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Chair

Mr. Mike Wallace

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● (1530)

[*English*]

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

This is the Standing Committee on Justice and Human Rights, meeting number 51. Pursuant to the order of reference of Friday, June 20, 2014, today we are dealing with Bill C-32, an act to enact the Canadian victims bill of rights and to amend certain acts.

Members, before we get started, the budget for this committee is in front of you.

Could somebody move that for me?

It's been so moved by Mr. Goguen.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you very much.

We have six witnesses today. Each group gets 10 minutes, so there's an hour of presentations. Witnesses will speak in the order in which they appear on the orders of the day.

From the Canadian Bar Association, we have Mr. Gottardi and Ms. Schellenberg; from the Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc., we have Ms. Lindfield; from the Canadian Resource Centre of Victims of Crime, we have Ms. Illingworth; from the Canadian Centre for Child Protection, we have Ms. McDonald and Ms. St. Germain; from the Canadian Crime Victim Foundation, we have Mr. Wamback, whom we've seen many times; and from the Canadian Association of Crown Counsel, we have Mr. Woodburn.

Thank you very much for joining us.

We'll start with the Canadian Bar Association. You have 10 minutes.

Ms. Gaylene Schellenberg (Staff Lawyer, Law Reform, Canadian Bar Association): Thank you for the invitation to present to you today the Canadian Bar Association's views on Bill C-32.

The CBA is a national association of over 37,000 lawyers, law students, notaries, and academics. An important aspect of our mandate is seeking improvement in the law and in the administration of justice. It's that aspect of our mandate that brings us to you today.

Our submission on Bill C-32 was prepared by our national criminal justice section, which represents a balance of crown and defence lawyers from across the country. With me is Eric Gottardi, the chair of that section. He practises primarily as a defence lawyer in Vancouver, but frequently acts as crown as well. I'll turn it over to him to address the substance of our submission and respond to your questions.

Thank you.

Mr. Eric Gottardi (Chair, Criminal Justice Section, Canadian Bar Association): Thank you, Mr. Chair and committee members. It's a privilege for me to appear before this committee once again.

In my testimony today I hope I can bring a broad perspective to the discussion. As Ms. Schellenberg mentioned, I primarily work as a criminal defence lawyer in Vancouver. I have worked as a crown prosecutor in British Columbia and in Ontario. I'm also a victim of crime: property, financial-related crime, and serious violent crime. Like many victims, I have been frustrated by a lack of information about my case and its progress through the courts. That is, in part, why I am so pleased to comment on Bill C-32, the victims bill of rights act.

The Canadian Bar Association had an opportunity to consult with the minister quite extensively over the course of his cross-Canada consultation. I myself met with the minister in Vancouver, and our members consulted with the minister in Saskatchewan, Nova Scotia, and myself again in Ottawa.

The CBA recognizes that an effective criminal justice system must balance the interests of victims of crime, the procedural rights of those accused of crimes, and the public interest in seeing the efficient administration of justice. As such, we were quite pleased to see that the minister had quite wisely declined to create full-party status for victims and had worked to protect the prosecutorial discretion of our crown prosecutors, in section 20 of the act, which the CBA strongly supports.

As Chief Justice McLachlin said in the decision of O'Connor many years ago:

> What constitutes a fair trial takes into account not only the perspective of the accused, but the practical limits of the system of justice and the lawful interests of others involved in the process, like complainants and the agencies which assist them in dealing with the trauma they may have suffered. Perfection in justice is as chimeric as perfection in any other social agency. What the law demands is not perfect justice, but fundamentally fair justice.

On the whole, the CBA section believes that this bill is an important step forward, improving the way the criminal justice system responds to victims of crime; however, some of the proposed amendments fail to strike the appropriate balance, leading to fundamental unfairness and some inefficiency.

I will outline some of our concerns and our recommendations to better balance the important interests at stake.

First, clause 21 of the bill proposes to enact a new provision that would require prosecutors to take reasonable steps to inform victims of guilty pleas. The provision would also require courts, after accepting the plea, to enquire whether prosecutors took such steps—laudable on its face.

These proposals, however, will place a significant burden on crown counsel and public resources. The onus seems to be on the crown to inform a victim that the accused intends to plead guilty prior to the guilty plea, and this may potentially lead to a delay in the actual sentencing.

It would also require additional staff time and resources in already overburdened and overworked crown prosecutors' offices across this country.

It may also raise victims' expectations about the extent to which their input will be considered in the agreement between defence and crown. Dissatisfaction with that level of input might give rise to more complaints under the proposed complaint provisions, at least insofar as it impacts on our federal prosecutors.

This concern is really one of perception. By using the rights terminology in the bill of rights, I'm concerned the victims may see their role as a competing one with the accused. That would be unfortunate, in a way that's consistent with the concerns expressed in writing to this committee by the Canadian Criminal Justice Association in their brief of September 25.

Second, the bill proposes amending the sentencing principles in the Criminal Code to include reference to the harm done to victims or to the community, in proposed paragraphs 718(a) and 718.2(e). These proposed amendments, in my submission, are unnecessary, as paragraph 718(f) already says it's the fundamental purpose of sentencing:

> to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

Repetition will only lead to confusion and litigation, clogging the justice system even more. For example, it's unclear whether the repeated reference to harm done to victims or to the community means that judges should attribute greater weight to that consideration than to the other important considerations in sentencing, including proportionality, the circumstances of the offence and the offender, and rehabilitation and reintegration.

● (1535)

The addition to paragraph 718.2(e) is particularly problematic. Paragraph 718.2(e) calls for restraint in sentencing generally and, in particular, in sentencing aboriginal offenders. It's a response to the problem of over-incarceration in Canada generally and, in particular, to the disproportionate incarceration of aboriginal offenders.

The Supreme Court of Canada in Gladue, and more recently in Ipeelee, recognized that aboriginal Canadians are overrepresented in Canadian jails, and the sentencing process may help address this unconscionable situation by requiring sentencing judges to pay particular attention to the unique circumstances of aboriginal offenders.

By adding a reference to the harm done to victims of the community in paragraph 718.2(e), the proposed amendment may suggest that greater weight must be placed on the harm done to victims than on the unique circumstances of aboriginal offenders. In this way the proposed amendment, combined with the increased use of mandatory minimum penalties in Canada and the elimination of conditional sentence orders for many non-violent offenders, seriously risks adding to Canada's overreliance on incarceration, particularly for aboriginal and marginalized communities.

This CBA section, therefore, recommends that the amendments to section 718 of the code or at the very least those to paragraph 718.2 (e) of the code be deleted from the bill.

Finally, clause 17 of the bill proposes a new regime allowing for the non-disclosure of a witness's identity in the course of the proceeding. On application of the prosecutor, the judge shall consider several factors, including the right to a fair and public hearing and the importance of the witness's testimony to the case in determining whether or not to make the order.

Concealing a witness's identity from the accused in the criminal proceeding is fraught with difficulties, including constitutional hurdles. Restricting the disclosure of a witness's or victim's identity in open court will seriously hinder an accused's right to make full answer in defence, and the CBA section is of the view that this proposal will not survive constitutional scrutiny.

There are also practical concerns. How can crown or defence counsel effectively direct a direct examination or cross-examination without revealing any information about the identity of the witness or the victim? Those are practical considerations that this committee should keep in mind. We therefore recommend that clause 17 be deleted.

But overall the section agrees that protecting victims is a very laudable goal and that the bill generally strikes an appropriate balance among the competing interests in the criminal justice system. While some aspects of the bill skew that balance, resulting in unfairness to the accused or, worse, inefficient administration of justice, we understand that perfect justice is not required but that there has to be fundamental fairness.

Thank you.

● (1540)

The Chair: Thank you very much for that presentation.

Our next presenter is from the Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc.

The floor is yours for 10 minutes.

Ms. Yvonne Lindfield (Co-Founder, Manager of Education and Community Outreach, Canadian Parents of Murdered Children and Survivors of Homicide Victims Inc.): Thank you, Mr. Chairman and honourable members.

I am very happy to be here this afternoon and have an opportunity to address you. I am a co-founder of Canadian Parents of Murdered Children and Survivors of Homicide Victims. I manage the education and community outreach programs.

Canadian Parents of Murdered Children is a national charitable organization first formed in 2009 to provide ongoing emotional support, education, and assistance to parents and survivors of homicide victims while promoting public awareness and education of all Canadians.

There are many kinds of victims of crime. My work involves a specific group of people who have become co-victims or what is commonly referred to as survivors of victims of homicide. I speak to you today on behalf of those parents whose child or children were murdered, as well as other family members who have lost a loved one to homicide.

It is impossible to expect anyone who has not been directly impacted by the act of murder to understand the enormous grief, the immense anger, and the depth of hopelessness that those of us who have experienced such a life-changing, traumatic event feel. The grief caused by murder does not follow a predictable pattern, and no one can ever be prepared for such a loss. No amount of counselling, prayer, justice, restitution, or compassion can ever bring a child or a loved one back. In homicide the primary victim is dead.

However, what we can do as a society to reduce ongoing trauma and in many cases re-victimization is to give the living victims, the survivors of homicide victims, the right to have a voice, to be acknowledged and considered as having been directly impacted by the crime. Our criminal justice system has evolved over many years. It is neither designed nor equipped to heal the victims of the trauma caused by the crime. It is set up to consider the guilt of the accused and protect the public. An effective criminal justice system is the basis of a civilized and prosperous society. I believe that without creating unjust or unfair treatment of the offender, rebalancing the criminal justice system in favour of the law-abiding majority sets out a blueprint by which equality can be achieved.

Bill C-32 is a significant and greatly welcomed piece of legislation that seeks to create clear statutory rights to information protection, participation, and restitution at the federal level for victims of crime for the very first time in Canada's history. However, there are those who would have you believe that giving reasonable and enforceable rights to victims would throw us back into medieval times when vengeance and retaliation were the rule of law.

I believe that the creation of the Canadian victims bill of rights is a major and positive shift in the criminal justice culture and its implementation will codify a modern, balanced, and just society. In preparing for today, I had a difficult time deciding which proposed right to address within the timeframe available to me. Therefore, I decided to focus on a systemic problem that currently exists among jurisdictions in Canada, the correction of which is vital to the success of the administration and enforceability of Bill C-32.

One must acknowledge and understand the vast challenges and inequality of services that victims face across the country. The federal government has constitutional authority for the enactment of criminal law and criminal procedure. However, the provinces and territories have constitutional authority over the administration of justice, including investigation and prosecution, as well as victim services.

