House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 035 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, November 16, 2010

Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

Tuesday, November 16, 2010

● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting number 35 of the Standing Committee on Justice and Human Rights. Today is Tuesday, November 16, 2010.

You have before you the agenda for today. You'll notice we're continuing our study of Bill S-6, An Act to amend the Criminal Code and another Act, essentially dealing with the faint hope clause.

Just as a note for committee members, I'm hoping to leave a little bit of time at the end of the meeting to deal with Mr. Dechert's motion. I believe it was properly tabled, so he's open to having it discussed at the end of this meeting.

We have two panels today on Bill S-6, and the first one will be for an hour.

I want to welcome our witnesses. First of all, we have, representing Correctional Service Canada, Mr. Don Head. Welcome back to our committee.

We also have a National Parole Board representative, Marie-France Pelletier. She is the executive vice-chairperson. Welcome.

Finally, we have the Barreau du Québec, represented by Gilles Trudeau. Welcome to our committee.

Each of you has up to 10 minutes to present, and then we'll open the floor to questions. If you finish early, that's great. The more time we have for questions the better.

Why don't we start with Mr. Head.

Mr. Don Head (Commissioner, Correctional Service of Canada): Thank you, Mr. Chair. I'll actually try to keep my comments under the 10 minutes.

Good afternoon, Mr. Chair and committee members. Thank you for providing me the opportunity to come before you today to discuss Bill S-6, which will eliminate the faint hope clause.

As you may recall, I appeared before you one year ago to discuss Bill C-36, which sought to achieve the same objective, and that is to eliminate early judicial review for those convicted of the most serious offences. Today I will cover two key areas in my introductory remarks, and of course I will then be happy to answer any questions you may have for me.

First I'd like to provide you with some key statistics related to our population of offenders serving life sentences who would be affected by this proposed legislation. Then I would like to provide you with a quick overview of Correctional Service of Canada's processes for supporting the courts when an offender decides to seek judicial review.

With respect to numbers, as of October 10, 2010, there were 1,508 offenders with cases applicable for judicial review. That is, they were eligible to apply to have their parole eligibility date modified. Historically, since the first judicial review hearing in 1987, there have been a total of 181 court decisions. Of these cases, 146 of the court decisions resulted in a reduction of the period that must be served before parole eligibility, and 35 resulted in a refusal.

Of the 146 offenders who have had their parole eligibility dates moved earlier, 144 have now reached their revised day parole eligibility date and 135 have been granted parole. Of these 135 offenders, 68, or about half, had no issue during supervision; 35 received a suspension but were not subsequently revoked; and 23 had their parole revoked. Seven of the 135 reoffended in a non-violent manner and two reoffended violently. Of the two offenders who reoffended violently, one was found guilty of two counts of assault with a weapon and one count of assault use of force, and the other offender was found guilty of one count of robbery.

While we're on the topic of numbers, I should also note that the proposed changes to the International Transfer of Offenders Act would have a minor effect with respect to judicial review. Of the more than 1,500 offenders who have been transferred back to Canada since the legislation came into force in 1978, only 28 were individuals serving life sentences. Of these, only nine are serving sentences for first-degree murder. Of the 300 active cases that we are currently reviewing for potential transfer back to Canada, only seven offenders would potentially have first-degree murder sentences. And I say “potentially” because international legal parallels are complicated, and each case has to be reviewed by legal experts to ascertain the appropriate equivalent sentence in Canada. All this being said, we would expect a negligible impact in Canada, as other jurisdictions as a general rule are extremely reticent to allow international transfers for what we could consider first-degree murder.

With respect to how Correctional Service Canada supports the judicial review process, this is governed by "Commissioner's Directive 710-5: Judicial Review". Twelve months before the offender's judicial review eligibility date, an institutional parole officer, or primary worker in the case of women offenders, would meet with the offender to determine whether he or she intends to submit an application. In addition, our staff would advise the offender at that time of their responsibility to engage legal counsel.

Our staff also works with the offender to facilitate a transfer to the jurisdiction where the hearing will be held if the offender requests the move. Alternatively, participation at judicial review can also be accomplished through escorted temporary absences. In addition, staff would advise him or her to request access to their file through access to information, so this can be shared with their legal counsel. Furthermore, the parole officer or primary worker ensures that a psychiatric and/or psychological assessment is completed in the 12 months leading up to the application, as well as a judicial review report.

● (1535)

The judicial review report follows the form we use for determining parole eligibility. It covers six areas: the offender's social, family, and criminal background; his or her sentence administration dates; summary of transfers and any disciplinary actions; summary of the offender's performance and conduct; any assessments done by psychiatrists, psychologists, or elders; and, finally, the offender's personal development.

As you can see, CSC provides an invaluable contribution to the process that determines whether an offender is a suitable candidate for parole, whether that be through judicial review, as is the subject of this proposed legislation, or normal avenues for release.

As always, public safety is our paramount consideration. The offenders in our care all come from communities across this country and most will return there. It is the job of the Correctional Service of Canada to manage their sentence from the day they enter our facility, through their incarceration, and out into the community. We do so with a constant eye to achieving good correctional results for Canada and Canadians.

Mr. Chair, committee members, I thank you for your time, and I look forward to answering any questions you may have.

The Chair: Thank you.

I will move to Ms. Pelletier.

[*Translation*]

Ms. Marie-France Pelletier (Executive Vice-Chairperson, National Parole Board): Thank you, Mr. Chair. I would like to thank you for the opportunity to appear before you in connection with your consideration of Bill S-6, An Act to amend the Criminal Code and another Act.

I would first like to tell you a little about us at the National Parole Board. The Board is an agency within Public Safety that reports to Parliament through the Minister of Public Safety. It is an arm's length, independent administrative tribunal. The Board is responsible for making quality conditional release decisions for offenders serving federal sentences of two years or more.

[*English*]

We also make conditional release decisions for provincial offenders serving sentences of less than two years in provinces without their own parole boards. As well, we make pardon decisions and clemency recommendations.

The board is made up of 45 full-time board members, when at full complement, and to ensure that we process our cases as mandated under law, we may also use approximately 45 part-time board members.

One of the main pieces of legislation governing the board is the Corrections and Conditional Release Act. The CCRA provides for principles to guide the board in conditional release decision-making, most notably that the protection of society be the paramount consideration in the determination of any case and that the board make the least restrictive determination that is consistent with the protection of society.

● (1540)

[*Translation*]

The Board must first determine whether the the offender will not present an undue risk to society before the expiration of the sentence. It must also determine whether the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender as a law-abiding citizen.

All decisions are based on an in-depth analysis of each case, and a through risk assessment based on all relevant and available information from police, courts, mental-health professionals, victims of crime, and others.

[*English*]

With respect to the faint hope clause, as we indicated to a Senate committee last June, the board has no role in the actual judicial review process itself.

If an offender's judicial review hearing is successful, impact on the board is minimal in that a positive judicial review decision results in adjusted parole eligibility dates. As you know, the offender is not automatically paroled. He or she must still undergo a hearing or a review.

Board members conduct a thorough risk assessment of all relevant available information, just as they would in any other parole case. If the board grants parole, the offender still remains subject to the original sentence imposed by the court, as well as to standard and, in some cases, special parole conditions.

Offenders paroled while serving a life sentence remain under Correctional Service Canada supervision for the rest of their lives, and they can have their parole revoked and be sent back to prison if they violate their conditions.

[*Translation*]

Judicial review cases are treated with the same rigour as other cases. Each case that comes to us is weighed on its own merits by independent Board members who receive intensive training on the requirements of the Corrections and Conditional Release Act, and in risk-based decision-making.

Thank you once again for inviting the National Parole Board to appear today and I will be happy to take your questions.

[*English*]

The Chair: Thank you.

We'll move to Monsieur Trudeau.

[*Translation*]

Mr. Gilles Trudeau (Director, Office of Criminal Affairs and Matters, Barreau du Québec): Good after noon, Mr. Chair, and members. I would first like to explain certain rules for how the Barreau du Québec operates and how it adopts its policies or positions.

With me today are Nicole Dufour and our articling student, François. I will be speaking on behalf of the Barreau du Québec.

The position I will be presenting today is the result of consultations held by a standing committee on criminal law at the Barreau du Québec. The members of that committee are professors, federal and provincial prosecutors and defence counsel. The Barreau du Québec does not take any position unless its criminal law committee has reached a consensus. So the comments I will be making represent the consensus in Quebec among professors, Crown prosecutors and defence counsel, and in our opinion this lends considerable weight to the Barreau's contribution.

We had the impression that the documentation provided to the Senate would be transferred to you; we have learned that this was not the case, so we will send the clerk of your committee the written position of the Bâtonnier du Québec.

Obviously, this is a reintroduced bill. The Barreau du Québec had taken a position when Bill C-36 was introduced, which is now called S-6. Given the extent of the amendments, we want to provide you with our comments.

The purpose of Bill S-6 is to amend the rules set out in sections 745.6 *et seq.* of the Criminal Code. If the proposed amendments are adopted, the bill that we knew as the "faint hope" clause will be eliminated for murders committed after this law comes into force and for individuals who are serving sentences. I will summarize it as follows: Parliament is deliberately complicating the application and eliminating judicial discretion, and is also using procedural subterfuges to introduce a mandatory 90-day deadline for making an application.

