



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 080 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, December 6, 2017

—
Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

Wednesday, December 6, 2017

• (1545)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone. Welcome to our meeting of the Standing Committee on Justice and Human Rights as we resume our study into counselling and other mental health supports for jurors.

We are delighted to be joined today by an illustrious panel. I will start with the people who are here in this room. Testifying as individuals, we have Mr. Patrick Baillie and Ms. Marie-Eve Leclerc.

Welcome.

Ms. Marie-Eve Leclerc (Ph.D. Candidate, As an Individual): Thank you.

The Chair: We also have Ms. Michelle Lonergan.

Welcome.

Ms. Michelle Lonergan (Ph.D. Candidate, As an Individual): Thank you.

The Chair: We also have Mr. Greg Kylo, who is the national director of program innovation at the Canadian Mental Health Association. Welcome.

Mr. Greg Kylo (National Director, Program Innovation, Canadian Mental Health Association): Thank you.

The Chair: By video conference from Toronto, we have Ms. Vivien Lee, who is a psychologist, testifying on behalf of the Centre for Addiction and Mental Health. Welcome, Ms. Lee.

Dr. Vivien Lee (Psychologist, Centre for Addiction and Mental Health): Hello.

The Chair: We will ask you all to present. It's eight to 10 minutes per group. We're going to go in the order in which the witnesses appear on the list.

We will start with Mr. Baillie.

Dr. Patrick Baillie (As an Individual): Thank you, Mr. Chair, and thank you for the invitation to present.

Yesterday you heard from Madam Justice Sheilah Martin, who was my law school Ethics professor. One of the things Sheilah didn't talk about was a particularly difficult case she had a few years back. Dustin Paxton was charged with incredible abuse of his roommate, to the point that when the roommate was dropped off at the hospital in another province, he was so disfigured that it took the hospital days to figure out his identity.

Multiple experts, including me, were involved in the case: court clerks, police officers from two provinces, lawyers, and Madam Justice Martin herself. All of those individuals had access to mental health supports afterwards. Also, I know that to varying degrees, each was impacted by that particular case.

Imagine, then, the scenario in which an envelope shows up on your doorstep summoning you to jury duty. You are not an individual who typically spends much time in the justice system; you're not a member of the media; and you're not a member of the legal profession, but you are compelled to show up and take responsibility for determining the fate of one of your fellow citizens.

You are not appropriately compensated for that. In Ontario, there is no pay for the first 10 days that somebody serves on jury duty. In Alberta, we'll pay you \$50 a day for showing up for jury duty. Every province—to my understanding—has a minimum wage standard, but we don't pay even the minimum wage to the jurors who are showing up to provide that responsibility. In fact, in some provinces they'll even have to pay for their own parking. With child care and other sorts of related expenses, those stresses start to add up.

The first thing people do when they receive their jury summons is to start thinking about how they can get out of it. We end up with a situation in which, effectively, people who are members of unions or people who are well paid in their other practices, through passive income, for example, are the only folks who are able to serve on juries—hardly a jury of one's peers.

Imagine then a trial such as either of the two gruesome trials we had in Alberta earlier this year: Douglas Garland, charged with the murder of grandparents Alvin and Kathy Liknes and their grandson, Nathan O'Brien; or Derek Saretzky, charged with the murder of three individuals in southern Alberta. Each of those was a jury trial; each lasted for weeks; and each involved graphic testimony.

In the case of the Garland trial, there was evidence that Mr. Garland had hung the victims on a meat hook, which was subsequently tested for DNA that showed the presence of the victims. That meat hook was passed around, albeit in a plastic bag, from juror to juror with the sound of the thud on the table as it moved through the participants.

It's not surprising then, that while people are thinking about the financial impact or the scheduling impact of serving on a jury, they don't spend as much time thinking about the mental health impact of serving on a jury. But we know—as my colleagues will tell you—that some evidence points to the occurrence of post-traumatic stress, to symptoms of anxiety, depression, anorexia, sleeplessness, and other forms of nervousness.

Then at the end of the trial process you are told—in some provinces—that you may get access to four sessions of counselling over the next two months, or you may not get access to any sorts of counselling.

But the very first instruction jurors are given, when they start their responsibility, is the instruction from the judge that they are not to discuss this case with anyone other than the members of the jury when they are all present. You heard two weeks ago the compelling stories of four jurors who sat on lengthy trials. Mark, for example, is not able to talk to his friends or family members about what he is going through. When you and I have a bad day, and we want to find some way to debrief and unwind, we talk to a spouse, a family member, or a close friend. We may talk to a psychologist or other therapist. That's the way we unwind, but jurors are specifically told that this tool is not available to them.

In the Garland trial, we had Justice David Gates going out of his way to look after the mental health of the jurors, but now that caution—that support for the jurors—is actually one of the grounds being used in the appeal as suggesting that he was biased in his rulings by being so protective of the jurors' mental health.

We end up, then, in the situation where we don't tell people what it is they're getting into; we don't support them when they're in the process; and we give very limited support to them after the process.

● (1550)

What I'm proposing to you is a series of steps—and I'll put a formal document before you over the next little while—that deal with the information that should be provided to jurors before they get involved in jury duty. It reminds them of their own resiliency skills and the things they typically do to look after themselves, and gives them more information about things like voir dices that are going to disrupt the trial process. There may be days when they're not called to be there, and they have absolutely no information about what's going on. There should be information about some of the mechanics, about who's going to pay for parking, and what sort of compensation they're going to receive. Then during the trial there should be a process that allows those people to have access to a counsellor, a psychologist, or other therapist who's been appropriately designated by the province, who doesn't talk about the trial, but provides support to those jurors who may be in lengthy trial processes. It's about making sure that we have adequate compensation so there isn't a financial stress that goes along with that, and perhaps in some of the longer trials even thinking about having a mandatory break. You heard about a juror who served on a 10-month trial. There wasn't a vacation break along the way. Nobody paid them to take a week off and not come in for jury duty, and yet everybody else who would typically be involved in a process over that length of time would be allowed to have a vacation.

Then there are the things we do afterwards. Juries, as you well know, are never allowed to discuss the deliberations. They're never allowed to talk to anybody about what happened in the jury room. But I can tell you that some of the jurors who've approached me over the last couple of years, who've sought out counselling because they found the provincial programs to be lacking, have talked about how stressful that part of the process was. They've impartially listened to all of the witnesses. They've heard the evidence. They've handled the exhibits. When they get into the jury room, some of them have told me, there's been a unanimous decision about what the verdict is going to be, but then a lengthy discussion, over hours, and even over days, about how each juror reached that particular decision. We know from some of the limited research on jurors that the deliberation process can be just as stressful as the rest of the process.

Again, what I'm proposing to you is this. If you look at section 10 of the Divorce Act, you see it allows for a judge to nominate an individual who would assess whether or not there's any possibility of reconciliation for this couple. The information that's disclosed during that assessment process is never compellable in any other setting and cannot be disclosed even with the consent of the husband and wife. A similar condition that would allow jurors, with a designated service provider, to talk about everything they've been involved with would then start to do the things that we need to do to look after the jurors' mental health.

I look forward to answering your questions. I'm happy to talk more about this. It's something that I've advocated on for years. I greatly appreciate the committee's interest in taking on this topic at this particular time.

Thank you.

The Chair: Thank you very much, Mr. Baillie.

I will move on to Ms. Leclerc and Ms. Lonergan.

Ms. Michelle Lonergan: Good afternoon, members of the committee. Thank you very much for inviting me here today to discuss the very important topic of juror mental health.

