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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone.

[*Translation*]

Welcome to the Standing Committee on Justice and Human Rights.

[*English*]

It's a real pleasure to once again welcome Mr. Van Kesteren to our committee as a temporary member.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): I'm just a fill-in.

The Chair: Mr. Oliphant is also joining us for the first time.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Hurray, hurray.

Mr. Robert Oliphant (Don Valley West, Lib.): I'm not here as a witness.

The Chair: This is the first time he's been here not as a witness. The roles are reversed.

It's great to be back on our study on counselling and other mental health support for jurors. We have a fascinating panel today. Two panellists are joining us by video conference.

I would like to welcome, from the Government of Saskatchewan, Ms. Glennis Bihun, who is the executive director and inspector, court offices, court services, Ministry of Justice.

We have Mr. Warren Miller, who is the sheriff and local registrar of the Queen's Bench Court, court services, Ministry of Justice.

They're joining us by video from Regina and they will be speaking first.

Then from Australia, we have Ms. Jane Goodman-Delahunty, who is a professor in the faculty of Business, Justice and Behavioural Science at Charles Sturt University.

The intention is to have both of those on video conference go first in case somehow we lose the video conference. We don't want to miss your testimony. We hope that will not happen.

Joining us here today, we have Ms. Katy Kamkar, who is a clinical psychologist for the Centre for Addiction and Mental Health.

Welcome, Ms. Kamkar.

From the Criminal Lawyers' Association, a frequent witness for us, we have Ms. Breese Davies, who is the vice-president.

Welcome back, Ms. Davies.

We have Ms. Vanessa MacDonnell, associate professor in the Faculty of Law, common law section, University of Ottawa.

Welcome, Ms. MacDonnell.

[*Translation*]

We also welcome Mr. Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada.

Welcome, Mr. Rodrigue.

Mr. Michel Rodrigue (Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada): Thank you very much.

[*English*]

The Chair: And we have Mr. Micheal Pietrus, who is the director, Mental Health First Aid Canada and Opening Minds.

Welcome, Mr. Pietrus.

We're looking forward to some fascinating testimony today. I will turn it over to the Government of Saskatchewan.

Mr. Warren Miller (Sheriff and Local Registrar, Queen's Bench Court, Court Services, Ministry of Justice, Government of Saskatchewan): Thank you.

Good afternoon, Mr. Chairperson and honourable committee members. Thank you for this opportunity to address you regarding the newly implemented Saskatchewan juror assistance and support program.

By way of an introduction, my name is Warren Miller and I have been employed with the Ministry of Justice in Saskatchewan in the court services branch for 28 years. The majority of that time, I have spent working in a front-line court manager role as the sheriff and local registrar. I am currently the sheriff and local registrar for the Moose Jaw Judicial Centre. In addition, I recently spent approximately four years in an acting role as the director of court operations for southern Saskatchewan. It was during that period that I became more focused on the area of overall jury management in Saskatchewan, including support for jurors. During the course of my career I've been involved with numerous jury trials involving serious offences in which graphic images and evidence were tendered as evidence.

With me today is Ms. Glennis Bihun, executive director of the court services branch and the minister's designated inspector of court offices for Saskatchewan.

Jurors are called upon to consider what can be horrific and gruesome evidence as part of the important role they play in the administration of justice in our province. The experience has the potential to cause distress to jurors, who are typically unaccustomed to such things.

There is more social awareness of mental health issues now than there ever has been. There is a recognition that jury service could have a detrimental effect or negative impact on an individual, and it is appropriate that the state provide assistance and support to those citizens who have served as jurors. In Saskatchewan, between 20 and 30 jury trials take place each year, significantly fewer than in either Alberta or Ontario, but the need to support those who do serve as jurors is a priority. Emotional support for jurors was identified as a key area for improvement in the fall of 2016. We became aware of the work being done in Alberta and Ontario, so I connected with colleagues in both provinces to seek out details as to their efforts and experiences, including the recommendations made by Madam Justice Hughes related to counselling for jurors. We are very appreciative of the information shared with us and we've relied upon their experiences in designing a similar program for Saskatchewan.

Based on the information we've received from Alberta regarding utilization, we estimated that our annual costs for the program would be less than the threshold for a formal request for proposal, or RFP. Therefore, in accordance with our procurement requirements, we reached out to several established service providers in our province. This resulted in the receipt of three service quotations. These quotations were reviewed for how best they met four criteria: ease of use for participants, accessibility for participants, confidentiality, and professionalism in service delivery.

The service provider needed to be able to facilitate access to support via a 24-hour hotline available seven days a week. The ability to provide face-to-face support in multiple locations was also important as Saskatchewan has nine judicial centres plus two satellite court locations and the coroner's branch conducts inquests in additional locations around the province.

Confidentiality for the juror, their fellow jurors, and the deliberation process was emphasized. All counsellors were expected to have a minimum of a master's degree in Social Work or Psychology with a minimum of five years of practical experience. Following this evaluation, a two-year service contract was established with Morneau Shepell. The juror assistance and support program is administered by the inspector of court offices.

The Saskatchewan juror assistance and support program was launched and publicly announced by our minister on November 30, 2017. The announcement was carried by several major media outlets, and information regarding the new program was placed on the Government of Saskatchewan website with links from the Saskatchewan courts' website. Hard copies of pamphlets and information are also being made available in all our judicial centres to ensure that the public is aware of the existence of this new program.

Effective December 1, 2017, the ministry's juror assistance and support program policy requires the sheriff's office to provide all jurors with the program's brochure at the conclusion of their service or during the proceeding at the direction of the court.

● (1540)

Jurors would typically be instructed by the court regarding the sanctity of the deliberation process and be cautioned not to share information in this respect.

Saskatchewan's juror assistance and support program is accessible to all those who participate as jurors in a criminal trial, a civil trial, or a coroner's inquest in Saskatchewan. The program is accessible to those who experience personal difficulty within two months following the conclusion of a case or—at the court's discretion—during a case.

To access the program, jurors call the established toll-free number to reach professional intake staff who are available 24-7 to connect jurors with counsellors in their area. Currently, there are 96 counsellors who are available in 24 Saskatchewan communities. Counselling will take place in person wherever possible, and alternative methods of communication will be supported for jurors in remote areas.

The program will provide jurors access to four treatment sessions with a health care professional to help them overcome the difficulties related to their jury service. Up to an additional four sessions may be approved at the recommendation of the service provider. Approval may also be granted for the spouse, life partner, or other significant family member of the juror to be permitted to participate in the sessions where appropriate. All program-supported sessions are to be concluded within 24 months of the completion of the jury duty.

Those people who served as jurors prior to December 1, 2017, are eligible to request services by contacting the service provider in writing with the following information: confirmation that they served as a juror within the two-year period of December 1, 2015, to November 30, 2017; and evidence that they started experiencing personal difficulty within two months following the conclusion of the case they served on.

At the end of the program treatment sessions, the individual would be referred to his/her health care practitioner under the Saskatchewan health plan if further treatment is required.

As with all programs of this nature, maintaining a participant’s anonymity is essential. All Saskatchewan jurors are provided with a unique number when they attend for jury selection, and this juror number will be the identifier used, rather than the participant’s name.

We have planned reviews of this new program at six months and one year. Similar to what is being done in Alberta and Ontario, mechanisms are already in place to obtain feedback from those jurors who access the program so that their experience can assist with our review process. As of last week, there have not been any requests for service in Saskatchewan.

We are grateful to and respect all those who act as jurors. They play a very important role in society. We are pleased to have implemented this program to support them.

Thank you again for this opportunity to provide you with information on this new program. We would now be happy to answer any questions you may have regarding our new program.

The Chair: Thank you very much, Mr. Miller; it was much appreciated.

We have now been joined by Professor Goodman-Delahunty.

Because we have you and another witness by video conference, we'll have the two of you give your testimonies first so that we don't lose you. You have eight to 10 minutes, hopefully trending toward eight. Then we have some more witnesses in the room, and then we're going to go to questions. Thank you so much for joining us from so far away. It's very appreciated, especially given the hour difference.

The floor is yours.

● (1545)

Professor Jane Goodman-Delahunty (Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, As an Individual): Good afternoon, committee members and other attendees. It is a great pleasure to join you from here in Sydney, Australia, today.

By way of background, I will introduce myself. I'm trained in law and experimental psychology. I have done jury research and evaluation of jury programs for approximately 30 years, working first of all in the United States and then more recently here in Australia and New Zealand.

