HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO • NUMBER 057 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, April 13, 2017

Chair

Ms. Marilyn Gladu

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● (0845)

[*English*]

The Chair (Ms. Marilyn Gladu (Sarnia—Lambton, CPC)): Good morning, colleagues.

We are returning to our study of Bill C-337, an act to amend the Judges Act and the Criminal Code regarding sexual assault. We're very fortunate today to have a large group of witnesses. We begin with the Canadian Centre for Gender and Sexual Diversity. We have Jeremy Dias, who is the executive director, and Katerina Frost, who is the government affairs coordinator.

We also have from the DisAbled Women's Network Canada, Bonnie Brayton, who is the national executive director.

From "WomenatthecentrE", we have Nneka MacGregor and Mandi Gray.

From the Avalon Sexual Assault Centre, by video conference from Halifax, Nova Scotia, we have Jackie Stevens, who is the executive director.

I want to welcome all of our witnesses today. Each of you will be able to begin with your five minutes of comments.

We'll begin with Katerina for five minutes.

Ms. Katerina Frost (Government Affairs Coordinator, Canadian Centre for Gender and Sexual Diversity): Good morning. Thank you, Madam Chair.

Thank you, members of the committee, for inviting us to appear today. My name is Katerina. I'm here with Jeremy Dias representing the Canadian Centre for Gender and Sexual Diversity.

As we reviewed this bill, we noted the following points, which we respectfully request the committee to consider. First, we hope that in your deliberations as members of the committee you will consider the status not only of cisgender women and men but also transgender, intersex, genderqueer, gender-fluid, and gender non-conforming individuals. For example, a sobering statistic is that of transgender individuals surveyed for the 2014 Trans PULSE survey; 20% have been assaulted physically or sexually for being trans.

The committee's discussion of this bill has already included the issue of intersectionality in gender-based violence and social context in judicial training. We agree that this is an important factor. Similarly, we hope that the committee will consider the status of those with diverse sexual orientations. Gay, lesbian, and bisexual individuals report experiencing higher rates of sexual violence than heterosexual individuals.

Furthermore, we request the committee consider the impact that sexual assault proceedings may have on individuals of diverse gender identity and expression or sexual orientation. If members of the judiciary do not receive training covering that information, we feel that unintentional heteronormative, homophobic, or transphobic statements or actions toward the victim will mean that further stigma or indignity is attached to them unnecessarily. We also hope that you'll consider the ways in which training education could be sensitive to these issues in what is already obviously a traumatic experience for the victim.

We further hope that the committee will consider the changes proposed by Bill C-16, an act to amend the Canadian Human Rights Act and the Criminal Code. When this legislation passes, as we firmly hope and believe that it will, we feel that problematic interpretations of the law may still occur in sexual assault cases where gender identity or gender expression is a factor. We hope that with regard to judicial education and sexual assault law training, the committee will consider that changes be reflected on an ongoing basis. In the event that it does not become law, we hope that this content would still be included regardless, just because the people who are the reason for C-16 are not going anywhere, and if anything, they'll be fighting harder for equality in all ways and at all levels.

We hope that, with regard to the design and content of the training that judges will receive, the committee will consider the positive impacts of guidance from leading members of the LGBTQ+ community who have experience in supporting victims of sexual assault, as well as those experienced in supporting individuals with intersectional identities, and those from marginalized groups as well.

We feel that this bill is really a human rights issue and that all individuals, no matter their gender or sexual orientation, need to be able to have faith that the judiciary is in tune, up to date, and sensitive to them and their needs. This is about making sure that judges have better training. We hope that comprehensive education will mean exactly that, and will fully encompass the issues and challenges faced by the LGBTQ+ community.

Thank you.

● (0850)

The Chair: That's excellent.

Now we'll go to Bonnie Brayton for five minutes.

Welcome, Bonnie.

Ms. Bonnie Brayton (National Executive Director, DisAbled Women's Network Canada): Good morning, everyone.

I'd like to begin by acknowledging that we're gathered on the territory of the Algonquin people and that we are in a time of truth and reconciliation with the first peoples of Canada. I was invited to speak to the proposed Bill C-337. I'm confident that others who will come before you will focus—

Ms. Sheila Malcolmson (Nanaimo—Ladysmith, NDP): Madam Chair, can I make a suggestion?

Because of inaccessibility problems and the witness only just walking into the room, if the witness wants, can I suggest we skip to another witness? It's only a five-minute difference.

Ms. Bonnie Brayton: It would give me a few minutes to collect myself, if you don't mind.

The Chair: No problem.

We'll go then to Nneka MacGregor and Mandi Gray. You have five minutes.

Ms. Nneka MacGregor (Executive Director, Women's Centre for Social Justice): Thank you very much, Madam Chair.

Good morning, committee members. That was very, very considerate—thank you—for my colleague Bonnie.

On behalf of the Women's Centre for Social Justice, better known as "WomenatthecentrE", we thank you for the opportunity to make this submission on this very important bill.

Our sexual violence response coordinator, Mandi Gray, and I are here today as women survivors of gendered violence to speak to the need for an informed judiciary who receive continuous comprehensive and effective training on all aspects of violence against women, including sexual assault.

I'll begin by saying that I'm basing most of my comments on a finding from a pilot initiative that we facilitated in 2014-15. We conducted a snapshot review of cases proceeded in several specialized domestic violence courts in Toronto, Ontario. Observations from the court watchers speak directly to the issues being put forth in this bill.

What the public knows are only those high-profile cases that make the press, such as with the retrial presided over by Justice Robin Camp. His egregious and ill-informed comments appear anomalous and occasional, but what we as women survivors know, as well as what we found from our court watch monitoring, is that those types of comments and attitudes are far more pervasive and form part of the everyday misogyny in the courtrooms across the country. The only difference is that, while other judges make similar comments and hold similar victim-blaming views, they are not being observed and oftentimes give no reasons for their decisions. No one is shining a spotlight on them, thus enabling them to continue treating victims in ways that skew the outcomes in favour of the offender with no regard for the victim.

Too many members of the bench have attacked and viewed complainants in far too many sexual assault cases as though they are the wrongdoers. She is held accountable for her attacker's violence. It is like blaming a homeowner for a home invasion. Society simply doesn't do that, so why, therefore, are survivors being held to a different standard? The answer to this question is largely due to the fact that individuals who preside over these kinds of cases lack the education and training needed to understand the fundamental differentiators in sexual assault cases and how these cases need to be handled differently.

Our court watch reports documented many instances where judges failed to hold perpetrators accountable even after they had pleaded guilty. Comments our court watchers documented are as egregious as those of Robin Camp's, the only difference being that we didn't name them, and that's something that we plan on doing in future court watch initiatives.

I'm now going to hand it over to my colleague, Mandi Gray.

Thank you very much.

Ms. Mandi Gray (Sexual Violence Coordinator, WomenatthecentrE): Hi, my name is Mandi Gray. I work for "WomenatthecentrE". I'm a Ph.D. student, and I have also barely survived a rape trial.

It's important to note that Canada has among the most progressive affirmative consent laws and privacy protection for complainants in the world. The problem is that judges are struggling to apply the law. This is especially true when the sexual assault does not fit into the idealized archetype—the young, white, sober, female victim violently attacked by a racialized male stranger in a public place.

I'm going to focus on two major concerns that I've identified in Canadian courtrooms that may assist in correcting some of the discriminatory attitudes. The first is the need for education on provisions in the Criminal Code that already exist, and the second is education on cases involving alcohol.

There is a need for judicial education of section 276, which refers to sexual history, and section 278, the third party records, of the Criminal Code. These sections are colloquially referred to as rape shield laws.

In theory, an application must be made to cross-examine a complainant about his or her previous sexual activity or access their third party records, most often, therapy records or other medical records. The judge's decision to enter either of these into evidence may have serious implications for the complainant, and it's imperative that the judge makes an educated decision.

At the third party records application hearing, the complainant is actually entitled to legal representation paid for by legal aid. In contrast, the complainant is not entitled to representation at a sexual history application, and even if the complainant is willing to pay for representation, they are barred from attending.

Since the courts have the power to enter the most private details into public record, it is of utmost importance that the judge be aware of the very narrow grounds in which sexual history is even relevant to a sexual assault trial. Of course, the judge must ensure that the accused has the right to a fair trial, but similarly cannot allow for a discriminatory defence. In theory this seems like a simple task, but in practice has proven to be difficult. Even when both applications are not made by counsel or are denied by a trial judge, defence counsel pursue prohibitive lines of questioning, anticipating that neither the crown nor the judge will ever interfere, even if they are in violation. With proper education, judges can feel confident in their ruling and feel more confident in their decision-making.

It's also important to note that any education must include the role of alcohol. This risk is especially increased if she's attending post-secondary education. Many of these cases involve alcohol. There is no clearly defined threshold for intoxication for a sexual assault case, which may be difficult for a judge with little expertise in the area, and may partially explain why cases involving alcohol almost never result in conviction.

There are significant resources being allocated to social campaigns about consent and alcohol, but these attitudes are not reflected in Canadian courtrooms. As it stands, alcohol is the perfect alibi in a sexual assault case. There are two ways to change this, either by providing complainants with legal representation or by educating the courtroom actors to act in compliance with Canada's laws.

● (0855)

The Chair: Very good. Now we'll go to Bonnie Brayton for five minutes.

Ms. Bonnie Brayton: Good morning, again.

[*Translation*]

Hello, everyone.

Thank you.

[*English*]

I would again like to acknowledge the Algonquin people.

I was invited here to speak to the proposed Bill C-337, and I'm confident that others who will come before you will focus their remarks on the content and the substance of that bill, which as we know is about the important need to have a judiciary that is well informed in the area of sexual assault.

With limited time, we have instead chosen to focus on the Supreme Court decision that we believe makes it clear why judicial training is essential. We will also suggest that a thorough review of the content of this training is required to ensure that it has a fully developed curriculum to include the range of accommodation required to support all women.

On February 10, 2012, the Supreme Court of Canada released its judgment in the case of Regina v. D.A.I. LEAF and the DisAbled Women's Network of Canada intervened in that appeal. Through this Supreme Court of Canada decision, Chief Justice McLachlin, writing for the majority, described sexual assault as an evil and acknowledged that women with mental disabilities are targeted for this offence at alarming rates. The court confirmed the importance of hearing the voices of women with mental disabilities in the court. The court acknowledged that the testimony of women with mental disabilities is essential to stopping sexual abuse and ensuring that sexual offenders are brought to justice.

The legal question before the court was how to interpret subsection 16(3) of the Canada Evidence Act, which permits witnesses who can communicate the evidence but are unable to understand an oath or affirmation to testify unsworn on a promise to tell the truth. Lower courts have developed a practice requiring mentally disabled witnesses to explain the meaning of abstract concepts like promise, truth, and falsehood. No other category of witness—not even convicted perjurers—is subjected to such a pre-testimonial inquiry.

The Supreme Court of Canada ruling clarifies that persons with mental disabilities are not required to meet a more onerous test than any other witnesses before they are even allowed to take the stand. If a witness can communicate her experiences and if she can describe what happened to her, she can testify after saying she promises to tell the truth.

The Supreme Court judgment noted that in the past, mentally disabled victims of sexual offences had frequently been precluded from testifying, not on the ground that they could not relate what happened but on the ground that they lacked the capacity to articulate in abstract terms the difference between the truth and a lie.

Women with intellectual and cognitive disabilities, including women with brain injuries—frequently acquired as a result of violence—experience staggering rates of sexual assault and are seen as easy targets. Abusers believe that disabled women are powerless to complain or will not be believed even if they do complain. The Supreme Court, in rendering this decision, acknowledged this reality and confirmed that their testimony is essential to any realistic prospect of prosecution.

The Supreme Court majority recognized that the testimony of women with mental disabilities promotes the truth-seeking function of the criminal process, particularly given the undeniably high rates of sexual assault and the interests of society in the reporting and prosecution of abuse. As the Supreme Court itself said, excluding evidence would effectively “immunize an entire category of offenders from criminal responsibility”, with devastating harm to the abused women and to society as a whole.

The Supreme Court of Canada decision also notes that the questioning of mentally disabled adults may require accommodation of each individual's particular needs, so that their evidence is best communicated in court. This aspect of this ruling is in step with international law in other international jurisdictions. The U.K., for example, is currently far ahead of Canada in terms of providing for witness intermediaries who assist persons with communication or mental disabilities in accessing the justice system at all stages, from reporting to police to giving evidence in court. Creating and supporting a roster of witness intermediaries in Canada is a logical next step for the federal government.

The decision is also consistent with Canada's international human rights commitments. The UN Convention on the Rights of Persons with Disabilities points to the need for our country to uphold its promise under article 13, where we are to have equal access to justice, and under article 16, which commits state parties to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated, and where appropriate, prosecuted.

In Canada and around the world, this decision is regarded as a major victory for women and all people with disabilities, and provides opportunities for appeals across jurisdictions around the globe.

● (0900)

The Chair: Very good. Now we will hear from Jackie Stevens, who is the executive director at the Avalon Sexual Assault Centre.

Ms. Jackie Stevens (Executive Director, Avalon Sexual Assault Centre): Thank you. Good morning.

I am Jackie Stevens with the Avalon Sexual Assault Centre. I want to acknowledge that I am presenting to you today from unceded Mi'kmaq territory here in Halifax.

Avalon Sexual Assault Centre is a feminist, trauma-informed organization that provides services for those affected by sexualized violence. Avalon's primary emphasis is on support, education, counselling, and leadership and advocacy services for women and trans and/or non-gender-binary people.

Avalon offers trauma-specific, individual, therapeutic counselling and group program services for women and trans and/or non-gender-binary individuals, aged 16 and older, in relation to sexual assault or abuse. We provide community education, public awareness, and legal and professional training targeting the prevention of sexualized violence, intervention, and support of victims and survivors.

Avalon also operates the Avalon sexual assault nurse examiner program, which provides an immediate response to sexual assault victims of all ages and genders requiring medical care and the collection of forensic evidence.

Avalon has expertise and experience directly serving individuals who have experienced sexualized violence as well as in advocating for an equality-focused community response to sexualized violence. We've engaged in legal advocacy and education on these issues in Nova Scotia since 1983.

Avalon has expertise in substantive equality, sex-based, and gender-based discrimination and sexual assault law. The presentation is intended to provide the Standing Committee on the Status of Women with further points of analysis and consideration regarding Bill C-337.

Avalon has a substantial interest in this bill and the work of the standing committee because of its importance to the development of sexual assault jurisprudence and the impact of this jurisprudence on women's substantive equality, including the women directly served by Avalon centre.

Here are some points that I would like you to consider as you review this bill.

First, high-profile examples of systemic failure at all levels of the legal process have resulted in low rates of sexual assault reporting, and victims deciding not to participate in or to continue with the legal process after sexual assault or abuse has occurred.

Second, there is a level of distrust and lack of faith in the sexual assault criminal justice process, not only by victims but within the general public.

Third, there is a perception that the rights of the accused are more important than the rights of victims, and that justice is not possible for victims of sexualized violence under the current justice process.

Fourth, the issues brought forth to the public as a result of many high-profile cases have increased the number of individuals who are going public with their experiences before the courts and who are seeking systems and legal-based support and advocacy.

Finally, sexual assault advocates are not adequately resourced to provide ongoing court watch and court support as well as address the need for reform and change, both at an individual victim level and societally and systemically.

Criminal justice reform should continue to be based within the history of sexual assault law reform in Canada and in Parliament's intention to exclude discriminatory myths and stereotypes about women from judicial decision-making.

Past and present judicial statements, such as those of Judges McClung and Lenehan, and Justice Camp, demonstrate a disregard for women who have been targeted for sexualized violence. Their comments are rooted in misogyny, gender stereotypes, and sexual assault myths. Their decisions also demonstrate discrimination based on age, race, and the perception of what is deemed appropriate behaviour.

What is critical to note is that their decisions also demonstrate a lack of understanding of sexual assault and consent under the Criminal Code of Canada and/or blatant disregard for the laws.

Reformative processes should reflect a gendered analysis of the experiences of sexual assault victims and survivors, both when victimized and before the court. Sexual assault and abuse is committed from a position of power and control, and some victims are targeted because of gender, or racial or societal marginalization. Sexual assault laws under the Criminal Code are not gendered. However, how they are administered and interpreted is almost always based on societal perceptions of gender, race, age, disability, and so on.

Many sexual assault cases are investigated, tried, and decided on the basis of looking at the victim's pattern of behaviour and actions to determine consent or to refute that sexual assault occurred, rather than on the basis of looking at the accused's patterns of behaviour that demonstrate predatory, intentional, or criminal actions.

Reforms should apply to all levels of court, not just Canadian superior courts, and should be reflective of all forms of sexual assault or abuse under the law.

● (0905)

Separate from Bill C-337, I would like the committee to consider what practices are in place to ensure that existing policies, laws, and mandates pertaining to judges' training and decisions are being adhered to, and how this committee can influence or improve those current processes.

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

We're now going to go to Ms. Damoff for seven minutes of questions.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I want to first thank all of you for being here, and I also want to apologize to you, Bonnie, for the issues you had getting into the building. That's unacceptable, and I give you my word that we'll follow up with the building to ensure it doesn't happen to someone else who might be coming to committee.

Ms. Bonnie Brayton: Thank you.

Ms. Pam Damoff: This is our second day of testimony on this bill. When we hear about decisions as in a case where it was said that a drunk is able to consent, or comments that former Justice Camp made prior to the previous government actually appointing him to the Federal Court, everyone here agrees that those kinds of comments are simply unacceptable and we need to do something to deal with it.

The question becomes, how do we deal with that? Because both of those are currently sitting judges, and we as legislators don't have the ability to require education for them. What ability we do have is to provide resources for education, so we did provide $2.7 million. Also, we had Justice Kent here at our last meeting who talked about how they will be having mandatory training for judges going forward. That's a really good first step.

We also had Ursula Hendel here, who was talking about crown prosecutors and the fact that there is absolutely no education for them. She's been a crown prosecutor for 20 years, and it was five years in before she got her first training.

I'm wondering if you could talk about the need for training for crown prosecutors, especially with some of the groups you're representing who are some of the more marginalized in our communities. Could you just talk about the need for that, and if there's any role the federal government could play in training for crown prosecutors? You can all comment on that if you wish.

Mr. Jeremy Dias (Executive Director, Canadian Centre for Gender and Sexual Diversity): First and foremost, I do want to thank the committee again for having us. We really appreciate being here.