I'm a fourth year Ph.D. candidate in the department of Psychiatry at McGill University, and for the last nine years I have been studying the devastating effects of trauma and post-traumatic stress disorder under Dr. Alain Brunet's supervision in his laboratory on psychological trauma at the Douglas research centre.

I am here today with my colleague Marie-Eve Leclerc, who is a current Ph.D. student in the school of psychology at the University of Ottawa, a former master's student with Dr. Brunet in the department of psychiatry at McGill, and co-author on the research I'll be presenting today.

In September 2014, the trial of Luka Magnotta, a man who murdered Concordia University student Lin Jun in spring 2012, began. That same month my supervisor Dr. Brunet expressed his concerns in an interview about the increased risk for PTSD among the jurors, the lawyers, the expert witnesses, and other court staff who might be present and witness violent material during Magnotta's trial. This marked the beginning of Dr. Brunet's interest in examining the potentially traumatizing effects of jury duty.

An important caveat is that, about a year prior, the fifth edition of the *Diagnostic and Statistical Manual for Mental Disorders* was published. In it the definition of what constitutes a traumatic event was broadened and now includes individuals who are indirectly but repeatedly exposed to violent materials through photographs and videos, typically in the course of their professional duty. This was not included in prior versions of the DSM, and what this means is that the American Psychiatric Association now recognizes that any individual who is repeatedly exposed to violent and graphic material, such as a juror, can be at risk for developing post-traumatic stress disorder.

With the idea of building a research study investigating this question, Dr. Brunet asked me to write a paper that systematically reviewed the scientific literature on juror mental health, the results of which were published in 2016 in the *Journal of Criminal Justice*.

In total, we located 14 studies published since 1985 that examined post-traumatic stress symptoms as a result of jury duty. This research revealed that as many as 50% of the jurors will experience moderate to severe PTSD symptoms that could benefit from clinical intervention. Up to 12% of these jurors might be diagnosed with PTSD right after the trial, which can persist in some individuals for months and maybe even years.

The most consistently reported symptoms across the studies we reviewed include intrusive thoughts, memories, and nightmares about what they heard or what they saw; difficulty sleeping and insomnia; a lack of appetite; and feeling emotionally numb and disconnected from their surroundings and loved ones and hyper-vigilant within their surroundings—so feeling constantly on guard and afraid. Other research demonstrates high rates of depression and anxiety, in addition to substance use problems, which often complicate the PTSD profile.

Our review also highlights several sources of stress among jurors, the most prominent being factors related to the deliberations. These include deciding on a verdict, fears of making the wrong decision, tension among jurors, and being isolated from familiar support networks.

The nature of the trial was associated with severity of pathology across the studies, with 30% to 50% of jurors reporting that gruesome evidence was at least moderately stressful.

Jurors on criminal trials involving crimes against a person consistently report more severe PTSD symptoms and are significantly more likely to be diagnosed with probable PTSD and major depression, compared to those who sit either on non-criminal trials or on criminal trials that involve crimes that aren't committed against a person, such as burglaries or credit card fraud.

Other research suggests that the length of the trial in combination with the presentation of graphic evidence carries the highest risk for PTSD among jurors.

The literature also highlights that jurors with a history of mental health disorders, especially those who are faced with a case that is relevant to their own personal and prior trauma, are at increased risk for PTSD following their service.

• (1555)

Although the research to date supports the idea that the risk for PTSD might be highest among jurors who sit on high-profile trials involving violent crimes against a person, the strength of our findings should be considered in light of several methodological limitations, specifically regarding how trauma and PTSD are measured and diagnosed across and between studies, for example.

I am happy to elaborate on these issues during the question period.

For now, I'll turn it over to my colleague, Marie-Eve Leclerc, who is here today to offer some recommendations based on our work, as well as to answer any questions regarding her experience with attempting to conduct a study on PTSD among former jurors.

Ms. Marie-Eve Leclerc: Thank you, and thank you for inviting me here today.

For my master's degree, I was involved in designing a study that aimed to evaluate PTSD among jury members who were seated on a very specific criminal trial. Unfortunately, due to several obstacles, I was unable to complete this research.

To maintain the focus on trauma symptoms in the courtroom, I conducted a study on PTSD among Canadian lawyers instead. I would be happy to answer questions about those results in the question and answer period should there be an interest.

Based on this experience and the work that was presented here by Ms. Lonergan, I would like to discuss the following recommendations.

These recommendations are for planning a research study. In order to engage in active problem-solving regarding this issue, we believe that we must expand beyond the courtroom. For example, we suggest employing a multidisciplinary team of academic experts in the field of psychiatry, psychology, and the law with the goal of building bridges and addressing the limitations of higher research.

Research could be directed at evaluating potential jurors for a psychiatric disorder prior to, after, or several months following the trial. These clinician-led evaluations would help us understand the scope as well as the progression of the problem. This would not only help us build a profile to identify who is more at risk for trauma-related disorders as a result of their service but also shed some light on the direct effect of jury duty on mental health.

The following recommendations are for addressing juror mental health.

Post-trial debriefing is sometimes used by judges to help buffer the detrimental effects of jury service on mental health. Despite the judicial system's commendable efforts to mitigate symptoms of stress in jurors through the use of post-trial debriefing services, evidence revealed that debriefing alone may be insufficient to reduce the levels of pathology among those jurors. As with many treatments, combining several evidence-based practices would likely result in optimal outcomes.

These could include the use of psychoeducation on self-care and adaptive coping mechanisms to prepare the jurors to face the potentially traumatic material. This would also provide an opportunity to elaborate on the psychological services that would be offered to the jury members. It could also include counselling and debriefing led by mental health professionals throughout the trial, as a group or individually.

It is our belief that mental health disorders are best addressed by mental health professionals. Moreover, clinician-led debriefing and post-trial counselling for an extended period of time would be highly beneficial. Post-trial, extended follow-ups could be conducted weeks or months following the end of a trial, in order to reach out to jurors and ensure their proper rehabilitation, as many individuals do not seek help for trauma-related disorders.

Lastly, section 649 of the Canadian Criminal Code prevents former jurors from disclosing information related to the judicial process, which restricts in-depth investigation into the true experience of Canadian jurors for research as well as clinical purposes. It would be highly beneficial to amend this section for licensed mental health professionals, who are mandated by confidentiality policies, or by having psychologists, who are under oath and specifically working for the court. They could assist the jurors throughout this process, as designated service providers, as mentioned earlier by Dr. Baillie.

In conclusion, we are delighted to hear that the House of Commons is initiating research investigating this very important matter and we are honoured to share our findings with you today.

Thank you for your attention.

•(1600)

The Chair: Thank you very much, ladies.

Now, we will go to the Canadian Mental Health Association and Mr. Kylo.

Mr. Greg Kylo: Thank you, Mr. Chair.

Good afternoon, members of the committee and colleagues. Thank you for inviting me here today.

My name's Greg Kylo, and I'm the national director of program innovation with the Canadian Mental Health Association, at the national office.

We're celebrating 100 years in 2018, and CMHA, as you may not be aware—we're often confused with CAMH—is the largest community-based mental health non-profit in Canada. Even within the sector, it's sometimes overlooked that CMHA has an active presence in more than 330 communities, with almost 5,000 staff impacting the lives of more than 1.2 million Canadians per year.

CMHA is the only national community mental health organization that is inclusive of all diagnoses, all professions, and all demographics.

Thank you for your attention to this very important issue. The mental health of jurors needs to be protected, and measures need to be in place to ensure that duties of being a juror and contribution to justice in our country are not at the detriment of jurors' well-being. Today I'd like to focus on key areas that we believe will speak to the importance of protecting the mental health of jury members, and to how these services may be best positioned within the justice system.

