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Chair

Mr. Anthony Housefather

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• (1525)

[English]

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

Good afternoon, everyone. Welcome to our meeting of the Standing Committee on Justice and Human Rights as we continue our study on counselling and other mental health supports for jurors.

I would like to thank the members of our distinguished witness panel today, two whom are joining us by video conference. Ladies, when I introduce you, please let me know if you can hear me okay.

As an individual, we have Professor Cheryl Thomas, director of the jury project at the School of Judicial Studies, Faculty of Laws at the University College London.

Professor Thomas, can you hear me?

Professor Cheryl Thomas (Professor, Judicial Studies, Director, Jury Project, Faculty of Laws, University College London, As an Individual): I can hear you fine. Thank you.

The Chair: Wonderful.

Then we have Paula Hannaford-Agor, the director of the Center for Jury Studies in Williamsburg, Virginia.

Ms. Hannaford-Agor, can you hear me?

Ms. Paula Hannaford-Agor (Director, Center for Jury Studies, National Center for State Courts): Yes, I can. Thank you.

The Chair: Thank you so much.

In the room with us today, we have from the Canadian Standards Association, Mr. Doug Morton, the director of government relations.

Welcome, Mr. Morton.

Mr. Doug Morton (Director, Government Relations, Canadian Standards Association): Thank you very much.

The Chair: We also have Ms. Candace Sellar, the program manager of worker and public safety at the Canadian Standards Association.

Welcome, Ms. Sellar.

Ladies, as we mentioned to the people in the room, we're going to ask you to give your testimony first because you are on video conference and anything can go wrong with it. You will both have approximately eight minutes. I won't interrupt you before 10 minutes. Then, after all three of you speak, we'll go to questions from the panel.

We'll start with Professor Thomas.

Prof. Cheryl Thomas: Thank you.

I'd like to thank the committee for the invitation to provide evidence today about my research on the impact of jury service on members of the public. In these opening remarks, I'll provide the committee with some background on the perception of the issue in England and Wales, my research with jurors on this specific issue, a brief summary of those research findings, and information on the new criminal procedure rule introduced in England and Wales as a result of this research.

As director of the UCL jury project, I have been conducting research with jurors in England and Wales since 2002. My research is conducted only with actual jurors at court. I do not use students or other members of the public as proxies for jurors. My evidence today is drawn from immediate post-verdict surveys that I conduct with large numbers of juries before they leave court.

The impact of jury service on members of the public has been raised as an issue in England and Wales for a number of reasons. There have been a number of cases in recent years where jurors have publicly expressed concerns about the impact of jury service after a trial. These jurors have said that they were finding it difficult to cope, because they were not able to talk about the case to anyone when it was over. This clearly indicated that jurors were confused about the rules on disclosing their experience of jury service. Another factor here is the recent increase in sexual offences cases being tried by juries. Ten years ago, sexual offences made up less than a quarter of offences tried by juries in England and Wales. Today this has increased to over a third.

I think it might be helpful at this point to explain a few aspects of jury service in England and Wales. A quarter of a million people do jury service in England and Wales every year. We no longer have anyone who is excused as of right. We use a process of random selection, from initial summoning through to the final empanelling of a jury. We do not use voir dire or peremptory challenges. My research has shown that this produces a group of jurors at each crown court who are remarkably representative of their local population. This is important in relation to the impact of jury service on the public, as our jurors encompass an extremely wide range of individuals.

Until last year, the approach to providing juror support and aftercare was mostly passive. Leaflets were left for jurors at court explaining how to contact the Samaritans if they wanted to discuss how they were feeling. The Samaritans is a non-governmental, voluntary organization that provides confidential support 24 hours a day across the U.K. via a free phone line. In some exceptionally difficult cases, judges on their own initiative have arranged for a team of Samaritans to meet with jurors at the start or end of a case to explain what support was available.

In 2016 I was asked by the Lord Chief Justice of England and Wales to assess the following issues: juror understanding of their legal responsibilities, which included juror understanding of rules on disclosing cases both during and after trial; the impact of jury service on those who serve on juries; and juror demand for support and aftercare. I'm happy to share some of the main findings of this research with the committee today. I should say that these are unpublished findings, but they will be published later this year.

The first main finding was that a large proportion of jurors were clearly confused about what they could talk about, with whom and when, both during and after the trial. This was producing unnecessary stress for jurors.

The second main finding was that the overwhelming majority of jurors who served on a jury found jury service to be a positive, not negative, experience. When asked to describe their experience of jury service, the highest results were for such positive descriptions as educational, interesting, and informative. The lowest results were for such negative descriptions as depressing, confusing, boring, and worrying. Only a minority said the experience was stressful.

The third main finding was that only a very small proportion of jurors said they would contact the Samaritans to discuss how they were feeling about jury service. Many jurors thought the Samaritans was only for people who were suicidal. However, it was clear that, if the Samaritans could be used as a juror helpline, almost half of jurors said they would or might call it to discuss things like how jury service was affecting their lives, how to deal with problems with other jurors, and to ask for information about the legal rules they needed to follow.

Based on this research, a new juror notice was designed and tested with a large number of juries in England and Wales over an eight-month period. This is the document called, "Your legal responsibilities as a Juror", which I think the committee has a copy of. You will see that this document sets out clearly the two main rules for jurors on discussing cases, and it also includes information on what jurors can do if they feel they need any support as a result of doing jury service.

My research found that this notice dramatically improved jurors' understanding of what they can and cannot do, whom they can talk to about what and when, both during and after the trial. This notice was also widely welcomed by jurors themselves. As a result, a new criminal procedure rule was enacted in England and Wales in July 2017 requiring that this notice be given to each sworn juror by the judge at the start of every jury trial.

Finally, I would like to say something about the need to get the balance right on this issue.