As part of that work, I did a number of studies that looked at different aspects of juror stress. I want to commence my remarks by summarizing, in response to your request, some of the various ways that stressors can arise for jurors in the course of their jury duty from the outset and on through the post-deliberation and post-verdict process as we've just heard about in Saskatchewan, where services have been provided on a follow-up basis.

I think that as a background, it's important to understand that jurors are moving into an environment that is very unfamiliar to them. This can be very intimidating, and that alone can be somewhat stressful. They are required not to discuss their experiences and particularly the content of the evidence and their thoughts about it with others, and so they are in a way cut off from their normal support systems, which is why the need for the courts to provide some additional support systems is important.

Their daily lives are very disrupted by adjusting to the court schedule, which often requires them to travel, and there's often uncertainty regarding the duration of the trial and their attendance at jury duty, which alone can be very difficult and can impose some stress in terms of managing their day-to-day schedules.

The unfamiliarity of the decision task and the fact-finding role that is imposed on them requires quite a lot of learning and guidance from the courts, and, of course, their decision-making often has very serious consequences for the defendant if a verdict to convict is imposed. Jurors feel this burden of participation in the justice system due to the seriousness of the consequences of their decision.

Working with strangers itself can be quite stressful for jurors, who have to adjust to the dynamics of a consensus-making decision model that is required during the process of fact finding and reaching a verdict, particularly while learning to get along with other jurors, and figuring out the decision-making process, which can itself be tricky.

Most of all, jurors suffer from a loss of control over their lives and the decision-making in this experience, which can be quite unpredictable for them.

If we think about their experience once they come into the courtroom environment, oftentimes first of all they are a little confused as to how they should go about responding to just the issues of selection, which vary considerably from one community to another. In Australia, for example, we learned that the fact that jurors in certain states have to parade in front of the defendant during the process of peremptory challenges is particularly excruciating and intimidating, because they walk across and then might be challenged. It's regarded by some as quite an insulting process. Efforts are being made to try to meliorate that sort of confrontation with jurors even before they may have opened their mouths.

Answering questions in public about reasons they might seek excusal, if they are entitled to it, can be very embarrassing depending on what their reasons are, and so procedures that provide them the opportunity to do that in a more confidential environment or ahead of time are very much appreciated by jurors.

● (1550)

Depending on the kinds of processes that exist for challenges as well as for individuals who have legitimate reasons not to serve on a jury needs to be sensitively treated by the jury administrators as well.

Other issues as you move through the process are also important to consider, and next I want to talk a little about the need for ongoing communication with jurors once they proceed through the selection process. While they might have had some liaising officers right at the outset at the jury pool room or at the jury administration office where they initially report, oftentimes once they're assigned to a case they're off in a courthouse that might in fact be in another location or in another building away from the jury administration staff with whom they've initially become acquainted and comfortable. It's very important to make it clear to them who should be their liaising support. Is it someone on the court staff? Or is there some other person or mechanism they can use if they do need support during the trial once they're assigned to a particular case?

The physical facilities in which jurors work are often a neglected source of concern as expressed by juries. For example, in some very traditional or older courthouses, oftentimes the conditions are less than optimal. We've had some difficulties that I can relate here in the Australian context where some older buildings were never purpose-built as jury rooms or deliberation rooms, but in fact were converted from other uses that those buildings once had—in fact, for one of the largest courthouses in Sydney, as department stores. What has happened is that the deliberation rooms are quite cramped, often windowless, and do not afford jurors an opportunity for what we would call some “breakout” space during their discussion. In other words, there is only a conference table around which people sit in cramped quarters in which they have to spend long hours with very little relief.

What we have learned from a great deal of psychological research is that in fact just those physical creature kinds of comforts can do a great deal to relieve some of the pressure of the burden of the decision that people are grappling with, so it's important to take the physical environment into account as well, to provide people a break from the working quarters if they are cramped and, ideally, to have facilities for jurors designed so they are comfortable. Include some additional seating aside from the conference table for smaller discussions by jurors over the duration of the trial. If possible, have openable windows, natural light, and particularly some sort of view that can offer visual relief, which is really more facilitative of productive discussions and less inclined to result in tension and conflict between jurors.

Of course, during the trial, as we've heard from the former speaker as well, there is the potential that some of the evidence may be very confronting, particularly if it is gruesome evidence, which can be particularly stressful. It's important to try to provide the jury with some warning in advance that this is forthcoming and to try to give them some options to manage that. We have found it helpful also if that sort of material is not presented in a very lengthy series but rather in a series of a shorter duration, not just before lunch, not just after lunch, and not very late in the day either, so that jurors have some time for relief from and processing of that information, often perhaps requiring a break after some confronting information is presented, as well as the option to seek support and to seek counselling if they find it particularly disturbing.

● (1555)

In terms of the decision-making process itself in deliberations, some of the innovations in jury research that seem to be most promising are what are sometimes called fact-based question trails or sorts of decision trees that are decision-making aids that are given to jurors to help them to structure the discussion process once they get into the deliberation room and are actually able to start putting together the facts and working on the consensus of the group together. I think New Zealand has been the leader in this area of research. It's also a very popular trend growing in Australian courtrooms, because it helps to take some of the burden off jurors in terms of understanding complex legal language, because a lot of the legal issues are, in fact, embedded in the question trails that then guide jurors through the issues they have to address factually. The feedback that has come from experimental work, testing these kinds of processes against traditional jury directions, is that it's much appreciated, that juries are more efficient, and that their decision-making is more streamlined than it is in other situations. That seems to be a commendable issue to look at.

Jurors also need some guidance on what to do in terms of understanding what is an ordinary, healthy exchange of ideas and disagreement or dissent in a jury deliberation versus what is unhealthy, coercive, and sometimes even bullying, because they're not often given any guidance as to what to do if things become stressful in the deliberation room. Because of the confidentiality requirements that are attached to the deliberation process, there have been some cases in which, after a verdict has been rendered, courts have been surprised to find—in an Australian courtroom, for example—a note left on a deliberation table afterwards by one juror who argued that he was actually physically coerced to reach a verdict of consensus with fellow jurors, and then the court was confronted with the issue of whether that confidentiality of deliberation ought to be penetrated in order to try to resolve whether, in fact, something went awry. So that you don't find yourself in that situation, it's clearly important to instead give jurors some guidance on how to deal with disagreement and on what to do so they don't feel they have no recourse at all if deliberations need some guidance, time out, or consultation to resolve conflicts.

The Chair: Professor Goodman-Delahunty, you're running a little long. Could I ask you to summarize in a minute if you have anything left?

Prof. Jane Goodman-Delahunty: Yes, absolutely.

The last point I want to emphasize is that I think it is valuable for jurors to receive some debriefing, whether it is conducted by the trial presiding judge or whether it is conducted by a professional, particularly in cases that have been of long duration or cases in which there has been confronting or gruesome evidence. Aside from making available to jurors some counselling and support services—we have found in Australia that at least around 20% of the jurors take up that offer if they feel comfortable and trusting of the confidential counselling service—some general debriefing that provides closure seems to be a very positive way to end the jury experience.

Thank you.

● (1600)

The Chair: Thank you very much.

Next, we will move to the Centre for Addiction and Mental Health.

Ms. Kamkar.

Ms. Katy Kamkar (Clinical Psychologist, Centre for Addiction and Mental Health): Dear members of the House of Commons Standing Committee on Justice and Human Rights, I would like to thank you for the opportunity to discuss mental health supports for our jurors.

I'm Dr. Katy Kamkar, clinical psychologist at the Centre for Addiction and Mental Health and assistant professor within the department of Psychiatry at the University of Toronto. I'm also director of Badge of Life Canada, which is a peer-led national charitable organization for police, corrections, and first responders across Canada who are dealing with psychological injuries suffered in the line of duty. I'm also serving on the Canadian Institute for Public Safety Research and Treatment's national policing research committee. I'm also part of the scientific advisory committee of the Anxiety Disorders Association of British Columbia, as well as a founding and credentialed member of the Canadian Association of Cognitive Behavioural Therapies.

Do our jurors need access to mental health support? The answer is yes. Mental illnesses have a major impact on our economy. The estimated annual health care costs are about $51 billion Canadian. Driven in part by the fact that mental health problems are associated with reduced productivity at work and increased absenteeism, sick leave, short-term and long-term disability, the costs associated with mental health disabilities are also higher than are those for physical related disabilities and are seven times more likely to reoccur.

