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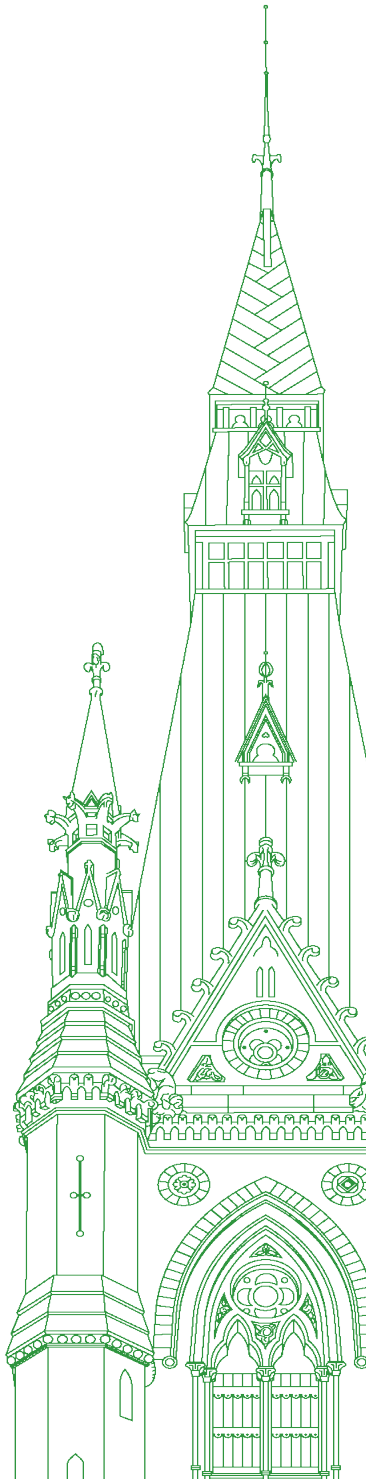

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Thursday, October 20, 2022

● (1530)

[*English*]

The Vice-Chair (Hon. Rob Moore (Fundy Royal, CPC)): I call this meeting to order. As you can see, our usual chair is not here, but I'm assured he's going to be back for the second hour. I'll try not to mess things up too much in his absence.

Welcome to meeting number 32 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to Standing Order 108(2) and the motion adopted on September 22, the committee is meeting to begin its study of the subject matter of Bill C-28, an act to amend the Criminal Code (self-induced extreme intoxication).

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using Zoom.

I would like to make a few comments for the benefit of the witnesses and members. Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mike, and please mute your mike when you are not speaking.

There is interpretation. For those on Zoom, you have the choice at the bottom of your screen of floor, English or French. For those in the room, you can use the earpiece and select the desired channel.

I remind everyone that all comments should be addressed through the chair.

For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as well as we can, and we appreciate your patience and understanding in this regard.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Mr. Chair, I want to make sure that those participating in the meeting via Zoom underwent the necessary sound checks.

The Vice-Chair (Hon. Rob Moore): Yes, the necessary sound checks were conducted.

M. Rhéal Fortin: Very good. I think it's important to mention that at the beginning of each meeting. We have to make sure the sound quality is acceptable for the interpreters, so they can do their jobs properly.

Thank you, Mr. Chair.

[*English*]

The Vice-Chair (Hon. Rob Moore): That's a great point.

To all of our witnesses, if you have any questions, just let us know.

We will begin. I would like to welcome our first witnesses, from the Native Women's Association of Canada, Carol McBride, president, and Adam Bond, manager, legal services.

You have five minutes for your opening remarks.

Grand Chief Carol McBride (President, Native Women's Association of Canada): Good afternoon, honourable committee members.

I will begin my remarks by acknowledging that we are gathered on unceded, unsurrendered territory of the Anishinabe Algonquin nation, my homeland.

NWAC takes two key positions on Bill C-28.

First, Parliament must address the systemic factors that contribute to indigenous women's substance misuse and indigenous women's overincarceration rates.

Second, indigenous victims of violence must have easy access to gender-specific recovery services that align with indigenous approaches to healing.

As you know, honourable committee members, on May 13, 2022, the Supreme Court of Canada struck down the Criminal Code's limitation on the defence of self-induced intoxication.

As a national indigenous organization representing indigenous women, girls, two-spirit, transgender and gender-diverse people, NWAC's criminal reform advocacy seeks to eliminate indigenous overincarceration and prevent systemic factors contributing to violence.

As Bill C-28 engages in the areas of concern, NWAC offers this brief statement to clarify its position.

According to the last report tabled in Parliament from the Correctional Investigator of Canada, Dr. Zinger, indigenous women represent about 50% of federally incarcerated women, despite representing only 4.9% of the adult population. This crisis demonstrates the links between colonization, systemic discrimination and intergenerational trauma. The genocide findings in the missing and murdered indigenous women and girls final report unpacks and explains these systemic factors.

NWAC is invested in ensuring that victims can access indigenous justice and healing supports and services. These supports must align with the community's indigenous legal order. It is important to ensure that community-driven, gender-specific healing and support services are sustainably funded and available to violence victims.

In addition to addressing victims' healing, NWAC emphasizes a harm reduction and prevention framework. Canada's criminal justice system is largely inattentive to the role that substance misuse plays in bringing indigenous women, girls and gender-diverse people into contact with the criminal law system as offenders, victims or both. This failure perpetuates substance misuse cycles and overincarceration.

Honourable committee, please also recognize that according to Bill C-28, when the self-induced intoxication defence is successfully applied, no one is held responsible for the harm, but the victim continues to suffer. Indigenous women, girls, two-spirit, transgender and gender-diverse people face a disproportionate likelihood of being victims of violence. In some cases, this violence will be perpetuated by someone acting under the influence of extreme intoxication.

Redressing systemic harms built into the criminal justice system requires understanding the differences between indigenous justice and healing and Canada's criminal law framework. Indigenous legal frameworks engage principles favouring healing, rehabilitation, elder mediation and restorative justice. Indigenous justice and healing models require women, girls, two-spirit, transgender and gender-diverse people who become violence victims to undergo healing and receive support predicated on indigenous understandings of these concepts.

● (1535)

Reconciliation principles require creating legal space for indigenous healing and justice.

Thank you. *Meegwetch*. *Merci.*

The Vice-Chair (Hon. Rob Moore): Thank you.

I should mention for everyone that I'll put up a card if you have 30 seconds left, and then this one means you're out of time, but our witness was right on time, so thank you for that.

Next we have, from Mothers Against Drunk Driving, MADD Canada, Eric Dumschat, legal director. He's appearing by way of video conference.

Mr. Eric Dumschat (Legal Director, Mothers Against Drunk Driving (MADD Canada)): Thank you, Mr. Chair and members of the committee, for this opportunity to speak with you about Bill C-28.

My name is Eric Dumschat, and I am the legal director for Mothers Against Drunk Driving Canada, or as it's more colloquially known, MADD Canada. I am pleased to have this opportunity to speak with you today about this topic as it is one that I know has caused many of our members some confusion.

Simply put, MADD Canada cannot provide an opinion on this bill because it does not affect impaired driving.

When the Supreme Court of Canada decision in May of this year effectively allowed for the use of “extreme intoxication” as a defence for certain violent crimes, MADD Canada heard from many members of the public. While the defence could only be used in very limited circumstances, there was widespread public discussion and fears that those charged with impaired driving or with numerous other Criminal Code offences could now use voluntary extreme intoxication as a defence to escape responsibility and accountability for their actions.

With respect to impaired driving, we assured concerned citizens at the time that the ruling would not impact impaired driving cases. This is because impairment is the essence of an impaired driving offence, whereas it is not for other crimes, such as assault. In short, voluntary self-induced extreme intoxication is not a defence for impaired driving.

In R. v. Brown, paragraphs 66 and 78, the Supreme Court noted:

> Parliament can constitutionally preclude intoxication as a defence if it is the gravamen of the offence.

It noted later:

> The Crown is mistaken when it draws an analogy between impaired driving offences and s. 33.1. The gravamen of the offence faced by Mr. Brown does not include intoxication, unlike criminal offences for impaired driving.
>
> Counsel for Mr. Sullivan made the point plainly: “The gravamen of assault is not intoxication. Without intoxication, every element of an assault [must] be proven; without intoxication, driving is benign.”

This case did nothing to change the inapplicability of this defence in the impaired driving context. As such, MADD Canada was satisfied that the May Supreme Court ruling on extreme intoxication as a defence would not impact cases of impaired driving.

I thank the committee for its time and would be happy to answer any questions once we have question period.

● (1540)

The Vice-Chair (Hon. Rob Moore): Thank you to our witness.

Next, and finally, we have, for five minutes, the London Abused Women's Centre and Jennifer Dunn, executive director, appearing by way of video conference.

Ms. Jennifer Dunn (Executive Director, London Abused Women's Centre): Thank you to the committee for inviting me here today. It's very nice to see you all again.

My name is Jennifer Dunn, and I am the executive director of the London Abused Women's Centre, or LAWC, here in London, Ontario.

LAWC is a feminist organization that supports and advocates for personal, social and systemic change directed at ending male violence against women and girls.

LAWC is a non-residential agency that provides women and girls over the age of 12 who have been abused, assaulted, exploited or trafficked or who have experienced non-state torture immediate access to long-term, trauma-informed, woman-centred counselling, advocacy and support.

In June, justice minister David Lametti tabled Bill C-28. This bill was introduced in response to the Supreme Court of Canada decision striking a section of the Criminal Code of Canada, which left a huge hole for extreme intoxication when it plays a part in a violent offence against another person. Evidence shows that this type of offence most frequently occurs by men against women.

The London Abused Women's Centre believes the Supreme Court has made a mistake. We agree that Parliament had to act in response to the Supreme Court decision, but we do feel it was rushed. There was a lack of consultation before the bill was introduced.

In August, MP Karen Vecchio held a virtual round table about Bill C-28 at the London Abused Women's Centre. MP Larry Brock was also in attendance. We had a table filled with frontline workers and women with lived experience. During this round table, my colleague Kelsey Morris said:

> It's incredibly infuriating we have seen intoxication used against victims and survivors for eons. Intoxication has continuously been used as something to villainize and condemn survivors and now we are all watching in real time as this same vessel of intoxication is being used to protect and excuse perpetrators…if this defence becomes prominent, as women we've got the message loud and clear that we are not safe in Canada.

During this round table, women with lived experience said to us that they were concerned about the Supreme Court's priorities. One woman mentioned that protecting victims should come first. Women should always be a priority. Women said that the people who haven't been through this can't possibly understand. They said that you can't ask survivors who have been failed time and time again to trust that this is not going to make things worse. Women have lived through situations in which they have been told that certain things are unlikely to happen and then they have had to end up living through those situations in the criminal justice system.

On June 23, it was said:

> The Government of Canada will continue to take action to maintain public confidence in the criminal justice system and support victims and survivors of crime. This legislation is one of several recent legislative reforms and programs the government has advanced to support victims and survivors of crime, including survivors of sexual assault.

During our round table in August, one woman made an important point about the fact that the extreme intoxication defence might be rare because these types of cases are not making it that far. We know from Statistics Canada that only 6% of sexual assault cases are reported to police, and of those 6% only one in five results in a trial. Even before a case goes to court, survivors face complex barriers to reporting. The criminal justice system is largely based on testimony and evidence, which is not effective to those harmed. The extreme intoxication defence creates additional challenges.

The London Abused Women's Centre believes this decision by the Supreme Court of Canada was made to favour the criminal instead of the victim. The Supreme Court's decision has left a huge hole. The extreme intoxication defence can be seen as excusing the offender's actions, can show a failure to hold offenders accountable, can be seen as minimizing violent crimes, and upholds even some myths about rape.

Women call us every day for support. When our community found out about this, women called us and asked us how this was going to hurt them. They asked us what they should do next. Women report that they are fearful that perpetrators, mostly men, might automatically think that they will not be held responsible if they are intoxicated.

In conclusion, we know that Bill C-28 is an attempt to address the Supreme Court's decision around extreme intoxication and that it aims to support victims and survivors of crime and to hold offenders accountable, but at the end of the day the ruling from the Supreme Court truly diminishes all past victories that protect women and girls.

Thank you.

● (1545)

The Vice-Chair (Hon. Rob Moore): Thank you.

Thank you to all of our witnesses for their opening statements. I didn't get to use my cards at all.

We will now turn to the question-and-answer time. The first round is for six minutes each, beginning with Mr. Caputo.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

I want to thank each and every one of our witnesses, both present and appearing virtually. What you have to say here is important. It's not only important; it is necessary, and it's necessary that we get this right.

I don't mean to take up the witnesses' time, but I was particularly struck by your comments, Ms. Dunn, by what you just said, because it was very striking on so many levels.

You spoke about myths. The first thing that came to my mind was the ability of somebody who commits a sexual assault, an offence that is intrinsically violent in and of itself, to claim to be so drunk as to not know what they're doing. Claiming that defence is something I've never really understood, so I understand what you're saying.

The first question I was going to ask was answered by Ms. Dunn, but I invite everybody to talk about the consultations that took place. Any or all of the witnesses are invited to discuss those from both a personal perspective and with respect to whether they feel in general that sufficient consultations have occurred in this process.

Mr. Adam Bond (Manager of Legal Services, Native Women's Association of Canada): We were consulted. It wasn't a great deal of consultation. I think we understand that the government was under a lot of pressure and that there were some misunderstandings about what the SCC decision meant. There was a concern that the public was under the impression that becoming intoxicated was essentially a "get out of jail free" card.

That said, we would have preferred to be consulted more and earlier on in the process. By the time we were reached out to, I think decisions with the direction of the bill had already been made.

Mr. Frank Caputo: Could I follow up on that, sir?

Obviously, you said that you would prefer that the consultations had been to a greater extent. What were the consultations?

Mr. Adam Bond: We had a meeting with Department of Justice where they had invited us to discuss the legislation. They invited us to provide our input, and they had explained to us the processes that they had gone through before that point to consult other stakeholders.

Mr. Frank Caputo: Thank you.

Do any of the other witnesses wish to weigh in on this?

● (1550)

Ms. Jennifer Dunn: I can say something. I think it was clear in my presentation that we had a round table in August. Since it was in August, it was after everything was already complete. We were not consulted ahead of time at all.

Thank you.

Mr. Frank Caputo: Could I follow up on that answer, please?

My sense is that you're probably fairly plugged into people who work in the field as well. Can you comment generally on the feeling in the community of whether there were there sufficient consultations on this very important topic?

Ms. Jennifer Dunn: I have to say that I have not heard in our community of any of the organizations that we work with being consulted. That's not to say it didn't happen, but it is concerning that we wouldn't know based on the work that we all do together.

Mr. Frank Caputo: This question is for the representative from MADD Canada.

Thank you for being here. I know you've been very clear that you may not have as much to add to the conversation, but in about 30 seconds, could you tell us about the general feedback you got from the public on this point?

Mr. Eric Dumschat: We had a lot of confusion and a lot of questions, not only from our members but, because we are one of the bigger names in the anti-impaired driving scene, from the media. They questioned if this was going to mean that people could claim, "I can't be charged with driving impaired, I was too impaired." We had a few questions about that.

It was pretty quickly dealt with just because, as I said in my opening remarks, it doesn't affect us. We put out a blast to our membership. I know I gave an interview to at least one media thing. How much further it goes beyond that I couldn't tell you.

Mr. Frank Caputo: Thank you, all.

The Vice-Chair (Hon. Rob Moore): Next we have Madam Brière for six minutes.

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Vice-Chair.

[*Translation*]

Thank you to the witnesses for being here this afternoon and for providing their input.

As you know, our government introduced Bill C-28 in response to a decision the Supreme Court of Canada handed down in May. The minister, Mr. Lametti, introduced the bill in June, so rather quickly. We received a letter from the Conservative members asking us to respond quickly, and we were very happy to be able to do that.

Just to make sure we are all on the same page, I would like the representatives of all three organizations appearing today to tell us what the criteria are to satisfy the definition of self-induced extreme intoxication.

You can go first, Ms. Dunn.

[*English*]

Ms. Jennifer Dunn: Thank you very much.

It is our understanding that "extreme intoxication", when seen in this way, wouldn't be from just one intoxicating substance. For example, you could not have consumed just alcohol; it would have to be perhaps a combination of intoxicating substances that could cause extreme intoxication. Further to that, there would have to be reason to believe that the intoxicating substances would create an extenuating circumstance, if you will, for an individual as well.

We believe, however, that an individual would have to know that they would be taking the intoxicating substances to begin with, whether it's alcohol or drugs, which would cause the problem to begin with. I know that in part this does not answer your question, but that's basically the understanding of it. We know that this is not a matter of an individual having a couple of drinks and then being able to claim they were drunk and committed a sexual assault. We know that this is definitely not the case, but do people on the ground know that? Not easily; they do not know that right off the top, right off the bat, when they hear about these types of conversations. That is one of our biggest concerns.

Thank you.

● (1555)

Mrs. Élisabeth Brière: Ms. McBride or Mr. Bond, would you like to add something?

Mr. Adam Bond: Yes. I'm not entirely sure that I understand the question, but I think it's about what is extreme self-induced intoxication in this context. The bill does spell it out for us in subsection 33.1(4): “extreme intoxication means intoxication that renders a person unaware of, or incapable of consciously controlling, their behaviour.”

I'll avoid a discussion of how to determine the inability to control behaviour, but I think this has to be situated in the context of the other negligence provisions, essentially, that have been included in here. This rendering a person incapable of consciously controlling their behaviour is in the context of somebody who has, as Ms. Dunn pointed out, self-ingested an intoxicant, and this is in the context of somebody who has departed markedly from the standard of care.

This raises a lot of questions. What is the standard of care of a reasonable person in these circumstances? I think these questions have to go by a case-by-case kind of basis. We also have the element of the reasonable person, the foreseeability of the harm...these kinds of negligence elements that have been included.

For instance, in the Brown case, we were talking about somebody who ingested magic mushrooms and then essentially had no control. The question is, would this have been captured in this clause? Is it reasonable for a person to know what their behaviour would be when taking those types of illegal drugs?

The reasonable standard, is that something...? In some cases, for some people who have a history of certain types of abuses, of interference, with bodily harm, in those circumstances they should be aware, as a reasonable person, that they're likely to engage in this type of behaviour, but when people take intoxicants that are illegal, it's not like we go to the pharmacy and we see what the potential side effects are.... The question of whether or not something is foreseeable probably has to go through a case-by-case basis.

Mrs. Élisabeth Brière: Thank you.

Would you like to add something, Mr. Dumschat?

Mr. Eric Dumschat: Unfortunately, I don't feel that I'm in a position to be able to add anything. As I mentioned, this doesn't really affect impaired driving, so I have not taken the time to educate myself to a point where I feel that I could comfortably speak on this topic.

The Vice-Chair (Hon. Rob Moore): Thank you, Madam Brière.

Next, for six minutes, we will move to Mr. Fortin.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Thank you to all the witnesses for being here today.

This is an important and concerning issue for all Quebeckers and Canadians. This applies to crimes for which the self-induced extreme intoxication defence could be advanced. Almost all the witnesses told us that they had not been consulted before the bill was drafted.

Mr. Dumschat, if the Minister of Justice had consulted you on the bill beforehand, what would you have told him? What would you have recommended in response to the Supreme Court's decision?

[*English*]

Mr. Eric Dumschat: To be honest, I would have been surprised if we had been consulted. As I've said a few times now, this doesn't affect impaired driving, so it would be understandable that we would not be consulted on this, because, frankly, there would be no need to consult us on this.

● (1600)

[*Translation*]

Mr. Rhéal Fortin: Mr. Dumschat, as you well know, people who are so intoxicated that they no longer know what they are doing get behind the wheel and cause car accidents. Those people could use intoxication as a defence even though their intoxication was self-induced. You don't think there's a scenario where this could come into play?

[*English*]

Mr. Eric Dumschat: No, this won't come into play. The Supreme Court has upheld the fact that Parliament can create criminal offences where the gravamen, the very essence of it, is impairment. If someone were to say, “Your Honour, I can't be held responsible for driving while impaired; I was too impaired,” wouldn't make any sense in the case law, and this is pretty clear.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Dumschat.

Ms. Dunn, I'll ask you the same question. You said you weren't consulted either. If you had been consulted, what would you have told the Minister of Justice about the bill?

[*English*]

Ms. Jennifer Dunn: You're correct. We were not consulted ahead of time. With regard to this bill, we know that it's truly an attempt to obviously address the Supreme Court's decision. It attempts to support victims and survivors of crime and hold offenders accountable.

The issue is that there was a reason this was put in place to begin with. I think the year was 1994, if I remember correctly. This decision really reopens that gap again, and it leaves women vulnerable to crimes. To be honest with you, we would have said that this decision shouldn't have been reversed to begin with or taken away to begin with.

We should still be able to know that women and girls can be protected without the potential for somebody to use self-induced intoxication as a defence.

[*Translation*]

Mr. Rhéal Fortin: I realize that you disagree with the Supreme Court's decision, but since the court's ruling can't be appealed, we have to live with it. Far be it from me to defend the Minister of Justice, but I do wonder what the best approach is given that we have to deal with the Brown decision.

What approach should the government have taken to deal with this issue? The bill is one option. You said you weren't consulted, and that seems to be true for just about every organization. What I want to know is what should the government have done.

Are there parts of Bill C-28 that should have been dropped or changed? Are there provisions that should have been added? What's your view?

[*English*]

Ms. Jennifer Dunn: It would be important to make sure, and I know this is something that is supposed to be done, that the gender-based analysis lens was looked at, or was used to look at this bill, as well. I'm unsure if the committee has information on that piece. I think that would be an important step.

Speaking to that, it would have been very important during consultation time to listen to women with lived experience, as well. Some of the women whom we spoke with during the round table gave some pretty good input on how they feel about this situation. Sometimes it's something as easy as education, for example, to let people know what this means in the real world.