Jury service is an important public service. Governments need to understand the impact of jury service on members of the public to ensure that proper steps are taken to help jurors in need of support, but this should be done and understood in the context of the overwhelmingly positive effects of jury service on the vast majority of members of the public who serve on a jury.

Many members of the public are initially unhappy or reluctant about being summoned for jury service, but in England and Wales, we found that 81% of people who served on a jury said, at the end of their jury service, that they would be happy to serve again if summoned.

There is also some evidence that jury service could have far-reaching, positive effects on civic life in general. There is some research from the United States that shows that jurors who had never voted before were more likely to vote at the next election after they had served on a jury.

The evidence from England and Wales indicates that we should not exclude more people from jury service out of fear of the impact of serving. Instead, we need to find the best ways of ensuring that jurors clearly understand the rules of jury service and can easily access support available to them. This will enable more people to be empowered by jury service and not negatively affected by it.

Thank you, and I'd be happy to answer any questions the committee may have.

● (1530)

The Chair: Thank you so much. That was fascinating and much appreciated.

Now we're going to move to Ms. Hannaford-Agor. I'm waiting to see if she's going to come up on the screen. Did we lose her? There's an audio issue.

We're going to call you back again, so we'll move now to the Canadian Standards Association, and then we'll come back to you. I'm sorry for the inconvenience.

Mr. Morton and Ms. Sellar, the floor is yours.

Mr. Doug Morton: Thank you, Mr. Chair.

I'm Doug Morton. I'm the director of government relations for the CSA Group, and with me is Candace Sellar, program manager of our worker and public safety standards development group. It's a pleasure and honour for Candace and I to be here today, and we appreciate the opportunity to address the committee on this very important topic.

The CSA Group is the largest standards development organization in Canada, and in 2019 we will celebrate 100 years of serving Canadians and others around the world. Our more than 3,000 standards span a range of sectors, including public and worker safety, health care, infrastructure, petroleum and natural gas, and climate change. We are accredited in Canada by the Standards Council of Canada, and in the United States by the American National Standards Institute.

As this committee noted in its November 9, 2017, news release, and as you've heard from various witnesses, serving on a jury can be stressful, but knowledge of those stresses in Canada is somewhat limited. The CSA Group does not purport to be an expert in juror stress. However, we have developed standards, and continue to develop new standards, related to psychological health and safety in various areas, which we thought may provide the committee some examples of best practices, something we believe you're interested in.

I'll now hand things over to Candace, who will provide you with more detail, and we'll be happy to answer any more questions following our presentation.

• (1535)

Ms. Candace Sellar (Program Manager, Worker and Public Safety, Canadian Standards Association): Good afternoon.

In 2006, CSA Group published a national standard of Canada entitled *Z1000 Occupational Health and Safety Management* that is used by many jurisdictions across Canada. This standard defines occupational health and safety as the promotion in the workplace of the physical, mental, and social well-being of workers, and the protection of workers from, and the prevention of, workplace conditions and factors adverse to their health and safety. The occupational health and safety management standard provides a model for establishing, implementing, and maintaining an occupational health and safety management system. Such a system increases awareness of health and safety, and encourages a more systematic approach to meeting defined health and safety objectives.

The CSA Z1000 standard was utilized as a model framework when, in 2011, CSA Group and the Bureau de normalisation du Québec were contracted by the Mental Health Commission of Canada to develop a standard to address psychological health and safety in the workplace. The project was funded in part by the Government of Canada through Human Resources and Skills Development Canada, Health Canada, and the Public Health Agency of Canada, as well as through a financial contribution from the Great-West Life Centre for Mental Health in the Workplace and Bell Canada.

This internationally renowned national standard of Canada was published in 2013 and was entitled *Psychological Health and Safety in the Workplace—Prevention, promotion and guidance to staged implementation*. The standard provides a set of voluntary guidelines, tools, and resources intended to guide organizations in promoting mental health and preventing psychological harm in the workplace. It has been downloaded more than 42,000 times since its publication, and it is currently being considered as a seed document by the International Organization for Standardization for the development of an international standard on this very important topic.

The psychological health and safety in the workplace standard includes information on topics such as identification of psychological hazards, assessment and control of the risks associated with hazards that can't be eliminated, implementation of practices that support and promote psychological health and safety, growth of a culture that promotes psychological health and safety, and implementation of systems of measurement and review to ensure sustainability of the overall approach.

The psychological health and safety standard provides information to help organizations implement key components of the standard, including scenarios to suit organizations of all sizes, an audit tool, and other resources and references. To date, the workplace standard has been heavily downloaded: 21% by the health care sector; 20% by the government, judicial, and policing sectors; and 11% by the education sector.

Using the psychological health and safety in the workplace standard as a basis, this month CSA will be publishing a new sector-specific national standard of Canada to be called the "Psychological Health and Safety in the Paramedic Service Organization" standard, commissioned by the Paramedic Association of Canada and supported through funding from the Ontario government's occupational health and safety prevention and innovation program. This standard has been developed by paramedics for paramedics, and it is a truly collaborative and consensus-based product.

There are approximately 40,000 paramedic workers in Canada, making them the third-largest group of health care providers in the country. The unique responsibilities and challenges faced by paramedic workers and the significantly increased risk of exposure to psychological stress are well recognized. The psychological hazards that paramedics are routinely exposed to at work can be acute or chronic in nature and can include, but are not limited to, operational stressors such as trauma, severe injuries and illness, child health crises, death, violence, and threats to their very lives.

In addition, organizational stressors common to many other work environments, such as poor communication, issues related to pay and compensation, high emotional demands, lack of social support from colleagues and management, physical strains, and poor job autonomy can be associated with adverse outcomes. It has also been shown that a link exists between these stressors and the potential development of various types of mental health problems.