Focusing on mental health promotion, prevention, and early intervention would benefit the public, employers, workers, families, insurance companies, and our society. The focus would produce a positive return on investment including reduced social, occupational, mental, and physical disability, reduced medical utilization, improved therapy outcomes and prognosis, with a return to healthier functioning, improved social and family relationships, and improved well-being and quality of life.

Serving on a jury can lead to an increased stress level as well as significant psychological distress and emotional difficulties, including feeling anxious, depressed, helpless, and overwhelmed. The emotional experience can increase vulnerability to psychological disorders, including depression, anxiety disorders, substance-use disorders, as well as trauma and stressor-related disorders.

Within *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, the DSM-5, there is a greater recognition and understanding of vicarious trauma that can occur after experiencing repeated or extreme exposure to aversive details of traumatic events. Our jurors can be exposed to diverse, traumatic, and gruesome evidence during their service, through detailed written materials, photographs, audio content, videos, and graphic verbal descriptions. Jurors also tend to witness first-hand the emotional impact traumatic events can have on victims, families, and witnesses. The exposure to such evidence and sequelae tends to be repeated throughout the day and over a period of time.

There are additional stressors that compound the risk for mental health problems among jurors, including feelings of isolation, limited social support, and fear of making a mistake. In addition there are jury discussions, deliberations, and verdict renderings that involve worry and anxiety about trial-related decisions, including determining the outcome of trials, such as the guilt or innocence of a defendant. The stressors are further exacerbated by social and time pressures inherent in providing jury service.

In some cases trial materials resembling a juror's own personal history can substantially increase vulnerability to mental health problems. Similarly, materials involving violence or crimes against people, or crimes involving children also tend to increase vulnerability to mental health problems. We need to implement a care plan for jurors. That care should begin early as part of pre-service preparations. Education about the potential impact of traumatic material during the jury service, common psychological symptoms one might experience, what constitutes normal reactions, and what reactions should be taken as warning signs for engaging more help should be provided.

● (1605)

Healthy coping resources should be provided prior to trial to help with anticipatory anxiety and this transition from normal life to jury service. The same resources should be available during the trial to minimize the negative consequences of service. During the trial, there should be a support system with, for example, social and psychological support in place to help reduce self-isolation, maintain jurors' mental health and well-being, and provide adaptive and healthy coping with regard to feelings of helplessness, anxiety, stress, or any emotional difficulties.

Funding and access to evidence-based mental health interventions following court cases should be available when needed. Mental health experts should be available for providing evidence-based mental health services. Consultation with a mental health professional, a psychologist, and/or a psychiatrist should be strongly recommended for an accurate diagnosis and discussion of various treatment options. Contact information should be provided for jurors to have access to additional mental health services if needed.

Evidence-based cognitive behavioural therapy, CBT, is effective for numerous psychological disorders and is at least as effective as medication. Research suggests that CBT offers the most benefits when completed with a trained mental health professional. The gains that are observed with CBT are long-lasting and tend to be maintained longer than improvements achieved by medication alone. Upon meeting with a health care professional, it is also important to establish a clear treatment plan and goals and to monitor progress toward those goals.

Dear members of the House of Commons Standing Committee on Justice and Human Rights, I would like to thank you again for the opportunity to discuss mental health supports for our jurors. Providing funding for evidence-based treatment and having a support system in place for Canadians who are performing such an important civic duty would be essential for all the reasons just mentioned and will contribute to the mental health promotion of Canadians and be a positive return on investment. Most important, it's the very human thing to do.

Thank you.

The Chair: Thank you very much.

We will now move to the Criminal Lawyers' Association.

Ms. Davies, the floor is yours.

Ms. Breese Davies (Vice-President, Criminal Lawyers' Association): Thank you once again for inviting the Criminal Lawyers' Association to present before you. I want to start off by saying that our basic position is that we're delighted to see that the federal government is interested in this issue, and we broadly support efforts to provide counselling and mental health services to jurors after difficult cases.

I'm the vice-president of the Criminal Lawyers' Association in Ontario, but I'm also a practising defence lawyer. I've been involved in a number of cases that had the sort of evidence you've heard about in terms of causing difficulties for jurors, and I was involved in one case where, on an ad hoc basis, supports were provided to jurors because of the nature of the evidence.

Our submissions today are going to focus on two issues. Vanessa and I are going to split them. Vanessa is going to deal with the importance of providing mental health supports as a means of ensuring representativeness of jurors, which is an important issue.

I'm going to talk about the opportunity you might have to think about this in maybe a slightly broader perspective than what you have right now and suggest to you that you might want to think about extending supports to all participants in the justice system to the extent that they don't have access to them already. Our position is that this will promote access to justice, it will ensure retention of lawyers in the profession, particularly women and racialized lawyers, and it will ensure that we start reducing the stigma in the legal profession around mental health issues.

You've heard a lot of evidence about vicarious trauma and how exposure to evidence can cause vicarious trauma. If you accept, which I hope you do, that the research is clear that exposure from a single case to difficult evidence can cause jurors to have significant psychiatric difficulties, you must also accept that prolonged exposure over time for lawyers on a repeated basis can also cause that exact sort of trauma. The impacts on people's lives are serious, so for that reason we support providing these supports for jurors, but we also suggest that you might look at it a bit more broadly.

On the specific issue of jurors, I think one of the things you're going to have to look at is section 649 of the Criminal Code, which is a jury secrecy issue. You've already heard from Saskatchewan that there is a prohibition about speaking about deliberations; I'm sure you'll take a look at it. It only provides for discussion of deliberations in respect of investigations of jury tampering. It strikes me that it may well limit the ability of jurors to actually seek and obtain the sort of support they need, to the extent that their psychiatric issues arise from or are exacerbated by the deliberation process. That's one issue.

Why are we suggesting that you should look at this more broadly? It won't surprise you that I'm going to suggest that really what you need to do is extend this to lawyers, and in particular defence lawyers. I'll explain why in a minute.

You'll know—or some of you might know—that in criminal cases crown and defence counsel often work very hard to limit the sort of evidence that gets put before a jury. Crowns and defence actually get exposed to much more and often much more graphic information than judges or jurors, because we take time to minimize the prejudice and minimize the impact. The reality is that lawyers are exposed to a lot more of this sort of information.

It's also the reality that most of the participants in the criminal justice system, if we think about judges, crown attorneys, and court officers, are usually people who are employed either by the government or other institutions, by and large, and have access to benefits. Defence counsel, in contrast, are usually sole practitioners and self-employed, who wouldn't otherwise have access to the sorts of supports you're talking about. If they need the supports, they're going to have to pay for them out of pocket.

That research has been done. A University of Toronto researcher named Ronit Dinovitzer has done research that shows one in four lawyers suffers from mental health issues. Lawyers who are self-employed or in private practice are more likely to suffer from mental health issues than government or public sector lawyers. If you take that together, it strikes me that it's clear that defence lawyers are at particular risk of experiencing mental health issues and, as well, not having the supports to deal with them.

We're also interested in ensuring that people stay in the profession. We've done studies—I know that some of you know about this—about the retention of women in the practice. We know that women are five times more likely to leave defence practice to go to the crown's office, largely because of the benefits that are available there. If we're interested in retaining diversity in the profession, that's one of the issues you may want to look at.

We are delighted that you're studying this issue and we think it's important, but if you want a healthy, properly functioning justice system, we think you should also think about extending whatever benefits you might extend to jurors to those other members of the justice system who don't otherwise have access to them.

● (1610)

In some provinces there are very narrow member-assistance programs available through the law societies, but we would encourage you to expand it and open the safety net that you're providing, to everybody involved.

I'm going to turn it over to Vanessa to deal with the other issue.

Professor Vanessa MacDonnell (Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association): I'm going to pick up on the diversity point that Breese raised.

Another way of thinking about the broader context of the discussion we're having today is to think about the whole range of supports that are or are not available to jurors when they end up performing this important democratic function. In addition to pointing out that at least until recently in most provinces there's been a real lack of mental health supports, in a lot of provinces there's also a significant ongoing problem with just the very basic supports that we provide to jurors. What I'm talking about here are, for example, the daily stipends that are provided to jurors who are required to turn up and perform their civic duty. For trials that last between one and 10 days, jurors are not paid anything to be there. Their employers must by law give them time off work but there's no obligation to continue paying employees. That already influences fairly significantly who is able to make themselves available. Once trials extend beyond 10 days, there are modest stipends available, and the amount goes up for very long trials, but the bottom line is that the lack of a meaningful income supplement for jurors who are called to serve in this way is a real disincentive. More than that, it essentially renders jury service for entire groups of people impossible. We talk about the jury as being this great democratic institution, but many people justifiably ask to be excused because they just can't afford to do it. In addition to there not being meaningful income supplements, in most provinces there's also no support provided to offset the costs of child care or elder care. We start out thinking about the pool of jurors as being the peers of the accused, but at the end of the day, we have a group that's really much smaller.

