HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

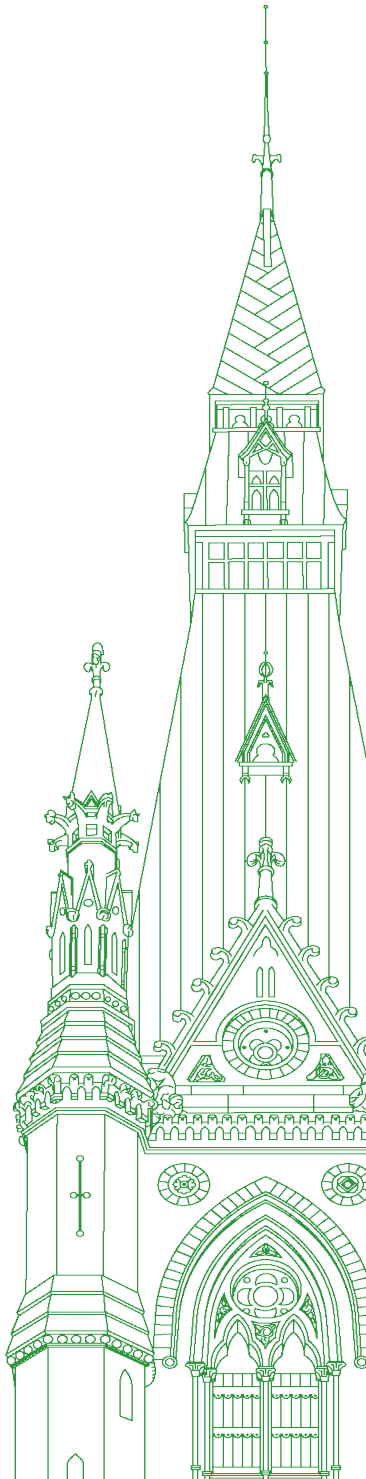
43rd PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 005

Thursday, March 12, 2020



Chair: Ms. Iqra Khalid

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)): Good morning, everyone.

Today we are having our second meeting on Bill C-5.

In our first panel, we have the Canadian Association of Black Lawyers, the Canadian Centre for Gender and Sexual Diversity, the DisAbled Women's Network Canada, and the Women's Legal Education and Action Fund.

I'll ask the Canadian Association of Black Lawyers to present its opening remarks for five minutes. This will be followed by questions from members.

Without further ado, Raphael Tachie, from the Canadian Association of Black Lawyers.

Mr. Raphael Tachie (Vice-President, Canadian Association of Black Lawyers): Thank you for inviting CABL to speak on this matter. We appreciate the opportunity to do so.

From CABL's perspective and the communities we represent, the intention behind Bill C-5 is laudable. We think the idea of educating the judiciary on taking the social context into account in sexual assault cases is a positive step and should be recognized and lauded.

We have a couple of concerns that we wish the committee to consider and take into account. The first concern revolves around the idea regarding interference with judicial independence. We question whether an undertaking to complete certain training or courses will be seen as interference with judicial independence by the executive and legislative branches.

The proposed amendments, furthermore, do not contain any enforcement mechanisms, whereby an individual provides such an undertaking, and then later on does not fulfill the requirements. Without an enforcement mechanism, we question whether the perception of interference with judicial independence is really worth it at the end of the day. That's our first concern.

The second concern we have revolves around the lack of definition of social context. If the amendments are to proceed as drafted, we urge the committee to think about the differential impacts of the law on the bodies of indigenous and black people. More specifically, when it comes to sexual assaults, whether in regard to victims or as accused, stereotypes about black and indigenous people lead to differential treatment under the law. These have different impacts on our bodies and communities.

CABL, therefore, urges the committee to include express language relating to the experiences of black—

The Chair: Sir, hold on for a second. I don't think we have translation. Perhaps you can give us a moment to see if we can fix it. As we're trying to figure out the translation for the video conference, I'll ask the next panel of witnesses to go ahead.

We'll come back to the Canadian Association of Black Lawyers.

Please pardon the interruption, as we deal with our technical challenges.

I'll turn to the Canadian Centre for Gender and Sexual Diversity, and to Cameron Aitken and Hana O'Connor.

Ms. Hana O'Connor (Ontario Conferences Coordinator, Canadian Centre for Gender and Sexual Diversity): Good morning.

The Canadian Centre for Gender and Sexual Diversity advocates for a world free from discrimination. To that end, we work through the fields of advocacy, education, research and resource creation to support 2SLGBTQ+ communities across Canada. To support this mandate, we support teachers and service providers as they work toward bridging knowledge gaps around gender and sexual diversity.

The intimate partner violence prevention program at the Canadian Centre for Gender and Sexual Diversity aims to increase capacity of LGBTQ2S+ agencies by providing them with the tools, information on resources and services and training to support LGBTQ2S + survivors of domestic physical assault, sexual assault and emotional abuse, and to increase and equalize their access to the criminal justice system.

We work with LGBTQ2S+ agencies, law enforcement and non-LGBTQ2S+ organizations to create best practices to address the gaps in victim services and increase access to justice for LGBTQ2S + people. These organizations include: sexual assault centres, community resource/health centres, legal services, victims services, police units, sexual health centres, pride centres, university and college programs, and many others. We will work with any and all service providers across Canada who may come into contact with LGBTQ2S+ survivors of intimate partner violence to increase the positive quality of these interactions.

In looking at the proposed legislation, Bill C-5, we support the rationale. In particular, the following points resonate with our program:

> And whereas reasons for decisions in sexual assault proceedings enhance the transparency and accountability of the judiciary;
>
> Whereas survivors of sexual assault in Canada must have faith in the criminal justice system;
>
> Whereas sexual assault proceedings have a profound effect on the reputations and lives of the persons affected and present a high possibility of revictimizing survivors of sexual assault;

and in particular, the importance of

> continuing education

Working with service providers across Canada, we are aware that ongoing education is a successful method of intervention in confronting bias for service providers. The formal process for survivors of sexual assault to receive necessary advocacy, health and legal supports is multi-faceted and involves a multitude of service providers. At every stage, there are barriers, which can relate to the intersectional identities of survivors. Ongoing discrimination based on a multitude of factors and lived experiences can further compound and weaken the relationship between survivors, service providers and the state.

Much of the same can be said for folks whose experience of sexual assault and violence also includes intimate partner violence. Members of the 2SLGBTQ+ community are, broadly speaking, more impacted by sexual assault and violence, and thus their lived realities need to be understood for competent services to be delivered.

Working with social workers, HR professionals, medical professionals and others in service provision, our aim in the IPV prevention workshops is to dispel harmful stereotypes and misconceptions that influence notions supporting survivors of sexual violence. Two crucial assessments include decoding which partner is the victim or abuser and providing services to transgender and gender non-conforming clients.

Notions of masculinity and femininity, age and appearance can often impact how service providers respond to situations of abuse as they first assess and react to the situation. Through the four years this project has been funded, we have delivered roughly 300 workshops to service providers across Canada. Starting with a greater understanding of gender and sexual diversity, we transition into situations and problem-solving, which challenge existing bias.

We have found that such training needs to be ongoing and of varied lengths depending on the particular organization, and we would encourage that the proposed seminars be lengthy. There are also provincial and regional disparities, which require training sessions to always take into account local needs, as they vary significantly.

Finally, the organizations that participate are engaged in an ongoing process of ongoing education to continue to address personal, organizational and policy-based barriers. Our training and workshops succeed because the goal is to promote a mentality focused on social justice and trauma-informed care, instead of a set curriculum.

I will now introduce our executive director, Cameron Aitken.

● (1110)

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

Mr. Cameron Aitken (Executive Director, Canadian Centre for Gender and Sexual Diversity): Thank you.

It is on that basis that we want to say we support the final section of the amendment surrounding the Criminal Code and further information regarding decisions in cases related to sexual assault.

Finally, in regard to gaps, we recommend that in addition to reporting on what seminars were offered, the number of judges who attended said seminars and the names of those judges are disclosed in reporting, similar to a mechanism of enforcement.

Finally, we recommend the implementation of reporting that asks judges to reflect and provide responses on how these seminars contribute to the incorporation of trauma and violence-informed approaches.

We are concerned that the existing phrasing around the proposed seminars does not represent the diversity of survivors of sexual violence in Canada. In particular, considering the organizations present today, we feel that a further enshrining of "Diverse voices who represent persons, groups or organizations the council considers appropriate, to support sexual assault survivors and organizations that support them...".

Thank you very much for your time.

● (1115)

The Chair: Thank you, Mr. Aitken.

We'll move to the DisAbled Women's Network of Canada.

You have five minutes.

Ms. Bonnie Brayton (National Executive Director, DisAbled Women's Network of Canada): Thank you.

I'd like to begin by acknowledging that we're gathered on the territory of the Algonquin people and that we are in a time of truth and reconciliation with all the indigenous communities from coast to coast to coast. We want to thank the Attorney General and the committee for inviting us today to speak. We also want to acknowledge the important work of the other panellists who are speaking today.

