SUBMISSIONS ON BEHALF OF THE CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)[1] TO THE HOUSE OF COMMONS' STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS STUDYING BILL C-75

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[1] See Appendix A for a description of the history and mandate of the Criminal Lawyers' Association.

Overview

The Ontario Criminal Lawyers' Association (hereinafter, "CLA") supports justice system reforms that are fair, constitutional, and evidence-based.

There can be no doubt that Canada's criminal justice system is overburdened and under-resourced. These factors result in unacceptable delay in the completion of criminal matters. As criminal lawyers, we are particularly concerned about the delay in the Court system, which negatively impacts our clients' physical, social, financial, psychological and emotional well-being and breaches their right to be tried within a reasonable time, enshrined in s. 11(b) of the *Charter*. While bill C-75 contains some examples of sound, evidence-based, and constitutional justice reform that will positively impact our system if passed, it also contains numerous examples of misguided and unconstitutional measures that we predict will decrease the fairness, efficiency and efficacy of the Canadian criminal justice system.

Efficiency is an important element of our system. However, efficiency is not the sole – or even the paramount - concern of the criminal justice system. The criminal justice system must use processes that are fair, just, and constitutional to arrive at the truth. Criminal trials are a search for the truth. A wrongful conviction and the ensuing loss of liberty is the greatest crime the state can perpetrate against an innocent person. These fundamental principles of the Canadian criminal justice system are zealously protected by sections 7 through 14 of our *Charter*. Efficiency is bought at too high a cost where it compromises these core values.

By far, the most effective way that the federal government could act to reduce court delays and support equitable outcomes is to increase funding to the criminal justice system. Increasing judicial complements, staff complements, and courthouse space would allow matters to proceed to trial within acceptable timelines. Ensuring that counsel for racialized and vulnerable justice system participants are provided with the resources necessary to robustly and vigorously protect the interest of their clients will result in more equitable outcomes. In addition, the government should invest in the infrastructure and resources desperately needed to modernize the justice system, such as technology to facilitate digital or virtual appearances by counsel for procedural "set dates" and a uniform method for online provision of disclosure to counsel through secure servers. There are clear and simple infrastructure solutions to the problem of delay that do not involve the degradation of procedural protections and individual rights contemplated by C-75. It is incumbent upon the government to pursue these options to protect accused individuals from court delays without compromising constitutional rights or due process.

Our membership and partners have mounted vigorous opposition to bill C-75, pointing out that much of the justice reform proposed in the bill would result in a significant erosion of the core values which underlie the Canadian criminal justice system. In addition, we believe that many of

the proposed changes in bill C-75 are not evidence-based and will have the actual effect of increasing court delays and further marginalizing Indigenous, racialized and vulnerable justice system participants.

We have provided a more detailed and fulsome position paper regarding the bill and our collective concerns which is available to the Committee. This submission is, in effect, an executive summary of aspects of that position paper and will focus on the 4 proposed substantive amendments:

I. Preliminary Inquiry reform;

II. Jury selection reform;

III. Increasing the maximum sentences to 2 years less a day for all summary conviction offences; and

IV. Permitting the introduction of "routine police evidence"

I. Preliminary Inquiry Reform – Clause 240 – amending s.535 of the *Criminal Code*

Eliminating preliminary inquiries for all cases other than those for which a maximum period of imprisonment of life is available will not further the interests of justice or assist with the orderly and efficient administration of criminal justice. The Committee should recommend that these changes not be made.

In the alternative, the committee should recommend amending the current proposal to provide for a process whereby the parties (the Crown or the defence) can apply to a judge to request leave to conduct a preliminary inquiry on the basis that it is in the "interests of justice" to permit such a procedure.

The CLA is opposed to the elimination of preliminary inquiries for all but the "most serious" offences. The preliminary inquiry is a meaningful tool for reducing court delay, protecting individual rights, and preventing wrongful convictions. The elimination of the preliminary inquiry for most offences, constitutes a significant change to the operation of the criminal justice system. The CLA predicts that this change will decrease the efficiency and efficacy of our justice system.