These acute and chronic stressors faced by paramedic workers put them at risk for a wide range of mental health issues, including, but not limited to, acute stress disorder, post-traumatic stress disorder, depression, anxiety, anger, and burnout. Such problems can lead to or be coincident with other negative outcomes such as suicide, substance misuse, addictive behaviours, relationship difficulties, and absenteeism. In fact, in 2017, 56 first responders in Canada took their lives through suicide.

• (1540)

This important new standard provides paramedic service organizations and other key stakeholders with guidance on good practice for the identification and assessment of hazards and management of psychological health and safety risks faced by paramedic professionals and the promotion of their overall improved psychological health and safety.

You may have heard on January 29 of this year, the Bell "Let's Talk" program. Moreover, the Rossy Family Foundation also announced a joint donation for the creation of a national standard for post-secondary student mental health, with the objective of supporting student success on campuses across Canada. These organizations have engaged the Mental Health Commission of Canada once again to lead the project, and CSA Group is currently in discussions with them to apply our accredited standards development process to this important new standard. Similar to the workplace standard, this important document will provide guidance for Canadian universities, colleges, and institutes to promote student successes through a collaborative approach to mental health among staff, faculty, and students. It will include guidance on strategies, processes, policies, and shared responsibilities of various players throughout the tenure of a student's post-secondary institution career. It will take into consideration the perspective of the student at various stages of their tenure at the institution, consider and gain input from various voices represented within the school system, and address all key elements of a psychological health and safety management system.

As illustrated throughout this presentation, CSA Group has a rich history of collaborating with government parties and industry stakeholders to ensure that we develop timely, relevant, and impactful standards solutions across the tapestry of sectors that comprise the Canadian landscape, including health care, worker safety, and public safety.

Given the emerging knowledge of the potential negative impact of jury duty on some Canadians, we believe there is the potential to improve the lives of those who are summoned to perform their civic duty by perhaps taking a similar systematic approach to their psychological health and safety that has been embraced by other sectors. While not all hazards can be eliminated from the important duty performed by jurors, a psychological health and safety management system approach could be focused on minimizing risk, addressing early awareness, and ensuring evidence-informed intervention practices and appropriate support throughout the process.

This management system approach could be the basis for a standard or a best practice guide on the psychological health and safety for jurors. If such a document would be a useful tool, and should CSA Group become involved, our accredited standards development process would ensure that a balanced representation of relevant stakeholders would serve on the committee charged with developing such a document, including health and safety experts, mental health specialists, and members of the legal profession.

Thank you for your attention.

Doug and I would now be happy to answer any questions you might have.

The Chair: Thank you very much.

Ms. Hannaford-Agor is with us. Please proceed.

Ms. Paula Hannaford-Agor: Okay. I'm sorry I missed your two other speakers. I could see them on video and I would love to have heard what they said.

My name is Paula Hannaford-Agor. I'm the director of the Center for Jury Studies at the National Center for State Courts. We're headquartered in Williamsburg, Virginia. I'm delighted to be invited to address the committee this afternoon.

For those of you who aren't familiar with the National Center for State Courts, we are a non-profit organization that provides leadership, technical assistance, and research to state and local courts throughout the United States on virtually any issue that state courts have to deal with—criminal, civil, family law, court technology, and my particular area of expertise, jury system management and jury trial procedure.

I want to spend a couple of minutes this afternoon telling you a little bit about research that the national center has done on the issue of juror stress. Some of this is older research dating back to the mid-1990s. We haven't had an opportunity to update that research, but I don't believe the findings have changed in any appreciable manner.

Just to quickly come back, I want to give a little bit of what I mean by juror stress. When we talk about stress in the context of jury service, that can either be good stress or bad stress. One of the things that we know about stress is that it enhances psychological and physiological functioning. For jurors who are coming in and experiencing good stress, this can mean they actually have heightened attention, heightened awareness of the evidence that they're hearing, and of their experience. This is actually normatively a good thing for jurors participating in the justice system.

Bad stress, on the other hand, is stress that persists either for excessive periods or occurs in excessive degrees, and can, over time, result in anxiousness or depression. This type of juror stress is actually a subcategory of a form of acute stress. We're referring to a sudden event that causes an emotional or physical reaction. It's often perceived by the individual as a loss of control over their environment or a loss of predictability in their daily routine. For most jurors, after jury service is over, this heightened emotional or physical response returns to normal. There are usually no severe or permanent effects.

In terms of symptoms of juror stress, typically most are minor emotional symptoms: anxiety, irritation, agitation, sometimes boredom. Not all cases are particularly interesting. A smaller percentage of jurors will experience major emotional or physical symptoms. Major emotional could involve nightmares, feelings of detachment, disturbing memories about the trial or about the deliberations, or depression. Physical symptoms can include nausea, heart palpitations, chest pain, sometimes shortness of breath, elevated blood pressure, headaches, muscle tension, and decreased sex drive.

The study that the National Center did in the mid-1990s found that about 70% of all jurors who report to state courts in the United States—we're talking about 1.5 million individuals annually—report some stress from jury service. Thirty percent reported no stress whatsoever. But less than 10% of jurors reported very, very high levels of stress. Typically, the types of cases that reported stress were capital felony trials involving either a death sentence or life imprisonment; cases involving crimes against persons, particularly children; and civil trials to a lesser extent, typically if there was a great deal of personal injury. Even among jurors who didn't end up on trials—people who simply reported for jury service, but were not actually selected for a trial—about 25% of those reported some level of stress.

•(1545)

What causes this stress? It's important to remember our definition: it's a sudden event that causes feelings of loss of control and predictability. Stress is caused simply by the disruption to jurors' daily routines. The voir dire examination at the beginning of jury selection, in which the judge and attorneys are asking questions that are sometimes very personal, can be very stressful. Certainly the trial evidence and testimony is sometimes very emotional and generates a pretty intense emotional response.