In fact, LEAF, who are also joining us today, have been and continue to be important allies for us. They have supported DAWN Canada in several Supreme Court decisions that provide us with concrete, measurable evidence that the issue of myths and stereotypes related to victims of sexual assault have a particularly egregious impact on deaf women and women with disabilities, particularly women with mental disabilities, including learning and intellectual disabilities, psychosocial disabilities and brain injuries. Let's be clear: It's when communication and interaction with the victim may be different.

We are here to discuss Bill C-5, an act to amend the Judges Act and the Criminal Code. We hope this legislation is enacted quickly. We expect and anticipate strong, non-partisan support from this committee. In preparing for today, I found something very interesting in the 2004 publication of *Ethical Principles for Judges* . It's not in the 2020 draft, by the way. In the chapter that focuses on equality, Chief Justice McLachlin and the committee chose to cite Eldridge specifically in the context of the risk of stereotyping.

DAWN Canada were intervenors in the Eldridge decision and in D.A.I. 2012. That was another very important decision that speaks to the myths and stereotypes that have been perpetuated in the courts and in society. In D.A.I., the issues of myths related to sexual assault are central and make clear that judges are themselves subject to biases, including deep-rooted biases that are linked to systemic sexism, racism and ableism. A review of CanLII reveals 723 instances of Eldridge being cited, and 152 for D.A.I.

I'd like to draw from the McGill Law Journal, in which Isabel Grant and Janine Benedet, in “Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues”, wrote as follows:

> The tendency to infantilize women with mental disabilities contributes to sex discrimination against them by perpetuating stereotypes of asexuality and hypersexuality. When these women are analogized to children, sexual relationships are no longer seen as necessary or important for them and they are depicted as asexual. Since no sexual activity is considered appropriate for children, the sexual activity that these women do have is then labelled as inappropriate, and they are also tainted, paradoxically, with a label of hypersexuality.
>
> The criminal trial process was not designed to facilitate the testimony of persons with disabilities. Oral testimony under oath, cross-examination, and the requirement to repeat one's story over and over again to persons in authority with consistency over a long period of time can present serious challenges to women with mental disabilities, yet these requirements are accepted without question as integral to the criminal trial process. An inability to operate within the confines of the traditional trial process may result in the diminished credibility of a woman's testimony or even in the granting of a stay of proceeding.
>
> The nature of the evidence received by courts in sexual assault cases presents other concerns. The routine use of sexual history evidence, cross-examination on therapeutic and other third-party records to undermine credibility, and the requirement of recent complaint raise unique concerns for women with mental disabilities. We suggest that the myths and stereotypes on which these devices rest remain....

My final comment and reminder to this committee is that 24% of women in Canada live with a disability. That's the statistic. Women with disabilities have the highest—the highest—rates of sexual assault of any women and girls in this country.

Madam Chair, if we are permitted to share our recommendations, Karine-Myrgianie will share them.

The Chair: You have 30 seconds left to share them. I understand that you have presented a written brief with your recommendations to us, which will be translated for the rest of the committee.

If you'd like to make any additional remarks, you do have 30 seconds.

● (1120)

[*Translation*]

Mrs. Karine Myrgianie Jean-François (Director of Operations, DisAbled Women's Network of Canada): Thank you for these extra few seconds. We will circulate the other information later.

We recommend that the training start from an intersectional analysis to deconstruct the myths and stereotypes about women with disabilities and deaf women victims of sexual assault.

For clause 2, we recommend that the training and seminars be developed by women's groups with expertise on marginalized women, such as DAWN Canada.

With respect to clause 3, we understand that there is a concern about judicial independence. However, we think it is important that all judges attend these seminars, that the seminars be evaluated, and that the evaluations be shared with the designers and the groups that developed the seminars in order to improve them.

This will also ensure that the systemic discrimination experienced by the most marginalized women remains at the heart of the discussions. Deaf women and women with disabilities, including those who live at the intersection of different forms of oppression, should participate in the seminars and training.

[*English*]

The Chair: Thank you for your condensed remarks. I appreciate that.

Moving on to LEAF, we have Rosel Kim.

Ms. Rosel Kim (Staff Lawyer, Women's Legal Education and Action Fund): Good morning. My name is Rosel Kim. I'm a staff lawyer at LEAF, the Women's Legal Education and Action Fund.

Thank you very much for inviting LEAF to speak on this issue.

Over the past 35 years, LEAF has played a key role in advancing women's and girls' substantive equality rights in law through litigation, law reform and legal education. The advancement of sexual assault law through a feminist and equality lens is a fundamental element of LEAF's work, because freedom from violence is a necessary condition for women's equality rights.

LEAF recognizes the symbolic importance of this bill and supports judges receiving training on sexual assault. However, we also believe that the bill requires certain specifications about how this training should be implemented, details of which I'll discuss later on.

I'll begin by discussing why LEAF supports specialized judicial training on sexual assault.

Despite a cultural shift in how we talk about sexual assault, we continue to witness profound misconceptions about sexual assault complainants in the courts.

For close to 30 years, Canadian law has said that a complainant's previous sexual history should not play a role in determining whether the complainant is believable, or whether the complainant consented to the sexual act in question, yet trial judges continue to get it wrong. Their errors are frequently rooted in harmful myths and stereotypes and, probably not coincidentally, a lack of understanding about the legal definition of consent—like the belief that if you weren't actively fighting back or yelling out, you weren't really saying no.

Recent cases have seen trial judges acquitting the accused or questioning the credibility of the complainant because a complainant didn't close her knees; because she was wearing loose-fitting pyjamas with no underwear; because she didn't immediately leave; because she had consented before.

Training is also necessary, because in order to combat such myths and stereotypes about complainants while still respecting the rights of the accused, sexual assault law has become very complex.

Many judges have had little to no experience in criminal law before being appointed to the bench. It's difficult to imagine that they'll be able to preside over a sexual assault hearing without training. It's left to the appellate courts then to correct the errors in law that are made in the lower courts. But not every case in which trial judges make these mistakes is or can be appealed. Even where an appeal is allowed, this may not feel like a victory to the complainant who will once again need to tell her story in a new trial.

Judicial training on sexual assault is needed to stop these errors before they happen in order to ensure trial fairness, minimize retraumatizing of complainants, and save judicial resources.

For these reasons among others, LEAF supports judges receiving training on sexual assault. In order for the training to be effective, we believe the bill requires certain specifications.

First is the term “social context”, as the other witnesses have mentioned. The term should be defined explicitly as factors contributing to systemic inequality in Canadian society, to include colonialism, systemic racism, ableism, homophobia and transphobia. Education about sexual assault cannot be conducted in a historical vacuum.

It's necessary to understand how our history and current social conditions, such as ongoing impacts of colonialism, have led to and can exacerbate the proliferation of sexual violence and the myths and stereotypes about complainants. Judges need to understand that indigenous women in Canada are three times more likely than non-indigenous women to experience sexual violence in their lifetime. Judges also need to understand that women with disabilities are more likely to experience sexual violence than are women without disabilities, as DAWN has mentioned.

Similarly, my second point relates to subclause 2(3) of the bill, which provides that materials will be developed in consultation with sexual assault survivors and organizations that support them.

It's important that sexual assault survivors who are consulted also reflect the diversity of people in Canadian society, especially those who have lived through the conditions of marginalization, such as systemic racism, and who directly understand how marginalization impacts their experience of sexual assault.

We would ask that this section also include meaningful consultation and input from individuals with lived experiences of oppression, particularly individuals or organizations that serve populations that are indigenous, black, or racialized, or those who live with disabilities or in poverty, among others.

Seminars on sexual assault should also include the impact of trauma on the complainant's memory, demeanour and well-being, considerations currently absent from this bill. Trauma can also have a profound impact on how a complainant remembers the assault, as well as on how a complainant reacts to it at the time of the assault and in the courtroom.

● (1125)

Finally, I would like to discuss clause 4 of the bill as it relates to reasons. In its current version, the bill only requires written reasons to be provided if trial proceedings are not recorded. Having publicly available written reasons would ensure greater accountability for the justice system by allowing legislators, researchers and the public to access and review them. As the bill currently stands, any oral judgment entered into the record will still require someone to pay for and order the trial transcript, which is costly and can be time-consuming.

As an alternative, we suggest amending clause 4 of the bill, so that where written reasons are not available in a sexual assault trial, the transcripts of the trial decision only, and not a transcript of the entire trial, should be made available on publicly accessible domains. This can be made possible by government providing dedicated funding for the transcript of the trial decisions.

Thank you very much for your time.

The Chair: Thank you very much to the witnesses.

Because of the technical difficulties, we will try to get the panellists by video conference to come into our second panel. For now, as we try to bring them back with proper interpretation, we'll go to our first round of questioning.

Mr. Lawrence, you're up, for six minutes.

Mr. Philip Lawrence (Northumberland—Peterborough South, CPC): Thank you all for being here and having such a professional discussion, and thank you for doing the work you do in the community. It's certainly very important.

I'd like to start with the folks from the DisAbled Women's Network of Canada.

Ms. Bonnie Brayton: Everyone calls us DAWN.

Mr. Philip Lawrence: DAWN; that's much easier. Thank you.

I don't think you fully got to expand on this, so I want to use this time to flesh that out a little more.

