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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

Thursday, October 30, 2014

● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I'm going to call this meeting to order.

This is the Standing Committee on Justice and Human Rights, meeting number 49, on Thursday, October 30, 2014. Pursuant to the order of reference of Friday, June 20, 2014, we are resuming consideration of Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts.

We have a number of witnesses here with us today. From the London Abused Women's Centre, we have Ms. Walker, the executive director. We also have Ms. Jong, as an individual. From Victimes d'agressions sexuelles au masculin, we have Monsieur Fortier and Monsieur Tremblay. From the Criminal Lawyers' Association, we have Mr. Krongold, a member of the board of directors and chair of the legislative committee. And from the Chiefs of Ontario, we have Grand Chief Yesno, which is a great name, and with him is Ms. Restoule, the director of the justice sector.

We're going to start with presentations in that order.

Ms. Walker, I know that you handed these out, but the rule here, unfortunately, is that these need to be bilingual to be handed out officially—

Ms. Megan Walker (Executive Director, London Abused Women's Centre): I'm sorry.

The Chair: —but what you can do is this. As members leave, you can make sure they get one as soon as the gavel goes.

Ms. Megan Walker: Thank you. I appreciate that.

The Chair: We'll make sure that happens for you.

We're allowing 10 minutes for each organization, and then there'll be questions and answers.

For the members of the committee, I'm going to try to save about 10 minutes at the end of the meeting to talk about what we're going to do in future meetings on this particular topic. Is that okay?

Ms. Walker, the floor is yours.

Ms. Megan Walker: Thank you, Mr. Chairman and members of the committee.

I am very grateful for the opportunity to appear before you today as a women's and victims' rights advocate to speak in favour of Bill C-32. I think it's really timely that I'm here today, particularly in light of the victim blaming and shaming by eight complainants toward a CBC celebrity.

Most of the work done by the London Abused Women's Centre is providing counselling support and advocacy to girls over the age of 12, and women who are abused by their intimate partners. But we also provide support services to families whose loved ones have been murdered by men that they trusted to love them. As you may know, we also provide services to prostituted women.

As you may know, Statistics Canada reports that half of all Canadian women, since the age of 16, have experienced at least one incident of physical or sexual violence. You are also likely aware that according to the Department of Justice the economic impact of domestic violence in Canada amounts to $7.4 billion per year, with $6 billion of that attributed to victim costs.

For far too long it has been our belief that we have focused on the rights of the accused and the convicted. At the London Abused Women's Centre we see firsthand, every single day, both the incredible pain and suffering of women and children who have been victimized, as well as their courage and strength as they try to move forward toward a life of freedom, peace, and healing.

We need to recognize that for many reasons most sexual assault and domestic violence victims will never call the police or enter the criminal justice system. When they do, the conviction rate in Ontario of domestic violence cases that go to trial is only 1%. There are many, many reasons for this.

The courts, as you know, move very slowly. The longer it takes to move through the courts, the more likely it is that abused women will either not appear to testify, or will perjure themselves on the stand. For some, they have moved on in their lives by the time their case makes its way to trial. For others, they have gone through counselling, as have their abusers, and they have reconciled. Many still remain too terrified to go to court.

In London right now the superior court is taking approximately one year before it gets to a preliminary trial, and two years before it gets to final trial stage. Provincial courts are taking anywhere from nine to fifteen months before they hear cases.

I have read a recommendation from some that is proposing to allow victims status as an intervenor in the proceedings. This has huge unintended consequences that will make it much more difficult for abused women to access the courts. It would further backlog and delay the court proceedings. There are huge costs associated with that, and you should know that the criminal justice system currently bears a cost of $545 million per year. And there are feelings of pressure, guilt, and inadequacy on the part of victims regarding their performance, when they are asked to participate at that level.

Abused women are fearful of their abusive partners, particularly that they will represent themselves in their defence and that women will face further abuse during cross-examination by their abusers. Bill C-32 specifically addresses this issue in proposed subsection 486.3(2), which orders that the accused not personally cross-examine the witness, unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. From our perspective, this is a great positive and removes a huge barrier for abused women in accessing the criminal justice system.

Further, this bill legislates protection, security measures, and opportunities for testimony for women and victims outside of the court.

● (1535)

Accountability is crucial to the work we do at the London Abused Women's Centre. We are of the view that the creation of an external adjudication process is not only a costly duplication of bureaucracy, but it is completely unnecessary in addressing victim concerns and complaints. We say this because of our own experiences in working collaboratively with the criminal justice service providers who we work with in London. We therefore believe that the federal departments and agencies that are recommended in resolving the issues are equipped to address complaints and concerns, provided they are given clear expectations as to their roles.

What we think is required to assist victims is a complaints mechanism that is well understood, transparent, and accessible. We recommend that all victims be provided with information, including a complaints process and contact information at the first point of access. We further recommend that all victim service community partners be provided with similar information that we can post online and provide directly to the women and victims we work with.

For safety, protection, and emotional well-being, victims must be kept informed not only during the active criminal process but during incarceration and post-incarceration of the offenders. We know that currently, despite the very best intentions, victims are sometimes forgotten at certain stages of the process, and this may increase the risk of serious injury and even lethality to those victims. We recognize that including in this bill the guidelines for communicating with victims is a positive and much-needed inclusion.

It's also important to recognize that while crown attorneys across this country would have a responsibility to inform and consult with victims, we do not want, under any circumstances, victims influencing crowns to drop charges. Prior to the mandatory charge policies in this country, abused women were often coerced by their abusive partners to drop charges, to meet with crowns, and to pressure the crowns to drop those charges once they were laid. Men's violence against women is a criminal offence, and like other criminal offences it should not ever be left up to victims to lay or drop charges.

I really do appreciate the opportunity to appear before you today, and there is much more to say. If there is an opportunity to respond to questions, I would particularly like to comment on issues around spousal immunity and restitution orders.

Thank you.

● (1540)

The Chair: Thank you, Ms. Walker.

Our next presenter, here as an individual, is Ms. Jong.

[*Translation*]

Ms. Joanne Jong (As an Individual): Ladies and gentlemen of the committee, good afternoon.

My name is Joanne Jong, and I am the daughter of a law-abiding 88-year-old man who was cowardly murdered. That makes me a victim of the worst possible crime.

Had it not been for the brave actions of Kevin Vickers during last week's ordeal, your loved ones might have become part of this less than enviable club as well. Fortunately, neither you nor they have to experience what I did, but last week's tragedy no doubt brings home to you what the families of murder victims must go through.

Parliament passed the Charter of Rights and Freedoms—which I also refer to ironically as the charter of criminals' rights—and it has been in effect for some time now.

So I am delighted that lawmakers finally understood the importance of creating a Canadian Victims Bill of Rights in order to restore balance to Canada's justice system. For law-abiding citizens who fell victim to criminal acts, like myself, the Canadian Victims Bill of Rights has been a long time coming. Finally, it is becoming a reality.

Looking at the world through my victim's lens, I cannot help but notice that the definition given for the word *victim* in clause 2, on page 2, is the same as that found in clause 45, on page 39:

> an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.

But a very different definition of the word *victim* appears in clause 3, on pages 8 to 9, in the part setting out the amendments to the Criminal Code. As a victim, I'd like a single definition of the term *victim* to apply to the Canadian Victims Bill of Rights in its entirety, the one that appears on pages 8 to 9.

If we apply the definition of *victim* on page 2 of the bill to last week's events, the term *victim* would include the friends and families of the terrorists, as well as 35 million Canadians, subtracting, obviously, the 90 individuals who became radicalized. Clearly, all of them suffered consequences of the two murders, but that does not make them all victims.

Conversely, the definition of *victim* used for the purposes of the Criminal Code, on pages 8 to 9 of the bill, is much more specific and fair to victims of crime:

> a person against whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence....

By that definition, the only people who would be considered victims of last week's tragedy would be the loved ones of the members of the military who were killed.

I'm also pleased to see that the victims bill of rights duly addresses restitution to victims of crime. If criminals want to be seen as having paid their debt to society, making restitution to victims for the damage they have caused is a decisive step in that direction. Personally, I would go even further. I would make it mandatory for the criminal to satisfy a restitution order before they could be considered for parole.

In clause 29, on page 25, the bill of rights states that the amount of the damages must be readily ascertainable. The families of individuals who have been murdered or assaulted, or had crimes committed against their person, experience significant harm and suffering, and those effects are difficult to quantify. I recommend creating a table that quantifies suffering, like the ones insurance companies use in the case of death or bodily injury. Such a table would make it easier to put a figure on these very real and present damages.

Our justice system already makes use of this kind of tool. Just consider the Child Support Table Look-up, a tool that enables the justice system to run much more smoothly.

I would also like the bill of rights to impose the requirement that criminals work during their incarceration in order to satisfy the restitution order. Such a requirement should take precedence over any other rehabilitation or training program. Law-abiding citizens have to work to take care of their responsibilities, so why should criminals not have to do the same?

● (1545)

That said, I see the introduction of the Canadian Victims Bill of Rights as a vital step towards making Canada's justice system fairer to us, the victims of crime.

Nothing can prepare you for stepping into the unfortunate shoes of a victim, unlike criminals, who willingly committed deliberate, planned and destructive acts against law-abiding citizens. Suddenly, we become victims at their hands, a fate we in no way deserve.

Thank you for inviting me here today to discuss such an important matter and for giving me the opportunity to express my views on the bill, which is crucial to making the justice system fairer.

The Chair: Our next witness is from the group Victimes d'agressions sexuelles au masculin, or VASAM.

Mr. Fortier, you have 10 minutes.

Mr. Alain Fortier (President, Victimes d'agressions sexuelles au masculin): Good afternoon everyone.

Thank you for the opportunity to appear before the committee today.

Finally, a bill that recognizes the rights of victims!

Established a year ago, VASAM is an association that assists men who have been victims of sexual assault. Although barely a year old, our young association has already accomplished a great deal for male victims. We are the first organization working to assist male victims of sexual assault in Quebec.

We already have a few hundred individual and corporate members. Further, we work in conjunction with organizations that assist female victims of sexual assault. We believe that, in 2014, sexual assault is no longer just an issue for women or men, but for victims.