To the extent that this committee is considering the mental health supports that we provide to jurors, the CLA would also recommend that you think a bit more broadly about the way we support jurors in performing this function. This not only is important because we want juries to be diverse and to represent the diversity of our society—we want all individuals to be able to serve—but this also has a very real impact on the accused, who has a constitutional right to a representative jury. There was a major report released in 2013 in Ontario by former Justice Frank Iacobucci, which identified some significant concerns from the standpoint of representativeness on Ontario juries, and he identified the issue of these income supplements, the lack of child care, and the lack of elder care supports as being significant factors in some of the representativeness problems that plagued the province. There, the concern was in particular with the under-representation of indigenous people.

There's lots of authority that establishes that this is a problem, and so to the extent that, as I said, this committee is thinking about how we support jurors and the relationship between that support and the fair-trial rights of an accused person, in our view it's really important to take that holistic approach.

Thank you.

● (1615)

The Chair: Thank you very much.

[*Translation*]

We will now give the floor to Mr. Rodrigue from the Mental Health Commission of Canada.

Mr. Michel Rodrigue: Thank you very much.

[*English*]

Thank you, Mr. Chair, for inviting the commission to provide our perspective on jurors' mental health. Before I begin, I would like to congratulate this committee for focusing on the mental health risks of jury duty, a topic about which relatively little is known but which impacts individuals in a very real way.

When the Mental Health Commission was created in 2007, one of the key priorities was to launch an anti-stigma campaign. Why? Because we recognized that mental health care would remain in the shadows if people were not willing to talk about it and to ask for help. On the heels of Bell Let's Talk Day, it is very encouraging to see the conversation about mental illness, but much remains to be done to move from conversation to action in delivering mental health services when and where people need them. I think it's a broader issue, and now I'll focus specifically on the issues that jurors deal with.

What is clear is that jury duty, in and of itself, is stressful, as the witness from Australia quite competently outlined. We ask regular citizens without any special training to make life-altering decisions about people charged with serious offences. This can be a heavy burden to bear. There can also be serious psychological harm caused by exposure to acts of depravity and to tragic events that are explored during trial. We've learned about vicarious trauma throughout these hearings. This can occur in anyone who has a traumatic experience, and not everyone is impacted in the same way. Since the post-duty experiences of jurors are not tracked, we don't know exactly how many of them experience vicarious trauma or operational stress injuries.

[*Translation*]

Mr. Chair, a lot of jurors need professional help and should be able to receive it to overcome the psychological distress they feel after performing their duties as jurors. There are many proven methods that help those who access them to recover, and which improve their quality of life.

Access to counselling services, for instance, is important. You will not be surprised to learn that access to those services is clearly insufficient. Recently, we studied various possibilities to help provinces and territories provide better access to such mental health services. As other witnesses have pointed out, these people need someone to turn to for support. The only way of ensuring that mental health stays in the spotlight is to be able to talk about it.

I strongly encourage the committee to study the benefits of prevention and resilience. By “resilience” I mean an individual's capacity to adapt to stress and overcome obstacles and adversity. Resilience is at the heart of the work the Mental Health Commission of Canada does, as is the fight against stigma and discrimination.

In Canada, there is increasing evidence that programs that bolster self-awareness and resilience can greatly contribute to reaching those objectives. For instance, programs like The Working Mind, and Road to Mental Readiness, which we manage and which were adapted from Department of National Defence material, are helpful.

The Liberal and Conservative members of the committee will recognize a good part of the content of these programs, since we provided training to their caucus recently. We still hope to do the same with the NDP caucus.

These programs teach participants to recognize the early signs of distress and to ask for help if they need it. We also have programs adapted for police forces, first responders and veterans. So, it would be simple to adapt these programs for jurors.

● (1620)

[*English*]

Unfortunately, public programming tailored to the needs of jurors doesn't exist—or barely exists. Jurors have often had to themselves navigate the mental health system with its long and longer wait times or pay for services directly. If we ask citizens to provide a public service such as jury duty, they should have access to tailored mental health care to deal with the impact of their public service. This in turn also requires informed decision and research. For all those reasons, the Mental Health Commission of Canada is highlighting five elements around which the committee could consider framing your recommendations.

First, you should consider offering pretrial mental health awareness education to jurors, such as The Working Mind and Road to Mental Readiness, particularly in cases involving serious crimes.

Second, where there is a chance that jurors will be exposed to traumatic images and testimony, courts should consider arranging for access to a mental health professional throughout the trial.

Third, government should seriously consider strategies to ensure timely access to publicly funded diagnostic services and evidence-based treatments for jurors. We can commend what's happening in Saskatchewan. It's a wonderful first start.

Fourth, what can be shared with mental health professionals and others should be clarified, either by addressing section 649 of the Criminal Code or by assigning court-cleared professionals.

Finally, a strategy should be developed to facilitate access to evidence-informed programs and services, and to explore the experiences of jurors after they complete their work. Admittedly, these measures will not put a stop to the challenges jury members may experience after participating in a trial involving extreme violence. However, we believe that publicly acknowledging these issues, as the committee is doing, and hearing from witnesses with a wide range of experience and expertise will go a long way to identifying long-term solutions.

● (1625)

[*Translation*]

Thank you very much indeed.

The Chair: Thank you very much for your testimony.

Regarding that presentation to the NDP caucus, I am sure Mr. Rankin will take your business card.

Mr. Michel Rodrigue: Perfect.

The Chair: We will now have our question and comments period.

[*English*]

For those people who have not been familiar with this process in Canada, the official opposition will have the first round of questions, then the government, then the second opposition party, then the government. Then we just go to everybody who wants to ask a question and we don't really go in any rigorous formula because it lets everybody ask questions.

We're going to start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much for all your testimony here today. I really believe that this is making a difference and will make a difference, so thank you for all the effort that you put into this.

Ms. Goodman-Delahunty, it sounded like you've experienced some of the same challenges that we have with respect to our section 649. You said no discussions are allowed. Is there any suggestion within the governments or the administrations that maybe some changes should be made to allow jurors to talk to their psychologist, their psychiatrist, that sort of thing? Are there going to be any changes on that?

Prof. Jane Goodman-Delahunty: Before the trial is over or post trial, I think there is a difference. In other words, if somebody, post trial, consults the services that are available with mental health professionals for counselling, I think that information would be regarded as confidential. The distinction that is being made is between talking about their experience, if it were stressful, for example, during deliberation, versus the issues that are off-limits, which are the processes and content of the reasoning for the decisions for the verdict.

Hon. Rob Nicholson: Some accommodation is available after the trial, is there, for them to discuss these confidential issues?

Prof. Jane Goodman-Delahunty: Yes.

Hon. Rob Nicholson: You didn't mention among the other issues the question of compensation. What is the compensation down there, if any, or does it vary from state to state in Australia?

Prof. Jane Goodman-Delahunty: It varies considerably from state to state. Along the lines of what one of the former speakers said, we have recommended that the compensation be increased where it was clearly out of date or where people had to rely on employers as well.

For example, in Sydney, one of the difficulties is that many jurors, if they turn up and are not required to stay beyond 1 p.m., get zero compensation. This was seen as a disincentive as well, so in line with some of the thinking we've heard from other speakers today, we recommended that a respectful sign for jurors would be to compensate them adequately for their time so they're not facing excusal by losing money or bearing a financial burden on top of other burdens associated with jury duty.

Hon. Rob Nicholson: Thank you for that.

You, Ms. MacDonnell, raised this issue as well. Wouldn't you agree that not only do jurors experience the stress of what they're hearing and the actual court case, but adding to their stress can be the fact that outside of the jury, their home situation is being challenged because they're not getting the resources they need, or the home care, elder care, child care, and all that sort of thing? That, it seems to me, would be a huge stress.

Prof. Vanessa MacDonnell: I think it's absolutely true that it's a stress if the potential juror even gets that far, right? One of the concerns is that individuals will seek pre-emptively to be excused. Potential jurors who've received a summons will seek to be excused on the basis that they have child care responsibilities or the like—

Hon. Rob Nicholson: They can't afford it.