The primary justification offered by the Department of Justice for eliminating most preliminary inquiries is that the elimination will reduce court delay. The Department of Justice has suggested that Bill C-75 would bring about at 87% reduction in the number of preliminary inquiries. However, according to Statistics Canada, in 2014/2015, preliminary inquiries occurred in less than 3% of cases, with 81% of those cases concluding within the 30-month presumptive ceiling set by

R. v. Jordan.[3] Of the provinces that reported data, there were only 9,179[4] adult criminal court cases (provincial and superior court) that had at least one charge with a preliminary inquiry that was requested and/or held, and only 1,315 adult criminal superior court trials in the same sample.[5] Presumably, a number of those 1,315 matters proceeded to superior court without a preliminary inquiry, meaning that in more than 7,864 matters (86%), the matter was concluded following the setting of an inquiry, during the inquiry, or after the completion the inquiry. In addition, only 25% of eligible cases actually opt for a preliminary inquiry, and the proportion of cases with a preliminary inquiry does not exceed 5% of the overall caseload in any part of Canada.[6] At most, 2% of all court appearances are used for preliminary inquiries, and the vast majority of preliminary inquiries take two days or less.[4]

The preliminary inquiry process has already been substantially streamlined through the enactment of s. 540 of the *Criminal Code,* which permits the prosecution to enter much of its evidence at the inquiry in paper form. In our collective experience, preliminary inquiries are most often requested when there is substantial potential benefit to the process, such as discovery of civilian witnesses, discovery of *Charter* issues, fostering pre-trial resolution, eliminating weak charges, or focusing trial issues.

In multicount indictments, preliminary inquiries can result in the elimination of weak charges. And in large multi-accused prosecutions, such as "Projects," the preliminary inquiry can result reducing the number of individuals being prosecuted. In addition, across the board, preliminary inquiries assist to focus and narrow issues prior to superior court trials. Many, if not the majority, of superior court motions proceed on the basis of transcripts of *viva voce* evidence from preliminary inquiries. In addition, preliminary inquiries allow for the discovery of complex and time-consuming motions, such as third party records applications (including third party record application for offences of a sexual nature under s. 278 of the *Criminal Code*). If this discovery is transplanted into the trial context, we run the risk of long mid-trial delays to allow these motions to occur, particularly in the third party record context where records must be subpoenaed and vetted. Finally, preliminary inquiries greatly assist counsel in arriving at accurate time estimates for trials in complicated matters. Due to scarce court resources, inaccurate time estimates can result in specific delay to the matter in question and general delay across the docket.

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[3] Joanna Smith, "Evidence behind Ottawa's choice to cut preliminary inquiries remains elusive." online: <http://www.cbc.ca/news/politics/preliminary-inquiries-decision-justice-wilson-raybould-1.4610495>

[4] It should be noted that this number excludes information from superior courts in Prince Edward Island, Ontario, Manitoba and Saskatchewan, due to the unavailability of data.

[5]Statistics Canada, "Adult criminal court statistics in Canada, 2014/2015." online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14699-eng.htm>

[6] Cheryl M. Webster and Howard H. Bebbington, "Why Re-open the Debate on the Preliminary Inquiry? Some Preliminary Empirical Observations" (2013) 55(4) *Canadian Journal of Criminology and Criminal Justice* 513. (http://ow.ly/znQR309KTWW).

The 2013 empirical research study by Cheryl Webster and Howard Bebbington "Why Re-open the Debate on the Preliminary Inquiry? Some Preliminary Empirical Observations," analyzed a sample of 2.2 million cases nationwide and concluded that:

> Within this context, it is notable that our data – while somewhat dated – suggest that the preliminary inquiry appears to change the 'trajectory' of cases in ways that help to reduce the use of expensive court resources. In almost all jurisdictions, the majority of cases with preliminary inquiries are resolved in Provincial Court, without the need to proceed to the Superior Court level, which is more formal and deliberate and, by extension, more resource intensive and time consuming. Further, at least in four jurisdictions, non-trivial numbers of cases with preliminary inquiries resulted in charges being dismissed. While there are clearly 'costs' to preliminary inquiries – in terms of court time and appearances – these costs may be small in comparison to those of a trial. In addition, preliminary inquiries do not appear to account for a large portion of the courts' business and, as such, are unlikely to contribute substantially to the problem of court delay. Indeed, this procedure is used very rarely and, when employed, takes few court appearances. Thus, alterations to the preliminary inquiry are unlikely to have a significant impact on the speed or efficiency with which cases are resolved in the criminal justice system.[78]

Notwithstanding the disclosure obligations put in place by *Stinchcombe,* the process remains adversarial in nature. Investigating officers do not necessarily have the full gamut of case-specific information or a full appreciation of the legal issues at play, at the time of a witness interview. Police tactics, such as conducting interviews of witnesses without audio and video recording or asking minimal or vague questions of witnesses to avoid potential future contradictions in evidence, are common. While the Crown has abundant police resources available to re-interview witnesses when new issues arise during the preparation process, in the vast majority of cases there are a number of structural and cultural barriers in place that affect the ability of the defence to interview witnesses. This means that without a preliminary inquiry, the Crown will have often unfettered access to ask questions of witnesses prior to trial, and the defence, in most cases, will have no ability to do the same, further tilting the already significant power imbalance between accused and state.