Our organization's mission is to raise awareness among the public and political bodies regarding the problem of sexual assault against men during their childhood; direct and guide men towards appropriate resources to help them survive the trauma and health problems from which victims suffer long after the assault; and encourage men of all ages who have been victims of sexual assault to request assistance in order to break out of their isolation and retake control of their lives.

When it comes to victims' rights, our association responds to all draft legislation, always asking for reaffirmation and reinforcement of victims' rights and demanding that legislation be brought in line with the rights of perpetrators.

Today, we are pleased to tell you the reasons for our wholehearted support for Bill C-32.

It is well-established that, whenever we request a better legislative framework to protect victims, groups that provide assistance to perpetrators argue that we are interfering with the offenders' rights. Whenever we request tougher sentences, such organizations say we are automatically anti-rehabilitation. Regardless of the approach, it is often the victim who feels guilty for requesting more information, greater security, involvement in the process or restitution.

[*English*]

The Chair: Could you just slow down a little bit, just for translation. Thank you.

[*Translation*]

Mr. Alain Fortier: Regardless of the approach.

[*English*]

I'll repeat if it's okay? Just continue?

The Chair: We just need you to speak slower. The French is fine, just a little slower.

Merci.

[*Translation*]

Mr. Alain Fortier: That is why we believe that a victims bill of rights is essential to clearly set out and recognize victims' rights.

Now, I'd like to turn to the right to information and the right to participation.

When a criminal complaint is filed, the prosecutor immediately becomes party to the process, while the victim takes a back seat. Too often in the past, we have seen victims given little information and left feeling abandoned by the judicial system.

Now, with this bill of rights, victims will be able to obtain information regarding programs available to assist them, information about the process and status of legal proceedings, and information about reviews while the individual is subject to the corrections process.

In addition, the victim will have to be notified of an agreement between the Crown and the defence prior to a guilty plea. It will be possible for victims to present an impact statement and provide their views regarding decisions made, and the authorities will be required to consider them.

Providing a framework for the right to information and the right to participation clearly shows that the judicial system respects victims.

Now, let's discuss the right to security. We know that nearly 90% of sexual assaults are never reported to the police. Fear is one of the factors behind that statistic. Victims are afraid no one will believe them, afraid of the judicial system, afraid their family will abandon them, afraid of retaliation and afraid of facing their attacker again once their sentence is completed.

If we want to increase reporting rates, we must work on mitigating these fears. Supported by the victims bill of rights, we can reduce fear in the following ways.

To help victims overcome their fear of the justice system, it should provide for the right to request testimonial aids, for example, enabling them to testify outside the courtroom so they don't have to see their attacker. Furthermore, on application by the prosecutor, publication bans for victims under 18 years of age should be made mandatory. Cross-examination of witnesses under 18 years of age should also be prohibited.

Victims are afraid of retaliation. The appropriate authorities in the judicial system should provide protection for victims' security and privacy. Orders for judicial interim release should also indicate that the safety and security of victims has been taken into consideration. And victims should have the right to protection from intimidation and retaliation.

When we talk about fear of retaliation and intimidation, we do not need to look very far to find an example of boldness on the part of an alleged attacker. Last May, at the Quebec City courthouse, while an alleged victim spoke with the media, her alleged attacker stood right behind her in an attempt to intimidate her, in full view of the cameras.

Victims are afraid of facing their attacker again. One of the greatest fears faced by victims once they have been through the trial and obtained a guilty verdict is that they will one day face their attacker again after their sentence is completed. The reason is that Quebec's judicial system has long shown that perpetrators are released immediately upon finishing their sentence, regardless of whether or not they have made progress in prison.

Unfortunately, the victim is often faced with this reality even sooner than they expect. Sometimes, victims are just starting to begin the healing process when they learn that their attacker will be out in a few months. It does nothing to help.

We hope one day for a revamping of the release procedures. In the meantime, we applaud the changes proposed by the bill of rights: giving victims access to information about their attacker's progress while in prison; disclosing to victims the date and conditions of release; imposing non-contact or geographic restrictions to protect victims; and showing victims a photograph of the offender prior to completion of the sentence.

The judicial system cannot eliminate all victims' fears. However, by making the system more accessible, by humanizing the process, by reducing the risk of intimidation or retaliation, and by developing guidelines for offender release, the judicial system sends an important message to victims, that their safety is of prime importance to society.

● (1550)

Frank Tremblay will now take over the reading of our brief.

Mr. Frank Tremblay (Vice-President, Victimes d'agressions sexuelles au masculin): Good afternoon everyone. Thank you for having us.

My name is Frank Tremblay, and I am the vice-president of VASAM.

Continuing with our presentation, I will speak to the issue of restitution orders.

In cases of sexual assault, society often thinks that the damage is only psychological. By all accounts, there is always psychological damage, and it varies widely from one victim to another. However, the aspect of financial damage is rarely addressed. The community probably believes, wrongly, that financial damage is minimal, because victims have access to the same services that attackers do. Here are some consequences of sexual assault that can have a financial impact: loss of productivity at work, occasionally followed by loss of employment; marital problems, often leading to separation; high consulting fees for health professionals; problems with alcohol and drug addiction, gaming and prescription drug use; health problems; and sexually transmitted diseases.

With the bill of rights, victims will now be able to apply for restitution. Compensation is not intended to make victims wealthier but, rather, to assist them in coping with their ordeal.

We would like to underscore two very important points for us. First, if the judge does not award restitution, the reasons should be clearly set out in the file. Second, judges must not take into consideration the attacker's ability to pay. We believe that these points are critical in order to guarantee staying power for this section and prevent certain judges from wriggling out of it for spurious reasons, somewhat like the current situation with the victim surcharge.

We firmly believe that reparation automatically involves restitution. By doing this, we also reduce the cost to society of providing services to victims, because those who caused the damage will be responsible for reducing the effects of their behaviour, in accordance with the polluter-pay principle.

We would like to comment on clause 52(1) of Bill C-32, which replaces subsection 4(2) of the Canada Evidence Act so that it reads as follows: “No person is incompetent, or uncompellable, to testify for the prosecution by reason only that they are married to the accused.”

Statistics show that, in 27% of sexual assault cases, the perpetrator is a spouse or ex-spouse. As a result, in 27% of cases, the woman cannot testify on behalf of the victim, who is usually a child. It is sometimes true that the woman—or, conversely, the man—is unaware of the acts committed. However, it is also sometimes true that the mother is aware of the act and does not assist her child. How often do children ask their mother for help and the mother refuses to act, by downplaying the behaviour or refusing to see the truth? We believe that the change to this section will benefit victims.

Times have changed, and we believe that if a mother refuses to testify, she is, to some extent, complicit in the spouse's actions. One question remains to be answered: if the law did not exist, what would the statistics be for crimes committed by a spouse?

Let us now turn to the notion of the right to a reasonable timeframe.

Despite all the positive aspects of this bill, we would like to suggest an additional section. The victims bill of rights should include a section entitled “Right to a reasonable timeframe”. We know that the judicial process can take three to seven years and that hearings are often postponed, which is discouraging to victims. The process takes much too long for victims, who must start their process of healing but not forget what they went through. We believe that a reasonable timeframe would be between one and one-and-a-half years, at most.

● (1555)

We cannot forget that we are working with human beings. We believe there should be a mechanism for speeding up cases involving crimes against people. The longer we wait to hear these cases, the greater the impact on the victims, and the longer and more costly the healing process.

In conclusion, we congratulate the federal government for its leadership and thank it for its work over the past few years towards better protecting victims. Whether it is increasing the sentences for pedophiles or proposing a victims bill of rights, you have shown great consideration for victims. We believe the Quebec government should look to your leadership in victim assistance, particularly on the statute of limitations issue.

Yet again today, with this bill, you are sending a clear message to victims: “Report your attacker and we will support you. The support will take the form of a system that will enable you to participate in the judicial process; inform you of your rights; make it easier for you to testify at trial; protect you not only during your testimony, but also once your attacker has been released; and consider compensating you for your financial loss.”

We want to reiterate our unconditional support for Bill C-32. We must always bear in mind that the proposed bill does not deal with property crimes, but crimes against people. If it were a stolen car or bike, or a break-in, the solution would be simple: pay to repair or replace the items. In the case of a victim of sexual assault, the solution is not so simple and quick. Often, years can go by before victims open up about what happened to them and start talking about it. Then, with assistance, they can begin a healing process that may take their entire lives.

We must remember that, behind all victims, there is a painful history with wounds and traumas that will always impact their lives and the people around them. With Bill C-32, we must assist and protect victims. The greater the protection we provide, the more likely victims will be to denounce their attackers, and this will make our streets and communities safer places to be.

● (1600)

[*English*]

The Chair: Merci beaucoup.

Our next presenter is Mr. Krongold, from the Criminal Lawyers' Association.

Mr. Howard Krongold (Member of the Board of Directors, Chair of the Legislation Committee, Criminal Lawyers' Association): Thank you, Mr. Chair.

The Criminal Lawyers' Association has had the privilege of appearing before this committee many times, and I thank you for the invitation to discuss this bill.

Let me just say at the outset that victims are not an abstract concept to criminal lawyers. We know the victims are real. We know that their struggles in the criminal justice system are real. Indeed, the CLA takes no issue with many aspects of this bill. Many of the rights set out in the bill simply codify what really are best practices for prosecutors in dealing with complainants, witnesses, and victims.

That said, there are three aspects of this bill that, I'd respectfully suggest, require some closer consideration.

First, I just want to address a broad point, and in some ways I think I'm going to echo what Mr. Tremblay and Ms. Walker said. One of the most conspicuous features of this bill is increased participation for witnesses and complainants by being able to bring a variety of applications in the course of a criminal proceeding, applications that at present are generally brought by crown prosecutors, often at the request of a witness or a complainant.

The concern that I have is about adding procedural steps to what is already a strained justice system. I'd respectfully suggest that we ought to all give some thought to what I would say is perhaps one of the worst strains on everybody involved in the justice system, which is the glacial pace of litigation in this country. Trials, we know, take years to complete. We know that puts an extraordinary strain on witnesses, on victims or complainants in cases, and certainly on accused persons, who live under the shadow of criminal proceedings.

The reason is not that accused people have too many rights or that trials are somehow too fair. Courts and litigants struggle to do the best they can within a justice system that strains under the weight of the demands it faces. We're here today, I suppose, to focus on the plight of victims of crime. I'll say for my part, I can hardly imagine the agony a family member or a victim of a crime has to endure waiting years and years and years for the conclusion of a case. We have a system that, I would suggest, can do much better. What we need is perhaps not more laws, but more funding for courts and litigants to move litigation along. That's something that I would suggest would benefit everybody involved in the criminal justice system.

The second point I want to make concerns a very specific provision, clause 17 of this bill, amending the Criminal Code. If I leave you with only one point today, I hope it will be to ask you to take some serious consideration of this provision. I read it and, quite frankly, I'm a little confused by it and a little concerned. I have no doubt that everybody here believes in fair trials, and yet there's a provision in this bill that I have trouble making sense of. I notice that there's no legislative summary of the bill, which is initially where I went to try to find some clarification.

This provision seems to add a new section to the Criminal Code that seems to allow for witnesses to testify anonymously. That is of grave concern to my organization. It's no exaggeration to say that this is a significant departure from the standards of Canadian justice that we've come to expect. Some might say it resembles more “star chamber” justice. The idea that a witness would not be protected from publication of their identity or protection, potentially, from being cross-examined by the person who may have been accused of the crime is one matter. This is a situation where it seems to suggest that the identity of a witness could be prevented from being disclosed, it seems to anybody, and that seems to include the accused.

I'm not sure if I'm reading the provision right. I hope I'm not reading it right. But it's hard to imagine a more fundamental change to Canadian law, one less consistent with Canadians' visions of open, fair justice, where everybody has a chance to a fair trial, where they can make full answer and defence and confront the witnesses against them.

I hope that my reading of this provision is wrong. If it is, then perhaps the provision could be rewritten for a little bit of clarity. If it's right, then I would respectfully suggest that some serious consideration ought to be given to it.

● (1605)

Ms. Megan Walker: It's page 17, not clause 17.

Mr. Howard Krongold: I'm sorry, it's clause 17. It's also page 17. It's adding proposed section 486.31 to the Criminal Code, and I struggle to understand it. Initially, I thought it was maybe a publication ban, but I see a couple of pages later that clause 19 deals with publication bans.

As I say, I had trouble wrapping my head around what this provision was intended to say. There's no legislative background or legislative summary, so it's very hard to know what's intended here. The marginal notes don't help much, so it's a profoundly troubling provision, if I'm reading it correctly, and I don't know that anybody's brought this up before, so I felt I ought to do so.

Finally, let me just add on a bit of a whimper, and it's more of a minor point, that there's a provision in this bill with respect to changing the rules for spousal incompetency. It may well be that it's a good change; certainly, it's the way the provinces have gone. It may be the way of the future and it may be the way the federal criminal legislation should go as well, but it's a big change and it's deserving of study and careful consideration. It's a little bit out of place in a bill that's about victims' rights. There are numerous exceptions to the spousal incompetency rule that permit spouses to testify when they're the victims, and I believe when the children are the victims as well.

I'd submit that this provision would get the attention it deserves if it were severed and dealt with in another bill dealing with criminal procedure and evidence more generally. It's an important change and one deserving of careful consideration.

Thank you very much.

The Chair: Thank you very much and thank you for that presentation.

Our final presentation is from the Chiefs of Ontario, Grand Chief Yesno.

The floor is yours, sir, for 10 minutes.

Grand Chief Harvey Yesno (Grand Chief, Nishnawbe Aski Nation): Good afternoon, and thank you.

On behalf of the Chiefs of Ontario, we appreciate the opportunity to present our views on Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts to the Standing Committee on Justice and Human Rights.

We believe that our experiences as first nations people in Canada, a demographic that's largely over-represented in the criminal justice system, as both offenders and victims, will bring a uniquely first nation perspective and insight to inform the committee.

The Chiefs of Ontario is a political forum representing 133 first nations within the province of Ontario. We appear before you today to make clear our position on Bill C-32. While the proposed victims' bill of rights is introduced to give victims of crime a more effective voice in the criminal justice system, we respectfully submit that it can better reflect the unique circumstances and needs of first nations persons who are victims of crime.

It is important to examine the issues of victimization and victims of crime in a broader context to fully understand its significance in relation to first nations people, persons, and communities. We invite you to consider the following facts and statistics.

A 2006 report entitled “Victimization and offending among the Aboriginal population in Canada” found that both crime and victimization rates are several times higher among first nations persons than non-first nation persons. This 2006 report found that a first nation person was three times more likely than a non-first nation person to be a victim of violent crime. Violent crimes committed against a first nation person are more likely to be committed by someone they know, such as a relative, friend, or neighbour, compared to non-first nation person. Generally on-reserve crime rates in 2004 were approximately three times higher than rates in the rest of Canada. The difference is even greater for violent crime, with an on-reserve rate that is eight times the violent crime rate of the rest of the country. A first nation person is more likely to be as victim of homicide than a non-first nation person. Between 1997 and 2000, the average homicide rate for first nations persons was 8.8 per 100,000 people, almost seven times higher than the rate for non-first nations persons of 1.3 per 100,000. The authors of this 2006 report indicated that it's possible that the statistics on the victimization of first nations persons may be even higher among vulnerable first nations groups.

It is to be noted that the current Conservative government has stated that it has completed 34 reports since 2006, out of the 40 total reports completed between 1996 and 2013, on the issue of missing and murdered first nations women and girls. While these reports focus on a specific subset of first nations citizens, namely first nations women and girls, they do highlight and support the disproportionate statistics of victimization within first nations communities.

The causes of the higher rates of crime and victimization among first nations communities are varied and complex. Continued colonialization and systemic discrimination against first nations persons have provoked traumas that have carried through successive generations and have manifested themselves through addictions, physical violence, and sexual abuse.

Victims of crime are not homogenous group. As such, the proposed Bill C-32 must recognize that first nations persons face unique difficulties within the criminal justice system and society at large.

The proposed victims' bill of rights has the potential to become a meaningful tool to reduce the over-representation of first nations victims of crime if it is amended to be inclusive of the following considerations.

● (1610)

First, the unique circumstances of first nations persons and communities that are victims of crime should be considered. If passed, Bill C-32 would allow the addition of the words “and consistent with the harm done to victims or to the community” to paragraph 718.2(e) of the Criminal Code. With this addition, it is our view that the consideration of the unique circumstances of first nations persons before the courts as offenders, as set out by the court in the Gladue decision and later affirmed in R. v. Ipeelee, should be extended to first nations victims and related first nations communities. Further, this information should be presented through independent counsel to the judiciary for consideration during sentencing.

In the 1999 decision of R. v. Gladue, the Supreme Court of Canada, in its interpretation of paragraph 718.2(e) of the Criminal Code, acknowledged that within the Canadian criminal justice system, first nations persons differ from non-first nations persons because many aboriginal people are victims of systemic and direct discrimination.

It is clear that unique and dynamic relationships exist between first nations offenders, victims, and community. As stated in Gladue, the appropriateness of a particular sanction is largely determined by considering the needs of the victims and the community, as well as the offender.

One recommendation we have here is that a specific reference to aboriginal persons, with particular attention to the circumstances of aboriginal victims, be added to clause 15 of the victims bill of rights and to subsection 672.5(14) of the Criminal Code.

Another consideration is representation of the voices of first nations victims and first nations communities. Our recommendation there is that aboriginal persons and communities who are victims of crime should be provided with their own independent legal counsel to represent their input in order to ensure that their unique aboriginal circumstances are represented within any criminal justice matter. This should be reflected in clause 27 of the victims bill of rights.

Another consideration, where first nations victims and communities are concerned, is that first nations-based restorative justice mechanisms must be utilized. Our recommendation there is for the addition of a provision stating that any criminal justice matter in which an aboriginal victim and/or community is involved should be referred to a restorative justice mechanism should the victim so choose.

Another consideration is support for first nations communities through programs and services specific to the needs of first nations victims. Our recommendation there is that a federal first nations victims justice fund be created to support aboriginal programs and services that respond specifically to the urgent need for adequate and culturally relevant programs and services for first nations victims of crime and their families, similar to that of Ontario's victims justice fund, and be used to administer various programs and provide grants to community agencies to assist victims of crime.

Finally, another consideration is addressing the systemic barriers for first nations victims. Our recommendation there is that a specific reference to the provision of support mechanisms for first nations victims and communities be added to the victims bill of rights.

In closing, we wish to reiterate our view that the considerations that we bring forward to you today with respect to the proposed victims bill of rights have the potential to begin to address the overrepresentation of first nations victims of crime. For almost 20 years, much work has been done to address the growing problem of first nations overrepresentation. We firmly believe that amending the proposed victims bill of rights to consider the specific and unique circumstances of first nations victims and communities will be a step forward in reconciling the overrepresentation of first nations persons within the Canadian criminal justice system, as offenders and as victims, and a move towards healing first nations persons and communities.

Thank you.

● (1615)

The Chair: Thank you, Grand Chief.

I thank everyone for your presentations.

We are now going to the rounds of questions. Our first questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

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

I also want to thank all of our witnesses.

I appreciate what you are doing for victims. Most of you are doing this through your groups. I especially want to thank you for taking an interest in the Canadian Victims Bill of Rights.

I will begin with Ms. Walker, who was the first to take the floor.

● (1620)

[*English*]

Welcome back to our committee, Ms. Walker. I appreciate what your organization does for victims, especially in those types of situations. It is absolutely not easy.

What is the number one problem that the victims whom you counsel and help have with the justice system? Is it to file?

I was absolutely flabbergasted when I saw the statistics on the number of complaints that are not filed because either the person doesn't trust the justice system or doesn't believe they'll have....

You started with the CBC thing, and we can all see the types of comments people receive for—let me say it in French—

[*Translation*]

daring to file a complaint or protest about something.

What is the number one problem victims face within the criminal system?

[*English*]

Ms. Megan Walker: We can't narrow it down to one problem, because every woman who comes in to our office, in the same way as every man coming in to your office or your organization, would identify a multitude of problems. There is tremendous fear of their partner, should they have to testify against them. We know that the time when women leave an abusive partner is the highest-risk time for them, with respect to either serious injury or homicide.

They're very fearful that if they report, they will suffer complete backlash, and shaming and blaming, and their family will abandon them, their church will abandon them—everybody will abandon them.

It could result in separation, and they cannot financially take care of themselves. They'll become homeless.

Legal aid certificates don't provide enough hours.

There's a variety of issues. Then, to access the criminal justice system is extremely difficult. To go to the police and have to tell these terrible, horrible stories.... Although we try our best to train police officers, there are still some who ask, especially in sexual assault cases: “What did you do? How much were you drinking? What were you wearing?”

There's a variety of issues.

Ms. Françoise Boivin: And it goes through the courts, and so on and so forth.

Is it fair to say, from reading the charter of victims rights, which I think has a lot of good intentions behind it—it's very hard to fault good intentions—that nothing in the charter would change those aspects that you're describing? It won't make the victim less fearful of filing against a husband, a wife, or whomever. It doesn't address those issues. It addresses the people who are going in front of the justice system.

It goes to what Mr. Krongold was mentioning, that we are not solving our number one problem with the justice system, which is—I think your expression was—“glacial” speed, which is really frightening and is becoming a big problem. You can give all the rights you want to whomever you want, but if your access to justice is still slow, I'm not sure we're achieving anything at that point.

What type of resource do you think, Mr. Krongold, we would need—

Ms. Megan Walker: You've asked me a question about whether this would actually address that. I think it's important that you let me answer that, because—

The Chair: No, it's her time, and—

Ms. Megan Walker: But in fact, that's why I'm supporting this, because this addresses all of those concerns.

Ms. Françoise Boivin: It would make.... Oh, no, I'm very, if you say so.... Actually, was it not a fair assumption to say that it would not remove the fear of the spouse, that they would not feel afraid to file complaints against their—?

Ms. Megan Walker: There will still be some fear, but this very clause that you've raised, or what is in clause 17, is one of the very reasons I support it. It allows women to testify as a witness and not have their identities disclosed. That's a very positive step.

It's a very positive step to be kept informed all the way through the process as a matter of legislation and not just as habit from municipality to municipality. It's a very positive step to have the pictures of the offenders posted to them when they're released from jail.

Ms. Françoise Boivin: I'm not sure I follow. I'm trying to understand you. I didn't want to debate with you. I really am trying to understand, because I didn't read clause 17 the way you read it. You're actually reading it in the way that Mr. Krongold is worried about, the way that it would be interpreted at some point in time.

But in my example of a spouse who files a complaint, let's say for sexual assault against her spouse—I don't want to be sexist, but let's say that most often that's what happens—you're saying that you feel she won't feel fear because her identity will not be divulged. But the spouse will know—

Ms. Megan Walker: Well, part of the reason women go to court now.... When they go to court and perjure themselves or don't show up, it's because they're so fearful of telling the truth. They are fearful of what's going to happen when he's released from jail, if he's even convicted. That's what they often say to us: “If only we could testify and have him not know it's us.”

Ms. Françoise Boivin: Okay. I get your point.

Is that your understanding of clause 17? Is it the way that Ms. Walker is discussing it? I go back to my point on resources, because I know a lot of crown attorneys, and I talk to them and ask how they will have to act to apply the new charter of rights and if there will be people there for the victims.

Usually it's the crown attorney who gets the questions. Some crown attorneys already try to do what is mentioned there, but because of the number of cases, they're afraid they won't be able to deliver. What types of resources do you think will need to be added to make this charter efficient?

● (1625)

The Chair: You have less than a minute, Mr. Krongold.

Mr. Howard Krongold: Let me address the resource issue. I suppose the concern, generally speaking, is that if there were more judges, if there were more funding for litigants, and that includes legal aid, obviously, because a lot of accused persons are legally aided and the reality is that months and months can go by in the course of litigation in trying to get somebody a lawyer and trying to get that lawyer properly funded....

Those delays affect everybody adversely and obviously affect crown attorneys as well. There's a real potential that they're going to have a court day set aside for an important domestic assault trial that everybody wants to see done and wants to see done properly, but if applications get brought at the last second, if applications get brought that maybe don't have a lot of legal merit because people don't know their way around the system, or if somebody shows up and all of a sudden wants his or her own counsel to represent them, you're going to lose a court day.

That court day has a domino effect, because it means you're going to lose that court day, and then another court day down the line is going to be lost when that case is again rescheduled. These cases are important. The interests of everybody involved are important. The more we slow down the system with more laws, more administrative hurdles, and no more money, the consequences for everybody are pretty obvious, I think.

The Chair: Thank you very much.

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

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

First and foremost, thank you to all the witnesses.

[*Translation*]

Thank you for coming to meet with us.

[*English*]

Certainly there's a diversity of opinion, and it's by getting that diversity of opinion and drawing out the best elements of it that possibly we'll be able to improve this bill. As you all know, it's destined to give the victims an important place in the judicial system, so that they are not to be dragged along as a simple piece of evidence in testimony but be treated sympathetically to perhaps alleviate some of their fears and make them more apt to testify about the wrongdoing perpetrated against them.

[*Translation*]

I will first address Mr. Tremblay and Mr. Fortier.

[*English*]

I'd like to get Ms. Jong's comments and then Ms. Walker's.

[*Translation*]

We have talked about delays in the consultation process. We have repeatedly been told that victims were very concerned by those delays. You talked about trials within a reasonable time frame.

Can you tell us why the delays are causing frustrations and problems for victims, and what the consequences of the delays are?

Mr. Frank Tremblay: Having experienced this in both civilian and criminal proceedings, I know that delays are a huge burden for victims because they prevent them from completing their healing process. They know full well that they will have to have a clear mind to be able to testify on what happened to them. So they will have a hard time relaxing fully in their therapy sessions until all the proceedings have come to an end. In the case of criminal appeal processes, we know that some trials can take seven years.

I have used the eye movement desensitization and reprocessing—EMDR—method in therapy sessions to treat the post-traumatic stress a person may experience after past sexual assaults. That method produces miracles, but it can also erase memories. Some order can be re-established, but that cannot be done until the trial is finished.

Longer delays slow down the healing process. That is why we are asking for delays to be kept reasonable. Long delays are almost inhumane for some victims. They may testify at the age of 12—preadolescence—and then have to testify again on past events as adults. That is extremely trying, as the healing process cannot be completed.

Alain, do you have anything to add?

Mr. Alain Fortier: The problem for a victim is having to constantly remember everything that happened. In court, they will have to remember the date, location and all the exact details because the defence lawyer will often try to discredit them by pointing out errors or inconsistencies in their testimony. On the one hand, they have to try to remember everything, and on the other hand, they want to begin the healing process. However, when someone wants to heal, they want to forget. So the longer the proceedings, the more serious the repercussions.

A victims bill of rights will not lead to additional delays. Nevertheless, we have to reduce the delays by tackling hearing postponements, which, based on what we have seen, are often requested by offenders. Hearings are postponed over and over to try to discourage the victim. That is where the real problem lies.

I agree with Mr. Tremblay that more resources need to be invested in our judicial system. That is first on the list. There should also be some sort of a direct access mechanism that would make it possible for crimes against individuals to be processed more quickly than property crimes. Crimes against people have repercussions on our society and on societal costs.

● (1630)

Mr. Robert Goguen: That's interesting.

Ms. Jong, did you want to comment on delays?

Ms. Joanne Jong: I have no comments to make on that issue.

Mr. Robert Goguen: Ms. Walker, did you want to comment?

[*English*]

Ms. Megan Walker: I think this bill will actually streamline our current resources. I think our best practices now will actually become consistent across the country through legislation. So what's going on in London, Ontario, will actually be carried on in Saskatoon. That's what should happen. Victims will now be treated equally across the country.

Just because we have resources in London, Ontario, that can work collaboratively with the criminal justice system and allow us to have best practices there, it doesn't mean that we shouldn't have those same best practices available across the country. That's why I'm so in favour of this.

I'm not sure if I'm pronouncing Mr. Krongold's name properly, but he mentioned that this is going to codify best practices across the country, and that's really tremendously favourable for victims.

Mr. Robert Goguen: Mr. Tremblay and Mr. Fortier talked about a reasonable delay. Now, this seems to have been contemplated in clause 20, which has been subject to some criticism. In essence, clause 20 speaks about the law not being interpreted in an unreasonable fashion that would in any way bother the good administration of justice, such as causing interference with investigations, the prosecution's discretion or, perhaps, the crown's discretion.

Do you feel that's a positive step in trying to expedite matters so that the administration of justice can proceed, Mrs. Walker?

Ms. Megan Walker: I disagree with it interfering with the crown's work. I think this is going to be really positive for the crown because, as I say, it's going to streamline the work. I didn't read it, as Mr. Krongold did, as adding procedures as a result of the increased participation of victims. What I read that to mean was guidelines where the crown attorneys and criminal justice service providers would have a method to communicate with victims, which was fairly straightforward, so they were not always responding to victims' phone calls asking where they're at. That's very positive. I think it would also keep victims in touch with the criminal justice service providers, so there will not be not ongoing delays, such as "Oh, my gosh, I couldn't reach this victim, so now we have to delay the court proceedings for another two weeks", or whatever.

Again, I look at this very positively. I look at it as a way to speed up the court system, and there's nothing in this that shows me it's going to delay anything.

The Chair: You have one more minute.

[*Translation*]

Mr. Robert Goguen: Mr. Tremblay and Mr. Fortier, I would like to first hear your comments on clause 20 and the discretion of prosecutors and the police.

Do you think this approach is worthwhile?

Mr. Frank Tremblay: What will be the extent of that discretion? That is the question.

We think that clause 20 is important because it sets out parameters. In Canada, crimes are codified. We have the Criminal Code. These types of decisions are not made under the common law.

In civil court, judges can render their decisions under the common law, and court decisions establish the rules. However, that is not the case in criminal law. In our society, we have determined what should come under criminal law. We have determined what actions would be seen as crimes and be punished.

Is it a step backwards to give judges a great deal of discretion to enable them to interpret cases? Clause 20 will enable judges to have witnesses come before them, to interpret cases and render a decision.

What will this lead to? In reality, their rulings will be limited. The proceedings will be limited, and judges will have to comply with this provision, without, however, having all the discretion common law grants them.

This is what I think, although I am not a legal expert.

● (1635)

[*English*]

The Chair: Thank you for those questions and answers.

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

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

Mr. Krongold, I want to give you a chance to talk a little further about your concerns with respect to clause 17, but I think we can tie it to the discussion we've just had from the questions by Mr. Goguen, who referred to section 20 within the charter, which is clause 2 of the bill. That's an interpretation section that I suppose might be section 1 if it were in the Charter of Rights and Freedoms. It may be the saving provision.

I want to understand the difficulty you expressed with respect to clause 17, that someone can be allowed to testify anonymously, apparently, so that the identity of the witness will not be disclosed—and your concern, I can appreciate, would be not be disclosed to whom. If that list of the people to whom the identity is not to be disclosed includes the accused, then we have a constitutional problem. Do I have it right?

Mr. Howard Krongold: Yes. To call it a constitutional problem is almost an understatement.

If what's being suggested here is that the identity of a witness not be disclosed—it says in the course of the proceedings—at any point in the proceedings to anybody outside, presumably the police and the crown, that will result in the spectre of people testifying behind some sort of anonymity shield, giving evidence, and the accused having no idea of who the person is. Is this a well-meaning neighbour down the street who saw a crime and wants to report it, or is it the next-door neighbour who has a grudge against them who said two weeks ago he'd get them if they didn't move their fencepost off his land?

It's a fundamental principle of our justice system that the accused knows the case and the person who's accusing them, knows who the witness is, and is able to confront them to make a full answer in defence. There is not a single example in Canadian criminal law in the history of this country that I'm aware of whereby people could be tried based on anonymous, secret evidence.

I hope the problem with that is apparent to everybody. This is completely out of keeping with the traditions of justice in this country and of British justice, from which our system derives.

It is a massive change if that's indeed what's intended. It's hard to understand what this provision is, but my concern is if what's being suggested is that the identity of the witness not be disclosed in the courts of proceedings to anybody, including the accused. I know proposed subsection (2) talks about having a hearing in private. In private from whom? Does that mean *ex parte*? Does that mean without the accused present?

If that's the case then this is a massive sea change to the law. This is not about protecting the identity of victims, because that's protected elsewhere. This is not about protecting them from abusive cross-examination or necessarily being cross-examined by the person whom they are accusing. This is something different entirely. And I haven't seen any debate about it, and it troubles me if I'm reading that correctly.

I should just say in response to Ms. Walker that in a domestic assault situation, the accused is going to know pretty quickly who is accusing them. There's no secret there about why a person is being arrested, unless we're not going to tell them why they are being charged either.

Presumably we're talking about a situation where a witness is somehow going to give evidence anonymously, and that is a profoundly troubling prospect. It's difficult to see how we could ever imagine justice to be done in those circumstances. I think it would be a massive constitutional problem. It's inimical to our very notions of a fair and open trial.

Mr. Sean Casey: Okay.

I have two follow-ups to that.

The first is with respect to clause 20 of the proposed victims bill of rights on page 6, where it talks about the following:

> This Act is to be construed and applied in a manner that is reasonable in the circumstances....

Then it goes on with a bunch of criteria.

You've said that if it's to be interpreted this way, it's unconstitutional. Can it be saved by clause 20? How is it to be interpreted? Where clause 20 says that the interpretation that we have to give of it is constitutional, what would that interpretation be? And how would you recommend it be clarified so that everybody knows that's what was meant, and that it is to be constitutional?

Mr. Howard Krongold: Again, in my reading of clause 20, it's not clear to me whether that clause applies to the act as a whole or only to the Victims Bill of Rights. It seems to me that clause 20 seems to be talking just about the manner in which the rights described in the previous 19 clauses are to be construed. I don't know that it would have any application to these other amendments that are going to be part of the Criminal Code. Clause 20 isn't part of the Criminal Code—it's a different legislative provision and I don't think it would apply. The other side of it is that clause 22, I believe, talks about how, if there is an inconsistency, the rights take precedence over the limiting section.

There's an intention in clause 20 to say, let's not unduly interfere with other important interests here such as law enforcement interests, delay, ministerial discretion, and those sorts of thing. If there's a conflict one seems to err on the side of the right and not the other interest at stake. To me clause 20 doesn't seem to address these concerns.

In terms of delay, I'll just say that the concern about delay isn't that crowns are going to consult with witnesses or victims in the course of prosecutions. That already happens. There's no reason why that should delay a proceeding. The problem is that the amendments to the Criminal Code talk about applications by victims and applications by witnesses. That means a witness is going to show up at trial. Some witnesses are absolutely well-meaning, honest people. Some witnesses are troublemakers. And some witnesses fall somewhere in between.

● (1640)

Mr. Sean Casey: Like society in general....

Mr. Howard Krongold: Right, like society in general. Absolutely.

We're going to have a situation where people are going to be showing up at trials, on the day of trial, and everybody is ready to go. You may have a complainant who is ready to go and wants to go, and some witness shows up who is maybe somewhat peripheral—maybe it's the landlord of the building who saw the accused running out of the building after the fight—and all of a sudden the witness says I want a publication ban on my identity. The court proceeding stops at that point because that witness has a right to make that application. The crown may say to them, this is ridiculous, there's no point in having this, you don't need a publication ban, there are no reporters here, and what are you talking about? But if that witness wants to bring that application, the proceeding will come to a halt and months and months of delay will accrue, and that's not good for anybody. That's my concern about delaying the process.

The Chair: You have one more minute.

Mr. Sean Casey: How do we need to change clause 17 amending the Criminal Code to ensure that it's not struck down as unconstitutional based on the interpretation that was given?

Mr. Howard Krongold: It's difficult to imagine how that provision could be saved. There is no precedent in Canadian law. There are lots of situations where people give information to the police anonymously. The law has always protected confidential informers who want to be tipsters and keep their identity anonymous. That privilege is assiduously protected by the courts. But this is talking about giving evidence secretly. There's been no precedent for it in Canadian law and it's difficult to imagine a situation where that would be permissible. Certainly, just saying it's in the best interests of justice doesn't seem to take into account all the concerns here. It's difficult to imagine a way that this provision could be made to be constitutional. It's simply unprecedented.

The Chair: Thank you very much.

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

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Thank you to our guests for being here today.

I have some questions for Mr. Krongold as well, about clause 17, which is proposing adding a new section 486.31 to the Criminal Code. First of all, you'll note it requires a judge or a justice to come to the conclusion that such an order to protect the identity of a witness "is in the interest of the proper administration of justice". In making that determination the judge shall consider:

> (a) the right to a fair and public hearing;
>
> (c) whether the witness needs the order for their security or to protect them from intimidation or retaliation;
>
> (d) whether the order is needed to protect the security of anyone known to the witness;
>
> (f) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process;

I assume you didn't have a chance to read or hear the testimony of Timea Nagy, who appeared at our last meeting—the transcript is probably not available yet. She's a woman who was a victim of human trafficking herself, and has assisted more than 300 victims of human trafficking. She made a very clear case for why some of those witnesses would need this kind of protection: they are significantly intimidated by criminal organizations that are involved in human trafficking. I'd suggest you take a look at that.

Second, it's my understanding that the right to face the accuser is not an absolute principle. In fact, the Supreme Court of Canada has found that this right must be balanced with the truth-seeking tradition of the court and protection of witnesses. For example, there would be situations where the ability to give anonymous testimony would be a matter of life and death, such as when the accused is a member of organized crime and an undercover officer might testify, or is a terrorism suspect and a CSIS agent might be testifying.

I also understand that these similar provisions are found in both the United Kingdom and New Zealand, in their criminal codes, which allow witnesses to testify anonymously where the court finds that it's in the best interests of the proper administration of justice to do so, and taking into account the right to a fair and public hearing.

What's your comment on those protections?

● (1645)

Mr. Howard Krongold: I guess what I'd say is this: the cases that I'm aware of where the Supreme Court has spoken about the right to confront one's accuser have to do with situations where, for example, the accused wants to personally examine a complainant or a witness in a case, and that's been held to be constitutional in appropriate circumstances.

We're not talking about the accused personally cross-examining, confronting the accuser literally, in court, but the ability to confront the allegations that have been made against a person.

It was my understanding as well—I wasn't aware of New Zealand—that this provision has been put in place in the United Kingdom, and has been—

Pardon?

Mr. Bob Dechert: You did mention British law earlier, and our traditions.

Mr. Howard Krongold: That's right. It has been put in place in England. I'm not aware of how that's played out. I know it was extremely controversial when it happened. I hope that if this is being considered, it's going to be extremely controversial here.

Mr. Bob Dechert: My guess is your colleagues at the criminal bar would argue against this vociferously in any particular case, and it would be up to the judge to decide whether or not it's absolutely necessary to protect the security of a witness. We have heard from people who have been in these situations where they think, first, it's absolutely critical to the safety of the witness and, second, it's absolutely critical to ensure that people come forward to report crimes.

As you point out, it's not going to be the victim per se, but peripheral witnesses who help to bring these types of people to justice.

Mr. Howard Krongold: I suppose the concern is this: it creates a tremendous danger of wrongful convictions if a person can come forward and not testify publicly—not publicly in the sense that their name is going to be published in the paper, but not testify in a way that the accused can identify who the person is.

In order to challenge a witness you have to know something about them, right? You have to know what their possible motives are, right? Why is the person here before the court? What's this person's background? Has this person lied to people in the past? All of these things are naturally important to understand.

The difficulty is that you have a judge put in the position of having a secret hearing in private, alone with the prosecutor, where the prosecutor explains why everything's necessary—and no doubt they'll think that's true—but with no one on the other side who can explain why this is not the case, why this witness's history is relevant, why there may be dishonesty in the witness's past that is important to know.

As I say, it is as fundamental as any right in the Canadian law that a person know the case they're facing, and that includes knowing who the person is who's accusing them. How can you respond to an allegation when all you know is somebody—I won't tell you who—says you did *x* three weeks ago at this location. How do you respond to that? There's no way to do that.

Mr. Bob Dechert: I put it to you that it's not an absolute principle, and the Supreme Court has ruled on this. I suggest that perhaps you take a look at that and consider that there are witnesses who are in very difficult circumstances and who need to be protected.

I'd like to ask a question of Megan Walker—

The Chair: One more minute.

Mr. Bob Dechert: —of the London Abused Women's Centre.

First of all, thank you for being here and thank you for the good work you and your organization do to work with the victims of abuse.

You mentioned that you would like to say something about the restitution orders provision of Bill C-32 and also about the spousal immunity provisions of Bill C-32, so please tell us.

Ms. Megan Walker: First about the restitution, it's very simple. I'm just so delighted to see that now emotional abuse will be covered under that. It's something that women have been asking of us for a long time. Of course, now they can ask for restitution for their car windows that have been smashed in, but that doesn't go far enough, so thank you for including that.

Secondly, with respect to spousal immunity, I think that it's very important to continue to include the clause that allows spouses to testify, not for the reasons that have been mentioned by my colleagues to the right, but because it.... You know, at one time in history, spouses were not allowed to testify, mostly because women were not considered to be persons, and therefore were not credible to testify. I think this, first of all, alleviates that and makes women more equal in society.

But, secondly, I know that there has been some concern raised about women in fear, and I'm counting on the new subsection 486.31 (1) on page 17 to help with that. I am not minimizing the thinking that every abused woman is going to go and testify behind this shield. Certainly women are called upon to testify on an ongoing basis right now as witnesses against their abuser. I'm talking about these very serious cases where women are threatened, battered, beaten, and end up in the hospital for weeks on end, where it could result in an attempted murder charge, where organized crime is involved, where their abusive partner is involved with organized crime, and where we would like to see these women pursue charges but they don't because of fear. We believe in those cases and that this section will be very helpful for them.

● (1650)

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

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

[*Translation*]

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

I also want to thank all the witnesses for joining us today.

In the committee's latest meetings and in today's meeting, the witnesses—and I do not mean all of them, but I am just summarizing—talked about Manitoba and a number of other provinces that have adopted this way to proceed over the past few years. I am talking about victims rights, compensation and so on. Manitoba, for instance, created the Victim Rights Support Service, which helps victims gain those kinds of rights.

I would like to put my question to everyone, but I unfortunately have only five minutes. That is so little time when I have so many things to say. So my question is for Mr. Tremblay and Mr. Fortier.

This is definitely a codification of a practice that already exists in a number of provinces. I would like you to tell me what will change once this bill has been passed, codification or not. There has been a lot of boasting about the codification of those rights, and that is fine and well, but who will enforce those rights?

A number of individuals have told us that victims will have difficulty navigating this system. We don't even know who is supposed to enforce the bill. Will complaints be received by federal prosecutors or by the federal ombudsman? I would like to ask you whether the government shouldn't rather review victims' social rights—including the right to assistance—instead of codifying rights that already exist. I don't know if you understand my point.

Mr. Alain Fortier: Honestly, the question is not very clear, but I will try to answer it in relation to the bill.

In Quebec, a lot of emphasis is currently being placed on rehabilitation. In the case of sexual assaults, a lot of work is being done with offenders and little with victims. I think the bill will help victims become involved in the process, as they are currently not involved. We know that, when prosecutors receive the complaint, they are the ones who handle the process. Sometimes, we are not aware of that. Even when I filed complaints, I did not know what was happening. It was difficult to obtain information, and I was kept in the dark. The bill will give us the right to information. It will provide safeguards, assistance and guidance, and it will grant victims additional rights.

The right to restitution currently does not exist in Quebec, either. In the case of sexual assaults, individuals rather than goods are attacked. The consequences are huge, and the victim may need years to recover. We feel that the restitution proposed here is a nice step forward. That can help someone pay for care or at least pay for part of it.

Should this be handled by the federal government or by the provinces? That is the question. According to what I have heard so far, this would mostly come under provincial jurisdiction. What will the rights be? How will they be enforced? I really don't know, but when it comes to rights, it is certain that something has to be done for victims. There is absolutely nothing for them currently in Quebec. I think this would have to come from the federal government.

● (1655)

Ms. Ève Péclet: However, no funding is attached to this bill. That's what I was trying to tell you. Bill C-32 is perfect with regard to what you are saying because it will create a feeling of safety for victims. The issue is that it does not come with any funding.

The Manitoba Minister of Justice told us that it was very nice that the federal government was adopting this bill, but that the government would simply pass the responsibility on to the provinces, which would have to deal with this on their own. We are talking about delays and justice system issues, but if the government is adopting a bill and it really cares about victims' rights, it should walk the talk, as we say in such cases.

Currently, none of those rights are guaranteed. The victim files a complaint, but we don't even know where this complaint will end up and who will examine it. That was my point.

Mr. Tremblay, do you have anything to say about this?

Mr. Frank Tremblay: You are asking why all this should be codified. Why was the Charter of Rights and Freedoms created? The charter can be invoked in a good number of criminal cases. Is it invoked often? It exists, but our rights can be violated in a criminal trial. In case of reasonable doubt, the individual is acquitted.

This new bill will not fix everything. You are saying that no budget envelope is attached to it, but if there is a plea bargain, at least the victim will be informed. If it has been codified, crown prosecutors would know it, as would others. Mentalities will not change overnight.

When I was little, my father's friends would come home with a beer between their legs. That was 40 years ago.

Ms. Ève Péclet: Do you think this bill is fine as it is, or should it be amended?

Mr. Frank Tremblay: I am not a legal expert. I am appearing as a victim.

Ms. Ève Péclet: Yes, but what is your opinion?

Mr. Frank Tremblay: I am appearing as an individual who has long been involved in this situation, as part of proceedings. I feel that tremendous progress has been made. Budget envelope or not, codification or not, regardless of things being taken too far or consideration being given to clause 17. This could lead to many meetings, but I think what's important is that significant progress is being made.

[*English*]

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

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

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

I thank the witnesses for being here.

I just want to clarify something if I could, Grand Chief Yesno, with regard to your testimony. You said that you believed that victims could make a referral to restorative justice regarding charges they may be affected by. It would be hard for me to understand that someone would want a referral to restorative justice on a significant, serious sexual assault case or, for that matter, manslaughter or second degree murder. Where would the line be?

That would be my question on that, just for some clarification.

Grand Chief Harvey Yesno: Thank you for that question.

One point I will express to the committee is that out of the 133 communities, we have 39 communities that are what we call remote —there is no road access, and so on—and I represent 34 of those, so we don't have the normal justice processes. The court process is a fly-in one. We have no women's shelters. We lack policing and other services in the community.

When we did the restorative justice pilot, it was something that the community had been talking about as far as involving the victim and also the assailant was concerned. Yes, there are easier ones to deal with, such as property damage and so on, but there is even assault. As you mentioned, when it does get to sexual assault, and perhaps even murder, there have been discussions with the community that.... It's not necessarily the first avenue of dealing with justice, but at some point in time that individual will come back to the community. Some of the views in the community are that you will still have to deal with that, because the person might be incarcerated for 10 years or 15 years, but we still have to deal with them returning.

● (1700)

Mr. David Wilks: I clearly understand where you're coming from, and I'm a huge supporter of the restorative justice system, having been involved in it in police work. I think there are some great assets to it, but it does have its limitations I believe.

Mr. Krongold, you mentioned clause 17. With regard to evidence going to be provided to the courts, would you agree that there must be a full disclosure of evidence between crown and defence lawyers?

Mr. Howard Krongold: Yes, that's the normal rule, absolutely.

Mr. David Wilks: Given that there would be a full disclosure of evidence, even if a witness were not to appear—if they were to give evidence outside of the courtroom—their evidence would be given to both the crown and the defence, would it not?

Mr. Howard Krongold: This is one of the questions that I have, because it would certainly normally be the case that the fundamental right to a fair trial would require disclosure of the identity of witnesses, the statements that have been—

Mr. David Wilks: You agree that it's been set already with regard to disclosure.

Mr. Howard Krongold: I would hope so. If this provision doesn't mean what it perhaps means, if it doesn't mean that the accused isn't going to have any idea who the witnesses are who are testifying against him or her, I suppose I don't understand it but I guess I don't object to it.

The difficulty is that what it seems to be saying is that information that could identify the witness not be disclosed in the course of the proceedings. If that means at any time during the course of the proceedings, including immediately after the person is charged before disclosure is provided to suppress that person's identity, then I do have issue with it because it would violate the fundamental principle that everyone is entitled to disclosure of the case against them.

Mr. David Wilks: I think there has been a case in the Supreme Court of Canada that can set a precedent for this. It's the Named Person v. The Vancouver Sun case, which you may or may not be familiar with. It found that the courts must balance the right to face your accuser with other rights, such as the truth-seeking function of the courts, protection of the witnesses, and so on.

I think the Supreme Court of Canada has heard evidence from the perspective of Named Person v. The Vancouver Sun that clause 17 may not be a problem. But I leave it at that.

Mr. Howard Krongold: Perhaps I could comment on that, though, because I—

Mr. David Wilks: Quickly, because I do have a question for Ms. Walker.

Mr. Howard Krongold: I will be very quick.

But respectfully, that case was about a confidential informer. A confidential informer is somebody who gives information—you're a former police officer and I'm sure you're aware—

Mr. David Wilks: I used them a lot.

Mr. Howard Krongold: Absolutely. A confidential informer is a citizen who comes forward and says, “I want to help the police but I want to be kept anonymous.” That's an incredibly important part of our justice system, but those witnesses don't testify in court. They're not witnesses but people who provide information, and it allows the police to do an investigation, get a search warrant, get evidence, or find other witnesses who will testify. That preserves the anonymity of those whose safety is in danger while also preserving fair trials.

Respectfully, this provision wouldn't do that.

Mr. David Wilks: I would suggest that you're somewhat inaccurate on that, because there are confidential informants who are utilized to infiltrate organized crime.

Mr. Howard Krongold: Sure, absolutely.

Mr. David Wilks: Their identity must be protected and/or they may face grievous bodily harm.

Mr. Howard Krongold: Absolutely.

The Chair: Mr. Wilks, you have 30 seconds.

Mr. David Wilks: Thank you.

Ms. Walker, could you quickly speak to me about the complainants' mechanism with regards to being updated on how the trial or the investigation is moving forward? As a former police officer, I can tell you that it's very difficult sometimes. Once it's gone into the court system, the police sometimes sever themselves from it and say, “Okay, it's the court's responsibility now.” Could you maybe explain how we could better keep the victims informed?

Ms. Megan Walker: I think there are a few things. I think that there needs to be a process that's very clearly outlined because right now what happens—and again best intentions are put forward—is sometimes the police think the crowns are doing it, and the crowns think the police officers are doing it. So it needs to be very clearly outlined who's responsible for contacting victims so it's not accidentally overlooked.

The Chair: Thank you for those questions and answers.

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

● (1705)

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

[*Translation*]

Since I have only five minutes, I will try to keep it brief. I hope the answers will also be brief.

I will start with you, Mr. Tremblay and Mr. Fortier.

Generally speaking, the provinces are very interested in Bill C-32. Quebec, among others, is very clearly saying it is prepared to work with the federal government. In fact, it is already laying the groundwork to realize victims' rights.

We often hear the criticism that the rights are rather conditional. Bill C-32 should be further crystallized, so that as much can be done as is already being done in the province.

How could this bill improve victims' rights? What can we do to help provinces move forward and become true partners? The rights are unclear.

Do you have any comments?

Mr. Frank Tremblay: What do you mean by “crystallize” rights?

Mr. Philip Toone: The legislation states that “a victim may”, and especially that, “the Crown may”. That's not necessarily a right; it's almost a privilege.

What could we do to make Bill C-32 much more concrete and help the province move forward? I am not talking about financial assistance, although funding is a major issue. I am really talking about rights.

Mr. Alain Fortier: Bill C-32 gives a good base. Of course, we would always like more. In my remarks, I talked about the need to put reasonable timelines on the process. I would like the bill of rights to contain more rights. However, if it did contain more rights, would it then pass?

The bill of rights should be adopted as it stands. Then, depending on any problems that might arise, we would always be able to improve it as a result of the comments from people working with it on the ground.

Mr. Frank Tremblay: Looking at what is happening, I wonder whether we are not on the way to creating an empty shell that basically almost no one will work with. Crown prosecutors will not use it. Victims will not even be told it exists. They will show up at the criminal trial without having been told about the complaint process.

On the other hand, if we do not codify anything, we will never get anywhere. None of all this will be enforced.

Mr. Philip Toone: Let me go back to the example you used. The Canadian Charter of Rights and Freedoms sets rights in stone. The rights in the Bill of Rights were almost completely ignored. Something had to be done.

In this case, we are codifying something very nebulous. We are trying to set some things in stone, but it is possible that we have not gone far enough.

Mr. Frank Tremblay: My inclination would be to tell you that the bill is a start.

What are we doing for victims? Are we doing enough? Go back 20 years. Alain went through a criminal trial. He went to court against his aggressor when he was 14 years old. He testified against him. At that time, his sexual past was not brought up, but it could be used in criminal court.

I see real advances. How will this bill of rights evolve? Will it be enforced?

There should be a minimum of restitution. It is difficult to sue someone in civil court. If you sue an aggressor for $25,000 or more, at least in Quebec, you have to go through interrogations out of court, and that is disgusting.

There is the limitation period, but that is another story. We could talk about that for a long time. Be that as it may, this bill moves things forward.

Mr. Philip Toone: Ms. Jong, I hope I have the time to come back to you because I appreciated your testimony very much, especially when you talked about the definition of “victim”. In my opinion, there are gaps there and we should talk about them.

[*English*]

I'd like to speak to Chief Yesno.

The Chair: You have two minutes.

Mr. Philip Toone: Perfect, thank you.

I very much appreciated your comments on the relatively new provisions for sentencing, on paragraph 718.2(e). If we have time I'd like to get back to that.

I would like to speak to the fact that the bill looks to create information for victims. One of the real problems is that we might create new rights here with this bill, but the victims won't necessarily know those rights exist. They won't necessarily know that they can call the police and feel reassured that they have these new provisions.

For those victims to know they have that access; somebody has to produce the information. Somebody has to produce the literature. The services have to be out on the ground.

Do you feel that the federal government is a partner in this with first nations? Is there more work to be done?

● (1710)

Grand Chief Harvey Yesno: Thank you for that question.

I'm most familiar, obviously, with the communities—I actually come from a remote community so I know about the services for whatever it is, whether policing and courts and the challenges that are there. What I can say for a lot of communities is that there is an inherent distrust that has built up over many years. I'm talking about the courts that I'm familiar with in our communities. It's probably less than 40 years that there have been any kind of courts. Talk about glacial movement—sometimes we view it more as rigor mortis and see it requiring divine intervention rather than science and medicine.

We do embrace the rights and respect the courts and so on. One of the biggest challenges we have experienced, whether in policing and courts, with the pace of these things is that it all boils down to a lot of it just being about the funding of support for services. That's why in our recommendations we're saying that we need a catch-up here to get a level playing field to restore justice in our communities and to have faith in justice. Our people do want and deserve the same thing as every other Canadian who can have justice, and I can understand, from what I'm hearing in the Q and A here, the frustration. I see that in our communities. It just exasperates that.

A lot of it is about resourcing, I believe, for the support services we do have, whether women's shelters or even for legal counsel. There's difficulty in getting adequate legal representation and enough courts to address the various levels of crime. That needs to be addressed. It is more of a resourcing issue than the law, really. The law is the law, and we believe it is the law for everyone.

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

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

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

Thank you to our presenters today. It has been very enlightening.

My first question is for you, Ms. Walker. You said in your statement that you wanted to talk a little bit more, if you had more time, about some of the issues the bill addresses when it comes to the accused not personally cross-examining the witness, and also spousal immunity and restitution orders. Would you like to take a few minutes to enlighten me as to what specifically the provisions of this legislation will do with regard to that?

Ms. Megan Walker: I responded to the immunity issue and the restitution, but I want to speak specifically about cross-examination.

One of the big fears, of course, that women have in testifying as witnesses when they're victims of domestic violence is that their abusive partner is going to be cross-examining them, because oftentimes that's a tactic of abuse as they defend themselves. So one of the things, again, that is really valuable is that the victim, through the prosecution, can apply to the judge so that the accused will not be personally cross-examine the witness, the victim. That's extremely positive. The judge or justice, if he or she is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination, can appoint counsel to do that on behalf of the accused. That is a very important piece to have in place so that further abuse can't occur, nor further intimidation tactics.

Mr. Blaine Calkins: These were the kinds of things that, obviously, in your opinion... I'm not trying to put words in your mouth, but I've heard from several groups of witnesses who say that there are a lot of unreported incidents of these things because of the fear of getting into the system, the fear of the unknown of what's going to happen, the fear of retaliation and retribution, and all of the other things that go along with that. Hopefully, a lot of these things are changes that will provide those rights to the victims

If and when it comes into force—and I'm pretty confident the legislation will be passed—what is your expectation as far as the reporting of these crimes, the prosecution, successes, and so on, insofar as victims are concerned?

● (1715)

Ms. Megan Walker: I think that this bill removes a number of obstacles that women currently face reporting to police.

Mr. Blaine Calkins: So we'll actually get an enhanced sense of justice. Would that be your perspective on that?

Ms. Megan Walker: I do believe that. I also think that we need to remember that nothing happens overnight. There's been some mention of that: how are we going to get this information out? I think that's an important issue to address. Maybe I'm not as up to date on politics as I was at one time, but I've always thought there were transfer payments made to the provinces from the federal government. Is that not accurate any longer?

Mr. Blaine Calkins: I'm an Albertan. You don't want to go down that road with me.

Voices: Oh, oh!

Ms. Megan Walker: But you do have the ability. You are the largest force, as a federal government, to make sure that you direct how information is distilled through to the provinces.

Mr. Blaine Calkins: Yes. No, of course, the administration of justice, through things like transfer payments and so on, are dealt with in that regard, as rightfully they should be, because everybody should be receiving similar benefits on this.

The Chair: One more minute.

Ms. Megan Walker: I'm not saying you have to increase funding.

Mr. Blaine Calkins: No, I know. I appreciate that.

My last question is for the Grand Chief.

Maybe I was just a little bit confused when I was listening to you.

I proudly represent the Cree nations of Montana, Samson, Louis Bull, and Ermineskin, which collectively used to be known as Hobbema. Now it's Muskwachis, and there are 12,000 to 18,000 people living on that reserve, depending on the stats that you get.

In your testimony you said that victims are most likely to know their aggressor, and this is on-reserve. The rate of incidents of incarceration is eight times higher, I believe, than it is for folks living off-reserve, and yet you said that the discriminatory aspects of the Gladue decision need to somehow be applied to the victims. I would suggest to you that in the largely homogenous population that we have living on reserve.... Can you explain to me what you meant by the discriminatory side of things? I'm a little bit unclear.

The Chair: Thirty seconds, sir.

Grand Chief Harvey Yesno: Can I ask her to respond?

The Chair: Yes.

Ms. Karen Restoule (Director, Justice Sector, Chiefs of Ontario): Just to clarify your question, I don't believe that Grand Chief Yesno is saying that the Gladue principles are discriminatory against victims.

Mr. Blaine Calkins: The Gladue decision is largely based on the principle of discrimination. That's what the principles of the Gladue decision are. He said that the Gladue decision should also apply on the side of victims. I'm just wondering how that fits together when the facts, as presented by the Grand Chief, were that on-reserve crime is higher, and the rate of incarceration is higher. In a largely homogeneous population, explain to me how discrimination is at play there.

Ms. Karen Restoule: It's our understanding that the Gladue principles address discrimination within the criminal justice system. The harsh reality is that most victims are offenders and most offenders are victims. In a community much like Grand Chief was referring to here in Ontario, in the most remote communities, applying the Gladue principles would allow you to look at the entire situation as a whole rather than just examining the unique circumstances in light of the offender. We would put forth that those circumstances are also very relevant to the victim and also very relevant to the community, as was reflected in the bill. However, it extends beyond just the generic responses that would be provided within those forms in consideration of those unique circumstances.

The Chair: Thank you very much for your questions and answers. We're well over time.

Our next questioner is Madam Boivin, from the New Democratic Party.

I am going to hold you to your time, Madam Boivin.

[*Translation*]

Ms. Françoise Boivin: We have talked about clause 17 at length, but I am not sure that I interpret it like you, Mr. Krongold. I would like that to be on the record. I do not want to get into a long discussion about it, but, in my opinion, the way in which the clause is written is vague enough. That is also the case with several other sections in the bill of rights. It actually says: "the judge or justice may". So it is understood that it is not an obligation. It continues: "…on application of the prosecutor in respect of a witness, or on application of a witness, make an order directing that any information…not be disclosed…in the interest of the proper administration of justice."

A hearing is held only if the judge so decides.

We also have all the wording that, in my opinion, provides protections that defence counsel may need in order to ensure that the proceedings are public and fair, depending on the nature of the offence.

In my opinion, this clause tries to protect a principal that everyone believes in, including the witnesses here today, the presumption of innocence. We also have to give victims back their place, by which I mean a place at the centre of the proceedings. This is not like a civil trial where there is a plaintiff and a defendant. We are all fully aware of that. That is perhaps why you see us as trying to prevent things getting turned around. I would hate to build up victims' hopes just to dash them later. I dread that. We are not here to hoodwink you.

Mr. Tremblay, Mr. Fortier, you talked a lot about the order and about the possibility of restitution. I understand. Criminal cases often move slowly: we heard earlier about the justice system moving at a glacial pace, or about rigor mortis. But in civil cases, it is sometimes worse. Imagine someone having gone through a criminal trial and then having to run around trying to get restitution. There again, I am afraid that you may be disappointed. I would like you to see our comments in that way. I am expecting support groups like yours to be the bill's main advocates once it is passed. You are going to have to talk to your people about it so that they can take as much advantage of it as possible. For me, that is where the interest of our exercise today lies.

Clause 16 talks about the right to restitution. That is the basic principle. The word used in the clause is "consider". It is not even a guarantee. My colleagues asked you whether we should use a phrase indicating that such a right would be granted, rather than simply being considered.

I have other concerns, and that is not such a bad thing, if it means that these people are going to be going home telling themselves that the clauses need to be expressed differently. It is also said that it must not be complicated to establish that restitution before the court. That was the crux of your testimony, Mr. Tremblay. These are the major damages mentioned by Statistics Canada. Victims absorb about 80% of them. Senator Boisvenu states that it is the victims who assume most of the damages, and he is right. But these damages we hear so much about are hard to quantify. The bill of rights will not help you with that. That is why I feel that some things could be done differently.

● (1720)

[*English*]

The Chair: This is the last time.

[*Translation*]

Ms. Françoise Boivin: Those rights could be granted to you in a way that would mean they are not simply considered. You could, but would not automatically, be consulted. I find that a little disappointing. For reasons completely opposite to those expressed by Mr. Krongold, I feel that the justice system is hardly concerned by this at all.

The ministers of justice have just finished a federal-provincial-territorial conference; they say that each province is doing what it is supposed to do for victims. Clearly, they have no great enthusiasm for the matter, but they are the ones who are going to have to enforce this legislation. In our meeting on Tuesday, Ms. Gaudreault, who works for victims, told us that she felt no great enthusiasm from the ministers of justice.

I do not really share your enthusiasm. It is one step forward, but that it all.

[*English*]

The Chair: That is your time. Thank you, madame, for that dissertation.

Our final questioner is from the Conservative Party.

Mr. Komarnicki, you have about three minutes, because I have business I have to take care of.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you, Mr. Chair.

I'm new to the committee and—

The Chair: If you really want to know, 8 minutes, 30 seconds for you, Mr. Goguen, if you really want to know; 8 minutes, 30 seconds for Madame Boivin; 8 minutes for Mr. Casey; 8 minutes, 20 seconds for Mr. Dechert. I think I've been pretty fair.

Three minutes, sir. Time to go.

● (1725)

Mr. Ed Komarnicki: Thank you, Mr. Chair. I don't normally appear before this committee so I'll look towards your indulgence.

I've been very fascinated by the discussion on clause 17 and proposed section 486.31 regarding the identity of the witness. When I looked at it, and I read this section, it says that when an order is made it must not interfere with the proper administration of justice. The judge must consider the right to a fair and public hearing. He must consider the security of the person or protecting them from intimidation or retaliation. He must be concerned about people who act covertly or undercover. He must look at the fact of encouraging people to report. He must look at whether there are any other alternative means to what he's proposing.

So it suggests to me that it's only in narrow cases.

Would you agree, Mr. Krongold, that it would be in narrow cases that he would make that order under the section? Yes or no.

Mr. Howard Krongold: I would hope so. Yes, I would hope so.

Mr. Ed Komarnicki: Okay. And it would be in a restrictive sense in the rarest of cases, and as a last resort. Would you agree with that statement or not?

Mr. Howard Krongold: I don't agree that that's the wording in the legislation.

Mr. Ed Komarnicki: No, I mean with my statement that it's to be used in the rarest of cases, or as a last resort in very narrow circumstances. Would you agree with that?

Mr. Howard Krongold: I don't know how the section will be interpreted. It doesn't say anything about as a last resort.

Mr. Ed Komarnicki: So are you saying that under no circumstances should a judge make that order under clause 17? Under no circumstances. Is that what you're saying?

Mr. Howard Krongold: Yes. I think the Canadian justice system has done quite well over the centuries without having these sorts of provisions in place.

Mr. Ed Komarnicki: Under any circumstances.

I notice in one of the propositions here, proposed section 486.3, where the accused is not personally entitled to cross-examine the victim—it may for a good reason; I've seen that happen—the judge can appoint a solicitor to actually do the cross-examination.

Wouldn't you agree that when you're dealing with victims' rights you may have to find some innovative ways to ensure both a fair trial and the ability to protect the victim, or those connected with the victim?

Mr. Howard Krongold: Those are two very different things. It's one thing to say counsel instead of the accused personally should be cross-examining a witness or a victim in a case. It's another thing to say nobody on the defence side—

Mr. Ed Komarnicki: I appreciate the difference. I'm saying the reason you have some innovative legislation and innovative provisions in clause 17 is with regard to the victim or those who are testifying in a case like that, and after considering all of these things, this allows a judge to make a decision he thinks is appropriate without interfering with the administration of justice.

Mr. Howard Krongold: What I would say is this. We spend a lot of time talking about balancing competing interests, and that, indeed, is a very large part about your role and the role of the courts.

But I guess what I would say is this: there are some rights that can't be balanced, such as the rights to a fair trial.

Mr. Ed Komarnicki: Under any circumstances.

Mr. Howard Krongold: The fundamental right to a fair trial and to make full answer in defence is so primary that I don't think—

Mr. Ed Komarnicki: The other point you made I want to take some issue with is you say the justice system proceeds at a glacial pace or something—

Mr. Howard Krongold: Yes.

Mr. Ed Komarnicki: —as if it has rigor mortis. The point is....

Mr. Howard Krongold: I didn't say the rigor mortis part, but yes.

Mr. Ed Komarnicki: I know you didn't, but the point I make is this: There may be ways to resolve that, but not at the expense of victims' rights. I don't think we should be opposed to adding procedural steps because it will somehow elongate the justice system. There may be other ways to deal with that, but you shouldn't do it at the expense of victims' rights.

Mr. Howard Krongold: Sure. I'd be the last person to say that justice should be sacrificed to expediency. I guess what I'm raising here is that ultimately one concern, which I hear from everybody else on the panel as well, is that the amount of time it takes for litigation to come to a head is problematic.

Mr. Ed Komarnicki: Yes, but through procedural rights you must guard the ability for victims to have a place in a trial process.

The Chair: Thank you very much. Thank you for that cross-examination, Mr. Komarnicki.

Mr. Howard Krongold: I usually get to answer a cross-examination.

The Chair: Thank you, everyone, for coming today, and for those presentations and the questions.

Quickly, committee, here's my plan; you can tell me if I'm wrong. But you don't have to tell me right now, because we're running out of time.

Today is October 30. We have witnesses for November 4 and 6, which fall next week on Tuesday and Thursday, and on November 18, because those witnesses basically got moved because of “the issue”.

Now, of the witnesses who were asked, the only ones who are not coming.... I thought we had more, but we actually only have one province coming. The Government of Alberta is coming, by video conference. Quebec has said no; P.E.I. has said no; B.C. is sending a letter; and we haven't had a response from Ontario yet.

I'm proceeding with that. After that is over on November 18, I would like to go back, on November 20, to our miscellaneous bill for an hour. There is information still coming. The clerk is going to follow up on why we don't have it yet, but we're going to get it. We'll tentatively have an hour on November 20 for that miscellaneous bill. I don't think it's going to take us more than an hour.

Then for the second hour we'll have a subcommittee meeting on agenda to look at what is coming next. That would allow me and you and any independents to bring forward any amendments to the bill we're dealing with now, Bill C-32. Then we will do clause by clause on November 25, and move forward on whatever is new on November 27, and we will decide upon that on November 20.

Here's what I want. We've had four bills referred to us. Bill S-2 is from the House. It's a statutory instruments piece, and is more technical than anything else. Then we have three private members' bills: Bill C-587, which has a February 18 date to it; Bill C-590, which has a March 9 date; and just as of last night, Bill S-221, which was unanimously passed by the House.

My suggestion is that if you people could get together to figure out which ones we could do...we could do Bill S-221 very quickly. Work it out. Come to see me about what you'd like to do and when. We'll have that discussion at our meeting on the agenda on November 20, and we'll know what we'll be doing till Christmas-time, if that is acceptable to everybody.

Is that okay?

Yes, Mr. Casey?

● (1730)

Mr. Sean Casey: It's extremely concerning that we don't have a better uptake from the provinces. There are huge financial implications for them in this matter. Is there anything more we can do to convince them to get here?

The Chair: Here's what I'll do. We'll ask them one more time.

Mr. Robert Goguen: They're not compellable.

The Chair: We can't make them come, of course—I hear you. We're getting a response in writing from one and verbally from another.

An hon. member: It's the single biggest issue.

Mr. Bob Dechert: Maybe you could call Kathleen Wynne and ask her to appear before the committee. That would be one.

Ms. Françoise Boivin: Even if they don't want to appear, at least send us a—

The Chair: We've asked.

Ms. Françoise Boivin: And they don't even want that?

Then can we use Twitter to pressure them, saying they don't want to talk about victims, or something?

The Chair: That's up to you to do.

Thank you, everyone.

We're adjourned.