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• (1105)
[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I'd like to call this meeting to order. Welcome back after the break week, everyone.

Welcome to meeting number 36 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 on the subject of Bill C-28, an act to amend the Criminal Code regarding 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 the Zoom application.

I'd like to take a few moments now for the benefit of 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 yourself when you're not speaking. For 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 also will remind you 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 best we can. We appreciate your patience and understanding.

Mr. Perron has a question.

[Translation]

Mr. Yves Perron (Berthier—Maskinongé, BQ): Thank you, Mr. Chair. Thank you for welcoming me to your committee this morning.

I would just like to make sure, as usual, that the sound checks for interpretation were conducted before today's meeting.

[English]

The Chair: Yes. Thank you for asking. I think they've been done. All are good so far.

I do have cue cards as well. When you have 30 seconds remaining, I'll raise the yellow cue card. When your time is up, I'll raise

the red one. I don't like interrupting, so if I can avoid that cue card, I will. Try to watch for that.

Mr. Perron, our tests have been done.

Now I'd like to welcome our witnesses for the first hour. Appearing today we have Benjamin Roebuck, ombudsperson for victims of crime. While our list says you're here by video conference, I believe you're right here in the room. Also, we have with us, via video conference, Rhiannon Thomas, from the Women and Harm Reduction International Network.

We'll begin with you, Mr. Roebuck, for five minutes.

Dr. Benjamin Roebuck (Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Thank you.

Honourable Chairperson and members of the committee, thank you for the invitation today. It's very nice to meet you all.

Today we are here on the traditional, unceded, unsundered territory of the Algonquin Anishinabe people. I acknowledge our shared responsibility and my personal responsibility to work to address historical and ongoing colonialism, racism and oppression of indigenous peoples. This includes working together to dismantle the criminalization of indigenous peoples and learn from the resilience and vibrancy of diverse indigenous cultures.

As you may know, I have been recently appointed. I am so thankful for this opportunity to serve victims and survivors of crime in Canada. I am brand new, just three weeks in, so please be patient with me as I get caught up to speed.

I would like to thank the members of this committee for the tireless work on justice and human rights that you do. I know that there have been many recent decisions by the Supreme Court of Canada as well as government and private members' bills that require your attention.

The Office of the Federal Ombudsman for Victims of Crime is an independent resource for victims in Canada. Our office was created to help the federal government honour its commitments to victims of crime. Victims contact our office to learn about rights under federal laws, to learn more about federal services available to them or to make complaints about any federal agencies or federal legislation dealing with victims. We help to problem-solve and find solutions when victims' rights have not been respected, and we collaborate with stakeholders across the country to identify emerging trends or issues that affect victims of crime. Based on this work, when appropriate, we offer recommendations to federal agencies and help to ensure that victims' concerns are considered in the legislative process.

When the Supreme Court of Canada ruled in *R. v. Brown* that section 33.1 of the Criminal Code was unconstitutional, it had immediate and adverse effects on survivors of violent crime. The wording of the law and the language used by the SCC are difficult to understand and contributed to widespread misinformation about highly traumatic and personal experiences in the lives of Canadians.

Organizations supporting women who have experienced gender-based violence and many young survivors of sexual assault, in particular, believed that the government had allowed space for intoxication to become an allowable defence for violence imposed on the bodies of women and girls. This belief caused considerable distress, resurfacing of traumatic memories, and protests in high schools where young survivors shared personal experiences, sometimes without the resources to do that safely.

As ombudsperson for victims of crime, I believe that there was an urgent need to act, and I am thankful for the way the whole government moved quickly to respond to the SCC ruling. I also appreciate the clear messaging from the Minister of Justice and Attorney General of Canada, the Honourable David Lametti, when he said repeatedly, "Being drunk or high is not a defence for committing criminal acts like sexual assault." I think that this showed empathy and it reflects a hopeful posture to act on other concerns raised by victims of crime.

I also understand that the unconventional approach to passing this legislation before it could be fully considered and weighed in our parliamentary committees has created an obligation to meaningfully engage in that process now.

The full continuum of intoxication caused by alcohol and other substances is a very present reality in many of the contexts that lead to criminal victimization. In the messy realities of these situations, people can slip in and out of their awareness of their behaviour and their impact on others, making it difficult to establish objective criteria about culpability. Other witnesses will explain that the defence of extreme intoxication is predominantly advanced by men perpetrating violence against women. As the Government of Canada launches its national action plan to end gender-based violence, I urge you to consider this legislation through that lens.

Our office has a few simple recommendations that I will leave you with. Number one is clear language. Continued misinformation about this legislation will have consequences on women and girls.

