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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 33 of the Standing Committee on Justice and Human Rights. Today is Tuesday, November 2, 2010.

You have before you the agenda for today. There are a number of items we're dealing with.

First of all, we're going to begin our review of Bill S-6, An Act to amend the Criminal Code and another Act, referring to the faint hope clause.

Second, we will move to consideration of Bill C-389, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

You also have before you the steering report. We met earlier today, and the clerk has been so kind as to put together the report.

Those of you who were present, Mr. Comartin, Monsieur Ménard, and Mr. Murphy, I'm assuming the report reflects—

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I move to adopt it.

The Chair: We have a motion to adopt the report. Any discussion?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I haven't had a chance to finish reading it. Could I just have another minute?

The Chair: All right. I'll just give you a minute.

Mr. Joe Comartin: It's fine, Mr. Chair.

The Chair: All right. I'll put the question on the report.

(Motion agreed to)

The Chair: The fourth report is adopted.

Now, back to Bill S-6. We have with us our Minister of Justice and Attorney General for Canada, the Honourable Rob Nicholson. Welcome back, Minister.

Accompanying him are senior officials from the Department of Justice. We again have Ms. Catherine Kane, director general and senior general counsel, as well as John Giokas, counsel. They're both from the criminal law policy section.

Minister, you know the drill. You have ten minutes to present on Bill S-6, and then we'll move to questions from our members.

[*Translation*]

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chair. I am pleased to have the opportunity once again to meet with the members of the committee to discuss legislation providing for serious time for the most serious crime.

[*English*]

I appeared before this committee just over a year ago to discuss these amendments. At that time they originated in the bill known as Bill C-36, but since then this Criminal Code package was re-introduced in virtually identical form in the other place as Bill S-6 in June 2010. It was passed by the Senate without amendment and is now before you for examination.

Let me begin by recapping the current state of the law with respect to murder. Section 745 of the Criminal Code provides that convictions of first- and second-degree murder carry mandatory terms of life imprisonment, with mandatory periods of parole ineligibility. For first-degree murder that period is 25 years. It's also 25 years for anyone convicted of second-degree murder who was previously convicted of either first- or second-degree murder under domestic law or an intentional killing under the Crimes Against Humanity and War Crimes Act. For all other second-degree murders, an offender must serve a minimum of ten years in custody. However, a judge may increase this to a maximum of 25 years, in light of the offender's character, nature, or circumstances of the crime, and any jury recommendation.

The parole ineligibility period set by the judge is part of a sentence that is read out in open court. Given the serious nature of murder, I think Canadians would agree that a period of up to 25 years of custody prior to being able to apply for parole is reasonable. I would assert that the 25-year parole ineligibility could and should be longer, especially in the cases of multiple murderers. As you know, that is another issue that our government has addressed through Bill C-48, a piece of legislation you will be asked to consider very shortly.

The core of the issue before us today is the so-called faint hope clause and its related provisions. It allows a murderer to apply for early parole after serving only 15 years, despite what the Criminal Code stipulates in section 745 and despite whatever longer period of time a judge may have imposed. We find this unacceptable. We were elected on a promise to restrict the availability of faint hope for offenders who are already incarcerated and to eliminate it completely for future offenders. Bill S-6, the bill before you, keeps both of those promises.

I would like to concentrate for a moment on the context in which these proposed criminal amendments have arisen. I believe it's necessary to clarify exactly how and why this bill was drafted and what it sets out to achieve. Since the first applications began to come forward in the late 1980s, the faint hope regime has been a source of concern among Canadians. They are disturbed and confused by a process that seems to allow murderers to circumvent the sentence imposed on them in open court after a fair and public trial. They see it as an affront to truth in sentencing, and they argue that a life sentence of imprisonment ought to mean just that.

Many refer to the faint hope regime as the loophole for lifers that can undermine the protection of society, because the system affords leniency to murderers, whose crimes demand severe punishment. Even worse, and perhaps most importantly, victims have told me about the additional trauma inflicted on their families and loved ones. They live in constant dread that the killer who robbed them of their loved one may one day bring forward a faint hope application. This review process forces victims to relive the details of the horrible crimes they have suffered again and again.

We want to spare these victims the anguish of parole eligibility hearings. We believe the justice system must not put those rights of individuals ahead of those of victims and law-abiding Canadians. The measures proposed in Bill S-6 are in direct response to these concerns and aim to accomplish three goals.

First is to restore the truth in sentencing by ensuring the sentence pronounced on a convicted murderer in open court is the sentence that is served. Second is to keep those convicted of the most serious crimes in prison for lengthier periods of time commensurate with the gravity of their crimes. Third is to help ensure that the families and loved ones of murder victims are not themselves revictimized at the whim of a convicted murderer who decides to bring forward an application for early parole that forces them to relive the pain of their original loss.

● (1535)

These are reasonable and compassionate goals, and I hope committee members would keep them in mind as they examine Bill S-6, because Bill S-6 will bar everyone who commits murder in the future from applying for faint hope. Thus, all those who committed these offences after Bill S-6 comes into force will no longer be able to apply for a parole eligibility date earlier than that imposed by the judge at the time of sentencing.

As for those who presently have the right to apply for faint hope, Bill S-6 will tighten up the application procedure to screen out applications that are unlikely to succeed and to restrict when and how often an offender may apply. This tighter procedure will apply to those who commit offences prior to the coming into force date. This means that those who are currently serving a life sentence in prison, those who have been convicted of murder but have not yet been sentenced, and those charged with a murder that occurred prior to the coming into force date and who are convicted—all will be subject to this new, stricter procedure.

I would like to briefly describe how two of the three stages of the current procedure would change. At the first stage of the current process, an applicant must convince a judge in the province where the conviction occurred that there is “a reasonable prospect that the application will succeed”. The court describes this threshold as being “relatively low”.

Under Bill S-6, an applicant would have to prove that the application has a substantial likelihood of success. This significantly higher standard will screen out flawed applications at the outset. It would also impose new time limits. Currently, the minimum period an applicant has to wait to reapply to a judge is two years after the initial rejection. Under this bill, an applicant would have to wait at least five years. The change from two to five years will create more certainty for the families of victims about when a faint hope hearing will occur and limit the number of applications that can be made, thereby reducing the trauma these hearings inflict upon victims.

Presently, an offender can apply for faint hope at any point after serving 15 years. Bill S-6 would change this by establishing a 90-day application window. In short, the applicants will have to apply within three months of becoming eligible, failing which they must wait a further five years, and then they will have again three months to apply. This proposed change will spare victims' families and loved ones from living in dread, uncertain of when or if a convicted killer will revive their suffering by seeking early parole.

Someone who succeeds at the second stage of the application may then go directly to the parole board for early parole. Bill S-6 doesn't change that. Colleagues, let me be clear: Bill S-6 does not affect the normal parole application process. There is nothing in this bill that in any way denies convicted murderers the chance to rehabilitate themselves or to apply for parole in the normal course once the parole ineligibility period imposed at the time of sentencing has expired. The bill simply requires offenders to serve their full sentence for the reasons I have outlined.

As I've said many times before, this government is committed to restoring balance in Canada's criminal justice system by standing up for the interests of law-abiding citizens and ensuring that the families and loved ones and victims are not themselves made victims by the justice system.

Mr. Chair, this is a fair, balanced, and reasonable reform of a controversial area of the law, and I urge all members of this committee to support this bill and hasten its passage into law. Thank you very much.

● (1540)

The Chair: Thank you, Minister.

We'll move to questions. Ms. Jennings, I believe you're the first one. You have seven minutes.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Chair.

Thank you, Minister, for your presentation today. I have a couple of questions to begin with. You'll excuse me that I'm taking a little bit of time.

My understanding is that unlike most inmates who are serving a sentence, if granted parole they remain subject to the conditions for the rest of their lives. Lifers are not entitled to statutory release. Is that correct?

Hon. Rob Nicholson: I beg your pardon?

Hon. Marlene Jennings: Is it correct that lifers are not entitled to statutory release under the current Criminal Code?

Hon. Rob Nicholson: They're not eligible until 25 years...or whatever the parole eligibility date.

Hon. Marlene Jennings: So they're not entitled to statutory release under the current provisions?

Hon. Rob Nicholson: Exactly.

Hon. Marlene Jennings: Thank you.

The second thing is, under the current Criminal Code provisions regarding faint hope, an inmate who has been convicted of more than one murder, where at least one of the murders was committed after January 9, 1997, may not apply for a review of his or her parole ineligibility period. Is that correct?

Hon. Rob Nicholson: That is correct.

Hon. Marlene Jennings: Another clarification or confirmation I'd like to know is once an application has been made to a judge using the faint hope clause, if the application is dismissed for a lack of reasonable prospect of success, the chief justice or the judge who has dismissed it may set a time for another application not earlier than two years after dismissal, or the judge may decide that an inmate is not entitled to make another application. Is that correct?

Hon. Rob Nicholson: That is correct.

Hon. Marlene Jennings: Do you know if this has ever happened when a judge in a ruling or in dismissing an application under the faint hope clause has ruled this inmate may not have an opportunity or be eligible to apply again under the faint hope clause?

Hon. Rob Nicholson: I don't know of any instances.

Hon. Marlene Jennings: Is it possible? I understand the information may come long after we do clause-by-clause and it's back in the House for debate at report and third reading, but is it possible—

Hon. Rob Nicholson: I would be glad to check into that for you, Ms. Jennings.

Hon. Marlene Jennings: Thank you.

Another question I have has to do with the issue of the delay.

Clearly, we'll be hearing from witnesses, but having reviewed some of the transcripts of the Senate committee, some of the witnesses talked about the delay of 90 days, in particular when it's the first application. If the bill is adopted, the provision you have for an application of 90 days after the coming into force of Bill S-6...it could be difficult for some inmates to meet the delay, and not through any dilatory activities on their part, but simply because in order to make the application, the individual has to make the application in the jurisdiction where the crime occurred, and that individual, that inmate, may be incarcerated three provinces away.