Then there are the restrictions on jurors' behaviour. Jurors are often either sequestered and not allowed to leave the courthouse, or sequestered overnight in a hotel. They are not allowed to speak with family or friends about the trial, and they're not allowed to use tools such as the Internet that they typically use for communication. All this causes stress, and certainly the experience of going through deliberations and coming to a verdict can cause stress.

It's important to realize that this stress is cumulative. It starts just walking through the door in this unfamiliar place, for jurors who aren't familiar with the courthouse, and continues through the trial.

Especially stressful trials are those that are very long, taking more than a couple of days. I mentioned trials for capital felony. Trials that generate a lot of media attention tend to be very stressful. The jurors are actually acutely aware of their own role in the justice system. Trials that involve very grisly, gruesome, or disturbing evidence or testimony are stressful, as are issues or evidence that involve a personal impact or meaning for individual jurors. These are actually quite rare because typically, during the jury selection process, those jurors who have a personal reaction will probably be identified and removed from the panel, so they will not actually be chosen as trial jurors for that case. Also, interestingly enough, boring trials are actually acutely stressful for many jurors.

Typically we try to educate judges on just being aware of what sorts of things can cause juror stress, and things that judges can do in the context of individual trials to try to minimize the incidence of juror stress. For the purposes of your committee, though, I think you're more interested in treatment options after the fact.

In the United States this has really only been done on a pretty ad hoc basis, individually. I was able to catch some of Professor Thomas' testimony earlier, and as she said, sometimes it's just a judge who is particularly attentive, realizes the jurors are having problems, and may suggest outreach. Most courts are not particularly well supported, though, to be able to provide those types of services.

We have seen treatment options along a continuum of how stressful the case was: for cases that are only moderately stressful, one of the things we recommend is just providing jurors with information. Many courts now have brochures on tips for coping after jury duty. They give some information about the value of normalizing their experience and saying, "You actually just experienced a rather stressful event, and because of that you may have these types of symptoms. If you do, these are normal reactions to the trial, and here are some techniques: don't smoke, don't take alcohol, relax, do deep breathing, yoga, exercise," and things to basically return some normalcy. Those are actually sufficient for most jurors.

We actually encourage courts to have jurors exchange contact information among themselves. Here in the U.S. there are no prohibitions on trial jurors talking with anyone they'd like after the trial, or with no one. One of the things we've found is that if jurors can talk with the other jurors who experienced the same trial, that can be a tremendous support for them.

•(1550)

The two other types of treatment usually reserved for much more serious trials are jury debriefings. These are typically very short group counselling sessions that are held with the jurors usually immediately after the trial is over. Typically they are done with a trained psychologist or some other type of counselling professional, and they're similar to the type of counselling that is provided to first responders—police, fire, and emergency services personnel—after traumatic accidents or events. Again, they are to help the jurors process their emotions a little bit, and then give them some tips for how to manage stress in the next couple of days or the next couple of weeks, as well as some ideas about how, if this isn't really going away, they should probably seek additional help.

In this country, a number of courts have contracted with their local mental health service providers or victims assistance offices to provide these types of services on an as-needed basis. They do require trained counselling professionals.

The other model is simply to offer jurors individual counselling after the fact. The federal courts in this country do this through the federal health and human services division employee assistance program. I'd be happy to send the committee a little bit more information about this, but typically, for anywhere up to six months after the trial, the jurors get an opportunity to visit with a federal mental health professional in an individual counselling situation. We've recommended that states adopt this model. I'm not aware that any of them have done so at this point. It's a fairly new program, started in probably 2012-13, and so it hasn't been widely replicated yet.

Those are all of the comments that I wanted to give, and I'm happy to take any questions.

•(1555)

The Chair: Thank you very much, Ms. Hannaford-Agor. That's very helpful.

We've now heard from all three of our witnesses, and we're going to go to questions from the panel. We'll start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, and thank you to our three groups who have given testimony here today. This has been invaluable to the committee. It is the first time the Canadian Parliament has focused a study on this particular issue, so this is all very helpful.

I'll start with you, Professor Thomas. You said that you sent us a new jury notice. Just so you know, we do have, it but it's getting translated. I'm going to be very interested to hear that.

You commented that nobody should be excluded. We heard testimony here earlier this week that in fact some people do get excluded because they can't afford to be on jury duty since their finances are so critical to their day-to-day life. Is that something you have come across? You didn't address that directly, but I'd like to get your comments on that.

Prof. Cheryl Thomas: Yes, of course. That's a very important point. I didn't mean to imply that there should be no excusals for jury service. We do have grounds for excusal if you're summoned and you have a legitimate reason. That includes medical reasons for why it would be difficult for you to serve, and also caring responsibilities. Some people are not able to devote the time to jury service. The issue of income is particularly relevant, let's say, for self-employed people here. Jurors in this country are paid for jury service. They are paid loss of earnings, but there's a maximum, close to £100 a day.

Now for some people, that's going to be below their income. For some people it will be above, but you have to make a case to the jury central summoning bureau that you have a legitimate financial reason for not doing jury service.

Hon. Rob Nicholson: Getting back to that new jury notice, you said that in your initial examination of this, the people were confused about the system. They weren't aware of what their responsibility was. Has this new jury notice made a difference, from any of the research that you've done?

Prof. Cheryl Thomas: Yes, it's made a dramatic difference in jurors' understanding of their legal responsibilities.

In this country, Parliament recently enacted a statute criminalizing a number of jury activities. In the past, there were common law rules that would make various actions by jurors a criminal offence, but they've never been made statutory. We needed to make sure that jurors understood this. One of the main issues that has been very problematic here is jurors' understanding that they cannot use the Internet to research their case, look up information about the defendants and so on. This is an issue confronting all jurisdictions that have the jury system.

This was a particular issue of concern for the Lord Chief Justice who sat on a number of cases in which jurors were charged with contempt of court and convicted and imprisoned for this, which seems quite a strong thing to do. We wanted to ensure that we found a way that as many jurors as possible clearly understood what their responsibilities were. If they then decided to ignore those responsibilities, there are greater grounds for prosecution.