The wording of Bill C-28 is complicated, and we recommend continued and clear messaging to the public.

The second recommendation is meaningful consultation. The diverse perspectives of Canadians emerging in the committee need to shape the legislation. We recommend making revisions to the legislation if significant concerns are identified.

Number three is monitoring. Intoxication is very common in contexts of violent crime, and you've heard significant concerns from women's groups and survivors about the possibility of this defence being abused. We recommend a formal review after two years to evaluate how the defence has been used in court.

• (1110)

Thank you again for your time. I look forward to the conversation.

The Chair: Thank you.

You were right on time, Mr. Roebuck. Welcome to your new role and to your first appearance on this committee.

Next, we have Ms. Thomas for five minutes.

Ms. Rhiannon Thomas (Women and Harm Reduction International Network): Thank you to the committee for your invitation to have Women and Harm Reduction International Network—WHRIN for short—speak about Bill C-28.

My name is Rhiannon Thomas. I'm here as the representative to speak about considerations similar to the previous speaker's.

Here is an introduction and our context. WHRIN was formed in 2009 as a response to a worldwide scarcity of services, research and training programs that are inclusive of women, female-identified and gender-diverse people who use drugs, by the global community of women who use drugs, as well as drug policy and human rights activists. WHRIN has spent the past 15 years working to improve the availability, quality, relevance and accessibility of health, social and legal services for women who use drugs.

WHRIN reminds the committee that drugs, including alcohol, while sometimes associated with violence, cannot be seen as the direct cause of violence. WHRIN would argue that drug dependency is not a disease or illness, nor does drug use per se negate free will and intention.

I am certain that the honourable members on this committee will be very aware that women are most often the victims of violence, including physical, sexual and socio-economic. By that, I mean that women in relationships in which gender-based violence occurs often do not have the economic means to freely or safely exit them. Children, as the committee knows, are often caught up in these situations as well.

As the previous speaker said, it is most likely that men who engage in intimate partner and gender-based violence will attempt to use this defence if it is made available to them.

For some men, both drug use and intimate partner violence may be expressions of a need for power and control related to gender-based insecurities. Intimate partner violence is usually inflicted by men who, buoyed up by patriarchal contexts, believe that violence is apposite in certain situations. Such violence occurs in settings where the perpetrator is in control. It must be understood as deliberate and, at some level, premeditated, independent of the amount of alcohol or other drugs consumed, if any.

Incidentally, this insight has implications for services designed for violent perpetrators, in which drug use should evidently be considered as a secondary factor in violence prevention interventions, given that the intention to inflict violence invariably precedes alcohol or other drug use.

Sexual violence is a place where we must be particularly careful with the use of this defence. Women are overwhelmingly the victims of sexual violence. This type of crime is one of the most under-reported, due to the burden of not having police believe narrative evidence. Even when cases get to court, survivors are cross-examined without trauma-informed approaches. If a survivor is a noted person who uses drugs, for example, their memories of the events are often discredited. In this way, a survivor can be blamed for a sexual assault, while the perpetrator—using this defence—has the potential to be acquitted for being intoxicated.

Additionally, if we consider gendered socio-economic realities, women have less access to legal supports. In most provinces, legal aid supports have been slashed for many years, so they are accessible only to the accused who are facing jail time, and not to survivors. Further, as parents and, often, the primary caregivers, women who may want to invoke such a defence may be reluctant to do so, due to the threat of losing child custody.

Importantly, due to the criminalization of many commonly used drugs, research on their physiological effects is limited, which would also impact the limitations of the use of this defence. To properly study if and how many drugs affect perceptions and the ability to make informed decisions is difficult, if not impossible, given the exemptions required. One drug we know a lot about is alcohol, since it is legal. We know that it affects inhibitions, perceptions, judgment and so on, and it has been clearly linked to violence—perhaps not causally—in many studies.

Finally, the criminalization of drugs, drug use and people who use drugs must also be considered. How will this affect communities that are most impacted by prohibition? Black, indigenous and poor people in this country—who are most often disproportionately incarcerated and have less access to pricey lawyers—certainly are

not going to be in a position to pay for expert witnesses who can make assertions about the levels of intoxication and their relation to criminal intent.

• (1115)

I also would refer to the rising numbers of women, particularly indigenous women, in the federal prison system. You can easily find these numbers on the Canadian government website. I would encourage the honourable members of this committee to also read the report from the Office of the Correctional Investigator that was released last week, which pointed to how those numbers are increasing and how indigenous prisoners, especially female prisoners, are in prison longer and in maximum security more often. I ask this: Will this defence be accessible to these Canadians?

