnesses in the criminal justice system.

lt specifically validates harms not routinely considered, such as emotional harm and the economic costs of criminal harm. Through the new victim impact statement provisions, particularly for children, the emotional harm and emotional abuse that often accompany other forms of chargeable abuse can be validated through the victim impact statement, if and when the offender is found guilty in a criminal court.

Giving victims a voice to express the impact of the crime is a critical component of the healing process. One consideration I would suggest is that there may be difficulty for some child victims in writing or reading from a written statement. ln 2012, Boost piloted a project to video record children's victim impact statements and for the video statements to be used in court. This served as an effective tool for children to be able to express their feelings honestly and in a way that the written statement did not allow.

The bill translates many current practices of providing information to victims into rights, such as information about resources and supports, the status of the investigation and prosecution, the release of offenders, as well as parole conditions and what the offender looks like at the time of release.

The bill specifically sets out that victims have a right to protection, and this includes the right to have their security considered and reasonable measures taken to protect them from intimidation and retaliation. This is particularly important in cases of sexual assault. One of the most common reasons that victims do not come forward to report to law enforcement is fear that the threats made by the offender will be realized.

ln the vast majority of child sexual abuse cases, threats are made to the child that directly relate to their own safety and security and/or that of their loved ones. Including this protection in the bill sends a strong message that their safety and security will be protected.

ln recent months, Boost has begun to see more cases involving human trafficking of young women and there is a heightened element of fear in these cases that will require special considerations with respect to their safety.

The bill states that every victim has the right to request testimonial aids when appearing as a witness. While this is important to include as a right, in my experience it is very difficult, if not impossible, for children and other vulnerable witnesses to ask for this unless a professional advocates for them.

ln some jurisdictions across the country there are specialized child victim witness court preparation programs where the needs of child victims are identified and advocated for in the court. However, where this type of program is not available, child victims cannot rely solely on judges or crown attorneys to make applications on their behalf.

● (1610)

I'd like to address some of the ways the bill could be enhanced to further support the rights of child witnesses. While testimonial aids are available to all child witnesses, in my experience they're underutilized because they are either not always available in some jurisdictions or because there are prosecutors who still believe that it's preferable to have the child testify on the stand without the benefit of testimonial aids.

These decisions are often made as it's felt that a witness on the stand, even if the witness is in distress, will have a greater impact on a judge or jury. As a result, we often see an underutilization of testimonial aids even if they may be in the best interests of the victim. Professor Nicholas Bala and his colleagues in their 2011 report to the Department of Justice where they examined, among other things, perceptions of the judiciary regarding the use of testimonial support provisions, found that in almost half of the cases applications for the use of closed-circuit television for children under 18 were either never or only occasionally made.

Other jurisdictions have recognized that children and certain other vulnerable groups need additional advocacy to ensure their rights are asserted and upheld. In the United States, a guardian *ad litem* may be appointed by the court as an additional support person who can assist children to exercise their statutory rights to special measures. They can make recommendations to the court regarding the child's welfare and access all evaluations, records, and reports regarding the child. There's also federal legislation that provides for attorneys for children in addition to guardians *ad litem*. Norway provides for state-funded counsel and separate legal representation for alleged child and adult victims of certain sexual and violent offences.

While the government may not wish at this point to consider the possibility of duty counsel for vulnerable victims, perhaps the flexibility to allow pro bono lawyers, law students, or even privately hired lawyers, when they can be afforded to attend hearings as advocates for victims' rights, may be feasible. It's also possible that legal clinics and law schools across the country could provide such assistance. There are already protections in the bill to ensure there's no excessive delay or interference with the proper administration of justice. Moreover, given Canada's commitment to and ratification of the Convention on the Rights of the Child in December 1991, it's arguable that more should be done now in the legislation in relation to child victims' rights.

For example, article 12 of the convention sets out a child's right to be heard. It says:

> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Finally, Canada, which has taken a leadership role with respect to the development of the United Nations' 2005 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, might consider some of the guidance it provided in this area. There are several areas where children's needs as victims could be better accommodated in the legislation. The current bill provides for applications by victims for various measures available under the Criminal Code, for example, testimonial aids and publication bans, as well as the rights of victims to convey their views about decisions to be made by authorities that affect their rights. However, vulnerable victims will need support and assistance to make applications and convey their views.

Paragraph 25 of the guidelines states:

> 25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:
>
> (a) Child victim and witness specialists who address the child's special needs;
>
> (b) Support persons including specialists and appropriate family members to accompany the child during testimony;
>
> (c) Where appropriate, to appoint guardians to protect the child's legal interests.

The language used in court, particularly with child victims, must be understandable and respectful of children's developmental capabilities. There's a dearth of attention to this issue. Provincially, the law societies have not addressed this, and it's the right of child victims to understand and to be respected during questioning as victims and to be able to participate fully in the criminal justice system.

Bala also asked judges about their experiences with the questioning of child witnesses and asked them how often, if at all, they observed child witnesses 13 years and under being asked questions by professionals where they appear incapable of answering due to the complexity of questions or developmentally inappropriate questions. Thirty per cent of judges reported that defence counsel often or almost always asked complex questions compared to 23% by police, 13% by the crown, 11% of child protection workers and 8% by judges. It's also worth noting some other relevant provisions of the UN guidelines including articles 14 and 31. All interactions described in these guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child according to his or her abilities, age, intellectual maturity, and evolving capacity. They should also take place in a language that the child uses and understands.

● (1615)

Professionals should also implement measures to ensure child victims and witnesses are questioned in a child-sensitive manner and to allow for the exercise of supervision by judges, facilitate testimony, and reduce potential intimidation, for example, by using testimonial aids or appointing psychological experts.

Again, other jurisdictions have recognized this issue as a pressing one for child victims and have made developments in response. Over the past decade, several countries, including Australia, New Zealand, and parts of the United States, have enacted specific legislation in an attempt to prevent improper questioning of child witnesses, particularly during cross-examination.

Bill C-32 offers an opportunity to recognize not only the unique needs of victims, but those of child victims of violent crime, and to provide protections and advocate for the needs of these vulnerable victims.

Thank you.

● (1620)

The Chair: Thank you very much for that presentation.

We'll go now to our rounds of questions. Our first questioner, from the New Democratic Party, is Madam Boivin.

[*Translation*]

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

I too want to thank our witnesses.

All of this is extremely interesting. We had been expecting this bill for a long time. We heard a lot about it and there were also several press conferences. I congratulate you for the work you do on behalf of victims, each one of you in your respective fields.