This new juror notice now means that almost 100% of jurors now understand their legal responsibilities.

• (1600)

Hon. Rob Nicholson: Congratulations for that.

Ms. Hannaford-Agor, you said that for some people part of the stress was the disruption of their daily routines.

Let me ask you the same question. Was it the financial disruption to their lives, or do your studies at the state level indicate this is not a big problem?

Ms. Paula Hannaford-Agor: The financial hardship is a big problem I think everywhere. I'm particularly delighted to hear that England and Wales pay up to £100 a day. That is many times more than most state courts pay here. Typically the average juror payment is about \$22 a day across the states, with some states as low as \$10 a day, which is barely enough to get a meal at a McDonald's or parking for your car.

There are a lot of jurors who cannot afford to serve if they're empanelled on a trial for longer than a day or two. They would be excluded from longer trials. Typically they are able to come in for at least one day. Most jury managers will work with jurors so that if they have a day off or can pick up an extra shift, we'll make accommodation so that they are able to serve at least for that day.

In the United States, most trials are not that long. A typical trial is probably one to three days and many cases are only one day. It's a day's worth of wages that is lost, but often many of the people who are on hourly wages can make that up by picking up an extra shift at work, or something along those lines.

Hon. Rob Nicholson: I was very interested in the fact that you said that there are number of brochures that try to help jurors once they're done. These give you a certain amount of advice. I'm not in the business of promoting smoking of anything in particular, but I thought that one of the things they said is, don't smoke or have a drink. For some people, wouldn't that be their way of trying to relax after they're on a jury trial?

Ms. Paula Hannaford-Agor: It may be, but this is just sort of example of a way of treating stress with caffeine or alcohol or nicotine that can actually raise the anxiety level.

Hon. Rob Nicholson: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you very much.

Mr. Boissonnault.

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

Professor Thomas, I was interested to see that you're coming to us from Univ. Two weeks ago, I was just nearby, giving a speech at Corpus. I'm a Corpuscule. I was giving a speech on student wellness for Corpus' quinqucentenary. It made me think about what we're doing for wellness once students leave and enter the professions, and what we ask them to do in civil society.

Therefore, I was interested in your report. Did your research uncover other sources of juror stress? If so, what steps is the U.K. government taking to alleviate those forms of stress? What about the personnel? What about the people conducting the trials? Are there any mechanisms inside the British government to help those individuals?

Prof. Cheryl Thomas: Can I first of all let you know that I've just been informed that my connection is going to end at 10 o'clock my time? If I disappear in about an hour's time, that's why.

My research was primarily to test the effectiveness of this new juror notice, but also, in the course of that, to explore the extent to which there is a demand among our existing jurors for some kind of aftercare. We weren't actually exploring the sources of stress; we were exploring the extent to which jurors feel the need to be provided with some means of confidential support following the trial.

As I said, the overall finding is that the overwhelming majority of jurors said they do not require this. However, if there were a general juror helpline, almost a majority of jurors said they would or might use that to discuss things that may relate to stress; for instance, how they felt about serving on the jury or how to deal with other jurors. That indicates some level of stress, I think. They also wanted to use the helpline for things that are not related to this issue, that are much more court procedural issues about how to deal with expenses, when they were going to get paid, and so on.

• (1605)

Mr. Randy Boissonnault: I have a question for you that might be beyond your research, but some of which I think bleeds over here in Canada.

How much of the way the system is run now is still the British "stiff upper lip" approach, which is, do your civic duty, get on with it, have a good mug of tea, and don't be bothered about it?

Prof. Cheryl Thomas: I think that's probably more of a myth than a reality these days in England and Wales. We have a very diverse population. I wouldn't say that the population doing jury service is necessarily the classic, "stiff upper lip" British member of the public. Jurors are increasingly requesting information, support, and so on, and I think that's a very good indication that they're not willing simply to be passive participants in the process anymore.

I'll just say one thing. You raised the issue of support for staff, and I would say that a growing issue here is the well-being of and support for judges in our crown courts who are now dealing with, as they would describe it, "a daily diet of sex cases", and that is becoming quite troubling for them as well.

I speak to them at the Judicial College about juries on a regular basis, and when I raise the issue of the Samaritans for jurors, a number of judges have asked if they could have a helpline for judges as well. The judiciary is looking into that.

Mr. Randy Boissonnault: Thank you very much, and congratulations for your good work.

To our colleagues at CSA, I'm wondering if you would be able to take a look at your excellent standards for OHSM and let us know where the gaps are. Have you taken a look, and have you listened to or heard from staff or people who are responsible for court proceedings, and the stresses they're facing that the system simply may not be able to account for?

Ms. Candace Sellar: Just to clarify, do you mean with respect to the psychological health and safety systems?

Mr. Randy Boissonnault: Absolutely.

Ms. Candace Sellar: CSA primarily develops the standard. We work with our partners, in this particular case the Mental Health Commission of Canada. They have done an elaborate case study over the last five years since the standard has been out, looking at over 40 participating organizations. I'm talking of ones from the federal government to small and medium enterprises.

The standard really is a continuous improvement model, so you can go through the cycle once, but you're not done. It's a process; it's not a destination. Part of the concept is that, once you complete your first journey through the standard, you've put certain pieces in place; then you evaluate how they're performing, and it's a continuous improvement loop.

Conceptually, we believe that all of the pieces are there. It's put together by the top experts on this topic in Canada, but it's an evolving document. The standards are consistently re-evaluated and improved wherever they're needed to be. We've done the generic workplace document. We're finishing the paramedic one. They're actually working today on it back in Toronto. The student health one is about to kick off, I'd say, in the next couple of months.

Mr. Randy Boissonnault: To clarify, just so I can remember the figure and take it away for future reference, you mentioned that a certain number of first responders committed suicide. Over what time frame was that?