We would remind you of what Parliament's intention was when it enacted section 745.6. That provision followed on the abolition of the death penalty in 1976. For a person convicted of first degree murder, the sentence was then to be imprisonment for life with no possibility of parole before 25 years had been served. At the time, that parole eligibility period was described as a necessary compromise for abolishing the death penalty. The faint hope clause was then adopted to give the convicted person a glimmer of hope, to leave some incentive when such a severe punishment is imposed for the most serious crimes. It allows a convicted person to be granted parole before serving 25 years of their life sentence, if they show that they are capable of reintegrating into society and if they demonstrate good conduct in prison; I will add, exemplary conduct.

Given the possibility of the remission of what may be as much as 10 years of their sentence, an inmate has an incentive to mend their ways and adopt a course of conduct that will make their application for a reduction of the parole eligibility period more likely to succeed. The inmate is then better able to cope with the despair caused by sentencing someone to life imprisonment, because of the realistic possibility available to them of reintegrating into society before their life is over.

Considering that the objective of section 745.6 is to give a person convicted of murder a faint hope, to encourage them to change for the better, the Barreau du Québec wonders what motivates the government to deny the value of that objective. The Barreau du Québec has stated its views in the past on a bill with the same objectives, Bill C-45, which was introduced in 1994, at which time it stated that it opposed the proposed amendments to that section.

● (1545)

In the Barreau's opinion, the process set out in section 745.6 was working perfectly and did not need any legislative amendment. We believe it is still of the same opinion and the figures disclosed by Don Head prove very clearly that the system is working for people who are incarcerated for a serious crime. It is working, since out of the 4,000 and more people who have been imprisoned for sentences, ultimately only the most deserving have been able to pass the review, the review by a judge, first, and then by a jury. The jury is important here; it is the jury of the community where the offence took place, and it is they who are given the task of making the finding of guilt. They have the power, on behalf of the community, to allow the individual to apply to Ms. Pelletier so that hearings will be held in order that they might eventually be released.

The bill shifts the preliminary burden that the judge will have to consider and introduces the concept of substantial likelihood, when the burden is lower at present. That seems to us to be a way of further complicating the way this process is initiated, for a person who, notwithstanding the complete good faith of the Correctional Service, is an inmate who will have to make applications to obtain their files and deal with the delays and difficulty involved in obtaining complete documentation.

On that point, I know that the committee has heard the very eloquent testimony of Kim Pate, who told you about the maze she has had to navigate to help some women make their applications.

In *Vaillancourt v. Solicitor General of Canada*, the Supreme Court of Ontario held that the present review process struck a fair balance between the need to show clemency to a convicted person whose conduct while serving their sentence is good, which may contribute to their reintegration into society, and the interests of the community, which demands that the act that led to incarceration of the offender be denounced.

On that point, we want to draw your attention to the statistics. The Bâtonnier provided 2009 statistics; we have had the benefit of having up to date statistics. I also think those statistics speak volumes.

The Barreau is also concerned that the effect of the bill, if it is passed, will be to fetter judicial discretion. The Criminal Code provides only general guidelines that apply to the application, and under the provision of the Code the jury must make a decision based on the character of the applicant, their conduct while serving their sentence, the nature of the offence, and any other matters they consider relevant in the circumstances. That discretion is assigned to the jury. As well, when it refuses an application, the minimum time before making a new application would now be five years; currently, it is two years. This also fetters judicial discretion. The judge is the person in the best position to determine when a new application may be made. It would therefore be preferable to give the judge discretion to make five years the time for a new application, while making two years the minimum, rather than setting a mandatory minimum time of five years.

The Barreau du Québec is also concerned about the introduction of a mandatory 90-day deadline, when in many situations the person will have to apply for judicial review to the chief justice of the province in which the crime took place, which is often different from where they are incarcerated. So this is not a simple matter. It is so complicated, in fact, that there has been an agreement between the federal government and the provinces to ensure that legal aid schemes agree to pay a lawyer in each province. The file has to be transferred, and in some cases the records and documents have to be translated. While this is clear to us lawyers, it may be less clear for people who are not lawyers, in spite of the complete good faith on the part of the Correctional Service and the accused. In Quebec, we have a form about four pages long to be filled out to be able to make an application, which is examined by the Superior Court judge.

● (1550)

On behalf of the Barreau du Québec, I think that if the government's intention is to amend an Act to make sentences of imprisonment harsher, that is certainly not an intention supported by a criminological study of victims. We do not see how this bill could help victims; quite the contrary. We believe that in the Criminal Code as it now stands, all of the information needed for making victims feel safe and explaining the judicial process to them is there, specifically section 745.01, which requires that the judge read the sentence and, in passing sentence, tell the entire community that although the individual has been sentenced to imprisonment for life, they may, in certain cases and after a certain time, apply to a jury for the opportunity to apply for early parole.

Thank you.

[*English*]

The Chair: Thank you.

We'll move to questions.

Ms. Jennings, you have seven minutes.

[*Translation*]

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

I would like to thank the three witnesses for their presentations. I have a few questions to ask.

Mr. Head, if I am not mistaken, you appeared as a witness before this committee when the bill was considered during an earlier session of Parliament. At the time of the presentation you made in connection with that other study, were the figures the same as the ones you gave today?

[*English*]

Mr. Don Head: There has been a slight difference in the numbers, but that's just a result of a one-year change in the population.

[*Translation*]

Hon. Marlene Jennings: In the information you gave us today, there's nothing new, there isn't a new item, for example the possibility of saying that some have committed violent or non-violent acts, the nature of the violent acts, and so on. You were able to provide that information a little over a year ago, when you appeared before the committee.

● (1555)

M. Don Head: That's right.

Hon. Marlene Jennings: I don't know whether you have read the testimony given by Kim Pate concerning the complexity and difficulty of preparing an application for judicial review, a faint hope application. She said the Correctional Service provides assistance, but recently the time needed for filling out and completing the file to obtain the documents with the application has been much longer than before. She is really afraid of the consequences if the government does not agree, for example, to extend the 90-day deadline or to allow the judge to have discretion to extend the deadline in cases where the inmate has not been able to get all the documents needed.

Based on your experience, do you think the process is not easy? You say you are starting to provide assistance only 12 months before the date. So I would like to know what information you have about how much time it takes, about the complexity, and for you to tell us whether there has been a change, recently, in terms of the time it may take.

[*English*]

Mr. Don Head: Thank you for that question.

We start the process 12 months before the eligibility date in terms of engaging with the offender. At that time, we engage them in discussion as to whether they're going to make an application for that first phase of screening. And if they indicate to us that they are, then, as I mentioned, we advise them to seek legal counsel. We advise them to make the proper request through access to information to get their file documentation. Then we'll start to work on the judicial review summary report, which takes us about six to eight weeks of parole officer time to complete.

That would be done during that 12-month period. So if 12 months before the eligibility date the offender indicates that he or she is going to make an application, our parole officers will start that process of gathering the information and starting to do the reports.

One of the things we do in terms of making sure that there is no bias in the writing of the reports is ask a parole officer who has not worked directly with the offender to do the preparation of the judicial review report.

Hon. Marlene Jennings: Mr. Head, we heard that 90 days to prepare a request is simply unimaginable. Even a year, at times, is not sufficient, for a variety of reasons, such as the delay in getting legal counsel, for instance, or time for the inmates to get access to their actual files. In some cases, the inmates' files are locked elsewhere, and the inmates have to go through a process each time they wish to access their own files. We heard that even when legal counsel is found or assigned to an individual, getting documents through access to information....

We just heard from the Quebec bar that in many cases, or in a significant number of cases, these documents must be translated, and it's not just anyone who can translate the documents, because they have to be translated in a manner and by individuals who are certified so that the courts will accept them as being clearly representative.

So my question to you, given that you're a full party to accompanying the inmate, is whether 90 days is sufficient.

Mr. Don Head: Maybe as a point of clarification....

Hon. Marlene Jennings: Can you answer yes or no?

Mr. Don Head: I'm sorry, I have to add some clarification, because our understanding of the 90-day window is that the period of making the application is not necessarily the period of time required to do all the case prep. That's what we've been led to believe in terms of how this legislation has been written.

● (1600)

Hon. Marlene Jennings: Really? Well, Mr. Head, it's not spelled out in the legislation that the 90 days is simply to hand in a form and that the supporting documents can follow. So unless the minister is agreeable to an amendment that would actually clearly specify that, then what I'm getting from you is that 90 days is not sufficient.

Mr. Don Head: If the offender indicates the full year in advance that he or she is going to make application, there normally is enough time for that kind of work. There is absolutely no question, Madam Jennings, that for somebody who has been sitting in a penitentiary for 15 years, not all the files are readily available, and sometimes we have to go back and get them. But again, that's why it's that much more important that we engage the offenders to let them know that the sooner they let us know they are going to do that, the sooner they can seek legal counsel and the sooner they can make requests for their information. But if they wait a month before their parole eligibility date, then obviously there is not going to be enough time to get into that window.