So would there be any openness on the part of the government to extend the delay in those kinds of circumstances, or at least allow a judge the discretion to hear grounds for extending a delay if an inmate is unable to meet the 90-day delay?

● (1545)

Hon. Rob Nicholson: I hear the point you're trying to make. I guess I would say, if I were advising one of those individuals, they've got 15 years to get their act together, and they do have this three-month opening, which is an exception to the rule that they would serve the full 25 years. That's what I would encourage that individual to do. You've got many years to look forward to this opportunity and that three-month window.

Then at least give some comfort to the victims this individual has created, knowing that after those three months they don't have to worry about it for five years. I think it's a reasonable proposal and I want to see it stay the way it is.

Hon. Marlene Jennings: So the government is not at all open to allowing any kind of judge's discretion on the 90-day delay where an inmate is able to show exceptional circumstances that prevented him or her from completing the application within the deadline? Is that correct?

Hon. Rob Nicholson: I think it's clear what the section says, Madam Jennings, and I think it's reasonable and I think it should be left as it is.

Hon. Marlene Jennings: So is my understanding correct that the government is not open to allowing any amendment that would provide a judge's discretion in exceptional circumstances, where exceptional circumstances are shown to that judge, to extend that 90-day deadline under any circumstances? Is that correct?

Hon. Rob Nicholson: A reasonable process set out in favour.... I like the way it's expressed in the bill as it was passed by the Senate.

Hon. Marlene Jennings: Thank you.

I take that as a no, the government is not open to that suggestion.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): He could clarify if you're wrong.

Hon. Marlene Jennings: Am I wrong? If I'm wrong and it's assuming—

Hon. Rob Nicholson: Again, I like the bill just the way it is—

Hon. Marlene Jennings: —from your three responses—

Hon. Rob Nicholson: —and I think it's reasonable. I'd like this committee—I'm urging the committee—to pass it just the way it is.

Hon. Marlene Jennings: In other words, my assumption, my reading of your response, is correct, that the government is not open to that even if proof of extraordinary circumstance was demonstrated.

It might happen once, it might never happen, but there's no openness of the government.

I'll move on.

Hon. Rob Nicholson: Ms. Jennings, you might be very interested —

Hon. Marlene Jennings: Yes.

Hon. Rob Nicholson: Mr. Giokas has pointed out to me that there is a process in place. It's called the BF system, the bring forward system. They already start working with and preparing these individuals well in advance of whatever timeline.

Hon. Marlene Jennings: Who does?

Hon. Rob Nicholson: This would be Correctional Service Canada.

So, again, there is a recognition that even with 15 years of preparation, some individuals might still need some assistance. It's interesting, I'm sure for you to know, that that process is in place.

Hon. Marlene Jennings: Thank you for that information.

When the Correctional Service comes before us, because I'm assuming they will be witnesses, I'll be able to ask them about that particular process and how they go about assisting the inmates. So I appreciate that information greatly.

The Vice-Chair (Mr. Brian Murphy): Ms. Jennings, we'll have to stop you there.

During your answer, Minister, you mentioned getting some information to Ms. Jennings. Of course, you would supply that I think to the committee.

Hon. Rob Nicholson: No, I just want to give it to Ms. Jennings and the rest of you can figure it out for yourselves.

The Vice-Chair (Mr. Brian Murphy): Well, then, you're out of order.

You have to give it to the clerk. Would that be all right?

Hon. Rob Nicholson: That would be fine.

The Vice-Chair (Mr. Brian Murphy): Monsieur Ménard, your have seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you for being here today, Mr. Minister. You can rest assured that I greatly appreciate your being here, although we have differences of opinion, as you know.

Do you believe in rehabilitation?

[*English*]

Hon. Rob Nicholson: I hope you do as well, Monsieur Ménard.

I think rehabilitation is an important part of the criminal justice system of Canada. I hope you'll join with me when you see the different programs and initiatives that we have taken.

Indeed, one of the arguments for getting rid of the two for one.... You remember on the truth in sentencing, people said people weren't getting the kind of rehabilitation when they were in provincial detention centres.... You know the efforts that were made by my colleagues to get rid of that, so that individuals could get the kind of treatment that is available under federal institutions. So, yes, by all means.

You say there are some differences of opinion. I hope we agree on that.

● (1550)

[*Translation*]

Mr. Serge Ménard: You certainly seem convinced that rehabilitation is possible even for murder.

[*English*]

Hon. Rob Nicholson: Anything is possible, of course. You'd hope that the individuals who start to make application after 25 years have gotten the message of the enormous crime they have committed and the number of victims they have created.

So, yes, it's the hope of everyone that even minor offenders get the message that this is not the way to live your life.

[*Translation*]

Mr. Serge Ménard: If I understand correctly, you are pleased to point out that, of all the people who were released on parole, only one committed a serious crime, which was not a murder, but armed robbery.

You are aware of that.

[*English*]

Hon. Rob Nicholson: I'm sure you've got the details of whatever case you're referring to, Monsieur Ménard. But you're right, you make a good point, that sometimes people who get released can commit other crimes. But that's the chance you take any time.

I mean, let's be fair. Anytime somebody gets paroled, there is always that possibility that the person may commit another crime. Those are the factors that are weighed by the parole board in every case, whether it's an individual who's applying to get out after a murder, or indeed others.

That's always a possibility, and I thank you for raising that.

[*Translation*]

Mr. Serge Ménard: It was actually the Canadian Bar Association that told us that, of all those who were able to benefit from the provision that you now want to limit, only one person had committed another serious crime, an armed robbery. So that cannot justify your haste to implement this measure as quickly as possible.

[*English*]

Hon. Rob Nicholson: No. What motivates me, and what has always motivated me in this particular area, are my discussions with the victims. The individuals, who have been created victims by the murder of one of their loved ones, are unanimous when they tell me how terrible the process is that they go through when the 15 years rolls around and they have to then, in many cases, relive the experience.

It certainly reduces the victimization, and in the end, we all have a stake in that. That is one of the driving forces of this particular piece of legislation. We are going to reduce that victimization for people who become victims in the future. And for people who have been victims in the past—you can see the new procedures we have—this will at least give them a little more certainty as to when and where they may have to relive those experiences.

[*Translation*]

Mr. Serge Ménard: Mr. Minister, how many of the victims have you met?

[*English*]

Hon. Rob Nicholson: It happens when I go across the country, Mr. Ménard.

I've been minister for four years, and every time I've been in one of the major cities, I make a point of hearing from victims. They write to me. They e-mail me. They stop me in the streets. I'm sure you have probably heard from some of these victims. But they are unanimous that when this 15 years rolls around and these individuals have this faint hope clause, they tell me they become victimized again. My heart goes out to them, and I hope yours does as well.

[*Translation*]

Mr. Serge Ménard: Mr. Minister, could you tell me approximately how many victims have you met? Dozens, hundreds, around 50?

[*English*]

Hon. Rob Nicholson: You know, I haven't kept track—

[*Translation*]

Mr. Serge Ménard: No, but, if you only had met with six or seven, you would tell us, wouldn't you?

[*English*]

Hon. Rob Nicholson: Again, it's when I've been to different cities and whenever this bill comes up. I'm sure you probably hear from some of them yourselves on this.

You've never heard from any victims? I can tell you something, Monsieur Ménard—

[*Translation*]

Mr. Serge Ménard: No, that is not what I said.

[*English*]

Hon. Rob Nicholson: Please—

[*Translation*]

Mr. Serge Ménard: I said that I had not heard—

The Vice-Chair (Mr. Brian Murphy): Excuse me, Mr. Ménard, but you have to give the minister a chance to finish his answer.

Mr. Serge Ménard: Yes, but I don't want him to twist my words. I am not twisting his words.

[*English*]

Hon. Rob Nicholson: The point is that sometimes you get somebody like Sharon Rosenfeldt, who represents a lot of the victims. In the Clifford Olson case, there were 11 different families touched by that. She made the point to me that, "When I'm speaking with you, Minister, I'm representing all these other individuals." You may find the same experience, that when you talk to some of these victims, many of whom have become involved in making sure there are changes made to the law, they represent other people who may not necessarily be there.

Thank you for the question.

● (1555)

[*Translation*]

Mr. Serge Ménard: You often bring up the fact that the public wants to limit these occasions. You are not happy that the decisions we are talking about are not made by judges but by juries. Should that not be an indicator that these decisions are socially acceptable to the public?

[*English*]

Hon. Rob Nicholson: Again, in the case of first-degree murder, for instance, juries do make that decision and impose life sentences on individuals for whom.... Again, it's said in open court that they're ineligible for parole for 25 years. But what we all know about this particular clause in federal legislation is, as I say, that it's a loophole for lifers.

So, yes, there is this. Again, juries do what they are instructed to do and weigh the guilt or innocence of an individual. You're quite correct that in first-degree murder cases they are prepared to impose life sentences with no eligibility for parole for 25 years for an individual.

Again, this is something that's been part of our law now for quite some time, and this is what we want to change.

The Vice-Chair (Mr. Brian Murphy): We're going to continue now with Mr. Comartin for seven minutes.

I remind questioners and witnesses to respect each other's time. It's very difficult for the translators to translate two voices at the same time.

Mr. Comartin, for seven minutes.

Mr. Joe Comartin: I assume those comments weren't directed specifically at me, Mr. Chair, because I'm always so mild and sedate in my questioning.

The Vice-Chair (Mr. Brian Murphy): We'll see.

Mr. Joe Comartin: I'll thank you anyway, Mr. Chair, and you, Mr. Minister, for being here, along with the officials.

Let me just pursue this. Your last answer, of course, is accurate, that at the time the jury convicts the person and the sentence is imposed, they're looking at the 25 years as the penalty. Actually, it's life, so it's much longer than that.

I don't know if you know, Mr. Minister, that the length of time the average convicted murderer in Canada spends in custody is 28.5 years. It's not 15 or even 25, and in fact—

Hon. Rob Nicholson: I hope I didn't confuse things when I said that.

You don't necessarily get out at 25 years; you could be there longer. There is no question about that.

Mr. Joe Comartin: Okay.