Prof. Vanessa MacDonnell: A lot of the time, either these individuals are excused before they ever show up to court or they show up to court and provide their explanation and they're excused. That obviously is a huge problem.

Then, of course, for those jurors who do end up sitting, this inadequate income supplement is a big problem. There was some mention of travel. This is another significant factor, particularly in Ontario. For example, I believe in North Bay, that one centre holds jury trials, and this is one of the biggest judicial districts in the province. Now, excuse me if I've confused North Bay and Thunder Bay; I'm not from Ontario.

It's a huge problem. It means that people are often required to travel quite some distance not only to have their trial heard if they're an accused person, but also to serve on a jury. This has been one reason among many why there's been a real issue with indigenous people not ending up on juries. We need to think about the cost of requiring people to travel if they need to travel. What's the cost of meals, for example? If a jury is sequestered, there are potential costs associated there, too, so there's a need to think about this closely.

If you don't mind, I may also just pick up on your point about section 649 of the code, the juror secrecy rule. Just putting on my constitutional lawyer hat for a moment here, or my constitutional law professor hat, there's some question about how much of this the federal government can act on and how much will require some collaboration with the provinces.

Certainly one thing that the feds could do that would help support this initiative would be to propose some amendments to section 649. In my view, this could be done fairly narrowly. It depends on how broad you want to go, of course, but you could just amend the juror secrecy provisions of the code to allow individuals to access a counsellor, and of course we already know that these counselling services are confidential. For many of the concerns that animate the juror secrecy rule, such as the desire for decisions to be final, the desire to preserve the integrity of the deliberation process, and preventing jurors from being subsequently harassed, none of those concerns are really at play if you create a narrow exception that allows people to—

Hon. Rob Nicholson: You could give us a possible draft for changes to section 649.

Voices: Oh, oh!

● (1630)

Prof. Vanessa MacDonnell: It would be only a sentence or two.

Hon. Rob Nicholson: Good.

Prof. Vanessa MacDonnell: It's really not complicated.

Hon. Rob Nicholson: Good. If you want to give any thoughts on that, we would be very interested in seeing that.

I know I'm running out of time, Mr. Chair.

Mr. Rodrigue, thank you so much for your comments here and your five points, which we will have to look at and explore.

Ms. Davies, I was intrigued by one report, which I think you said was out of the University of Toronto, about the mental health of lawyers. What was the name of that again?

I'd like to get a copy of that, Mr. Chair.

Ms. Breese Davies: Sure. I can find it. It's by a professor by the name of Ronit Dinovitzer. She does a lot of research in the U.S. and some in Canada around the mental health of lawyers. I can certainly find a link to that report and get it to you.

Hon. Rob Nicholson: I would very much appreciate that. I think that would be very insightful.

Ms. Breese Davies: The most recent one is an American study of about 12,000 lawyers. It's a very extensive study. I can get that to you through the chair of the committee.

The Chair: Thank you. We'll circulate it as soon as we get it.

Next, we will move to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I'd like to start with Dr. Kamkar, please. We've heard so much testimony today and through many of the other days of our study about the stresses that arise throughout the whole process of the trial. One of the big things that seem to be needed is the ability to have counselling during the trial as well as afterwards.

My question to you, Dr. Kamkar, is, given the state of affairs now where they can't actually talk about the trial during or after it, how does that affect counselling?

Ms. Katy Kamkar: Thank you very much for that question. It's very important.

A lot of times, it's not necessarily the content or the details of the trauma. I remind myself I'm providing CBT for trauma almost every day. It's not necessarily the content, but a lot of times, as we talked about, it's about the beliefs around the trauma, and also the stressors surrounding it. In that case, we talked about stress around the deliberation, the outcome, the fear of making a mistake, whether someone is part of the majority vote or the minority vote, the pressure, and the time. There's also, whenever the trial ends, what they hear in the media, the family's opinion, and friends' opinions. People start talking about it. There is people's perception of them. A lot of times, a lot of the stress is not necessarily around the actual content but it's mostly about the perception that they might develop about themselves, and about others, and they're concerned about others' perception of them.

The other thing here—as you mentioned and as I appreciate—is really for us to view it on a continuum. We always look at mental health promotion, prevention, and early intervention. As you said, during the trial and after... a lot of times, there could be things even prior to the trial. To say, you know what, there are some expectations here. We know expectations prior to attending an event are very key to our emotional distress. Having any kind of unhealthy coping for anxiety, especially anticipatory anxiety, and going from their normal life to jury duty with that, but also throughout the trial as well, so if they go through any emotional distress, what could be some key healthy strategies that they could use to better deal with the distress?

Again, we can view it on a continuum and it can maybe help to prevent someone going from mild to moderate symptoms or moderate to severe symptoms—anything, of course, that could help prevent the onset of a psychological disorder, as well as after the trial, for anyone who would need to have access to that. Even knowing that there is access provides a sense of peace of mind as well.

● (1635)

Mr. Ron McKinnon: Thank you.

Saskatchewan, for example, has provided for up to four sessions and an additional four, if recommended by the therapist, I understand. Is that an approach that you see has...?

I guess I'm concerned by the rigidness, as it seems to me, of that process. Do you think that works for effective counselling?

Ms. Katy Kamkar: There's always a concern whenever we set any limit. There are significant individual differences. It could be that sometimes after the trial we might deal with normal issues but also with adjustment-related issues that might resolve in about two or three months. Sometimes it could be the onset of panic attacks. If I do not know how to deal with my panic attacks, I might start feeling demoralized. I might start avoiding going to places or returning to my work.

Mr. Ron McKinnon: Would you say that the prescription for counselling needs to be more open-ended?

Ms. Katy Kamkar: Yes, to ensure everyone has good access and good care, absolutely.

Mr. Ron McKinnon: Thank you.

The Chair: I'm sorry to cut in, Mr. McKinnon, but you mentioned Saskatchewan's programming and expressed some concerns about the finite limit. Maybe you want to ask Saskatchewan about that.

Mr. Ron McKinnon: Yes, absolutely.

Saskatchewan, could you tell me what the basis is upon which you chose four sessions? It seems to be fairly arbitrary and maybe rigid.

Ms. Glennis Bihun (Executive Director and Inspector, Court Offices, Court Services, Ministry of Justice, Government of Saskatchewan): We certainly recognize that it's a starting point. Mr. Miller mentioned how we based our starting point a lot on the experience of what other jurisdictions were doing.

The other dynamic we considered is that we appreciate that this is an opportunity to provide jurors with support and to assist them in getting to a good space after their experience as a juror, but we also very much recognize the need to bridge the support provided through the program to some longer-term supports that may be necessary for mental health support. There's very much a recognition of the need to bridge. This program of course isn't in place and can't incorporate those longer-term needs for mental health.

Mr. Ron McKinnon: Thank you.

Would the Mental Health Commission like to comment on this as well?

● (1640)

Mr. Micheal Pietrus (Director, Mental Health First Aid Canada and Opening Minds, Mental Health Commission of Canada): From the research we've seen that's evidence-based and the programs that we work on with first responders and within the general workplace, it's certainly very important to make people aware of changes. Oftentimes, people may experience things and not know what actually is going on. They may not even associate them with mental health issues.

If you know in advance and you begin to see changes, as Dr. Kamkar was talking about, in terms of the continuum.... You go from that unexpected wake-up call in the morning at three o'clock before you deliver an important presentation or paper or something of that nature to all of a sudden not sleeping for weeks. That really begins to create all sorts of changes within the individual.

The importance of early intervention, of being able to be aware of changes that you're experiencing that could be related to the work you're doing as a juror, is very important in then seeking help. Otherwise, you may not know for quite some time afterwards that you really need help and that you are experiencing mental health problems or the onset of a mental illness. It's a very slippery slope, and it can occur very quickly.

The Chair: Thank you.

We're moving on to Mr. Rankin right now because we're out of time for this questioner.

Don't worry. I'm sure he'll give you a chance, Ms. Davies.

Mr. Murray Rankin (Victoria, NDP): I have so many questions. This is such an interesting group of presenters. Thank you very much.

Ms. Bihun or Mr. Miller, just to go chronologically, I have a question for you, please. You live in a province where there's a very large indigenous population. We've already heard Professor MacDonnell talk about the Ontario experience, where you have very large areas and people will no doubt travel a great distance in order to be on a jury.