As some of you pointed out, the success of this new charter is going to depend largely on provincial and territorial partners. In the course of the administration of justice, they will have to apply large parts of this new Canadian Victims Bill of Rights.

I don't remember exactly who talked about this, but I have to admit I am a little concerned about something. Following last week's meeting of federal, provincial and territorial ministers responsible for justice and public safety, there was a certain disappointment. Certain specific demands had been made regarding legal aid. However, they did discuss the Canadian Victims Bill of Rights.

I read the statement made by the new Quebec Minister of Justice, Stéphanie Vallée, which says: “However, Quebec like several other provinces expressed some concerns regarding the implementation of the bill as proposed.”

It was also said that there was not enough consultation before the bill was prepared. I would like to know whether, like me, you believe that the various levels of government are going to have to work in close cooperation if this new bill of rights is to work.

Aside from Mr. Sullivan who spoke about this briefly, no one has pointed out that some elements are missing from this bill. As explained by the minister and representatives of the Department of Justice, that was somewhat deliberate. They wanted to start with something. That said, this charter leaves a number of victims aside. So we have a Canadian charter for the rights of victims, but it does not necessarily apply to all types of victims.

I would like you to discuss that more in depth. The question of members of the military disturbs me considerably. Since I read several of your articles, Mr. Sullivan, I am surprised not to hear you say anything about the victim surcharge. I was not necessarily satisfied by the replies provided by the department officials. I'm not sure I understood what they were trying to do with new subsection 737(4), regarding reasonable delay.

Does this dispel your reservations about the surcharge, or do you still think that there is a legal vagueness there?

Mr. Laferrière, you worked in close cooperation with Senator Boisvenu in connection with the victims' association with whom you worked. Conservative colleagues, who could never be accused of being overly favourable to unions, may not have situated you quite accurately. You have been a passionate advocate for the rights of victims.

Could you tell us about your background?

[*English*]

I'll start with Mr. Laferrière, just to be precise on where he's coming from, and then go to Mr. Sullivan.

● (1625)

[*Translation*]

The Chair: Mr. Laferrière, you have the floor.

Mr. Claude Laferrière: I was a pro bono lawyer for close to eight years with the Honourable Senator Pierre-Hugues Boisvenu. I was a very close collaborator and friend until last April, that is to say until I saw the document, in particular clause 20 regarding the discretionary power, which is poorly defined in connection with the rights of victims.

I understand perfectly that the police and crown attorneys have discretionary power, but it should probably be defined in the context of victims' rights. We understand it in connection with the rights of the accused, in the context of a criminal investigation, but when it comes to victims and their families, what are we talking about?

In conclusion, I will add that I am a lecturer at the University of Montreal and at Laval University in the field of national security law.

[*English*]

I have also a degree from Georgetown University Law Center. I spent a little time in the U.S.

[*Translation*]

I also teach business law. Currently I'm responsible for a legal research course at the University of Montreal. Some of my students are Chinese nationals from Beijing, in the People's Republic of China.

Ms. Françoise Boivin: Thank you.

What I meant is that I wanted people to situate you generally. I believe we have understood your position on clause 20 well.

Mr. Claude Laferrière: I am trying to be as apolitical as possible.

Ms. Françoise Boivin: I understand.

Mr. Sullivan, could you reply to my two questions on the notion of "victim"?

[*English*]

Mr. Steve Sullivan: There are a couple of things I want to put to you.

If the provinces are on board, then this will have no impact at all. Quite frankly, if this bill was going to bring in fundamental change, I think you'd be hearing the provinces scream more loudly than they are now. I don't know how much consultation was done, but I think the fact that they've been fairly silent suggests that they don't really see much of a change here from what they have in their own victims bill of rights.

When I was at the ombudsman's office, I met some women in the military who had been sexually assaulted and not treated very well. There have been a lot of media reports around that, not just in the most recent *Maclean's*, but going back many years, so this is not a new issue. The fact these principles wouldn't apply to people in the military justice system I think is very problematic, and hopefully can be addressed in this bill, but if not, then something should be done quite quickly. I understand it operates differently.

With the victim fine surcharge, my understanding what the bill the would do is.... Some judges were giving offenders 100 years, 50 years to pay. I think this bill is intended to limit that. At the ombudsman's office I made the recommendation that it should be mandatory. Having said that, looking back, I wouldn't do that again. I think it has created a situation whereby we're at risk now of losing all the victim surcharge money. The reason I made it was that, as ombudsman, you couldn't tell the provinces to spend more. I don't think they have any intention, for the most part, of spending more, so the only real avenue was to get more money through victim surcharges. I don't think that's going to happen.

My recommendation would be that the government go back to the old system and find a hybrid system that could work and clarify what those exceptions are for people who cannot pay. We're seeing people who can't pay being ordered to pay $700 fines, and it's not working.

The Chair: Thank you for your questions and answers.

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

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you to all the witnesses for your presentations.

There's certainly a diversity of approach, but certainly we'd all agree that the purpose of this legislation is to focus on the rights of victims, a piece that was neglected in the criminal justice system. I think we'd all agree also that we shouldn't let perfection become the enemy of good. These provisions are all intended to give the victims a voice, and that's the direction this government has taken.

Mr. Hooper, I was interested by your comment regarding delay. Our extensive consultations indicated that victims were very much preoccupied by delay. It's one of their major concerns. I wonder if you could explain from your vast experience why delays do matter to victims, and conversely, if you could explain why delays help criminals.

Thank you for your work with victims. It's very much appreciated, and certainly more work in that field by others will be appreciated as well.

Mr. Robert Hooper: Yes, thank you for the question, sir.

I'll answer backwards with the second part, why delay is important to the accused person.

Generally speaking, the right to a fair trial in a reasonable period of time is enshrined in our Charter of Rights and Freedoms. Many moons ago, with a gentleman named Mr. Askov it was decided when there were delays in the crown, the prosecution, the police, etc., on a charge, and it's now known as the ruler for delay, but when that happens, you walk free. I can't imagine being the victim of a violent crime and the only reason the person who perpetrated the crime and violated you is not going to jail or getting the appropriate sentence, whatever may be fit, is that it took *x* days or *x* months, and the only reason was a prosecutorial delay or police delay, or a systemic delay, etc. That certainly is not something the victims whom I represent support. That is in the favour of the accused. It's enshrined in our Charter of Rights, and so be it.

You'd be happy to know that Mr. Askov committed another crime and found himself incarcerated.