To be honest with you, when we receive phone calls from women, they wonder what's going to happen to them, and what is going to happen next to them. When people on the ground don't particularly know what is going on, that's a huge problem for us, so a public education piece would have been vital in this circumstance.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Ms. Dunn.

[*English*]

The Vice-Chair (Hon. Rob Moore): Thank you. You're out of time.

Thank you, Mr. Fortin.

Next, for six minutes, we have Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

I do want to start off by saying that I think some of us around the table have sort of forgotten the situation we were in when asking about why people weren't consulted.

The Supreme Court made a decision, which created a gap in the criminal law. It also created a lot of confusion in the public. I think that a consensus among all of the parties—among ourselves—was that we needed to act quickly. These sessions we're holding now were planned at the time because we knew that the consultations couldn't really take place fully unless we were going to leave that gap for months after the Supreme Court decision. It's kind of been forgotten here that we really are endeavouring to do those consultations at this point because of the time frame we were forced into.

I want to thank the representative from MADD for being here. He's in a peculiar position of providing a kind of negative evidence, but I think it's important that MADD was here today to say that. I think we still have some of that confusion out in the public that this decision has somehow affected impaired driving.

I know it's an awkward position for you to be in here today, saying it doesn't affect what we're concerned about, but I think an important message for us to get out to the public is that it doesn't change anything about impaired driving.

With that very long preamble, I would like to ask the Native Women's Association of Canada about what we actually did in the bill and whether they think it's sufficient.

In common language, we did two things. We set a very high standard for what it means to be in extreme intoxication. It's basically automatism where you're not in control anymore. Also, we require that evidence—not just a claim—be presented of that state. The second thing we did is we said that prosecutors can then evaluate whether care was taken by a reasonable person.

Given the Supreme Court decision, what I'm really interested in today is if this is a good thing that we've done here. Is it a sufficient thing that we've done?

● (1605)

Mr. Adam Bond: I'll try to be as brief as I can.

Is what we've done here a good thing? I think essentially two options were available. Both of them resulted in the same outcome. The court had basically said it's a stand-alone offence or fix section 33.1.

For reasons that were echoed in the consultations through the 1990s on this with women's groups, there was a risk that a stand-alone offence could undermine other types of plea deals—like, somebody could commit a sexual assault then plea out to a lesser offence of extreme intoxication. Then there's this option of tightening it up and including these negligent standards.

At the end of the day, we don't know if either of these options is really going to be successful in addressing what was at the core of Brown, which is the substitution of the *mens rea* for becoming intoxicated with the *mens rea* to commit the offence. Does it do it? We will find out one day, I'm sure.

Is it good? I think it was good that action was taken quickly. We should have been consulted earlier. We would have liked to have a conversation, even if there were only two options and both of those options have ended at the same place.

When we did consult and when we did have conversations with Justice, our position was, as the president said here, that the bill cannot be enough. These are systemic issues. They cannot be dealt with by fixing the Criminal Code. They cannot be dealt with in the Criminal Code itself.

The reason we have this provision to try to deny the application of a defence of self-induced intoxication is that we have problems with extreme intoxication and with misuse of substances. These problems are pronounced in marginalized communities, including indigenous communities, because of the legacies of systemic racism and because of colonization.

We need not only amendments to the Criminal Code. We need more substantive policies and programs to address the underlying issues. If we get ahead of extreme intoxication, it won't be an issue. If nobody commits the crimes because of the extreme intoxication, then we don't need section 33.1. We need to focus more on the peripheral policies and programs to address these underlying issues because it doesn't matter what you do; nothing is going to be enough in the Criminal Code alone.

● (1610)

Mr. Randall Garrison: Thank you. I think that's very important testimony for the committee to have heard and to think about when we're reporting back to Parliament at the end of this.

I know there's not going to be very much time, but I'd like to ask Ms. Dunn the same.... Maybe I won't ask Ms. Dunn this time. I'll ask on another round.

Let me stay with the Native Women's Association of Canada then.

I know the answer to this, but do you see ways that we could actually increase the support services at the community level to help deal with those addiction problems that lead to extreme intoxication?

Mr. Adam Bond: Well, I definitely don't have enough time for that one. I would just say it needs to be done at a community level and at a nation-to-nation level because we can't paint with too wide a brush. We need to understand that the communities and the organizations are in the best position to explain what services and supports they need.

Mr. Randall Garrison: Thank you very much.

The Vice-Chair (Hon. Rob Moore): Thank you, Mr. Garrison.

Mr. Garrison's time is up, but there will be other opportunities for sure.

Next for five minutes we'll go to Mr. Van Popta.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you very much, Mr. Chair.

Thank you to all the witnesses for being here and sharing your wisdom with us. This is a very important study.

Ms. Dunn, I want to focus on you first. Thank you for the important work that you do in helping women who are the victims of crime.

Today we're talking about whether or not extreme intoxication can be a defence for a person accused of a violent crime. You are a very important witness for us, Ms. Dunn, because, to quote the Minister of Justice when he introduced this legislation, we know that there are clear links between intoxication and gender-based violence, particularly sexual violence and intimate partner violence. As well, 63% of women and girls who were killed were killed by an intoxicated attacker.

In your earlier evidence, it was clear that you did not agree with the Supreme Court of Canada's decision in R. v. Brown, which reintroduced that defence into Canadian jurisprudence. My question is whether in your opinion there was ever a possibility that that defence should be reasonably available. I'm going to take the facts in the Brown case. He had consumed alcohol and magic mushrooms, and he said in evidence that he did not know what the impact of that was going to be. He could not reasonably have foreseen that he would lose control over his ability to know what he was doing.

In those circumstances, would it be reasonable for that defence to be available?

Ms. Jennifer Dunn: Thank you very much for the question. I appreciate the opportunity.

This is interesting. Asking if this defence should be available in other situations is a good question for us because it all comes down to the systemic issues that we have at hand here. I would like to say that the majority of people who commit sexual assault, for example, are men. In these types of situations with these men, should that type of defence be available? It should absolutely not be because the women are at most risk in this type of situation. But in other types of situations—let's just use the exact example that you just gave but with a woman—we would say let's think about that. There should be, perhaps, more opportunities for this person. They should be able to use extreme intoxication as a defence.

Then it comes down to this big systemic issue that we have at play here, which is the fact that these laws are not being looked at through the lens of violence against women. I think it is really important to think about how we protect women in this situation. How do we protect specifically indigenous women and racialized women, and what does that look like? I don't think it's a matter of whether this defence will be good in some situations, and whether it will be a good idea to allow this defence here but not a good idea to allow it there, because it's way bigger than that.

I'm going to put a period at the end of my sentence there.

● (1615)

Mr. Tako Van Popta: Thank you.

Many Canadians would be very sympathetic to what you just said, but we parliamentarians have the challenge that the Supreme Court of Canada put to us and we're trying to respond to it.

The Supreme Court in the Brown case said that section 33.1 was unconstitutional but they did say that if you were to frame a law within these parameters it might be constitutional, so that's what we're trying to do here. Your evidence is very useful for us. Thank you for that.

I'll cede my time. Thank you very much to all the witnesses.

The Vice-Chair (Hon. Rob Moore): Next for five minutes we'll have Ms. Dhillon.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair.

My questions will be mostly for Ms. McBride.

Bill C-28 says people who have committed violent crimes cannot use the defence of voluntary extreme intoxication if they have consumed intoxicants in a negligent manner.

What impact do you think this bill will have on indigenous women, girls and gender-diverse people, and how would it affect their confidence in the justice system?

Mr. Adam Bond: What will the impacts be on indigenous women and girls? It's a little bit of a difficult question. We need to understand that there are two competing interests here. On the one side, we have the overincarceration of indigenous women. On the other side, we have the overrepresentation of indigenous women and girls being victimized by violent crime.

On the side of protecting people from violent crime, I think that this bill is a rapid reaction to the Supreme Court's decision to, I think, primarily address the public misunderstanding about what that decision did and to calm down some of the myths that were spreading relatively rapidly. I think that's a good protection, though section 33.1 has existed for a long time and there's still overrepresentation so it's hard to say—maybe status quo.

As far as addressing the overincarceration is concerned, again, I don't think it's going to be particularly impactful just on its own. These cases are quite rare where 33.1 defences are made, but I don't think that it will result in more indigenous women being incarcerated necessarily.

Again, as I was saying earlier, the real return on investment for addressing these issues is going to be with the policies and programs. What are the effects? It's likely the status quo of prior to the Brown decision.

Ms. Anju Dhillon: Thank you for your answer.

I'd like to follow up with Ms. McBride's testimony that NWAC looks for a harm reduction and restorative justice framework. Can you please elaborate on how that would unfold and talk a little bit about this model?

Grand Chief Carol McBride: First of all, I think we have to take into consideration that every first nation has their own way of dealing with justice issues. I would see in different situations different ways of healing.

I know for NWAC, right now we're looking at resiliency lodges, which I think is going to help our women who are going through different situations in their lives and hoping that we can give them the help that they need before going to this measure of extreme intoxication.

I think it all depends on the first nation. It should be up to the first nation to put in these healing mechanisms, because I think that's where the problems are going to be ironed out a little bit or solved a bit more than what they are now.

Right now, first nation communities, the Métis and the Inuit, we just don't have the money to be able to put in the services that are needed in the community. We are facing big problems, especially with addictions. Anyway, I hope that enlightens you a little bit on what's going on in our indigenous communities.

● (1620)

Ms. Anju Dhillon: It does, and I thank you so much for your very frank response.

The Vice-Chair (Hon. Rob Moore): Thank you, Ms. Dhillon.

For two and a half minutes, we have Mr. Fortin.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

I want to come back to what I was saying earlier.

Mr. Bond, I may have misunderstood what you said, so please correct me if I did. I thought you said that you were fine with Bill C-28 and that it was an appropriate response to the Supreme Court's decision in Brown.

Your preference, however, is the status quo before Brown. Obviously, that's not possible, except perhaps in fantasyland. We have to accept the Supreme Court's decisions.

I gather, then, that you're fine with the bill. If not, in two minutes or less, can you tell me exactly which provisions of the bill need to be amended and how?

[*English*]

Mr. Adam Bond: I don't think I said that the status quo was accepted. The question was what was the effect on indigenous women. I said that the effect was going to be status quo.

Whether or not there are things that I would change, I think I answered this. There were two options. Both of those options led to the same outcome. I think that this bill, in that the purpose of it was to address the kind of public concerns about the Brown decision, is effective in doing that. If it's supposed to address the issue of extreme intoxication-related crimes, it didn't do that prior to Brown, and it's not going to do it after.

The crux of our comments here is that we need this to be coupled with services and programs to address substance misuse issues.

[*Translation*]

Mr. Rhéal Fortin: I take it, then, that you don't have any recommendations on how the bill should be amended. Is that correct?

[*English*]

Mr. Adam Bond: That's right.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Bond.

Ms. Dunn, I have the same question for you, but you have roughly 30 seconds to answer. Are there provisions in the bill that should be amended, and if so, how?

[*English*]

Ms. Jennifer Dunn: I will try to be very quick.

Off the top of my head, to be honest with you, I can't tell you specific sections, but I think something important was said by Mr. Bond there. We need to work hand in hand with this legislation as it is. I know we can't change what has happened in the Supreme Court, but we need to work with organizations, especially with women with lived experience, to see how this unfolds and what will be best moving forward.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Ms. Dunn.

[*English*]

The Vice-Chair (Hon. Rob Moore): We have Mr. Garrison for two and a half minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to come back to Ms. McBride.

We're talking about a very narrow case here of self-induced extreme intoxication, but we know that many more women, in particular indigenous and marginalized women, are subjected to sexual assault.

This is a kind of leading question. What are the services like for indigenous women who have been subjected to sexual assault? Do you feel the same level of services and the same culture appropriate services are available to indigenous women as are available elsewhere in our society?

Grand Chief Carol McBride: I find that what we are suffering with in our communities is the lack of healing resources that would help our community, our women. We just don't have enough financial resources to bring in what we need.

Our people have been through a lot. These residential school people are coming back to a very poor community that can help them with their healing. I think we really have to concentrate on bringing those resources to the community. Healing can only happen based on what's within their own culture.

We have our own healing processes. Unfortunately, as I said, we all have poor communities. When you're talking about housing, food and everything else in everyday life that we need, we just don't have enough to go around.

Basically what we're hoping for is that we get enough resources to be able to help our people so they don't end up behind bars, so that they don't end up being victims, and they don't end up being a woman who has to put up with violence. We're hoping to get our men healed or within our healing process before this happens.

I hope that helps a bit.

● (1625)

Mr. Randall Garrison: It's very important testimony to get the committee to focus on. It's not just the narrow law in front of us, but how we address the problem that results in having to have such a law.

Thank you very much for your testimony.

Thank you, Mr. Chair.

The Vice-Chair (Hon. Rob Moore): Thank you, Mr. Garrison.

I want to thank all of our witnesses who appeared here and virtually. We appreciate your input as we study the subject matter of Bill C-28.

Members, I would ask those of you who are on virtually to use the second link sent to you a few minutes ago for the second part of our meeting. That part is going to be in camera.

I will be relinquishing the chair to our real chair at that point. The second hour of our meeting is in camera.

I want to thank our witnesses. We appreciate your testimony.

I will suspend the meeting for a few minutes.

[*Proceedings continue in camera*]