As my research has indicated, similar to yours, women with disabilities are more likely to be sexually assaulted and then revictimized. I'm wondering if you could describe some of the unique elements when you're a woman with a disability going through a trial for sexual assault. We obviously know it's going to be horrible for any woman, but what unique elements might be there for a woman with disability?

Ms. Bonnie Brayton: I'd have to say, based on an intersectional understanding of people, especially in the context of this discussion, that would depend on what her disability is. What we need to think about, of course, is accommodation and understanding what issue is important for somebody. There could be a number of factors, including her disability, or accommodations for a disability. There could be the issue, which I raised really clearly here, of communication for some women and making sure they're supported in that regard. It's also understanding that presenting in plain language for a woman, depending on her disability, would be very important, and that's not always accommodated.

Of course, I cite Eldridge, not in the context of sexual assault, but in the context of a deaf woman's right to be fully supported through a process. That means that from when she reports the sexual assault, through the entire process, she's entitled to interpretation, sign language or captioning, whatever she needs. Again, that individual should be able to identify what her disability support or accommodation is.

In terms of the issues that women with disabilities face that are important to talk about, a good example, I think.... When we talk about indigenous women, for example, in the context of the missing and murdered women's inquiry, a lot of people may not understand that a large number of women in that context would have had brain injuries. Brain injury is a hidden disability, and consequently many people who have brain injuries, including women who experience gender-based violence and sexual assault, are not aware of it and have not had a diagnosis. The consequence is that she's undermined by something that neither she nor others understand.

There are a lot of different things we need to think about, but I think the most important thing we need to understand is that when we develop the training for judges, the full breadth of that understanding needs to be there. It's not a simple issue and you can't put everybody in one box. When you're looking at sexual assault and the victim, you need to look at her from all of those intersections: race, indigeneity, sexual orientation and disability.

● (1130)

Mr. Philip Lawrence: Do you have...?

Sorry, go ahead.

Mrs. Karine Myrgianie Jean-François: I'm going to add something, and I think Rosel could add to it as well. Something that's very important to understand is with regard to part of the criteria that judges use to understand who can give consent and who can tell the truth.

Also, how do we talk about consent? When we talk about telling the truth, we understand that some women aren't able to, and then judges, the law and past jurisprudence have told some women that they may be suggestible or may not be credible witnesses. If you can't make sense of the time.... We think about women with brain injuries, for example—who are women with disabilities—and time can sometimes get muddled. The experience is still there; however, currently, the way our criminal courts understand what's happening, makes them not to be seen as credible. They're seen as maybe being suggestible, especially for women with intellectual disabilities, or if they have mental health issues, schizophrenia or other disabilities.

I think it's important to go back to what Bonnie said. The reality of the needs of women with disabilities is that they are numerous, and not every single woman will need the same thing.

When we think about the highest number of sexual assaults, and violence in general, it is towards women with intellectual disabilities. However, they are now believed, which is the case for all women, but especially for them, and there are legal ways that criminal courts have made that happen.

Ms. Bonnie Brayton: The D.A.I decision we referred to is one of the ones that really impacts.... Sorry.

Mr. Philip Lawrence: No, no, thank you. One of the things I'm drawing from that is that, in this training, the important thing for a justice to understand when adjudicating a case of a woman with an intellectual disability and who's been a victim of sexual assault is that the conditions and consent may be different for someone with an intellectual disability. Is that correct?

Ms. Bonnie Brayton: It's also important to remember, around the myths and stereotypes, some of the things I mentioned before like the notion of hyper-sexualization. These things are used to try to shape that there was consent, as opposed to there not being consent. That's really important to understand also.

Mr. Philip Lawrence: You believe this proposed law would generally help judges understand that. Am I correct?

Ms. Bonnie Brayton: Part of curriculum is intersectional and fulsome, yes, but it really needs to have that fulsome understanding of victims' needs.

Mr. Philip Lawrence: I have just one other question on this.

The Chair: Sorry, Mr. Lawrence, you have 10 seconds left.

Mr. Philip Lawrence: Really quickly, in terms of the victims of this, do you think the sentencing is appropriate or should be additional sentencing for folks who victimize women with intellectual disabilities?

Mrs. Karine Myrgianie Jean-François: Currently, as far as I understand, there's.... Sorry, I'm going to have to answer in French.

[*Translation*]

When a case involves a vulnerable person, this aggravating factor is taken into account in sentencing. Something is already in place for that, but we are not here to say that we necessarily need harsher sentences for sexual assault of women with disabilities.

[*English*]

The Chair: Thank you.

Ms. Damoff, you have six minutes.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Chair.

Thank you to all the witnesses for being here and for the good work you all do. I think all of you testified when we were looking at the bill in the past. I'm not sure if LEAF did. No, okay, but I know DAWN and you folks did.

When we looked at the bill last time, we had a Crown prosecutor testify. She was one of the most powerful witnesses I've ever heard. One of the things she said was:

> I have heard the statistic that one in four women will experience some form of sexual assault in her lifetime but, in my experience, factors of privilege, whether you're white, whether you're educated, whether you're financially independent, and whether you're male make us less likely to experience sexual assault. Ironically or not, those are all the same factors that tend to make it less likely that you'll be a judge. So, while we're expected to rely on common sense and ordinary experience, when it comes to sexual assault, most of us who work in the courtroom have no ordinary experience.

That's a direct quote. I wonder if you could speak a bit about the importance of ensuring that the training is intersectional. We had quite a robust discussion in the last iteration of the bill about the exact wording we could use that would be supported in the courts. We ended up coming up with social context. The intent of that was to ensure that the training included sexual diversity, disabled women, women of colour and women of various backgrounds. How important is that training to ensure that it also includes that social context?

I'll turn it to all of you.

● (1135)

Mr. Cameron Aitken: Part of what we were trying to convey earlier is that we work with service providers teaching about consent and intersectionality, and it can be a very challenging thing, so it's absolutely important that the training take into consideration things like power dynamics, all of these different identities and the notion that they can make someone more vulnerable. It's definitely a difficult thing to teach because there's no individualized curriculum. That is one thing that could be accepted, and there could still be meaningful seminars around social context, but it would need to be done in a very holistic and meaningful way. It's not something that you can have one cookie-cutter approach or workshop for that will reach or resonate with everyone. That's what we're trying to convey in the work we do as educators.

Do you have anything, Hana?

Ms. Hana O'Connor : I don't have much to add to that. I'd just reiterate our sense that we really feel that this training should be ongoing. As Cameron said, this one-prong or cookie-cutter approach, when you have so many subsets of what it means to be marginalized and what it means to be victimized or racialized, is an ongoing thing. It's not going to be a half-day or one-day seminar where you're going to hit every single approach. That's the point we really want to drive home, that this is ongoing. Society is evolving, we're evolving, and this needs to be taken into consideration.

Ms. Pam Damoff: Thank you.

Please be brief, so we get to everybody.

Ms. Rosel Kim: On whether social context is important in this training, we would say yes. Depending on the other factors of identity that you inhabit, as a complainant there are layers of stereotypes based on that. It's a question of how you experience sexual violence, if you are taken seriously or not seriously by members of the justice system, and whether you're believed. These all depend on where you come from. It's important to unpack that. There are myths and stereotypes that exist about sexual violence in general, but also the fact that your experience of violence may be exacerbated because of other factors of marginalization.

Ms. Bonnie Brayton: I'm going to say something, and I'll turn it over to Karine.

The point I was making before was that when we look at the missing and murdered women inquiry, again, the disability lens was not added. The consequence of that was that one of the root causes was missed in something that we invested a huge amount of money in. This idea that we cannot use an intersectional lens on any social, economic, or societal issue is to be simply living in the past. It's quite clear that we're beginning to move that way in all types of legislation. The reason that's beginning to be the case is that it works better.

Mrs. Karine Myrgianie Jean-François: For me, this is really important. We often talk about intersectionality these days. We think about black women, indigenous women, women with disabilities and trans women, but some of us are not just one. Some of us live those different things. It's important to go back to what Rosel said earlier about the experience of marginalization. Some of us are marginalized in different ways. For me, that's how training that addresses those stereotypes and systemic discrimination could be useful.

Ms. Pam Damoff: To all of you, if you were asked to participate in training videos that they're working on, would you be happy to do that? Am I seeing a unanimous yes? Okay.

Thank you, Chair.

● (1140)

The Chair: Thank you, Ms. Damoff, for being very judicious with your time. I really appreciate that.

Mr. Fortin, for six minutes.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you.

First, thank you all for being here this morning. It is very kind of you to contribute to the study of this bill, which is important to us.

I would like to address your testimony, Ms. Kim. You talked about the transcript of the reasons for decisions. I understood that you were talking about a partial, not a full, transcript. Could you tell me more about that? Among other things, would that apply to all cases, whether it's an acquittal, a conviction or a dismissal?

[*English*]

Ms. Rosel Kim: I wanted the partial transcripts of the decision itself in sexual assault cases. The reason for limiting the transcripts is that we understand that providing transcripts of the entire trial can be very costly and time-consuming. However, given that there has been so much discussion about how sexual assault trials are run, and what goes on at a sexual assault trial, having the decision put on the record and made publicly available can at least provide the public with some kind of accountability, as well as accessibility to what the judge decided.