Although every province and territory has legislation addressing victims' rights and services, they vary greatly from one jurisdiction to another. While we must respect the constitutional jurisdiction of the provinces, the Canadian victims bill of rights provides an opportunity to engage all jurisdictions to revisit their legislation and make it parallel with the federal government's victims bill of rights.

The interpretation and administration of these rights must be the same in every jurisdiction. Only in this way will universality and fundamental equality of rights as identified in Bill C-32 benefit all victims in Canada. The successful administration of Bill C-32 requires social change throughout the country that actively promotes crime victim-centred legal advocacy, training, education, public policy, and resource sharing.

● (1545)

Nationwide training on the meaning, scope, and enforceability of victims' rights through practical skills courses, online webinars, and teleconferences open to, but not limited to, attorneys, judges, advocates, law enforcement, and policy-makers, is imperative if Bill C-32 is to enhance fairness and justice for victims.

Similar to the criminal justice community's need for training, victims also need to be educated in order to best understand and exercise their rights under Bill C-32. Therefore, resources need to be available to help victims effectively access the federal, provincial, and territorial programs and services available to them. The important principle is that all Canadians have access to the same type of information in a timely manner.

People who use public services want to know what services are available to them and how to access them. This is especially true for victims of crime who have to try to understand and negotiate a complex and intimidating criminal justice system, which they may have never dealt with before. The result is the victims' needs are unmet and they are left uninformed, resulting in a negative impact on their well-being as well as their confidence and engagement with the police and the wider criminal justice system.

It is important to clearly identify the role of each agency within the criminal justice system. Access for victims to a single Web portal would provide the means to lessen, if not eliminate, gaps and create a seamless flow of information. Should there be a breach of rights under the Canadian victims bill of rights, the efficiency of the internal complaints process to correct an infringement and provide a resolution in a timely manner is absolutely essential to avoid additional harm to the victim in another long, drawn-out process.

The fulfilment of these rights should be measured by performance indicators developed for each criminal justice agency in contact with victims. If victims are able to secure participatory status in the criminal justice processes, it will provide them with a sense of empowerment, something we lose when we become a victim of crime, and it will promote a positive interaction with the criminal justice system. It will reduce trauma and additional victimization, which is extremely detrimental and debilitating. And it will restore public confidence in the Canadian criminal justice system.

Finally, I wish to comment on the cost of implementing new legislation and the resulting services when the Canadian victims bill of rights comes into force. Tens of millions of Canadian tax dollars go into the maintenance and enforcement of justice and to incarcerate, educate, and rehabilitate offenders. While education and rehabilitation of offenders as well as crime prevention programs are critical to reducing crime and creating safer communities, it is equally important to provide rights, services, and rehabilitation for the victims of those crimes. To help offset the cost borne by victims and their families through no fault of their own, and to reduce demands on the Canadian tax dollars, some of this financial responsibility should be borne by the offenders.

While our constitutional rights are near and dear to our hearts, and are the foundation upon which this great country thrives, the implementation of the Canadian victims bill of rights must over time —because it will take time—ensure that all parties operating within the criminal justice system shift their mindset to one of equality for both the offender and the victim. Bill C-32 will have a profound impact on how the criminal justice system, and other government departments and agencies, treat victims. I appeal to all political parties and all levels to work cooperatively to ensure its effective implementation.

Thank you.

● (1550)

The Chair: Thank you for that presentation.

Our next presenter is the Canadian Resource Centre for Victims of Crime.

The floor is yours for ten minutes.

Ms. Heidi Illingworth (Executive Director, Canadian Resource Centre for Victims of Crime): Sorry. The clerk took my speaking notes to photocopy and he didn't give them back to me.

The Chair: Why don't we come back to you then?

We will then go to the Canadian Centre for Child Protection.

Ms. McDonald, the floor is yours for ten minutes.

Ms. Lianna McDonald (Executive Director, Canadian Centre for Child Protection): Thank you.

Mr. Chairperson and distinguished members of this committee, I thank you very much for giving our agency the opportunity to provide a presentation on Bill C-32.

My name is Lianna McDonald, and I am the executive director of the Canadian Centre for Child Protection, a registered charity providing national programs and services related to the personal safety of all children. Joining me today is my colleague Monique St. Germain, general counsel for our agency. She will answer some questions later on.

Our goal today is to provide insight and support for Bill C-32, legislation that will create a federal victims bill of rights. We will offer testimony based on our role in operating the many programs aimed at reducing the sexual exploitation of children.

Our agency was founded in 1985 as Child Find Manitoba after the disappearance and murder of 13-year-old Candace Derksen. Candace disappeared while on her way home from school. Her disappearance and death had a profound and lasting effect on our province and our community.

Today our organization operates MissingKids.ca, a national missing children program, as well as Cybertip.ca, Canada's tip-line for reporting the online sexual exploitation of children. Since launching nationally, we have received 125,000 reports from the public regarding the online sexual abuse and exploitation of children. It is through this work that we have seen the most brutal behaviours towards children, everything from the recording of graphic sexual or physical assaults against very young children by predatory adults to teens coping with the aftermath of a sexual crime that has been recorded.

Through the course of our work, we have had the opportunity to hear from and work closely with many families devastated by sexual victimization. We are acutely aware that the sexual abuse of children is a vastly under-reported crime that can go unrecognized for years. We know that when victims do come forward, a conviction is nowhere near certain. In many cases, moving forward with the court process can result in additional trauma for the victim. Finally, we know that the sentencing process to date has not adequately recognized the impact on the specific victim or on society as a whole.

What we have heard loud and clear is that every victim needs a voice and every victim needs to count. We see this bill as an important step towards ensuring that victims not only obtain the information and support they need but also are able to participate in the justice system in a meaningful way that respects their dignity throughout the process.

For the above reasons, we welcome the creation of this bill. I want to highlight and speak to some key components that we've identified.

The first is restitution. Restitution is a component of sentencing that is common to property and fraud cases but rarely considered in other cases. Yet a victim has often incurred, and will continue to incur, significant intangible expenses as a result of the crime. For example, a parent whose child has been abducted by the other parent may incur travel, legal, and other costs to search for and recover the child. A victim of child sexual abuse may need to obtain specialized counselling or other services to help them deal with the aftermath of abuse and disclosure, and cope with the ongoing court processes.

Having a standardized form will assist victims in identifying these losses for the court, and will help level the playing field for all victims. Making it mandatory for a judge to at least consider restitution will not only increase the chance that restitution is ordered in appropriate cases; it will also provide the court with a concrete way to better understand the financial impacts of crime and the extent to which those costs are borne by individual, innocent victims.

While we realize that offenders will not have the means to pay restitution, and that in some cases the need for incarceration will outweigh the benefit of any restitution order, there will be cases where it will be appropriate. While we would have hoped for recognition within the bill of the types of losses that may be specifically associated with the abuse of technology, we believe the bill's provisions on restitution provide an important starting point that can be built on going forward.

Additionally, adding the words “protect society” as a fundamental purpose of sentencing to proposed section 718 is an important and welcome change, particularly considering the vulnerability of children. We have seen all too often that those convicted of crimes against children, those who by the very nature of their crime pose a clear and obvious danger to children, receive sentences that do not adequately protect society.

● (1555)

We realize that sentencing is an individualized process with many competing factors to be taken into account, but mandating that the protection of society be considered will help to rebalance the scorecard and strengthen the court's ability to impose meaningful sentences that adequately address the risk an offender poses to society.

I'm going to provide a case in point. The case involves the offender, Peter Whitmore, who is currently serving a life sentence for two counts of kidnapping and sexual assault causing bodily harm, among other offences. In 2006 he took a 14-year-old boy from Manitoba, then abducted a 10-year-old boy from Saskatchewan. He told both boys he would kill them and their families. He made them watch child pornography and sexually assaulted them.

While the details of that case are shocking, what is even more shocking is that Mr. Whitmore had, on at least two prior occasions, abducted and sexually assaulted young children, and had sexually assaulted at least five other children. He had taken his first known victim, an 11-year-old boy, and sexually assaulted him for several hours. The sentence imposed for that assault, along with the sexual assault of four other victims, was 22 months.

Within nine days of release from custody, he engaged in repeated sexual assaults against an eight-year-old girl over the course of three full days. When news of that assault became public, another victim came forward. He received a four-and-a-half-year sentence for the assaults on those two victims. After being released, and committing a series of parole violations, he went on to kidnap and sexually assault two boys from Manitoba and Saskatchewan.

The repeated and serious behaviour of this offender posed an obvious danger to children and nearly cost these children their lives. It is for cases such as this one that the sentencing changes will be most meaningful.

We also welcome the addition of provisions to formalize the use of community impact statements. The inclusion of these types of statements will pave the way for broadening the scope of information considered by the court, and ensure a more accurate picture of the way in which a particular crime impacts the community.

Crime is more than just about one victim and one offender. Certain types of crimes have a long-lasting and profound impact upon an entire community. Consider the case of a child who has been abducted. Whether the child is returned, seemingly unharmed, as in the case of the young child abducted from his bedroom by Randall Hopley in 2011, or if the outcome is much more tragic, as in the case of young Tori Stafford, entire communities are forever impacted. Safety and security is shattered. Children are no longer free to go and play. The heightened anxiety, and the distrust that can build while a case remains unsolved, are things that can cause lasting harm, which cannot be properly conveyed through an individual impact statement.

What I want to point out for our work, in particular, is that for some crimes the victim is unknown. In child pornography, the space that we're most involved in, most of the children depicted are unidentified, and therefore no one can file a victim impact statement. A community impact statement may be an effective way to convey important information about the nature and extent of the harm posed by such crimes, a way to give a voice to those who cannot speak for themselves.

Finally, we are pleased to see adjustments to the provisions on testimony. For example—I'll just name a few—expanding the things a court must consider when an application has been made to exclude the public from the courtroom will help to ensure consistency in decision-making, and will be important to victims.

In particular, requiring a court to consider the ability of the witness to give a full and candid account of the acts complained of, if the order were not made, is key in the context of child sexual abuse. It is often very difficult for a victim of any sexual crime to come forward to police. It is intimidating and traumatic for a victim to have to recount that abuse in a courtroom full of strangers. It can be even worse if the victim comes from a small community. While a publication ban may be available, a publication ban will not be enough if the people sitting in the courtroom know who you are, know where you live, and know your abuser.