Ms. Candace Sellar: That was last year.

Mr. Randy Boissonnault: It was 56?

Ms. Candace Sellar: Fifty-six.

Mr. Randy Boissonnault: And when you say front-line service workers, what does that encompass?

Ms. Candace Sellar: I read it in a report this morning. They only used the classification of first responders, so I would assume it would be your traditional paramedic, fire, and—

Mr. Randy Boissonnault: PMS?

Ms. Candace Sellar: Yes, exactly.

Mr. Randy Boissonnault: Thank you very much.

Mr. Doug Morton: Could I just add to that?

The Chair: Certainly, Mr. Morton.

Mr. Doug Morton: Candace mentioned in her presentation that 20% of the 42,000 downloads have been for policing and judicial organizations. As she mentioned, the Mental Health Commission did a report in 2015 summarizing the over 40 organizations that have adopted the standard, or portions of the standard. We would be happy to take a look at that report to see which organizations have downloaded the information, and make it available to the clerk, if that would be helpful.

• (1610)

Mr. Randy Boissonnault: Thank you very much.

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

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair, and thank you to the witnesses for really interesting presentations.

I want to continue with what Mr. Boissonnault was asking you about, if I could, Ms. Sellar.

You talked about the CSA working with the Mental Health Commission of Canada to try to generate these standards that would have been appropriate for various things. You've talked about students, the work you're doing now, workers and so forth. Could you spend a little more time talking about what you understand about the trauma facing jurors? Would there be anything different, or would it simply involve cutting and pasting the various standards that have been applied in those other contexts?

Ms. Candace Sellar: We had a very similar conversation when the Paramedic Association of Canada approached us with the request to do a sector-specific document on the generic workplace document. In their particular case, the generic workplace document doesn't delve deeply into concepts like post-traumatic stress disorder and some of the severe exposures that paramedics specifically would come into contact with. I'm not a jury expert by any stretch of the imagination, but I would suspect that a lot of the images and experiences that paramedics would experience would be similar to what a juror in a more severe court case might experience as well. I think there would be parallels. I think some of the content would likely be quite similar at a generic level. It's about getting into the specificity of what the jurors' needs would be. That might be a little different.

Mr. Murray Rankin: That's helpful.

Professor Thomas, you talked about the Samaritans across the U. K. and Wales having a free phone service, which I thought was fascinating. Canada has a gigantic geography, four and a half time zones. It's attractive to think that we might take advantage of somebody as we address juror stress, making that service available. Then we would be covering all the jurisdictions and so forth.

First, I'd like you to speak a little more about the experience. Second, you said specifically there was a problem in ensuring that it wasn't just perceived to be a suicide line. How can we make sure it is not limited to that?

Prof. Cheryl Thomas: That's a really interesting issue. Within the U.K. there is a perception that the Samaritans are the people you call if you're feeling suicidal. Over the years, brochures for jurors were put in the jury lounges that said that if you want to talk to someone,

call the Samaritans. It is true, the Samaritans are not just there for people who are suicidal, but that is the public perception.

First of all, my research showed that most jurors were not aware of those brochures. They're left in the jury lounge. Jurors don't pick them up. They don't read them. Even if they're told about them, they would be reluctant to call the Samaritans because they think they would be wasting the Samaritans' time to talk about the stresses they've had of serving on a jury. The change that's required is simply a name change. What the research found is that if the exact same service by the Samaritans were simply called "Juror Helpline", a much larger proportion of people would be willing to call it.

We'll be working on that in future, I think, but what we've tried to do in the meantime with the new jury notice is to make it very clear to jurors that the Samaritans are there for everyone, for whatever they want to talk about, no matter how small the issue might be. We've also given them information about the fact that everyone in the U.K. who can do jury service can also seek free counselling via the National Health Service, and most jurors didn't know that.

Mr. Murray Rankin: I was thinking as you spoke that brochures left in a jury room don't really do very much, but that maybe the kind of downloads that we've heard about from the CSA witnesses, combined with a link to a telephone line, could be a way of comprehensively reaching out and making clear that it's not just about suicide but, as you put it, a juror helpline and website, if you will. That might do the trick.

Prof. Cheryl Thomas: I think that's a very good idea. What we've found from research in relation to the juror notice is that if it is simply left in the jury lounge, it is not half as effective. The point is that it is given to only jurors who are sworn onto a jury and, in effect, given to those individual jurors by the judge when the judge is providing his or her opening remarks to the jury. This makes jurors feel that this information is much more important and much more accessible.

• (1615)

Mr. Murray Rankin: I have a final question, please, for Ms. Hannaford-Agor, if I may.

I had the impression, when you related your experience from the Center for Jury Studies at the state court level, that the problem might not be as significant as we might think. It seems that, yes, stress is cumulative, but I came away from your remarks thinking that maybe it wasn't as big a problem. According to one of our researchers, Mr. Alain Brunet at the Douglas Mental Health University Institute, his research led him to conclude that between 10% and 15% of jurors who were exposed to gruesome evidence suffer from post-traumatic stress.

For the United States, does that seem about right to you, that kind of ballpark figure of the jurors suffering from symptoms associated with PTSD?

Ms. Paula Hannaford-Agor: I apologize. For some reason, the lights are going crazy.

Mr. Murray Rankin: We can still see you some of the time.

Ms. Paula Hannaford-Agor: Just to answer your question, I'm quite struck, because that was our experience, too, that about 10% of jurors actually experienced high levels of stress. I think the similarity in those percentages is quite telling. The symptoms might not clinically be PTSD, but certainly similar or at least a mild form of PTSD.

I think it really comes down to what types of cases we are seeing. In the United States, we've had a rather dramatic decrease in the number of cases that go to trial. On the criminal side, there are plea bargains or plea agreements, and on the civil side, many of them are just settlements, particularly in court cases. Today I don't have statistics on this, but I suspect that jurors are actually being exposed to much less traumatic cases than they were 20 years ago when we first did our study.

So the incidence of juror stress may not be as severe as it was 20 years ago, but for those cases that do take place, particularly capital trials or the cases with very gruesome evidence, probably about 10% of the jurors would still experience that type of stress.

Mr. Murray Rankin: Thank you very much, all of you.

The Chair: Mr. Fraser.

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

Thank you all very much for joining us today.

Ms. Hannaford-Agor, if I could start with you, I'm sorry to see that it looks like your room is quite stressful when we're talking about stress here today. I hope you'll be able to manage through the rest of my questions without too much more drama.

You talked about a debrief after the trial and possibly having a psychologist come in to give everybody some idea of what they've just been through. In practice, do you think it would make sense for that to be mandatory for the jurors to have to go through, or is that too much of an obligation to put on them? As we know, everybody experiences these sorts of things differently and perhaps some people can walk away fine, whereas others need a little bit more attention or perhaps even counselling.

I am wondering what your thoughts are on that, whether it should be mandatory or not and what that might look like.

Ms. Paula Hannaford-Agor: That's been one of the big drawbacks and criticisms of the debriefing after trial: that jurors, particularly after a long trial or a trial that's been particularly difficult, are usually exhausted and just kind of numb from the experience. As to having that debriefing immediately after the trial, many of them can't appreciate it, and they walk away from any of the benefits. They'd really rather not be there.

Typically, it's maybe a couple of days later or a week or so later when they realize that, yes, that case is still bothering them. They're still thinking about it a lot, maybe having nightmares about it, and finding that their blood pressure is up. They realize at that point that they need some additional help, as opposed to immediately after the trial.

• (1620)

Mr. Colin Fraser: If I can turn to another issue, then, we've heard from some jurors who already have testified for this study that when they were done, they felt like they were just shown the door,

basically, and it was a matter of, "Thank you very much for your service". If a guilty verdict was rendered, they weren't kept informed about what happened the rest of the way through for sentencing in a criminal matter, or whatever else might arise. Do you have any comments on that and on whether it would be helpful for jurors to be given the option of being informed about the rest of the case after their job is done?

Ms. Paula Hannaford-Agor: Actually, a lot of state court judges now make a point of meeting with the jurors after the trial is over, not in a semi-formal environment but an environment that is less formal than a courtroom, first of all just to say, "Thank you for being here", and also to answer any questions they may permissibly answer. There are some things that they obviously cannot discuss with the jurors, but jurors have a lot of questions. What we've heard from judges who routinely do this is that they have an opportunity to learn a lot from jurors, and jurors really appreciate the extra acknowledgement by the judges of their participation.

Typically, those judges will also give them some ideas about what to do if they encounter difficulties after trial, particularly if it's been a difficult trial, and will say to them that they can contact the court. Many jurors will say they would like to know what happens with a case. If there's going to be a sentencing in a couple of weeks or a couple of months later, jurors would like to hear more about what happens to the case, so efforts will be made to send out notices of hearings and things.

As well, in this country, because we do have the first amendment and media often contact jurors, particularly in high-profile cases, they're told what to expect from the media and told that they don't have to talk to the media, and they're given just some tips on how to work through some of those issues post trial, such as difficulties with employers, for example, who were not happy about people who had to serve, especially on long trials.

Mr. Colin Fraser: Thank you very much.

That leads into the next question I was going to ask of Professor Thomas. In Canada we have a prohibition in the Criminal Code against jurors speaking about the conversations, discussions, and deliberations that happened while on a jury. I know that it's different in the United States, but in the U.K., as you mentioned, there is the jury secrecy rule.

Based on what we're hearing in this committee, we're debating perhaps making an amendment to section 649 of the Criminal Code of Canada, the jury deliberation rule, to allow an exception, like they do in Australia, for discussing the jury deliberations with a person for therapeutic purposes or mental health counselling. Do you know if that discussion has happened in the U.K.? What are your thoughts on an exception like that to the usual rule?

Prof. Cheryl Thomas: Yes, that has been discussed to some extent here. We have exactly the same rule prohibiting revelation of anything that was said or done in the jury deliberating room.

In relation to counselling, the approach here is that there's confidentiality between therapist and patient. That's generally seen to cover the issue. It comes up in relation to the Samaritans as well. Of course, with the Samaritans that's a completely confidential discussion. The individual Samaritan will never know the identity of the person calling, and the person calling will never know the actual identity of the Samaritan. In effect, the issue of breaching disclosure that could be prosecuted wouldn't actually arise in either of those instances, because they're covered by confidentiality.

The only exception we have at present to the prohibition on discussing what happens in the deliberating room is for the purposes of an investigation into any misconduct that might have occurred on the part of the jury. Until the recent act, that was also covered, so the court was actually prohibited from inquiring into possible misconduct on the part of the jury.

•(1625)

Mr. Colin Fraser: Confidentiality doesn't necessarily obviate, though, the criminal sanction the person may face if they're the one breaching the law. I'd be a little concerned that the individual would not necessarily be aware of that, and that even if they read the Criminal Code, they still might think they weren't allowed to talk to someone else for therapeutic purposes. So I'm not sure that entirely covers it, from my perspective.

Prof. Cheryl Thomas: No, it doesn't cover it from a purely legal point of view. What I'm saying, though, is that the practicalities of pursuing that here is not the main source of concern. The main source of concern here has been that jurors actually understand what their legal responsibilities are and that they have a means of discussing their experience of jury service in a confidential way post trial.

Mr. Colin Fraser: Thank you very much. That's very helpful.

The Chair: Members, we'll now go to short snappers. If you have a shorter question, feel free to put your hand up and I'll recognize you.

I'll ask the witnesses to give a bit shorter answers to these questions.