Of course, there are instances, such as Justice Camp, where some things that are said in the courtroom don't make it to the decision, and may not be available. Having the decision on the record made available allows us to know what kind of decisions are out there, and that could really help with the research on the trends in sexual assault cases.

[*Translation*]

Mr. Rhéal Fortin: This part of your testimony interests me. Clause 4 of Bill C-5 would add section 278.98 to the Criminal Code, which would require judges to provide full reasons for their decisions, either orally and then recorded in the minutes, or in writing.

Am I to understand that you wish to limit the explanation of reasons? I assume that was not the purpose of your comments, or did I misunderstand?

[*English*]

Ms. Rosel Kim: We don't wish to limit the grounds. That was not what I meant by my testimony. The reasons, even when they're given on the record, might not be publicly available for people to access. If they're not written and if they're not published on CanLII, they will not be accessible to the public unless someone takes the extra step of ordering them for themselves. My point simply was that if the reasons are on the record but they're not written, then the decision itself that's on the record, the transcript, should be made available.

[*Translation*]

Mr. Rhéal Fortin: So you want the judge's full reasons.

[*English*]

Ms. Rosel Kim: That doesn't mean the transcript of the whole trial itself. It's just of the day the judge renders a decision.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

The Chair: Thank you, Mr. Fortin.

[*English*]

Now we go to Mr. MacGregor.

You have six minutes should you choose to use them all.

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

Thank you to all the witnesses for coming today and for your opening statements.

One thing I've noticed in the discussion around this piece of legislation is that there have been concerns expressed over what role Parliament plays in judicial education. We heard from the Canadian Judicial Council and the institute, who have stressed very much that this kind of training already happens. There have been concerns expressed by some in the legal profession that if Parliament intrudes too far with this bill, we are interfering with judicial independence.

We've heard from some of you say with regard to possible amendments to this bill that maybe you'd like to see a bit more specificity. I'm curious about that. As the bill is currently written, it closely reflects the amendments that were made to the previous version by the Senate's legal and constitutional affairs committee. They were feeling that this made it more in line with the constitutional requirement of judicial independence.

If we already have a mandate that judges have to undertake to participate in continuing education and the fact that we have a reporting requirement that has to include the information about the seminars, Ms. Kim, how do you see Parliament's role in this? Can you elaborate more on the specificity you'd like to see in this bill with respect to how the training should include the diversity that is in Canadian society?

● (1145)

Ms. Rosel Kim: I'll speak on the independence point.

My understanding is that it's the judges themselves who have recognized the existence of myths and stereotypes in sexual assault trials, beginning almost 30 years ago in decision like Seaboyer and as recently as Barton, and that there are significant issues in how trial judges continue to engage in myths and stereotypes about victims.

In a way, this need for judicial education was actually for a signal by the judiciary, and this could be seen as a Parliament responding to what the Supreme Court of Canada has pointed out over the last few years. If we see this kind of training as strengthening judicial competence to prevent errors in law, then this purpose of the training is to ensure that judges are well versed in the very complicated area of the law. We believe this is well within the boundaries of judicial independence.

As relates to social context, I think that it would be helpful to have a definition of what social context means. I know that the mandate letter has signalled certain things like impact of trauma and unconscious bias. We would like to see the fact that social context is linked to factors that have led to systemic inequality that have exacerbated these harmful myths and stereotypes in Canadian society.

Mr. Alistair MacGregor: Do we serve the public well by putting the specificity in the bill, or do we serve the public better by analyzing the reports that are going to be tabled in Parliament and then having a chance to review the education? I guess that's what I'm trying to get at. If anyone else has a comment on that question, go ahead.

Ms. Bonnie Brayton: I'll just go back to what I said in my opening remarks regarding the ethical principles for judges and the idea—going back to McLachlin in 2004 citing Eldridge—that if Eldridge is there to remind judges, then I think it's really clear.

I would really agree with what she has already said and just say that it's really important to understand that judges themselves, including McLachlin and others, have often said that this is something we need to address. I think their specificity in choosing Eldridge in that particular chapter speaks to the idea that you do have to be very clear and, as I said, it should be embedded in judges' training.

Ms. Rosel Kim: I think there is a value in having some specificity but also in being open to the fact that our understanding of how systemic inequality has been perpetuated is changing every day. It is important to signal what we understand to be factors in systemic inequality so far, such as the ongoing impacts of colonialism and systemic racism, which we understand have played into the harmful myths and stereotypes. Keeping it as an open and evolving list I think is a good idea.

Mr. Alistair MacGregor: Do you have anything to add in the final 30 seconds?

Mr. Cameron Aitken: Very briefly, I think that's definitely a great point on how best to capture the spirit of that training, but again, our experience, especially in doing training with a lot of institutions, is that it can also go really poorly and end up serving a counterproductive purpose. If it's done in a way that is not intentful, and does not have all these layers and impacts, it can be so counterproductive that it makes it even harder to have redress.

I think that making sure it's very intentful from the onset is a way to approach the process successfully.

● (1150)

Mr. Alistair MacGregor: Thank you.

The Chair: Given the time that we have remaining, I will split it, with three minutes for the Conservatives, three for the Liberals and then one each for the NDP and the Bloc for any questions you have.

We'll start with Ms. Dancho.

Ms. Raquel Dancho (Kildonan—St. Paul, CPC): I just want to say thank you very much to each of you for being here. I feel that this issue is extremely important and I'm very excited to see this legislation going forward.

I do want to discuss a couple of the things that were mentioned. We know that the purpose of this bill is to ensure that victims of sexual assault and violence are treated with the dignity, compassion and respect they deserve from judges, but beyond that, I believe that this legislation is aiming to create an environment where victims feel comfortable—or at least a bit more comfortable—in sharing their very traumatizing story in an otherwise very intimidating environment.

A few of you have alluded to this. I believe, Ms. Kim, you mentioned this, and, Ms. Brayton, I know you mentioned this as well. In retelling this trauma over and over again to several different authority figures in intimidating environments, those details can sometimes be different in the retelling, because they are so traumatic and so difficult to remember.

In the education and seminars for judges that will be be created, what can we do to ensure that those seminars and that education focuses on that, to ensure that there is compassion and that judges understand there needs to be work done to understand that this shouldn't be used against victims? I think that's what you mentioned, Ms. Kim. Sometimes those details, those differences, can be used against the victim. I believe that's what you said.

What can we do about that? How can we build a seminar that educates judges to understand that this is traumatizing and they need to adjust for this?

Ms. Rosel Kim: I think there is a lot of psychological and neuroscience research out there on the impact of trauma and how it impacts memory. It would be great to incorporate what's already out and accepted in the scientific community about how trauma can impact someone's memory and their demeanour, in order to combat what we think about how a victim should behave and tell their story. That, hopefully, would inform what we think about how a victim should tell their story or how they should behave in a courtroom.

Mrs. Karine Myrgianie Jean-François: I would add that everything that Rosel said is right, but sometimes discrepancies happen because of the way our brain works and because of what we remember. It can also be the way we talk to different people, in that the way you talk to your friend or the way that you talk to a police officer might be slightly different than it is for a lawyer or a therapist. Sometimes the words you use may be more clinical, but they're still the truth. They're still your truth, and survivors should be believed.

Ms. Raquel Dancho: I appreciate both of those comments, and Ms. Kim, particularly the science of trauma. I think that's something that the committee, when creating these seminars and education, should absolutely factor into that education.

Are there any more comments on that?

Ms. Bonnie Brayton: It's again a reminder about how you communicate—what Karine was saying about how you communicate. Understanding that individual accommodation is something that really needs to be ingrained in the way the training is set up, so that it's understood that it's different and it's individualized. That you really can't take a cookie-cutter approach is the fundamental underlying thing we need to understand. As a consequence, what is appropriate trauma-informed counselling for one group of women may not address it the same way in another context.

I do think it's, again, coming back to that intersectional understanding of what and how.

The Chair: Thank you, Ms. Brayton.

Moving on to Mr. Virani, you have three minutes.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you, Chair.

Thank you again, to all of the witnesses.

In these three minutes, I'm going to ask you a question and I'm going to ask all of you to respond to it in about 45 seconds. Sorry for the brevity.

Picking up where Ms. Damoff and Mr. MacGregor were, we are struggling with unpacking the term "social context", which I agree with you needs to be unpacked, but not being overly prescriptive in a way that potentially misses some groups.

There is language that is known to the judges and is also known to the mandate letter that Ms. Kim referred to, which is "unconscious bias" and "cultural competency" training. What I would ask each of the groups to do is respond to whether unpacking social context to include unconscious bias and cultural competency training would be an improvement to this legislation.

Could we start with DAWN, please?

● (1155)

Mrs. Karine Myrgianie Jean-François: I think I will go back to what we said, and you'll get that afterwards, in French as recommendations and in English as speaking notes—we work bilingually. This idea that some of us are marginalized in different ways is what we need to understand. We also need to understand that marginalization and what we know about the ones who are the most marginalized evolves in time. It's important, the science about our unconscious bias, and also what cultural competency means and for whom, right? Often we think about that for newcomers, but some of us who were racialized have been here for generations, so we need to improve and also think about deaf culture.