In summary—

The Chair: Thank you, Ms. Thomas.

Ms. Rhiannon Thomas: Oh, I'm sorry. I had one more thing to say. Do I have time?

The Chair: Sure. Go ahead.

Ms. Rhiannon Thomas: In summary, WHRIN's position around this issue is that we see no evidence of direct causal association between drug use and violence or other offences. However, it is clear that mitigating factors should always be considered holistically, without drug use alone, per se, being an isolated factor. Contextual issues such as acting under duress of threats or intimidation, exploitation, gender, history as violence survivor, all these things should be considered together, and mandatory simplistic views should always be avoided.

Thank you.

The Chair: Thank you, Ms. Thomas, and welcome to the committee.

I'll now go to our first round of questions, beginning with Mr. Brock for six minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair.

Good morning, Ms. Thomas and Mr. Roebuck. Thank you so much for your appearance today to help us in this important study.

I'm going to try to balance my questions with respect to both witnesses. It really depends on the timing. I know I have only six minutes.

I'll go first to you, Mr. Roebuck. I want to personally congratulate you on your appointment to this particular role. It is a role that is so vastly important to victims in this country of ours from coast to coast to coast. I would be remiss if I did not highlight the fact that this particular position was left vacant for close to 13 months, notwithstanding the cries from the official opposition and other members of the House of Commons to fill it, because there was a need for victims to be heard.

As you have indicated in previous testimony—I've done a little bit of research—there is a real disconnect in terms of equality in the criminal justice system between the rights of the accused and the rights of the victims. You have opined specifically with respect to section 15 and section 28 of the charter, how there is that particular imbalance. It's so important to have you here filling this particular role. It would have been so helpful to have your knowledge and your background when we studied Bill C-5, and also when we studied, most recently, victims' rights with respect to participating in the criminal justice system.

That being said, I want to give you an opportunity to perhaps expand on some of the recommendations that you spoke about. As a former Crown attorney, I am so acutely aware of the abysmal statistics we have in terms of successful prosecutions in this country. It stems from a lack of reporting. It stems from a lack of knowledge of rights. It stems from a lack of trust that the victims have with police authorities, with participants in the criminal justice system. You yourself have opined that there was a great deal of misinformation that was largely alarmist the moment the Supreme Court of Canada released the decision.

I'd like to hear from you, sir, as to the particular steps your office is taking to perhaps assuage some of these fears and some of the concerns that victims have, particularly as they relate to the Supreme Court of Canada decision and the government's response with the passing of Bill C-28.

• (1120)

Dr. Benjamin Roebuck: Thank you for the question, Mr. Chair.

I'm here and ready to work. We're starting by engaging stakeholders and listening. I don't want to come in with a pre-established agenda, even though there are clear issues that need to be tackled. I think we need to hear directly from victims and survivors of crime across the country: What are the pressing issues right now that need to be moved on?

I think one of my keen observations at the moment around legislative changes that are happening is that I don't think it's right to dismantle mandatory minimum penalties without considering increasing protections and access to justice for victims of crime. There has to be some compensation in that equation, which is why I'm very interested in Bill C-233, about the potential use of electronic monitoring as a way of protecting women's safety if offenders are given the option of conditional sentencing. I think we have to look at the balance when we're making decisions as important as that.

Mr. Larry Brock: Specifically I asked, sir, what your office is doing to contribute to the overall knowledge component as part of your recommendations moving forward. You mentioned knowledge, greater consultation, making revisions to the legislation and

monitoring the data. Those are the four highlights I heard from your presentation.

I've heard from other witnesses that it was important for the government to respond appropriately to the Supreme Court of Canada's decision. I am not critiquing the government. It was appropriate they do that, and we urged them to do that, but there's been a great deal of criticism in terms of the speed with which they pass the legislation without proper consultation and without proper public announcements to victims' groups so that the public can be informed that this is not going to be opening up the floodgates for future litigation.

As I indicated at the outset, it's bad enough to convince a victim to participate in this process. I personally engaged in a number of round table discussions, and notwithstanding my highlights of Bill C-28, there is still that fear out there that the defence now has another tool available to them to litigate.

I'd like to know what your office is doing to assuage those fears.

Dr. Benjamin Roebuck: We have an advisory committee that we're ready to re-engage, service providers across the country who are keenly interested in this issue and a number of women's organizations and groups that are very interested in monitoring this outcome. We'll look to stay on top of how it's being used in the courts. Our office will monitor that as well. We hope to come back to the committee with an evaluation of how it's being used.