The Chair: Thank you.

Hon. Marlene Jennings: Is my time is up?

The Chair: Yes, it is.

We'll go to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I'm just going to ask one question, Mr. Chair, because I may not have the time to come back. I will then leave it to my colleague to continue.

Mr. Head, I need a number; there is one missing in the wonderful documents you sent us. On October 10, 2010, how many prisoners with life sentences were there in Canada?

[*English*]

Mr. Don Head: The total number of individuals doing life was 4,774.

[*Translation*]

Mr. Marc Lemay: Wait a minute.

Mr. Don Head: There were 4,474.

Mr. Marc Lemay: You said there were 4,474?

Mr. Don Head: I'm sorry, there were 4,774.

Mr. Marc Lemay: Right, thank you.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Further to the question Ms. Jennings asked, you said that normally there would be enough time. But are there not exceptions, particularly for foreign citizens or aboriginal people?

[*English*]

Mr. Don Head: As you would know, Mr. Ménard, there's always the exceptional case, but the vast majority.... Again, it's really key, in order for us to fulfill our roles and our obligations, that the sooner the offender gives notification at the 12-month mark, the easier the process will be. There's no question that there will be the odd case that will be complicated for some reason, such as a foreign transfer in or the examples that you've used.

[*Translation*]

Mr. Serge Ménard: So to make the process fairer, it might be wise for the judge to have the discretion to determine whether there has actually been negligence, when the deadlines weren't met, and so to refuse an extension then, but to grant an extension in cases where the problems were outside the person's control.

Mr. Don Head: That's a possibility.

[*English*]

One of the things we could do administratively is to start our engagement with the offender two years in advance, if there were significant issues. Administratively, we could start the engagement with the offender even earlier. Using the one-year mark is a policy we've set within the organization. It's been that way for many years. We could adjust administratively when we start to engage the offender and start them thinking about that process.

[*Translation*]

Mr. Serge Ménard: Mr. Bâtonnier, you explained the expertise of the members who made up your criminal law committee very clearly. You said that it represented a consensus. You also talked about the track record of these provisions.

Did your committee have an opportunity to find a well documented opinion stating that the track record was negative?

Mr. Gilles Trudeau: First, I'm not the Bâtonnier, not yet.

● (1605)

Mr. Serge Ménard: Excuse me.

Mr. Gilles Trudeau: I am the representative of the Bâtonnier du Québec. To my knowledge, the standing committee on criminal law of the Barreau du Québec could not identify a single study showing that the system under consideration was not satisfactory or was having problems.

I told you about the requirements for making an application. From what I understand from the Correctional Service, an individual simply needs to make an application within the 90 days, with the documents. That is not what the rules of procedure say in Quebec regarding reducing the parole eligibility period. The application is defined in them, and these are 18 sections of regulations, with two schedules, in which a certain number of documents have to be provided and affidavits completed. I don't think I could appear before the Superior Court in Montreal and simply say that I am representing Mr. So-and-so, who was sentenced 15 years ago, and I want to make my application because I have complied with the 90 days, and say I will provide the rest. Rather, my impression is that the nice clerk will hand my pleadings back to me and tell me to complete my document, and when they have the documents, they will take them before the chief justice.

Mr. Serge Ménard: So that is another reason why it would be good for the time to be longer and for judges to have discretion.

Mr. Gilles Trudeau: Absolutely. We do not understand why procedure is placed above substance here. The substance is for an application is made that can be considered by a judge. The Barreau du Québec is aware of the efforts the Correctional Service makes, particularly in Quebec. In general, it may still work well in some cases, but I think the weakest people need to be protected here. So the fact that there is no time allowed or escape clause that would allow an applicant who is out of time to provide evidence that they were unable to act seems to us to be incomprehensible and unfair.

Mr. Serge Ménard: Ms. Pelletier, the ultimate decision is up to your Board, to allow partial release of inmates, under supervision. You say that the people who have to make that decision are independent.

Can you tell us something about these people's training and skills?

Ms. Marie-France Pelletier: Certainly. The people appointed as Board members come from a variety of backgrounds, to start with. In fact, the Act provides for this. The Corrections and Conditional Release Act tells us that the Board must be representative of the community. That is why Board members come from diverse backgrounds. That is why, when they become Board members, we have a very rigorous training process to bring the knowledge of people who come from different occupations up to the same level, if you will. We may have lawyers, police officers, teachers, nurses, people from the private sector, and so on. So as I said, we have a very rigorous training program. At the outset, new members are given training at both the national level and the regional level. They have at least five weeks of training, plus training on the ground, if you will, in the regions. As well, training isn't limited to that initial training. We offer our members ongoing training every year, again at both the regional level and the national level.

Mr. Serge Ménard: I'd like to know...

[*English*]

The Chair: *Merci.*

We'll move on to Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair, and thank you, witnesses, for being here.

Mr. Head, when some of the Justice officials were here, they gave us some figures on what I call the interim applications, the initial applications that are turned down. The figure they gave us—this was up to April 25 of this year—was that there had been 276 applications, including the 181 court decisions.

Are those figures accurate?

● (1610)

Mr. Don Head: Yes.

Mr. Joe Comartin: When the individual is approaching that year, before they're eligible to make their first application, and they decide not to, is there any notification that goes out to anybody? I'm thinking in particular of families of the victims of that murder.

Mr. Don Head: No.

Mr. Joe Comartin: Is there a policy not to do that?

Mr. Don Head: No. It's something we're looking at now with some of the other proposed legislative changes around information to victims.

Mr. Joe Comartin: Would that require a legislative change, or could you simply do it as a policy or as regulation?

Mr. Don Head: I believe it requires a legislative change, but I'd have to get back to you on that.

Mr. Joe Comartin: Who is looking at this type of amendment?

Mr. Don Head: It's within our department.

Mr. Joe Comartin: That is, within Corrections, not Justice?

Mr. Don Head: It's within Public Safety.

Mr. Joe Comartin: Do you have any idea when you'll come to a conclusion as to whether you're going to move with that legislation?

Mr. Don Head: Part of it is linked to Bill C-39. It has the amendments for information to go to victims.

Mr. Joe Comartin: For the ones who are denied at the interim application, have you kept statistics on how many are denied for the full ten years—that is, who can't apply until the 25 years are up—and how many have specific shorter days?

Mr. Don Head: We have a chart of those we know of for whom reductions occurred. Most of them appeared to be one-year reductions. Several had five-year reductions, but in terms of the ones with...no, we don't collect that data.

Mr. Joe Comartin: I'm sorry. Did you say the number that appeared was a one-year...? I don't understand the term “reduction”.

Mr. Don Head: I'm sorry. It's when they had their parole eligibility period reduced from 25 years to 24, or from 18 to 17; that's what I meant by reductions—after it's gone through the jury phase, phase two.

Mr. Joe Comartin: I'm sorry, I wasn't asking about the jury phase; I was asking about the interim phase.

Mr. Don Head: On the phase one, no, we do not collect that data.

Mr. Joe Comartin: Do you know whether the victims' families are notified when the interim application is turned down?

Mr. Don Head: Again, the....

Mr. Joe Comartin: That's not something—

Mr. Don Head: We do not do that as routine, no.

Mr. Joe Comartin: I'm not clear from both the briefing and the answer you gave Ms. Jennings: if a person says to you prior to one-year release eligibility that they're not going to apply, do you begin preparing that documentation anyway?

Mr. Don Head: No.

Mr. Joe Comartin: Okay. So what happens then? Do they have to come to you somewhere after—let's use the standard 15 years. Do they have to come to you then and advise you they now want to apply?

Mr. Don Head: There are two avenues that can occur. One is that they will come to us at a later point, or, just as part of normal case management engagements with the offender, the parole officer a year or two years down the road will engage the offender again and ask them if they have any interest in pursuing that.

Mr. Joe Comartin: Do you do that on an ongoing basis each year or so afterwards?

Mr. Don Head: Yes, but not necessarily as a matter of policy.

Mr. Joe Comartin: Just practice.

Mr. Don Head: That's right.

Mr. Joe Comartin: With regard to the numbers coming in from foreign jurisdictions, in total since 1978 we've only had 28?

Mr. Don Head: Yes.

Mr. Joe Comartin: You make this distinction that some are complicated, in that we're not sure whether they would fit into the first-degree murder category in Canada, depending on how they were categorized in the foreign jurisdiction. Who determines whether in fact it falls into that category?

Mr. Don Head: Normally what happens when we get those cases is our sentence administration staff and our legal staff then will work together to see if there is a parallel sentence.

Mr. Joe Comartin: Of the 28 who came in, do you have any idea of how long they served in the foreign jurisdiction before they were transferred?

Mr. Don Head: I do not have that information available right now, no.

Mr. Joe Comartin: Do you know if you keep that information?

Mr. Don Head: We'd have to go back and go through the files individually to find that information manually. We don't have that as an automated field that we could readily pull.

Mr. Joe Comartin: How long would that take?

Mr. Don Head: Maybe a month.

● (1615)

Mr. Joe Comartin: I would ask you to do that and provide it to the clerk of the committee so she can circulate it.