Ms. Rosel Kim: I think having unconscious bias and having cultural competence are good starting grounds, but I would reiterate what I said earlier that there should be some other signalling of the historical context of why we are where we are today. We can also talk about the over incarceration of certain racialized groups, and certainly the reconciliation part should be front and centre in talking about the social context and ongoing impacts of colonialism.

Ms. Hana O'Connor : Going back to what everyone has said about unconscious bias and stereotypes, when you're talking from a 2SLGBTQ context, false stereotypes around the 2SLGBTQ are just rife in society in general. Within the queer community, statistically the people most likely to experience intimate partner violence and sexual assault are transgender women, who are highly fetishized in our society. The next most likely demographic is bisexual women. Bisexual women are highly sexualized in our society. Around stereotypes and unconscious bias, this can have an impact on everything to do with a sexual assault trial when it come to witness statements. 2SLGBTQ people may censor themselves more. We're going back to the language that they may use.

I definitely agree with what everyone else was saying regarding that social context.

Mr. Arif Virani: Thank you.

The Chair: Thank you very much for that.

[*Translation*]

Mr. Fortin, you have one minute.

Mr. Rhéal Fortin: Once again, thank you for being here.

I understand that, for various reasons, you are sensitive to this bill. We are too. In our opinion, victims of sexual assault sometimes do not have the credibility they deserve when they testify because the judge is not always aware of their reality or what they have been through. They also do not feel comfortable in court. This bill seeks to mitigate those two disadvantages.

In addition to what is stated in the bill, is there anything else that you could recommend to help victims be more believed and more comfortable in the judicial process? Any one of you can answer.

[*English*]

Ms. Bonnie Brayton: I'm going to again come back to the D.A.I. decision, which centred on the idea that a woman with an intellectual disability is telling the truth, and if she's telling the truth it's not....

Mr. Rhéal Fortin: She's always telling the truth.

Ms. Bonnie Brayton: I'm just trying to get to the point.

[*Translation*]

I apologize for answering in English.

[*English*]

It's to get to the point where it is fundamental from the D.A.I. decision that the woman's right to be believed has to be centred. This is absolutely at the centre of why I think this training is important. The issue of believing women based on many different biases is why we need this.

The Chair: Thank you, Monsieur Fortin.

Thank you.

Mr. MacGregor.

Mr. Alistair MacGregor: Thank you.

I'll ask my question quickly to the Canadian Centre for Gender and Sexual Diversity.

You mentioned maybe further making sure that diverse groups are enshrined. As the bill is currently written, the Canadian Judicial Council is going to consult with organizations it considers appropriate, such as sexual assault survivors, and groups and organizations that support them.

Are you confident that the Canadian Judicial Council has the ability to consult in a diverse way? Do we need to amend that to make sure that there's specific language in there to represent the diversity that we see in Canadian society?

● (1200)

Mr. Cameron Aitken: I think that the crux of our one program is that when you focus on the main group of people involved in the VAW sector and people who support survivors, you sometimes get one mould of feminism or one overarching understanding of how things should be done. In the absence of it being clear that it needs to be a smattering and not just a traditional canon.... That was why we were so thrilled to see the other organizations that were being represented today, not only sexual assault centres, but other advocacy groups that have specific identities and communities in mind.

From our experience, we would feel more comfortable with it being as specific as possible because of our experience in trying to support service providers in the VAW sector.

Ms. Hana O'Connor : I don't think anything can be lost from being more specific with the language.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you very much.

To the witnesses, if you feel that there are some additional recommendations or clarifications that you need to provide, please do submit written briefs addressing some of the questions that were raised today. In the next week or so, we'd really appreciate any additional information you can provide.

Thank you for being here today and thank you for your remarks.

I'm going to suspend the meeting for two minutes as we switch panellists.

Thank you.

● (1200)

_____(Pause)_____

● (1205)

The Chair: Welcome to our second panel on Bill C-5.

Thank you to the witnesses for being here today.

Thank you to Raphael Tachie, for your patience. I see you are joined by Lori Anne Thomas from the Canadian Association of Black Lawyers.

By video conference, from the Canadian Centre for Child Protection, we have Monique St. Germain; from the Colchester Sexual Assault Centre, Sarah Flemming; and from the Kawartha Sexual Assault Centre, Jess Grover and Amie Kroes. Thank you for being here today.

We're going to go to our video conference first, and we'll start with the Canadian Association of Black Lawyers, for five minutes.

● (1210)

Mr. Raphael Tachie: Thank you so much, and thank you to the committee for inviting us.

The intent behind the bill is laudable, and we support the general approach considering the social context surrounding sexual assault in judicial training and education.

We have a couple of concerns that we would like the committee to take into consideration. Our first concern relates to the idea of, or the appearance of, judicial interference that is created by the legislation. We query whether undertaking to complete certain seminar training will be seen as interference with judicial independence by the legislative and executive branches of government.

Secondly, the amendments do not contain any enforcement mechanism. If an individual undertakes to go to the seminar, and then fails to actually go through once appointed, there doesn't appear to be a mechanism to enforce that piece.

In that context, we query whether the appearance of judicial interference is worth it, especially when you consider that the Canadian Judicial Council currently provides training to judges on these types of issues. Perhaps the concern is the coordination with that entity to educate judges on these issues.

That is the first point I would like to make. The second point relates to the notion of social context. The proposed amendments do not define social context. Traditionally, the law has had differential impacts on the bodies of black and indigenous people in Canada. We would like to see a more specific definition of social context that takes into account stereotypes about black people and black bodies that lead to the differential impact of the law on them, whether as victims or as accused in sexual assault cases.

CABL urges the committee to include such express language in the preamble, as well as in the body of the text that takes into account the lived experiences of black and indigenous people, both as accused and as victims of sexual assault.

Thank you very much.

The Chair: Thank you very much for your remarks.

Moving on to the Canadian Centre for Child Protection, Ms. St. Germain, you have five minutes.

Ms. Monique St. Germain (General Counsel, Canadian Centre for Child Protection): Thank you and good morning.

Ms. Chairperson and distinguished members of the committee, thank you for giving us the opportunity to provide a presentation on Bill C-5. My name is Monique St. Germain. I am the general counsel of the Canadian Centre for Child Protection, which is a registered charity dedicated to the personal safety of all children that has been operating for over 30 years.

For the past 17 years, we have been operating Cybertip.ca, which is Canada's tip line to report the online sexual exploitation of children. Cybertip is a central part of the Government of Canada's national strategy for the protection of children from sexual exploitation on the Internet. We also created and operate Project Arachnid, a global platform to reduce online child sexual exploitation.

Every day our agency bears witness to the brutal ways in which children are victimized online. The vast majority of the reports we receive through Cybertip relate to images and videos, material that depicts very young, prepubescent children, many of whom are preverbal and cannot tell anyone about the abuse they are enduring. Most of these children have never been identified by law enforcement.

We also work directly with survivors of childhood sexual violence, including those whose childhood sexual abuse was recorded. We know all too well the devastating and long-lasting impact that these crimes have on victims and their families. I am here this morning to express our agency's strong support for Bill C-5 and to put forward our recommendations to specifically account for children in this bill.

First, the term "sexual assault law" is not defined in the bill. It should be crystal clear within the Judges Act that the term is meant to include all offences listed in clause 4 of the bill.

Second, the Criminal Code offences for which a record must be created does not include the offences related to commercial sexual exploitation of children or sex trafficking. This oversight must be rectified. Consideration should also be given to including offences that involve the use of technology such as the offence of making child pornography.

Third, the mandated inclusion in training that is set out in proposed paragraph 60(3)(b) of the Judges Act is incomplete when it comes to children. Topics that need to be included in training to be responsive to the needs of children include grooming, which is a process by which an offender lowers inhibitions and gains access and time alone with children. We actively monitor reported case law related to sexual offences against children, and it is clear that the Canadian courts need to deepen their understanding of this very common offender tactic.

Another topic is the age of protection or the age of consent. These Criminal Code provisions are complicated. They are specific to minors, and they reference concepts such as trust, authority, dependency and exploitation, all of which are critical legal concepts when it comes to a child's capacity to consent.

A third topic is the dynamics of child sexual abuse. There are significant differences to consider between adult and child sexual assaults. The perpetrators are different. The extent of vulnerability is different. The tactics used are different. The rates of disclosure are different. Even the ability of the victim to recognize if something was or wasn't a sexual violation is different. All of these issues must be accounted for in any training if that training is to be responsive to children.

The online terrorization and manipulation of children that occurs via technology is unprecedented in today's society. There are multiple complex Criminal Code [*Technical difficulty—Editor*]. We live in a world where children can be virtually assaulted and where live-streamed child sexual abuse is ever increasing. The impact on children of technology-related offences can be as serious as offences involving physical contact. It's essential that technology-facilitated offending be included in this training.

Finally, the history and purpose of various Criminal Code provisions that are meant to address the needs of children in the court process, such as testimonial aids, publication bans and section 161 of the Criminal Code, must be covered. These are incredibly important for children.

● (1215)

In closing, we see the concrete evidence of sexual assaults against children every single day. Children are far too often the victims of sexual assault. It is imperative that judicial education account for their unique vulnerabilities, their status as independent rights holders, and all of the Criminal Code provisions that exist to protect their interests. Children deserve to be understood by our courts, and to be fully accommodated throughout all court processes. Thank you.