In addition, preliminary inquiries are often used by defence counsel to discover *Charter*-infringing state conduct. Defence lawyers play an important role in curtailing improper conduct by the very state actors who produce and disseminate disclosure. Based on our collective experience, the preliminary inquiry is an extremely useful tool for discovering state misconduct.

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[7] *Supra.* note 3, at p. 526 [Emphasis Added].

[8] It should be noted that the Department of Justice's June 2017 "JustFacts" Communiqué on the preliminary inquiry (http://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/jun01.html), suggests that there are "mixed results" regarding whether the preliminary inquiry decreased the likelihood of a superior court trial taking place, citing a Justice Canada study with a dataset 17,616 cases, which found no evidence of reduction. The JustFacts report also cites a 2005 study by Webster using the 2.2 million case dataset which "found some evidence to indicate that when a preliminary inquiry was held the likelihood of a trial taking place decreased". It is unclear why the Department of Justice fails to refer to Webster and Bebbington's 2013 study, which is a more recent and comprehensive analysis, with stronger conclusions regarding the efficacy of the preliminary inquiry as a tool for reducing court delay. See also: Michael Code and Patrick J. LeSage, *Report of the Review of Large and Complex Criminal Case Procedures*, November 2008, at p. 14 ("Code-LeSage Report")

Modern criminal litigation is increasingly complex, particularly as a result of increased sophistication in the tools and techniques used by law enforcement and the growing scale and scope of prosecutions. Preliminary inquiries are an indispensable tool to narrow issues and avoid mistrials. As one Member noted, preliminary inquiries are "like x-rays before an operation".[9]

In maintaining the preliminary inquiry as a procedural step where the offence carries a potential penalty of life imprisonment, the government implicitly endorses the value of preliminary inquiries in achieving substantive and procedural justice, but confines their application only to those offences where, in theory, individual liberty interests are most seriously engaged. However, the availability of a life sentence is not necessarily the best indicator of sentence length. For example, the notable increase in the use of the Dangerous Offender and Long Term Offender regimes, means that individuals often receive *de facto* life sentences for offences which do not carry a maximum penalty of life under the *Criminal Code*. In addition, offenses which carry a potential penalty of life imprisonment, would qualify for a preliminary inquiry even where life sentences are rarely imposed[10], while an offence such as Aggravated Assault, would not qualify for a preliminary inquiry despite the potential for lengthy Penitentiary sentences on conviction.

In conclusion, there is no credible evidence that eliminating most preliminary inquiries will reduce delay, and there is evidence, both anecdotal and statistical, that preliminary inquiries operate to reduce delay and promote efficiency. In addition, preliminary inquiries are an important part of discovery, increasing the efficacy of our justice system and guarding against wrongful convictions.

II. Jury Selection Reform – Clauses 271 to 275

The CLA recommends that the government pass the amendments proposed in Clause 273 and 275 of the bill, but not Clause 274 of the bill. Regarding Clause 271 (the elimination of peremptory challenges), the CLA suggests that the government either maintain the peremptory challenge system, or pass meaningful reforms which allow counsel to engage in evidence-based jury vetting for bias through modest, but increased, vetting procedures. Additionally, if the purpose of the amendment is to ensure jury diversity and true representation, this is best achieved by changing the way in which jury pools are assembled and overruling the majority Supreme Court of Canada decision in *R. v. Kokopenace*

The CLA is in favour of the changes proposed in Clause 273 of the bill, which would allow individuals who have been convicted of criminal offences to serve on juries so long as they received a sentence of less than two-years-less-a-day or they have received a pardon or record suspension. We believe that this is consistent with the principles of rehabilitation and human

[9] *Supra* note 9, quoting Bill Trudell, chair of the Canadian Council of Criminal Defence Lawyers.
[10] E.g., Robbery, Break and Enter with Intent into a Dwelling, and Possession of the Purpose of Trafficking

dignity that constitute core values of our criminal justice system. In addition, we hope that this will have the ancillary effect of increasing the diversity of juries. We are also pleased that this assists to reduce the stigma of criminal convictions on members of Canadian society.