Madame Pelletier, you make the one note, in response to a question you got at the Senate, that the judicial review decision—what was the word? The use you make of that is minimal. Could you tell me how minimal? Why would that not weigh fairly heavily in your mind, given that you've had both a judge and a jury look at the situation?

Ms. Marie-France Pelletier: Right. Essentially what happens is if that information from the judicial review process is available to the board members, they will consider that information along with the rest of the file information as well.

Mr. Joe Comartin: Let me interrupt, because I know we're short on time. Do you see the entire documentation that has gone before the judicial review?

Ms. Marie-France Pelletier: Not necessarily. In some cases, this information will be shared and in others it will not.

Mr. Joe Comartin: What's the basis on which it's not?

Ms. Marie-France Pelletier: It's the information we're provided from the Correctional Service that the board members will see.

Mr. Joe Comartin: You don't have a right to ask for it?

Ms. Marie-France Pelletier: We can.

Mr. Joe Comartin: But you don't always.

Ms. Marie-France Pelletier: We don't always, that's right. Just to clarify it, when that information is available to board members, they will obviously take it into consideration along with the rest of the information they have on file from various sources.

The Chair: Thank you.

We'll move to Mr. Rathgeber for seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for your attendance and for your testimony.

Mr. Head, I have sort of a technical question to start out with. You indicated that with respect to 135 offenders, 68 had no issue, 35 were released on early parole, 35 received a suspension but were not subsequently revoked, and 23 had parole revocation. Do the words "revocation" and "suspension" mean the same in this legislation and the mechanics as they do in normal English parlance?

Mr. Don Head: Our staff can suspend an offender if they consider there's some legitimate reason to do so, so a belief that they're not abiding by their conditions of release. Then over a 30-day period there has to be a determination as to whether that suspension will continue and then lead to a review by the parole board for review for revocation, and revocation would be the parole board pulling back the release and the offender then going back into the penitentiary.

Mr. Brent Rathgeber: So they are returned to custody if their parole is suspended....

Mr. Don Head: Yes.

Normally what happens if somebody is suspended is they'll either come back into a federal institution or into a provincial facility, depending on where they're located, until this assessment is done. If they're revoked, then they do come back into the federal penitentiary.

Mr. Brent Rathgeber: And they're serving a life sentence, obviously. So if their early release is revoked, when, if ever, can an individual apply again? Can an individual who has their early release revoked pursuant to the mechanics that Mr. Head just described—they're a lifer...? Are they precluded from ever applying again?

Ms. Marie-France Pelletier: No. They can reapply for another form of release at a later date. Typically, they would have to wait two years, but there can be variances.

Mr. Brent Rathgeber: They're still serving a life sentence.

Ms. Marie-France Pelletier: Yes, that's right.

Mr. Brent Rathgeber: We have individuals here—one was convicted of robbery and another was convicted of two counts of assault with a weapon and one count of assault and use of force. Presumably they were sentenced for those subsequent offences. But they're still serving a life sentence, the original sentence for which they applied for early release. Are they eligible to apply again for "faint hope" after they've served for offences committed while out on early release?

Ms. Marie-France Pelletier: Unfortunately, I'm not sure of the technical answer to that question.

Mr. Brent Rathgeber: Nor am I.

Ms. Marie-France Pelletier: What I would do is undertake to give you a proper answer, because I wouldn't want to mislead you on that very technical point.

Mr. Brent Rathgeber: Thank you.

Mr. Trudeau, you testified—and I hope I heard you correctly—that the Quebec bar does not support this legislation because it does not believe it does anything to enhance the rights of victims. Did I understand that correctly?

[*Translation*]

Mr. Gilles Trudeau: Yes.

[*English*]

Mr. Brent Rathgeber: You also said you believe that the onus to victims is discharged when the trial judge in his sentencing explains to the court in open court that it is a life sentence without eligibility for parole for 25 years. Did I understand that correctly?

● (1620)

[*Translation*]

Mr. Gilles Trudeau: What I referred to was the requirements of the Criminal Code as set out in section 745.01, that the judge shall... I can read it for you, if you don't know what it says.

[*English*]

Mr. Brent Rathgeber: I know what it says, and we're short of time, but that was your testimony—that the discharge is the court's obligation to victims when that section 745 is read.

[*Translation*]

Mr. Gilles Trudeau: I understand that the purpose of your bill is to make sentences harsher because you are looking for some equivalency between time served and the sentence imposed. It is also intended to take into account the ambiguity that could result from this in victims' minds, that the person who has been convicted may be released. The Minister testified to that effect. But it seems to us that the requirements of the Criminal Code mean that at the time of sentencing, the judge provides all the information. We can't say that the public and the victims are deprived of information. They know the individual is being sentenced to imprisonment for life, and there are certain conditions that mean the individual will be entitled to make an application to a jury for permission to be granted early parole. That is what I am saying.

[*English*]

Mr. Brent Rathgeber: Has the Quebec bar association consulted with any victims, or any victims' groups, or any victims' advocates in forming this conclusion that this bill does not enhance the rights of victims, or is this your opinion?

[*Translation*]

Mr. Gilles Trudeau: The work done by the committee is based on the opinions of its members and is shared with the Bâtonnier. The Bâtonnier and the Barreau du Québec recognize the importance of what must be considered in terms of the victims. The Barreau du Québec does not need to consult more victims, concerning legislation that is working fine, than the Minister of Justice himself is capable of naming, of victims he has consulted.

[*English*]

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

We're going to go to Mr. Lee.

I'm going to suggest we do four minutes apiece so that we get at least two more questions in.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): It's a good suggestion.

I have a question for Mr. Head, I think. No, it's actually for Ms. Pelletier. You both described—or I think it was Mr. Head—this 12-month workup to a possible application. Because this bill removes the faint hope procedure for everybody 15 years from now, we're only dealing with this transition period for those who would still be entitled over the next 15 years to make this application.

Does that mean, because of the strict timelines placed by this legislation on the faint hope clause applications, that when you start the one-year workup, you would in all cases effectively have 15 months to get the application in? You'd have the 12-month leave time and then the clock would run on the 90-day period imposed by the legislation.

Have I got it right that for everybody who's going to make a faint hope clause application, they would have a reminder from CSC about one year prior to the trigger date and then have the 90 days remaining to make an application?

Have I got that right?

Mr. Don Head: In theory that sounds right, yes.

Mr. Derek Lee: No, I have to be right in practice, not just theory. That's why I'm asking you.

Is it possible that as soon as this bill is implemented you're going to have some people who may not be ready? In other words, they may not have started 12 months earlier but may have waited around a little bit, not realizing that there's going to be a deadline. Then, my gosh, they only have six months, and it takes four months to hear back from some guy with a photocopier on the other side of the country.

Mr. Don Head: On that you're absolutely right.

The point at which this comes into effect is such that if somebody had indicated to us nine months ago that they weren't going to apply and then all of a sudden, because this has come into effect, they have changed their mind, our window is going to be much, much smaller and we're going to have to work a lot harder—and the offender is going to have to work harder as well in terms of initiating the process.

● (1625)

Mr. Derek Lee: So there might be a practical concern for some inmates in this situation?

Mr. Don Head: That's possible, yes.

Mr. Derek Lee: Which might create a legal concern under the charter or in some....

Okay. I'll leave it at that because we can't solve that here now.

My second question is the following—and I'm going to direct this to Monsieur Trudeau—but first I have to ask you to think in English, because I'm going to ask you about the English version of the bill.

In the French version, clause 1, the short title is fine. I read it and I seem to understand it *en français*. But I look at the English version and it has this term “serious time”.

Are you a lawyer?

Mr. Gilles Trudeau: Yes.

Mr. Derek Lee: I'm just wondering about this.

Mr. Head, are you a lawyer?

Mr. Don Head: No.

Mr. Derek Lee: Ms. Pelletier?

Yes, you're a lawyer.

Do you know what “serious time” means legally? I just didn't know, and I was curious if it meant anything.

Monsieur Trudeau or Ms. Pelletier, I need some help here.

[*Translation*]

Mr. Gilles Trudeau: I didn't understand your question, because there was a lot of noise behind us.

[*English*]

Would you like to rephrase your question? I did not understand your question, There was a lot of noise—

Mr. Derek Lee: I'm going to let you off the hook, because I know the French version of clause 1 works for you. But then—

The Chair: Mr. Lee, your four minutes are up. But I will give you —

Mr. Derek Lee: I asked Ms. Pelletier to respond to this.

The Chair: Very quickly.

Ms. Marie-France Pelletier: Unfortunately, honourable member, I think it would be beyond the purview of my role to provide legal advice to this committee. I'm afraid I won't be able to answer your question.

Mr. Derek Lee: You wouldn't know what that meant in your role on the parole board then?

Ms. Marie-France Pelletier: It's not an issue for us to interpret at the board.

Mr. Derek Lee: At this time.

The Chair: Thank you.

Monsieur Lemay, you have four minutes as well.

[*Translation*]

Mr. Marc Lemay: Ms. Pelletier, I have a question for you. When someone is sentenced to imprisonment for life, they remain under the jurisdiction of the parole board for the rest of their life. Have I understood that correctly?