Mr. Duvall.

Mr. Scott Duvall (Hamilton Mountain, NDP): Thanks very much. I'm sorry about coming in late. I'm just filling in here.

I've listened to some of my residents in Hamilton, where I come from, and one of their issues when it comes to jury duty is the amount of compensation they get, or the amount of money they're losing by serving. The compensation they get for jury duty is very, very little. They want to be good citizens. They want to do what the government asks them to do in the court system. However, they have expenses—it could be travelling, it could be child care, it could be a loss of wages—that create big hardships for them.

I'm wondering if the witnesses can give us anything on this issue. Do they think there should be fairness for everybody, so that whatever loss of wages people incur might be reimbursed, and any expenses?

I don't know who wants to answer that.

The Chair: Ms. Hannaford-Agor, please go ahead.

Ms. Paula Hannaford-Agor: I can weigh in a little bit. In the United States about eight states have enacted legislation that requires employers to compensate employees who are summoned for jury service with their regular wages for a certain period of time. Typically it's about three to five days, so up to a week of jury service. That is enough to cover probably about 90% or 95% of most the trials in the United States. That actually puts the burden on employers, largely because they are deriving the benefit of the justice system by virtue of their corporate citizenship. That's been the justification. There are eight states right now who have done that.

Arizona, in addition, has put in place what they call the "lengthy trial" fund for cases that last longer than five days. Jurors are reimbursed their regular wages up to \$300 a day, which is enough to cover everyone except the highest-income jurors. They are compensated out of a fund that comes from civil filing fees. I think it's a \$15 charge for filing a civil case in Arizona. It goes into this fund, which has basically been self-sustaining. It allows jurors to be able to serve on much longer trials, including trials of a month long or several months long.

Mr. Scott Duvall: Thank you for that answer. Just to follow up on that, because I heard you say they have different methods in different, why is it not universal right across the country?

Ms. Paula Hannaford-Agor: It's the United States, and states' rights are important. The federal law just basically does not get involved in state rules about employer compensation.

Mr. Scott Duvall: Okay. Thank you.

The Chair: Thank you very much. It's the same as in Canada; it's provincial.

Can I just ask Professor Thomas one question related to the Samaritans? Is there a contract, then, between the Government of the U.K. and the Samaritans to do this? Do they have any special training on jurors? How does that work?

•(1630)

Prof. Cheryl Thomas: There is no special contract between the Samaritans and government because Samaritans are available, as I said, 24 hours a day, 365 days a year, for anyone to call, for any reason. In effect, they agreed to partner with the court service to make that information available for jurors.

You raise a really important issue about training for the Samaritans. I've been working with the Samaritans in central London to train a small group of Samaritans who have a particular interest in juries, so that they better understand the rules that jurors are under, including the confidentiality rules and so on, and who does jury service and what possible stresses and strains they might come across. That's at very early stages.

I hope that in the future there will be, in effect, a separate group of trained Samaritans available on the phone any time around the country on a separate phone number that would be called a "juror helpline", so that those calls would just go to those Samaritans who are trained in that issue.

The Chair: Thank you very much.

Ms. Hannaford-Agor, I have a question about the United States. We're looking at how different provinces in Canada have started adopting programs related to support and to providing mental health counselling for jurors post trial. Are you aware of any U.S. states that have implemented a system whereby jurors systematically get a notice at the end of the trial, saying that this is a support service they should call? Are there any that you would recommend as a best practice?

Ms. Paula Hannaford-Agor: Unfortunately, that's probably the area where implementation has not worked so well, because it tends to be very ad hoc. Texas and Alaska have both enacted legislation that essentially grants the local clerk of court the authority to create a mental health or a juror support program, but it doesn't actually require them to do so nor does it provide any funding for them to do so. It's really been undertaken on a court-by-court basis, by either a judge or a clerk of court who has been particularly concerned about this issue and has reached out to do this.

Again, it depends an awful lot on the judicial training, and whether or not the judges and the court staff are aware that jurors are experiencing difficulty in a particular trial and know that these resources exist. There are often some gaps in how these services get rolled out. Even where they exist, they tend to be underutilized.

The Chair: I have one last question for you as an expert in jury issues, and perhaps the professor wants to answer this as well. There have been some discussions here, and I think it's universally agreed amongst all parties here that there has to be support provided to jurors post trial.

There have been some witnesses who have come forward to us and talked about the need for support during the trial, allowing jurors speak to mental health professionals during the trial. There's a lot of concern, of course, about that influencing the jury. I'm just interested to hear your viewpoint on that issue and whether or not, if someone comes forward during the trial, saying they're having serious issues,

they should simply be excused and replaced by an alternate, or should they actually be given some ability to speak to a counsellor?

Ms. Paula Hannaford-Agor: I've heard judges who have talked about this. I think the universal consensus here in the United States is that it would be interference with the jury process itself to have anyone reaching out to the jurors. If the juror were experiencing such high stress, it would most likely be brought to the judge's attention, and they would excuse that person and replace them with an alternate. Everyone else I've ever heard from has said, "No, we'll provide services after the trial is over."

As well, at the front end, during the jury selection process, try to identify and remove jurors who are probably not emotionally stable enough to be able to deal well with the particulars of that case.

• (1635)

The Chair: Thank you.

Professor Thomas, do you have any comment on that?

Prof. Cheryl Thomas: The view here is exactly the same. It raises the issue of the importance of court staff during a trial. Yes, the judge is important, but it is usually the ushers and the jury managers who are the ones who spot the people having difficulties and can help them through the process and bring things to the attention of the judge.

The Chair: Thank you so much.

Are there any other questions, folks?

Not hearing any, I want to thank our witnesses very much. You've been extremely helpful, and we thank you. In particular, to each of our guests from the U.S. and the UK, it's very nice of you to give Canadians the benefit of your insight.

The meeting is adjourned.

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