Also, in cases involving child pornography of an identified victim, the trauma of the sexual abuse has already been compounded by the recording of the abuse. It is hard enough for such a victim to know that the prosecutor, defence lawyer, and judge are viewing the abuse. Having the recording of the abuse also played before a courtroom full of strangers can result in unnecessary damage and re-traumatization of the victim.

In closing, our agency is supportive of the changes brought forward through Bill C-32. Every victim should have a voice. Every victim should matter, and every child brave enough to come forward should know that their voice will be heard, and that they too can have confidence in our criminal justice system.

● (1600)

Thank you.

The Chair: Thank you very much for that presentation.

We are now going to go back to the Canadian Resource Centre for Victims of Crime.

The floor is yours for 10 minutes.

Ms. Heidi Illingworth: Thank you for inviting us to appear before the Standing Committee on Justice and Human Rights today.

Our agency is a federal not-for-profit corporation that was created in 1993 with a goal to provide a voice for persons harmed by serious crime in Canada. We offer advocacy, information resources, and emotional support to survivors. We're here today in support of Bill C-32, but we're calling for several amendments.

We believe that persons victimized by crime need to feel supported, retain their dignity, and be guaranteed a certain standard of treatment by our government. This bill means victims still go without legal status, a cause of action, or an appeal, should they not be satisfied. In my presentation today, I will highlight some of the amendments we are suggesting to strengthen this important legislation.

Information is power for victims, who are often left wondering what has happened, where to get help, or how their case will proceed. Bill C-32 addresses the need of victims for information, but it provides it to them only upon request. We feel that information should be offered to victims proactively. They should not have to request it given the trauma they've suffered and their general lack of knowledge about the criminal justice system or where to get help.

We also feel the language of the bill is too vague, in that it does not specify who is to provide this information to victims, how the information is provided, or how victims will even know they have such a right to request information. We cannot rely on the goodwill of professionals in the criminal justice system to provide the information. We must require them in legislation to do so. As such, we recommend the bill be amended to state:

> Police and Crown prosecutors shall automatically provide victims of crime with:
>
> general information about their rights under the Bill and how to exercise them, the criminal justice process, and support services available to them;
>
> specific information about the progress of the case, including information relating to the investigation, prosecution and sentencing of the person who harmed them by the responding.
>
> Information shall be provided to victims in the medium of their choosing, whether by mail, over the telephone or electronically.
>
> Where a federal conviction has been secured, victims shall be provided instructions by the Crown's office on how to register with the PBC and CSC in order to receive information about the offender who harmed them.

With regard to the right to protection, the bill does not state which criminal justice authorities are responsible for the safety and security of victims, how victims' security will be considered in reality, or what reasonable and necessary measures are taken in each case. Without specifically requiring police and crowns to address these issues in each case where a victim raises concerns, victims' safety and protection may be overlooked. We recommend the bill be amended to state:

> Police and Crown officials are responsible for consideration of the victim's security and privacy; and upon request of the victim, shall take reasonable and necessary measures to protect them from intimidation/retaliation, to protect their identity and privacy, and to provide access to testimonial aids. Where a victim raises a concern, each authority shall respond to the victim directly stating how the concern will be addressed.

With regard to the right to participation, the bill is unclear and does not specify to whom victims can convey their views or how their concerns will be formally addressed or acknowledged. We feel this bill is an important opportunity to ensure that judges make sure that victims who wish to be heard can do so at sentencing through impact statements, something that does not happen consistently across Canada currently. We recommend the bill be amended to state:

> victims have a right to directly convey their views to police and Crown prosecutors about decisions to be made and that each entity must respond in a timely manner to indicate that the victim's concerns have been considered. Judges shall ensure that victims are provided an opportunity to address the court when the sentencing phase or sentencing hearings occur.

In Canada, our experience in working with victims of fraud tells us that restitution orders are very difficult for victims to enforce without incurring additional financial costs. Victims need practical help to enforce restitution orders, otherwise they are useless. It is especially difficult for victims to enforce such orders once the offender completes their sentence, and/or their parole period, because there's no longer an incentive for this offender to pay the balance of the order against them. Victims also commonly report to us that they have difficulty accessing information to help them gain access to funds they're owed because privacy laws protect the offender. We recommend the bill be amended to state:

> each province and territory shall develop a restitution collection assistance program for victims based on the successful program currently offered to victims in the province of Saskatchewan.

I have some information about that and I can leave it with the clerk.

● (1605)

For rights to be meaningful in Canada, we feel that the victims bill of rights must offer appropriate recourse in the event that a victim's rights are infringed. In Bill C-32, the avenue for recourse is a requirement that federal departments and agencies establish internal mechanisms to receive and review complaints and then recommend remedial action. It does not state what recourse victims would have, if any, if internal complaint mechanisms did not resolve a situation to their satisfaction. We feel that this lack of recourse risks further aggravating and frustrating victims.

In the debates in the House, the minister said that the Office of the Federal Ombudsman for Victims of Crime will provide some of the recourse and redress to victims if there are failings within the provincial and territorial system, to assist victims in trying to alleviate their concerns. We are concerned because this bill does not specifically mention this office, and it is questionable what it can provide to victims when it has no investigative powers or jurisdiction to look at the failings of the provinces.

Paragraph 25(3)(c) requires every federal department agency or body to notify victims of the result of the complaint reviews and of the recommendations, if any were made. This is problematic as we see it, because departments are investigating themselves and are not even required to provide an official recommendation to address the complaint. Also, we know that since provinces are responsible for the administration of justice, most of the complaints are going to be related to provincial matters involving investigation and prosecution of cases, and not federal departments.

We recommend that the bill be amended to require that federal, provincial, and territorial departments that receive complaints from victims respond in writing to all complaints, including an explanation of policy change or other outcomes, even where department officials deem them minimal. Offices that investigate complaints shall also have the authority to require a curative or restorative remedy from FPT departments where it is found that a victim's rights were infringed, including requiring crowns and police officers to receive education about the bill or to write letters of apology where it is deemed a victim's rights are infringed.

There are other significant gaps in the bill that we wanted to highlight for you. We feel that it is lacking a clear right to support services in the aftermath of what has happened to victims. In the interests of community resiliency, we feel that victims must be guaranteed support services to help them recover. This bill should be amended to reflect this.

Another major concern of ours is that the bill does not apply to victims in the military, and we feel that it should be amended to include this group. We know that victims of sexual assault and harassment in the military have a particularly difficult experience. Recent research has highlighted the fact that those who file complaints face mockery, ostracism, and even threats. Victims clearly do not feel safe to come forward and report these crimes to superior officers.

Lastly, with regard to monitoring, implementation, and enforcement of this bill, we're concerned about how it's going to be enforced uniformly across Canada, since it is the provinces and territories that are responsible for the administration of justice. We believe it's critically important to monitor and assess how this legislation is implemented and enforced, so that in practice victims every day are not denied their rights.

We recommend that each province and territory establish an agency with an oversight function to help monitor the rights of victims and their fair treatment by criminal justice practitioners. Such offices may investigate both the statutory violations of victims' rights and alleged mistreatment by criminal justice practitioners in a neutral and objective manner. We feel that this office could also make recommendations to provincial and territorial authorities for change and should be required to report to the Policy Centre for Victim Issues annually about the number and circumstances of crime victims whose rights have been infringed.

We also recommend that the policy centre for victim issues provide a biannual monitoring report to Parliament so that criminal justice stakeholders and members of the public are aware of how victims' rights are being implemented and enforced, how many complaints are received, and how many are resolved to the victims' satisfaction while enhancing FTP cooperation in this regard.

To conclude, we view the Canadian victims bill of rights as a valuable piece of quasi-constitutional legislation that for the first time recognizes some of the needs of people who are harmed by crime in Canada. However, we feel that this bill requires victims to seek out the rights provided to them rather than being offered them automatically. It's also difficult to see how we're making victims' lives easier if we don't provide real recourse to them when their rights are violated. If we don't provide victims the ability to enforce their rights, the bill doesn't have the desired effect of changing the existing legal culture, which often excludes victims from criminal processes.

● (1610)

Nor will it hold criminal justice authorities to account in terms of respecting the rights it enshrines. We must do better than this for persons harmed by crime in Canada.

Thank you.

The Chair: Thank you very much for your presentation.

Our next presenter is from the Canadian Crime Victim Foundation.

The floor is yours, sir.

Mr. Joseph Wamback (Founder and Chair, Canadian Crime Victim Foundation): Thank you, Mr. Chair and members of the committee.

The humane treatment of victims is of absolute, paramount importance to any civilized society. I have been working on and waiting for this for 15 years, and I'm here today to congratulate this government for initiating Bill C-32 and for recognizing the importance of providing protection to Canadian crime victims.

Today I am not going to deal with the minutiae of the bill, because I am so pleased that victims' rights are being considered, and my focus is to recognize its fundamental importance in Canadian society.

Victims' rights must never be subjected to the shifting influences of legislative majorities nor to any judicial assault or activism. They must be grounded in Canadian law to be applied equally across this country. The only way to truly achieve this is through an amendment to our Charter of Rights and Freedoms. Though, unfortunately, that is still some distance off in the future, Bill C-32 is a monumental leap forward in that direction.

Crime victims, as well as those accused, simply seek humane, fair treatment and balanced rights. They do not want handouts. They seek, as free citizens, to be empowered with rights and standing that no judicial or legislative authority can ignore or take away, rights that should be their Canadian birthright.

There are those who will question the emotional engine that fed this bill, but I'm sure that those individuals will concede that similar engines fed the campaign for the charter itself, and most legislators do not question the multiple, repeated cases of injustice and re-victimization witnessed each and every single day in Canada. They acknowledge them, but to date they have simply proposed to address them with statutory reform or rights or statements of principles that impart no legal rights for crime victims.

Bill C-32 is a beginning.

The very foundation of our justice system depends upon the voluntary cooperation of victims to report the crimes committed against them and to testify truthfully when called upon. Mistrust of the system and the overwhelming belief that it is unjust have already started to cripple the nation's confidence in its courts. This is a very dangerous consequence for Canada, a consequence far more dangerous than is creating rights for victims of crime.

The protections defined by Bill C-32 are the very kinds of rights with which our charter is typically and properly concerned, and those are the rights of individuals to participate in all those government processes that affect their lives.

Those who argue that victims' rights don't require definition are simply condemning victims to perpetual re-victimization and second-class citizenship. Throughout the evolution of our justice system, victims have been transformed into a group oppressively burdened by a system that was originally designed to protect them.