Ms. Marie-France Pelletier: They remain under the supervision of the Correctional Service, yes.

Mr. Marc Lemay: They remain under the supervision of the Correctional Service for the rest of their life.

Ms. Marie-France Pelletier: Yes.

Mr. Marc Lemay: Even if they are released, even if they receive a sentence reduction, they are under the Correctional Service for the rest of their life?

Ms. Marie-France Pelletier: Absolutely. Parole doesn't mean that the person isn't serving their sentence any more.

Mr. Marc Lemay: They are free as the air and may do anything they like.

Ms. Marie-France Pelletier: Absolutely not. They are under the supervision of the Correctional Service.

Mr. Marc Lemay: There we are.

Mr. Head, on October 10, 2010, there were 4,774 inmates serving a life sentence. Since 1987 there have been 181 decisions. So a very small minority have made applications.

Mr. Don Head: Yes.

Mr. Marc Lemay: Of those 181 decisions, 145 have resulted in a sentence reduction. If I understood you correctly, there have been only two failures, that is, only two people, out of all of the people who have been released, who have re-offended with violence.

Mr. Don Head: That's right.

Mr. Marc Lemay: I want to explain the suspensions. Take the example of a client who is released, but who must not consume alcohol. If they are caught consuming alcohol, they can be suspended. It can be as simple as that, right?

Mr. Don Head: Yes, that's right.

Mr. Marc Lemay: So the system is working well at present. You have control of this system.

[*English*]

Mr. Don Head: Yes, we supervise them. We make sure they adhere to their conditions, yes.

● (1630)

[*Translation*]

Mr. Marc Lemay: I want to come back to the two individuals we were talking about earlier. One was convicted on two charges of assault with a weapon and one charge of assault with the use of force, while the other was convicted of robbery. Do you happen to know what sentences these two individuals received?

[*English*]

Mr. Don Head: Not with me, no.

[*Translation*]

Mr. Marc Lemay: Can you send them to us? I imagine those sentences are consecutive to the ones they are currently serving.

[*English*]

Mr. Don Head: I'll have to check. I can get you that information.

[*Translation*]

Mr. Marc Lemay: I would be very grateful, sir, if you would send us the sentences of these two individuals. Thank you.

[*English*]

The Chair: I want to thank all three of our witnesses for appearing, and also those who came with you.

Yes, Mr. Comartin.

Mr. Joe Comartin: Chair, I had sent a letter to Mr. Head asking for additional information. I ran out of time. I still want him to respond to that request for information. Given what happened the last time this bill went through, when we didn't have all the information, I want that information updated to October of this year.

The Chair: Does Mr. Head know what information you're referring to?

Mr. Don Head: Yes, I'll undertake to update the chart that was requested.

The Chair: Yes, and deliver it to the clerk's office.

Mr. Don Head: To the clerk, yes.

The Chair: Thank you to all three of you. I would appreciate your cooperation in clearing out and allowing the next three witnesses to take their places at the table.

We'll suspend for two minutes.

● (1630)

(Pause)

● (1635)

The Chair: Reconvening the meeting, we're continuing our review of Bill S-6.

We have two organizations and one individual with us during this second hour. First of all, we have the Criminal Lawyers' Association, represented by Michael Mandelcorn. Welcome back. We have the John Howard Society of Canada, represented by Ed McIsaac. Finally, we have Mr. Rick Sauvé. Welcome back.

As each of you know, you have 10 minutes to present. If you take less time, that's great; it means time for more questions from our members.

We'll start with Mr. Mandelcorn, please.

Mr. Michael Mandelcorn (Regional Director, Criminal Lawyers' Association): Thank you. The Criminal Lawyers' Association welcomes the opportunity to appear before this committee on the fundamentally important issues raised in Bill S-6.

The Criminal Lawyers' Association is a non-profit organization that was founded on November 1, 1971. Our organization represents approximately 1,000 criminal defence lawyers across the province of Ontario. The objectives of the organization are to educate, promote, and represent the membership on issues relating to criminal and constitutional law.

While the Criminal Lawyers' Association supports the proposition that offenders who have committed murder should only be released if they do not pose an undue risk to reoffend, we believe the amendments to the faint hope clause, as contemplated by Bill S-6, do not advance this goal. In particular, I ask you to note the points that follow.

First, all of the government's new crime legislation is designed to bring public accountability to the criminal justice system and restore public confidence. The faint hope provisions are about public confidence. It is the public—the jury—that hears the evidence and makes the decision.

Second, much has been said about the revictimization that is caused by the current faint hope provisions. We must remember that the convictions, by definition, are at least 15 years old before the matter gets to the jury. The convictions themselves are not in dispute. The person has either pleaded guilty or has been found guilty. This is a prime opportunity for victims to see what progress the offender has made over those intervening years.

Third, the provisions provide a much-needed incentive for convicted persons to fully utilize rehabilitation and programming while in custody. The offenders most likely will be released eventually; it is in our interest that they remain motivated to rehabilitate themselves.

Fourth, as noted in the legislative summary of Bill S-6, as of April 13, 2009, 991 lifers were eligible to apply for judicial review. There have only been 174 court decisions made, resulting in the reduction of sentences in 144 cases. It would appear that only those offenders who have the best chance of success are applying for a reduction of parole ineligibility.

Fifth, the National Parole Board did grant release in 131 cases, although we have no information as to how many hearings it took after the reduction in parole ineligibility for the offender to achieve some sort of interim release.

Sixth, I believe you just heard some of these statistics previously, but of the seven offenders who had their full parole revoked, two were revoked for breach of conditions, three for new, non-violent offences, and two for new, violent offences. Of the seven offenders who had their day parole revoked, five were revoked for breach of conditions, one for a new, non-violent offence, and one for a new, violent offence. Thus, the overwhelming majority of lifers who are released do not reoffend.

Finally, it is our position that the current vetting procedure in subsection 745.6(1) is sufficient to ensure that frivolous applications do not make it before a jury.

Thank you very much.

The Chair: Thank you.

Now we'll move to Mr. McIsaac.

Mr. Ed McIsaac (Interim Director of Policy, John Howard Society of Canada): I thank the committee on behalf of the John Howard Society of Canada for the invitation to appear today. We appreciate the opportunity to meet with you to discuss Bill S-6.

In June 2010, I left with the clerk copies of our submission on the legislation presented to the Senate's Standing Committee on Legal and Constitutional Affairs. I made the same mistake as the Quebec bar, assuming that the submission would have been transferred over when the legislation moved.

There has been to date extensive and detailed discussion on the proposed legislation. As such, I will provide a brief opening statement.

The John Howard Society of Canada, as most of you know, is a non-profit organization whose mission is to promote effective, just, and humane responses to the causes and consequences of crime. The society has 65 front-line offices across the country delivering programs and services to support the safe reintegration of offenders into our communities.

The John Howard Society of Canada does not support this legislation. What we appear to have here is a proposed solution in search of a problem.

While the faint hope clause over the years has become synonymous with a claimed “soft on crime” approach, the data and our experience say otherwise. The faint hope clause, as you know, was introduced in 1976 as an offset to the abolition of capital punishment and the establishment of the 25-year minimum sentence without parole eligibility for first-degree murder convictions. Between 1961 and 1976, the average period of incarceration before conditional release was 15.8 years for those serving a sentence of capital murder. Currently, the average length of time served prior to conditional release is 28.4 years for first-degree murder convictions. How can this huge increase in time spent in federal penitentiaries, subsequent to the introduction of the faint hope clause, be portrayed as soft on crime?

The data also show, with regard to international comparisons with other western democracies, that the time spent in custody on first-degree murder convictions in Canada is double that of other jurisdictions. Again, where is the evidence of excessive leniency?

For those serving life sentences, the current process for obtaining a reduction in parole eligibility is rigorous. It includes reviews by a judge, a jury, and eventually the National Parole Board. The number of offenders applying under the provisions of the faint hope clause is low. According to the CSC figures—and they were adjusted somewhat today—1,062 offenders were eligible for review, yet only 174 applications had been received. These low numbers are evidence of an extremely limited self-selection process, resulting in very few, if any, frivolous applications coming forward. Those applications that are approved by a judge as having a reasonable prospect of success and which are then granted a reduction of time on eligibility by unanimous decision of a jury are, in the vast majority of cases, being granted conditional release by the National Parole Board.

● (1640)

So where is the problem with the current process that this legislation is attempting to address? Who within this process is being soft on crime: the judiciary, the juries, or the National Parole Board?

I would suggest the data clearly indicate that Canada, in comparison to other western democracies and our history prior to 1976, is in fact unreasonably tough on crime. Society is not well-served by long prison sentences. Legislation that increases the period of incarceration should not be accepted. This legislation is not an effective, just, or humane response to the reasonable management of life sentences. I recommend that the committee reject this legislation and turn its attention to a thorough review of how we as a country have moved from an average period of incarceration for those convicted of first-degree murder, from 15.8 years prior to 1976, to the current unreasonable 28.4 years.

I thank you for your attention and I look forward to your questions.

● (1645)

The Chair: Thank you.