The CLA is opposed to the simple abolishment of the peremptory challenge without the concomitant enactment of any explicit or meaningful tools to enhance the impartiality of juries.

Peremptory challenges play an important, though imperfect, role in our jury system. The historical rationale for the peremptory challenge is two-fold. First, the law recognizes that if all parties have contributed to the configuration of the jury they are more likely to accept the jury's verdict. It has been argued that the challenge gives the accused confidence in the impartiality of the jury.[11] Secondly, and perhaps more importantly, the peremptory challenge has been viewed as an important safeguard against potentially biased jurors. In the peremptory challenge process, the potential juror is asked to look upon the accused and *vice versa*. Following this exercise, both the Crown and defence counsel are given the option of accepting or striking the juror. This process allows counsel to use their training, experience, and common sense to eliminate jurors who may harbor hidden bias or be unable or unwilling to apply constitutional imperatives, such as the presumption of innocence.

An impartial jury has been recognized by the Supreme Court of Canada as "a crucial first step in the conduct of a fair trial".[12] However, we agree that, due to the constricting nature of the Canadian jury selection system, counsel are often forced to struggle to eliminate significant forms of bias through the peremptory challenge process, based on guesses, stereotypes, and hunches.

The single best way to identify and eliminate bias in the jury model is to enact a selection system that permits modest jury vetting, through jury questionnaires, surveys, and/or *voir dire*. The common law permits counsel to ask limited and prescribed questions of jurors aimed at revealing racial / ethnic / religious bias or bias based on pre-trial publicity. However, research shows us that bias can be complex, nuanced, entrenched and unconscious. An evidence-based approach to reducing or eliminating jury bias would allow counsel more latitude to screen potential jurors for biases that distort the trial process and foster wrongful convictions.

Clause 271 of the Bill, which proposes to permit trial Judges to stand aside jurors to "maintain public confidence in the administration of justice" may prove a tool for counsel to develop methods, through the common law, to enhance the jury vetting system to allow us to better uncover and remove biased jurors. However, we fear that the proposed provision is vague and it will inevitably take years of time and resource-consuming litigation to come to a final determination on its meaning and scope through the common law process. In addition, based on the current

[11] 4 WILLIAM BLACKSTONE, COMMENTARIES *34647.
[12] *R. v. Parks*, [1993] O.J. No. 2157, citing *R. v. Sherratt*, [1991] 1 S.C.R. 509 at p. 525, 63 C.C.C. (3d) 193 at p. 204

jurisprudence surrounding the challenge for cause procedure, we fear that the application of this section may be narrowly defined, and counsel will be left with few tools to prevent juror bias.

One of the reasons for contemplating jury selection reform is to improve jury diversity and representation on the jury to actually reflect the community where a charge is being tried. The most significant feature affecting representation by racialized, Aboriginal, and other identifiable groups on juries is the lack of diversity in the composition of the panel. This has much to do with the way in which panel members are selected from municipal rolls and summons are sent to the associated address on file. This limits the number of individuals from marginalized or low socioeconomic communities on jury panels, as these individuals may have less stable housing or be transient. The Supreme Court of Canada had an opportunity to consider this problem in *R. v. Kokopenace*[13], but unfortunately the majority decision upheld the status quo concluding that the current jury pool selection process in Ontario did not raise constitutional concerns. The federal and provincial governments therefore need to act legislatively to implement the minority decision in that case and improve how jury pools are selected. These proposed amendments do nothing to deal with this problem. The federal government should amend current s.629 of the *Criminal Code* by providing for a means by which the accused or prosecutor may challenge the jury panel on the basis that it is not representative of the community from which it was drawn. The proposed amendment would be to add the following subsection to s.629 of the *Criminal Code*:

s.629(4): The accused or the prosecutor may also challenge the panel on the basis that it is not representative of the community from which it was drawn

This amendment would do much more to correct the current problem than the proposed solution offered and would ensure that jury panels are truly representative of the community.

Finally, Clause 274 would modify the challenge for cause system to allow the trial judge to decide the question of whether a juror is partial and ought to be removed from the jury on the basis of cause. As noted above, the law permits counsel for the accused to ask limited and prescribed questions of jurors aimed at revealing racial / ethnic / religious bias or bias based on pre-trial publicity. In the current system, the question of whether a potential juror's answers to the prescribed questions reveal bias is decided by a "mini-jury" of two jurors, called "triers". Currently, there are two methods for determining who will comprise the triers in an individual case, the static triers method[14] and the rotating triers method[15].