But the other point with regard to the juries it that it's the jury in that same community, if it gets that far, that is going to make the decision. It's the same community and judges from the same area who are going to be trying the issue of whether the person is going to be able to apply for early release, because of course they don't all get early release when they go on to the parole board.

In fact, there are cases that we received from Mr. Head—which this committee didn't hear about last time because one of your colleagues held up this material and it never came before committee—showing that out of the 144 cases granted the ability to apply for parole by juries, only 134 of them were in fact granted parole.

But it's the jury that makes the decision.

Hon. Rob Nicholson: Yes.

Mr. Joe Comartin: A jury convicts originally for the 25 years. A jury subsequently makes the decision—

Hon. Rob Nicholson: Yes.

Mr. Joe Comartin: —as to whether the person is going to be able to apply for early parole.

Hon. Rob Nicholson: Well, ultimately, if they get past the first application, there's no question about that. Yes.

Mr. Joe Comartin: Right. I want to jump over to the new multiple murders bill that you have before the House this week. The way I read that, if this bill goes through and someone, by way of judicial discretion, is convicted of double murders and is given consecutive sentences, that person would then have to wait 50 years before applying for early parole. Is that correct?

Hon. Rob Nicholson: Exactly.

Mr. Joe Comartin: Is there some reason why we didn't combine these two bills?

Hon. Rob Nicholson: Would you like to combine them? Would we get them more quickly, Mr. Comartin?

Mr. Joe Comartin: Well, if your Prime Minister didn't prorogue as often as he did, we would have been through this bill a long time ago, wouldn't we, Mr. Minister?

Hon. Rob Nicholson: Well, I can tell you, deal with this one quickly and I promise I will make every effort to get that one to you as quickly as possible—

● (1600)

Mr. Joe Comartin: We dealt with it very efficiently last time—

Hon. Rob Nicholson: We have no problem....

Mr. Joe Comartin: —and then you prorogued Parliament, and we're back a year later having to go through it all over again.

Mr. Minister, are you aware of what the average life sentence is in most of the western democracies?

Hon. Rob Nicholson: It's life, in many cases. It depends which country you're talking about. There are 180 or so countries.

Mr. Joe Comartin: The studies we had coming out of the last round on this showed that the average in the western democracies was 10, 12, or a maximum of 15 years.

Hon. Rob Nicholson: You mean time in custody for murder?

Mr. Joe Comartin: Yes.

Hon. Rob Nicholson: That could be.

Mr. Joe Comartin: That was the average sentence before they could apply for parole. That's the average in the western world.

Hon. Rob Nicholson: Nobody has greater respect than I do for other jurisdictions. You'll get American jurisdictions that have very different approaches to murders. I've had critics who point to a particular state. I say you could look at that other state. They have different experiences. I have great respect for Australia. Usually somebody cites that as an example. I have great respect for the United Kingdom, all of Europe, other countries, but we have the right to make a made-in-Canada solution. We can deal with these pieces of legislation and this law. We can come up with our own solutions. We can have a look at what other countries and other jurisdictions do, but ultimately I think we have the right to make those decisions for ourselves. That's not a comment on Australia or any other one of these wonderful countries around the world.

Again, we have the right to make our own decisions, and we are making them. I disagree sometimes with what certain jurisdictions do, and I may agree with others, but this is a made-in-Canada solution. I think we can all be proud of that.

Mr. Joe Comartin: I'm not sure you're aware of this, but in the vast majority of those countries, although convicted murderers spend much shorter periods of time in custody, there are also lower murder rates.

Hon. Rob Nicholson: There are some states that execute people. I very much disagree with that, Mr. Comartin. I appreciate that some of these jurisdictions are fairly close to us, but just because we, for the most part, get along with the United States doesn't mean we will adopt what is in various jurisdictions. I disagree with what many of them do. Let's have a made-in-Canada solution. That's what you have here before you.

Mr. Joe Comartin: But the reality, Mr. Minister, is that unless we bring back the death penalty, the families of the victims of a murderer are always going to be faced with the uncertainty that at some point this person is going to be paroled.

That's really the only solution to your major concern here, to absolve victims of the stress they go through.

Hon. Rob Nicholson: I want to reduce victimization, and you're quite correct that if somebody goes out....

If the other bill gets passed as well and they become multiple murderers, it will be maybe 50 years, and maybe there will be nobody around who is still a victim of this individual. We will definitely reduce victimization, and this will be welcomed by the families and the loved ones of these people who have been murdered.

Mr. Joe Comartin: Do you agree with my assumption that the only way you can ultimately completely do away with that stress to the victims is by bringing back the death penalty?

Hon. Rob Nicholson: I don't agree. First of all, I'm against the death penalty, of course, as I think most Canadians are, and in the end you will never eliminate the feeling of victimization. You will never eliminate the hurt that has been inflicted upon them by some individual. All we can do is do what we can to minimize that, and I think we are minimizing that by getting rid of the faint hope clause.

That's all we're attempting to do here.

Mr. Joe Comartin: Do I still have time?

The Vice-Chair (Mr. Brian Murphy): Twelve seconds.

Mr. Joe Comartin: I'll pass.

The Vice-Chair (Mr. Brian Murphy): Great. We'll move now to Mr. Dechert, who I understand is going to split some of his time with Mr. Petit.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Minister, thank you to you and your officials for being here today.

I would like to say at the outset that for many years in my community people have said to me that they don't understand why criminals, especially people who commit the most heinous of crimes, murder, don't actually serve the sentences the courts impose upon them. Sir, in my view, people need to understand and have faith in our criminal justice system, and one way of doing that is demonstrating to them that criminals actually do serve the sentences the courts impose upon them. So I want to thank you for bringing this legislation forward.

Having said that, you've mentioned the families of victims, loved ones, and friends of victims. I wonder if you could tell us what they have told you in regard to the current process of parole eligibility.

● (1605)

Hon. Rob Nicholson: Well, it's a very good point. When I have met with them their stories are similar in many ways. They start thinking about this prior to the 15 years. Then they're waiting. They don't know exactly when or even if the application is being made. Some of them have told me stories that in their heart of hearts they knew the guy wasn't going to get out anyway, but he made the application, in their opinion, to increase the pain these people feel. It's hard to believe that there would be individuals like that, but I have to accept what they tell me, and that is that some of these individuals put forward the application with no reasonable hope of having the matter successfully heard. This victimization happens again and again, and it continues on all the way through the process.

Even the ones I spoke with and said this is not retroactive, in the sense that we are not getting rid of the faint hope clause for the individual who has caused you this pain.... I have been impressed by the individuals—Sharon Rosenfeldt is a good example—who have come forward and said they want to make it a little easier, if they can, for people in the future.

As I said to Mr. Comartin, you can never eliminate the pain for what some of these individuals inflict on law-abiding, innocent Canadians. You can't get rid of that, but to the extent we can minimize that, I was impressed by people like her who would be prepared to make it better for people in the future. It's very impressive. And again, this is what this bill will accomplish.

Mr. Bob Dechert: Certainly, we all saw not only the great pain that was imposed on the friends and families of the victims of a particular case tried recently here in Ontario, but also the trauma it imposed on the entire community where those awful events took place. I think that's something we need to be very cognizant of.

You mentioned in your remarks, Minister, how this bill complements other pieces of legislation the government has brought forward, including Bill C-48. I wonder if you could explain how this will work in a complementary fashion with Bill C-48.

Hon. Rob Nicholson: I'm here to testify, of course, on this bill, but as Mr. Comartin said, these bills are both part of the same process, which is to try to reduce victimization. In a sense, they do complement each other. In that particular case, a judge who believes it's appropriate can impose a period of ineligibility consecutively rather than concurrently. For the person who is the second or third or tenth victim of one of these individuals, their life is not devalued in the sense that there's no change in the penalty of the individual who has inflicted this pain on their families.

That is one of the bills that I hope is very quickly going to be before this committee and be passed by Parliament.

And you're right, they complement each other. They will bring about truth in sentencing and will send out the message that there are no “discounts” for multiple murderers in Canada anymore. Every life will be taken into consideration.

Mr. Bob Dechert: Before I share time with Mr. Petit, perhaps you could explain how this bill distinguishes between individuals who are already incarcerated for murder and those who will be convicted and found guilty after this bill comes into law.

Hon. Rob Nicholson: The bill is very carefully crafted. We have rules against retroactive punishment, against changing somebody's punishment after they've already received it or they have committed a crime with a certain set of laws before them. What we're saying is that this bill will be very specific. It will affect those individuals who are charged after the coming into force of this law. Anybody who has committed one of these terrible crimes will be charged and have the existing penalties applied to them.

Mr. Bob Dechert: How would it affect currently incarcerated murderers?

Hon. Rob Nicholson: Those individuals who have already been charged with murder would continue to be eligible for the faint hope clause, but with the new procedures, I have indicated they will have a 90-day window at the 15-year mark. If they miss that, or it's turned down, or they're unsuccessful, for whatever reason, they will have to wait five years before they can apply again, for which they will get another 90-day window. And then they will have to wait for the 25-year mark.

● (1610)

Mr. Bob Dechert: Thank you very much.

[*Translation*]

The Vice-Chair (Mr. Brian Murphy): Mr. Petit, you have two minutes.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good afternoon, Mr. Minister.

My question is quite simple. In connection with the bill that you want us to pass as quickly as possible—it is a fine bill, I have already read it—I am going to tell you about a case we had in Quebec. And I would like you to tell me what the difference is.

In 1987, a man by the name of Denis Lortie killed three colleagues of the Parti Québécois. He was even planning on killing René Lévesque. He killed three people and injured seven. The judge and the jury gave him a life sentence. In 1995, exactly eight years later, he was free, completely free. He even works in a convenience store in Cantley, in the Outaouais. Three people were killed and seven are disabled for life. He was sentenced to life imprisonment.

What will the new bill and the one you talked about, Bill C-48, bring to the table? Could you tell me that? It is extremely serious. This man killed three people and even wanted to kill Parti Québécois members. And now, he is free. What will change under the new bill that we are studying today?

[*English*]

The Vice-Chair (Mr. Brian Murphy): Very briefly, Minister.

Hon. Rob Nicholson: I think this bill is very straightforward. Anyone convicted of murder after this point will not be eligible for what is known as the faint hope clause after 15 years. Their first opportunity for parole eligibility would be at 25 years.

In addition, with the other bill you've referenced, if an individual is convicted of two, three, or multiple murders, the judge then will have the discretion to have their parole ineligibility in consecutive terms. As I think Mr. Comartin pointed out, you could be waiting for 50 years if you start killing more than one person.

The Vice-Chair (Mr. Brian Murphy): Okay.

This is the second round. Over to Mr. Lee, for five minutes.

Mr. Derek Lee: Thank you.

Mr. Minister, you didn't mention in your remarks that these rules applied to those convicted and sentenced for high treason; you only mentioned murder.

It's okay. I can read the bill.

Hon. Rob Nicholson: Nobody has been convicted of it, but....

Mr. Derek Lee: But you did omit that. This would apply not to just those convicted of first-degree murder—

Hon. Rob Nicholson: Yes, it would. That's correct.

Mr. Derek Lee: That's correct.

You seem to skate over the fact that this bill retroactively removes the ability of individuals who are convicted of first-degree murder to apply for parole in anything but the 90-day window that follows the 15th year anniversary.

Hon. Rob Nicholson: To be honest, I hope I was as clear as possible. With an individual, in your example, who has already been convicted, these new procedures would apply. They would have a 90-day window at the 15-year mark, and then after that, five years. I want to be very clear about that.

Mr. Derek Lee: You were clear.

Hon. Rob Nicholson: Those are for people already in the system.

Mr. Derek Lee: You were clear about that, but you weren't clear about the retrospective impact on those who are currently serving life sentences. There is a retroactive impact. Procedurally, this removes their ability to apply for parole in any period except the 90-day window.

Hon. Rob Nicholson: It's not retroactive; it's retrospective, in the sense that—

Mr. Derek Lee: Retrospective, if you will.

Hon. Rob Nicholson: —it changes the procedures, but their sentence is the same—life imprisonment with no eligibility for parole for 25 years. The faint hope clause will be available to them, but there is a change in the procedures.

Mr. Derek Lee: You've referred to the confusion of the public in relation to people who receive life sentences. You could have proposed a bill that would actually impose a life sentence—you're in jail until you die—but you didn't do that. This bill affects only the 10-year window that follows the 15-year period and going up to the 25-year period. Is that right?

Hon. Rob Nicholson: It's very specific.

Mr. Derek Lee: I guess you're agreeing with me.

Hon. Rob Nicholson: Yes, I agree with you.

Mr. Derek Lee: Don't be afraid to commit here; you're the government.

So it only covers the 10-year period—

Hon. Rob Nicholson: Are you committing to life sentences with no eligibility for parole? That's where you're going, Mr. Lee.

Mr. Derek Lee: I'm encouraging you to go for it for the purpose of clarity.

Is it also true that this bill—I'm stabbing in the dark here—doesn't affect anyone convicted of second-degree murder?

Hon. Rob Nicholson: Yes, it does.

Mr. Derek Lee: And if they're sentenced to life and 15...does it affect them?

● (1615)

Hon. Rob Nicholson: They would become eligible for parole after 15 years.

Mr. Derek Lee: So this bill doesn't affect them.

Hon. Rob Nicholson: Just to be clear, because you asked me to be clear, if you were convicted of second-degree murder, the judge could impose parole ineligibility up to 25 years, in which case you would be eligible for the faint hope clause.

Mr. Derek Lee: Okay, but it would still be a life sentence.

Hon. Rob Nicholson: You're right that the sentence could be 10 years until parole eligibility, and again....

Mr. Derek Lee: I have to talk about Clifford Olson again. Once Clifford Olson has served 25 years—he may have served 25 years already—this bill doesn't affect him at all. Whether this bill is passed or not, Clifford Olson will still have the ability to apply for parole any time he feels like it. Is that correct?

Hon. Rob Nicholson: That's correct. Exactly.

Mr. Derek Lee: Okay. Well, it's rather pointless to refer to Clifford Olson as an example, or his victims, if this bill doesn't impact him at all.

Hon. Rob Nicholson: The example I used was Sharon Rosenfeldt, who recognizes that this does not affect her own particular case, but she is prepared to join with me to help future victims. That is why I raised that question. I wasn't suggesting that his sentence was being changed.

Mr. Derek Lee: Okay.

Earlier in your remarks—and I stand corrected if I'm wrong—I heard you say that everyone who is given a life sentence will be subject to this new procedure. But that's not exactly what you intended, I presume, because it's only those who are going to have life sentences with parole eligibility dates between 15 and 25 years. Those are the people this affects.

Hon. Rob Nicholson: Exactly.

Mr. Derek Lee: So you do accept the retrospectivity now being imposed by this bill—albeit limited, but it's there. Okay.

Thank you, Mr. Chair.

[*Translation*]

The Vice-Chair (Mr. Brian Murphy): Mr. Lemay, the floor is yours for five minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Minister, I must say right away that I have a great deal of trouble voting in favour of this bill. I won't be able to do it because the bill will take away any faint hope from a number of individuals who could be reintegrated in society. I invite Mr. Petit to check what the court said about Mr. Lortie's conviction, since, contrary to what he was saying, those were not first-degree murders.

Having said that, Mr. Minister, that only applies to first-degree murders, meaning to those sentenced to life imprisonment without possibility of parole for 25 years. Since 1976, when the death penalty was abolished in this country, the current system with the so-called "faint hope" clause has been working very well. What do you see wrong with this system?

[*English*]

Hon. Rob Nicholson: I think the system can be improved, and with this bill we will reduce victimization. I'm hoping you will reconsider, think about those victims, and support this bill, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Okay.

I have good news and bad news for you. The good news is that this system looks after the victims far more than you think. I have already worked with cases of individuals who submitted applications. Right now, 4,000 prisoners are serving life sentences without possibility of parole for 25 years. Out of that number, only 265 prisoners filed an application and 140 were able to go beyond the first stage. So, it is clear that, by taking a case, a Superior Court judge is concerned about the victims. No one can come before a judge without being aware of the harm they have caused and of the victims they have left behind as a result of the murder.

That being the case, I tried to find the figures, but there are none. Do you have the numbers to show us that even one of the criminals who were released after 25 years in prison reoffended and committed another murder?

The answer is "no".

[*English*]

Hon. Rob Nicholson: Not in the case of the faint hope clause.

[*Translation*]

Mr. Marc Lemay: All right.

Do you have any evidence that one of those criminals committed manslaughter again?

● (1620)

[*English*]

Hon. Rob Nicholson: No.

[*Translation*]

Mr. Marc Lemay: Do you have statistics proving that one of those criminals committed another offence punishable by more than 10 years of imprisonment?

[*English*]

Hon. Rob Nicholson: There have been a couple of cases where people who have committed violent crimes have had their parole revoked.

[*Translation*]

Mr. Marc Lemay: They are among the 13 people who were sent back to prison. So that means the system is working. Victims are being looked after. Do you not see that, with the system that you want to enforce, someone who is no longer able to see the possibility of being released—because he really won't be able to see it anymore—will start working for the criminals inside the prison. As a result, violence will increase in the penitentiaries.

[*English*]

Hon. Rob Nicholson: Again, Monsieur Lemay, we all have a stake in making sure that our criminal justice system and our penitentiary system work. We want these individuals to take the time to figure out that what they've done is wrong and that they've hurt society.

You said they're taking into consideration victims. In the examples you're giving me, they're taking into consideration the criminal—the individual. Yes, I can appreciate that his concerns are being taken into consideration if he isn't able to make an application after 15 years. I'm worried about the families these people have victimized. I'm worried about those individuals. They are very clear.

You said that you've been involved with these people. I think you've probably met some of them as well. They say, "Look, I'm victimized again when this person has the opportunity to get back out onto the street."

[*Translation*]

Mr. Marc Lemay: I have met with some of the victims' families and I can tell you that they are prepared before they appear in court. You have to pass the jury stage before the court in the district or place where the murder was committed.

I don't think anything should be changed in this system at all. It works very well and it looks after the victims before someone becomes eligible for parole, especially an individual who has committed a first-degree murder.

[*English*]

Hon. Rob Nicholson: I think one thing we can agree on....

[*Translation*]

The Vice-Chair (Mr. Brian Murphy): Mr. Minister, please make your answer brief.

[*English*]

Be very brief.

Hon. Rob Nicholson: Yes.

I'm glad there's one thing I know we can agree on. You said those witnesses are prepared. You bet they're prepared. Do you know what some of them tell me? They start thinking about it sometimes even two years in advance. They are trying to line up their relatives and their friends. I believe you're right: they do come very well prepared. That's part of the torture they go through, doing this part of the preparing. They're prepared, but it's a terrible experience for all of them. They've probably told you the same thing.

We do agree on that one. When they come before these hearings, they are always very well prepared. It's a terrible experience for them, but they all do their homework, the ones I've talked to.

The Vice-Chair (Mr. Brian Murphy): The last question in this last round, Minister, is from Mr. Woodworth.

You have five minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair.

Thank you, Minister, for appearing before us today to discuss this important bill.

Sometimes when I listen to opponents of bills like this, I get the impression that they just don't get it in terms of understanding that we're trying to look at things more from the perspective of victims than has previously been the case.

As a lawyer yourself and a student of the law, you'll know that historically, of course, our criminal justice system began over 1,000 years ago by way of the crown intervening so that victims didn't retaliate and take the law into their own hands. Instead, they were left with a sense of justice in the results the crown imposed.

I can't imagine what it must be like for a victim whose loved one has been murdered to go to court and hear the crown and the judge and everyone else say that the sentence is 25 years with no parole, and then find out afterwards that, oops, we were just fooling you; it's really 15 years with no parole. It must be like a kick in the gut, in my view. I can't imagine how unfair, how misleading, and how unjust that must seem to victims, and how cheated they must feel. I think the primary good thing I see in this bill is that this is not going to happen.

I know that this is a piece of law that can't apply retroactively. There are people who have committed crimes who are still, under this bill, going to get the benefit of the faint hope clause, because the crime happened before this bill was introduced.

I wonder if you could just tell us a little more about the improvements in the system for victims, even in cases where the crimes were committed before this bill was introduced.

● (1625)

Hon. Rob Nicholson: I think one of the very good things about this is that it adds some certainty for the victims. Rather than have a situation where the 15 years—and this is where Mr. Lemay and I agree. These people are very prepared for this, believe me. They are on top of this; they know when this matter could possibly be brought forward.

But an application doesn't have to be made at 15. It could be made at 15 and a half years, six months after that. It could be nine months; it could be after 16 years that they could make the application. There are no requirements for them at any particular time. So yes, they have to continue to be prepared at any time.

What this bill will do is say, look, you've got 15 years—and I was talking with one of my colleagues over there. They've got 15 years to prepare for this, to get their act turned around, and they've got a three-month window then to make the application. If they miss that, if they decide their situation is not one that should be before the courts, or they realize themselves that they have not been rehabilitated or they might be a danger to the public and for whatever reason decide not to make that application, they'll still have the opportunity at the 20th anniversary of their crime. Again, they'll have another three-month opportunity to do that.

So it provides some certainty. Again, I think this will be one of those things that will be welcomed by victims. But I thank you for your comments.

The Vice-Chair (Mr. Brian Murphy): One minute.

Mr. Stephen Woodworth: Just to put this in context, Minister, under the current legislation I had the idea or the impression that these faint hope applications—even if they are refused or if they are heard—can be raised again and again and again. Is it every two years?

Hon. Rob Nicholson: Yes, every two years.

Mr. Stephen Woodworth: So this will at least give victims a little more peace of mind for a longer period of time between applications. Is that correct?

Hon. Rob Nicholson: I couldn't have summed it up better myself, Mr. Woodworth. That's exactly what the case will be.

Mr. Stephen Woodworth: Thank you.

The Vice-Chair (Mr. Brian Murphy): Minister, your allotted time is up. All of us want to thank you for coming.

Hon. Rob Nicholson: Thank you very much.

Mr. Derek Lee: Mr. Chair, it's 4:27. The minister was scheduled to be here until 4:30 and I have two short questions.

The Vice-Chair (Mr. Brian Murphy): Well, I didn't get a question.

If I may, with the committee's indulgence.... What do you think, Minister—as your final two-and-a-half-minute question—about the argument that penitentiary officials, corrections officers, will be put in harm's way by virtue of the allegation that a person without hope, faint or otherwise, of obtaining parole might turn inside as more of an enemy of rehabilitation than a product of it? It's an argument that's been made, and we expect to hear evidence from corrections officials.

Hon. Rob Nicholson: I think what you'll hear from Correctional Services Canada is that they put a management plan in place to minimize the risk to themselves, to mitigate the opportunities for the individual to inflict pain on himself and others around him. So our system is well-equipped to handle individuals who may be of danger to themselves and to their fellow inmates and to the correctional services officers. I'm confident in the individuals that we entrust with the incarceration of people in this country.

Again, I will say finally that this is a bill that will be very much welcomed by the general public in Canada, in particular those victims who have had the unfortunate experience to become a victim at the hands of a murderer in this country.

The Vice-Chair (Mr. Brian Murphy): Minister, my BlackBerry reads 4:29 and some. I think you've discharged your duty. We appreciate you being here.

No objections from Mr. Lee or otherwise, I thank you for coming. We're going to ask the justice officials to stick around for questions.

It says 4:30 officially on my BlackBerry now, so we're good.

Thank you, Minister.

Mr. Lee, you have five minutes.

● (1630)

Mr. Derek Lee: I could have used the two, but I'll take the five.

Are we okay to proceed now?

The Chair: Mr. Lee.

Mr. Derek Lee: There are two additional small items I wanted to cover.

I want to ask if the provisions in the bill affect in any way the current judicial screening that is applied to parole applications by lifers between 15 and 25 years. These are the judicial screening, essentially the judicial permission sections of the Criminal Code now that must be met when a lifer makes an early application under the current faint hope clause. There must be a permission or decision of a judge that allows that application to proceed before it proceeds. I'm wondering if this bill affects those provisions in any way.

Mr. John Giokas (Counsel, Criminal Law Policy Section, Department of Justice): Yes, it will raise the threshold test. Right now, at stage one, which is applying to a judge, an applicant need only show a reasonable prospect of success. If Bill S-6 becomes law, that test will now be a substantial likelihood of success. This is a term that is found in two Criminal Code provisions in the Youth Criminal Justice Act and in other federal statutes.

Mr. Derek Lee: Thank you for clarifying that. I'm a little puzzled about why this wouldn't have been included in the list of retrospectivity contained in the statute. Are we not in fact changing that provision as well for lifers?

Mr. John Giokas: Yes, the Criminal Code will be amended to replace “reasonable prospect” with “substantial likelihood”.

Mr. Derek Lee: We have to be honest then. In terms of this bill importing retroactivity or retrospectivity, we have now found two situations, two retrospective or retroactive applications. One is in posing this relatively short 90-day window for applications, which didn't exist before, for people already convicted and serving life sentences, and the standard on the judicial screen has been altered, in effect raised beyond what it was before. Are those not retroactive changes to a sentencing regime that was in place for people previously convicted?

Mr. John Giokas: There's a distinction to be drawn between retroactivity and retrospectivity. I don't want to get too technical, but a retroactive application would change the substantive law. It would attach new legal consequences to something that's already happened in the past. In a sense, it would be changing the law as it was in the past. The minister stated during his speech that this is not permissible under the Constitution.

Instead, what we're doing is we're attaching new legal consequences in the future for events that occurred in the past, and these changes are procedural. I don't have the case law with me, but there is case law stating that this type of change, what we're calling a retrospective change, will pass constitutional muster.

Mr. Derek Lee: Thank you for clarifying it. You've done it very well, but they are retrospective in nature, and that's fully agreed on by the Department of Justice. Is that correct?

Mr. John Giokas: That's correct.

Mr. Derek Lee: With respect to the 90-day window for applications, where did the 90 days come from? Does anybody know?

Mr. John Giokas: The 90 days was considered to be a reasonable period of time to actually bring the application forward, but as the minister has explained, and as correctional officials will explain when they come here, prisoners are assisted well before the end of the 15th year to get their materials together. The three months is simply to file the application. They don't have to have the whole procedure done in three months.

● (1635)

Mr. Derek Lee: Who determined that 90 days was a reasonable period, given that it is retrospective in nature and that one might argue if it is not found to be clearly reasonable, it might be labelled or described as an arbitrary measure?

Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): With respect to most proposals for criminal law reform, we look at various options, and the model that was agreed upon was one that applied three months to being the application, 90 days, rather than guessing which particular three months applied. As my colleague indicated, that was considered to be a reasonable period of time for a person to bring the application for the process after a 15-year period or after waiting the further five years, given that the inmate has a great deal of lead time to start to gather the material they'll need for that application process.

Again, part of the rationale for having any time limit on it is so that once that period of time expires, all those other persons affected by that know that the application can't be brought then until the further five years.

The Chair: Your time is up.

Mr. Derek Lee: I'll come back.

The Chair: Yes.

Next we have Mr. Rathgeber for five minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair. Thank you to the witnesses for your attendance here today.

I certainly support this legislation, but I do have a couple of technical questions that you hopefully can help me with.

I'm having a difficult time wrapping my mind around how this legislation interacts with the International Transfer of Offenders Act. When my friend, Mr. Comartin, was questioning the minister, he cited a number of countries that have shorter average periods of incarceration for what Canadians call first-degree murder—and certainly even shorter than 15 years. I see in New Zealand it's 11 years; in Scotland, 11.2 years; and in Sweden, 12 years, and it goes on.

What would happen if an individual, a Canadian, were successful in applying to serve a sentence in Canada after being found guilty of what we would call first-degree murder in a foreign jurisdiction with a minimum sentence less than prescribed by the Canadian Criminal Code?

Mr. John Giokas: If the minimal sentence is less than prescribed by the Criminal Code, we go by the Criminal Code.

But we're talking here about a life sentence. There are two parts of the sentence. There's the actual life sentence and then the period of parole and eligibility that form part of the sentence.

The International Transfer of Offenders Act, as it reads now, gives transferred offenders the right to apply for parole after 15 years; they don't have to go through the faint hope process. The reason is that the faint hope process requires the application to be made in the jurisdiction where the murder occurred. In the case of a foreign offence or somebody who's been convicted of a crime abroad, that's impossible.

So the International Transfer of Offenders Act gives them a break and lets them go straight to the parole board. If Bill S-6 becomes law, those 15 years will change to 25 years, so they will serve 25 years without eligibility for parole, instead of the 15 years currently in the International Transfer of Offenders Act.

Mr. Brent Rathgeber: And that's the case even in a situation where an individual was sentenced to something other than life in the country where he or she was convicted for what we would call first-degree murder?

Mr. John Giokas: Well, the provisions we're referring to are provisions where somebody has been convicted of an offence abroad that would be first- or second-degree murder if it had been committed in Canada. So they may not describe it that way abroad, but if it's equivalent, then for our purposes it is first- or second-degree murder.

Mr. Brent Rathgeber: Okay. Thank you. That clarifies one of my questions.

The second one is with respect to retroactivity. I understand fully that individuals who are currently serving life sentences will, for the most part, be unaffected by this legislation, at least with respect to the time in which they can apply. But there are some changes with respect to windows, the 90-day window, and then the time after an unsuccessful application when they can reapply.

Has the department done research on potential charter challenges regarding those procedural retroactive issues that might be faced by this legislation, assuming it gets passed?

● (1640)

Ms. Catherine Kane: Yes. As with all legislation, we look at the charter implications of it. The minister would not be tabling legislation if he had any reservations about the charter viability of this legislation.

Mr. Brent Rathgeber: Are you familiar with what the defence might be to any charter issues regarding these procedural changes that current lifers would be facing once this bill becomes law?

Ms. Catherine Kane: Well, every charter challenge will perhaps be unique in terms of what's asserted and what grounds are asserted. We assume that charter challenges would perhaps be based on this being cruel and unusual punishment or another provision of the charter. We're confident that a defence can be mounted that this is a reasonable limit on any possible infringement of the charter.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

The Chair: Thank you.

Is there anyone else on the government side? We have two more slots.

Mr. Dechert.

Mr. Bob Dechert: Sure. Thank you, Mr. Chair.

Perhaps I could direct this question to either Ms. Kane or Mr. Giokas.

Mr. Comartin and others have mentioned that in a number of other jurisdictions, the average time that murderers spend in prison differs from that in Canada. I'm wondering if you could give us a sense of some of those countries—in Europe, Asia, and South Asia—and perhaps just give us a sense of where Canada sits in the range.

Mr. John Giokas: I don't have those figures with me. I can tell you, though, that in those countries a sentence of life imprisonment is life. So what we're really talking about is when they are released from custody, the average figure for a number of jurisdictions—and unfortunately I am unable to list them—is something like 15 years of custody. In Canada the figure that has been cited is 28.4 years of custody for murder, prior to being released.

Mr. Bob Dechert: Do you have any data on China or India or the Philippines, any of those countries?

Mr. John Giokas: Some of the jurisdictions are a little difficult because they maintain the death penalty. So that tends to skew matters. But as I said, I don't have the data with me, but we certainly do have data.

Mr. Bob Dechert: Okay.

Ms. Kane, do you have anything to add to that?

Ms. Catherine Kane: No, but if the committee wants that information, we can undertake to provide it to them to the extent we can.

Mr. Bob Dechert: Okay. Thank you.

I guess what I'm hearing, Mr. Chair, is that Canada is a bad place to commit a murder, and that's okay with me.

Thank you.

The Chair: All right. Anyone else on the government side?

Mr. Petit, and then we'll go to Mr. Lee—I believe he wanted to continue—and then we'll go to Mr. Lemay.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Mr. Giokas, you used the terms "retroactive" and "retrospective" in your testimony. We know that, in law, retroactivity means that legislation does not go back or at least does not affect people. I am either not able to understand your testimony or I am missing something. Could you tell us what that means in terms of legislation?

Mr. John Giokas: Yes, I can explain it in two sentences. Retroactive legislation changes the substance of the legislation in the past. Retrospective legislation changes the procedure from the time an act enters into effect. So it does not change the substance of legislation in the past. We can say that retroactive legislation affects the substance and retrospective legislation affects the procedure.

Mr. Daniel Petit: Thank you.

[*English*]

The Chair: Thank you. We'll move on to Mr. Lee.

Mr. Derek Lee: I just have a quick question about the title of the bill.

In clause 1 it says "Serious Time for the Most Serious Crime Act". It doesn't really refer to the sections of the Criminal Code at all. One still has just as foggy a notion about what the bill is aimed at as one would have from reading the bill as it is described on the order paper, "An Act to amend the Criminal Code and another Act".

Does the Department of Justice take ownership of this bill title, or is it just something that gets dropped in between Sussex Drive and Wellington Street?

● (1645)

Ms. Catherine Kane: The title of the bill is part of the drafting process. The title of the bill must bear a link to the contents of the bill.

Mr. Derek Lee: That would be helpful here, but "Serious Time for the Most Serious Crime Act"...you could say that about the whole Criminal Code. It's okay; you probably aren't able to link this with any specificity to the provisions of this bill, which deal with parole eligibility and parole eligibility dates and the process for applying for parole by those convicted of murder.

Ms. Catherine Kane: The thrust of the bill is to ensure that those who are convicted of the most serious crime, being murder, are detained in custody for a longer period of their life sentence. So there is that link.

Mr. Derek Lee: That's what "serious time" means then—"serious"? I'll accept that. That was a serious question.

Thank you, Mr. Chairman.

The Chair: We'll move on to Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Was section 745.01 abolished?

Mr. John Giokas: Excuse me...

Mr. Marc Lemay: I would like my colleagues opposite to read it. I have here the 2011 version of the Criminal Code and it seems to me that this section is still in effect.

Mr. John Giokas: Are you talking about what the judge must say when the sentence is passed?

Mr. Marc Lemay: That's right.

Mr. John Giokas: It will continue to apply. As you well know, people are waiting because the system is clogged.

Mr. Marc Lemay: Exactly. So, someone who is convicted of first-degree murder gets a life sentence, end of story.

Mr. John Giokas: Yes.

Mr. Marc Lemay: But, after the reading, we like to say that an individual becomes eligible because, under section 745.01 of the Criminal Code, the judge must read it.

Mr. John Giokas: Yes, that's it.

Mr. Marc Lemay: It is good to read a little, and that's what the governing party and the Liberal Party should do from time to time. Section 745.01 reads as follows:

> 745.01 Except where subsection 745.6(2) applies, at the time of sentencing under paragraph 745(*a*), (*b*) or (*c*), the judge who presided at the trial of the offender shall state the following, for the record:
>
> The offender has been found guilty of (*state offence*) and sentenced to imprisonment for life. The offender is not eligible for parole until (*state date*). However, after serving at least 15 years of the sentence, the offender may apply under section 745.6 of the *Criminal Code* for a reduction in the number of years of imprisonment without eligibility for parole...

In the Criminal Code, no victim's family is taken by surprise. It is already in the Criminal Code.

Mr. John Giokas: That's right. That's why it is in the Criminal Code.

Mr. Marc Lemay: That's why it is there. It must be reread and the judge must read it.

Mr. John Giokas: Yes.

Mr. Marc Lemay: That being said, we must understand that not every criminal who is sentenced to 25 years of imprisonment is necessarily eligible for parole.

Do you have the latest figures since April 9, 2009, on parole applications submitted by individuals convicted of first-degree murder. I had 265. Are there more than that?

● (1650)

Mr. John Giokas: The most recent figures are from March 7, 2010. We are talking about 276 people.

Mr. Marc Lemay: You are saying that 276 people filed an application.

Mr. John Giokas: Yes.

Mr. Marc Lemay: Of those 276 people, how many have received a reduction in the time without eligibility for parole?

Mr. John Giokas: I have three figures.

Mr. Marc Lemay: We will go slowly, but it is important. I think my colleagues opposite—

Mr. John Giokas: Establishing the date of the numbers is very important.

Mr. Marc Lemay: Yes.

Mr. John Giokas: The most recent numbers that I have indicate that 148 people had their sentence reduced.

[*English*]

Mr. Marc Lemay: That is 148.

[*Translation*]

You are saying that 148 people had a right to a reduction in the time before being eligible for parole.

Mr. John Giokas: These figures date from April 25, 2010, and are provided by the Correctional Service of Canada.

Mr. Marc Lemay: What are the other figures you have?

Mr. John Giokas: They also come from the Correctional Service of Canada, but, as I said, the date when we establish the numbers is important. As to the application rate, the total—

Mr. Marc Lemay: Yes.

Mr. John Giokas: That's the total from March 7, 2010. I have more recent numbers, but they have not changed; we are still talking about 276 people.

Mr. Marc Lemay: Of those 148 people as of April 25, 2010, has anyone reoffended?

Mr. John Giokas: According to the information I have, 13 people have re-offended.

Mr. Marc Lemay: Thirteen have re-offended.

Mr. John Giokas: Nine of them had been granted parole, and two were on what we call day parole.

Mr. Marc Lemay: Did any of those individuals re-offend by committing first-degree murder?

Mr. John Giokas: No.

Mr. Marc Lemay: By committing second-degree murder?

Mr. John Giokas: No.

Mr. Marc Lemay: By committing manslaughter?

Mr. John Giokas: No.

Mr. Marc Lemay: Were any of those individuals serving a longer sentence, or had any of them committed a crime warranting a prison sentence of at least 10 years?

Mr. John Giokas: I don't know.

Mr. Marc Lemay: Could you—

Mr. John Giokas: I have the figures regarding prisoners released by the National Parole Board. However, I don't have any figures on their sentences.

[*English*]

The Chair: Time is up.

[*Translation*]

Mr. Marc Lemay: I'll get back to this matter later.

[*English*]

The Chair: Maybe.

Mr. Comartin.

Mr. Joe Comartin: Out of the 13, you had 11 that were basically parole violations, minor infractions of their attendance at work or abstinence from alcohol, those kinds of things.

Mr. John Giokas: That's my understanding. There were 11 for non-violent offences, breach of condition.

Mr. Joe Comartin: On the other two, I understood one was a violent offence involving a robbery and the other one was a theft of some sort.

Mr. John Giokas: No, it was an assault with a weapon. There were two violent offences: robbery, and the second one was assault with a weapon. As I said, I don't know what sentences they received for those separate offences. I just know their parole was revoked.

Mr. Joe Comartin: Okay.

I'm a bit surprised at the figure of the 276 applications, because last year when we got the numbers from Mr. Head, at that point there had only been 174 applications with the information he gave us. Is Correctional Service Canada your source for this information?

Mr. John Giokas: Yes, but the 174 Mr. Head referred to at that time were people who had gone to stage two and appeared in front of a jury. These are people who got past stage one.

The 276 figure I gave are the people we know who have applied at stage one. We know that of those people...last year it was 174, and now the figure I have is 181 who actually got past stage one.

● (1655)

Mr. Joe Comartin: Okay. As the minister put it earlier today, even with this low standard, the judge at the initial stage found about 100 that didn't even meet that low standard. They were basically frivolous applications. He weeded those out, so the victims knew early on they weren't going anyplace. The victims are notified both of the initial application and the result of that initial application.

Ms. Catherine Kane: Yes, and they are allowed to have input to that early application as well, so they would have known at the time that the judge didn't permit it to go on to the second stage, that it wasn't proceeding at that time, but it leaves open the possibility that another application will be brought.

Mr. Joe Comartin: In fact, again with the information we had from Mr. Head last time, of the 174 first applications, four applied a second time. That was it. Nobody applied a third time.

Ms. Catherine Kane: If that's his information, I'm sure that's correct. We don't have that specific—

Mr. Joe Comartin: You didn't get that information on this round.

I have a quick question on foreign transfers.

We're going to have this result—if you can agree with me—that if this bill goes through, those people who can get out on parole in other countries in that 10- to 15-year range are going to be able to come back to Canada with no supervision at all. Is that right? That's going to be the consequence of this bill, unintended, of course, but it's going to be the consequence.

Ms. Catherine Kane: No.

Mr. Joe Comartin: They're going to serve out their sentences. They are going to get early parole in all those other jurisdictions, because that is the average they get. Instead of spending time back here in Canada, initially in incarceration and then out on parole, they're going to come back as Canadian citizens to Canada and there is going to be no supervision of those criminals at all.

Mr. John Giokas: Well, I can't say that, because they're getting out on parole in the jurisdiction where they committed the offence, and I don't know what the conditions of their parole would be.

Mr. Joe Comartin: Come on. Those jurisdictions have no ability to supervise them in Canada, right?

Mr. John Giokas: But I'm assuming their conditions will be similar to ours, that they not leave the state or the province or the city without notifying—

Mr. Joe Comartin: You're more optimistic than I am. In fact, the reality is that most countries are quite happy to get rid of them and give them back to the country they came from.

Those are all the questions.

The Chair: Thank you.

We'll move over to Mr. Woodworth.

Mr. Stephen Woodworth: Thank you, Mr. Chair.

I wasn't sure what we were doing here. Perhaps I could give the first minute to Mr. Norlock, if that's all right, and then take the rest of my time. Would that be all right?

The Chair: It's fine, if he sticks to one minute.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): I'll do my best.

I want to go back to much of the questioning that has been put to our witnesses from the department here. Of course, there has been a lot of concentration on recidivism, a lot of concentration on what the accused.... But the minister was rather specific, I believe, and you can tell me if I'm wrong.

This is not about the accused. This is about the revictimization of the families and loved ones, and in many cases the community and the neighbourhood in which the murders took place. I think it needs to be said that there is no faint hope for the dead person or, in some cases, the dead persons. They don't get a chance to be reprieved from the grave and be with their loved ones again. They don't get a chance to have all of the care of the community to make them a better person. They're dead. Unwillingly, they had their life taken from them.

It's nice to pat the guy or girl who did it to them. This still opens the door for the person who sees the terrible thing they've done. Tell me if I'm wrong. If they have taken part, in prison, in all the programs to make them a better person, it does give them an opportunity to change their life on the outside of a prison instead of on the inside of a casket. Would you just confirm that this does not close the door to that?

Ms. Catherine Kane: The bill would preserve the opportunity for the inmate to apply for parole after serving 25 years. The 25-year period would start at the date of their arrest. So, yes, they would have opportunities to make an application to the parole board, and the parole board would receive it with all the information and apply all the standards that they use to determine if that person should be released into the community and on what conditions.

● (1700)

Mr. Rick Norlock: Thank you.

Mr. Stephen Woodworth: If I could now pick it up, I'd like to respond to the issue of section 745.01. I assume you're probably familiar with it. It is a statement that the judge is required to read on sentencing. One of the first things the judge has to say is “The offender is not eligible for parole until...”, and then a specified date, which in the case of murder is 25 years, so the offender is not eligible for parole for 25 years.

Then he goes on to say:

> However, after serving at least 15 years of the sentence, the offender may apply under section 745.6 of the Criminal Code for a reduction in the number of years of imprisonment without eligibility for parole. If the jury hearing the application reduces the period of parole ineligibility, the offender may then make an application for parole under the Corrections and Conditional Release Act at the end of that reduced period.

The Chair: Mr. Woodworth—

Mr. Stephen Woodworth: I just wanted to get that on the record—

The Chair: Mr. Woodworth, order.

In the future, you have to read that more slowly, because we have interpreters who are trying to keep up, and what you just did was virtually impossible to keep up with.

Mr. Stephen Woodworth: I'm sorry. I forgot about the translation.

In any event, let me summarize by saying there's a great long legal phrase, and what I'd like us to do before we're finished with this bill is to remember two things. First of all, we're not talking about the victim's family, because the victim's family are victims. They are suffering the loss of a loved one in a murder, and they are consumed by grief. Their emotions are upset and roiled, and they are not lawyers.

I maintain that having two contradictory statements placed before them by the judge is an inadequate way to communicate to them that the accused is not receiving 25 years without parole.

In any event, the other thing I'd like to ask about is the idea that faint hope reduces problems for prison guards. I wonder if you or the department have any statistics or any evidence that indicates there is a difference in the injuries or deaths to prison guards caused by persons who have faint hope for parole and those who have not.

Ms. Catherine Kane: I'll respond to both aspects, but with respect to your question regarding the prison guards, if the committee is intending to hear from officials at the Correctional Service, they would be best positioned to respond to that question. If you're not, we can undertake to get that information and provide it to the committee. But our colleagues at the Correctional Service do have that information about programs and safety measures for prison guards and what the safety record is.

Mr. Stephen Woodworth: For now, then, if you don't have the information with you, I'll defer the question and I'll wait to see where we go with the hearings.

Ms. Catherine Kane: On your other point with respect to the notice that the judge reads out in section 745.01, that is a lot for a victim to absorb. As some of the committee members may recall, those amendments were included in a bill in 1999 that made a lot of victim-related amendments. Among those, the best route at the time to deal with some of the concerns about faint hope was to make sure that although it does seem a very formal way to provide the notice, there was at least some way for the record to indicate and for the victim to be able to access the information that it would be possible for the offender to bring the application after 15 years.

Other amendments were also made at the time to make it clear that the victim could have input at that stage and could also have input at the actual faint hope hearing, and of course victims also have input at the parole stage if it proceeds to that point.

From a program standpoint, we made other changes so that victims have ability to get financial assistance when they have to travel to faint hope hearings, and also when they have to travel to parole hearings. Over the years, many improvements have been made so that victims are supported in those processes, but it's been an evolutionary process to get victims the support they need for these difficult hearings. Although that seems awkward, it was a very necessary first step to start to make some progress to address victims' needs.

We can probably do better, and we do in the literature that we provide to victims now.

● (1705)

The Chair: Thank you.

We will move to Mr. Murphy and Ms. Jennings.

Mr. Brian Murphy: Just briefly, there is something we should probably do on every bill that talks about changing the amount of time people serve. I'm struck that we had debates here today, really, about whether it's the victims' code or the Criminal Code—it's the Criminal Code—and whether denunciation is more important than rehabilitation. If we would all take a good look at section 718, we all know it's a balancing act. There are all the principles of sentencing at play in this debate, which has been good.

My question is this. It seems that the impact of this bill will be longer periods of incarceration for a group, a subset, of the prison population. Perhaps this could be deferred to Corrections, too, but is there any way of calculating what that might cost? If it's not dollars, in terms of man years or person years, is there any way of calculating that based on the past experience of applications that were successful, etc.?

You don't have to answer that now, but if there were an answer or an analysis, we'd appreciate getting it through the clerk.

Mr. John Giokas: Assuming that Bill S-6 is passed into law, there will be no implications for 15 years, because that will be the length of time that people will have to wait...well, 16 years, till the anniversary of their 15th year.

After that it's difficult to predict. We have been unable to get accurate predictions because there are a number of other variables at work: a declining murder rate, an aging prison population. So we don't know, 15, 20, 25 years down the road, what the population in the prisons will be.

This is a question we've been asked many times, and that's the best response we can come up with right now. I'd suggest, if corrections officials come, that they be asked if they have better estimates.

Mr. Brian Murphy: Thank you.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: Yes. I have two things, very briefly.

One I raised with the minister, and he confirmed that in fact since January 9, 1997, an inmate who has been convicted of one or more murders where at least one of the murders was committed after January 9, 1997, may not apply for a review of his or her parole ineligibility, period. That's the faint hope clause. So that means any individual, including individuals who may have been found guilty this year of more than one murder, and of those murders, at least one of them was committed on or after January 9, 1997, does not benefit from the faint hope clause as it now exists in the Criminal Code. Is that correct?

Ms. Catherine Kane: That's correct.

Hon. Marlene Jennings: And Bill S-6 does not change that. Is that correct?

Ms. Catherine Kane: That's correct.

Hon. Marlene Jennings: Thank you.

The second point I want to raise has to do with the question that I believe Mr. Murphy asked, which was about the costing. According to our parliamentary researchers, and I believe the minister actually confirmed it, if someone was eligible—they were found guilty, the bill came into effect now—they would have theoretically five chances in which to apply for the faint hope clause under the Criminal Code as it now stands: seventeen years, five years later, five years later, up to twenty-three, and then at twenty-five they can apply as well—regular parole.

Ms. Catherine Kane: They may apply every two years now.

Hon. Marlene Jennings: Sorry, every two years, which is why it's five times. It's theoretically five times between the 15th year and the 25th year.

Ms. Catherine Kane: Correct.

Hon. Marlene Jennings: Under this bill, it would be two times only, as a maximum. Is that correct?

Ms. Catherine Kane: Year 15, if not successful, year 20....

Hon. Marlene Jennings: And then at year 25 it's the regular parole they would be able to apply for.

So why is it that you're not able to calculate, then, what a projected costing would be?

Ms. Catherine Kane: Maybe we misunderstood the question. We understood the question to be the costs for Corrections of the additional time for offenders who would otherwise perhaps be eligible for early parole and be supervised in the community rather than being detained in custody.

Hon. Marlene Jennings: Yes, but normally you should be able to. If you base it on the statistics you now have in hand, of the total number of offenders who, under the current Criminal Code, could benefit, could be eligible for or were eligible for the faint hope clause and actually applied, what percentage actually received faint hope? And then on the number who violated their conditions and were sent back, you could actually run a program that would allow you to project, within a certain margin of error, how many would be rejected and therefore would continue to serve. Corrections Canada knows how much it costs per day, so theoretically you can in fact give a number, work up a number of the projected costing based on the statistics that you already have. Is that correct or not?

● (1710)

Ms. Catherine Kane: Our colleagues at the Correctional Service of Canada use a variety of strategies similar to what you've described, looking at past experience, to forecast the impact. However, as my colleague indicated in this case, there will not be any impact for the next 15 years.

In terms of the incarceration costs, again, if colleagues from Correctional Services are appearing, they would be better placed than we are to indicate how they deal with that. Their planning is always more than just the numbers. There are so many factors that come into play about where people are housed and the programming they need and so on.

Hon. Marlene Jennings: Thank you.

The Chair: We're out of time. Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Giokas, I believe that we did not finish our discussion.

At this time, how many prisoners are serving a life sentence in Canada? Do you have the latest figures? If you do, when are they from?

Mr. John Giokas: No, I don't have them.

Mr. Marc Lemay: Could you get them to us?

Mr. John Giokas: Yes.

Mr. Marc Lemay: Do you know how many prisoners will likely be eligible for early parole?

Mr. John Giokas: Yes I do. In April 2010, 1,062 prisoners were eligible to apply for parole under the "faint hope" clause.

Mr. Marc Lemay: You said that there were 1,062 of them.

Mr. John Giokas: As of April 12, 2009, 4,955 prisoners were serving a life sentence.

Mr. Marc Lemay: As of when?

Mr. John Giokas: As of April 12, 2009. Those figures were provided by the Correctional Service of Canada. At that time, 4,955 prisoners were serving a life sentence in Canada.

Mr. Marc Lemay: Out of those 4,955 prisoners, 1,062 were eligible—

Mr. John Giokas: Yes, one year later, on April 10—

Mr. Marc Lemay: —2010—

Mr. John Giokas: —2010, 1,062 prisoners were eligible to apply for parole under the "faint hope" clause.

Mr. Marc Lemay: As of April 25, 2010, only 148 of those 1,062 prisoners had been granted a reduction in the number of years of imprisonment without eligibility for parole.

Mr. John Giokas: These are Correctional Service of Canada figures.

Mr. Marc Lemay: Very well. How many of the 148 prisoners who were eligible for a reduction in the number of years of imprisonment without eligibility for parole have been released?

Mr. John Giokas: According to the Correctional Service of Canada, 135 of them have been released.

Mr. Marc Lemay: When is that figure from?

Mr. John Giokas: It's from April 25, 2010. I would like to repeat that these figures were provided by the Correctional Service of Canada.

Mr. Marc Lemay: Okay.

● (1715)

[*English*]

The Chair: Mr. Dechert, are you finished?

Mr. Bob Dechert: Yes.

The Chair: All right.

I want to thank our witnesses, Mr. Giokas as well as Ms. Kane, for spending their time with us this afternoon.

We are now going to move to another bill, Bill C-389.

Rather than suspending, I would ask you to focus your attention on Bill C-389, clause by clause.

As a reminder to everybody, we have scheduled a delegation from Namibia for an hour after this meeting. Those of you who can stay, please stay. It's a good opportunity to exchange information on our relative and respective justice systems.

How do you want to proceed from here? We have the bill in front of us.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, as a result of discussions I've had with the government side, I'm proposing that we deal with this clause-by-clause immediately. I have a motion to carry that out, which I would ask to be able to present at this point.

The Chair: Please do.

Mr. Joe Comartin: It would simply read this way: that the title and clauses 1 to 5 inclusively of Bill C-389 be adopted, and that the chair be ordered to report the bill to the House.

I've checked this with the Table in the House, and this would be an acceptable procedure.

Mr. Chair, that's what I would propose we do at this time.

The Chair: All right, Mr. Comartin.

I'm advised, first of all, that there are only four clauses to carry rather than five. Apparently they were misnumbered.

Mr. Joe Comartin: Not in my version of the bill.

Oh, I see what's happened.

The Chair: If you look at your version of the bill, you will notice there's a 3 where there shouldn't be.

Mr. Joe Comartin: Yes.

The Chair: So the clauses you have shown as 4 and 5 should show 3 and 4, on the next page.

I'm assuming your motion was intended to reflect that.

Mr. Joe Comartin: It is, Mr. Chair. I'm sorry.

The Chair: I'm also advised that apparently the bill has to be dealt with clause by clause. With the unanimous consent of the committee, we could do it under one motion, but I would need unanimous consent from everyone at the table.

You've heard Mr. Comartin's motion. Are you prepared to deal with it with one motion, or do you want to deal with it clause by clause?

Mr. Murphy.

Mr. Derek Lee: No.

The Chair: Mr. Murphy, go ahead.

Mr. Derek Lee: No.

Mr. Brian Murphy: I guess it's not unanimous.

The Chair: So it's not unanimous, Mr. Lee.

Mr. Derek Lee: No.

The Chair: All right. Then we'll have to deal with it clause by clause.

Mr. Derek Lee: I don't see that there's a major time problem here. I'm a little bit confused about why we want to deal with it in just one motion.

I have a question about the bill, and I want to get it on the record, so let's not waste time.

The Chair: All right. Please get it on the record.

Mr. Derek Lee: Okay. Mr. Siksay is here.

The amendments to the Canadian Human Rights Act that his bill proposes use fairly normal English and French words, as far as I can determine. But there isn't anywhere in the bill, although there may be in his possession, what I would call a definition or a description of the terms he is inserting into the bill. The two terms are “gender identity” and “gender expression”. In the absence of a dictionary nearby to explain them, he might well be able to do this, because there may well be out there what I would call generally accepted definitions or explanations of those terms. We just don't have them here on the record. They may have been given at second reading. I don't know.

If he could just go through those quickly, that would probably satisfy me and the record.

● (1720)

The Chair: Just for the record, we've invited Mr. Siksay to be here. He won't be voting.

Mr. Siksay, do you want to respond?

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair, and I appreciate being able to be here today.

With regard to the issue of definitions, I think if you look at the Canadian Human Rights Act, you will find that most of the prohibited grounds of discrimination aren't defined in the act, and that's intentional. They're intended to be living definitions that look to common usage and to other jurisprudence. That's why there aren't per se definitions included in this private member's bill.

For the interest of Mr. Lee and others, there are a number of definitions of gender identity and gender expression. One that I use more often than not is that gender identity has been defined as an individual's self-conception as male or female or both or neither, as distinguished from one's birth-assigned sex. The Yogyakarta Principles, which is an international document, a United Nations document, that's well known in human rights circles, defines gender identity as referring to:

> each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

The definition I generally use for gender expression is that gender expression refers to how a person's gender identity is communicated to others through emphasizing, de-emphasizing, or changing behaviour, dress, speech and/or mannerisms.

The Chair: Thank you.

We'll go back to Mr. Comartin's motion. If I have to, I'm going to....

Sorry, go ahead, Mr. Lee.

Mr. Derek Lee: Mr. Chair, I didn't get a chance to thank Mr. Siksay for putting that on the record.

The Chair: You may, if you wish.

Mr. Derek Lee: Thank you.

The Chair: Back to Mr. Comartin. I would have to rule that out of order, unless we move to clause-by-clause the routine way, unless Mr. Lee wants to change his mind.

Mr. Derek Lee: Well, I'm going to object. It's easy to do this, because we have to amend the bill anyway to put back clause 3.

We don't have to do it. Will it be renumbered automatically?

The Chair: Yes.

Mr. Derek Lee: What's the wording of the motion?

The Chair: Mr. Comartin, do you want to read that again with the change reflected?

Mr. Joe Comartin: Yes.

I move that the title and clauses 1 to 4 inclusively of Bill C-389 be adopted, and that the chair be ordered to report the bill to the House.

The Chair: All right.

Mr. Derek Lee: Okay. There's the motion.

Is there debate?

The Chair: Do you wish debate?

Mr. Derek Lee: I do, because Mr. Comartin, with great respect, refers us to clauses 1 to 4. The bill we have in front of us has clauses 1, 2, 4, and 5. So the motion doesn't match the bill we have in front of us. If Mr. Comartin wishes to change his motion to read “clauses 1, 2, 4, and 5”, then his motion would match the bill.

The Chair: Mr. Comartin.

Mr. Joe Comartin: If I could change the wording to “clauses 1 to 5 inclusively, as corrected”, would that take care of the problem?

Mr. Derek Lee: I'm agreeable to that.

The Chair: Thank you.

What's your wish? Do you want this on division?

Mr. Bob Dechert: Yes, please.

The Chair: Just for the record, the bill is carried on division.

Hon. Marlene Jennings: Mr. Chair, I asked for a recorded vote, please.

The Chair: You want a recorded vote?

Hon. Marlene Jennings: Yes, I do.

The Chair: I'm advised that the request for a recorded division has to happen before the vote takes place or it's agreed that it's on division.

● (1725)

Hon. Marlene Jennings: It did.

The Chair: What did?

Hon. Marlene Jennings: I asked for a recorded vote right after you said “on division”.

The Chair: No, I heard “on division” over here, and then—

Mr. Brian Murphy: He's not the chair.

The Chair: No, he isn't.

Hon. Marlene Jennings: I asked for a recorded vote.

The Chair: Okay. We'll take a recorded vote.

Hon. Marlene Jennings: Thank you.

Mr. Bob Dechert: Mr. Chair, if I could ask for one clarification, what is the chair's view of the use of the word “adopted” in terms of the motion, that the clauses be adopted and the bill be reported to the House?

The Chair: I'm not sure we have to get into the word “adopted”, because all of the clauses have been carried. I'm assuming that after the recorded vote, one way or another, we assume there will be a result, so I'm not sure the word “adopted”—

Mr. Bob Dechert: The word “adopted” is part of the bill, I assume is what it means.

The Chair: “Adopted”, which would be “carried”—

Mr. Bob Dechert: That is, “adopted” is part of the bill.

The Chair: Yes, although the term that is customarily used at this table would be “carried”.

Mr. Bob Dechert: Okay.

The Chair: Could I have the actual motion read back?

Mr. Joe Comartin: It reads that the title and clauses 1 to 5 inclusively, as corrected, of Bill C-389 be adopted, and that the chair be ordered to report the bill to the House.

The Chair: We'll call the recorded vote.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: We're adjourned.

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