Today we witness the genesis of this redress through Bill C-32. I have had discussions with experts on the psychological effects of crime, and they conclude that the failure to offer victims a chance to participate in criminal proceedings can and does result in increased feelings of inequity, with a corresponding increase in crime-related psychological harm. There is overwhelming evidence that having a voice will improve a victim's mental condition and welfare even though they know and understand that their participation may not change the outcome.

A justice system that fails to recognize a victim's right to participate threatens secondary harm, harm inflicted by the operation of a process and beyond that already caused by the criminal act. This alone should give us cause to define victims' rights to minimize insult to the already criminally inflicted injury. Additional or secondary trauma stems from the fact that victims perceive the system's resources to be devoted almost entirely to the accused, and little remains for those who have sustained harm at the offender's hands. Bill C-32 will not eliminate that trauma, but it will go a long way to creating better and clearer understanding and acceptance by those who are victimized by crime.

lt must be emphasized that Bill C-32 is not an assault on the fundamental rights of the accused. There are vague assertions that offender rights will be undermined, and these assertions have little value other than to inflame this debate. Justice and the rights of Canadian citizens are not a zero-sum game. The rights proposed by Bill C-32 do not subtract from those rights already established for offenders. They merely add to the body of rights that all Canadians should enjoy.

● (1615)

I've heard some say that the costs of Bill C-32 will be enormous. These arguments are totally illegitimate. The reality is that the cost will be mere pennies on the dollar compared with what we spend for the rights of criminal defendants. It is simply a cost that society must be willing to bear.

Studies have shown that, by a vast majority, where a victim is told the reasons for a plea agreement in advance, they support the position. They want a conviction. My experience from other venues shows that when victims are consulted in advance, knowing that crown attorneys have the final decision but that their input is actually valued, the crown will generally have the support of the victims. This will strengthen the crown's position, both in court and in the eyes of the public, since most victims will support the crown's position on a plea when they understand the reasoning behind it. It should be an instant shield against public criticism.

I've heard it said that Bill C-32 could lead to unrealistic burdens on courts and crown attorneys. The charter has established rights for the accused that lead to burdens on the courts and crowns, and yet no one is complaining that those rights should not have been created or should be overruled. There is no legal, rational, or moral basis for why victims should suffer an inferior status in our laws and in our courts.

Justice often requires burdens to be borne. Currently the burden of injustice imposed on victims is far greater than any administrative burden that might theoretically befall the courts. Nothing in Bill C-32 makes a victim an additional party in a criminal trial. The fact that a victim is present and may be heard at critical stages does not increase the power of the state, nor does it diminish or infringe upon the rights of the accused. Bill C-32 simply does not give the victim an independent right to speak at trial or before the jury. These fears to the contrary are unfounded.

Some have suggested that there is no pressing need for victims rights, as virtually every right provided by Bill C-32 can be or is already protected in existing legislation and the charter itself. Statutory rights or principles impart no legal right to crime victims, nor any measure of accountability within the justice system. Further, existing laws and statements of principles have failed despite the victims movement that's in their interest.

Placing victims rights in the charter—this is something that I will keep pushing until I don't have any breath left—is the only way to create respect for the rights of victims and to make them part of the sovereign instrument of the whole people. I've heard it said that considerable progress has been made with respect to victims rights in Canada over the years, but considerable progress remains elusive in Canada. The daily injustices done to victims, and that continue, are neither acceptable nor trivial. Over the last few decades, I've witnessed the erosion of basic human rights for crime victims in Canada.

My singular concern today is and will continue to be that the rights and protections created in Bill C-32 will always take a back seat to the charter rights of the accused.

Thank you.

● (1620)

The Chair: Thank you very much for your presentation.

Our final presentation for this afternoon is from the Canadian Association of Crown Counsel.

The floor is yours for ten minutes, sir.

Mr. Eric Woodburn (President, Canadian Association of Crown Counsel): Thank you very much.

Thank you for the opportunity to speak here. It's a privilege.

By way of introduction, I'm Eric Woodburn speaking on behalf of the Canadian Association of Crown Counsel. We represent the interests of over 7,000 crown counsel across the country, including federal crown counsel. Historically we've predominately spoken about workload and independence of prosecution services across the country. Today we'd like to talk a little bit about that and about this bill.

As a senior crown counsel prosecuting in Halifax, Nova Scotia, I'm intimately aware of the devastating effects of crime on victims and their families. As crown counsel, we get a front-row seat to all the terrible crimes committed and the wake of despair they leave. Beyond the economic costs, we know first-hand that thousands of lives are affected each day. We are well aware of the need for a victims rights bill.

Our hope is to aid in the creation of a strong victims rights bill while adding suggestions that will help the bill fit into our justice system. Our suggestions are intended to help it pass constitutional scrutiny and allow the justice system participants to work efficiently and effectively while they're doing their jobs. To that end, we agree with the submissions of my learned friend Mr. Eric Gottardi, from the CBA, and hope to add our own perspective to this.

As a front-line crown prosecutor, I can speak to the current practices and ensure the committee and everybody around the table that we're doing everything we can so victims get maximum access to the justice system. When I say everything we can, it's partly a resource issue and partly a time issue. I'm going to get into that a little bit more, but I can't stress enough the amount of time it's going to take to fulfill all the obligations. It's not a matter of not wanting to or not having the will; it's a matter of having the resources. And that's really where we're at.

We hope the victims rights bill will augment the practices we already have in place. Perhaps they are inconsistent across the country. Maybe this will add some consistency to what we're already doing.

I can say that a large part of our job is working with the victims of crime. That is our job. It's the part of our job that we enjoy the most. We actually sit down with the victims of crime and their families and explain to them what's going on. We keep them in the loop. In cases of homicides, we bring the victims and their families into our offices. We talk to them. We sit down. We spend time with them. We let them know about the process and we let them know about the progress but without tainting the prosecution. That's important. Unwittingly, victims of crime can sometimes get information that's actually detrimental to the prosecution and/or the investigation.

Once again, it's an essential part of our job to keep victims informed and give them a better understanding of the criminal justice system.

If it pleases the committee, I'd like to comment a little bit about some of the clauses highlighted by our friends at the CBA and some of the clauses that don't necessarily cause concern but that should at least be reviewed and looked at a little more closely.

On right to information, we understand that every step of the way, from the first day it happens until the person is sentenced, victims should be involved. We believe that wholeheartedly. I don't think you'll find anybody who disagrees with that. But information regarding the investigation at the police level and certain types of information are sacred. We can't have that passed on, and there can't be a mechanism in order for that to be passed on. It's an issue that affects the investigation and the police and them being able to do their jobs fully and properly.

We've had several cases of witnesses and victims leaking pertinent information, which has only impeded the investigations even further, inadvertently or otherwise. There are also victims who wish the matter would go away. They don't want to go any further. They work at cross-purposes with that information, bringing it to the accused and to other parties, posting it on the Internet. Some use information as a conduit straight to the accused.

● (1625)

Finally, when we have victims who are witnesses, too much information often can taint the process itself. I'll give you a brief example of a victim/witness who has information. They've witnessed something themselves. Well, if another individual has witnessed the same thing and they share that information, the credibility of those witnesses goes down, and so does our prosecution. It's very problematic, and it has happened, inadvertently or otherwise.

It's an issue we have, and we have to be careful, because ultimately, for the most part, victims of crime would like to see a successful prosecution. I don't mean successful as in "conviction". For us, a successful prosecution means something different.

In regard to the notification of a guilty plea, I won't read out the entire section. As my learned friend has already pointed out, this section should be struck. We do everything we can to inform victims, especially victims of violent crimes, of the status of their case. This is both a workload and a delay issue. Our system operates in an emergency room style of atmosphere. We do the best we can to triage as many cases as we can in the best possible fashion as they come in. While we make efforts to contact victims on the most serious matters, just before or after a plea, it's simply impossible to inform them on all those matters that don't quite reach the top.

Aggravated assault, sexual assault, child assault, murders: those we take special care with. But when somebody who has committed an assault causing bodily harm on their wife walks into our courtroom on a busy arraignment day and wants to plead right there, be sentenced, and just do the sentence—and it happens on a regular basis—the duty that's mandated is that we have to inform the victim. We have to step outside of court. As you know, to inform properly, we have to take not minutes but somewhere upwards of half an hour to an hour to sit down, and that's if you get them right away.

What would normally happen is that the case would get put over to another day. The flavour of the week is that—my friend could speak to this—when they come back, they no longer want to plead guilty. They withdraw their guilty plea, they fire their lawyer, and we head off to trial. Between the time that happens and the trial, of course, evidence starts to dissipate. There are delays. There are arguments. We'd like the discretion to strike while the iron's hot, like we do now, and have faith that when we recommend sentences, we recommend them within the range, given the fact that there's an early plea. That's really all. We're not trying to take away from the bigger cases. Nobody pleads to those on the first day. Even if they did, we'd still put them off to make sure that we do inform victims of serious crimes.

However, the way it's written right here, unfortunately, it includes a lot of things that just come in and have to be triaged. It's just a matter of the way the courts work right now. Once again, it's not a matter of not wanting to contact every victim. It's just a matter of resources. We have the will; we just need the way, I guess.

With regard to non-disclosure of witness identity, my friend pointed out that on the application of a prosecutor in respect of a witness, it also says—and maybe I have a different one—"or on application of a witness". I can't really mince words here: this section can be viewed as unconstitutional. Leaving aside the right to a fair trial, the accused has a constitutional right to disclosure, and it could actually raise a witness' status to that of confidential informant.

It's trite to say that an accused has the right to know the victim's name, record, and any possible bias they may have. I'll give you a quick example. Believe me, this happens. The victim has an axe to grind, so they proceed to make up a story implicating the accused. The victim has a lengthy record, including perjury and several unfounded allegations against other parties, as recorded by the police. The accused has a right to know this, the right to full answer and defence. It goes without saying.

● (1630)

There's a goal of protecting victims that's laudable, in our view, but untenable in this current form. Perhaps it can be reworded to suggest that the victim's address, phone numbers, and place of work, for example, don't need to be disclosed at an open hearing. However, certainly the type of information.... The person has to know their name, record, and whether they have any bias against that person.

The Chair: I have to ask you to wrap up, if you can.

Mr. Eric Woodburn: I will. I wrote a two-hour speech for my 20 minutes.