In any event, the second part of why it seems to be unequivocal that the victims whom I represent.... I was at a pretrial yesterday with a woman who was sexually assaulted by a fellow student at a university campus that will remain nameless, getting ready for her civil trial against her perpetrator. If you line up the times that she had suicidal tendencies and admissions to mental health facilities, they line up with the times when there was an adjournment or a delay in her case. The accused had the right; he went clear to the Supreme Court of Canada, or attempted leave. That was over a five- to six-year period. If you drew two parallel charts, you'd see that almost every time there was an appeal, or she had to appear once again and was told no because he had appealed to the next level, there was either a suicide attempt or an admission to a mental health institute. This is just one anecdote. I happened to be with her yesterday at a pretrial in Hamilton, Ontario. I asked her if I had her permission to give that example. She said that unfortunately, with the length of time this was taking in her life, it really hurt, plain and simple.

● (1630)

Mr. Robert Goguen: The trauma continues as the process lengthens.

Mr. Robert Hooper: She would tell you that her healing process probably cannot start until the sentencing process concludes.

Mr. Robert Goguen: I'm going to draw on your experience to give the committee a little bit of insight in the plea bargaining prospect. Can you give us the dynamics of how these deals take place? Could you comment also on whether you feel that this act positively influences the plea bargaining process in favour of victims in this case?

Mr. Robert Hooper: I think the independence of the crown and the defence lawyer both coming at a case from two different avenues is trying to essentially, rightly or wrongly, bake a cake, which is to put all the ingredients of the reasonable propensity of a prosecution being successful, the offender not being sentenced or not being found guilty.... These usually happen previous to a pretrial. Then at a pretrial, where there's often some judicial influence, can you really make the case beyond a reasonable doubt, which is a very high standard? We're less and less clear about eye-witness testimony, etc. Sometimes, albeit subjectively, it looks like a slam dunk, so to speak. There are legal hurdles that will prevent a conviction on the highest charge. I think this bill will be somewhat successful in assisting in that way, more in the plea bargains with respect to sentencing. The guilty plea is going to be the *x*, and there are some provisions that victims will be accommodated, or the harm to victims in the community will be more accommodated in the sentencing.

Truthfully, with concurrent and consecutive sentencing in this country, from a victim I hear “Yes, I would love Mr. and Mrs. X to be convicted of 16 counts”, but in reality in our criminal justice system, two years less a day concurrently 15 times is no different from two years less a day once, practically speaking.

Mr. Robert Goguen: You touched briefly on the victim impact statements, and you touched also on this new concept of the harm to the community. As you know, in section 718, the sentencing principle of the Criminal Code, a fundamental purpose of sentencing is provided. It's an overarching philosophy of sentencing that helps to interpret the objectives of sentencing. Bill C-32 will add an explicit reference in proposed paragraph 718(a) to harm done to victims or the community. This will make it explicit that the objective of sentencing is not only to denounce criminals, but also to recognize and denounce the harm done to victims.

Could you comment on this provision?

● (1635)

Mr. Robert Hooper: Yes. When I look at the provision, it appears to me to give specific deterrence, which is already a sentencing principle in this country, a little more girth or a little more teeth. I envision, and this will depend on the judiciary in this country, that there could be sentences that now say, because of the conduct, this is how this has affected and harmed this specific victim. Even more generally, to use human trafficking as an example, they could say, “You are running a pimping organization out of Motel 6 on the QEW, and that's harmful to our community; therefore, the norm is three years and you're getting four years.”

It is certainly a hammer that could be used. I welcome it. I think “specific deterrence” is sort of a wishy-washy term; “general deterrence” is not very specific. This really says let's look at what the victim impact statement says; let's see if we should increase the sentencing. That's how I propose, or hope, it gets used.

The Chair: Thank you very much.

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

Mr. Sean Casey (Charlottetown, Lib.): Thank you to all the witnesses.

Mr. Sullivan, your comments resonated particularly with me, in that I share your view that the bill is as good as far as it goes, but that it has been oversold. I share your concern as well that because of the dual responsibilities and roles between the provinces and the feds, the real measure of its effectiveness is going to be in the resources that are allocated probably at the provincial level to give these rights some teeth, these rights to information and the right to complain.

Can you give us some sense...? You were quite clear in your testimony that you don't think much is going to change, but that if you're wrong, we're looking at a big bill. I should also point out that three of the five witnesses referenced the role of the provinces here, so this is something that I think we're going to be grappling with as we go through this study. I want to deal with that awful hypothetical that maybe you're wrong, and that there is going to be some significant role in terms of providing resources to give teeth to the complaint provisions and the information provisions. Can you give us a sense of what the resources would look like, what the financial commitment would need to be, on a practical level?

I have one last thing before you answer that. You said that you hoped we would hear from provincial attorneys general. We've invited them; they're not exactly jumping at the opportunity to take your seat. If you have any sway, we do want to hear from them, and we have invited them.

Mr. Steve Sullivan: If I had more sway, then victim services would have a lot more resources.

First, I'll say this. One of the dangers in over-promising when it comes to victims' rights, and there's some research that supports this, is that if you tell victims this and you raise their expectations, and then they go into a system and those expectations fall very short, it's actually worse than doing nothing at all. Again, I'm not opposed to the bill. I'm not saying people should vote against it. I just think the rhetoric has to be realistic.

If it is realistic—and my kids would tell you I'm wrong all the time, so it's not unreasonable that I'm wrong again—then you're going to have crown attorneys spending a lot more time with victims, which means that you need crown attorneys in court as well, which means you're going to need more crown attorneys. Crown attorneys associations, I think, will tell you they already need more crown attorneys to keep up with that, and that's been with the different bills before Parliament where they've testified to that consistently.

Mr. Sean Casey: We've invited them as well.

Mr. Steve Sullivan: I think that's great.

If you're going to require police officers to spend more time with victims—and it's not that they don't want to do those things—then you're going to require more police officers. I can tell you that in Ottawa and in Toronto we hear all the same things about police budgets. I think even the federal government has talked about the police budgets, that we have to get a handle on those, so we're probably going to see those shrink, not grow. If there's a lot more work in this with police and victims, then you're going to have to have more police officers.

In Ottawa, for example, at our crown attorney's office, we have a program called the victim/witness assistance program. It's in every jurisdiction of the province, and I'm sure they have something similar in most jurisdictions across the country. That's an office that works with victims when cases are before the courts, and it helps keep them updated about the dates and those kinds of things. They're limited to pretty much domestic violence, sexual assault, homicides, some elder abuse, and some trafficking, but they just don't have the time to deal with all those other victims. For impaired driving victims, assault victims, non-domestic assault victims, they don't have the resources and time to deal with those people now, even under the province's victims bill of rights. If this bill is going to put more work on them, then they're going to need more people as well.

If I'm wrong and the minister is right that this is going to have some kind of fundamental change, it's going to mean a substantial increase in resources for crown attorneys, police, victim services, and everybody in between to make sure you can actually do what you're promising you're going to do.

● (1640)

[*Translation*]

Mr. Sean Casey: Mr. Laferrière, you submit that clause 20 should be withdrawn. I think that the changes you have proposed will really be quite significant for our justice system.

Do you think we should amend the charter?

Mr. Claude Laferrière: I will answer in two parts.

If the legislator decides to maintain clause 20, its substance would certainly need to be more specific, so as to describe precisely what the discretionary power of the police and Crown consists of with regard to victims. We know what it is in connection with the accused, criminals, terrorists, and organized crime. In those cases, a discretionary power is necessary.

In the case of victims, it is comparable to clauses 28 and 29; there is no recourse. It has been said that the charter offers no recourse. Why were clauses 28 and 29 included, as well as clause 20? If legislators wants to hold a debate on the immunity of the police and the Crown, I think they should do so in a distinct framework, a separate one, and not in a charter on the rights of victims. In my opinion, there is no causality there.

As for the second part of your question, there was a symposium in 2012 in Quebec. The City of Quebec is a Conservative arena in this field. The senior organizer, who did absolutely splendid work, was the former Attorney General and Minister of Justice of Quebec, Mr. Marc Bellemare. At the Classique Hotel, in Quebec, more than a hundred victims were convened and a workshop was held on the charter. This seminar was presided by Senator Pierre-Hugues Boisvenu, who did excellent work, by the way. I was assisting him. My role was to be the legal counsel.

What came out of that seminar is that the victims would like the help of a lawyer. That lawyer would play all of the roles that Mr. Sullivan discussed. His role would really be to guide the victims throughout the process and to make representations at all stages of the criminal trial before the judge and jury.

Mr. Sean Casey: So that lawyer would play an active role in court.

Mr. Claude Laferrière: Indeed, there could be plea bargaining, or an appeal. This is not only my personal opinion. It is what came out of the symposium, and there was a consensus.

The Hon. Christian Paradis was there as a guest of honour, as well as Mr. Bertrand St-Arnaud. In my opinion, this reflects Quebec's position on the victim dossier.

That said, the reason I am here today is much more circumscribed. In a very targeted way, my purpose was to discuss clause 20, and specifically what is meant by the discretionary power of the police and of the Crown regarding victims.

[*English*]

The Chair: Thank you for those questions and answers.

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

● (1645)

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thanks to each of our guests for being here today.

Ms. Kennedy, I want to start with you. It's good to see you again. I'm a big fan of and believer in what you and your colleagues do at the Boost centre in Toronto. I've had the opportunity to visit on several occasions and I think it's a model that we need to follow across Canada. I know that Mr. Seeback agrees with me that the Peel region needs a centre like Boost, and we're hopeful there will be one soon. I think all the other MPs from the Peel region feel the same way. We thank you very much for your leadership and for the way you're helping child victims in your centre.

I know that you followed the development of the victims bill of rights and you were part of the consultation process with the Minister of Justice. I want to ask you specifically about some of your comments. In your opening comments, I'm not sure if I got it right, but I think you said you were concerned about the ability of child witnesses to testify both in trials and in victim impact statements through some means other than in person in the courtroom. My understanding is that the victims bill of rights does provide for that.

Do you agree with that or are you happy to see that?

Ms. Karyn Kennedy: I do agree, and the Criminal Code allows for the use of testimonial aids. My concern is that they're not being utilized as fully as they need to be. Children are particularly vulnerable as victims and witnesses in the criminal justice system, and there are additional things we can do to make it easier for them to be able to go through the justice process. We can't just think of them as small adults. They are not. They have unique needs, as I've discussed, with regard to their ability to give their evidence, their ability to provide victim impact statements, and just how they interpret and understand the criminal justice system.

I think there is a good foundation here for what can be provided, but I think there's more that we can still do.

Mr. Bob Dechert: The victims bill of rights does say specifically that victims have a right to testify either behind a screen or through some other device, like a video. When I visited your centre you had a special room that was very child friendly with hidden video cameras in it. You get statements from children right after the event of whatever has happened to them. That's the sort of thing you're talking about, I assume, and allowing that to be used in the courtroom.

What other kinds of testimonial aids are you referring to? Can you give some examples?

Ms. Karyn Kennedy: Certainly I can't speak for the whole country, but across Ontario there are courthouses that don't have closed-circuit television equipment available. Often prosecutors and judges are reluctant to bring it in because it's cumbersome and expensive, that kind of thing.

I think there has been progress made in terms of offenders in custody being able to appear in court through the use of technology. We have the basis of that, I think, with the advocacy centres. There are facilities for children to provide their statements to police during forensic interviews. I think we could even take that further. As we demonstrated in our pilot project, we could record victim impact statements using video so the child doesn't have to go through that experience in court in person, as well as even providing their testimony from another location via technology.

Mr. Bob Dechert: It seems to me that the victims bill of rights does support that.

Ms. Karyn Kennedy: Yes, I agree.

Mr. Bob Dechert: Okay.

Now, in terms of the victim impact statement provisions themselves and the new features that are in the victims bill of rights, are there things about them that you like?

Ms. Karyn Kennedy: I like the fact that there is now a standardized victim impact statement. In Ontario the questions that were included previously in victim impact statements for children made no sense—you know, asking children how many days of work they missed and things like that. They didn't have a way to understand those questions or respond to them, and it just wasn't getting at what the impact of the crime had been on them. I think this is much better.

Mr. Bob Dechert: How do you feel about the provision regarding the release of a picture of the offender to the victim when the offender is released?

Ms. Karyn Kennedy: I think it would be helpful if we saw sentences where offenders were actually incarcerated long enough for them to look different. Unfortunately, we don't see the kinds of sentences in child sexual abuse and child physical abuse cases that we would like to see, but I think the more information that's available to the victim and their family, the more helpful that is.

Mr. Bob Dechert: As you know, the government has introduced another bill, the strengthening of penalties for child sexual offenders act, which is Bill C-26. It will be before the House of Commons very soon. Hopefully you'll come back and appear before the committee when we study that bill.

● (1650)

Ms. Karyn Kennedy: I'd be happy to.

Mr. Bob Dechert: Do you agree with the victims bill of rights provisions that designate another person to view the picture if the victim doesn't want to view it or if it would be harmful for the victim to see it?

Ms. Karyn Kennedy: Yes, certainly in cases where children are involved, having an adult in that role would make a lot more sense.

Mr. Bob Dechert: Thank you very much for those answers.

The Chair: This is your last question.

Mr. Bob Dechert: Okay.

I have one question for Mr. Laferrière.

He referred in his written presentation and in his oral presentation to the possibility of a veto by victims over plea bargains. He said that came from a consultation process that he attended in Quebec.

Is that your suggestion, that this should be included in the victims bill of rights, and are you going to suggest that to our colleagues on the other side of the table to put that forward as an amendment?

Mr. Claude Laferrière: Yes, sir.

Mr. Bob Dechert: Okay. Thank you.

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

Our next questioner, from the New Democrat Party, is Madam Péclet.

[*Translation*]

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

My question is for all of the witnesses, as all of their opinions are important.

I'd like to come back to what my colleague was saying about delays.

Mr. Sullivan, perhaps you could tell us more about the delays that are, in your opinion, the biggest problem for victims dealing with the justice system.

Since the charter rights are not necessarily imperative, that is to say that there is no automatic sanction if those rights are not respected, a complaint mechanism was created.

If that complaint mechanism is adopted by the provinces, to whom will the victims submit their complaints? Should the Department of Justice adopt that mechanism and receive the complaints from victims throughout Canada, or should the complaint structure be adopted by each province? Then there would be a dual system; on the one hand the victim has the right to information on the trial — on the plea bargain — and the charge, but on the other, if the victim's rights are not respected, they must complain elsewhere while the trial continues. When the victim files a complaint, the mechanism is triggered, but if the victim's rights are not respected, the trial will continue in the meantime until the end, and the victim thus stays in the middle of it all. So it is possible that his or her rights will never be respected.

How can we balance those two things? Where should the complaint mechanism be inserted? How can we insure that the victim will be able to follow the normal trial process without having to obtain the assistance of the crown attorney or an ombudsman? The system has two tracks and dual speeds; the trial continues while the victim is trying to have their rights recognized.

How can we balance that? How do you see things?

My question is addressed to all of you, since you all have interesting things to say.

[*English*]

The Chair: Andrew, we'll start with you and work our way across. How does that sound?

Mr. Andrew Murie: Sure.

In some provinces now there actually is a good process if a victim has a complaint in the system. As I said in my comments, and as some of my peers have said, it really depends on the mechanism the provinces put in place to deal with these issues, because largely 90% of this will fall under provincial jurisdiction and very little will fall under federal jurisdiction.

One of the things the federal funding that's been allocated for this bill can be used for is to make sure there's some kind of standard that the federal money is used for to help in the provinces. You already have some good templates. You could apply it for those provinces that have weaker types of victims' rights, and also, for the right to complain, to put that process in place. A lot of this is process oriented and best practices, so if you can facilitate that, you're going to make it a lot better.

● (1655)

[*Translation*]

Mr. Claude Laferrière: Regarding delay and victims' rights, we had a situation in Quebec that caused me some concern. I am interested in organized crime issues. So what is happening at the Gouin Judicial Services Centre worries me. Judge James Brunton ordered a stay of proceedings in some 40 cases involving biker gangs.

I will use proof by contradiction here. If victims' lawyers in these types of cases were recognized in the justice system, they would be extremely important collaborators for the Crown. Biker wars produce many victims. We are talking about hundreds of victims. I am thinking of the SharQc and Printemps 2001 operations.

In Quebec, certain groups have started wars against other groups. A family may have a black sheep, but this does not mean all family members are black sheep. So there are victims and victims' families. In my opinion, if lawyers could represent victims in the justice system, additional pressure would be placed on defence lawyers and criminal organizations. This would help secure a conviction more quickly, instead of having to charge individuals suspected of serial murder again. The victim's lawyer would become an important player in such cases.

I am not quite answering the question, but I want to clarify that, when it comes to the complaint mechanism—the proposed administrative mechanism—I recommend a much more active operational approach. That would ensure that the crown prosecutor and police officers would no longer be alone. They would have a new ally in the victims' lawyer.

[*English*]

Mr. Robert Hooper: To answer the question about delay versus the victims' rights and those two processes going hand in hand, I agree with Mr. Murie that there are some templates available. Candidly, I think if you are weighing if we adjourn this for three months to have an investigation of whether a victim's rights were violated, that the victim wasn't told about a process, will mean there will be an application under the Charter of Rights and Freedoms and the accused perpetrator is going to potentially walk free, I think 99.9 victims out of a hundred are going to say that once again they've been revictimized and they would rather see justice done to the accused person.

Unfortunately, unless you turn back to probably before your time when the Charter of Rights and Freedoms came into play, that rule is going to be there and you need whatever it is to make a constitutional amendment these days to change that. You're going to have to enshrine something equally in the charter for victims to weigh that. There are things in the bill that aren't perfect and that allow a judicial officer or a judge to adjourn the process. I think the compromise in your question is that there may be availability, if judges choose to use it, to adjourn and to allow the victim to go and have the complaints process.

I'll echo the third thing Mr. Murie said, that although sections 26 and 27 talk about a federal body and a provincial body, as he and I talked about before this started—he used 90%; I don't know what the percentage is—most of it is going to lie on the municipalities with police officers and crown attorneys. If the provinces don't get on the bandwagon it will be difficult to have an effective complaints process. I hope the ombudsperson watches the complaints process so that we can see themes and maybe we'll be back here in a year changing some things.

The Chair: I'm sorry there's no more time for anything further on that. Thank you for those questions and answers.

Our next questioner, from the Conservative party, is Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Mr. Hooper, I wanted to pick up on some of the discussions we had on the delay. We heard that one of the suggested amendments would be—I might not use the term correctly—almost a victim veto on a plea bargain. I understand the nature of that a little bit. In my past life I was a lawyer. I think plea bargains are a complicated situation. They aren't necessarily about expediency; in fact, they aren't about expediency. In my understanding and experience, they're perhaps an assessment of the evidence and a reasonable prospect of conviction by a crown attorney. Therefore they make some kind of a deal and that could be based on the evidence. It could be based on their assessment of how the victim might testify in court. There could be a whole variety of factors.

What would you think the effect of giving a veto on that to a victim would be, meaning that matter is now going to trial? I don't think there are very many victims who would be willing to accept a plea bargain.

● (1700)

Mr. Robert Hooper: I'll try to start with the big picture. We've heard a lot about resources. I think that if we go from every case that may or may not have a reasonable proposition of conviction are all being tried every day.... Forget about the crown attorneys phoning victims and telling them the trial is next week; how about the—I'll just make up a number—600 crown attorneys that will need to be hired, and you should start interviewing today, to try these cases. With the greatest respect to victims, I can't envision a victim I've represented who said that you can have your day in court, and Joe or Jane might be found guilty of 16 counts and get a slightly larger sentence, or we're going to drop 12 charges and we're only going to plead four of them, and we're going to give a bit of a break on sentencing because the truth is that your mom's not a very good witness.

I think you're right. It is a complicated, hopefully somewhat objective process, that takes into.... I referred to baking a cake earlier. My analogy was there are tons of ingredients in a plea bargain. To pump up my profession and yours previously apparently a little bit, I don't think that crown attorneys just walk in in the morning and think “He's getting a plea bargain. He's not. She is. He's not.” I don't think it works that way. I think it's a very complicated process. There is consultation with the police forces. To be fair to victims, it's a subjective, emotionally charged situation, so giving them a veto quite honestly would bring the administration of justice to a grinding halt in my respectful submission.

Mr. Kyle Seeback: I don't think it's practical in the circumstances with all due respect to victims. I also think you're right. It would lead to an incredible increase in the trial mode in virtually every jurisdiction.

Mr. Robert Hooper: I think the thing we forget about it is how about the 60% or 70% of victims who leave the courtroom with a not guilty verdict, which means they were not believed. In the crimes I deal with, that sexual assault victim who takes the stand for two and a half days and is cross-examined by one of my colleagues, and on the Friday the jury says not guilty, that doesn't necessarily mean it didn't happen, but I bet you—I don't know because I've never been sexually assaulted—leaving the courtroom what they think is, “I was not believed over my perpetrator”, and that's a huge victimization in my respectful view.

Mr. Kyle Seeback: Absolutely.

Mr. Sullivan, I want to talk to you a little bit about your comment on restitution. My understanding is restitution is a bit of a complicated scenario in the justice system. I don't know it nearly as well as I would like.

Could you give me some examples of restitution? How does a restitution order or even a victim surcharge order balance out against, for example, somebody who's convicted and whatever money they may earn in prison? Can it be deducted from that? What about a civil lawsuit? Are there ranking in priorities of that? Which one supersedes the other? Those kinds of things.

Mr. Steve Sullivan: You're right; the restitution can be complex. It can be very simple if it was a stolen bicycle, if there was TV, and you have the bill, and that's what you're going to order.

Where it gets more complicated is in personal injury situations: there's violence; some might need counselling; there's loss of work. Even if you could present to the judge a summary of what those costs would be, if you're looking at counselling down the road, it has to be readily ascertainable, and that's challenging for many victims to get that. It becomes a really complex process.

Then there's the idea of let's say it's going to be $500. We order that. It can be part of the person's probation, but once they are done probation if they don't pay it, it then becomes up to the victim to go to civil court to try to have that enforced.

My memory's going to be bad on this, but I recall testifying a couple of years ago on a private member's bill that had some ranking as far as those who are in prison and had orders against them for restitution are concerned. I think there was a restitution victim surcharge, but I can't give you any more details than that.

I think one of the other challenges for many cases is the offender doesn't have any money. If it is extensive resources, or if the victim has a lot of injuries, and they lost a lot of work, and they maybe need lots of counselling, even if they went the civil route it really depends on what the offender has to pay. If he or she doesn't have very much, then a restitution order or anything else is just not going to be paid.

It is a very complex process. It can work. Where it works really well is when you have restorative justice encounters and dialogues where people come together—the accused, the offender, and the victim—and they work out a resolution and say how much money is going to be paid. I think it's around 80% of the time you see the money actually get paid.

● (1705)

Mr. Kyle Seeback: Do you have a recommendation on how to make restitution orders more effective?

Mr. Steve Sullivan: There's a provision in here I think that is good. It allows the crown to ask for an adjournment to get those readily ascertainable costs. I would suggest letting the victim have the chance to ask the court for that as well. I think where it would really help is if the provinces do come and Saskatchewan comes, you may want to look at their program. They have a program that helps victims enforce those orders. I think that becomes very helpful.

The Chair: Thank you for those questions and answers.

Mr. Kyle Seeback: I wanted to ask about Saskatchewan.

The Chair: You can ask them when they show up, hopefully.

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

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

[*Translation*]

I would like to start at the beginning by asking what the definition of a victim is, since the bill is changing that definition slightly. It would be important to reach some sort of an agreement on who will be affected by this bill of rights.

According to the bill, a victim may have suffered harm following an offence or even an alleged offence. What do you think this could mean? Corporations seem to be ruled out. Is it agreed that corporations will be ruled out once and for all? Or will corporations have rights that will take precedence under the bill of rights?

Let's begin by defining victims. Is there a consensus on that definition? Will another piece of legislation override this bill of rights?

Mr. Sullivan, would you like to comment?

[*English*]

Mr. Steve Sullivan: I'm not sure I completely understand the question, but I think it's a fairly consistent definition. It's probably similar to the one that's already in the Criminal Code, although I don't have a copy of the Criminal Code with me. There may be some other adjustments. I think if you look at the provinces, it's a similar definition to the one the provinces use around "victim". It does try to recognize, I think, everyone who can be one. It's property damage, emotional harm, physical harm. Most definitions also recognize if someone is incapacitated or deceased. It represents their close relatives, those kinds of things.

Mr. Philip Toone: There's a provision here that a victim can be somebody who is a victim of an offence and somebody who is found to not have been criminally responsible. How is that going to play out?

Mr. Steve Sullivan: I don't think it will play out any differently now. In the Criminal Code now there are provisions for not criminally responsible cases where victims can do impact statements. I understand that because the person isn't found guilty of the crime in a sense they're not criminally responsible. They've done the act but they didn't have the elements to form the intent. I don't think from a practical point of view, a front-line perspective, that there's really a difference in how victims are treated. Mental Health Review Board hearings allow victims to come to hearings. They can do impact statements. I don't know if the systems work that well in all the provinces, but those provisions do exist.

Mr. Philip Toone: The victim surcharge fund, I think, is a good case in point here. If the person is not found criminally responsible, it would be pretty hard to impose a surcharge on the penalty because the penalty wouldn't apply.

● (1710)

Mr. Steve Sullivan: To be honest, I don't know how that would work. I've never thought of that perspective, but it's quite possible that they wouldn't impose a surcharge.

Mr. Philip Toone: The courts seem to be pointing in a direction where the surcharge simply is going to be tossed. We'll see on appeals what's going to happen over time. That surcharge looks like it's not going to be available.

Maybe, Mr. Murie, I could ask you this question.

There are a number of charities that are currently working for victims rights. If the fund is no longer funded by the surcharge are the charities able to compensate? Where is the funding going to come from?

Mr. Andrew Murie: When the legislation was brought in to increase the victim surcharge fund, many.... Many of the charity-based victims services organizations get no funding at all right now from the victim surcharge fund. Most of it goes to the provinces. They use it to fund their own services.

As my peers have said, there are limitations within the service provided already. Our hope was that with the increase in victim surcharge funding, which we totally supported, the system would for once become better funded, so that the provinces and the territories would have enough funding to fund their own systems and there would be enough funding left over for organizations such as MADD and Boost and other such things.

Right now we support thousands of victims in the court system each year. We get zero funding from the federal government or any provincial governments. We do it all out of charitable donations. The risk to the service we provide goes up and down based on these donations. It's absolutely critical that in victim services....

If you look at other countries, for example, my counterparts in the U.S. get the majority of their funding from victim services, basically from the federal surcharge system there. It adequately funds the system so that the U.S. can have professionals and can be guaranteed victim services throughout the country.

We're far from that. It was the hope that this would happen. It would be a terrible decision, if the courts struck these down and the victim surcharge funds stopped flowing through the system. The other thing, too, is that all of a sudden all of the great services that the provinces provide—we're talking about resources—would be gone too.

Mr. Philip Toone: What would you see as a remedy, then? It certainly looks as though the courts are challenging the surcharge. It looks as if its days may be numbered.

Mr. Andrew Murie: I've read the Michael case, which is one of the latest ones, in which basically a street person had a victim surcharge fund of $900 imposed and is never going to be able to pay it.

What I'd like is not to have the wide discretion that judges had before, whereby they basically waived all the victim surcharge, which is fundamentally wrong, but to have a situation wherein, under narrow restrictions, judges can exempt even the minimum surcharge from being paid in cases in which the person is mentally ill, is a street person, or has no hope.... They don't even have a hundred dollars, so why impose it? I think you could do that. It would make a fundamental difference. But people who have the funds should pay, and it should be that increased amount.

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

Now we have Mr. Wilks, from the Conservative party.

Mr. David Wilks (Kootenay—Columbia, CPC): My first question is for Mr. Laferrière and then Mr. Hooper and then hopefully Mr. Murie.

With regard to clause 20, I understand your position on removing it completely, but one of the things I wanted to talk about was a Supreme Court decision, Regina v. Beaudry, with which I believe you may be familiar. It said that the Supreme Court of Canada has recognized police discretion as an essential component of our criminal justice system. It said that police have a lawful mandate to preserve public safety, undertake investigations of criminal matters, and assist victims of crime and other members of the public. It said that the police exercise their discretion in many ways with respect to whether to start, stop, or how to pursue an investigation, how to deploy their resources, whether to pursue charges, and how and when to release information to the public. It said that these decisions are made according to a myriad of considerations, including identifying risk to the public safety, availability of information and resources, and severity of the situation.

I wonder whether you could speak to how that affects this and if you could marry it to clause 22, which seems to have a caveat pointing back to clause 20. It seems to me that clause 22 has a caveat protection with respect to clause 20.

While you're reading that, I'll quickly go to—

● (1715)

[*Translation*]

Mr. Claude Laferrière: When it comes to police discretion, it's not a matter of challenging police officers' discretionary power in the fight against crime—in other words, the pursuit of an individual who will potentially be charged.

However, when we talk about discretionary power in the context of a victims bill of rights, what do we mean? That is why I asked who suggested this clause at the end of one of the paragraphs in my brief. What does it mean to define the discretionary power of the police and the Crown in the context of victim protection and rights provision?

If the legislator does not speak in vain—which is also a rule of law—and we apply this principle within the victims' rights framework, what does that mean? What does it mean for a police officer or a Crown prosecutor to exercise a discretionary power, not toward a criminal or an individual under investigation, but toward a victim?

The target is no longer the criminal or a criminal organization, but rather the victim. So what are you trying to say? In other words, I simply suggest that the legislator provide concrete examples of how this discretion will be exercised in the case of victims.

I'll leave it at that. If police officers and crown prosecutors want to hold a debate on this, they can go ahead, but they should do so outside the framework of the bill of rights.

[*English*]

Mr. David Wilks: Thank you.

Mr. Hooper, you brought up a good point with regard to the responsibility of notification. As a former police officer, I always felt my job was to notify the victims of where the investigation was, but once it got into the court system I didn't think it was my job any more. I thought now it had turned to either the crown prosecutor or the probation officer or whatever the case may be. There seems to be a blurred line where, if all else fails, it defaults back to the police, even though they may not have a clue about what's going on once it gets to the court process because they have a whole bunch of other things.

Do you have any suggestions on how we could clear that up from the perspective of notification?

Mr. Robert Hooper: Yes, it's not an on-the-fly solution but I heard that we'd have to hire more crown attorneys to make these identifications. With the greatest respect, I think it just needs to be somebody who can dial a telephone and say that the trial is next week. It doesn't have to be a crown attorney or a police officer.

My worry is the bail situation because at least in Hamilton, which I'm familiar with, and in the Toronto area the crown attorney is not assigned to the file at a bail situation, or it would be rare for that to happen. I think that is a very grave concern if there is not one point of contact that unblurs the lines, if that's the word, where you would say you're going to testify—and the police officer doesn't always testify at a bail hearing—but once the information is laid and the ink has dried that turns to the crown attorney's office. I'm not sure we could put that onto victims services because I don't think the resources are available. It certainly sounds a bit like telemarketing, but if you had a bank of phones and people were telling what happened in your case yesterday, that's just a go-forward every day. That's my quick solution.

● (1720)

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

We have two more questioners and that will take us right to the 5:30 mark.

Madame Boivin, I'm going to hold you to your five minutes.

Ms. Françoise Boivin: I will try. That's the problem with us lawyers: five minutes for a lawyer is about 15 minutes in everybody else's life.

The Chair: In billing time anyway.

Voices: Oh, oh!

Ms. Françoise Boivin: No. Speak for yourself.

[*Translation*]

Mr. Laferrière, I truly believe that you put your finger on one of the major shortcomings of the bill of rights. I think we are all happy that victims are finally receiving their due attention. They are especially happy about that, as the unfortunate events they experience will affect and influence the rest of their lives. Once the crown prosecutor and the defence attorney have closed their cases, once everyone has finished their work, victims continue to suffer the consequences of their experience. So there were some great hopes involved in this.

We could discuss this at length, but if we look at the legislation, clause by clause, we see how the provisions are drafted and how they relate to one another. Starting with clause 6, the text talks about the right to information, protection, participation and restitution. We see how the provisions are designed.

When I was studying law at university, we were taught how to draft legislative texts. Every word is important. For instance, clause 16, which has to do with restitution, states the following: "Every victim has the right to have the court consider making a restitution order against the offender." We cannot be against virtue; that's great. This could be considered, but it does not constitute a right to restitution.

The legislation states that we have the right to protection, but clause 20, which you talked about, indicates that all the clauses I just mentioned—which have to do with various victims' rights—have to be construed and applied in a manner that is reasonable in the circumstances. That's still very vague. Numerous clauses that reduce the bill's impact follow.

A number of provisions related to recourse could lead to frustration among victims. Mr. Murie and Mr. Hooper are saying that the provinces will have to enforce the legislation in over 90% of cases. When I consider the size of our country, the number of courts in Canada and the number of crown prosecutors who will have to apply this bill, I am not sure consistency will be achieved. Do you have any advice for us on how to ensure that a victim in Quebec will be treated the same way as a victim in Saskatchewan? You talked about a system that is working well in Saskatchewan.

These are my concerns. Is there a way to improve this bill? Should we make it more binding? Would it be better to leave it as is, with so many open doors?

I think I have already used up my five minutes.

This gives you an idea of my thoughts. Are you more favourable to the bill being binding or are you satisfied with all the discretion given to the system to operate in a haphazard way? One by one, I want you to tell us whether you are favourable to the bill being binding or whether you are satisfied with the status quo.

[*English*]

Just say "I want it more crunchy" or "I think the system works well that way".

The Chair: If you could, be succinct.

[*Translation*]

Mr. Murie, go ahead.

[*English*]

Mr. Andrew Murie: I think that's fine. Let the provinces do their job. Some of them do it really well. Let them do it. I think you'll get a better system for victims at the end of the day.

Ms. Françoise Boivin: That's good.

[*Translation*]

Mr. Claude Laferrière: I am favourable to collaborative federalism, as the chief justice put it in a decision on the national securities regulator or another decision. I think improvements will have to be made in terms of delay and penalties, so that potential victims' lawyers can represent their clients effectively.

● (1725)

[*English*]

The Chair: Mr. Hooper.

Mr. Robert Hooper: Ms. Boivin, I took out part of my remarks, and it was that I'd love it, but it would be unrealistic, if we could have the same stuff in Saint John, New Brunswick, as Calgary, Alberta, but that's virtually impossible now, so hands off; let's see how the provinces go, and let's collect the things that go wrong and fix them.

Ms. Françoise Boivin: Mr. Sullivan.

Mr. Steve Sullivan: I think that to make it binding you're fundamentally changing our justice system, and that's a bigger debate. The key to this is resources. There's not a crown attorney or a police officer in the country who wouldn't love to do more for victims of crime. It's about resources. To make it binding, you're making victims a party, and that's a big debate.

The Chair: Ms. Kennedy.

Ms. Karyn Kennedy: I would agree with everything my colleague said. I don't have anything to add.

The Chair: Thank you.

Our last questioner is Monsieur Lauzon from the Conservative Party.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you to our guests for their very, very interesting comments.

I'm going to address my questions to Mr. Murie.

First of all, Mr. Murie, I want to say off the top that I so much appreciate and respect the work your organization does. As you know, we have a colleague who has been a victim of an impaired driver for probably 20 to 25 years now. I've had discussions with her, and it's just terrible.

Before I ask you a couple of questions, I want to confirm some figures. I think you said in your opening comments that an average of four people per day die because of impaired drivers.

Mr. Andrew Murie: That's correct.

Mr. Guy Lauzon: I just did the math, and that works out to 1,460 people per year who die because of impaired drivers.

Mr. Andrew Murie: That's a conservative number. We miss a lot of the people—

Mr. Guy Lauzon: It involves how many victims? We have those families, extended families. It's incredible.

Then you also mention, I think, that 175 people per day are injured from impaired—

Mr. Andrew Murie: Yes.

Mr. Guy Lauzon: That works out to 63,875 per year. Again, there are all the families, all the associated.... This is a real problem, and that's why I'm so, so grateful, and please keep up the good work. It's phenomenal.

Mr. Andrew Murie: Thank you.

Mr. Guy Lauzon: I understand that you provided some testimony through the extensive consultation that our government did, and we appreciate that, in order to develop the victims bill of rights. I wonder if you could tell us what you would like to see in the victims bill of rights. What would make your day?

Mr. Andrew Murie: I remember very profoundly one of the things that the minister said as he went across the country. As many of my colleagues said, I can give you cases where people go to court 28 to 30 times over a period of two to three years. To put anything in this bill that would delay the current system of justice would be a major mistake. This is a good step in the right direction. We have lots of work to do to make the criminal justice system much more efficient, and then I think we can talk about other things at that time.

The minister was really clear to our organization that this would move victims rights in the right direction, but it wouldn't delay the criminal justice system. He was very fair with us right there, and that same message as he went from coast to coast consulting was delivered to us. We had reasonable expectations. We were able to give things that we thought would move along.

We really believe, despite those figures that you stated, that impaired driving is the leading criminal cause of death in this country, that our victims are treated as second-class; they're not treated the same way as murder victims, homicide victims, sexual assault victims, etc. within the system. Just in the compensation piece that the provinces do, every victim of impaired driving is exempt from any criminal justice compensation. It's wrong; it's fundamentally flawed. We talk about, yes, let's let the provinces do the job, but our hope is also that they take this as an opportunity to be fair to all victims.

Mr. Guy Lauzon: A police officer told me that he thought a car driven by an impaired driver was actually a weapon. Whether I kill you with a gun or I kill you with my car while impaired, it's still murder.

● (1730)

Mr. Andrew Murie: Yes, manslaughter, vehicular homicide, it's the same thing.

Mr. Guy Lauzon: Whatever.

Do you think that the victims bill of rights will make offenders more financially accountable?

Mr. Andrew Murie: Yes, I think so. I think it also goes back to what some of my colleagues said. I think the provincial system has to work with victims to create, through court orders and various other mechanisms, the ability to get that money. We fail in that right now. The provincial system does a terrible job.

Victims feel that they get this restitution order and then they have zero chance of collecting it.

The Chair: Thank you for those questions and answers.

I want to thank the panel for joining us today. You did a fabulous job of kicking off our discussion.

We'll be talking about this bill for the next three weeks, and then there will be a break week on the Hill, and then we'll likely be doing clause-by-clause study the week after that, just in case you want to follow along.

Thank you again for coming.

With that, we'll adjourn until Thursday.