I think it's really important to understand that the perceptions of legislation are what people act on. In abusive relationships where there's coercive and controlling behaviour, any misperceptions around the way that this can be used... You can have an abuser trying to convince a victim that it can't be reported because they were intoxicated.

I think clarity is really important, and we'll try to promote clear messaging on this to the best of our ability.

• (1125)

Mr. Larry Brock: Thank you, sir.

The Chair: Thank you, Mr. Brock.

The next round of questioning goes to Mr. Naqvi for six minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you, Mr. Chair.

I also want to start by congratulating Mr. Roebuck on his appointment. It's three weeks in, and I'm sure you're learning something new every day. I'm sure this will continue.

I'll start my questioning with Ms. Thomas.

Thank you for joining us today. Can you share with us, in your organization's experience, the reaction of the communities you worked with when the Brown decision was rendered by the Supreme Court of Canada?

Ms. Rhiannon Thomas: In our organization, the immediate reaction was the concern from the community that this kind of defence is going to do more damage to people who are victims of violence, because already the balance is not in favour of victims of violence.

I don't really know what else to say. There's a real concern about providing perpetrators of violence with more power in the court system.

Mr. Yasir Naqvi: Do I read correctly from your response that you had hoped that Parliament acts as fast as possible in making it absolutely clear that such a defence does not exist?

Ms. Rhiannon Thomas: Yes, if that is the reality. From the perspective of our organization, what ends up happening in the courts will really be the evidence that we would use to analyze what's happening.

I agree that it's important that the government is clear about what the laws mean and how that works out, but ultimately, if the courts rule in favour of someone who is violent, especially depending on the substance that they are using, and using that as an excuse for violence that is premeditated or a separate issue, that will continue to be a concern.

Mr. Yasir Naqvi: What are your suggestions in terms of making it even more absolutely clear that intoxication or just being high is never a defence when it comes to perpetrating any crime, in particular as it relates to sexual violence?

Ms. Rhiannon Thomas: I'm sorry. Can you repeat the question?

Mr. Yasir Naqvi: In your view, what else can be done or what else can the government do to make the point absolutely clear, as has been in this instance where the Minister of Justice and other government officials were very quick to highlight it, that just intoxication or being high is not a defence for committing any crime or sexual violence?

I'm of the view that we have more work to do in regard to educating people—men in particular—that this is never a defence.

What is your recommendation as to what else can be done?

Ms. Rhiannon Thomas: That's a great question.

Real investment in support services for women and families who experience intimate partner violence and gender-based violence would be a crucial step, because those services are rare. The shelter system, for example, for women who are escaping violence is very full all the time. This was particularly highlighted during lockdowns and the pandemic.

I think it's really looking at investment in services for women who are victims of violence and particularly sexual violence. I can't overstate how overwhelming it is to try to report sexual violence to the police.

I'm sure all the honourable members of this committee will understand the dark figure of crime when it comes to sexual violence. It is very difficult to report that and even once it is reported, going to court is a very traumatic system because there is no support there to help people get through that system and through that process.

• (1130)

Mr. Yasir Naqvi: Thank you.

Dr. Roebuck, I have probably a minute and a half left.

Your last recommendation was around data collection. Can you expand on that? What kind of dataset are you speaking of? How do you suggest that data be collected? Most importantly, how can it be used to protect victims of sexual violence?

Dr. Benjamin Roebuck: Thank you for the question.

I believe that an appropriate way of collecting the data would be to look at every instance of the defence being used in court and look at success factors and when it's unsuccessfully used. It would be to look at the nature of the cases where it's being used and evaluate whether it is disproportionately affecting violence against women, as we've seen in the past.

I'm not sure yet of the proper mechanism within government to do that. Certainly, our office will also keep an eye on its use and likely commission a study in year two to report back on the work.

Mr. Yasir Naqvi: Thank you.

Do you know if that data is being collected at the moment? Do you have any sense of that, even from academic circles, given your background?

Dr. Benjamin Roebuck: Yes, there's an excellent research centre at Western University where some of that data is being monitored.

The Chair: Thank you, Mr. Naqvi.

We'll go to Monsieur Perron.

Welcome to the committee.

[*Translation*]

Mr. Yves Perron: Thank you very much, Mr. Chair.

I thank the two witnesses for being with us this morning.

Mr. Roebuck, congratulations on the important position you hold. I cannot believe the position was vacant for so long, as my Conservative colleague mentioned. In any event, you are here.

In your statement, you made recommendations and used clear language. You said that there needs to be meaningful consultation and that a formal review should be conducted after two years. In your recommendations, I sense that you have significant concerns.

With Bill C-28, do you think we achieved the desired balance between defending individuals and protecting victims, or do you instead think that the bill will not be effective?

[*English*]

Dr. Benjamin Roebuck: It's a great question.

Mr. Chair, in general in Canada, we have work to do to balance the system with regard to the rights of offenders and the rights of victims, where the rights of offenders are guaranteed under the charter, and victims typically have to ask for their rights to be respected, and there's no recourse for them to follow up outside of the complaints mechanism, which is part of why our office is vitally important to victims and survivors of crime.

In terms of clear language, it's not accessible to the average Canadian to understand. I just want to read this portion of the bill:

they departed markedly from the standard of care expected of a reasonable person in the circumstances with respect to the consumption of intoxicating substances.

For a survivor of sexual assault who tries to look at and understand the law, that's not clear, so the messaging has to be there, because already, as Ms. Thomas has pointed out, we know that less than 6% of sexual assaults in Canada are reported to the police. If women feel that they're not going to be believed because there was intoxication involved, that's significant. We need to clarify that.

We need to look at this issue also in the context of drug and alcohol policies and harm reduction and consider the importance of safer consumption programs as a means of people using more safely than in other contexts where private violence could occur.

[*Translation*]

Mr. Yves Perron: Would you have a specific proposal to make, particularly on the portion you read us? Have you thought of language that the committee members could use to make a sound recommendation to the government?

Do you have something prepared already or would you be able to provide something to the committee?

• (1135)

[*English*]

Dr. Benjamin Roebuck: Mr. Chair, we can certainly look at some language and recommendations. I think you'll probably receive a lot of helpful input through the committee hearings about the way the language could be used and interpreted.

I think that for something as significant as this—because, as I mentioned, alcohol intoxication is present in so many contexts of violence—having a plain language summary at the top of the bill—even within the Criminal Code—that articulates the essence of what's being said, followed by the legal language, which I understand is important, could help to clarify.

[*Translation*]

Mr. Yves Perron: What do you think of the approach used in Bill C-28? The minister had two choices: create the offence of extreme intoxication, or require that a risk of loss of control and risk of harm due to the loss of control be demonstrated.

I noted during previous testimony that some people had expressed doubts as to the effectiveness of this clause. This was the case in particular for Mr. Hugues Parent, full professor of law at the Université de Montréal, who said that the proposed wording did not include the risk of a defence lawyer invoking psychosis, for example.

What do you think about this? Do you believe there is a significant gap to be addressed before moving forward with this bill?

[*English*]

Dr. Benjamin Roebuck: Thank you, Mr. Chair.

There are parallels with other types of behaviour that I think need to be considered.

With something like psychosis, generally it's understood that it's a partial break from reality or a partial difference in perception. I think the way we're talking about extreme intoxication may be oversimplified in reality, and we need to consider the fluidity of the impacts of extreme intoxication.

I think that's a really important consideration and the impression of victims of crime should be considered in that, as has been recommended, but I think it's an oversimplification to assume that there's a complete disconnect that's permanent throughout the complete duration of an offence.

[*Translation*]

Mr. Yves Perron: Thank you very much.

When he appeared before the Committee, Minister Lametti stated that the new clause 33.1 would be easy to apply. Do you share this opinion?

We can see that you have some doubts as to the wording, which you find too technical, but that, on the whole, you think the content could be good. I would like to hear what you have to say on this.

[*English*]

Dr. Benjamin Roebuck: Thank you for the question, Mr. Chair.

I don't believe that it will be a common defence. I think there is a high threshold that's established in the law, but we do need to monitor it to ensure it doesn't become more common.

As was raised earlier, I think a part of the concern about the bill was that there was some misunderstanding about what it meant, and I think some of that would still be part of this process. I don't think it will be a common defence, but I think the perception of Canadians still has the power to influence the way that sexual assault survivors choose to report or not report.

[*Translation*]

Mr. Yves Perron: Thank you very much.

[*English*]

The Chair: Thank you, Monsieur Perron.

Next we'll have Mr. Garrison for six minutes.

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

I want to thank both witnesses for being present today, and I also want to welcome the new ombudsman for victims of crime. I will say that I sympathize with him for having been called before a parliamentary committee when he's barely settled into the chair, and I appreciate his intention to consult widely before taking on more specific perceptions.

I want to start by asking you, Mr. Roebuck, if you believe that when Parliament acted quickly this did anything at all to stem the perception that a big gap had been opened in the Criminal Code that would allow perpetrators to get away with crimes by claiming extreme intoxication.

Dr. Benjamin Roebuck: I do believe there was value in taking quick action on this matter. The misconceptions were continuing to grow, and without a legislative response or a response from the House, I do believe they would have caused further harm to survivors of sexual assault and partner violence and other forms of victimization.

There is still work to do in terms of communicating clearly with the public so that we can root out some of the misconceptions that were present in that period of time, and there are still concerns to address in monitoring how this bill will impact survivors.

I do believe that the immediate action was justified and important for the safety of survivors in Canada.

● (1140)

Mr. Randall Garrison: I, too, regret that we didn't have you in place sooner so that you could have been part of our consultation for the study we're doing on victims of crime, but I certainly look forward to having input from you as we go forward on this in the future.

I want to turn to Ms. Thomas, and I want to start by asking the same question I asked Dr. Roebuck. Do you believe that Parliament acting quickly did anything to help staunch the fear that some major gap had been opened that would allow people to claim extreme intoxication as a defence?

Ms. Rhiannon Thomas: Quick action is certainly a good approach. However, as to the impact on the views of a community of people who have been so affected by violence and sexual violence, I think it is very difficult to understand how big that gap is and how much damage occurs in the public to people who have experienced this kind of violence. Because, historically speaking, sexual violence in particular but also other kinds of violence have never been addressed and survivors have not gotten the supports they required, I think quick action is important, but a lot more needs to be done to stem these concerns.

Mr. Randall Garrison: In the context we were using before, it may have been good to have action, but it's not sufficient to stop with Bill C-28. There's a lot more we need to do in terms of supporting victims of sexual violence.

In your opening statement, you talked about the challenges faced by women in general within the court system but also by marginalized women, including those who might use substances. Could you talk a little bit more about those challenges and what's being done, if anything, to meet those challenges?

Ms. Rhiannon Thomas: That's a really good question and it's a lot to answer.

I'm here representing WHRIN, but I have many years of experience doing frontline work with people who use substances, and also in supporting people through court systems. Poverty is the number one challenge. If you're a poor person in Canada, your access to legal supports is minimal. My experience with most people who are in the provincial systems in particular, but also the federal system, is that if they do not have access to legal supports they often end up pleading out and serving time, whether they're guilty or not, just because that is the only option available to people if they don't have money for a lawyer. I'm sure I don't need to talk about how the situ-

ation of poverty in Canada is increasing with the cost of living and so on.

Then, there are also all those other challenges that are experienced. People who are Black or indigenous are disproportionately stopped by police. There's plenty of evidence on that. I hope that, as we continue to collect more race-based data in this country in various places, we'll start to see facts and figures on that information.

Again, poverty, race, the address where people are calling for crimes.... I'm here in Toronto, and I can certainly say that when you call 911, depending on what the issue is, if you call for an ambulance the police will come depending on where you're calling from. If you're coming from a poor area, that's when the police will also automatically arrive.

Then, on top of that, another challenge is the fact that we're in a situation right now where we're talking about criminalization of drugs and drug use, which has a direct impact on this kind of law. When people are criminalized for substance use, then the people who will be disproportionately impacted and more likely to be arrested or charged will be, again, people who are poor, people who are racialized and people who are otherwise marginalized.

● (1145)

The Chair: Thank you, Ms. Thomas.

Thank you, Mr. Garrison.

I will next go to a five-minute round beginning with Mr. Caputo.

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

Ms. Thomas, thank you for your work. My wife does work on behalf of women in a similar capacity, so I'm obviously appreciative of your work.

Thank you, Dr. Roebuck, and congratulations on your appointment.

I'm going to begin by talking about something that came to me earlier here today when I was listening. There's a crucial distinction that I think needs to be made here, and that is the raising of a defence versus the success of a defence, two very different things. The raising of a defence is dependent upon the threshold that has to be met, as in when somebody can raise this defence, in what circumstances. Here it's a question of whether there is extreme intoxication. The Minister of Justice came forward and said this defence will rarely be successful. But that's very different from saying this defence will rarely be permitted to be raised. They're very different things.

Now when I look at the Criminal Code, particularly sections 266 to 278 and onward, this is what we see: If a person wants to raise evidence of prior sexual activity, for instance, as part of their defence on a sexual assault or sexual interference or the like type of allegation, or if somebody is pursuing a record that relates to the victim, they have to go through an evidentiary hearing that is separate. In this case, we don't have a separate evidentiary hearing. We just have the defence that can be raised. In those two examples that I cited, as I recall, the victim is actually entitled to standing in the courtroom. What that means is that the victim is entitled to a lawyer and the victim is entitled to make submissions or make an argument to the judge.

On the one hand, we have this robust system that says we're going to have a high threshold, and before we even get to that threshold we're going to have the judge hear whether this is appropriate. On the other hand, we have extreme intoxication, and that defence can simply be raised and the victim isn't heard. That's what I see in Bill C-28.

As I was thinking and listening, what I was left with was this: Wouldn't it be prudent if we developed legislation that mirrors, say, section 276 to 278 and onward, saying that before you raise this defence, you actually have to have a threshold hearing before a judge, and at that threshold hearing the victim could actually get their own lawyer? Would that be something that would perhaps diminish the use of very questionable defences of this kind being raised—not being successful, but being raised—and would it take into account victim concerns more greatly?

I appreciate this is quite a loaded question, so I know that will probably take up most of our time.

Ms. Thomas and Dr. Roebuck, I'm happy to hear from both of you on that point.

Ms. Rhiannon Thomas: I could speak to it very quickly.

I think that is certainly a good consideration. However, I would come back again to my points about access to legal aid. If such a measure was taken, there would also need to be financial support for the victim to be able to access a lawyer, because having the right to access a lawyer is not the same as being able to actually access a lawyer.

That's my comment on that point. Thank you.

Mr. Frank Caputo: Thank you. I know that in British Columbia legal aid is provided for such applications.

Dr. Benjamin Roebuck: Thank you for the question, Mr. Chair.

I think a number of lawyers across the country are probably nervous about the direction of that question, but it's very intriguing and we can do a better job of exploring the standing of victims in the court process. There are other countries where there are more rights in place around legal representation for victims, and there are pros and cons to the different approaches to it.

I want to acknowledge that the raising of the defence can sometimes be just as harmful to the victim as a successful defence. It causes distress to go through the court process. I think if there's a way to consider it early, without needing to go through a full trial, that is valuable and it merits more study.

It's a very interesting question.

• (1150)

Mr. Frank Caputo: I'm certainly not trying to alarm anybody. I'm trying to look at the mechanism by which we get to the most efficient trial that balances the charter rights of the accused, but also recognizes the inherent harm that victims go through in what we would often call secondary victimization. The primary victimization is the offence. The secondary victimization is going through the trial process.

Dr. Roebuck, you just mentioned that we have to balance these things. What I'm putting forward is a balance. I hope that this is a recommendation.

I see my time is up.

Ms. Thomas, I thank you for that. That's a very vital issue, as far as financial assistance for representation is concerned. Let's face it: Most people who are victimized can't afford a lawyer. I think that would have to be dependent...and I would urge legal aid in all provinces to make that funding available if such a recommendation is accepted.

Thank you.

The Chair: Thank you, Mr. Caputo.

Next is Ms. Diab for five minutes.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Ms. Thomas, welcome.

Mr. Roebuck, congratulations on your new post. I'm sure there's a lot of work ahead of you.

I've listened to the last number of sessions over a couple of weeks. There's been talk about what the government had to do to bring forth.... I've also listened to a lot of the misinformation that was there prior to the introduction and, quite frankly, continued. It's misinformation that is still out there. As a woman, that disturbs me a lot.

Ms. Thomas, thank you for your testimony and bringing to light once more that there are support services that are desperately needed for a woman who experiences sexual violence, intimate partner violence, gender-based violence and all of that. Obviously, it's for all victims' rights.

What I'd like to ask you, Mr. Roebuck, since you're with us today, is if you can please share with us what support services are available across Canada for victims. In particular, are there any for sexual assault survivors, for women survivors of intimate violence and so on?

Dr. Benjamin Roebuck: Across Canada, we have diverse responses to victimization. Each province and territory has different mechanisms for funding and supporting services.

What we see in many places would be some sort of generic service for victims of crime that any type of survivor can access. In Ottawa, we have Ottawa Victim Services. That would be more generic. There are also specialized services for survivors of sexual assault, like a rape crisis centre or a sexual assault centre, or specialized services around domestic violence.

It's always challenging for many of these services to be funded, and many pursue grants year after year for pilot funding or cyclical funding. They spend so much time trying to secure the resources to do the work, which they could be spending on serving survivors if they had more resources. Our research centre, prior to coming into this post, looked at the well-being of the victim service providers in this time during the pandemic. Certainly, the pressures of responding to these complicated cases are taking a toll.

I think we need to do a better job of supporting the providers who are trying to work with the survivors.

Ms. Lena Metlege Diab: I take it that the services differ depending on what province or territory you're in.

A second question to that is, what can you do, in your role, to have more of an equal footing for any victim across the country, regardless of who they are, what economic status they have and, quite frankly, where they live?

Dr. Benjamin Roebuck: I love that question.

I do have a limited jurisdiction, in terms of looking at federal legislation while the administration of justice in a lot of victim services is in the provincial and territorial jurisdiction. However, we have really wonderful groups like the federal-provincial-territorial working group for victims of crime that's bringing together provincial stakeholders with federal stakeholders, sharing information and really starting to consider some of the ways we can improve services across the country.

I think we definitely need a better connection with the transfer from folks in the provincial victim services into the federal one if there's an offender who is sentenced to two years or more.

• (1155)

Ms. Lena Metlege Diab: Ms. Thomas, would you have any recommendations to make for us in terms of how we can best help you to get more information out to the people and the women you are serving?

Ms. Rhiannon Thomas: That's a big question.

I'll just echo this recognition of the disparities between federal and provincial systems and the disconnect that occurs. I'm heartened to hear about a provincial-federal victims committee—I forget what it's called—that discusses this.

If the committee would like to share this information, it needs to go out through those networks that already exist, because there are networks throughout the country and, as others have said, they differ depending on whether you live in a rural setting or in a city.

I'm in a city. I'm in one of the biggest cities in our country, and speaking just about here, I know that the services are insufficient. I can only imagine how that is for someone living in a rural area.

I think it's crucial. If you want to talk about communication, you are going to want to look at the services and systems that are in place and talk to the people who are doing that work on the front lines now. That's how the information will get back out to victims, survivors and advocates who do this work.

Ms. Lena Metlege Diab: Thank you, Ms. Thomas.

My time is up.

The Chair: Thank you, Ms. Diab.

Next, for two and a half minutes, we'll go to Mr. Perron.

[*Translation*]

Mr. Yves Perron: Thank you very much, Mr. Chair.

Ms. Thomas, I have significant concerns regarding everything this bill brings up, particularly the secondary factor of fear and intimidation that could prevent victims from reporting a crime. You also alluded to this earlier.

I am pleased to see that everyone agrees that it is important for the government to tell Quebecers and Canadians very soon that this defence will not be an easy route for everyone.

Do you have a specific recommendation for the government in this regard?

[*English*]

Ms. Rhiannon Thomas: I'm not clear on what the question is.

[*Translation*]

Mr. Yves Perron: I have a significant concern, which you also expressed earlier.

With this issue being in the media and questions about section 33.1, I am concerned that, even if we try to get a clear message out to the public quickly, women or any other victims will be even more afraid to report offences because there is that doubt, especially if they know that the perpetrator was intoxicated. In fact, earlier, Mr. Roebuck spoke about the importance of having clear language so that the public understands it.

Do you have a recommendation for the Committee on this specific point?

[*English*]

Ms. Rhiannon Thomas: You made a key point there, which was that despite the quick response about the issue, there will still be this concern.

I think that speaks deeply to the history of how these systems work and all of the underlying issues of why women do not speak up, particularly with sexual violence, but also with other kinds of gender-based and intimate partner violence. It's because there are no systems in place to respond to it. No matter how quickly the government may respond, if those systems and services are not in place to help survivors, then it's very difficult for people not to become more afraid that this defence is going to fuel a system that already works against victims and survivors of sexual and other violence.

Again, my recommendation is to really look at those systems and how they are unevenly distributed throughout the country. If you consider the under-reporting of those crimes versus how many there actually are, and then how funding might be distributed to those services based on reported crimes, I think you might start to get that picture together.

• (1200)

The Chair: Thank you, Ms. Thomas.

Thank you, Mr. Perron.

Lastly, we have Mr. Garrison for two and a half minutes.

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

I want to thank both of the witnesses for bringing our attention back to the larger challenges that we face in the justice system beyond those that we are addressing in Bill C-28. I particularly want to thank Ms. Thomas for reminding us of the interaction between poverty, systemic racism and access to justice in our system.

Since time is drawing to a close here, I'd like to briefly give each of the witnesses a chance to add anything that they want to say at this time in these hearings.

I'll go to Ms. Thomas first, and then to Dr. Roebuck.

Ms. Rhiannon Thomas: Thank you.

I don't think I have anything else to add. I'd just reiterate our appreciation for your having us come and speak and for recognizing those intersections that you just mentioned.

Mr. Randall Garrison: Dr. Roebuck, go ahead.

Dr. Benjamin Roebuck: I think it's important to consider the compound effect on survivors of violent crime of a number of legislative pieces that are happening right now.

When we have questions about intoxication, when the Supreme Court strikes down the mandatory reporting on sex offender registration and when victims see measures like mandatory minimum penalties being dismantled, I think there is work to do to ensure that we are considering the rights and protections of victims. We should be looking to mitigate some of the compound effects that are happening at the moment.

I am very thankful for the work that this committee is doing. I look forward to working with you over the next few years.

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

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