Have you given any thought to specific concerns about aboriginal or indigenous culture and perhaps the need to address special needs, given their remote location and so forth? They have no one to talk to about their experience when they're cloistered in a hotel room far away, and then they go back to the community and there's nobody there because they're miles from any counselling services. Has that entered into your deliberations?

Ms. Glennis Bihun: Yes, absolutely. Certainly, over the years as we continue to review and address concerns that may arise periodically on the overall jury management system, a key group in Saskatchewan that we seek advice and counsel from is an elders forum. On a number of occasions over the years we've sought their advice and have made changes in regard to that advice. That's certainly something we're committed to continuing to do in the go-forward.

Mr. Murray Rankin: Ms. Davies, I have two questions for you.

The first is that you tantalizingly told us that you had a case where juror supports were provided, yet you didn't, I don't think, tell us about any experience, positive or negative, that you might educate us upon.

My real question is on how you talked about the need for others in the courtroom to have counselling services where required. I was fascinated by that.

I was thinking, though, that in the defence bar, I really appreciate that the one in four lawyers with mental health issues and especially women and racialized minorities are finding themselves in the defence bar without the benefits of the state system that might be available to a crown counsel. I very much respect that. In my province of British Columbia, there's a very effective program the law society offers free for members of the law society, and it deals with mental health issues, drug addiction, alcohol, etc. I wondered whether that wouldn't be a sufficient place to go and just maybe make it more robust in funding.

Lastly, if you're a defence lawyer, some of what you might be particularly traumatized by, ironically, could be things you can't talk about because they're subject to solicitor-client...you have evidence from your client that is really traumatic and you can't share it with anybody because you're their lawyer.

I'd like it if you could address some of those questions.

Ms. Breese Davies: The first question was what case was I involved in. It was the coroner's inquest into the death of Ashley Smith, in which there was videotaped evidence of her in custody. She was the 19-year-old who died in Grand Valley Institution. There was a lot of videotape evidence of her acting like a normal 17-year-old, joking around. There was video evidence of her being forceably injected with medication, and ultimately, there was a video of her dying, because they had been ordered to videotape her. There was also lots of very difficult evidence. The process was different, because it was a coroner's inquest, so nobody's liberty interest was at stake, and there is a bit more flexibility around how you can deal with jurors in those cases. On an ad hoc basis, the coroner, Dr. Carlisle, who was the adjudicator on that case, provided support to the jurors throughout the process and afterwards. We know that the jurors took him up on that offer. We knew very little about it, for obvious confidentiality reasons, but we also know that it continued after the case was over.

That's the only case I've been involved in.

There are unique challenges to trying to do it during the hearing, particularly in a criminal trial, because you don't want someone external to the jury interfering with their deliberative process. I think that's a real challenge in terms of providing support during a criminal trial, because you do want them to be the decision-makers and to receive the instructions from the judge. That was the case I was involved in. I don't know how successful they would say it was, but it was certainly reassuring to all of us who were involved. Also, certainly during that case, I, out of pocket, had mental health supports that I relied on during that process to deal with any issues in a pre-emptive way.

● (1645)

Mr. Murray Rankin: Is there no law society help for you?

Ms. Breese Davies: I might have been able to go through the law society. The law society program in Ontario is quite restricted. I did it privately because there was also the matter of juggling schedules, and a lot of what the law society provides, at least in Ontario as I understand it—although I would invite you to get other information from the source—is a lot of over-the-phone counselling and counselling by email. So for me, that wasn't the sort of thing I would have benefited from.

I think there are real restrictions in terms of what is available through the member assistance programs, and they're not consistent across the provinces. Some are better than others. I think my recommendation would be to extend these benefits to people who don't otherwise have access to them. That restriction might be limited if there was a robust support system from the law societies in the province, or it would be available in other provinces where there isn't one.

The last question was about privilege. That's something we have to navigate, absolutely. We would have to respect privilege in any discussions that we have with anybody, but as Dr. Kamkar said, you can talk about the issues without disclosing privileged information.

Often the information that is traumatizing becomes part of the public record. Once it becomes part of the public record—

Mr. Murray Rankin: I'm talking about when it doesn't.

Ms. Breese Davies: Right. In fact, defence counsel would be restrained in what they could disclose to a counsellor, and they'd have to be governed by their obligations in terms of privilege, and that would limit the ability. The other thing I think is important is having access to supports that are in person if that's what they need. It's really important to connect people with resources that will work for them as opposed to saying here's a phone number you can call.

Mr. Murray Rankin: I really appreciated, Mr. Rodrigue, how you helpfully summarized the five recommendations that MHCC made. Numbers two and four were kind of linked. One was that if it's a dramatic case, you should arrange for mental health professionals during the trial, and then of course you said, understandably, that section 649 of the Criminal Code might need to be addressed so people can access professional help. They're very much linked, because you can't do one without the other.

Do you have any thoughts about that and how it might work?

Mr. Michel Rodrigue: There are other experts around the table who may have more specific ideas.

Around the actual services, the important part is for the individuals to have access to prevention. If you're going to be listening in on very traumatic experiences and those are going to be related during court, you should have access to pretrial training so you get to build resiliency. Then, throughout the case, you should have access to counselling.

There's one area where we are trying to expand because we know have challenges in terms of access to mental health services across Canada, and we are trying to be very creative. We are now trialling a program in Newfoundland and Labrador using e-mental health therapies. In Great Britain, those have been demonstrated to be as effective for mild to moderate depression as face-to-face counselling. There's also an encouraging element, which is that we could be very creative in how we are able to offer these services to jurors.

I'll leave my comments at that and perhaps open it up to others if they want to address it specifically.

● (1650)

The Chair: Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair, and thank you to all of the witnesses for coming in today and for all of your compelling testimony.

If I may start with you, Professor Goodman-Delahunty, you spoke about perhaps debriefings by judges to jurors to give them that closure. We did hear testimony previously about this need for closure, which a lot of jurors expressed was so important to them. We also learned that some provinces do it and some judges do it, but it's not something that's across the board.

What is your opinion? Do we need to provide training for judges? If a kind of national action plan were to be created for providing that support to judges, how important is that training piece for judges, and then, building on what Ms. Davies and Ms. MacDonnell said, perhaps moving it to all administrators of the justice system? Can I have your comments?

Then I will ask both of you to comment on that as well.

Prof. Jane Goodman-Delahunty: I think there are some judges who are going to be more comfortable with that kind of role and others who are not. It seems to me, in looking at the literature on this topic, that there really are two different models, some where judges have been present but have successfully turned over the facilitation or the debriefing to someone with facilitation and mental health counselling expertise, while the judge is available to fill in on some of the legal aspects. There are other judges who are comfortable doing that on their own, but who may nonetheless benefit from some training.

I don't know that it's imperative that a single type of model be adopted, because I think there will be individual differences with the judges as well. I think what's important is to provide that opportunity.

Some judges simply undertake to have their offices follow up with the jurors and let them know, for example, when a sentencing proceeding may eventuate. It is of much interest to many jurors, particularly if they've participated in the decision on guilt, to know what the follow-up will be so that they are not left simply with the sense of being participants and then being abandoned as the case goes forward. Sometimes jurors do want to attend those follow-up proceedings as well. That sort of facilitation is what many judges feel more comfortable with.

Ms. Iqra Khalid: Ms. Davies.

Ms. Breese Davies: I can tell you what my experience is, which is that it is completely inconsistent. I know some judges do debrief with the jury and give the follow-up information, so for some trials I've been involved in, a number of the jurors showed up for the sentencing hearing. For some trials, none did, and I doubt that there was any debriefing at the end.

You've heard the evidence from jurors about what would be helpful or not helpful, but to the extent that that is going to become part of the process, I think that training judges on how to do that and providing them with support if they do not feel comfortable doing it would be important. If someone else is going to do it, if you're going to have a facilitator, you still run into the section 649 problem, because there may well be discussion in that debriefing that would run afoul of section 649. The one thing that does happen in every jury trial I've ever done is that, at the beginning of the trial, the very first thing jurors are told is that it's a criminal offence to disclose the contents of their deliberation, and usually the very last thing they're told before they leave the courtroom is, “Thank you for your service. It's a criminal offence for you to discuss the contents of your deliberations.”

That is absolutely the clear message, and so I think you need to do something to help jurors navigate what that means. I think if I were a juror completely untrained, I would think that I couldn't talk about any of it with anybody ever in any context. When they are trying to navigate some psychiatric symptom as a result of the trial process or this or that and figure out what's captured or not, I think the message would be that it's all covered, and I don't think they would be wrong in that interpretation.