I will move now to Mr. Sauvé.

Mr. Rick Sauvé (As an Individual): Thank you.

I'm pleased to have this opportunity to speak today. I'm here to put a face on who this legislation, the faint hope clause, applies to.

Over the past 30 years I've been a prisoner. I've worked with young offenders in the community after going through the faint hope clause process, eventually earning my parole. I'm now working back inside the system. I go back into federal penitentiaries and work with men serving life sentences.

There have been some misconceptions over the years about the faint hope clause. I've heard things such as “It's an automatic release for people going back into the community after 15 years.” There hasn't been one person at the 15-year mark who ever returned to the community—not one.

When people go back to the community where the crime was committed, they expose themselves, and it's a trial of their character by the people of that community. I've talked to hundreds of people in speaking engagements in high schools, universities, and public forums, and not one person has ever said that I should not have been returned to the community.

I trust the National Parole Board and Corrections. Many men are never going to apply for the faint hope clause, but it's one of the tools in Corrections that allows prisoners insight into themselves so they realize the only way they're ever going to return to the community is by working toward that goal. For many of the men I work with—I'm in prison five days a week seeing them—and some have been in for 25 years, some for 30 years, it's becoming a hopeless situation in prison.

I look forward to your questions.

Thank you.

The Chair: Thank you very much.

We'll move to questions from our members.

Mr. Murphy, five minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): At first glance, this is the second time, for instance, Mr. Mandelcorn, that I've questioned you. I have a pretty good memory of what I asked you last time, so I won't ask you the same thing again.

Where I come from on this is...as you know, everybody in their community has an instance where a 13-year-old girl is gunned down by someone in a store. We have one in a small community like Moncton. Every so often there's a parole board application by the offender, who really isn't hero number one in a place like Moncton. So sympathies for the victims, the victims' families, are very much on the minds of people in these cases. If we can work out a way to minimize the re-victimization, I think we could get through to the argument that is so appealing from all of the panellists here, that it is, to use the phrase, a solution looking for a problem.

I fully respect, Mr. Sauvé, Mr. McIsaac, your testimony. It's very compelling. But from a legal point of view, what effect would these changes have in sentencing procedures? Would judges and lawyers now look at it and say one of the reasons, under clemency and prerogative, that this section 745 was brought in to counterbalance the taking away of the death penalty, was to give this hope, any type of hope, of rehabilitation?

Will it have an effect? I'm trying to get inside the mind of the criminal courtroom. Will there be, in the back of the mind of the judge, a thought..."I know it's supposed to be beyond a reasonable doubt and all that, but..."? Would it make the doubt even less? Could there possibly be fewer convictions because the judge knows, and perhaps the prosecutor, in laying the charge, that the consequences are going to be made much more grave I think—long term for a long-term offender? That's one question I have.

The other thing that troubles me is that we have lifers spending, on average, 28 years in prison. We like to compare ourselves not to the United States but to European countries, which on average have something like 10, 11, and 12. Is there something we're missing in the comparison? I'll ask Mr. Mandelcorn. Is there something in those jurisdictions that grade the laws differently? Is there a different nomenclature for the laws? Is there a different system? Why are they so markedly different from us on that?

So those are two, really, legal questions to you, Mr. Mandelcorn, because we only have five minutes.

● (1650)

Mr. Michael Mandelcorn: I'll answer your first question. The second question I'll defer, since I'm not, quite frankly, aware of the systems in Europe.

Much of sentencing and when people are released is based on public perceptions and public climate—quite frankly, the political climate. With respect, I would suggest that we're in a political climate where it's difficult for people to get released. Although the board certainly makes its decision on a case-by-case basis, I can't say that they would be immune to realizing what the public opinion is.

With respect to your first question, which I'm more comfortable answering, you have to note that there's no discretion in the sentencing. If a person is convicted of first-degree murder, it is life. It's not a matter of reasonable doubt. It's in front of a jury. The jury is not instructed as to what consequences occur should there be a conviction.

With respect to the slight amount of discretion, if it's a second-degree murder conviction and the judge can impose anywhere between 10 and 25 years of parole ineligibility, I suggest it's on basic sentencing principles that judges are instructed and taught not to take that into account. It's the crime that fits the parole ineligibility. If the particular heinous crime is above and beyond, if you will, a second-degree murder conviction, the person is looking at greater than 10 years. The parole ineligibility—that's what the judges look at. I would suggest that you do not look at the fact that this person may not get out because there's no faint hope anymore.

Mr. Brian Murphy: Very briefly, Mr. Sauvé, all the logic seems to point to the idea that there are people who can be saved and reintegrated. Then the argument comes, well, there's a 15-year wall in any event, even under current legislation. Would you think that it should be moved back to 10 years or five years?

Mr. Rick Sauvé: My belief is that people should be returned to their community, earn the right to be returned to the community, when they've completed their rehabilitation. They're no longer considered a risk to the community. If somebody's considered a risk, then they shouldn't be returned to the community.

I don't think there's any number...there's no magic number that you can put on when somebody's rehabilitated. It's a process that starts inside, and the person has to demonstrate that. It's not an easy process to get by the National Parole Board, to earn your way from maximum security down to minimum security, and then to find a community that's willing to accept you. It's a long process.

Mr. Brian Murphy: And we accept the classic *double entendre* of "it begins inside"—

Mr. Rick Sauvé: That's right.

Mr. Brian Murphy: —in prison.

The Chair: Thank you.

[*Translation*]

Mr. Lemay, you have five minutes.

Mr. Marc Lemay: Thank you for being here.

You have heard the previous witnesses. We have the numbers. Mr. McIsaac, I would like to know how it can be that in Canada, people who have been sentenced to life spend an average of 28.5 years in prison today. Is there an explanation? We are told that murderers are always released too soon, but people who have been convicted of murder are now spending 28.5 years in prison. I would like to understand what has happened or what is happening to make the time in prison longer—not a lot, but longer—than in Europe or elsewhere.

● (1655)

[*English*]

Mr. Ed McIsaac: I believe there's no one answer. But I think one of the variables that has come into play is the existence of mandatory minimums. When you begin to remove discretion, whether it is at the court level in the sentencing process or at the parole decision level with regard to release, you end up with a focus not on the individual, not on the individual circumstances of the crime itself or the individual characteristics that led that person to that situation; you begin to address and respond to an act rather than an individual.

If you look prior to 1976, as I had indicated in my opening remarks, the average length of time was somewhere around 15 years, which is relatively consistent with what we see in New Zealand, Australia, and western Europe. The bringing into force of the mandatory minimum at that point I think was the key variable in causing us to now be in a situation, almost 25 years later, where we have offenders serving in excess of 28 years, on average, prior to being released.

[*Translation*]

Mr. Marc Lemay: I imagine you submitted a brief to this committee. Did you prepare a brief?

[*English*]

Mr. Ed McIsaac: The John Howard Society created a brief that it provided to the Senate committee, which was initially reviewing the legislation. I'm sorry, as with the Quebec bar, I thought the paper had been transferred over. It will be provided to your clerk and copies will be given.

[*Translation*]

Mr. Marc Lemay: I imagine we will be receiving it. Thank you.

Mr. Sauvé, some journalists or some people who analyze the prison system say that if Bill S-6 is enacted as it now stands, there is a risk of an increase in violence in prisons, since some inmates will no longer have the faint hope clause. They will know they are going to be incarcerated for the rest of their lives. What do you think about that?

[*English*]

Mr. Rick Sauvé: I believe there's the possibility of that taking place. I've been working with LifeLine, going back into prisons, and I'm in my 13th year of going back inside. Many of the men I work with hold that faint hope clause as something to work towards. Most of the men and women, when they get to that 15-year point where they can first make their application, say, "I really don't want to go through this. I don't want to put the victims through this. I don't want to put my own family through this. I think I can continue. I've already got 15 years in, and I can see a little light at the end of the tunnel now." So most of them don't apply.

But if you remove that hope and you remove that glimmer of a goal to work towards—the 15 years—there's nothing. You're going to be sitting in a maximum security prison saying, "I'm going to be here for a minimum of 25 years and probably a lot longer." What do they have to look forward to?

I've heard people say we have to protect the public. Well, the staff, the volunteers, the visitors, the nursing staff—all those people are the public who are working inside the system, so you are putting those people at risk.

● (1700)

The Chair: Mr. Comartin.

Mr. Joe Comartin: Thank you.

Mr. Sauvé, did you apply right at the 15-year mark, when you first could?

Mr. Rick Sauvé: That's when you can begin the application. I was under a different set of rules, but it was about 16 years by the time I got to go to court. I went through the court process, and then I could start applying to the parole board.

Mr. Joe Comartin: So from the time you applied after the 15 years, from the time you started the process until you were actually released, how much time went by?

Mr. Rick Sauvé: It was about 16 years.

Mr. Joe Comartin: No, I'm sorry, I mean just the period of time from when you applied until you were actually released.

Mr. Rick Sauvé: Oh, I'm sorry. It was about nine months. We had to get court space. We had to get a judge that was available. We had to get a crown attorney. I had to find a lawyer, and then a jury had to be empanelled. There was a preliminary hearing and then the process itself.