We at CMHA applaud the federal government's commitment to addressing the mental health of jurors. The impact jury duty can have on participating citizens needs to be understood more thoroughly, as is the case of the serious mental health issue that many people associate with first responders or soldiers engaged in combat operations. We know that occupational stress injuries, or OSIs, and post-traumatic stress disorder, PTSD, can develop for myriad reasons, and these reasons are often very subjective.

The negative effect of a difficult trial can be felt by anyone participating in the legal proceeding, and we're hopeful that over time we can ensure that all parties are protected from the harmful impact of OSIs and PTSD. We encourage making mental supports available to all individuals involved in our justice system. CMHA National encourages the justice system to collaborate with community mental health agencies and to find effective solutions for occupational stress injury and post-traumatic stress disorder amongst the participants in all courts in Canada.

CMHA branches across the country are prepared to assist local courts in the rollout of any programming designed to address OSIs and PTSD within their communities. As has been articulated, and as you are aware, occupational stress injury is any persistent psychological difficulty resulting from operational duties, such as law enforcement, combat, or any other service-related duties. PTSD is a type of OSI that presents after an individual has experienced a particularly harmful event, known as trauma. While OSIs and PTSD are often associated with veterans and soldiers engaged in combat operations, they can be developed through other circumstances, such as jury duty. Jury members, lawyers, survivors of violence and crime, police officers, paramedics, Children's Aid workers, nurses, doctors, and humanitarian workers are examples of individuals who are exposed to primary or secondary trauma in the course of their work.

PTSD is one of the most common types of OSI and can present as depression, anxiety, substance misuse, and other mental health symptoms that persist and disrupt daily life. PTSD has a range of symptoms, such as flashbacks, nightmares, the development of phobias, depression, irritability, anger, and sometimes self-harm and suicide.

Trauma is a very subjective experience, which means that certain events may trigger the development of PTSD in some individuals, but not in others. Trauma can have physical, mental, and emotional components. One can also experience secondary trauma, or secondary traumatic stress, which is the experience when a person witnesses or hears about another's trauma and hasn't necessarily experienced it first-hand themselves.

Listening to the lived experience of those who have served as jurors is a critical step in guiding action and provisions to identify what is required to protect and preserve the mental health of those who serve in our Canadian justice system.

I'd like to acknowledge and thank those with lived experience of mental illness and involvement within our justice system who have contributed to this discussion. We have learned that there are certain types of trials that pose more of a risk to the juror, and the nature of the trial must be considered. In the case of murder trials, the compounding effects of listening to details of crime, viewing evidence such as autopsy photos, and passing judgment on an offender's guilt have left jury members emotionally distressed.

•(1605)

Seeking help is often left to the individual and is voluntary. In the case of jury duty, standard practices of care must be embedded within the jury duty responsibilities and should be considered mandatory safety precautions. We recommend that the Department of Justice establish an enhanced protocol on the psychological protection of jury members. Jury members should be informed that participating in such a safety protocol before and after jury duty is expected in order to ensure the safety and well-being of jurors.

Should these services be mandatory? Wearing safety protective gear is mandatory in some workplaces. In the case of jury duty, when jurors are exposed to highly traumatic material, this produces an extremely unsafe environment. Therefore, we recommend considering mandatory measures be established to safeguard against harm in certain trials.

It should not be left up to the individual jury member to apply to the Criminal Injuries Compensation Board for reimbursement for cost of treatment, lost wages, and other expenses following the trauma and psychological injury of serving as a juror. Programs including jury debriefing and post-trial counselling should be provided free and should be easily accessible. That accessibility is really the key to ensuring it is available to anyone serving jury duty.

The federal government should consider following provincial justice departments such as that in Ontario, where jurors are able to call a designated phone number 24-7 to get help whenever they need it, and in Manitoba, where having a jury debriefing program is a best practice and has been implemented successfully.

These programs would benefit anyone who has served in a criminal or civil trial or an inquest. Jurors will be provided with information on the program at the beginning of the trial and then again as it finishes or as needed throughout.

In conclusion, I want to recognize that although not have been many studies or significant landmark trials on the psychological impact to jury members have been done to date, we do have evidence of the lasting effect of occupational stress injuries and the

importance of minimizing exposure to harm. If individuals have been exposed to stress or significant traumatic material, we do have evidence-based tools to support the person to manage this exposure and address their emotional and psychological needs.

I urge the Canadian government not to wait until evidence mounts that certain practices such as debriefing and post-trial counselling in the context of jury duty are beneficial but to act now and make these evidence-based practices readily available, accessible, and compensated.

Thank you again for inviting me here today.

•(1610)

The Chair: Thank you very much, Mr. Kylo.

Now we will go to the Centre for Addiction and Mental Health.

Ms. Lee, the floor is yours.

Dr. Vivien Lee: Thank you, Mr. Chair. Thank you to the Standing Committee on Justice and Human Rights for the opportunity to discuss mental health supports for jurors.

I'm a clinical psychologist who has worked with many individuals who have experienced trauma in their line of work, including first responders and military members. What many of them have in common is not only mental health injuries as a result of exposure to trauma but also the confusion and stigma that they're suffering as a result of something that's considered a normal part of their duties. Therefore they often do not recognize or seek help until much later, when their difficulties have impacted many aspects of their work and personal lives.

Why is this important to the Canadian government? In addition to the amount of suffering of individuals and loved ones, the Mental Health Commission of Canada has estimated the cost of mental health difficulties to employers in Canada to be \$6 billion in lost productivity per year. As well, 30% of short-term and long-term disability claims can be attributed to mental health difficulties.

Imagine if we could make a dent in that economic cost and that incredible amount of suffering. We can certainly do so by improving awareness and increasing early access to effective treatments to reduce this ripple effect on our economy. The World Health Organization estimates that every \$1 invested in treatment for depression and anxiety results in a return of approximately \$4 in better health and our ability to work.

Returning to the impact of trauma on mental health, I'd like to highlight the impact of cumulative trauma or the repeated exposure to traumatic material and human suffering. For example, criminal investigators may have to view extremely disturbing and graphic images and videos over and over. They may bear witness to extreme suffering and work with victims and their families. The impact of exposure to such material can induce feelings of horror and helplessness, and these were included in the revised criteria for PTSD a few years ago.

Repetitive exposure to traumatic, gruesome details, as well as witnessing the emotional impact on victims, their loved ones, and witnesses, can certainly impact those in the courtroom as well. Members of a jury have no choice as to whether they serve on a jury or as to the type of trial. As does the work of investigators, jury duty may involve exposure to horrific images, videos, and details of unspeakable horrors and immense suffering, yet currently jurors do not receive any education on the potential impact on their own health.

As do first responders and others exposed to trauma in their work, jurors may try to “suck it up” and fulfill their civic duties. They may not recognize that they’re suffering until they have finished and have returned to their regular routines. There, they may begin to see the impact on their emotional and physical functioning.

PTSD symptoms may include but are not limited to repeated disturbing memories and images; nightmares; feeling jumpy; trouble sleeping and concentrating; and feeling numb, guilty, sad, or scared. They may try to cope by drowning out these problems with alcohol or drugs. Imagine experiencing these types of problems day after day, night after night, seeing horrible images when you look at your computer screen or—worse—in the faces of your loved ones.

I worked with an individual who was severely impacted by his service as a jury member. He was repeatedly exposed to horrific images and details of the victim’s suffering throughout the trial. He performed his civic duty well; however, he developed PTSD. Of course, he had no idea what was happening because he knew nothing about PTSD except that it was something that happened to soldiers and victims of terrible crimes. He never imagined that his difficulties may have been the result of a regular societal role of serving on a jury.

His home life deteriorated, and his work suffered. When he tried to reach out to the justice system for help, he received few answers. By the time my client realized something was wrong and that it was connected to his jury duty, and by the time he eventually made his way into my office, at least a couple of years had gone by, and his PTSD symptoms were by then well-entrenched and impacted every single aspect of his life.

There were then many other stressors to deal with on top of his PTSD. Treatment was also a major financial burden for him, resulting in fewer and irregular sessions. If he had had knowledge of how trauma could impact jurors, guidance in accessing services sooner, and financial help in paying for evidence-based treatment, he could have started to feel better much sooner, and many of these ripple effects may have been avoided.

This brings me to evidence-based treatment for PTSD. This term “evidence-based” is important.

• (1615)

There are many counsellors and therapists out there who offer therapy for trauma. Their effectiveness varies widely. Some may be ineffective or may even worsen one’s PTSD. It is crucial that evidence-based treatment be available for both the client’s access to effective care that can help him or her and for reducing long-term costs for the payer of that treatment.

The American Psychological Association recently updated its guidelines for best practices in PTSD treatment based on strong research support. These include treatments such as cognitive behavioural therapy, prolonged exposure, and cognitive processing therapy. These treatments have also been studied and recommended by the National Center for PTSD run by Veterans Affairs in the U.S.

In summary, there is a similarity between jurors serving their civic duty on trials and criminal investigators bearing witness to traumatic scenes over and over. Recommendations for this standing committee include the following practices.

One, provide jurors with education about the potential impact of traumatic material as well as resources for healthy coping skills before and throughout the trial. This can also help to reduce stigma.

Two, provide psychological information and check-ins after each trial so that individuals can recognize if they do begin to experience trauma-related difficulties. Such a process would let individuals know that experiencing intrusive symptoms such as memories and nightmares for the first few weeks is normal. This process would not ask individuals to go into detail about the trauma, as doing so can be harmful too soon after the experience.

Three, because many individuals may not notice problems until they have transitioned back into their regular lives, it will be important to provide contact information for a specific organization or individual should the individual need guidance in accessing services.

Four, having funding available for evidence-based treatment can make an incredible difference in both the short term and the long term.

Thank you, members of the committee, for allowing me the opportunity to speak today about the impact of trauma on jury members. Having a federal framework in place to support members of our society performing such an important civic duty will be remembered as a crucial step forward in promoting mental health for Canadians as a whole.

Thank you.

The Chair: Thank you very much, Ms. Lee, and now we’re going to questions. Because you can’t see what’s going on in the room, I’ll explain that we’re going to be having questions for all the different witnesses, whether they’re in the room or, like you, on video conference. We’ll do a round of questions, and then I’ll open it up to any questions.

We’re going to start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

Thank you very much for this testimony. This was very powerful. It was right on the money. It is very much appreciated.

I hope, Ms. Leclerc and Ms. Lonergan, that when you produce your thesis, you will send a copy to us at the justice committee. Believe it or not, over the years I've read a number of theses on issues that I'm very interested in. We would certainly appreciate it, if that's possible.

Dr. Baillie, I have a feeling that you could almost write this report for us right now.

Voices: Oh, oh!

Hon. Rob Nicholson: You seem to cover off everything. You've said that you're going to be forwarding material to us.

Dr. Patrick Baillie: Yes.

Hon. Rob Nicholson: That would be very welcome, I want you to know.

You've touched upon all the different aspects of this. One of the things you said, among others, is that we would let jurors know what they're going to get in terms of compensation, if anything. I'd almost be embarrassed to tell some of these jurors what they're going to get. You're trying to explain to them how important their role is, but they'll get nothing for the first two weeks, and they might get fifty bucks a day after that if it goes for a couple of months.

What are your suggestions on that? Or what thoughts do you have on that? Wouldn't this contribute to these individuals...? You made the very good point that when people get these notices, they say, "What do I do to get out of this?" That's number one. But isn't this another way of letting these people know that they are not being treated one hundred per cent, that they're not going to be treated well under the system? Doesn't it send that message?

• (1620)

Dr. Patrick Baillie: Sir, I saw you nodding when I made the comment about the minimum wage. I don't think this is a minimum-wage job.

Hon. Rob Nicholson: Right on.

Dr. Patrick Baillie: We're asking people to all of a sudden become experts in criminal testimony, in evaluating the quality of the evidence that's put in front of them. Also, as my colleagues have pointed out, jurors don't have the option of looking away. They can't take a 15-minute coffee break in the middle of somebody's testimony.

I think that minimum wage is an absolute minimum, and we need to be looking at something significantly higher than that. If you assume \$15 an hour in a regular day—because I don't really expect people to go to work after they've served on jury duty—then you'd be talking in the range of \$100 to \$120 a day as an absolute minimum.

If I may, I'll give you just a quick biography. I've been a psychologist working with the Calgary Police Service for 22 years, and I've been working in an outpatient forensic program for 25 years. Because of the outpatient forensic program, I had judges who said to me, "If you want to understand how to think like a lawyer, you need to become one." Being a doctor wasn't enough. I went back and did law school afterwards, just for fun, you know—

Voices: Oh, oh!

Dr. Patrick Baillie: I'm a psychologist and a lawyer, hence part of the reason why I see this from a number of different perspectives. I've also been privileged to have conversations with judges and lawyers over the years about how these cases impact on them, and then more recently with jurors who sought me out because of the amount of media attention that's been brought to this issue, frankly, and the opportunity to discuss it.

I think the supports that we need to put in place begin with the finances, but as my colleagues have suggested, it's something that needs to continue afterwards, and four sessions within a two-month period simply isn't enough.

Hon. Rob Nicholson: They might not have the symptoms for two months.

Dr. Patrick Baillie: As Dr. Lee suggested, it could be years later that the individual develops the symptoms. As Mark told you, it was months later that family members noticed that he just wasn't getting back to being his regular self. Mark's advocacy on this has been absolutely instrumental in getting people to pay attention to it.

Finances are part of it, but having qualified evidence-based therapy from qualified therapists on an ongoing basis is critical.

Hon. Rob Nicholson: Yes.

Dr. Patrick Baillie: I did a CBC segment a couple of weeks ago. The director of the Alberta program was invited to participate in the conversation. She said that over the last two years that the program has been in place, they've had about 20 jurors access the program.

Well, even if you assume the four-session maximum for them, even if you were paying the therapists \$200 an hour, that would be a \$16,000 bill to run the program for the entire province. For a minister to suggest that this has significant cost implications, they're not paying attention to the mental health of the jurors.

Hon. Rob Nicholson: Ms. Leclerc, you've made a very interesting suggestion to us, and it's one that is right up our alley: making a possible recommendation to change the Criminal Code.

I don't know of any other information that somebody could get that they would never be able to discuss with anybody else. Your suggestion—and I'm hoping we will move forward on that—is to look at that section of the Criminal Code and say, "Just a second—it is possible to share that information with somebody in the medical profession." Thank you very much for that.

Did you have any other comments on that?

Ms. Marie-Eve Leclerc: Not particularly, but perhaps Ms. Lonergan does.

Hon. Rob Nicholson: I can tell you what I was going to ask you, Ms. Lonergan. You said there are a number of different measurements on PTSD and a number of different studies there. I wonder if you could explain that just a little more.

Ms. Michelle Lonergan: As a trauma researcher, I found it quite daunting to review this literature. Many research studies that are out there use validated measures of post-traumatic stress disorders. I approached this paper by saying, okay, I have a specific question: I want to know to what extent jurors meet PTSD diagnostic criteria or exhibit symptoms following gruesome evidence. Those were pretty much my search terms.