My experience is inconsistent. If you're going to recommend that this be a consistent practice, I think there needs to be appropriate training.

● (1655)

Ms. Iqra Khalid: Thank you.

Following up with regard to section 649 as well, we've heard that the ability to seek counselling not just after but also during.... In your opinion, could there be some colouring of opinion of a juror who could go through the potential process, and in that case, are we having an additional juror just by virtue of a juror seeking counselling during that time of a trial?

Ms. Breese Davies: I think that would be the concern, that you need to preserve the integrity of the decision-makers, and when there are 12 of them, you need to make sure that the decision is the decision of those 12. There are criminal offences of tampering with juries and interfering with juries. I'm not suggesting counsellors will do that, but given that we have it as a criminal offence, we're obviously concerned with intentional interference, but I think we also have to be worried about unintentional interference with the deliberation process.

I think it's a much more complicated question, in terms of the fairness of the trial and fairness to the accused, to provide supports on an individual basis. That's not to say you can't provide education around the possible symptoms and issues. Education is one thing you can provide. I think providing individual counselling to jurors through the process, which permits them to talk about deliberations, runs a real risk of creating unfairness in the jury process that you won't ever be able to measure. You would never be able to measure whether it's unfairness to the crown or unfairness to the accused, because it would be in a confidential environment.

Ms. Iqra Khalid: My last question is to both of you as well.

Something that came up a lot when we heard from jurors was that the same testimony or evidence or viewing of evidence in a trial affected jurors differently, and whether they need the counselling or not really depends on the individual person and how they internalize what they've seen.

Is there room, then, when it comes to the actual process of selecting the jury, to set in some measures to really allow people to opt out if mental health is a concern to them, or can the onus fall on the lawyers who are going through the jury selection process and the judge too, to ask those pointed questions when they're selecting the jury?

Prof. Vanessa MacDonnell: It's a very interesting and complicated question.

With few exceptions, we have resisted any kind of jury vetting on the front end. In the U.S., there is a very extensive voir dire system where potential jurors are asked a number of questions by the lawyers about features that might have a bearing on their jury service. We have not gone that route for all sorts of reasons—for reasons of juror privacy but also because we sort of have to assume that jurors are in a position to serve.

If we start asking too many questions, it's problematic. On the one hand, it might make sense to say, “Well, maybe we should consider asking jurors if they think they might be impacted.” With that type of inquiry, the rationale might come from a very good place, but then, of course, the flip side is the significant risk of stigma, the significant risk that, all of a sudden, we're looking for a particularly mentally fit type of juror, and that kind of inquiry is a lot darker.

Occasionally, there are questions about whether we should question jurors about their competence. There have been some very high-profile cases in the past. In the U.K., for example, it came out after a trial that there was obviously not a basic understanding on the part of jurors of the legal concepts, and those things can have a potentially devastating impact.

Again, the idea of asking jurors...of measuring their competence in advance, can go south very quickly. This kind of questioning raises a lot of difficult questions. I'm a skeptic.

● (1700)

Ms. Breese Davies: If I can just jump in, I agree about not going there as a positive step, but jurors are invited to articulate any undue hardship. I think the only thing you could do in this respect is to ask that the questionnaire that gets sent out in advance include that as a potential ground of hardship, one that the court would be willing to consider, if the juror wants to volunteer the information.

I think you have to respect the autonomy of jurors and not create another exit, because we have such a problem with under-representativeness on juries.

The Chair: Thank you so much.

Now we're going to go to what we call our “short snap-around” where the question has to be relatively short and pointed. I would also ask that the answer be brief so that we can get as many as possible from members.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

I have two questions. I will pose them both and then the witnesses can answer.

Mr. Rodrigue, you made reference to the need for pretrial training in certain difficult cases where the evidence might be quite gruesome or difficult to deal with. I think you alluded to two training programs in your testimony. I don't know anything about those programs. Perhaps you could just expand on what the scope of that pretrial training would look like.

Professor Goodman-Delahunty, I was wondering if you could talk about some of the programs, if any, that are in place in various states of Australia.

Mr. Michel Rodrigue: Thank you, Mr. Cooper, for that question. I'll pass it off to my colleague who is primarily responsible for those programs, and he'll be happy to outline briefly what those are.

Mr. Micheal Pietrus: Basically these are preventative programs designed to make people more aware of their own mental health and mental wellness and look for signs and indicators. We don't want people diagnosing themselves, but you can tell a lot about changes in mood, sleep, addiction issues, and all of those kinds of things. The more aware you are of these, the easier it is to get help.

At the same time, we provide coping strategies to help you move along that continuum to a much more positive and mentally well state. That is what we're looking to do. If you have that kind of situation, where people are going to be exposed to trauma—again, it triggers some people and others are able to deal with it— but if you're aware, you can seek that early help and support to make sure that it doesn't become a much more chronic issue.

The Chair: Professor Goodman-Delahunty.

Prof. Jane Goodman-Delahunty: With respect to the programs in Australia, I'm not aware of any that are pretrial preventative kinds of training, such as we've just heard about. The services that are available through the jury administrators' offices are more akin to what Saskatchewan appears to have, where there are professional counsellors who can be accessed by individual jurors in situations where they feel stressed.

Generally, we've learned that the mere existence of them needs much more publicity to jurors so that the uptake occurs. There have been barriers to their use, simply because although they were there they weren't very evident to jurors who came on board. A great deal needs to be done to make those more visible.

The Chair: Thank you very much.

Mr. Mendicino.

Mr. Marco Mendicino: I want to pick up on a point raised by Professor MacDonnell around the sharing of jurisdiction when it comes to many of the ideas we've been discussing today around mental health.

We take some guidance from the Criminal Code inasmuch as where the federal government is directly involved in setting some parameters, when you look at the code you see a lot of guidance with regard to the procedure of empanelling and discharging a jury, but there are also some substantive protections around the secrecy of juror deliberations.

A lot of what we've been talking about today around mental health, allowances, hardships, and some of the recommendations that have been put forward actually find themselves in provincial statutes and regulations. My question to you is—you can answer, and then perhaps others can weigh in—for the purposes of this committee's deliberations, as we get our heads wrapped around this collectively, where is the appropriate entry point for the federal government in navigating around the shared jurisdiction of this important issue?

● (1705)

Prof. Vanessa MacDonnell: I haven't done a detailed federalism analysis of this issue. I know, though, that Breese has some things to say about the potential spending aspect of things, so I'll leave her a moment.

The way it tends to be framed is that we tend to talk about everything up until the point of empanelment, which tends to be dealt with by the provincial Juries Act. I guess even part of the process of empanelling the jury is where the federal jurisdiction kicks in, with the Criminal Code provisions on peremptory challenges and challenges for cause. A lot of what we're talking about strikes me as being a provincial matter, like you said, the kind of thing you'd find in the Juries Act.

Certainly on this question of juror secrecy, I think that's absolutely a matter for the federal government. Ontario and Saskatchewan recently rolled out these programs. These programs are being implemented provincially, so my sense is that you're talking about collaboration when it comes to a lot of these things, with the feds and the provinces playing an important role.

Maybe, Breese, you want to say something about the spending dimension.

Ms. Breese Davies: Obviously this is a point of intersection between federal and provincial jurisdiction, where you're talking about the administration of justice. A lot of this, a lot of what we've talked about, has to do with the administration of justice, which is a provincial power, but obviously you also have cost-sharing agreements between the federal government and the provinces. Those have changed over time. We've seen an historic reduction in the federal contribution for things such as legal aid and all of that sort of thing.

My caution is that to the extent that you are going to encourage provinces to do this, which may be all that you decide you can do on a particular issue, that you want to collaborate with them and encourage them to do this as part of their jurisdiction.... I caution that if you encourage them to do it in a particular way within a finite package of financial resources, they will do this at the expense of another part of the system, and almost inevitably that will be at the expense of legal aid funding. Almost inevitably, funding to legal aid and defence counsel is the easiest thing to cut, because nobody's going to be up in arms about that. Other things often get priority.

If you want this to be something that happens across the country, I would encourage you to also think about sharing in the funding of it.

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: This is a question for Professor Goodman-Delahunty.

You mentioned that New Zealand is a leader in this field. I don't know what you were referring to. You said that about the greater awareness of the conditions in the jury room and so forth. Did they have a counselling support program or the like that led you to conclude they were a leader? What did they do that makes you say that?