[13] 2015 SCC 28

[14] In the static trier method, the first two jurors selected become the triers for the duration of the challenge of cause for procedure, they determine the question of bias for all jurors, and are then dismissed at the conclusion of jury selection.

[15] In the rotating triers method, the first two individuals selected become the triers until a third person is selected, at which time the first trier is dismissed and the third person selected is sworn in as the first juror. The second and third individuals selected decide the challenge for cause until a fourth juror is selected, at which point the second person selected is dismissed and the fourth person selected is sworn in as the second juror. The first and second juror decide

The rationale for the process of having the challenge for cause question decided by triers, and for excusing the first two triers (whose suitability was not determined by a jury of triers) is philosophical in nature. The right to a trial by jury is a right to have guilt determined by a group of the accused's peers or representatives of their community, as an important check against state power. The selection of the jury is supposed to be based on a random sample of the population and not by a delegation of state power, selection or control. On that basis, the trier system maintains the philosophical separation between the state and the jury and minimizes state intrusion into the selection of jurors. The right to a trial by jury is enshrined in s. 11(f) of the *Charter*. The CLA predicts that Clause 274 will attract constitutional scrutiny and result in complex litigation which will consume time and resources for little gain. We have not seen any data supporting the idea that the use of the trier system creates any real unfairness or delay to the criminal justice system, and predict that the cost of litigating the proposed amendment will far exceed any delay caused by maintaining the *status quo*.

III. Increasing the maximum sentences to 2 years less a day for all summary conviction offences – Clause 318

It is our position that these changes should not be made. The overall cost to the administration of justice does not warrant this amendment. The current regime of summary offences (maximum 6 month sentences) and super summary offences (maximum 18 month sentences) strikes the appropriate balance. Making the legislative change will place greater burdens on the Provincial Courts, will expose offenders to greater periods of imprisonment for relatively "minor" offences, and will prevent non-lawyers (including law students) from representing people in summary conviction trials.

The hybridization of many more offences, the increase in the maximum sentence for summary offences, and the extension of the limitation period for the laying of summary charges will operate together to download many more matters to the already overburdened and underfunded provincial court system. Our provincial court system already experiences considerable delays. In fact, of those jurisdictions for which Statistics Canada keeps data

> Nearly half (49%) of all cases took less than four months to complete in 2014/2015. This was followed by 42% of cases that took between 4 and 18 months to complete. The remaining 9% of cases took between 18 and 30 months to complete (6%), or 30 months or longer to complete (3%).

Equally concerning, the new sentencing new sentencing regime for summary offences will disqualify paralegals and student clinics from acting on summary conviction matters. Under s.

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the challenge for cause until a fifth person is selected, at which point juror number one is excused from being a trier (but is still a member of the jury) and jurors number two and three become the triers until the next juror is selected. This process of rotating triers continues until all jurors have been selected.

802.1 of the *Criminal Code,* and the operating legislation of several legal governing bodies (Law Societies), agents such as paralegals, articling students, and law students may only legally represent clients where the maximum sentence is six months incarceration. The CLA is extremely concerned that this will have a significant effect on access to justice for those who cannot afford a lawyer, but do not qualify for Legal Aid (which is available only to those Canadians living in extreme poverty). In addition, this will inhibit the training and development of licensing candidates and law students, through the articling process and through university legal clinics. To the extent that paralegals are currently prohibited from representing accused persons on the most serious of criminal offences (where the maximum sentence is 18 months for Law Society of Ontario paralegals), it will be difficult to justify restricting paralegals from acting in the most serious of summary conviction cases going forward if there is a standardized 2 years less a day sentence established.

Should these sweeping reforms pass, we suggest considering mechanisms which would allow agents to continue to represent accused individuals on minor charges. Options include amendments to the *Criminal Code* that increase the permissible scope of agent practice (however, it must be noted that the scope of practice is also limited by the rules of practice of legal governing bodies across Canada) or creating a sub-classification or sub-designation for summary offences which allows agents to represent accused persons who fall within the sub-class. This is best effected by permitting provincial law societies to oversee and regulate when non-lawyers can appear on summary conviction cases by, for example, requiring lawyer supervision and/or certification before being eligible to defend accused.

IV. Routine Police evidence – Clause 278

This clause is unnecessary. There are already mechanisms in place for counsel to dispense with strict evidentiary proof for non-controversial police evidence through admissions or otherwise. Creating a new formal procedure whereby leave will be necessary to hear from witnesses *viva voce* will result in inefficiencies and delay.

Reducing the length and complexity of trial by entering uncontroversial evidence into the record in writing is sound policy which promotes trial efficiency. Such efficiency, however, must not come at the expense of the right to full answer and defence and must not erode the procedural protections in place to ensure that an accused person is only convicted on the basis of evidence that is tested and proven.

This amendment is entirely unnecessary, as mechanisms already exist that allow for the presentation of uncontroversial evidence in a way that saves time and court resources. Presently, s. 655 of the *Criminal Code* confers a discretionary right on the defence to admit any fact for the purpose of dispensing with proof. Typically, admissions are made by the defence through a written and signed agreed statement of facts or a document containing uncontroversial admissions in

writing. The use of agreed statement of facts is routine in practice. Neither party benefits from prolonging a trial by having officers testify to issues that are necessary for the trier of fact to know but are not in dispute. Defence counsel and the Crown often work together to draft these documents. The process is easy and efficient. The contents of these documents are relied upon by the trial judge for the truth of their contents. Agreed statement of facts advances the same objective as admitting a police affidavit at trial, but because it is a document submitted to the court on consent of the parties, there is no need for the additional, time-consuming process of applying for leave to cross-examine the affiant. Moreover, we are not aware of any evidence suggesting that the length of trials is substantially affected by unnecessary police evidence. This proposed amendment is addressing a "ghost" problem that does not exist.

Further, this proposed amendment signals a seismic and troubling shift in our criminal justice system. As one commentator put it, "[w]hen once the status quo was the Crown shouldering the responsibility to present in court testable evidence as part of their obligation to prove guilt beyond a reasonable doubt, now the accused must request it".[17] The proposed s. 657.01 has a number of weaknesses, which violate due process, fundamental justice and the legal rights protected by s. 7 of the *Charter*.

The police must be held accountable for unlawful or unconstitutional conduct. Exploring and exposing such abusive conduct, which undermines the rule of law, is often accomplished through examination of the police conduct at a trial. Unfortunately, history has shown that racialized and Indigenous communities are the most vulnerable and affected when it comes to unconstitutional state conduct. In some instances, what might appear to be a "routine" encounter between police officers and members of the community, or what appears to be "routine" police investigative step is anything but routine. Creating a leave requirement to cross-examine police witnesses will create an unnecessary hurdle that will frustrate rather than further the interests of justice.

We are also of the view that this proposed amendment is constitutionally infirm and will violate s.7 of the *Charter*. Although Canada does not have an enumerated "right to confront," the right to confront available witnesses, the right to cross-examine witnesses, and the right to challenge Crown evidence have all been recognized by the Supreme Court of Canada as components of the right to make full answer and defence protected by s.7 of the *Charter.* [18] In fact, the right to cross-examine Crown witnesses has been recognized as a "principle of fundamental justice that is critical to the fairness of an accused's trial".[19] The laudable goal to improve trial efficiency cannot dilute fundamental *Charter* protections.

[17] Lisa Silver, "Leaving a Paper Trail: A Comment on Bill C-75," online: <www.ablawg.ca>.
[18] See e.g., *R. v. Potvin, Titus v. The Queen,* [1983] 1 S.C.R. 259, *R. v. Seaboyer*
[19] *R. v. Osolin,* [1993] 4 S.C.R. 595

APPENDIX A

The Criminal Lawyers' Association is a non-profit organization that was founded on November 1, 1971. The Association is comprised of over 1350 criminal defence lawyers, many of whom practice in the Province of Ontario, but some of whom are from across Canada. The objectives of the Association are to educate, promote, and represent our membership on issues relating to criminal and constitutional law.

The Association has routinely been consulted and invited by various Parliamentary Committees to share its views on proposed legislation pertaining to issues in criminal and constitutional law. Similarly, the Association is often consulted by the Government of Ontario, and in particular the Attorney General of Ontario, on matters concerning provincial legislation, court management, the Ontario Legal Aid Plan, and various other concerns that involve the administration of criminal justice in Ontario.

The Association has been granted standing to participate in many significant criminal appellate cases as well as other judicial proceedings. For example, the Association was granted standing in, and participated throughout, the Commission on Proceedings Involving Guy Paul Morin (the "Kaufman Inquiry"). The Association has intervened in many appeals heard by the Court of Appeal for Ontario and by the Supreme Court of Canada.

We are the largest private bar stakeholder in the administration of criminal justice in Canada.