The Chair: Thank you very much for that.

From the Colchester Sexual Assault Centre, Ms. Sarah Flemming is next.

You have five minutes.

Ms. Sarah Flemming (Executive Director, Colchester Sexual Assault Centre): Good afternoon. Thank you, Madam Chair, honourable committee members, and all others present today. I am Sarah Flemming. My role is executive director of the Colchester Sexual Assault Centre in Truro, Nova Scotia.

I would like to thank you for the honour of speaking on behalf of Bill C-5 this afternoon. In our small town located an hour north of Halifax, we support Colchester County as well as two neighbouring counties, with free trauma counselling, outreach support at schools and in other organizations, and workshops and presentations all year round.

We have two part-time counsellors who have, on average, 450 individual counselling sessions and an unlimited number of drop-ins per fiscal year.

We are in what is known as a current hot spot for sexual exploitation and trafficking. Court support is also something we offer to clients. We have had two clients in the last year who have utilized that service.

I am here today to offer my insight on an area that I feel will create ripples across the judicial process. It will see more victims and survivors come forward to have their assailants charged. It will create a higher level of trust between police, lawyers, judges and the greater community.

This bill is not asking judges to become partial to the plight of victims, but rather, it will allow them to perform their job through an anti-oppressive practice.

Marginalized women are at a much higher risk of sexual violence and have a much lower rate of reporting. I don't think we need to ask ourselves why. I believe we are well-informed of the risk factors of sexual and domestic violence. However, as a country, I think we do a poor job of implementing these practices and ultimately keeping women safe.

Nonetheless, we are making progress where it counts. In my small town alone, our court system has developed a mental health and domestic violence court. In working with community partners, both victims and offenders are able to get the support that is needed to reduce recidivism, while holding offenders accountable for their actions.

I was once told not to come with a problem but rather with a solution. My solution to supporting victims/survivors is to have judges trained in best practices while facilitating a more restorative approach when appropriate, and to have sexual assault and sexual violence cases presided over under the mental health or domestic violence courts where appropriate. This is not necessarily always the best practice for everyone, but it may be a way to support victims when needed by allowing them access to the services that can keep them safe and prevent further harm from happening.

I feel that we need to broaden the collective lens on sexual violence, and passing this bill is a step in the right direction. What would it mean for victims to feel that when they walk into a courtroom, they do not have to fear the repercussions of their trauma following them throughout their lives? We have an opportunity to hold offenders responsible and potentially to provide them with what behaviour is expected of them in a cab, at a bar, or in a 20-year marriage.

The outrage of revictimized survivors needs to leave only sexual assault and women's centres and enter into the realm of everyday conversation. I want to hear the retired men at my local Tim Hortons discuss how no person deserves to be assaulted, without mentioning how much they drank, what they wore, or questioning their motives in terms of money or fame.

When I tell victims that it is not their fault, I want them to believe me and to know that the justice system is in place to support them and to follow up. In the event that there is a "not guilty" verdict, I want them to have the chance to know why, to understand the due process and legal jargon, all while feeling in control and supported.

Thank you again for having me speak on behalf of the Colchester Sexual Assault Centre, as well as Colchester, Cumberland and Hants counties in Nova Scotia. I look forward to hearing further updates, and hopefully the passing of this so important and timely bill.

● (1220)

The Chair: Thank you very much, Ms. Flemming.

Moving on to the Kawartha Sexual Assault Centre, you have five minutes for your remarks.

Ms. Jess Grover (Board Chair, Kawartha Sexual Assault Centre): Madam Chair and hon. committee members, good afternoon. I'm Jess Grover, the chair of the board at the Kawartha Sexual Assault Centre, KSAC; and I am joined today by Amie Kroes, the board secretary. We're here to speak in favour of Bill C-5.

Each year, KSAC, located in Peterborough, Ontario, works with nearly 750 clients and receives nearly 1,000 crisis calls, and nearly 15,000 people take part in our prevention education program. I've been a volunteer with KSAC for almost a decade, and I joined the board in 2016. I am a survivor of child rape.

The passage of Bill C-5 would be a crucial beginning step in addressing rape culture in Canada. Rape culture is an environment that normalizes and trivializes sexual assault through pervasive rape myths. These false ideas about survivor/victims and the nature and frequency of sexual assaults are all disproved by the support work and research that sexual assault centres across Canada do.

Rape culture is like dust. It floats around us, often imperceptible, especially if you aren't looking for it. It is tossed into our environment through the stories we consume and the biases we pass from generation to generation. As we interact with others in our society, it settles onto all of us. Every single person in this room is carrying a bit of this with us, and it weighs down our decisions and our actions. Unless we actively recognize and work to dismantle rape culture, it will continue to build up and weigh down our society. Make no mistake about it. The dust of rape culture floats through the justice system, and it will continue to collect on its inner workings until the system breaks under the strain of it.

All of us in this room can name very public instances that have caused Canadians' faith in the judicial system to be eroded with regard to sexual assault, which have directly impacted our work of sexual assault support and prevention education. This harmful environment in some courtrooms dissuades our clients and other survivor/victims from pursuing criminal avenues, and it directly contributes to sexual assault case attrition. These instances are directly cited by our clients accessing support.

We do not want to bias the judiciary. We do not want to tell judges how to do their job. We do not want to compromise the independence of Canada's judicial system.

We support this bill because it would help address the biases that we know currently exist.

We support this bill because we believe that education on sexual assault will directly impact our work. We want to stop feeling trepidation when we present the option of pursuing legal avenues to victims and survivors.

We support this bill because we expect our government to listen to Canadians and ensure the fairness of our justice system.

We support this bill because we understand that judges want to come to sound decisions, and this bill would help empower them to do so.

We support this bill because we expect courtrooms to stop contributing to the perpetuation of rape culture in Canada.

● (1225)

Ms. Amie Kroes (Board Secretary, Kawartha Sexual Assault Centre): Hello. My name is Amie Kroes, and I am a social worker serving on the board of the Kawartha Sexual Assault Centre. In addition to that, I have had the opportunity to work with survivors in multiple different contexts and in multiple different roles.

According to an April 2019 Department of Justice report, while sexual assault rates have remained stable over the last 15 years, over 80% of these incidences were not reported to the police. According to a collection of Justice Canada studies, the most frequently cited reason for not reporting was that people did not think they would be believed. These studies also found that two-thirds of the participants were not confident in the police, the court process or the justice system.

Sexual assault cases are one of the only types of crimes where a survivor's character is put on trial. Survivors who agree to a court process will be asked to retell their story, recognizing that a lawyer is to dismantle it, call them a liar and systematically pick apart their credibility. This process is being overseen and regulated by a person who may likely not have any specialized training on how to understand trauma, the impacts of it or the societal influences governing their own bias. We do not feel this is a socially just or ethical practice.

We all know the comments that have caused survivor/victims and the general public to lose faith in the justice system, comments such as in a 2014 case when a judge said, “Why couldn't you just keep your knees together?”, the same judge who on more than one occasion mistakenly called the complainant “the accused”. There have been other cases, such a judge saying that clearly a drunk can consent, or a lawyer asking whether the larger-than-average penis size of the assailant was attractive to the survivor. This was permitted, in a court of law. This is how some survivors are treated by our justice system.

Tell me, would you ask a loved one to report if you knew that this is what was waiting for them in the courtroom? This must change.

Recognizing that rape myths impact every aspect of the justice system, the Kawartha Sexual Assault Centre has a working partnership to provide education to the police services in our jurisdiction. This training empowers officers to do their job in the best way possible by providing training on the neurobiology of trauma and evidence-based facts to counter rape culture. This training has received a positive response, not only from the officers working with victim-witnesses, but also from the victim-witnesses who are working with the officers. Through this bill, we may begin to change the relationship between survivors and the justice system, and while it's only a small step in the right direction, it is valuable movement toward building trust.

Thank you.

The Chair: Thank you very much to all of our panellists for their testimony. We really appreciate your being here today.

Being cognizant of time, I'm going to cut down the first round of questioning from the normal six minutes to five minutes, so that we can get to our second round of questioning.

With that, Mr. McLean, I believe you're up first with five minutes.

Mr. Greg McLean (Calgary Centre, CPC): Thank you, Madam Chair.

Thank you, everybody, for the testimony you provided today. Thank you for the great work that you do in helping victims of sexual assault.

I'm hoping you can provide us with some details of the support you provide to your clients—your friends—prior to their going to trial. Maybe you can provide some indication of what happens at trial that dissuades them further, in the current regime, from presenting their case.

That's for each of you. That would give us more of a body of weight about the necessity of what we're going through here.

Ms. Sarah Flemming: Realistically, not many want to seek any legal counsel or go forward with any sort of criminal justice involvement whatsoever. Realistically, I think the fear most people have when they walk in is that in order to receive services, they will have to disclose to a police officer that they have been assaulted.

I can't speak directly because, unfortunately, I'm new in my role, so I don't have first-hand experience in walking a victim or survivor through that process. However, that has been my experience with anyone that I've met so far. It's the fear of disclosure because they will have to press charges.

● (1230)

Ms. Amie Kroes: At our centre, we also provide something called accompaniment, which offers a survivor an opportunity to have somebody with some specialized knowledge go with them whenever they're accessing any of the different types of services, whether that be the hospital, the police station or the court process. Timelines are an issue, but I know that's not being addressed specifically with this bill.

As I said in my five minutes, one of the biggest concerns that people have is wondering how they will be treated, what they can expect and whether people will believe them. They know what happened and they know they can tell their own story, but they wonder if everybody else will see it the same way they do. Will everybody else understand what transpired? That is probably one of the biggest concerns that survivors have. Do they want to put themselves in a really vulnerable position, knowing that they might not get the outcome that they want—because there's often a lack of forensic evidence—and put themselves through years of potential revictimization and re-traumatization?

Ms. Jess Grover: Just to add to that, one thing we talk to folks about—both the police and our clients—is the neurobiology of trauma, which really impacts what can happen in a courtroom. When survivors are in a courtroom and are facing a barrage of questions and often questioned in ways that are similar to internal monologues that have happened many times, they feel that secondary victimization. We know that happens, and it actually impacts their ability to recall accurate information. It directly impacts their ability to do so.

We know that we need to prepare them to withstand more trauma in order to tell their story. We work with them to prepare them for that.

Ms. Monique St. Germain: When it comes to children, the additional difficulty would be that they don't necessarily have the language or the life experience to convey what has happened to them in a way that is meaningful and understandable from the court's perspective. Having the judge who is hearing the case have a better understanding of child development, child brain development and the impact of trauma on children is very important.

The Chair: I think you're questioning the Canadian Association of Black Lawyers.

Mr. Tachie, do you have any comments on Mr. McLean's question?

Mr. Raphael Tachie: I don't have any comments on that point. We don't work directly with victims on sexual assaults and issues like that. We are usually advocating on the general issues that occur in the black community. I wouldn't have anything to add to that.

The Chair: Mr. McLean, you have 20 seconds left. Would you like to use it?

Mr. Greg McLean: I'll let that pass. Thank you.

The Chair: Mr. Zuberi, you have five minutes.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): I'm sharing my time with Mr. Virani.

Would you like to go first?

Mr. Arif Virani: Sure. I had a question.

First of all, thank you to all of the witnesses for their testimony, particularly Ms. Grover. Thank you for your candour and your very erudite presentation, and your honesty.

I want to ask a question of CABL. You were meant to be in the last panel, and I want to ask you a question that came up then. We are struggling with the term “social context”, and you highlighted this in your presentation. It was a useful amendment in the last Parliament, but many, including me, feel that it needs to be unpacked a bit. The struggle we are having is trying to not be too prescriptive, where we might leave out certain key components, but also trying not to be too general, where we miss important concepts.

There is a concept of unconscious bias that is known to the judges, and we understand they are already receiving training on unconscious bias. There is also a term that is probably familiar to you, “cultural competency”.

I am wondering if you could provide us with your view, and the view of CABL, on improving the section that deals with the training, to state something along the lines of “training on sexual assault law and social context, including cultural competence and unconscious bias”. Would that be an improvement that is more directive in the type of training we want to see occurring?

Ms. Lori Anne Thomas (President, Canadian Association of Black Lawyers): Yes. In terms of the social context, that is precisely our concern, that the unconscious bias issues, the cultural competency issues, are not addressed in this. I know that in the last panel there was some discussion on whether you can begin the training and then return to it later on to see what needs to be improved.

In our submission, it should be something that's considered, especially when you're talking about the known phenomenon of the hypersexualization of black bodies. I believe the same would be true for indigenous bodies.

That is something we think would be necessary in almost any training, given the overrepresentation of black and indigenous accused before the criminal justice system, and also as victims in personal injury cases in sexual assaults.

● (1235)

Mr. Sameer Zuberi: I want to shift the theme for a moment to go towards young people and children.

First off, I want to thank Ms. Grover for being so honest with us with what has happened to her in the past.

This is a question around children, essentially.

Do you feel that the courts are in a position where judges are able to appreciate the experiences of young people, the trauma that young people have suffered, and can fulsomely take in their testimony in a way that will allow for justice to be served?

You can both comment on that, Ms. St. Germain and Ms. Grover, please.

Ms. Monique St. Germain: Do you want me to go first?

Mr. Sameer Zuberi: Yes.

Ms. Monique St. Germain: Okay. I think that when it comes to the court system, we have an excellent judiciary. We have different levels of competence and knowledge when it comes to children and specific issues surrounding children. For example, our judges who practice in family law areas would have a lot of different pieces of information and knowledge about children and child development. They would have that because of the type of work they do.

Our judges who hear criminal cases may not have the same kind of information and training. What we have found is an evolution in the judgments that we review. The language that is used, the understanding that is expressed, can vary considerably from judge to judge.

Training that takes that into account and helps to level the playing field a bit, and provides all of the judges with information that's relevant, I think would be much better for children.

Mr. Sameer Zuberi: Thank you.

Ms. Jess Grover: We know that trauma affects developing brains differently, and often permanently. It doesn't necessarily permanently affect functioning, but it affects how your brain works, where things happen.

It's really important that when we are talking to children, we recognize that not only is development a spectrum, but that it is impacted by trauma. That is a very specialized form of psychology, so ensuring that is part of training and understanding is incredibly important, in order to find justice for child survivors.

The Chair: Thank you very much for those comments. I really appreciate them.

Mr. Fortin, for five minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

My thanks to all our witnesses for their significant contribution.

We all agree, of course, that victims must be better protected and that the judicial system must be adapted so that it supports and understands them better.

However, I must admit that I am troubled by what we are told about children who are victims of violence and sexual assault. We are hearing a lot about them these days. I somewhat agree with the witnesses on this, particularly with Ms. St. Germain and Ms. Grover.

Ms. St. Germain spoke briefly about the sort of unique environment for the Youth Division. The judges in that court work with young people on a daily basis and have a somewhat different approach. In many circumstances, for example, it is possible to hear the testimony of young children in a place other than the courtroom so that those children feel more comfortable.

First, do you believe that the training proposed for judges under Bill C-5 should be based on what is done in the Youth Division, or even be largely, but not identically, modelled on the division's approach?

Second, in what specific ways could we reduce the impact of sexual assault on young people and make it easier for them to testify?

● (1240)

[*English*]

Ms. Monique St. Germain: I'm not sure I understand part of the question, but from our perspective, if you're getting at the special circumstances and treatment that happen under the Youth Criminal Justice Act, the act is really about children who commit crimes. We're talking here about children who are victims. That's something our whole legal system doesn't do a great job of recognizing. We're really good at recognizing the rights of children accused of crimes.

There will definitely be ways to reduce the victimization of children through the court process. These have to do with a lot of the victim services that are provided around the country, such as support persons being permitted in all courtrooms. We know that doesn't happen in all areas, despite the fact it is clearly in the Criminal Code.

We also know there is a tremendous gap in victim services, although not the ones delivered through courts, but the ones delivered after a trial is over. For the child, the trauma has not ended. The trial may be over from the criminal justice perspective, but for a child that victimization can go on for a lifetime, particularly if a child had imagery created of the sexual assault, because that can circulate online indefinitely.

Ms. Jess Grover: I don't have anything to add to what my colleague said, but Ms. Kroes may have additional things to say.

Ms. Amie Kroes: The only thing I would call attention to, just based on what our colleague said, is that Kawartha Sexual Assault Centre funding only supports our working with youth and adults who are over the age of 12. We are not in a position right now to support these children as they work through the court process, or with them directly afterwards with their journey of healing after their experiences of trauma.

[*Translation*]

Mr. Rhéal Fortin: It is quite awful.

I understand that appearing in court can upset the children. Ms. St. Germain addressed the issue of young people and pointed out that the approach is different when it comes to young victims. Furthermore, Quebec has the Youth Protection Act; there are special provisions for young offenders, and she is right to point out that the approach for young victims is different.

I would like to know whether one of you could recommend concrete measures that we could incorporate into the bill to improve the support provided to young people when they appear in court. For example, I imagine that you would agree to have them testify outside court. What do you think of the idea of having them testify in a separate room, without the accused being present? Do you think that would help young people?

[*English*]

The Chair: Monsieur Fortin, my sincerest apologies. You're completely out of time.

Mr. Rhéal Fortin: Okay.

The Chair: Perhaps you can pick one witness to give very brief remarks on that, please.

Ms. Lori Anne Thomas: That's actually something that occurs anyway at this point. Right now, if there are vulnerable witnesses, be they adults or children, they can testify in another room. There are mechanisms in the current Criminal Code that are essential almost by default. The defence would have to argue why such mechanisms should not be used, such as having a child testify in another room or testify behind a screen or by video link. In addition, some courthouses, at least in Toronto, do have support animals for victims as aides. There are things currently in place.

I think that's already in the Criminal Code but I defer to anyone else if there is any other improvements they can see to address that.

● (1245)

The Chair: Thank you very much, Ms. Thomas. We appreciate that.

Mr. MacGregor, you have five minutes.

Mr. Alistair MacGregor: Thank you, Chair.

My first question will be for the Canadian Association of Black Lawyers. You did state that you had some concerns. You said that the goals of the bill are laudable but you had some concerns over judicial independence because, through this bill, applicants are required to undertake to participate in education on sexual assault law.

Could you not argue, though, that we are still respecting judicial independence because we are going to have no role whatsoever in how a judge uses that education? They are still going to be completely free and impartial when they present their decision in a particular case.

If not through this bill, what role should Parliament play in making sure our judges are accountable? We have seen recent examples where judges are using outdated myths and stereotypes.

I would like to hear your thoughts on those two questions, please.

Ms. Lori Anne Thomas: With respect to the act, I think the reporting certainly addresses some of that concern. This would really only affect new judges, those who haven't been appointed as yet. All judges are subject to new judges' training, so we do think this should be the area where it's specifically addressed with this type of training and its mandate.

The concern we have is not so much with respect to this specific area. The concern is that once you open the door to mandating that those who are applying to be judges have certain types of training, essentially the slippery-slope argument can be used, not by your government but by other governments, for other training that may not have, again, a laudable reason to be in place.

We think all of this training, especially with respect to what the presenters at this time and the previous panel...should be taken into consideration and be taught on an ongoing basis. We think the training is absolutely necessary. We just have concerns about mandating it or the undertaking for those who are applying, because, again, it opens the door to other requirements for those applying to be judges in the future. That's where we have some concerns with regard to judicial independence.

With regard to the training, we think it is important. We do think that reporting is important as well.

Mr. Alistair MacGregor: What role do you think Parliament should play, then? That was my second question.

Mr. Raphael Tachie: The role that Parliament can play is making sure that the appointment process appoints not only legally competent lawyers but also suitable lawyers, lawyers who have a [*Technical difficulty—Editor*] character as well as the social awareness to be able to act as judges, to reflect the values of the Canadian community. To me, that means looking at the people we appointment and the process by which we choose people, but not mandating that it meets certain training requirements as part of the appointment process.

Mr. Alistair MacGregor: Ms. Grover, you expressed strong support for the bill. There are some differences in this version compared to the version we saw nearly three years ago. Are you happy with how the bill is currently written, or are there some specific amendments that you think we could make use of?

Ms. Jess Grover: I feel relatively comfortable with it. I would state in particular that the term “social context” can be challenging. I recognize that there can also be trouble when you start listing out identities or areas that need to be focused upon, but I want to ensure that....

I think the spirit of the bill is quite good. In particular, I believe having judges disclose the reasoning for their decisions is really important for checking why decisions were made.

In my analogy of rape culture being like dust, you have to pick up and look behind everything to see where it is; otherwise, you're not going to find it. I feel it's important for accountability and for transparency to ensure that it is there.

Obviously, I would love to see more done to ensure that the whole judicial process is safer and that there's less secondary victimization of survivors, but I recognize that scope is very large, and we're discussing this today. I think the changes were good, though, between the two.

● (1250)

Mr. Alistair MacGregor: Okay. Thank you.

The Chair: Thank you, Mr. MacGregor.

Thank you, Ms. Grover.

I'm moving on to the second round. We're restricting it to three minutes.

Mr. Lawrence, you have three minutes.

Mr. Philip Lawrence: My questions will be for you, Ms. St. Germain.

I think you have some excellent ideas here specifically, but there are three areas where I think you wanted to see an addition. You wanted to see children specifically included, and people in general who are abused virtually, as well as victims of human trafficking.

Is that correct?

Ms. Monique St. Germain: Yes.

Mr. Philip Lawrence: I was recently at an International Women's Day luncheon. I had the pleasure of hearing a victim of human trafficking. She described the time she was being raped for three months.

This might seem obvious, but I want to get it on the record. In your interactions with the victims of human trafficking, are there any victims less traumatized than sexual assault victims?

Ms. Monique St. Germain: No, they are absolutely very traumatized individuals. In fact, there's one thing we have really noticed, and it's very striking, because we monitor recorded case law from across the country and human trafficking cases that involve children specifically. What we have noticed is that almost never do those victims file victim impact statements. Almost never is there any information brought forward before the court about the long-term and ongoing impact that accrues to these individuals.

We have noticed that is a really significant thing, because when it comes down to sentencing in particular, if the judge doesn't understand the victim impact.... That's supposed to be one of the criteria they look at, but they can't understand it if they don't have a victim coming forward to say something.

We see that problem with children. We see it with human trafficking victims who are children and with commercial sexual exploitation. Those provisions being missed in the list of Criminal Code provisions was a bit shocking.

Mr. Philip Lawrence: Like I said, just to get this on the record—I have an idea what your response will be—insensitivity would revictimize them just as much as any other victim of sexual assault.

Ms. Monique St. Germain: Yes, absolutely.

Mr. Philip Lawrence: Thank you.

Do I have any more time?

The Chair: You have about a minute.

Mr. Philip Lawrence: I would like to go back now to the Canadian Association of Black Lawyers. My question is this.

Justice MacDonald, of course, came to our committee—not that you have the view of the amendments—but he suggested a series of amendments that would perhaps soften the law with respect to it less telling the judiciary. Generally I think the characterization of his view might be of working with the judiciary.

Would that be an amendment you would be more agreeable with?

The Chair: Very briefly, Ms. Thomas.

Ms. Lori Anne Thomas: [*Technical difficulty—Editor*] especially with respect to the education would be, I think, more favourable than the way it is currently articulated.

The Chair: Thank you very much, Ms. Lawrence.

We'll move on to Mr. Sangha.

You have three minutes.

Mr. Ramesh Sangha (Brampton Centre, Lib.): Thank you, everyone, for coming today and giving your valuable input.

In Bill C-5, the major part that we are studying is how the Canadian Judicial Council will establish standards on how to give training to new judges. In that, they will have suggestions from you and different groups to build the standards. Those seminars will be imparted to the judges who are coming for the training.

From yesterday onward, we have heard from many sectors. People have come here to give their organization's and association's input. It's regarding seniors, children, women and different types of other communities. You people are doing a great job of representing separate sectors of the community.

We have to keep the independence of the judiciary on one side here. This question is the same and one that is asked many times. Please give your points on what you want to be included in the seminar for training the judges, so that we can ensure that the best judicial training is being given and is comprehensive and inclusive. Keep in mind that those judges already have the best experience. They have 10 years experience as lawyers. They were in the communities. They know many things and still we want to give them training regarding the sexual assault cases.

● (1255)

The Chair: You have one minute.

Mr. Ramesh Sangha: Please give the points. We want a little bit of an idea. What you want to be included in the seminar?

The Chair: You have 30 seconds for a brief response. Thank you.

Ms. Sarah Flemming: The question is what we want to see in the seminars for judges specifically with regard to sexual assault training.

If we look at the fabric of Canada and at what most judges look like, they don't necessarily match up. From that perspective alone, I think it would be beneficial for judges, with all of their experience, to understand what it feels like from the perspective of a survivor or from marginalized people. I think with that, and hearing in first voices, it can only be helpful for them when they preside over our sexual assault cases.

Ms. Jess Grover: I just want to add very quickly about the neurobiology of trauma. We need training about what trauma does to someone based in science, based on what we know and based on research.

The Chair: Thank you.

Thank you very much for that.

Mr. Fortin, you have one minute.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

My question is for any of the three of you.

The bill sets out certain conditions for the appointment of judges. In particular, you must have practised law for 10 years in the province where you are and you must undertake to participate in continuing education on matters related to sexual assault.

I understand that you support the bill. However, do you think it is sufficient as it stands, or do you think it would be useful to add other conditions to it on the whole issue of sexual assault?

[*English*]

Ms. Amie Kroes: Yes.

Ms. Sarah Flemming: Yes, absolutely.

[*Translation*]

Mr. Rhéal Fortin: What other condition are you thinking of?

[*English*]

Ms. Sarah Flemming: Yes, ideally. That's what I spoke to in having the sexual violence court be part of domestic violence. For judges who have shown that's an area of law they want to practise or know more about, that trauma lens can only be helpful in their presiding over further cases.

The Chair: Thank you very much, Ms. Flemming.

Thank you so much, Mr. Fortin.

Mr. MacGregor, you have one minute. Thank you.

Mr. Alistair MacGregor: This bill by itself is not going to fix all of the problems we see in our justice system. Very quickly from each of you, what does additional federal support look like beyond the courtroom? I know that's a big question.

Ms. Jess Grover: This maybe simple to say. We do what we do on a shoestring budget. There is so much we do. An hour of one-to-one counselling costs us roughly $50, which is extraordinarily affordable. Any money we have allows us to do work, particularly with under-served populations. We receive funding to work with women.

Where are trans and non-binary folks, where are men in this? There are gaps. There are pockets of money, but there are gaps that happen when the funding is disbursed in that way.

We work with survivors. We work in our communities. KSAC serves four counties. We know the needs of our communities. Trust us to meet them. Give us some resources.

● (1300)

The Chair: Thank you very much.

I really appreciate all of the witnesses coming today. Your testimony has been very helpful. If there is additional information, based on the questions, that you would like to provide, please don't hesitate to submit a written brief at your earliest convenience, so that we can include that in our deliberations on Bill C-5.

Thank you once again for your remarks. We look forward to continuing this study.

The meeting is adjourned.

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