Prof. Jane Goodman-Delahunty: I was referring specifically to their use of deliberation aids in the form of fact-based question trails, or decision trees for jurors to use to facilitate the decision-making process and not to any other aspect of juror support or counselling.

Mr. Murray Rankin: Lastly, you said that 20% of Australian jurors take you up on these programs that are available. You said that a general debriefing is positive. What does a general debriefing include? Is that just a conversation with a counsellor at the end?

Prof. Jane Goodman-Delahunty: Those are two different things. The counselling service—and those statistics are some years out of date, but they're the most recent we had.

The debriefing is a different process. That is simply a discussion, in open court usually, between the judge and/or someone else. Mostly in the Australian context, it has been judges who have implemented that system of their own volition to provide jurors with closure. That would not necessarily involve a counsellor.

Mr. Murray Rankin: Thank you.

The Chair: Mr. Fraser.

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

Thanks, everybody, for joining us today. It's been very interesting.

I have a practical question for the folks from Saskatchewan. We heard testimony earlier on in our study about some challenges that jurors were facing at the courthouse itself. Professor Goodman-Delahunty touched on some of the things that can be done to make it more comfortable for jurors, even something as simple as having a window that opens, or a more collaborative atmosphere for jurors.

We heard earlier in testimony that there were issues even with regard to the parking. Sometimes jurors were arriving at the courthouse at the same time as perhaps the victim's family or others who were in the courtroom. I wonder, from the Saskatchewan experience, whether any thought has been given to that, and whether the aim is to make jurors as comfortable as possible.

● (1710)

Ms. Glennis Bihun: I'm happy to elaborate a little bit on other things going on in Saskatchewan.

The rollout of the juror assistance and support program is really one initiative that's part of an overall review of our jury management system. That overall review certainly includes taking a deeper dive into some emotional supports along with those financial supports. It certainly goes towards education. It certainly goes towards taking a look at the information we have available in our summons packages. It also can certainly take a look at some of those comforts with regard to facilities.

Specifically with regard to parking, we are able to provide parking when jurors have been selected and are participating on a jury itself, so that's something that's allowed for as part of the reimbursement expenses that exist in our regulations.

Mr. Colin Fraser: And do they have their own entrance into the courthouse, or are they interacting with people who they may be nervous being next to?

Ms. Glennis Bihun: I would say that it varies. Saskatchewan has the good fortune of having many beautiful and traditional historic courthouses in our nine judicial centres and that's something to be very proud of. You can appreciate that sometimes what comes with that, particularly as a number of different matters are proceeding at the same time, with some of the complexities of the cases, is that we are finding ourselves experiencing those difficulties.

I'll ask Mr. Miller to address it given his particular experience, as a sheriff, and what he has experienced in those situations.

Mr. Warren Miller: Specifically, if you're speaking of the Victoria Avenue Court House in Regina, there are only three areas of entrance or exit at that building, so we have to coordinate the egress of accused persons, jurors, witnesses, families, and the public through those three entrances, obviously trying to limit contact wherever possible.

The facilities themselves present challenges but we do our best to manage those.

Mr. Colin Fraser: Thanks.

The Chair: My question is to Professor Goodman-Delahunty. It's a comparative law kind of question.

Ms. Goodman-Delahunty, you've been hearing us talk and opine about section 649 of the Canadian Criminal Code, which restricts jurors from talking about deliberations of the jury post-trial. You talked about your experience from Washington, in the United States, where they don't have such a restriction.

Can you tell us whether in Australia it is federal or state law that would govern that, and whether there would be a distinction between New South Wales and Victoria, etc., and whether there would be any restriction or not?

Based on your accent, I'm guessing you're from South Africa, probably Johannesburg, so I'm asking also whether you know what it is in South Africa as well.

Prof. Jane Goodman-Delahunty: I'll start with the last part. As far as I know, they no longer have any jury trials in South Africa, so that's out of consideration.

The Chair: Okay.

Prof. Jane Goodman-Delahunty: In Australia, by state, there are similar provisions that prohibit the discussion of the contents of deliberation, but it is state law that would govern those. There is a provision for jury trials on some Commonwealth matters, but those are very rare and would have their own separate law about that issue.

I think despite their state differences, they're very parallel.

● (1715)

The Chair: Thank you very much.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: I was going to go along those same lines. I'm the only one on this side who's not a lawyer. I'm a businessman. When I look at this, I think, Jesus, so I'm curious and I want to ask our law professors whether, over the last 50 years, there is a trend. I understand that most trials—maybe I'm being presumptuous when I say that—are plea bargained at this point. More and more, there is less and less trial.

Has anybody done a study to see what the trend is? How many trials are we talking about?

Then the second thing is what Mr. Housefather was alluding to. I don't know if he's alluding to that, but of course, our law is part of the British system. We have a tradition that has the trial by jurors. Is there any talk within the law profession about moving away from that and moving towards what other jurisdictions have done for centuries, which is just trial by judge?

Ms. Breese Davies: That would require you to amend the charter. That may be bigger than what you thought you were biting off with this question.

In some cases, there's a requirement for juries unless the crown consents to there not being a jury. Many people elect to have a trial by judge alone. Many people would elect to have a trial by judge alone even in those cases where it's required. If you're looking to limit the number of jury trials, one thing you could do is to allow an election to be done in every case regardless of what the offence is. We have section 469 of the Criminal Code which requires there to be a jury unless the crown consents otherwise. You could just do away with that and have an election in every case if you wanted to limit the number of jury trials.

I don't know if there's research on trends in the number of jury trials or not. I think it varies from jurisdiction to jurisdiction.

Prof. Vanessa MacDonnell: I don't think I have anything to add.

The Chair: Mr. McKinnon, you have one last question if it's very short.

Mr. Ron McKinnon: Ms. Davies, you expressed concern about the idea of individualized counselling during the course of a trial. I was wondering if that could be addressed by having a suitably appointed, suitably certified, court-appointed counsellor.

At the same time, I'd like to ask the opposite question to Dr. Kamkar, as to whether group counselling during the course of the trial would be effective.

Maybe we'll start with Ms. Davies or Dr. Kamkar.

Ms. Breese Davies: Why don't you start?

Ms. Katy Kamkar: When we finished our conversation, I was actually thinking about it and wanted to include something, so thank you for that.

People can still benefit without necessarily talking about the content of the trials and the materials, on which, I understand, there are legal restrictions. People can really learn evidence-based cognitive behavioural therapy skills and strategies to manage anxiety, mood changes, or any emotional distress. It would be wonderful again as a preventative strategy. We do benefit from evidence-based CBT strategies just generally speaking. How can I manage my emotions? How can I manage my sleep? How can I manage any negative thoughts or worries that I might be going through, without again talking about the contents? Those general strategies in addition to, as you mentioned before, education, can be tremendously beneficial as well.

Mr. Ron McKinnon: That could be done very effectively in a group context?

Ms. Katy Kamkar: Yes, it can be done in a group. Ms. Davies mentioned education, of course, and then there are also evidence-based CBT strategies and skills for better management. Again, with a variety of skills and strategies, we can learn to better manage our emotional distress or any distressing thoughts we may experience, and we can learn about healthy coping, unhealthy coping, normal reactions, warning signs of stress, etc.

Mr. Ron McKinnon: Thank you.

The Chair: Ms. Davies, do you want to finish? Then that will be the end of the meeting.

Ms. Breese Davies: I would be concerned about the privacy of individual jurors who are experiencing the evidence or the process differently from one another and about the capacity to deal with some of the issues that were raised in terms of interpersonal conflict. If the stress is the product of a conflict, it may be that people wouldn't raise the issues in a group setting.

I'm not a therapist, so I don't know, but those are the sorts of things that would be of concern to me. We wouldn't want to create a situation that stigmatizes one juror in respect of the group by having them disclose what was going on with them individually.

● (1720)

Ms. Katy Kamkar: She's absolutely right about that. That's very true. We need to very much appreciate individual differences, of course, and I think that if we're going to go the route of groups, having access to individual counselling as well would be tremendously helpful in the case of those specific issues that might arise—they are more often the case than not.

The Chair: Thank you very much.

I want to thank all of the witnesses today. It was a real pleasure to have you testify before our committee. We very much appreciate your testimony and the quality of the testimony.

If you have any written submissions that you have not yet provided the committee and you want to, we invite you to please do so.

Have a wonderful day.

The meeting is adjourned.

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