

ADJOURNMENT PROCEEDINGS

[English]

A motion to adjourn the House under Standing Order 38 deemed to have been moved.

JUSTICE

Mrs. Jane Stewart (Brant, Lib.): Mr. Speaker, I would like to follow up on a question I asked the Minister of Justice on February 15. It regards the disturbing trend whereby defence lawyers subpoena private and confidential files and records from counsellors at sexual assault centres, from psychiatrists, doctors and other personal counsellors for use in the defence of their clients.

I thank the minister for his attention to this issue and for his informed response. However, I would like to share with the House the angst and concern that exists among constituents in my riding when they think of these personal documents being brought into the courtroom.

I like to share with the House some words from a constituent who wrote to me: "For many of us, the only safe place to talk about our injuries is in therapy. Therapy is a place where victims can learn to re-establish their own self-worth without being abused again. The counsellor offers the support that is desperately needed in order to learn how to set safe boundaries, learn about self-worth, the right to privacy, that it is okay to say no, it is okay to validate our own needs, it is okay to be angry and how to express that anger in a safe and constructive manner.

"In therapy, we learn that we are not powerless to our perpetrators and that it was not okay to be violated in the manner in which we were. We are given a place to safely express our emotions and validate our own feelings, even if we are the only ones that do. For many of us this is the only safe support that we have.

"This is a very sad day because now the defence lawyers want to take away what little privacy we as victims have and violate us all over again. My therapy is very personal to me. I can talk about my pain and my goals, my hopes and my fears. I pay good money for the right for that support to allow me to create my own boundaries. I urge you as a representative of my government to stop this injustice".

Those words are poignant and they are instructive. They tell us that victims of violence do not want these very private and therapeutic conversations to be part of the courtroom proceedings.

In 1992 the House passed very good legislation with the rape shield law. We know recently that in Nova Scotia the law was challenged and fortunately, the Minister of Justice intervened and the integrity of that law was maintained. With this right to subpoena we see a back door approach to get confidential

Adjournment Debate

information into the courtrooms where it should not be and where it creates difficulties for people like my constituent.

I know the minister is working very hard on this. I know he has intervened in the Supreme Court case that is reviewing the result of a B.C. appeal that would require strict controls over the use of this information in court. I thank the minister for that intervention. I hope the Supreme Court will judge in favour and allow the result of the appeal in the B.C. judgment to be available to all of us in Canada.

I ask the minister to continue his diligent review in this regard. I realize the issues are complex, but I ask him to find a balance between providing a fair trial for the accused and for the victim a right to privacy.

Mr. Russell MacLellan (Parliamentary Secretary to Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, as the hon. member for Brant has said, this is a troubling and complex issue which places in conflict two compelling sets of interests.

On the one hand, victims need to be able to seek counselling and medical assistance in confidence and with full respect for their privacy and personal integrity, both at the time of their counselling and later on in any court proceedings. On the other hand, people accused of serious offences need to be able to bring forth relevant evidence that may establish their innocence. Courts across the country are grappling in individual cases with the very difficult balance of victims' and accused persons' interests.

• (1905)

The Supreme Court of Canada heard argument on this issue in the case of *O'Connor v. the Queen* on February 1. The federal government intervened in that case to urge the court to endorse a strengthened version of the guidelines developed by the British Columbia Court of Appeal. The Supreme Court has reserved its decision.

The *O'Connor* guidelines developed by the B.C. Court of Appeal are designed to prevent fishing expeditions into the complainant's past. They place the onus on the person seeking access to the records to establish that they are relevant. This is done through a two part procedure which may be done in camera with a ban on publication and at which the complainant and the holder of the records are not compellable witnesses.

At present and subject to the decision of the Supreme Court, the *O'Connor* procedure is binding only in British Columbia. At a January federal-provincial-territorial meeting of ministers responsible for justice, it was agreed to review the B.C. Court of Appeal guidelines with a view to having them adopted in each jurisdiction. This would govern the situation pending the decision of the Supreme Court in *O'Connor* and pending any new legislation in that area.