What I ended up finding was that although a lot of the studies employed standard measures of post-traumatic stress disorder, many of them were modified to such an extent that I was reading them and asking what they meant. When you want to compare this to other PTSD populations, it becomes uncomparable.

Or, for example, they would report prevalence statistics of the diagnosis of PTSD, but you would have no idea of how long the symptoms had been lasting. Some research omitted criterion F from the PTSD diagnosis, which refers to functional impairment: your inability to function at home, at work, or at school. Some studies said the prevalence was 10% of PTSD, but they didn't take into account... they just decided to not measure that. I was like, well, are these people experiencing symptoms to the severity of their lives being disrupted, or is it manageable?

There were just a lot of questions that this literature brought up. If I were to redo it, if I were to do it myself, I would supplement these measures they've used, which are often self-reports in which people rate on a scale of one to whatever how much they experience this. I would supplement that with clinician-led evaluations of post-traumatic stress disorder, using gold standard measures. Many measures can be used to give you an accurate idea of what the issue really is.

• (1625)

The Chair: Thank you very much.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Chair.

I'll start with you, Dr. Baillie. First I want to say that I agree with Mr. Nicholson. This evidence has been very powerful, and it agrees one hundred per cent with all the other testimony we've heard. It's very helpful to hear the same themes coming before us again and again. I think it gives us a really good idea of where we should be going with this.

One of the things that have come up many times is the idea of having counsellors available to jurors during the trial, and the concern there is that in some way they might influence the decision.

Dr. Baillie, you mentioned designated service providers after the trial. Are these the same people or would they be psychologists at large? Would that person be related to the court system in some way and be some sort of officer of the court? Perhaps you could comment on those points.

Anyone else can feel free to respond as well.

Dr. Patrick Baillie: I think the questions are related. When I refer to a designated service provider, I think it's important that whoever is providing the treatment services understand the unique position they're in. If they're talking to a juror in the midst of a trial process, which frankly could be happening with any psychologist—the juror may be in a regular course of therapy and have a session on Wednesday afternoon after their court date and be talking about a stress they're experiencing—we need to make sure that the psychologist does not in any way influence the proceeding.

I've had trials where I've had contact with judges in the middle of the trial about what we could be doing to provide support to those

jurors during the trial. I think the support needs to simply be generic, in the sense of reminding them about some of the symptoms that they may be experiencing, and, as Dr. Lee said, understanding that some of those symptoms are normal experiences and don't necessarily lead to the diagnosis of post-traumatic stress disorder.

As Ms. Lonergan pointed out, there are four symptoms of post-traumatic stress disorder, but you get the diagnosis only when those symptoms are causing marked distress or clinically significant impairment in social, occupational, and other important areas of functioning.

As you can tell, I may have used that phrase a few times in my life.

Voices: Oh, oh!

Dr. Patrick Baillie: You can help people with the symptoms without getting into why they may be experiencing those symptoms and without needing to talk about particular pieces of evidence. During the trial process, there are ways of providing assistance, but again, if that responsibility is put onto a psychologist or a therapist who is not part of the legal system, they may not know that having a conversation about what the juror saw the day before is problematic. I think the designated provider applies to both the in-trial supports as well as the post-trial supports.

• (1630)

Mr. Ron McKinnon: Would counselling during a trial reduce the likelihood of developing post-traumatic stress? In talking with first responders, I've heard about the need for pre-PTSD therapy as well. Would this fit into that category?

Dr. Patrick Baillie: Again, there are the three parts, as Dr. Lee suggested. Providing some education prior to the start of the process as sort of a stress inoculation approach can be an important part of reducing the symptoms of PTSD.

I do the recruit screening for the Calgary Police Service. We would be concerned about somebody being hired into the police service who has had previous traumatic experiences. Similarly, somebody serving on a jury may be much more vulnerable to experiencing symptoms of trauma if they've had that pre-existing condition themselves. I'm not saying that you exclude them from the process, but that kind of educational information may be of assistance to them, as would be that ongoing support, so that they understand that the symptoms they may be experiencing are normal, and so that if they became abnormal—that marked distress or clinically significant impairment—we're providing supports to them down the road.

Mr. Ron McKinnon: Thank you.

Dr. Lee, would you like to respond?

Dr. Vivien Lee: In terms of counselling during the trial, you're right: we don't want to have someone potentially biasing jurors. What we can do first of all is the education, and we can normalize some of their reactions.

People experience things and think they shouldn't because no one else seems to, and then they feel like an alien. It's about having to normalize that a lot of what they're thinking is normal, and it's also about helping them to incorporate some healthy coping skills, even just things like deep breathing, telling themselves it's okay, and letting themselves engage in some self-care and trying to relax a bit. Things like that I know sound very obvious, but people don't see them in the middle of such a stressful circumstance, and they think, "This shouldn't be affecting me." It would be about focusing more on self-care and healthy coping during the trial.

Mr. Ron McKinnon: Thank you.

Would anybody else like to respond to that? Mr. Kylo?

Mr. Greg Kylo: Yes. I agree with my colleagues, and I think it actually provides an opportunity for illness prevention.

We've talked about substance use and addiction. As Dr. Lee mentioned, a coping mechanism that's unfortunately very normalized in our society is to say, after a long day of jury duty, "I need a drink", or something stronger, right? This is a very maladaptive way of coping with this type of stress and can be progressive and lead to significant illness.

As has been said, having those supports during the trial can normalize the reaction to this really dangerous environment but also can provide other options, rather than the normal coping mechanisms that many of us might not see as being unhealthy. Not only can that be done in a professional way so as not to bias an outcome, I think, but it can produce better jury deliberations and outcomes because people are more capable of showing up and having a good perspective in the process.

The Chair: Thank you very much.

Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Chair.

I want to reiterate previous comments. To all the witnesses, the fact that you came to the committee and offered such concise, clear testimony and all had specific recommendations makes it very difficult for us to ask questions, because you've really done our work for us.

I want to echo what Mr. Nicholson said, especially to you, Dr. Baillie. When you come to a group of legislators and you have a clear recommendation to amend a statute of Canada, that is right up our alley. Thank you for referencing section 10 of the Divorce Act, because that's something we can use as a model. I notice that the way subsection 10(2) is written, it seems to use fairly direct language, such as "the court shall".

Dr. Patrick Baillie: Yes.

Mr. Alistair MacGregor: I also note that section 627 of the Criminal Code allows for a judge to "permit a juror with a physical disability" to have those kinds of supports. When we make the recommendation to the Minister of Justice to have that clear amendment to the Criminal Code, are you in favour of using the more direct form of language that is in the Divorce Act, for example?

You touched on that too, Ms. Leclerc.

Dr. Patrick Baillie: Without getting into the specific language, I think it's important to give jurors the opportunity to talk about all of the aspects of the trial.

There's one point that I don't think has been brought up so far in this process, not just today but at all. In the Derek Saretzky trial, as in many trials these days, more than 12 jurors were empanelled, but the trial concluded with 14 of them. The code requires that two of those jurors be randomly excluded from the process before the deliberations start, and one of the jurors was quite vocal in the courtroom and outside in saying that this was a travesty, that "you make me sit through all of this testimony and then you kick me out of the room before I have a chance to participate with my colleagues in the deliberation process."

One of the recommendations that I made in a letter to the minister a couple of months ago was that there's nothing magical about the number twelve. To exclude those two witnesses and to say that makes it easier to come to your unanimous verdict suggests that you somehow randomly picked the two dissenters, who would have been obstructing a unanimous verdict anyway. Why not allow all of the people to participate in the process? The language we use about allowing people to discuss the deliberations is a recognition of the challenges that are inherent to deliberations, but we also have the challenge of those people who get kicked off a jury before they're even allowed to conclude the process.

• (1635)

Mr. Alistair MacGregor: I also appreciated your earlier comments about how in some cases we are paying jurors less than the minimum wage, less than some teenager at McDonald's is making. Look at what they could potentially be exposed to and the total involvement in a court case. As you said, they can't turn away. They have to give everything their careful consideration.

Dr. Lee, in your testimony you came up with some figures that really made me sit up and take notice, such as, for example, the fact that Canada loses \$6 billion in lost productivity each year due to mental health and that for every dollar invested we see a \$4 return. We saw similar statistics when this committee was studying access to justice. Making those investments in legal aid takes care of a whole host, a myriad, of associated problems.

One of the things we're struggling with is that the administration of justice is a provincial jurisdiction, but the federal government's duty is the Criminal Code. Also, we made a recommendation that we take a specific amount of money out of the Canada social transfer and dedicate it right to legal aid.

Looking at the financial side of things, I'm really just trying to nail down a specific recommendation that we can make to the justice minister. Would you like to see something similar, where we have dedicated federal funding to make sure the provinces have a fairly even standard across this country?

Dr. Vivien Lee: I think so, especially if it's proportional to the number of people in each province who would be serving on a jury. This is as long as it's not a fixed amount. When things are starting out, it can be more of a pilot. If you're finding that it might help to put more money into, for example, counselling services during the trial as well as evidenced-based treatment afterwards, you might have to tweak that just to see what works in the long term. It might take a while to see what the optimal amount is.

I do think this is something that should be across Canada. Why should some people in Ontario—it is wonderful that we have access to this now—get support after serving on a jury when someone in the next province doesn't have that?

Mr. Alistair MacGregor: Mr. Kylo, do you have any other comments? Some of your testimony talked about the investment, that if you treat it early, you can mitigate problems later down the line. Do you have anything else you'd like to add under the same vein of questioning?

Mr. Greg Kylo: About the one dollar invested and the four, that really speaks to mental health promotion and illness prevention. There's a real opportunity here, specifically where there is trauma that will be experienced by certain people going through this process. It's a really good investment. Probably Dr. Lee and I and others could provide more specific data to back that up for you so that those recommendations can have that evidence. It would be really prudent, yes.

Mr. Alistair MacGregor: Thank you.

The Chair: Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

Thank you to all of the witnesses for being here today and for your excellent presentations. It is very much appreciated.

Dr. Baillie, in your testimony you talked about the fact that it's pretty difficult to go through a really long jury trial and not have the ability to take a break or a mental health pause. I'm wondering if you know of any other jurisdiction in the world that uses a jury system where the opportunity is available for jurors to take a break.

• (1640)

Dr. Patrick Baillie: It's an excellent question. I'm not aware of any such jurisdiction. I can refer back to the Garland trial, when Mr. Justice David Gates, on his own decision, went out of his way, after some of the more difficult days of testimony, to suspend proceedings for that day and give jurors the next day off. He took two breaks during what was a five-week trial. My concern for those much longer trials would be coordinating the court schedule and giving the opportunity to jurors to take a longer break.

To go to the specifics of your question, I'm not aware of that being built in anywhere else.

Mr. Colin Fraser: We heard in previous testimony, from an earlier day in this study, that some of the former jurors found it difficult to not have any closure on the matter. After they deliberated and there was a conviction, it went on to a sentencing hearing. They weren't included or made aware of what the result was. Are you familiar with this sort of criticism from former jurors, and what do you think we could do about that in terms of a recommendation?

Dr. Patrick Baillie: I think there are two parts to the process. I'll again use the Saretzky trial as an example. Mr. Saretzky was found guilty, but there was the issue of parole ineligibility. Because it was a multiple homicide, he was potentially facing consecutive periods of parole ineligibility. Most of the jurors, but not all of them, came back for the sentencing hearing and sat in the gallery. For them, that was something they wanted to see—the end of the process.

Some people may choose to access that, but most of the jurors, and I think all of my colleagues, including Dr. Lee, would comment on the fact that jurors almost unanimously say, "We finished. We gave our verdict. The judge came in, talked to us for a couple of minutes, told us to look after ourselves going forward, and that was it. I got my parking validated and I left the courthouse." There isn't a sense of closure.

I'll share this because I think it's relatively public information. One of the juries that I had some closer contact with gets together periodically. They go out for dinner together to check in on each other and see how they're doing. Again, it's a small financial cost to them to be able to have that kind of support from other people who have been through a similar process. Wouldn't it be nice if on a three- or six-month basis there was some additional support available to them for their own self-care as well as for, as Dr. Lee suggested, contacting the jurors to see how they're doing more generally?

Mr. Colin Fraser: With regard to the matters themselves that we're talking about, criminal proceedings—

And I noticed, Ms. Leclerc and Ms. Lonergan, that you touched on the fact that obviously there are big differences between certain types of gruesome cases, which I think we all have in mind when we're talking about this sort of program being made available.

I'm wondering, Dr. Baillie, if you can touch on how you would distinguish between certain cases and whether there should be a distinction made in different cases that have extra support or it is just up to the court to do that.

Dr. Patrick Baillie: I think that, as all of us have pointed out, there are some individuals who do a great job of serving on juries and who have no difficulties afterwards, and there are some individuals who are triggered by something that happens during the process, but we can't know in advance what those triggers may be. So, I think most of us have made recommendations about criminal trials, civil trials, and fatality inquiries. It covers a broad spectrum. Even in a civil trial there may be such emotionality in the courtroom that there's a connection for that juror back to the case. So to say that only in homicide trials would we provide this or only in child sexual abuse cases, I think that's simply too restrictive.

Mr. Colin Fraser: Ms. Leclerc and Ms. Lonergan, I know it was raised in your testimony. Can you speak to that as well, please?

Ms. Michelle Lonergan: I think I would agree with Dr. Baillie that it's a very difficult question to answer. I wouldn't necessarily be in favour of segregating who does and who does not get extra services. It could be something that could be open to everybody. As I said, the research generally supports that what we think could cause the most problems typically does cause the most problems. But that being said, other research—for example, one study in 1994—has shown that jurors on criminal trials involving crimes against a person were six times more likely to have major depression, but the same thing wasn't true for post-traumatic stress disorder. There was only one person who had post-traumatic stress disorder and that person was from a burglary or credit card fraud case. The field and the scope of the problem and who is more at risk in what type of trial really aren't there yet to answer that question at all. I think that also brings up the issue of cherry-picking with regard to who does and does not get services. I think there are programs and opportunities and avenues we can look into that would provide cost-effective and therapeutically effective help for any juror who is suffering after any trial.

• (1645)

Mr. Colin Fraser: That's great. Thanks.

The Chair: Dr. Lee, do you want to chime in?

Dr. Vivien Lee: Just to agree with everyone else who has been speaking, I'd be very cautious about pre-emptively picking which types of crimes are likely to be traumatizing or not. To borrow from a different context, I see a lot of people who have been injured in the workplace. Many times it may not look traumatic to an outside person because it's part of their job, and their employer has dismissed it and said that they shouldn't be feeling this and they shouldn't be feeling trauma, but every person is different. Everybody else has been saying that you never quite know what is going to trigger someone. What's traumatic for one person may not be for other people, so, I'd be very cautious about that.

The Chair: Thank you.

Now we'll move to a question round with shorter questions.

We'll have Mr. Liepert, Mr. Ehsassi, and Mr. Cooper and then go back to Mr. Fraser.

Mr. Liepert.

Mr. Ron Liepert (Calgary Signal Hill, CPC): I have just a couple of things.

Dr. Baillie, just as a follow-on to what we were just talking about, I certainly don't need any more convincing, and I would be surprised if anybody around this table did, about having better information for jurors as they head into jury duty. It seems as though, according to some of the testimony we've had, when young children are involved, that tends to be much more traumatic. Both trials you referred to, Garland and Saretzky, involved young children. Would you suggest that, maybe as part of that information package or session, if a young child is part of the trial, that fact be specifically addressed?

Dr. Patrick Baillie: Yes. I think the more specific we can make the information without biasing the process, the more helpful it's likely to be.

Mr. Ron Liepert: You don't think that would then come back, as you said earlier with regard to the Saretzky trial—was that the one, in which you said...?

Dr. Patrick Baillie: It's Garland.

Mr. Ron Liepert: They're now using it against ...?

Dr. Patrick Baillie: I know the defence counsel in that case quite well.

In my view—and I don't mean to prejudge the Court of Appeal—what Justice Gates was doing was looking out for the mental health of the jurors relative to the evidence they were hearing about the victims. That evidence didn't necessarily point to this accused as being the perpetrator. When you provide information for the jury that says that a child died in this offence, unless there's some dispute about whether or not the child died or simply disappeared, we know that a child died, or that a child was a victim of sexual abuse.

I don't think it biases the jury to say, "This is the type of testimony that you're likely to be hearing." Again, as all of us have said, reminding people of their natural resiliency skills—monitoring their sleep, monitoring their appetite, getting a regular workout, maintaining their social contacts, and restricting their consumption of alcohol and other drugs.... I don't think that creates a bias.

Mr. Ron Liepert: I have just a quick comment, Mr. Kylo—

Actually there's one more thing. We actually had one of the kicked-out jurors as a witness, which was very helpful. Again, that's a real issue that somehow doesn't seem that difficult to solve.

Dr. Patrick Baillie: Right.

Mr. Ron Liepert: Mr. Kylo, this is just a quick comment, and it's not criticism. Some of the testimony we've had seemed to indicate that Alberta has had in place for a long time the most progressive program. I guess that's the way I can put it. Yet in your remarks, you made no mention of Alberta. You mentioned Ontario and Manitoba.

Is the Canadian Mental Health Association familiar with Alberta's program, and is it one that might be modelled by other provinces?

• (1650)

Mr. Greg Kylo: Absolutely, I would suggest that it would be probably one of the best practices out there. I mentioned Ontario and Manitoba because they're less known, and I would have assumed that you'd heard quite a lot about Alberta's programs to date.

The Chair: Thank you very much.

Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

I in turn would like to thank all of you. You've been incredibly helpful. Given that it is getting pretty late, I'll keep it very brief.

Dr. Lee, you obviously have a lot of experience dealing with first responders. Is there any legislation, policy, or code of conduct that applies to first responders that we could graft and use when it comes to jurors? Is there anything that comes to mind?

Dr. Vivien Lee: Services vary widely across Canada in terms of what they offer their staff. I've been a trainer with York Region Paramedic Services. I'm going to use them as an example, because I think they're doing a great job. With all their paramedics, I'm actually one of their clinician trainers for a resiliency-mental health preparedness program. They're just going in, and with all the new recruits and all the seasoned staff, they're just talking about, "What are some of these operational stress injuries that people may experience? What do they look like? What are some basic coping skills? Here are some numbers that you can reach out to, or some of our staff to reach out to if you're having problems," and it's confidential.

They're going there proactively. They also have a peer support team, which isn't as feasible with a jury, but even having some kind of... Having a mental health support person or clinician or someone they can reach out to during the trial and afterwards, I think, would be tremendously helpful.

Mr. Ali Ehsassi: Thank you very much for that.

Now I will turn to Dr. Baillie.

You alluded to the numbers for Alberta, with regard to the people who are actually seeking services, and the numbers really seemed quite minuscule. Would you possibly have costs for other provinces as well?

Dr. Patrick Baillie: I don't, because I don't know what their utilization is, and there have also been different dates. Saskatchewan introduced their program last week. Again, it's a four-session, two-month model. I don't imagine anybody has taken advantage of it just yet, but in other provinces, I'm sure those numbers would be available through the mechanisms they have set up, such as an employee assistance program.

Mr. Ali Ehsassi: That's something we should definitely look into. Thank you for that.

You talked about information that should be provided beforehand, but you alluded to only two things if I was listening correctly. The two things you were talking about were the mechanics and compensation and things of that nature.

Could you elaborate on that? What else would you include in those kits that are handed to jurors before the trial?

Dr. Patrick Baillie: The other critical piece I hope I alluded to was the resiliency component of the things jurors need to do to be looking after themselves during the process. The finances and the mechanics are the things that allow jurors to have some sense of control over what's going on in their lives. When people don't feel control, they tend to experience higher levels of anxiety, and so if you give them that information, they will have a little bit more knowledge about what to expect in terms of the mechanics.

Jurors may not have a great deal of sense of what to expect in terms of emotional testimony. Going back to the Garland trial, we had a medical examiner who was tearful on the stand. She was an experienced professional, and yet she was struggling with the evidence she was being asked to present. We need to provide jury members who don't have that experience with information up front about the kinds of difficult testimony they may experience. We need to tell them about the kinds of symptoms they may experience, and

tell them that those are normal symptoms. We need to tell them about some of the strategies they can use to ameliorate those symptoms during the trial process, and inform them of the supports available to them afterwards.

Mr. Ali Ehsassi: Is this something that's currently done in Alberta?

Dr. Patrick Baillie: There is a brochure that's provided. I think it could be more comprehensive. I think the program generally could be more comprehensive.

Mr. Ali Ehsassi: Would you be kind enough to send a copy of that to the committee?

Dr. Patrick Baillie: Certainly.

Mr. Ali Ehsassi: Do you know if any other province has a similar practice?

Dr. Patrick Baillie: I believe there is information provided to jurors in other provinces, but I don't know the depth of that information.

The Chair: We have already asked for all the brochures.

You mentioned Alberta in your testimony. Ontario has it. Yukon has it, and we've asked for it from all of the provinces that have the program.

Mr. Cooper.

• (1655)

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Mr. Kylo, you alluded to the Manitoba debriefing program. We really haven't heard much evidence about that program. I understand it was established in 2005, but other than that, I really don't know much about it. I was wondering if you could elaborate on the Manitoba experience with the debriefing program.

Dr. Baillie, in relating your experience in counselling jurors, you mentioned that a number of people who came to you were perhaps not satisfied with the four counselling sessions or required further assistance. One of the things I was quite surprised to hear about from Alberta and Ontario was the relatively small number of jurors who are accessing those programs. I was also surprised to learn that almost no one who has access to those programs has asked for more sessions. I believe most provinces offer four sessions, and in Ontario it's up to eight.

Do you have any theory as to why that is? Would it be a lack of information? Is it that jurors are discouraged in some way? It just seems a little bit surprising in light of the statistics, which show that PTSD and other stresses are quite commonplace in the people accessing these programs.

Dr. Patrick Baillie: I'll give Mr. Kylo the chance to answer on the debrief program.

Mr. Greg Kylo: We'd love to be able to provide some follow-up information. The executive director of CMHA, Manitoba division, Winnipeg branch, provided me with the background details of the programming going on in Manitoba, and I'd love to forward that to the committee.

The Chair: Thank you.

We'd also love to hear from CMHA as a witness in January. They weren't available before Christmas, but hopefully they will be here after the new year.

Dr. Patrick Baillie: Some of the concerns raised by jurors who have sought me out had to do with their not feeling a sense of connection with the therapist provided through the juror support program. I'm a forensic psychologist. The last line of my bio for any presentation reads, "Dr. Baillie appears frequently before the courts, usually as an expert and only occasionally as an accused."

I'm used to being there. I understand the processes. I understand that jurors can be affected by even something as simple as the layout of the courtroom, the location of the jury rooms, and the parking difficulties at the courthouse. I think jurors feel a sense of connection and would welcome an opportunity to talk about their experiences with somebody who has been involved in the process, an involvement that some counsellors may not have had. They may be brilliant counsellors or therapists, but without having the legal or courtroom background, they don't understand. For example, if a juror says there was a voir dire and they were off for three days, and the counsellor asks what a voir dire is, that kind of interrupts the counselling process. The juror now has to do the educational part of it.

The Chair: Thank you.

Dr. Lee, do you want to intervene?

Dr. Vivien Lee: Yes, I just wanted to make a corollary to that. What I've heard a lot from first responders is that almost every service has access to their employee assistance program, EAP. I hear so many stories of people trying to reach out to their EAP counsellors, and they find it very frustrating, so they go only once or twice.

Similar to what Dr. Baillie is saying, many of these counsellors don't get it. They don't get trauma. They don't understand cumulative trauma. They don't understand trauma that's part of someone's work or duties.

They find it very helpful to speak with someone who really understands what that world is like and what the impact of cumulative trauma is.

The Chair: Thank you.

We have a couple more short questions.

Mr. Fraser and then Mr. Boissonnault.

Mr. Colin Fraser: Thanks, Mr. Chair.

Mr. Kylo, perhaps I will ask you a question similar to what Mr. Cooper asked about the debriefing program. I understand they have that program in Manitoba where you receive that information. But what, in your opinion, would be a model debriefing session, post-trial, and do you think it would better to have an individualized debriefing session with each juror or to have a collective sort of thing?

Mr. Greg Kylo: It's a very good question.

I have my own personal thoughts on that, but I'll defer to my esteemed colleagues, who might be able to provide a more professional opinion on that.

● (1700)

Dr. Patrick Baillie: My more professional opinion is both.

Mr. Greg Kylo: Yes, that was my suggestion.

Dr. Patrick Baillie: As a group, there are 12 jurors, 14 jurors, who have been through a process. In the same way that we do debriefs with first responders who have been involved in a critical incident, there are appropriate ways of doing that, and some criticisms of some inappropriate ways of doing that. Allow the jury to vent as a group about some of their experiences, but then follow up with those who want the individual follow-up, or at the very least, touch base with them.

Again, concerning undercover police units—we talked about people viewing graphic images—homicide units, and integrated child exploitation units, we do mental health checks with them on an annual basis. Somebody may come in and see me for 10 minutes and say, "I'm doing okay. Thanks for checking in." Other people may say, "I'm so glad that this is a regular part of our routine, because now I get a chance to tell you what's been going on."

I think you should do the same thing with jurors. If somebody says, "No, I'm good today, but I appreciate knowing what the supports are for me down the road if something comes up", then that's another opportunity to reinforce those supports.

Mr. Colin Fraser: Dr. Lee, do you have any comment on that?

Dr. Vivien Lee: I absolutely agree. This kind of debriefing or check-in can certainly be done as a group, where if members want to talk....

You want to be careful that people don't go too much into trauma detail, because that can be very upsetting for other people in the group. It's just to give some education about symptoms, what can happen down the road, and whether anyone wants to talk about how they're feeling. Then it's, "Here's the number. Call us if you want."

You can do it as a group, but then, as Dr. Baillie was saying, follow up individually.

Mr. Colin Fraser: Great.

Thank you very much.

The Chair: Thank you.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thanks, Mr. Chair.

Thanks to all of the witnesses.

We will listen to more witnesses. We will write a report. We will recommend some money. Hopefully, the money gets found, and it gets to the people who need it.

Are there enough people to provide the supports who have the expertise that Dr. Lee, Mr. Kylo, and you have outlined as being necessary to provide the proper care, or are we setting ourselves up to create a demand for which we don't have the supply of professionals? That is the first question.

The second question is this. We told military people in the past to suck it up, tough it out, and push through. That didn't work. We did the same with first responders. That didn't work. Now we're doing it with jurors.

My very basic layperson question is, are we asking too much of jurors, or is it just that we're asking too much of jurors without the proper supports in place?

Anyone can respond.

Dr. Vivien Lee: I can go first.

In terms of there being enough clinicians if this were to roll out across Canada tomorrow, there probably wouldn't be, but certainly this is something in which there is a lot of interest. More and more people have been getting trained in appropriate types of trauma treatment, with all the focus on veterans coming back from Afghanistan and increasing recognition of what first responders go through. There are certainly opportunities for training that could be put into place fairly quickly. It couldn't happen tomorrow, but it could definitely happen over time.

Mr. Randy Boissonnault: Thank you.

Dr. Patrick Baillie: As Mr. Kylo commented, I think we look at the occupational stress injury clinics that most provinces have available to them. Those are going to have a number of professionals who are trained in trauma.

Again, 20 jurors, in the two years that Alberta's had its program.... I would certainly hope that we're able to provide that number of resources. One of the challenges comes when jurors come from more remote areas, but we have the wonderful technologies these days that allow for coverage to be provided to those groups as well.

I agree with Dr. Lee that probably not tomorrow but in a very short period of time, each province should be able to recognize quality professionals, like psychologists, social workers, and other individuals. Then they'll be able to provide the services.

Mr. Randy Boissonnault: Thank you.

Could you respond, Ms. Lonergan?

Ms. Michelle Lonergan: Other treatments are currently being developed for PTSD. In our lab, we work on one. It's a little bit complicated, but essentially, it's trying to dampen the emotional tone of the traumatic memory to alleviate the symptoms. We've been working on it for about a decade.

What's really fun with it is that we get similar results to those from evidence-based treatments, right now, but we do it in half the time, at half the cost, and with students who can be trained right out... undergraduates do it because it's a very easy treatment to implement.

These types of things are coming up. It's still in the experimental phase, so it's not widely used right now, but these things are coming up too. Our hope is that, in the near future, it becomes something that's more mainstream and that more people can be trained and we can reach a lot more people.

• (1705)

Mr. Randy Boissonnault: Now, regarding my question as to whether we are asking too much of jurors, would anybody want to take that on?

Dr. Patrick Baillie: I was involved in a trial back in 1996 and I was sitting with a number of the lawyers after the trial was over. One of the lawyers talked about a previous year in which he had done 12 homicide trials in a calendar year.

It simply doesn't happen anymore because of the complexity of the voir dire in each case, the charter challenges, and the admissibility of evidence.

In a complicated trial, we then ask jurors to be beyond a reasonable doubt on certain facets, but on a preponderance of possibility on other evidence. We have made the process very complicated.

However, I think the part that creates the most complications is the length of the trial. In the good old days, a homicide trial was three, four, or maybe five days long. The Daniel McNaughton trial, the infamous insanity case, was a three-day trial. Now, we take these trials and put them out over five or 10 months, as you heard from the witnesses two weeks ago.

That increases the repetitive exposure to this gruesome testimony, to the evidence, to the videos, and to the physical exhibits to the testimony. That makes it much more demanding on juries, and I think it gets to the point where we are expecting too much from some individuals.

Mr. Randy Boissonnault: Thank you all very much.

The Chair: Thank you very much. Are there any other questions?

I'm not seeing any.

I want to thank our group of witnesses from today. As all of my colleagues have said, your testimony has been very helpful and very instructive. Clear recommendations are always appreciated.

Thank all of you so much for coming in or for testifying online from Toronto.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>