The Chair: It's 10 minutes.

Mr. Eric Woodburn: I would have written a one-hour speech if I had known it was 10 minutes.

The Chair: Time is fleeting.

Mr. Eric Woodburn: Form 34.2 lists several points not traditionally included in the victim impact statement, and I would like to add this as a cautionary tale. This is a real case.

In a case of domestic violence, a husband beat his wife with a wine bottle and a clothes iron. She ran out of the house and when she came back in, he hit her again, knocking her to the floor. She was looking for somebody to call, and he pulled the phone out of the wall. She ran out of the house and flagged somebody down to take her to the hospital.

The husband was charged with aggravated assault and was brought in. At his sentencing, the victim was allowed to give her own victim impact statement in her own style. She did it verbally. She blamed herself for what happened: she shouldn't have let him drink so much; she shouldn't have argued with him. She said, "I need him home; he has to be home." The judge took that into consideration, gave him a 22-month conditional sentence, and sent him back home.

A voice: A learned judge.

Mr. Eric Woodburn: This is a cautionary tale about listening to the victim. The crown appealed that. He went back and he received a 22-month real jail sentence. The court of appeal said that the judge had erred in taking that into account.

The Chair: You are well over your time. I am assuming you have more, and I know there will be questions and you'll likely get a few questions and be able to expand on your presentation.

Mr. Eric Woodburn: Are you saying I can't leave?

Some hon. members: Oh, oh!

The Chair: Thank you very much for that presentation.

We are going to do the rounds of questions, and we have about an hour.

Our first questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

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

I also thank our witnesses.

This group of witnesses is probably the most diverse ever, and that is a good thing. Indeed, there are as many opinions as there are witnesses. We have lawyers from the Canadian Bar Association, and crown attorneys. It must be specified that the representative of the Canadian Association of Crown Counsel is a crown attorney. He is probably the one who, without being the victims' attorney, works most closely with them. There are also other groups representing victims, who do not necessarily share the same opinion

This gives us some of the real backdrop to bill C-32.

[*English*]

I think everybody agrees that Bill C-32 is a good step. It's a step in a good direction. It has good at the heart of it.

Ms. Illingworth showed all the weaknesses of the bill, if I can call them that, in the sense that there is not much that is enforceable. A lot of things the victims will have to seek themselves. We have others who are raving.

I'll play the lawyer that I am, and I will address some of my questions to the lawyers, because I am not sure that I agree totally with what they have been saying.

[*Translation*]

I will begin with the representative of the Canadian Bar Association.

Mr. Gottardi, regarding clause 21 and the guilty plea notification, you have said that the proposals were ambiguous and might delay trials unnecessarily. I believe M. Woodburn said approximately the same thing. You are also asking us to withdraw that clause from the bill.

And yet, when I read the bill, I get the impression that this will not prevent you from obtaining guilty pleas, and that following the request from the judge, even if you have not had time to inform the victims, this will not prevent guilty pleas from being entered. You will simply have to inform the victims that that is taking place.

Moreover, subclause 21(4.4) states that:

> Neither the failure of the court to inquire of the prosecutor, nor the failure of the prosecutor to take reasonable steps to inform the victims of the agreement, affects the validity of the plea.

● (1635)

[*English*]

What the hell are you afraid of with that clause? I mean, for me, it's a clause that's at the heart of what I hear a lot from victims, that sometimes they are not informed.

That may not include you, Eric, because I do know a lot of crown attorneys who do take the time with the victims.

But to infringe that in a charter, to say it's a right to know that there's a deal coming, that there's a plea coming—what's wrong with that?

I would address that first to “Mr. CBA”.

Mr. Eric Gottardi: Yes: the two Erics.

Madame Boivin, there are a couple of answers to that, I think. On its face, I think this provision has a lot to recommend it. From my own experience, and participating in consultations with the minister, one of the main criticisms from many victims is the lack of information about what's going on. Certainly the agreement to enter into a guilty plea is the culmination of the case, and often leads directly to the sentence.

I think the concern arises more from the practical side for those of us who have been in the busiest provincial courts in our busy cities or centres. Rick can speak of Halifax. I can speak of Vancouver. In Hastings, when you have 50 cases on the docket and 10 of those accused in custody wish to plead guilty, it does become a resource issue if the crown has to step out of court and notify those 10 victims.

I take your point that the language of the statute talks about the judge accepting the plea and then inquiring about the notice—

Ms. Françoise Boivin: Even with the case experience you're citing, I mean, that would be deemed reasonable, but I can't see a judge saying to someone, for instance, “I will wait. We'll finish this. We didn't have time. It just happened. We will take a few minutes after and we will notify.” I think there is the space there, so to strike down the whole point....

I want to go to Mr. Wamback's point. He talked about resources. If it's a question of resources behind the point of view of CBA and Juristes de l'État on striking some of those, well, then, let's force the government to put the money where their mouth is and to say “You know what? We believe in those rights. We will put in the resources.”

I feel for you, because I know that my colleagues in the courts will have to.... We had a justice minister who told us that they will have to adapt on those issues.

The Chair: You have one minute left.

Ms. Françoise Boivin: Okay.

I'm very interested also in the point you're making on proposed paragraph 718.2(e) and the Gladue case. Are you saying to the committee today that the way the new section is worded would set aside the Gladue decision? Or would it just maybe be bringing in some new lawyers' discussions in front of the court to know if it still applies or not?

The Chair: A succinct answer would be nice.

Ms. Françoise Boivin: Better than the question.

Mr. Eric Gottardi: Well, listen, lawyers are always going to argue about words. Those principles are present in the sentencing sections. There are two distinct concepts in proposed paragraph 718.2(e). One is the principle of restraint generally. The other is the impact of the sentence on aboriginal offenders. It's just that by grafting on that phrase there, it's really unknown what impact that will have on aboriginal offenders. It's unpredictable at this point.

All we are saying is that this factor is there. It's enhanced by this bill. It's enhanced in other subsections. So even if the committee were to just edit out that phrase from that one subsection, I think you'd have an enhancement of the balancing. You could still have an emphasis of victims rights without potentially throwing a wrench into the works of the Gladue considerations.

I don't know that it's necessary. I don't see the benefit. And certainly the downside far outweighs the benefit.

● (1640)

The Chair: Thank you very much.

Our next questioner is Monsieur Goguen from the Conservative Party.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Mr. Chair, there certainly is a wide swath of opinion and a variety of angles being taken here. We have the father of the victim, the victim, the crown, the defence counsel, and the victims group. It's certainly not surprising that there is a diversity of opinion. But I think we all agree that this is a step forward. It's trying to give the victims a voice. Certainly, perfection should not be the enemy of good. While lawyers will always argue about the wording and the structure of how things should be put forward, I think jurisprudence will fill in the blanks. The colouring book will be coloured by jurisprudence—the crayon. I think moving forward is the proper thing in this context.

I want to talk to the Canadian Centre for Child Protection. I want to commend you on the great work you do in assisting children and young adults. We all know that they are the most vulnerable witnesses and victims. You commented on the testimonial aids, such as being able to testify behind a screen, not to be cross-examined by someone who has been your perpetrator, and even issues of personal security and factors to be considered.

Do you feel that this will help encourage the reporting of offences, the bringing forward of witnesses, and having those witnesses participate in a criminal justice system that is completely foreign to them and very frightening?

Ms. Lianna McDonald: Yes.

I will answer first and then my colleague, Monique, will speak specifically to your question.

One of the things our agency has been dealing with over the last number of years is, again, the recognition that most victims of sexual assault or abuse do not come forward. For the ones who do come forward, there are a number of barriers along their criminal justice journey that get in the way of their proceeding. We know that they have so many things working against them, even from a child development perspective, in terms of how they face the types of questions and the different processes that they have to go through. I think we have a couple of comments we want to make on those aids.

Ms. Monique St. Germain (General Counsel, Canadian Centre for Child Protection): I would like to say that there is definitely a history to these provisions. They were brought in specifically to help ensure that testimony could come forward. What we like about this bill is that the test is being tweaked and being made a little bit easier in some cases. We like the fact that it applies to more victims. We like the fact that victims can request these aids directly, and we think that the addition of all of the different considerations will help ensure consistency of case law across the country.

Mr. Robert Goguen: Can I ask your opinion of clause 17? I know Mr. Gottardi and a friend from the crown have mentioned clause 17. Of course, the whole issue is the disclosure of the identity of the informant—or the victim in some cases—and a fair trial.

You deal with many vulnerable witnesses and victims. I'm looking at clause 17. It seems to me that it would be a very extreme situation in which this type of a remedy would be granted. It requires a special application. The parameters seem to be, for the judge to grant this special application where the identity is not disclosed, that there be the right to a fair and public hearing, and whether effective alternatives to making the proposed orders are available. It would be something used very leniently, almost as in the protection of someone's life, to combat a very horrific crime. We can easily think of a situation in which you have a police informant, the information is sacred, and if his or her identity gets compromised it could lead to death.

We had Ms. Nagy who came to testify. She was a victim of human trafficking. When she confronted her perpetrators, the brother of the accused was in the court going like this, signifying: if you keep going, I'm going to cut your throat.

Although it's controversial, what's your perspective on this clause?

Ms. Monique St. Germain: I agree with you. This is a clause that is definitely not going to be applied all of the time. There are a few things that we would like to highlight about this clause. One of them is that this clause is a discretionary provision. It is going to require the judge to take into account a lot of different considerations. There is some case law to support this kind of a provision in the right sort of circumstances. Certainly, the considerations that the judge needs to go through are quite thorough. There are a lot of different things they need to consider.

One of the things that we like included in this provision is whether or not the witness needs the order for their own security, or to protect them from intimidation or retaliation, which I think is an important consideration. You shouldn't need to fear giving testimony in this country.

● (1645)

Mr. Robert Goguen: I guess it's all about striking a balance, although that's certainly not an easy one in this context. It would have to be life and death, in my mind, for this application to be granted.

I have a question for the Canadian Bar Association and also our friend with the crown prosecutors.

We're always very concerned about the uniformity of the application of laws from province to province. Different justices have different approaches. Do you feel it would be appropriate to give some sort of training on the application of the VBR, because it will be somewhat new? I know some of it is codification. Is this something that's warranted in your mind, in order to ensure a more uniform application Canada-wide?

Mr. Eric Gottardi: Maybe I'll only say the following. At some of the consultations that I attended, education of all of those involved in the justice system—the police, prosecutors, defence counsel, even judges—was something that was asked for by many victims' groups around the table.

The other thing I'd say is that around the table and just from my own experience I know that a lot of what's recommended here, in terms of informational rights and procedural ways to go about including the victim in the system, are often found in many crown counsel policy manuals across Canada. Those often are the best practices that are recommended. Of course, problems arise out of the implementation from time to time.

Mr. Eric Woodburn: I agree. Education's important from this point of view: when we're sitting around the table discussing it, the pitfalls of how you use a certain section, I think it's important that it will be educated police and judges on the uniformity of the use of this act, but they also need to know so that they can inform victims of their rights.

Mr. Robert Goguen: I suspect you'd agree with me that when it would come to educating, whether it be the crowns or it would be the judges, basically bringing in some of the crown prosecutors and some of judges who deal in the day-to-day, the bear pit, the provincial court, the criminal offences, in getting the guiding, the streamlining, would be useful. We do argue about words, but we're also very good, when it comes to lawyers, in streamlining processes and making them work.

Mr. Eric Woodburn: Even now, in its form, our provincial policy-makers are interpreting the language themselves and we're running into problems because we're going down to their office and saying, no, I don't think that's the way it's supposed to be interpreted. As for the complaints, for example, against crown attorneys, they thought, we have to set up our own complaint department for crown attorneys. But we already have the Canadian Bar Association and internal measures in order to combat any issues there. Sometimes also, like I said, universal application and interpretation of the act would be helped by education, I would think.

The Chair: Okay, thank you very much.

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

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

Ms. St. Germain, I want to start with you because you're the first lawyer who's appeared before us who wasn't of the view that there were severe constitutional issues with clause 17. In your answer to Mr. Goguen, you indicated that there is case law to support clauses like this in other jurisdictions.

Can you tell us about the case law now or can you send it to us? I'd be interested to have the two lawyers who think that it isn't constitutional comment on what you say might support it.

Ms. Monique St. Germain: Yes, I can send that case law to you.

Mr. Sean Casey: Thank you.

The Chair: If you are sending it to one member, please send it to the clerk, and it will be distributed to everybody.

Mr. Sean Casey: As I said, all of the lawyers we've heard from so far, except those at the Department of Justice, don't share your view. I think it's important that we have all of this.

Ms. Monique St. Germain: Absolutely.

Mr. Sean Casey: Staying with clause 17, I have a question for Mr. Woodburn and Mr. Gottardi. It's the same question that I posed to the Criminal Lawyers' Association.

On this clause 17, Mr. Woodburn, you were more unequivocal than Mr. Gottardi. You said that it is unconstitutional. We heard a similar position from the defence bar. The CBA says that it will invite “rigorous constitutional scrutiny”.

Mr. Eric Woodburn: It can be viewed as unconstitutional.

● (1650)

Mr. Sean Casey: Within the act, under clause 2 of the act, we have all of the declarations of the various rights. Clause 20 within those declarations is one that talks about the “Act is to be construed and applied in a manner that is reasonable in the circumstances” and doesn't “interfere with the proper administration of justice”, and “discretion”, and all of these other sorts of things. It's an overriding interpretation clause or a broad interpretation clause, if you will.

I come back to the constitutional concerns with respect to clause 17 and protecting the identity of witnesses. When read with that clause that I just referenced, can you offer me your opinion as to whether you take any comfort in the existence of this clause 20 contained in clause 2 of the bill when expressing your concerns with respect to the constitutionality of clause 17?

Mr. Eric Woodburn: I'd have to say no, because a justice or a judge can still order that the identity of somebody—including name and everything—be hidden from anybody in the courtroom and still consider all parts of clause 17 and the other part in clause 20 and still say, “Yes, we can still do it”. I don't see how they can work in conjunction. It's still there. It's part of the problem.

Mr. Sean Casey: Thank you.

Mr. Gottardi.

Mr. Eric Gottardi: I agree with my friend.

When we're talking about clause 20, we need to understand—at least in my view of it, which comes from some of the concerns that were expressed early on in the process and during the consultations—that you have to recognize the fundamental pillars of the system and the independence of the judiciary, the independence of the prosecution service, and the independence of an independent bar.

The concerns were that if some of the provisions in the victims bill of rights went too far, they would impinge on the constitutional imperative of prosecutorial independence. It's my belief and understanding that clause 20 is here in this bill of rights to ensure that nothing in the bill is going to override that constitutional principle. It's a safeguard to protect the constitutionality of the bill.

I don't see it as impacting on clause 17. Clause 17 seems to stand alone in terms of a code amendment. There is lots of ambiguity in this section. When the proposed subclause 486.31(2) says:

> The judge or justice may hold a hearing...the hearing may be in private.

it's unclear to me how private that's going to be. Is it simply in camera so the public won't be there, or is it *ex parte* so the defence and the accused won't be there? It's ambiguous to me.

I agree with the comments from Mr. Goguen that the only possible situation I could envision is where death is at issue, but it's not clear to me in the section that this would be the reality there.

I'd also be interested in seeing the case law, because I took a look, based on the exchange at the committee with Mr. Krongold, who was here. I can't find any cases, appellate or higher, that deal with anonymity of witnesses. There is the use of pseudonyms and that kind of thing, but what is contemplated in this bill, in terms of any information that could disclose the identity, is unheard of.

I haven't found it in my research. I'd certainly consider any cases that do come along, but I think this one is particularly problematic as it's currently drafted.

Mr. Eric Woodburn: With regard to the “life and death”, there are measures in place that we deal with.

A couple of weeks ago we brought in a witness in witness protection. I think everyone in the courtroom except for me had a bulletproof vest on. They didn't know where he was coming from; they didn't know where he left to; but he testified very comfortably in the courtroom. The courtroom was cleared of all individuals who didn't need to be there. The safeguards were put in place.

It's one of those things. When it's life and death, it's dealt with that way. We just don't allow people to waltz in and waltz out.

When it's a child, we also take very great care with them to ensure they're not emotionally or physically harmed by the process or by anybody around. It's extremely important to us that people walk out whole, or sometimes better, when they walk out of that courtroom.

● (1655)

The Chair: You have one more minute, Mr. Casey.

Mr. Sean Casey: Again, back to the two practitioners who are within the criminal justice system on a daily basis, you have expressed concerns over delays and demands on resources as a result of some of the measures in this bill, including the clause we just talked about, the notification of guilty plea, the complaints mechanism.

Specifically concerning crown counsel and legal aid budgets, what are your comments on how the rights that are enshrined in this bill will impact on the demands on those two, especially in consideration of their adequacy today?

The Chair: Who would you like to answer that question?

Mr. Sean Casey: The question is for the CBA and the crown counsel.

The Chair: You both have 10 seconds.

Mr. Eric Gottardi: I'll defer to my learned friend.

Mr. Eric Woodburn: I'm not afraid to answer.

Voices: Oh, oh!

Mr. Eric Woodburn: If I have longer than 10 seconds I can attempt it.

The Chair: Well, the longer you wait, the less time you have. Are you going to answer the question?

Mr. Eric Woodburn: Yes. Thank you.

It's a matter of where the resources.... We just don't have enough people; we don't have enough staff in order to deal with the amount of work that's going to be added. It's not only for us in legal aid; I'm also incredibly worried for the people in our victims services. In my view they work extremely hard on a shoestring budget, and this is going to impact them greatly.

The Chair: Thank you very much.

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

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

Thanks to each of our witnesses for being here today and for sharing their expertise with us.

Just by way of a response to the question that Mr. Casey raised earlier about cases supporting clause 17 of the bill, there are two that I know of, and there may be others. There's the case of the Vancouver Sun v. Named Person. It was a decision by the Supreme Court of Canada. Another case was R. v. Moosemay, the citation for which is [2002] 2 WWR 581. As I said, Mr. Chair, there may be others that certainly support the constitutionality of this provision. I'm sure many of the lawyers around the table today are aware of those cases.

I wanted to address the issue of clause 21 and the notice of plea bargain, which was raised by a number of witnesses today. As you know, clause 21 proposes a new subsection 606(4.1) of the Criminal Code, which is to say that in a case where there has been a serious personal injury:

> the court shall, after accepting the plea of guilty, inquire of the prosecutor if reasonable steps were taken to inform the victims of the agreement.

In proposed subsection 606(4.2):

> If the accused is charged with an offence, as defined in section 2 of the Canadian Victims Bill of Rights, that is an indictable offence for which the maximum punishment is imprisonment for five years or more

—again, after accepting the plea of guilty—and:

> the court shall...inquire of the prosecutor whether any of the victims had advised the prosecutor of their desire to be informed if such an agreement were entered into, and, if so, whether reasonable steps were taken to inform that victim of the agreement.

Proposed subsection 606(4.3) says that where the victim was not informed of a plea bargain prior to the guilty plea being made in court:

> the prosecutor shall, as soon as feasible, take reasonable steps to inform the victim of the agreement and the acceptance of the plea.

Further, proposed subsection 606(4.4) goes on to say that:

> Neither the failure of the court to inquire of the prosecutor, nor the failure of the prosecutor to take reasonable steps to inform the victims of the agreement, affects the validity of the plea.

It seems to me there are a lot of qualifications for the prosecutor. In the heat of trial, in a busy courtroom, he simply has to meet the test of having taken reasonable steps and done what is feasible. It seems to me that in the days of the Internet and electronic communication devices, which virtually everyone carries these days —Canada has one of the highest incidences of cellphone and Internet usage in the world—it would be pretty simple for most prosecutors to get the email address of the victim prior to the day of trial and to tell them that the trial would be on such a date and that they might be sending them some information so they should stand by their email. I would think that a lot of victims would do that.

It's also been stated here by a number of people that it's really a question of resources. Of course, as we know, the administration of justice at the court level is under the purview of the provinces, and at the cost of the provinces. When we last met, we had the Alberta Minister of Justice, who was asked this question several different ways by some of my colleagues on the other side of the table, and who didn't seem to have a concern about the costs. Presumably, at least that minister of justice is prepared to make available to the crown prosecutors the resources that are necessary in order to inform victims that a plea bargain has been entered into. From my dealings with victims, it's been pointed out many times to me that this is a significant issue for victims. They feel they have a right to be informed when a plea bargain has been entered into.

I should also point out that the committee has invited all of the provincial and territorial ministers of justice to appear before the committee or provide some comment to the committee, and thus far we've heard from only the Alberta Minister of Justice. There's more time to go in this study. We may hear from the others yet, but I would have thought that the two biggest provinces, Ontario and Quebec, which must have the greatest number of cases before the courts, might have stepped up and said, “Hey, wait a minute. This is going to cost us far too much. We can't possibly provide these resources.” The evidence so far is they haven't said that.

I would have thought that, from the point of view of the prosecutor, the prosecutor would say, “I'll do what I can do within the time and resources that are available to me, but perhaps the provincial attorney general needs to provide me with more resources”. At least the Alberta attorney general seems to be prepared to do that.

● (1700)

I want to ask the victims groups what they think of clause 21 and of the right of a victim to be informed of a notice of plea bargain after it's been accepted by the court—given, as I said earlier, that the prosecutor only has to meet the test that he has taken reasonable steps and done it as soon as feasible.

Perhaps we can start with Ms. Lindfield.

Ms. Yvonne Lindfield: I think it's really important that the victim be informed. As you suggest, in this age of technology it does not take much to type up a little email and send that out.

I talked about the web portal. That's something where all that information can be put in and the victim can access that. The minute a plea bargain process is under way, that information can be put into that. By way of email, the victim can go in there and actually see what's going on. It saves time for the crown's office, and it doesn't impede the process.

Mr. Bob Dechert: Would you be concerned about any delay?

Ms. Yvonne Lindfield: As I said, when the process starts, that's when you put in the information that it is under way or that it's being considered, so they know that....

Mr. Bob Dechert: Okay. Thank you.

Ms. Illingworth.

Ms. Heidi Illingworth: I think it's very important for crowns to inform victims as soon as possible about pleas. I think Joe did a really good job in his presentation when he talked about how it makes a difference for people. Maybe they don't necessarily agree with the decision, or with the lesser sentence that is being offered, but they will be happy that there is a conviction. If the crown takes a few minutes—perhaps an hour is not necessary, but a few minutes—to explain why this has been done, and why it's in the interests of justice to do this and to proceed this way, it makes a huge difference for people; it's positive.

I think crowns can certainly do a better job of this on a daily basis and use their victims services, for victim witnesses and people and personnel, to do this. We should expect that this is part of the job nowadays in the criminal justice system.

Mr. Bob Dechert: Ms. McDonald, and then Mr. Wamback.

The Chair: Really quickly, please.

Ms. Lianna McDonald: I'll let Joe speak, but on the earlier point about the number of qualifications that have been built in, we're pleased to see that type of language used.

If there's an opportunity later, I might want to comment on the resource issue.

● (1705)

Mr. Joseph Wamback: As far as plea bargains go, it's been my good fortune to study, although I know it's not very popular, jurisdictions down in the United States. There are literally thousands of individual jurisdictions where plea bargains are discussed with victims prior to moving forward. The overwhelming evidence and response is that it makes the crown's job easier, because the victim now understands in many cases why a plea bargain is accepted or a plea bargain is proposed. They would rather have a conviction than see everybody walk out the door totally free.

Mr. Bob Dechert: So you support clause 21.

Mr. Joseph Wamback: I support it. Not only do I support it, but it will save time and money.

The Chair: I'm going to take some time away from the next Conservative turn on that one.

Mr. Toone from the New Democratic Party, the floor is yours.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): You're not taking time away from me, thank you very much.

The Chair: Not yet, but keep it up and....

Voices: Oh, oh!

Mr. Philip Toone: Duly noted. Thank you.

I too want to thank you all for coming today. I believe you've all raised some very interesting and important points.

I'll try to keep this brief, because we don't have a lot of time, but I'll start with resources. I want to continue with that question.

Ms. McDonald, you were going to raise an issue regarding the resources. I have my own questions, but if you just want to carry on, please do.

Ms. Lianna McDonald: I just wanted to reference a situation that happened with us.

Over 13 years ago, when we set up Cybertip.ca, it was at the very beginning of the whole onslaught of child abuse material on the Internet. There were no structures set up across the country. We didn't have specialized police units. We had everybody running and scrambling just to figure out how we were going to do this—and if we even needed to do something, which was the right thing.

We set up the tip line, and to date we've received over 125,000 reports and we've arrested all kinds of people.

My point is that resources will always be an important discussion, but I think we need to detangle the conversation between how we will properly support this and therefore support victims and what the bill is trying to achieve in terms of supporting victims of crime across Canada.

Mr. Philip Toone: Ms. Illingworth, you mentioned resources as well. We know that one of the problems is victims sometimes just do not identify themselves. There are a lot of obstacles. Spousal abuse is a pretty good example of that. There would be real reasons why you wouldn't want to come forward and there are fears, and one of them is because people simply don't know what their rights are.

Is this bill going far enough? Are victims actually going to be more likely to present themselves to authorities because this bill has been adopted? Are the resources there for victims to know what their rights are going to be?

Ms. Heidi Illingworth: I don't know if I can answer that. I don't know what the government has allocated with regard to the educational piece around this bill.

Implementation and education, raising awareness, are really important. One of the problems I highlighted is that people who have never been victimized don't know about the criminal justice system, and they certainly don't know they're going to have rights under this bill. I don't think it is something that ordinary citizens are interested in. We don't study up on what happens to me if my house is broken into, or what rights will I have if someone assaults me at the mall or steals my purse or anything like that.

There is a huge piece around education that needs to be done once this bill is passed, and we can strengthen the awareness of people across the country about what you can do, what you have a right to, what supports you can find in the aftermath.

Mr. Philip Toone: Were you consulted in the prior processes where we were developing this bill?

Ms. Heidi Illingworth: Yes, absolutely.

Mr. Philip Toone: I would have presumed that you're on the front lines for the victims to actually acquire that information, to acquire the resources.

Ms. Heidi Illingworth: We are. We direct victims. We get tons of calls from across Canada. People don't know where to get help and we direct them locally, first and foremost, to get supports where they live and try to inform them as best we can about what might be available in terms of financial assistance or other supports.

Mr. Philip Toone: Right. In the consultations, was the idea discussed that the federal government might have some obligations to actually publicize the bill, to actually bring the rights that will be brought forward in this bill to the fore so that you can actually deliver that message?

Ms. Heidi Illingworth: Certainly in our briefs that we prepared we always touched on implementation of the bill. We requested that quite lot of money go into how we were going to raise awareness about this.

Mr. Philip Toone: But at this point, that point still hasn't been addressed?

● (1710)

Ms. Heidi Illingworth: I don't know the answer to that.

Mr. Philip Toone: Okay. If we could get back to our learned colleagues who were addressed, Mr. Dechert brought up some jurisprudence. I think it would be fair for you to have an opportunity to comment on those. When it comes to clause 17, do you have any more comments on what Mr. Dechert brought forward?

Mr. Eric Gottardi: Not really. I'm intimately familiar with the Vancouver case. It was lawyers from our defence team in the Air India case who argued that case. It's a case that really doesn't have anything to do with what's proposed in this bill. It has to do with terrorism offences, and the investigative hearings, and the open court principle and freedom of the press. I looked at it after I saw the intervention last time, during the last hearing, and it's not particularly helpful.

There are cases from the Ontario Court of Appeal and the Alberta Court of Appeal that do talk about witnesses testifying under a pseudonym, the consideration of whether or not the accused...and it's usually in cases where the accused actually knows who the witness is. They may not know their actual formal name, but they're familiar with them. They've had interactions with them, so the accused basically knows who the person is. They have some information about the person, so it's not practically impossible to cross-examine in that situation.

Clause 17 contemplates at least the possibility that the accused and counsel for the accused and the crown might have to cross-examine or direct examine a witness when they have no idea who the witness is. I haven't found a single case that talks about that, and I can't imagine a scenario, short of life and death and someone essentially amounting to a confidential informer, where that kind of process would pass constitutional muster.

Mr. Eric Woodburn: I have nothing more to add.

The Chair: You have 30 seconds.

Mr. Philip Toone: Very quickly, on community impact statements, you brought a point that was very interesting. Could you elaborate? I'm just worried that "community" is poorly defined. How are communities going to know to come forward?

Do you have any more comments on communities?

Ms. Lianna McDonald: To your last point I can't be specific about that definition and so forth. I can just speak to our issue and what we do see.

When we look at the two types of crimes we primarily deal with.... And one of the biggest challenges we deal with daily is, as I mentioned, that in much of the imagery of child abuse we process we don't know who the victims are. We have a whole problem of even including when we have people going before the courts and looking at the impact when we can't even identify those victims because... maybe they have been charged with possession of material on their hard drives. So we have that.

But the other point I would like to make, and the one we have talked about mostly within our 30 years of doing this work, is when we see some of the most—and they are very rare—high-profile child abduction cases where children are taken and there's a duration before the child's even located, we've heard from friends of the victim, immediate family members, neighbourhoods completely impacted and traumatized by that event.

I think when we look at community impact and that consideration, from our agency's view it's an important one.

The Chair: Thank you for those questions and answers.

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

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

Ms. McDonald, I'm very familiar with the Hopley case. I'm from Sparwood. I have had, shall I say, the honour in my old profession of arresting Mr. Hopley several times so I know him intimately and there are some interesting things about Mr. Hopley we could probably share.

Ms. Illingworth, I have a few questions for you, and then to Mr. Woodburn, and then a comment at the end.

I'd like to get a better idea of some of amendments you're putting forward because to me some of them seem a little problematic from a police perspective. I'm retired from the RCMP.

Give me an example of a letter of apology that you would want the police to sign with regard to the victim.

Ms. Heidi Illingworth: I guess there could be different circumstances where an apology might be necessary. I'm thinking of a lot of sexual assault complainants who come forward and perhaps their allegations are deemed unfounded originally at the moment they come forward, but perhaps later on other victims might come forward in the same case, and then a case does proceed against an accused.

I think it could have to do with treatment on an individual case. People want to be believed when they go to the police to report sexual violence. Sometimes they are not respected when they do that, when they go. Perhaps they are not provided with a support person when they are going to have to give a video statement.

Obviously it would be the service itself or the complaints mechanism that would decide if such an apology letter was ever required, but I think it's something we can do for victims.

● (1715)

Mr. David Wilks: From the perspective of the RCMP anyway there is a mechanism in place so that if a person is a victim of crime and then doesn't believe the police have done their job in a proper manner, they can lay a complaint through an appropriate agency to have that dealt with. It does exist from the perspective of an investigation on the police.

Further to that, you had mentioned in your statement, protection from intimidation and having the police be able to deal with that. Again, please give me an example because the way I dealt with things in my tenure was if I arrested X for assaulting Y that person was released either on a recognizance and/or an appearance notice—probably not an appearance notice, promise to appear or recognizance—or in some cases before the judge who would put conditions on that person whether it be a no contact, whether it be a lot of those things.

If the conditions are in place, is your suggestion that the police, if they know those conditions, would need to act on those conditions regardless of whether the victim says anything or not? Under most circumstances the police would never know until the victim comes forward and says there's been a breach. Then the police under normal circumstances will act on that breach, but most of the time they don't know about the breach.

Ms. Heidi Illingworth: Certainly. I think the point is about communication and about victims being able to raise their concerns when they encounter such problems. They should get a response from an agency around their concerns. That is our point.

Mr. David Wilks: I have one last question to the crown vis-à-vis the defence.

Voices: Oh, oh!

Mr. David Wilks: As you're aware, in British Columbia police do not lay the charges. The crown lays the charges. In Alberta, police lay the charges and the crown doesn't lay the charge. It becomes problematic for the police from the perspective of when they lay the charge as opposed to when the crown lays the charge.

My question is with regard to keeping the victim notified. In British Columbia, I would think the hand-off would be as soon as the charge is laid. It would then go the crown, because the police have done their investigation. But if you look at Alberta, it could go all the way through, because it's the police who lay the charge.

Do you have an answer to that? It seems to be problematic in regard to how the victim is kept in light of the investigation, because there can be a difficulty in, shall we say, the hand-off from the quarterback to the fullback.

Mr. Eric Woodburn: Well, I can say that the police reports are the first point of contact. Nova Scotia is a police charge jurisdiction, but I know that in other jurisdictions, such as B.C., the crowns handle it. New Brunswick is the same.

But no matter what, the police are the first point of contact. In my experience at least, they are always the first to recommend and hand over the victim services numbers, the numbers to call, and to explain the process to any victims they come across. The first point of contact is the police.

On the major crimes, it has been my experience that the police remain that point of contact until the file is actually turned over to the crown. If it's a crown charge area, they work together, and eventually the two will meet the families and so forth. That's in the higher-end crimes.

At the lower end, and I don't mean to break it up that way, but with assault causing bodily harm, we kind of run those through. This is where you are going to run into this kind of problem. Once again, the police are the first point of contact, from victim services right through to a victim impact statement. All those things are given as information first-hand, and then when the crown turns it over, it's usually right in our crown sheets. So the crowns are already informed that some of these things are already done, along with information on how to get a hold of them normally.

● (1720)

The Chair: Thank you very much.

The next questioner is from the New Democratic Party.

Madam Péclet.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): I am accepting a challenge here. I am going to take advantage of the fact that I have the opportunity to speak to several lawyers at once here, and of the fact that this may be the first and last time where I will be able to do so without charge. That was a little joke, to start. I should add that I am also flanked by two lawyers

My first question is for the Canadian Bar Association representatives.

In part V of your brief on Bill C-32, you talk about the victim impact statement form, considered in sentencing. You propose that certain parts of that form be withdrawn, those that would allow the victim to express in writing the type of sentence they would like to see handed down to the accused.

I would like to hear your rationale for that. You say it is redundant, but would it not allow the judge to explain certain aspects of the system to the victim? For instance, if victims ask for a certain sentence, the judge could tell them that he understands, but that jurisprudence has to be taken into account. He could provide examples and explanations.

Aside from the redundancy issue, what was your reasoning on this?

[*English*]

Mr. Eric Gottardi: I think what you're referring to in our submission is a reference to a small notation on the standard form that's recommended in the bill. This portion of the form essentially says that with the permission of the judge, the victim can comment on the type of sentence the person should get. That's just a little detail that's tucked away on the form that I think some might have missed.

As the law stands now, a victim is not allowed to comment on the type of sentence that he or she thinks the accused should get. The focus of the victim impact statement is in fact on the impact on the victim, physically, emotionally, and every way possible, and how it has made their life more difficult. That's what the judge needs to take into consideration when they're coming to the appropriate form and quantum of sentence.

It's not something that's been permissible up to now, and in my experience it's really not something that will be particularly helpful. The judge, the crown, the defence—they're experts in what the jurisprudence will tell them about what the appropriate range of sentence should be. Ultimately the judge is the arbiter of where the quantum comes down.

Again, I think it has the possibility of raising expectations on the part of victims. If someone asks for eight years in prison and the person gets four because that's what the case law says, that victim may not be particularly happy about that.

Ms. Ève Péclet: Yes, but I don't think just writing what she expects will raise expectations. I think it's the job of the judge to explain why they gave that judgment.

I'm sorry, I don't have a lot of time. I have five minutes, and I like to keep my time at five minutes.

You haven't had a chance to talk about the community. Could you just give me an example of what you would maybe define as "community"? Or what would you like to see? Right now we don't know what the community is, and I know that a lot of organizations have said that they don't actually know what it is.

What would you like to see? You haven't had a chance to explain your thoughts on that.

● (1725)

Mr. Eric Gottardi: The community impact statement hasn't necessarily been a focus for us. I think there are questions about how to identify what the community is and who will be the community spokesperson. Are we talking about the neighbourhood community Block Watch? Are we talking about the city? Are we going to get a community impact statement from the mayor of Richmond, British Columbia?

So I don't know what that means, and I don't know—

Ms. Ève Péclet: But do you personally have an opinion?

Mr. Eric Gottardi: It's hard to deny that crime within a particular community, especially high-profile, very violent crime, has an impact not only on the immediate victims and their families but also on Canadians' sense of safety within their own communities and that kind of thing.

For the particular task that the judge has to do in terms of the individualized sentencing for that offender, I don't know how particularly useful it will be in every case. It may be that in some cases there's a particular impact and it's particularly relevant, but as a matter of course I have some doubt about how useful it will be to the actual calculus and analysis that a sentencing judge has to do.

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

Our final questioner for today is Mr. Calkins from the Conservative Party.

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

I hope you were saving the best till the last.

The Chair: Absolutely.

Mr. Blaine Calkins: Some of the things I'd like to see, through my limited knowledge of this process from my background in law enforcement, concern obviously how victims have an opportunity to participate in a number of areas. I like the codification of a lot of the standard practices right now that do happen across the country.

What I'd like to know, primarily from the victims advocacy groups here, is with regard to the victim's right to have access to information, whether it's in relation to the offender's correctional plan, an obligation to provide the victim information about restorative justice and mediation services, and the option of whether or not the victim should have an opportunity to see an updated photo of the offender prior to their release.

I'm wondering if I can hear some thoughts on those particular things and if you can give us any quick examples of where that would be entirely appropriate.

Mr. Joseph Wamback: I can start initially. I'll keep it brief.

There is no such thing as a standard victim. Everybody is different. They all have different needs. Some individuals have a need to have access to every bit of information about the person who has murdered their child or their loved one. They want to know 25 years later, when they're still serving their life sentence or hoping for some form of release, all the details. Others don't want to know anything.

I think it's incumbent upon the process to allow those victims access to that information and to whatever information is appropriate and available at the time. That could include photographs, the success of the individuals within the correctional services on any programs that they're taking, or recommendations for release at parole boards. Certainly during the trial process and during the sentencing they should have access to as much information as is currently legally available to them.

Mr. Blaine Calkins: Yvonne.

Ms. Yvonne Lindfield: When there's a homicide, when a family member or a loved one is murdered, the police become the lifeline for that family. Having communication between the investigation department, the police, and the surviving family is very, very important. They want as much information as you can give them. They're not looking for information that will compromise the case or any evidence, but they need to feel that they're a part of that.

I think what we've lost sight of, or maybe we've never had sight of, is the fact that, yes, it is a crime against the state, but it's actually a crime against the family that's left behind. You can't intellectualize that away. That's exactly what happens. We really have a vested interest in knowing what is going on without compromising the case. That's all the way through the criminal justice system.

As we said before on the question with regard to plea bargaining, they just want to know. It's a lack of information. Victims of crime do not understand the legal system. It's a different world. It's a different language. They just want to know what it means. Will a plea bargain give them a sentence, and will going to trial perhaps means they will walk? They just need to know that.

● (1730)

Mr. Blaine Calkins: Fair enough.

Heidi, do you want to add to that?

Ms. Heidi Illingworth: I would just echo the comments that have already been made.

I think offering an updated picture of an offender who's about to return to the community—perhaps it's only four years later, but perhaps it's 25 years later for some family members—is a really valuable thing for them. Many still do fear for their own safety. They want a little peace of mind to know what he looks like now. From my experience of going into prisons for parole hearings, I can tell you that they do often very much change from when they're arrested and sentenced. It's particularly valuable, I think, in domestic violence cases, where women are still fearful of their ex-spouse coming back to get them, to fulfill the promises that they made.

Mr. Blaine Calkins: Okay. Good.

I'll use the little bit of time I have left—

The Chair: Thirty seconds.

Mr. Blaine Calkins: —to say that as a member of Parliament, I've heard loud and clear from my constituents for many years that they don't view our current justice system as a justice system; they view it as a legal system.

I'm going to make a statement here and see if you agree with it. With the changes that are being proposed in this piece of legislation for a victims bill of rights, have we turned the corner? Can we now say that we're moving from a legal system to finally a justice system? Would you agree with that statement?

Mr. Joseph Wamback: I've said in my brief that this is a monumental step forward. It's a turning point in the relations that the Canadian people will have with the judicial system in this country. It needs work, and it will always be massaged and manipulated for the next dozen years or more, but it's huge.

I welcome it, and I know that a lot of victims and Canadians welcome it.

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

If I did save the best for last, I guess that's you, Joe.

Voices: Oh, oh!

The Chair: Thank you very much for your presentations today.

Just for the committee's understanding, we have a break week ahead, a busy Remembrance Day week.

When we're back, on Tuesday, November 18, we'll have another set of witnesses. On November 25, which is the next Tuesday afterwards, we will be dealing with clause-by-clause. My recommendation is that by Friday, November 21, if you have any amendments, please get them into the clerk so that we can get those looked at to see if they're movable.

We've heard everybody's witnesses who were asked, except for the provinces. We heard from one province that said yes; we heard no from two; one is submitting a letter; and from the others, no response. We've tried a number of times, so we're not trying again.

That's what we're doing, just so you know. November 21 is a big day. Make sure you get your amendments in by then.

Thank you very much.

We're adjourned until November 18.