Mr. Joe Comartin: Did that nine months include the parole process?

Mr. Rick Sauvé: No.

Mr. Joe Comartin: How long did the parole process take?

Mr. Rick Sauvé: I was successful at having my parole eligibility reduced to 15, but I'd already had 16 in at that point. I could then apply to the National Parole Board, but before I could do that, I had to have more psychological assessments and another psychiatric assessment, and there were other conditions I had to meet. I had to find a halfway house, so then I could begin the process of looking towards reintegrating into the community.

Mr. Joe Comartin: How long did that process take?

Mr. Rick Sauvé: It took another three or four months before I got in front of the National Parole Board. Then I was granted unescorted passes to a halfway house, so that process took another year.

Mr. Joe Comartin: So it took roughly the better part of two years in total after the 15 years.

Mr. Rick Sauvé: I had over 17 years in by the time I got my full parole.

Mr. Joe Comartin: We have statistics from Corrections Canada showing that for the average person, over this period of time in 2004-05, it was 23 years when they got out on their first application. In 2005-06 it was 21 years. In 2006-07 it was 24 years. In 2007-08 it was 23 years. This last year, 2008-09, is the last we have, and it was 25 years. Would that be consistent with what you see?

Mr. Rick Sauvé: Yes. In fact, there are men I go to the parole board with now. I've been to the parole board, in my capacity as an in-reach worker, at probably close to 300 parole hearings, and I've never seen anybody get out at their date.

Mr. Joe Comartin: Mr. McIsaac, with you as well, I want to pursue a bit the point Mr. Sauvé raised about the mindset of the person who would become eligible at the 15th year to make the application, and why they wouldn't do it. I think, having watched too much TV, we all have this stereotype of a con as figuring that the first chance they get they're going to do it. Mr. Sauvé has given us some comments about that. I can understand how initially at the 15th, 16th, 17th, and maybe even 18th year...but when you're getting up to the 20th year, you still have a large number of these prisoners, much more than a majority of these prisoners, not applying. Could you expand on that? I don't understand why they would not.

Mr. Ed McIsaac: I'm not sure I understand either. I would support the reasons provided by Mr. Sauvé. The institutional environment in our federal penitentiaries is not an inviting and pleasant place. It is difficult, oftentimes, to stay out of trouble. A conviction for a minor or major offence creates a black mark. Involuntary transfers, perhaps back to higher security, are going to slow the process down. I assume there is a weighing in the minds of most of what their chances are, or what they believe their chances are, often reflected by the position that the Correctional Service is taking with regard to the management of their case, whether it be for the preparation of—

● (1705)

Mr. Joe Comartin: Let me stop you with that, Mr. McIsaac.

We heard from Mr. Head in the last session that they approach the prisoner about a year before and have some discussion with the prisoner as to whether he—or she, in the rare case—is going to apply. Is it your understanding that the Correctional Service, at that point, would indicate what their recommendation is going to be?

Mr. Ed McIsaac: No, I don't think they would. But the individual would probably have a fairly good idea from the ongoing reports and recommendations that are being made by his case management team.

The Chair: Thank you.

Mr. Dechert, five minutes.

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

And thank you, gentlemen, for being here today.

I think it was Mr. McIsaac who mentioned that he didn't understand the problem this bill is trying to solve, and one of my colleagues from the opposition suggested he didn't understand what the problem was either. Perhaps I can help you out.

There are two problems—two very big problems. One problem is that the faint hope clause is unfair and unjust to victims and the families of victims, in my view. The second big problem is that justice must not only be done but be seen to be done.

The public, in my opinion, is losing confidence in our justice system. Every week I receive dozens of e-mails from my constituents telling me our justice system only looks after the rights of criminals and that it does not stand up for victims and law-abiding citizens. When that happens, when hundreds and thousands of people believe our criminal justice system is not fair and not just and that truth in sentencing does not exist, they lose faith in our criminal justice system. When they lose faith in our criminal justice system, there's a tendency to take the law into their own hands. Those are two very big problems that this bill we're considering today is designed to address.

With respect, gentlemen, this bill is not about rehabilitation. I hear, a lot, that people can be rehabilitated, people should be rehabilitated, we need to give people incentives to be rehabilitated. That's not what this bill is about. This bill is about respecting victims and their families and truth in sentencing, so people will have faith in our criminal justice system, so they can go to bed at night and rest easy knowing that murderers are behind bars where they ought to be, and that the sentences the judges and juries impose upon convicted murderers are actually served by them.

That's what this bill is about, and that's the problem this bill is designed to solve. I hope that my friends on the opposite side of the table will understand that as well.

Mr. McIsaac, you mentioned the mission statement of the John Howard Society in your remarks, which I think you read, and I'll read it again. It is “effective, just and humane responses to the causes and consequences of crime”.

Perhaps you could focus on the consequences of crime and tell me if the John Howard Society has considered the impact of the faint hope clause on victims, and the impact on public confidence in our Canadian justice system that is posed by the faint hope clause. Tell me, in your opinion, how the faint hope clause is just and humane to the families of the victims who are no longer here to enjoy their lives, no longer around—as Mr. Sauvé was able to do, to get rehabilitated, to get an education supported by the people of Canada, so he can go back into prison and help other murderers get early release.

Perhaps you could tell me how that's just and humane and how that focuses on the consequences of crime.

Mr. Ed McIsaac: The results of a murder are never just and humane. The impact on family members cannot be underplayed. For decades, victims in this country have received the short end of the stick with regard to their dealings with the criminal justice system. Progress has been made over the last few years, evidenced by the increase in requirements for information sharing that have been placed on both the National Parole Board and the Correctional Service, and the appointment of a victims' ombudsman. I'm not sure how any system can address the grief and the sorrow of victims.

The faint hope clause, as it currently exists, has built into it the ability of the judge at that review stage, and the jury during their considerations, to come to a decision that no further applications under that clause will be entertained if the application is frivolous, vexatious, and harmful in an unwarranted way to the victims.

● (1710)

Mr. Bob Dechert: I wonder if I can move on to another question. We have limited time here.

The Chair: Mr. Dechert, you're actually out of time. Sorry about that.

We're going to move to Ms. Jennings, for five minutes.

Hon. Marlene Jennings: Thank you, Chair.

I'll try to be very brief, given that I have five minutes.

Given the statement Mr. Dechert has just made about how this bill is meant to solve a problem that goes directly to the heart of the families of victims, who live with the pain and grief every day, I'm going to ask if you are aware of any study done by this current government of all of the families of victims of those convicted offenders who have applied under the faint hope clause, since the creation of the faint hope clause. This would be a study of people who have actually gone through the process—both prior to 1987 when the judicial review was brought into effect and since then—and their actual experience with the process. What did they themselves conclude, whether the offender was successful with the application or not successful with the application?

Are you aware of any such study that has been conducted, either by this government or any previous government, since the faint hope clause was first inserted into our Criminal Code?

Mr. Ed McIsaac: No, I am not.

Hon. Marlene Jennings: Thank you.

Given all the testimony you have given, all three of you, and that you are aware of from previous witnesses, either before this committee or the Senate committee, regarding the issue of the faint hope clause, are you in agreement that if any government wishes to eliminate or repeal this clause, there should be those kinds of studies done, particularly when you have a parliamentary secretary saying that the reason this government is bringing in the legislation is for the families of victims?

Mr. Ed McIsaac: I would expect that there should be a study or a comprehensive review, not only of the opinions of victims of crime but of the number of applications that have been identified as frivolous or that have been dismissed and the number of times victims have had to appear on more than two or three occasions to address or to be present at the reviews.

Hon. Marlene Jennings: I have another question. Given the statement of the parliamentary secretary that this legislation is being done for families of victims, would you not agree that in order to have solid information, you would first conduct a study? You would conduct a study of the attitudes and knowledge those members of families of victims had prior to any application having been filed. Then you would do the same thing after they had gone through the process of an application under the faint hope clause.

I am aware of studies done before and after, in completely different areas, in which the conclusions of individuals who have lived through a particular process can be quite different from what they were prior to having gone through the process, because they gained a lot of information that allowed them to understand context and environment. In some cases, they actually say that this is a great process and it's something they believe should exist. I'm not speaking specifically of the faint hope clause. There are other processes where this happens.

Do you believe that this is the kind of study this government should be conducting prior to claiming that this legislation is for addressing a need expressed by families of victims?

● (1715)

Mr. Ed McIsaac: Is that question directed to me as well?

Hon. Marlene Jennings: It's to all three of you.

Mr. Ed McIsaac: It is to all three of us. I will begin.

Yes, I agree with you on that point. We are living in a time period when there is a considerable amount of misinformation with regard to crime and criminal justice matters. Within the public realm, I think an information education package would be necessary to ensure that people are aware of their rights and where to go to ensure that they are in fact enforced.

Hon. Marlene Jennings: I'd like—

The Chair: Thank you. We're out of time, but I'll take a one-word answer from the other two.

Mr. Rick Sauvé: Yes.

Mr. Michael Mandelcorn: Yes.

The Chair: Okay.