In terms of crown prosecutors, I'll just speak from my own personal experience when I went to trial with my case. The crown prosecutor indicated that they didn't have enough time to even talk to me. For me that was the most heartbreaking part of the experience. I had to deal with the Ottawa Police and detectives. They collected my testimony, and then even before it went to trial it was pleaded out of court. I begged the crown prosecutor to take five minutes and meet with me, but they indicated that they were just too busy.

Then after doing some research into it, I found out that a lot of crown prosecutors are overworked and there are just not enough resources for them to do their jobs. Even before we talk about training for crown prosecutors, I think it's really important that we recognize that the system is rather burdened. They have high caseloads and high turnover, and the development of expertise is tough.

I think, as we move forward, that the federal government needs to reach out to provincial governments, and as lawyers are trained provincially in the schools of education, they definitely look at this being a mandatory part of training. A number of our staff and volunteers, who have just finished their law degrees or are lawyers with our team, have never even talked about LGBTQ issues, let alone disability, race, or intersectionality.

The notion that you can go from kindergarten to the end of a law degree without talking about these really critical issues is shocking. Also, while I understand that this now becomes a provincial and territorial issue, I do think that leadership from folks at your table has the power to reach out to ministers of education about this problem you are seeing at the federal level and...how they might address it even before it becomes a problem moving forward. There's a long-term thing to address there, but also a short-term thing.

I also do recognize that the training—and I'll be very brief, because I know those folks want to speak—

● (0910)

Ms. Pam Damoff: I don't have much time. Can you wrap up so other people can comment?

Mr. Jeremy Dias: Really quickly, the last thing I want to mention is that while we appreciate that there is some new funding going out to folks to provide training for judges, I do think some of that money should be going to community organizations, so that they are providing the training and the training is done in collaboration, as opposed to—

Ms. Pam Damoff: Sorry. Do you mean that you should be training the judges?

Mr. Jeremy Dias: Yes, rather than the funding going to judges to train themselves and figure out whom they need to train, I think the funding should go to community organizations so that we are the ones leading the training and I think the training needs to be mandatory through community organizations. If you want training on LGBTQ issues, you come to the Canadian centre—you know what I mean—a designated....

What the government does this with Xerox, right? If you guys want to pay for a photocopy that is done with—

Ms. Pam Damoff: I'm going to have to cut you off, because I only have a couple of minutes left.

Mr. Jeremy Dias: I'm done.

Ms. Mandi Gray: I just want to say quickly that my experience was a complete anomaly. The crown had an excellent analysis of sex assault law, the judge was an expert in sexual assault, yet I was absolutely brutalized through cross-examination. The crown is terrified of objecting to problematic lines of questioning, because it's so normalized in the courtroom.

The case has now gone to appeal because the judge was too educated on sexual assault, and it looks as though the conviction will be overturned. I think it's largely about changing the norms of what is acceptable in the courtroom, because it has become so normalized that even those actors who have this expertise and education are viewed as biased or are afraid of objecting to particular lines of questioning because they're worried about its being appealed to a higher court.

Even with the education, I think it's more a question of changing the landscape of a sex assault trial as it currently stands.

Ms. Pam Damoff: I think these discussions are important in changing that conversation as well.

Bonnie.

Ms. Bonnie Brayton: I'm in fact going to the crown prosecutors' provincial conference next week and giving a workshop on the D.A. I. decision. I certainly uphold the idea that this is a really important way we're going to also see more convictions. There's no question that the crown prosecutor piece is extremely critical.

I support what Jeremy said. As you heard in my initial testimony, it's quite clear that there need to be adjustments even to the judge training that exists. I would say that for both judges and crown prosecutors you need to involve the civil society organizations that have the expertise to provide the training.

Ms. Pam Damoff: Did you have anything to say? I was going to move on to my next question.

Ms. Jackie Stevens: I would like to add two points, if it's possible.

Ms. Pam Damoff: Sure. Go ahead.

Ms. Jackie Stevens: Thank you.

These are two points in relation to the question around training for crown prosecutors.

Here in Nova Scotia, the public prosecution service of Nova Scotia is independent of the department of justice. I know that this is unique in the country. When it comes to mandating such things as training and policies, there's a slightly different context elsewhere, whereas our Minister of Justice doesn't have any authority over the crown.

The other thing worth noting is that recently the Liberal government here in Nova Scotia has appointed two sexual assault crowns, crowns who will specifically be trained and specializing in the prosecution of sexual assault cases. We hope, certainly, that this move will drastically change what the climate has been here recently in Nova Scotia.

● (0915)

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

We're going to go to Ms. Vecchio for seven minutes.

Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC): Thank you very much.

First I want to correct the record. Ms. Damoff indicated that there was mandatory training. The mandatory training is for new judges; it's not for judges who are currently there. I just want to make sure the record notes that.

We had some excellent expert witnesses here the other day and, looking at the panel here, it's a phenomenal panel, especially when we're looking at some of the issues.

One of the issues we're talking about is diversity. Dr. Elaine Craig stated:

> Diversity on the bench is a huge issue that has the potential to improve a variety of aspects of the process.... Regardless of the pool, we're talking about a very narrow demographic of very privileged individuals.

I think we always have to keep that in mind. We're talking a lot about putting money into judges and a variety of different things like that, but we have to recognize—and it's great to see the panel here today—that we all walk different lives. Therefore, for someone to understand.... We're talking about a group up here trying to understand a group down there, which is not really going to happen. I think it's really important that when we're looking at this training that it has to be available.

I'm trying to find out where you're standing on this. We're talking about people from the LGBTQ community. We're talking about people who are disabled. I think it's really important that we recognize that the judges who are going to be sitting on the bench, who have either been selected now or have been sitting on the bench for a number of years, need to have this training.

What are some of your concerns with how we move forward with this? We talked about the mandatory training. We know that the mandatory training is talks about everything, not just sexual assault. We want to specifically look at sexual assault.

Can I get some comments on that, please?

Jeremy, if you don't mind, please start off.

Mr. Jeremy Dias: I'll just pass it to Bonnie to start. I went first last time.

Ms. Bonnie Brayton: Thanks, Jeremy.

I think you raise a very important point. Certainly one of the things we would like to see is more appointments of judges from diverse communities. That's a really critical way to start to shift the conversation.

Mrs. Karen Vecchio: That is critical, but the problem is that we have to recognize that the pool is not there. That's one thing I really wanted to comment on. That's why I think having the mandatory training is so important. We're talking about not the one-percenters perhaps but the people who have privilege or who have had the opportunity to get to where they are today.

Carry on. Thank you.

Ms. Bonnie Brayton: On that very basis, that's precisely why this mandatory training needs to be done. It's why we put such strong emphasis on making sure that the curriculum is properly developed so that it covers the full range of knowledge they require to make the kinds of decisions they are being charged with making and to oversee these cases.

I also think the point was raised earlier around the fact that one of the "pay it forward" sorts of things we need to think about is, again, that recommendation to ministries of education around adjustments in curriculum. One of the ways that DAWN has tried to address this is by developing something we call "learning briefs". We've developed these learning briefs and we share them with law schools, gender studies programs, and a range of different post-secondary institutions around the idea that, because the curriculum doesn't exist, it's important to take examples, such as that of the R. v. D.A.I. case, and use them in the classroom.

I agree that doesn't address the problem you're talking about right now. I think the reason this bill is so important is precisely that, because we have to move from something that isn't mandatory to something that is mandatory, including for those who are already in that place of privilege.

Mrs. Karen Vecchio: Thanks so much, Bonnie.

Ms. Nneka MacGregor: For us, it's really around who is delivering the training and the quality of the information that's coming forward. As women survivors, when we talk, we're talking from a place of lived experience. We're talking about issues, like what Mandi and Jeremy spoke about, like the way that their trial impacted them, and the lessons that you can learn as a result of going through that whole process.

For us, mandatory training is important, but who is delivering that training? You must include the voices of those individuals who have lived it, because it's our experience that is actually going to change the perception and the understanding.

Mrs. Karen Vecchio: Absolutely.

Mandi.

● (0920)

Ms. Mandi Gray: I will just agree.

Mrs. Karen Vecchio: Wonderful.

Mr. Jeremy Dias: I'll just add that there's such a desperate need to diversify the pool at the very beginning. I think the lack of access to education for LGBTQ, especially trans and non-binary gender folk, remains a critical problem. I think we need to look at, again, forcing provinces to subsidize or equalize access to education so that young people can climb up the ranks a little bit higher and reach into really cool opportunities. Having leaders come out and be supportive and lift up other folks who are in marginalized positions is also very critical.

The first step for that, of course, is creating that dialogue. Again, I just want to reiterate the point that Pam opened the door for. If lawmakers, the Canadian legal aid societies, law societies, and judges are training themselves, the challenge is that civil society is left out of the conversation. Step one is opening the doors so we can engage with them in having that conversation. Step two is then having them create that space so that we can then apply for those jobs and apply for those opportunities and see ourselves in those opportunities.

Mrs. Karen Vecchio: Thank you so much.

Jackie, I'm going to turn it over to you so you can finish the last question and start the new one. We've heard about the high-profile cases. We know that you have numerous cases, and I know even within the London area that I've spoken to the people from Violence Against Women and there are so many women we are working with to whom the justice system has not been fair.

Can you share your views on the last question as well as on some other situations that are not high profile, things you have dealt with in which you have seen that the justice system is failing because of the lack of understanding?

Ms. Jackie Stevens: Thank you.

Some of my points, I think, will touch on both questions.

Nova Scotia has had, over the years, some of the lowest reporting, charging, conviction, and sentencing rates. Certainly as we try to understand and make sense of that, some of it we feel comes from the history of how hidden sexualized violence has been in the province and the lack of, until recently, comprehensive services across the province to address these issues with victims and survivors. There simply haven't been the resources or the specialized programs and services that can provide the supports that victims need throughout the spectrum, from the time that they disclose and then if they do choose to report right through the criminal justice process, but also beyond that.

Avalon Centre 20 years ago started the first specialized trauma-specific sexual assault therapeutic counselling program. It was the only one of its kind until very recently. The fact is that people have gone without access to services and supports or there haven't been the resources to provide the advocacy and the long-term activism and action that people need at all levels. Those are crucial here in Nova Scotia.

The Chair: That's your time.

Now we're going to Ms. Malcolmson for seven minutes.

Ms. Sheila Malcolmson: Thank you, Chair.

This is extremely rich. All of the witness groups have given us lots of material that we can reflect in our final recommendations.

I also want to give you the assurance that on the NDP side, we're pushing for a true national action plan to end violence against women. This would bring that leadership, to train police, to train education, to get consent culture all the way through the system, as other countries, through the United Nations, have done. That push continues.

However, focusing in on this study, I'd love to hear from all four witness groups. Firstly, can you tell me if you agree that, in order to get the right training for judges, you should have access to the curriculum to help design it and inform it? Secondly, have you ever been invited to do so in the past?

Can I start with DAWN and work down and then finish with Avalon?

Ms. Bonnie Brayton: That's an excellent question and, yes, I absolutely think it's critical. One of the things that we know from 30 years of working at DAWN Canada is that we are still, in virtually every arena, finding that the basic understanding of accommodating and supporting women with disabilities has been a failure by the state at every level. To be clear, the level of trust we would have in anyone, except an organization like DAWN Canada being involved and developing that training.... It's just not credible.

In terms of the way that needs to be done, it's important to understand, too, that many of the organizations that have this expertise have been challenged and under-resourced for a long period of time. Also, the capacity to move forward with this kind of an initiative needs to be understood to be something that has to have a long view and a commitment to supporting the women's organizations and organizations for the people we represent. This is so we can continue to do the work and not find ourselves challenged to the point where capacity to deliver this critical training is not possible. That's an important point to know, though.

Thank you very much, Sheila.

● (0925)

Ms. Nneka MacGregor: I'm coming at this from a slightly different perspective, because people talk about specialized courts and specialization. In the court watch that we conducted in 2014-15, it was of the specialized domestic violence courts. We found, overwhelmingly, that even though it was called “specialized courts”, where you had specialized police, specialized crowns, and allegedly specialized judges, the reality was that even with all the specialization, they still lacked the fundamental analysis of gender-based issues. You'd have instances where somebody actually has the courage, goes forward, discloses, the police investigate, and it gets to trial. No matter the charge or the assault, what ends up happening is that it's the same outcome. Everybody ends up with a peace bond, and he walks away. There's nothing that happens.

For me, when we talk about specialization, I come back to the issue of who is delivering the training. Who is delivering the education to make you understand what actually happens in this context?

For us, to answer your question, have we ever been invited? No, we have not. It is critical to go back to Jeremy's point that you cannot educate anybody on a subject matter without the experts. You need experts to do the educating. You cannot have judges telling other judges about issues that they don't know anything about.

Mr. Jeremy Dias: I'll be brief, because I know Avalon has a lot to say on this.

This also speaks to the training that goes on for lawyers in our country. A number of lawyers in our country have to do a mandatory 30-something hours of training every year. Lawyers are constantly telling me that those training days are often slapped together, where they take turns jumping at the podium and talking to one another about their experiences.

I've been to these training days, and it's awful. It's terrible. The joke, of course, is that I'll sit in the back, and I'm not even invited to speak on LGBTQ issues.

We've never been consulted. No other LGBTQ organizations have been invited to the table to speak about these issues. We've had parliamentarians, lawyers, and judges look at us and say, “You know that button you're wearing, that “they/them” button? I don't even know how to navigate that let alone go into the effects of someone being victimized as a trans or non-binary gender person by a sexual assault.”

Absolutely, I think civil society needs to pay a critical role, and I think the federal government could play a critical role in setting out the curriculum. This sounds like you're stepping on the provinces and territories, but you actually wouldn't be because you're setting out this legislation. It wouldn't take a lot of work on your part to raise the bar and say that you're setting the curriculum as well.

Ms. Sheila Malcolmson: Thank you. Avalon, go ahead.

Ms. Jackie Stevens: I want to echo what the other presenters have said. Absolutely, experts from the community working hands-on with these issues, and victims themselves, need to be involved in the process of developing and delivering training to all legal and law enforcement professionals, including judges.

Avalon has worked with the Halifax Regional Police to develop police investigation and response training, and we deliver that on a regular basis. We have worked with the Nova Scotia Barristers' Society to develop training for lawyers. It is something that lawyers can access if they want, but it is not mandatory. Again, one of the questions is whether it is getting to the right people.

Over the years, we have talked to judges and have advocated for training for judges here in Nova Scotia. We have also worked in collaboration with organizations across the country to advocate for training for judges. We haven't been invited to do that. Often, what we hear is that judges would not be seen as impartial if they had specialized training.

I think the point all of us are trying to make is that this doesn't mean you're no longer impartial. What it means is that you are informed and you actually have the specific knowledge and understanding of the issues of sexualized violence, as well as the intersectionalities of race and other oppressions and how that impacts victims and points of law.

Certainly, as we know from many of the people who are on this panel before you now, and from high-profile cases across this country, people are being deliberately targeted for specific reasons, whether it's race or other forms of marginalization because of alcohol or misogyny. Not only are they being targeted for victimization because of those issues, but those very issues of why they're victims are then held against them in a court of law and are used as a way to deny what has happened to them.

That's what we need to get at, in terms of the roots of how we are actually understanding sexualized violence, through training.

● (0930)

The Chair: Very good.

Now we're going to go to Ms. Vandenbeld for seven minutes.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much.

I want to thank all of the panellists. This is very compelling testimony. Again, I apologize to Ms. Brayton for the difficulties in accessing the building.

We've heard a lot in this committee about the fact that women of intersecting identities experience more violence, and experience violence differently. What we are hearing here today is that they may very well be targeted because the judicial system doesn't recognize that. I find it very alarming.

I'm glad you referred to the Supreme Court decision, Ms. Brayton, about those losing their voice because of mental disabilities or not even being able to testify. I think this is quite alarming.

I think it was Ms. Gray who mentioned the stereotypes about what a victim looks like and what an aggressor looks like.

The legislation that is being proposed here talks about training "in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as...myths and stereotypes". Now, in the training that our government is providing for the new judicial advisory committees that are going to be selecting new judges, we go beyond that. We have training in unconscious bias, diversity, and intersectionality.

Do you think that this legislation goes far enough? Is it too narrow? Should it be more explicit in talking about intersectional identities, persons with disabilities or those without voice, LGBTQ, and non-binary? Do you think that we need to include more of that in this legislation?

I'll just go in the same order.

Mr. Jeremy Dias: I think it doesn't go far enough. I think the explicit needs to be there.

We've reached out to judges, lawyers, and law firms, saying, "Hey, we need to do this training", and they've said, "Oh, we had our unconscious bias training" or "We've had our diversity training." Then we'd get a copy of what they did, and LGBTQ is three minutes. It's just not comprehensive.

The funny thing is that there are people who want to learn and they have mandated time that they have to spend every year to learn, yet they're not connecting with civil society.

There is another piece that I really want to mention. I can't speak for the other witnesses, but I do encourage them to speak out if this is their reality as well. We don't have any funding from Victim Services Canada. If I am doing this reach-out to lawyers, law firms, or judges, it's on the side of my desk. We would love to tap into this funding that is going out to these law societies and law organizations, which already have tons of funding to do this work. We would love that funding so that we can do that work.

Avalon is, in my experience, an exception. I've seen their work in Nova Scotia—incredible work, working with the judicial system—and I'm constantly in awe of them. I think they're one of the coolest groups. Again, none of us are funded to do this work, so the progress that some of us have been able to make has been minimal and limited. I just wonder, if you're doing this.... If we're funded to do that, it would make it a lot easier.

Ms. Mandi Gray: Absolutely. It's important to note that I did a talk at a law school and I asked the students if they had ever had a non-lawyer present. I was the first one. They were third-year law students.

It's important to note too that as survivors we are often asked as individuals to provide our expertise, to divulge the most vulnerable moments of our lives, for no compensation. I didn't work until last week when I started working officially with the centre, but until then, there was a request to divulge all this information with no compensation or recognition of just how sensitive the issue is, especially when you are delivering training to people who don't have knowledge of the topics. I think a broader spectrum of training and education is needed. What exactly that will look like will be really difficult to decide, and what it looks like in practice will be interesting.

● (0935)

Ms. Bonnie Brayton: I'm really glad you asked the question. The fact that I brought up the Supreme Court decision speaks to a reality that we had to intervene at that level for this issue to even come forward before the judiciary because of what had happened at the provincial court level with this particular decision.

The reality is that women with disabilities are not believed. Many women are not believed. The whole issue of women's credibility in testifying is critical. The struggle for any woman to come forward and report is huge. You can imagine the kinds of challenges a woman with a disability faces just to get to that court if she's not supported. The idea that she gets to the court and then her credibility is questioned is huge. In terms of the reality that we must include civil society and focus on the training piece is absolutely critical, but that it be intersectional and that this isn't going far enough is absolutely clear.

The idea that Supreme Court decisions like these were attained by DAWN in 2012, and that most of the judiciary and crown prosecutors are not aware of this is so critical. It makes the point really strongly. That was in 2012; it's 2017. In December 2016, I heard from a woman whose daughter had been sexually assaulted. She had a learning disability, was in high school, and was being told by the crown prosecutor that she shouldn't go forward. She didn't really want to go through this, having been discouraged from going forward when she had reported—a 13-year-old girl sexually assaulted at her break in school. So yes, I think it's extremely critical.

Women with disabilities are being sexually assaulted at at least twice the rate of other women and we are not being supported to come forward and testify. Again, I'm coming to the point that all the other folks have made and we've reiterated here: it's critical to understand that, to support that.

Nobody supported DAWN going to the Supreme Court except LEAF. There was no funding. There was just enough funding to get us to the table. To understand that for DAWN Canada to even exist 30 years in, and we're the only organization for women with disabilities, speaks to the huge gap in understanding of who needs to be supported at the civil society level and all the way up.

Ms. Anita Vandenbeld: Thank you.

Ms. Stevens.

Ms. Jackie Stevens: These are very important points that are being made, and I urge the committee to consider them in all seriousness in terms of, across the board, how this impacts this decision around this bill and other areas that address this issue.

Picking up on some of the other presenters, I think that training is crucial. It does need to be intersectional, it needs to be done at all levels, and it needs to be done more than once a year or as continuing education. It needs to be done throughout so that a full spectrum of issues are being addressed, as well as the ways in which training is delivered. Again, it's crucial that experts from the community, from the areas of focus of that training, are involved.

I agree with others that there does need to be compensation, because most of us are doing this work as part of our mandate so there's funding in that sense, but when you're talking about this kind of specialized training that is ongoing, that is multi-faceted, and that is looking not only at first response and direct service delivery, but is also looking at best practices, legislative change. All of that does take time, energy, resources, and specialized knowledge. That needs to be recognized. This training definitely needs to be done in collaboration.

The Chair: That's very good. Thanks so much.

We've had a request to have our committee take 15 minutes at the end of the meeting to go in camera. I'm going to switch up to our second panel, and I want to thank all the witnesses who have testified today. We appreciate your experience and your courage in continuing to bring awareness to this issue.

Mr. Sean Fraser (Central Nova, Lib.): I have a point of order, I guess, or maybe it's just a question.

Some of the witnesses gave incredible testimony. If they're available and are able to stick around for the second half to take questions so we can get further testimony on the record, if possible, is that acceptable?

The Chair: I believe that's allowable, if the witnesses can stay.

Mr. Sean Fraser: Subject to the availability of the witnesses, of course.

Thank you.

The Chair: Very good. Thank you. We'll change up the panel, and we'll suspend briefly while we do that.

● (0935)

(Pause)

● (0940)

The Chair: We're happy to be back with our second panel today.

There is a point of order from Ms. Harder.

Ms. Rachael Harder (Lethbridge, CPC): I have a couple things here.

Pam Damoff has requested that we have 15 minutes at the end that are spent in camera. We've brought witnesses in to speak to this topic. It is incredibly rude to take from their time in order to go in camera without prior warning. That said, we also must have a vote with regard to whether we do in fact go in camera at the end of this meeting because we are changing the agenda.

Again, I do think it's really disrespectful to our witnesses. It really devalues their time. We were hearing excellent testimony before. I'm sure these individuals also have excellent testimony, and we won't get to the topic at hand.

The Chair: Very good. I would call a vote then on the request to have 15 minutes of in camera at the end of the committee.

● (0945)

Ms. Pam Damoff: Can I just say something to it, because someone has just called me rude?

I wouldn't be asking to go in camera if I didn't think it was important. I think we decided to jam-pack these meetings with an awful lot of witnesses, which is challenging to begin with.

I am very respectful of the witnesses and the witnesses' time. I'm going to leave it at that because certainly the opposition has done things that have required us to actually leave meetings. I'm always respectful of our witnesses, and I appreciate having the opportunity to say that.

The Chair: Ms. Vecchio.

Mrs. Karen Vecchio: I respect where we're coming from, but 15 minutes is a lengthy time as well. Is it something that is going to be a two- to three-minute discussion, or is it something that is so critical? We are doing so well on the testimony today.

Ms. Pam Damoff: I don't know, so I think 15 minutes would be appropriate.

The Chair: Is there further discussion on the motion?

Ms. Malcolmson.

Ms. Sheila Malcolmson: I'll say again, without having any notice or any idea what the content is about, and often we do talk about things one-on-one, I'm also opposed. We've invited witnesses here, and then we have to go to question period at 11:00. It's an unusual day. I'm planning to vote no.

The Chair: Is there any further discussion?

(Motion agreed to)

The Chair: With that, I would like to welcome, from the Native Women's Association of Canada, Chad Kicknosway and Francyne Joe. From Ending Violence Association of British Columbia, by video conference, we have Tracy Porteous. From Women's Shelters Canada, we have Lise Martin. From Regroupement québécois des centres d'aide et de lutte contre les agressions à caractère sexuel, we have Marlihan Lopez, who is the liaison officer.

Welcome to all of you.

Each of the speakers will have five minutes to present their comments, and we'll begin with Francyne.

Ms. Francyne Joe (President, Native Women's Association of Canada): Good morning Madam Chairperson, committee members, guests, and distinguished witnesses.

My name is Francyne Joe, and I am the interim president of the Native Women's Association of Canada. I would like to first acknowledge that we are on Algonquin territory and we are meeting here on this beautiful spring day.

I am honoured to have worked alongside Ms. Martin of Women's Shelters Canada on the 16 days of activism to end violence against women campaign. I thank all of today's witnesses for their commitment to supporting the empowerment of women and advocating for policies that address the roots of violence against women.

I am here today with Mr. Chad Kicknosway, NWAC's senior adviser on justice and human rights.

We thank you for the opportunity to present to you today on such an important subject. As a woman of first nations descent and a national representative of first nations and Métis women, it is my primary goal to advocate for policies that improve our well-being. This includes social, economic, cultural, and political spheres. The issue of violence against women extends into each of these areas.

I believe that the reported rate of one in three women living in Canada experiencing sexual assault in their lifetimes is a low estimate, when low reporting rates are taken into account. For indigenous women, the rate is at least three times higher. The launch of the national inquiry into missing and murdered indigenous women and girls marks the official recognition that violence against our women has reached pandemic proportions.

Indigenous women face multiple barriers to receiving justice after being assaulted. The first is the fear of coming forward. This may be a fear of retaliation, but it is commonly a fear of not being heard or believed. There is no question that the general practice of victim-blaming stops many women from coming forward. Indigenous women face not only the sexist aspects of the system but the practice of racism as well. It is well documented that indigenous women have been questioned aggressively, unfairly judged, humiliated, and even assaulted while reporting their assaults and even while in custody.

It may no longer be the practice of the media to criticize a woman for her lifestyle when reporting on cases of sexual assault. However, the decisions and comments made by judiciary officials have continued to perpetuate the racism and sexism that contribute to the propagation of violence against indigenous women. In the case of Cindy Gladue, a judge allowed graphic genital photos of the victim and a physical sample from the body to be shown in court. The fact that she was a sex worker was given undue bearing in the proceedings. The court's prejudice had an impact on the jury's judgments on consent and led to the ultimate acquittal of the man who killed her. Such errors in judgment, coloured by ignorance, bias, and outright racism, send indigenous women and perpetrators of violence against indigenous women a message that indigenous women's lives are not valued.

Indigenous women need to be shown that they are loved and that they are valued.

Our justice system needs to address this by passing bills that will strongly discourage light sentencing against perpetrators of violence against indigenous women, consider being an indigenous woman as an aggravating factor when sentencing an offender, and address the systemic racism and sexism that keeps indigenous women silent, which encourages a perception that they are vulnerable.

This bill comes at a pivotal time in Canada's history as we move toward reconciling with the first inhabitants of this country, the indigenous population. The passing of Bill C-337 would send a clear message that the justice system refuses to play a role in further violence against indigenous women and that indigenous women are respected, loved, and valued.

We thank you for this invitation to offer our input on the specifics of this bill and its implementations.

Therefore, on behalf of the Native Women's Association, I'm pleased to state our support for this bill and elaborate on our recommendations and concerns.

The proposed addition to the Judges Act to make it mandatory for newly appointed judges to complete comprehensive education in sexual assault law is a positive move forward. It must be expected that NWAC would bring forth the recommendation that this comprehensive education include a distinct section, or course, or chapter that discusses indigenous women exclusively. NWAC has done extensive work in this area already, and we are ready to offer our continued expertise on this matter. This could take the form of developing a comprehensive educational tool kit that brings awareness to the unique issues that indigenous women experience.

My first recommendation for the committee to consider is incorporating into subclause 2(2) of the bill, a reference that specifically addresses violence against indigenous women. Therefore, tail end of the proposed amendment of subsection 3(b) of the Judges Act would read, “as well as education regarding myths and stereotypes associated with sexual assault complainants, and education regarding the unique experiences of sexual violence against Indigenous women.”

● (0950)

I believe this inclusion will add value to the reconciliation process between Canada and the first inhabitants of this country.

A shortcoming of the bill that may have been brought to your attention appears to be that the bill's requirements of the comprehensive education in sexual assault law would only apply to newly appointed judges.

Subclause 2(2) of the bill is clear, that candidates in consideration of judicial appointment need to undertake education and “instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants.”

There's nothing the bill—

The Chair: Thank you.

I'm sorry, that's your time.

Ms. Francyne Joe: Okay.

The Chair: We're going to go now to Tracy Porteous, who's the executive director at the Ending Violence Association of British Columbia.

Go ahead, Tracy. You have five minutes.

Ms. Tracy Porteous (Executive Director, Ending Violence Association of British Columbia): Good morning. I'm speaking from the beautiful Coast Salish territory. I'm in Vancouver. I'm speaking on behalf of the Ending Violence Association of B.C., which is a provincial body that has 240 programs across the province that respond to sexual assault, domestic violence, and child abuse. I'm also speaking on behalf of the Ending Violence Association of Canada, which is the new national organization that is in place to respond to gender-based violence in practical ways, like the development of policy, training, and intervention strategies.

I want to thank the committee for having me here today and I would like to express our support of this bill, which addresses something that is at a crisis point in our country. We've never seen such a low in terms of public confidence in the justice system. When it comes to sexual assault, I think the low is at an all-time low. I think that many survivors of sexual assault don't come forward to report because of the news reports they've been hearing, but that has been the case for many years. Stats Canada suggests that only 5% of sexual assault survivors report to the police. However, we believe it's far lower.

There are some researchers out of SFU here in Vancouver who say that the number of women who report sexual assault to the police is so low it's considered statistically insignificant, yet sexual assault is far from insignificant. The results of sexual assault can have a debilitating, psychological impact that lasts an entire lifetime for survivors. I think it is incumbent upon the justice system to get it right.

We also know, from those who work with sex offenders, that for many sex offenders this is not just usually a one-time occurrence. In fact, most sex offenders, by researcher standards, have somewhere between 400 and 1,000 victims in their lifetime. So when we have one survivor in a hundred or one in a thousand who comes forward seeking a remedy from the justice system, it is incumbent upon us to get it right. Unfortunately, we are failing survivors so badly and have been for so many years.

We thank the committee and we thank the House of Commons. We thank the Leader of the Opposition for bringing this issue forward in the way that you are today. We think, specifically in terms of training for judges, that it's important that judges have training to understand the neurobiology of trauma and of fear that so many women have during a sexual assault. I think this is one of the most misunderstood aspects. Sexual assault is unlike any other crime. It's considered one of the most violent crimes a person can experience, and it's considered on par with what a soldier in a war-torn country might experience with PTSD, who has seen horrible things or whose life has been in danger.

I think we need to have police and the judicial folks understand how the trauma of sexual assault manifests in a human being, what happens in the moment of trauma, and what happens that manifests different kinds of actions on the part of survivors. We have seen too many cases where police or the judicial system has really just been misunderstood. In many respects, we are asking people who have very important jobs in our country to do those jobs blindly, without any training. With sexual assault being as complicated as it is, we also need to understand how the dynamics of sexual assault and the fear that is produced in a sexual assault can be replicated in and of itself in a courtroom. Most sexual assaults are perpetrated by males upon females. The issue is about power and control, and unless a judge, in their courtroom, is completely conscious of that, those same power dynamics can be replicated in a courtroom. They can be replicated in an interview room if somebody reports to police.

In addition to the necessary training of the judiciary, we also think the bill would be strengthened by including training for the RCMP. We understand that the aspects of the bill are written in such a way as to try to expedite its ascent, but we are only as strong as our weakest link. If we think about a house and we want to insulate the house but we have one or two windows wide open all winter long, that's the way I see our justice system. We have many police jurisdictions that are availing themselves of trauma training.

● (0955)

To some extent, here and there, the crown is involved. Anti-violence services and sexual assault services have definitely been availing themselves of the best training possible, but if we don't have training at the top of the food chain, if you will, at the judges' or even at the police level, we're doing an extreme disservice.

The other thing that's important to understand is—

The Chair: I'm sorry. That's your time. I'm very sorry.

Ms. Tracy Porteous: That's okay.

The Chair: We're going now to Lise Martin for five minutes. Thanks.

Ms. Lise Martin (Executive Director, Women's Shelters Canada): Thank you for the invitation and the opportunity to share our thoughts on Bill C-337. Women's Shelters Canada, formerly known as the Canadian Network of Women's Shelters and Transition Houses, brings together 14 provincial and territorial shelter organizations representing over 400 shelters across Canada.

We believe that the introduction and, more importantly, the implementation of Bill C-337 is an important step in the right direction. We congratulate all MPs who are working across party lines to make this a reality. Following the numerous testimonies that you have heard over the last 18 months as members of this committee, I do not need to convince you that the systems intended to respond to violence against women are broken.

Recent court decisions in Alberta and Nova Scotia involving sexual assault and domestic violence have spurred public outrage. Clearly, Judge Lenehan and former Justice Camp demonstrated a clear disregard for and a lack of understanding of sexual assault and definitions of consent as defined in the Criminal Code.

In November 2016, Judge Deborah Paquette of the Supreme Court of Newfoundland and Labrador downplayed the severity of strangulation in a domestic violence case, treated the perpetrator as the victim, categorized domestic violence as a private matter, and sentenced the RCMP officer to only 14 days' house arrest for assaulting his former girlfriend. This was in November 2016.

These recent examples, which are by no means exceptions, demonstrate how Canadian courts are failing to send the message that sexual assault and all forms of violence against women are unacceptable. For decades, advocates in the violence against women sector, and survivors, have fought to make domestic violence and sexual assault a visible and socially significant issue. Despite this, we continue to see our work undermined by Canadian judges, who label domestic violence as a private matter and misunderstand the basic ideas and laws about consent and sexual assault.

Enacting Bill C-337 to ensure training for judges working on cases of sexual assault is a demonstration of the Government of Canada's commitment to ensure that our legal system believes survivors. Training, however, must go beyond federal judges. Police, lawyers, crown prosectors, and judges all need training on sexual assault and domestic violence. For victims of sexual assault, police officers are their first interaction with the justice system. Since fear is the main barrier to victims' reporting sexual assault and domestic violence, we need systems that support victims and do not cause them further harm.

Our understanding of the proposed bill is that it only covers federally mandated judges. This is an example of why we need a national action plan on violence against women. A national plan could cover judges mandated by the provinces and territories and begin to ensure that women in all areas of the country have access to comparable levels of services and protection. This is not the case today. This is an area where federal leadership is called for.

In conclusion, mandatory and ongoing education that includes the neurobiological impacts of trauma, the power and control dynamics of violence against women, the role of intersectionality, and the experiences of survivors, with input and participation of women's organizations, would go a long way.

At Women's Shelters Canada, we would like to see training for judges broadened to include not only training on sexual assault but also training on domestic violence and the gendered nature of violence against women; training to better understand colonization and intergenerational trauma, with a focus on their impact upon Canada's indigenous peoples; training for the judicial committees that oversee the appointment of judges; collaboration with women's organizations in developing training, including trauma-informed approaches; and finally, training that is shaped by the perspective of survivors, as they are indeed the true experts.

That concludes my presentation.

● (1000)

[*Translation*]

The Chair: Thank you.

Ms. Lopez, you have five minutes.

Ms. Marlihan Lopez (Liaison Officer, Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel): Thank you for giving us the opportunity to speak this morning about this very important issue.

According to our organization's surveys, many women who choose to file a complaint consider that the justice system's method of handling sexual assault cases is flawed, unfair and fraught with myths and prejudices. Therefore, we think judges and future judges must receive training with regard to sexual assault to counter the stereotypes and prejudices in the legal process and decisions, and to better understand the systemic barriers to fair access to justice.

The Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, or CALACS, emphasized that the judges' training should result in better knowledge of the sexual assault issue and the intersecting contexts of vulnerability, such as addiction, isolation, lack of information, view of the perpetrator toward certain marginalized groups and various forms of violence that may be combined with sexual assault.

The judges' training should make them aware of the various myths and prejudices in our society and institutions, and of how other systems of oppression, such as racism, sexism, disablism and other types of discrimination toward members of the LGTBQ community, contribute to myths and prejudices when it comes to sexual assault.

The training should result in the acknowledgement that there are systemic barriers to access to the legal system that make certain victims particularly vulnerable to discrimination as part of the legal process and that there are barriers to fair access to justice.

The training should first address the definition of sexual assault, and the development of this definition to include other forms of sexual violence and to correspond to our modern reality.

The training should address links with other forms of violence, such as racism, homophobia, transphobia and disablism, which can intersect with sexual assault.

The myths and prejudices must be addressed to analyze how some groups are more stigmatized as a result of their ethnicity, socioeconomic class, sexual orientation, gender identity, migratory status, and so on.

The consequences and discriminatory nature of sexual assault with regard to the victims and their needs and rights must be addressed. Certain consequences may be experienced by all victims, while other consequences are experienced only by some more marginalized groups.

For example, victims with a precarious migratory status may jeopardize their right to remain in the country if they report their attacker. In other cases, sexual assault may be associated with a hate crime if the victims were targeted as a result of their sexual or gender identity. Also, victims with disabilities may be denied services if the perpetrator is a guardian or health care provider.

Judges must be made aware of these realities so they can properly understand the complexity of the consequences faced by victims of sexual assault.

The training must first address the particular needs of victims—especially women—who have specific and multiple vulnerabilities, to ensure fair access to justice.

These needs include the implementation of universal accommodation measures in the justice system and access to certain methods, such as the option of testifying outside the courtroom behind a screen and testifying in camera, to make it easier for victims to testify. The specific realities of immigrant women, refugee or non-status women and women with disabilities must be taken into account.

The training should address the behaviours to avoid in order not to further victimize the victims and act in a discriminatory manner. The handling of certain sexual assault cases is biased by racial, sexual, gender, class and other prejudices.

● (1005)

In the Quebec legal system, for example, in some identified and documented cases, culture and racial or ethnic identity were problematized and used as mitigating factors in the court decisions.

In R. v. Lucien, the ethnic origin and race of the perpetrators and the victim seem to have been used as mitigating factors.

The Chair: Sorry, Ms. Lopez, but your time is up.

[*English*]

Now we'll go to Ms. Ludwig for seven minutes for some questions.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you.

Thank you very much for all your testimony and for helping us become more informed on this issue.

The spirit of the bill before us is an important one that we definitely want to get right. We've heard from a variety of witnesses today and at our last session on the scope of the bill, and some areas where it may need to be broadened. As the bill stands right now, in terms of instilling public confidence and faith in the system, if mandatory training on sexual assault was there as put forward, I'm wondering if it would instill faith in the system, or maybe even a blind faith in the system.

I want to open this up to your experiences and opportunities on this because we've heard from testimony, for example, looking at the crime funnel. A sexual assault takes place. Most victims are fearful of reporting. Then they go before the police. This bill does not take in that element. Then, in the court system itself, many cases are pleaded out. In those that go to court, we've heard testimony about the concerns around the lack of training and awareness in the system by crown prosecutors, as well as the defence attorneys. At that point there could still be another plea. Then we're looking at juries and we're looking at judges.

If we limit the scope of this bill as it stands right now, to just training judges, is that going to give enough faith in the system? Are people going to be assuming that the whole system received mandatory training?

● (1010)

Ms. Lise Martin: My sense is that those in the legal system might think it's sufficient, but definitely those affected first-hand will not, as will the organizations and the advocates that work directly with survivors of sexual assault and violence against women generally.

Ms. Tracy Porteous: I think that one way to make this particular bill stronger is to make sure that it not only mandatorily trains new judges coming onto the bench but mandatorily trains all federal judges. I think the wording right now is that it's new judges, and it should be all judges.

I also think that we shouldn't limit ourselves to creating reforms just in relation to judges' training. If including training for police doesn't work for this bill, then let's have another bill ensuring that training for RCMP is done.

I also think that many legal minds are contemplating changes to the Criminal Code. Right now the way the Criminal Code is worded is that there's a requirement on the crown to prove that consent did not take place. It's very hard to prove that something didn't take place. I was at a conference recently where a number of legal minds were saying that perhaps we need to change or codify the rules in the Criminal Code around consent so that it's up to the defence to prove that consent was there. It's almost a reverse onus.

I think we should be thinking about a number of things. We should be thinking about provincial court judges. I know that's not your jurisdiction. In the 1980s a letter was sent by the federal attorney general to all the attorneys general in the country asking them to do more about spousal assault because women were being beaten by their husbands in their homes, and it's another form of silent violence that's going on across the country. After that happened, every attorney general in every province and territory in the country developed policies and programs and responses in relation to spousal assault.

Of course, we're not there yet, but I think that those of you who are at Canada's House in Ottawa shouldn't underestimate the power you have in influencing your provincial and territorial counterparts. I think when we all work together, we'll likely be more able to advance. Don't think about this particular bill as the only thing that's needed. I think we need to be working on a lot of fronts.

Ms. Karen Ludwig: Thank you very much. Let me add to this as well.

We've heard this from a variety of witnesses, that it's not a one-stop shop involving the mandatory training. Also, my point in asking the question is that unless we start working on the aspect of the crime funnel, mandatory judge training.... The judge could be the best-trained judge out there, but unless the system itself has some correction factor, he or she as a judge before the court or on the bench only has the evidence before him or her upon which to base the judgment. They may be the best informed on sexual assault, but from what we've heard from the last 18 months of testimony looking at violence against women and young girls, we need to have a comprehensive approach to dealing with and supporting those who are survivors of sexual assault.

The Chair: I think Chad had a comment. I don't know whether you're interested to hear it.

Ms. Karen Ludwig: I am, and any other comments on this.

Thank you.

Mr. Chad Kicknosway (Senior Advisor on Justice and Human Rights, Native Women's Association of Canada): I just want to add that the current Judges Act in section 62 grants the council powers to establish ongoing seminars for existing judiciary. My concern here is that this bill only impacts newly appointed judges. I would suggest incorporating into the current Bill C-337 some sort of transitional provision or some other provision that compels the council to make it a priority that all judges, even the old ones, take the mandatory comprehensive education on sexual assault.

Ms. Karen Ludwig: Thank you for raising that. When Justice Kent and Mr. Sabourin were in, they were talking about the training itself. If it's just training for new judges, they may not see another sexual assault case for five or six years, and it would be outdated or they might not remember—or they might never see a sexual assault case. One recommendation we have heard is that there be ongoing training within the judicial system and in other areas.

I'm just going to pass my time over, unless you want to say something, Francyne.

● (1015)

Mr. Sean Fraser: You're out of time, I think.

Some hon. members: Oh, oh!

Ms. Karen Ludwig: Thank you.

The Chair: All right.

Then we'll go to Ms. Harder for seven minutes.

Ms. Rachael Harder: Thank you very much.

One thing the National Judicial Institute said is how important it is to consult with wider society when forming the training that goes out to judges or that they participate in. They said that they want to do it or are doing it.

When Ms. Ambrose was consulted on this bill or brought in as a witness, she also said that she hoped the Liberal government would put this as a priority and that funding would be put toward consulting groups such as yours in order to make sure that the training was spoken to by, I would say, the experts or those who are on the ground working with these individuals day in and day out, which of course is very important for this training to be as effective as possible.

That said, I would be curious to know whether any of you have been consulted with regard to the new judges training.

We'll start with Lise.

Ms. Lise Martin: No. I haven't been. I think on this issue it's a question of bringing together the theory and the practice. I don't think it's one or the other. It's really needing to bring them together to see how they work or don't work. That needs to be incorporated into the training.

Ms. Rachael Harder: Chad, has your organization ever been consulted?

Mr. Chad Kicknosway: No. It hasn't.

Ms. Rachael Harder: Francyne.

Ms. Francyne Joe: No.

Ms. Rachael Harder: Tracy.

Ms. Tracy Porteous: My feeling is that the National Judicial Institute is starting to open up. I've been working in this field for 35 years and just last year was invited to do a one-off workshop for a group of provincial court judges at a national judges' conference on domestic violence and homicide.

The issue is embedding systemic change. I think the judges would say that there is a course on sexual assault for new judges or there is some training that happens at national conferences, but mandatory, embedded training, whereby....

As has been said by others, it shouldn't happen in a silo. I think the judiciary and the national training institute for judges should be working with those of us who have some expertise, who have been providing training across the sector, to ensure that the training that's going forward is founded from a perspective of women's and survivors' experience of sexual assault and is founded from a trauma-informed perspective. I don't think they should be working in silos any longer.

Ms. Rachael Harder: Thank you.

Ms. Lopez, has your organization ever been consulted?

Ms. Marlihan Lopez: No. We've never been consulted on the issues. I agree with what Tracy is saying. It's very important with these types of initiatives that the groups on the ground that have the expertise be consulted. I see it over and over again. The groups aren't consulted, then these projects are pushed forward, and finally they don't address the realities that victims, or survivors face in sexual assault.

Ms. Rachael Harder: Thank you very much.

Again, this is a question for each of you. Of course, you talk within your various networks to other organizations. Are you hearing overall support for this bill? Are there other organizations that you're talking to that would say, “Yes, we're in support of this bill going forward”?

I'd like to start with Tracy on this one.

Ms. Tracy Porteous: Yes. Across the board I have not spoken to anybody who isn't in support of the bill. Many people like me would like to see some changes to the bill in terms of training for all federal judges, not just the new ones. We would also like to see a mechanism for provincial court training, in police, and so forth, everything that I've already said.

I would say that the 240 programs under our umbrella and the national associations that I co-chair have endorsed the bill unanimously.

Ms. Rachael Harder: Thank you very much, Tracy.

Ms. Lopez.

Ms. Marlihan Lopez: There is general support for the bill among groups that work with sexual assault victims, but we're also fearful that if the bill is passed it will be seen like a panacea to confronting the systemic barriers that exist for victims and survivors when accessing the criminal justice system.

Also, we're fearful that it will just be an initiative that will be imposed on newly appointed judges. I think it's important that all judges be pushed to have this training. I think it's very important that we address the fact that it's not only the judges who need to be trained but police officers, even people who offer services, health services. I think we shouldn't concentrate all our efforts only on judges. That's really important for people who work on—

● (1020)

Ms. Rachael Harder: Thank you very much, Ms. Lopez.

Francyne.

Ms. Francyne Joe: Yes. In speaking with some of my friends, my colleagues, in British Columbia, we felt that if this type of training had been offered earlier it would have probably been supportive of inquiry, where women would have felt more confident in the system to report their cases.

As my colleagues have pointed out, this is the type of training that needs to be incorporated in the whole process. Personally, I've gone with a friend to a centre and when she wanted to go through the process it was very daunting, so then you don't have a reporting of an incident.

Ms. Rachael Harder: I totally understand that. I think this is a good first step. I think we have to start with the judiciary, and of course it doesn't stop there. We definitely need an overhaul of the whole system.

We only have a few seconds left here. Lise, what are you hearing?

Ms. Lise Martin: It's definitely support, but I think it would be a missed opportunity to just zone in on sexual assault. It should be on the whole continuum of violence against women and gender-based violence.

Ms. Rachael Harder: Sure. I would agree to that.

Chad.

Mr. Chad Kicknosway: Again, I want to rearticulate including a distinct chapter or course or component that deals with indigenous women.

Ms. Rachael Harder: Are you hearing organizations in support of this, though?

The Chair: I'm sorry. That's your time.

We're going now to Ms. Malcolmson for seven minutes.

Ms. Sheila Malcolmson: Thank you, Chair.

I'll say to all the witnesses, as I did to the first panel, that this “big picture” comprehensive approach is exactly what Canada committed to at the United Nations when it said it would adopt a national action plan to end violence against women and would take that leadership to intercept the training of judges, of police officers, whether municipal, territorial, or provincial.

We're very sorry that the Conservatives didn't fulfill that commitment when they were in power and the Liberal government is also saying that they won't. The NDP keeps pushing it and saying this is the solution. I appreciate this is a private member's bill that's only able to take one narrow slice, but it's because we haven't had implementation so far of Canada's commitment to the UN 20 years ago....

That said, I want to turn to the Native Women's Association. Thank you for raising again the terrible story of Cindy Gladue, in Alberta, because we haven't said her name in this committee review yet. I would ask you to expand a little more on how training for judges could be created in a way that's sensitive to the cultural and differently lived experiences of indigenous women.

Maybe a second part of that question is, would it be helpful for groups like NWAC—actually, I think you said this maybe in response to my Conservative colleague.... But is there anything you want to add about the imperative to review and shape the content, so that judges really are delivering their judgments in a culturally sensitive way?

Ms. Francyne Joe: I'll say a little bit here and then I'll pass it to Chad.

I think what we need to see is that this training, as Ms. Martin mentioned, also incorporates the history that affects indigenous women.

We've had the history from residential schools. The traumas are affecting women. They're affecting the perspective of Canadian society towards indigenous women, so that we unfortunately don't have indigenous women who feel respected or valued. This type of training can start to open up the eyes of Canadian society and the judicial system.

I'll pass it to Chad and he'll talk more about what we see this looking like.

Mr. Chad Kicknosway: This training should incorporate everything that Francyne has mentioned, but it should also incorporate the unpacking and unfolding of the systemic injustices within the criminal justice system that impact a lot of aboriginal offenders and victims as well.

It's not just the judges but also the crown and defence counsel who devalue or see less value in an indigenous person when they're in the criminal justice system.

I think it's important for the entire judiciary to understand that it's not that they're less productive or have nowhere else to go. They're equal citizens in Canada, and I think that needs to be attached to any type of comprehensive education package.

● (1025)

Ms. Sheila Malcolmson: Turning to Lise Martin, can you tell us more about the on-the-ground outcomes you've seen? What's the collateral damage to women who have come forward and then don't feel fairly treated by the justice system? Can you illustrate that a little bit more? What's the damage from not improving the system and not giving victims and survivors a better day in court?

Ms. Lise Martin: I think it's often a case of daily occurrences of bad decisions that just build on one another and make it difficult for women to move out of this life of violence that they are living, essentially.

I have a family court example of a judge providing time for his preschool children, very young children, whose contact with the dad was via Skype at nine o'clock, to accommodate his schedule.

That's the type of daily occurrence that has an impact on the bigger picture. I think that's where this training just has to have so many levels, different levels of understanding. Also, it needs to be put under an intersectional framework and a gender equity framework, because that underpins everything.

Ms. Sheila Malcolmson: Thank you. I'll turn to our Quebec and British Columbia witnesses who are online.

Ms. Lopez and Ms. Porteous, can you add more about the imperative to have a comprehensive approach to gender-sensitive and trauma-informed training for every step of the justice system, and uniformity across the country so that women who move from place to place can have some assurance of equal access to justice?

Ms. Marlihan Lopez: We emphasize that the training must have an intersectional perspective because very often we forget the realities that certain marginalized groups face in the context of sexual assault and sexual violence, and these realities are not examined when pushing forward certain initiatives.

When we talk about access to the judicial system, we have to remember that some groups have even faced systemic barriers just to report the assault in terms of talking about their experience. It's even more difficult when you're dealing with groups that don't even have a migratory status that would enable them to access the system. For groups that face systemic racism or other types of discrimination, accessing the justice system is even more difficult.

I think that this initiative has to underline and address how all these systemic barriers work against these victims and make it so difficult for them to access the justice system.

Ms. Sheila Malcolmson: Thank you.

The Chair: Thank you very much.

Now we'll go to Sean Fraser for seven minutes.

Mr. Sean Fraser: I'll ask Mr. Dias to return to the table quickly. I know we're running up against our time limit.

You mentioned, Mr. Dias, during your testimony, the quality of the training that you've been to. I'm a lawyer by trade, and I've sat through those same sessions. They can be incredibly weak by times, when you show up just to prove that you've done what's mandatory.

One of the pieces of testimony we heard from the Office of the Commissioner for Federal Judicial Affairs was that they're seeing a huge uptick in the number of judicial applications, to the tune of 500 in this year alone. He said, point-blank, we do not have the capacity to deliver quality training, and what will happen is that we will put in some session that satisfies the requirements. Essentially, in my mind it would be like a rubber-stamping process.

One of the things that came out of the testimony was that there might be another way to do this, by saying, let's disclose the training you have as part of the lengthy questionnaire that we've introduced in the appointments process. Let's have every judge say, "If I'm appointed, I will undertake to complete training", and then, on the back end, fund community organizations who are experts to deliver the training. Would this be a better way to protect against the risk that we do a rubber-stamping process with people who don't have the lived experience that the experts do?

● (1030)

Mr. Jeremy Dias: Absolutely. Without a doubt, I think that would be a great option. I also think the training has to be recurring, because these issues change dramatically over time. I've been using "they/them" pronouns for six years now, but it's only in the last two years that we've seen community organizations, businesses, and government recognize non-binary pronouns.

The reality is that this education requires a sort of ongoing update and upkeep, so that we're staying *au courant*. It's really important that this continues.

The answer is yes, absolutely. Having it happen with us first and then moving forward is a brilliant idea.

Mr. Sean Fraser: Thank you very much.

The Chair: Very good.

Unfortunately, in the interests of going to our committee business, that's the end of our panel discussion, so I want to thank all of our witnesses. If there is information you'd care to send to the clerk afterwards, that would be fine.

Mrs. Karen Vecchio: I have a point of order.

I'm just concerned as we're about to go in camera without knowing what the business is, and I would like to know why we're going in camera. I'm very fearful that the reason we're going in camera is that we have not seen the Prime Minister say that he—

Ms. Pam Damoff: We've already voted on it.

Mrs. Karen Vecchio: Actually, there's debate allowed, thank you. Sorry.

The Chair: The clerk brought me information that says, because we didn't have unanimous consent on the motion to go in camera, that triggers a debate where each party will get three minutes, and then you'll have one minute of rebuttal to talk about why it ought to be in camera.

Mrs. Karen Vecchio: As I continue, my biggest concern is that we are looking at a substantial bill that's going to help women, the LGBTQ community, women who are disabled, first nations, a variety of different people, and we're very concerned that this government is not in support of this bill. Therefore, we are not having the opportunity to hear from witnesses—

Ms. Pam Damoff: Can we dismiss the witnesses?

Mr. Sean Fraser: I have a point of order, Madam Chair.

The clerk may be able to shed some light on this. I believe the correct procedure would have been to have the debate before the vote. There was an opportunity, and both sides actually commented on it. We moved to a vote and voted to go in camera, so would that not have satisfied the requirements for debate that it seems are now being relitigated?

The Chair: The clerk has asked us to suspend at this point because she needs to check into that, so we'll suspend.

● (1030)

(Pause)

● (1035)

The Chair: All right, so we've had a clarification. Apparently, because the topic of discussion will be the agenda, which is something that it was previously agreed upon we would go in camera for, let's suspend—

Ms. Sheila Malcolmson: Chair, can I just double-check? I thought the vote was on the point of order. The vote was not to go in camera. That was my understanding.

The Chair: No, the vote was not on the point of order. The vote was on a motion to go in camera for 15 minutes, but actually we don't even need a motion to go in camera for things that we've already previously agreed would be. We just didn't know what the topic was, but now we know that the topic is the agenda and we know that there was a motion that was voted, so we can go in camera —

Mrs. Karen Vecchio: The room's not being cleared.

The Chair: We're going to go in camera, so let's clear the room. I'll suspend while we go in camera.

[*Proceedings continue in camera*]