We'll move on to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, my colleague's questions were so well put that I don't have any more. I can yield my speaking time to Ms. Jennings, if she wants to ask anything else. May I give her my five minutes? Take them, Ms. Jennings.

[*English*]

Hon. Marlene Jennings: Thank you.

I will conclude by simply stating, again in response to a statement made by Mr. Dechert to the effect that this government is only interested in truth in sentencing and they have no interest in the issue of rehabilitation of inmates, whether it be those convicted of first-degree murder, second-degree murder, or, I presume, any other criminal offence found under our Criminal Code.... In fact, if that is this government's interest, then they should attempt to amend the Criminal Code where it states that one of the principles of our criminal justice system is rehabilitation. It does not say that the rehabilitation principle does not apply to those who are convicted of first-degree murder, second-degree murder, or any other offence under our Criminal Code.

So I call on this government, if in fact it really is for truth in sentencing, to amend, make an attempt to rehaul the entire Criminal Code, and say that the only principle of the Canadian criminal justice system is retribution.

Mr. Bob Dechert: Bring it forward to committee.

Hon. Marlene Jennings: No, you bring it forward.

The Chair: All right, that's enough.

Order, order.

Mr. Bob Dechert: It's your suggestion to bring it forward.

Hon. Marlene Jennings: You bring it forward.

An hon. member: We are.

The Chair: Order, order.

We're going to move to Monsieur Petit, for five minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

I would like to ask Mr. Mandelcorn a question. Are you a lawyer?

[*English*]

Mr. Michael Mandelcorn: Yes.

[*Translation*]

Mr. Daniel Petit: Have you appeared in criminal cases?

[*English*]

Mr. Michael Mandelcorn: All the time.

[*Translation*]

Mr. Daniel Petit: So you know that when a person is charged with first degree murder, in Quebec, they appear in the Superior Court of Quebec. As a lawyer, have you engaged in plea bargaining to have the charge reduced to second degree murder, to avoid a jury trial, because it costs less for the government? Is that something that has happened to you in your career?

[*English*]

Mr. Michael Mandelcorn: It's plea negotiations, not plea bargaining, number one.

Number two, I don't think a crown would agree to drop a first-degree murder down to second-degree on the basis that it saves money. It is based on the strength of the crown's case and what would be supported in terms of a reasonable verdict, should it have gone all the way to trial.

● (1720)

[*Translation*]

Mr. Daniel Petit: Do you agree with me that this has happened to you during your career?

I am also a lawyer. In Quebec, these things happen. I imagine that your province is no different from mine. I'd like to know whether you are aware that when your client is convicted of second degree murder, their eligibility is different from the eligibility of an individual convicted of first degree murder. Do you agree?

[*English*]

Mr. Michael Mandelcorn: It could be. Even on a second-degree murder conviction, the judge has the ability to impose life with eligibility for parole at the 25-year maximum. So in most cases I would agree with you, the parole ineligibility period is lessened, not necessarily by definition and certainly not by law. It could be as much as 25 years before he's eligible to apply.

[*Translation*]

Mr. Daniel Petit: I would like to ask Mr. McIsaac a question.

You know that we are the ones who created the position of victims' ombudsman; there wasn't one before that. I think you talked about that in your speech.

I would like to know whether your organization consulted associations of victims who told you that what the Conservatives are doing is right. Did you consult associations of victims or did you consult only representatives of the criminal side, in the prisons, who naturally would have told you the bill is no good? Did you consult victims?

[*English*]

Mr. Ed McIsaac: Yes. The John Howard Society, in the provision of its services and programming, runs reconciliation activities that involve both victims of crime and the offenders. So it is not an area that we are unaware of. Contact with victims is an ongoing matter.

[*Translation*]

Mr. Daniel Petit: Mr. McIsaac, you say you met with victims. Did they tell you they are happy that the individual who killed their child or their wife or their uncle will be released after 15 or 16 or 17 or 18 years? Is that what came out of your conversations with the victims?

[*English*]

Mr. Ed McIsaac: No. Not at all.

[*Translation*]

Mr. Daniel Petit: Not at all.

Mr. Sauvé, I would like to ask you a question. Earlier, you talked about the hope this gave and that you benefited from, which is entirely to your credit. I would now like to ask you a slightly more direct question. After 15 or 16 or 17 years, a lot of people get out of prison. Personally, I call prison a coffin. But the victim, the person who is really in the coffin, what chance do they have after 15 years? They have nothing. What do you have to offer victims to help them?

[*English*]

Mr. Rick Sauvé: That's a journey that.... I can't speak on behalf of victims. That's a journey that they take.

I've appeared at conferences. I was at a workshop with a great number of victims. It was in Toronto. It was sponsored by the National Parole Board. Your colleague has brought up that victims and the public want to feel safe about who is in their community, and I disclosed at that meeting that I was convicted of first-degree murder.

At the end of the day, I drove one of the women home to her house; my wife and I walked the other woman to her car. They said after the whole day of workshops together, "I'm just not sure. I just want to make sure that I'm safe in the community." That's what the faint hope clause and the judicial review process are about.

You're absolutely right that the public wants to know that they're going to be safe in the community. You're absolutely right. When somebody goes back into the community, meets, and testifies, and has their whole life explained and presented to the public and the jury, they decide whether that person should be considered for parole. That's what this legislation is about.

The Chair: Thank you.

We're going to move back to Mr. Lee. You have a short question, I believe.

Mr. Derek Lee: Yes. It may not be a short answer.

This question is to all of the witnesses, if you'd care to answer.

This bill does not affect parole applications after year 25. For a lifer who's been in 25 years, there's no parole ineligibility imposed after 25 years. I'm sure you agree with that, and I think that's what the bill says.

Given that one of the objectives of sentencing is successful reintegration of offenders into society, and given that this bill is focused on year 15 to year 25, are we losing opportunities to successfully reintegrate offenders of this type between year 15 and year 25? Are prospects better in that timeframe? In your experience, do they diminish in any way? Is someone better or more easily reintegrated at year 18 or year 20 than they are at year 30 or 35?

I'm asking you to address year 15 to year 25. Where are we better off as a society? If we get rid of the faint hope, we're going to lose that year 15 to year 25 period for reintegration purposes. Is this good, bad, or neutral?

● (1725)

Mr. Rick Sauvé: First of all, my belief is—and this is from somebody who was convicted and who served a life sentence, and continues to serve a life sentence—my sentence is going to be forever.

If the risk is such that the person shouldn't be reintegrated into the community, they stay in prison. And there are many men and women who are never going to get out. They're going to die in prison. I've worked with at least 16 people who have died from natural causes while serving their life sentences.

But the longer you keep people in, the harder it is to reintegrate them into the community. One of the things I studied when I was working on my thesis and I've witnessed in my work is that young offenders who come in and are sentenced to a life sentence and have a seven-year minimum are not getting out in seven years. Many of them are staying in 10, 15, or 20 years. And it's harder to reintegrate them into the community because their mental age and their experience in the community are the same when they go back out as they were when they came in. Their development is blunted.

I took a guy out on a pass just the other day. He is serving for second-degree murder. He was sentenced to 12 years. He's been in for 23 years. The problem was, he couldn't get into programs. They just weren't available, so he was in a lot longer than was necessary. He'd never seen a cellphone before. He had never seen some of the new money that is out. So trying to help him reintegrate into the community is a challenge. The longer you keep people in, the harder it is to reintegrate them.

I'm not saying that you just automatically open a door and let somebody out because they've served this number of years or that number of years. When a person is ready to start reintegrating, that's when you have to do it. And it's a long, slow process.

The Chair: Thank you.

We'll have one short question from Mr. Norlock, just to make sure the government gets one more.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): My short question is this, and I think Mr. Sauvé hit the nail on the head when he said, "My sentence is...forever". I would suggest that people convicted of first-degree murder do have a sentence forever. We've heard today that they're on parole for the rest of their natural life. But the reason they are on parole for the rest of their life is that the person or persons they murdered are sentenced forever. They don't have a panel sitting here worrying about how long they should be dead. They're dead forever.

But we have to think of the living, I'm told. And the whole psychology behind that is that the person who is dead is dead. It's the living we have to worry about. But when we talk about the victims, the other side will say, "Well, you guys talk about them, but you really don't care", and then we say, "Well, if you really cared you'd...."

My conundrum is this. I believed in the death penalty at one time. I do not any more. So here we have people who have committed murder. We don't hang them any more. So we have this worry now about what to do with the people we used to hang. At one point our society said we were going to put them in jail forever because the person they murdered is dead forever. And then we said, "No, that's not fair. We need to give them some hope, and we need to show them that they're not going to be punished forever."

Mr. Sauvé, what this government is dealing with, along with the families of victims and society as a whole—because we are all getting the message, but it's just that we have different philosophical outlooks—is the question of when it is appropriate to begin the system for reintegration into society for a person who has committed that grave act of murder. We've heard it should be eight years, because in Europe it's eight years. I would say that no one can really answer that. I think Mr. Sauvé answered it best. He doesn't think there is a specific date.

● (1730)

The Chair: Thank you.

Gentlemen, thank you for appearing before our committee. Your testimony is helpful.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca