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Thursday, December 2, 2010

Chair

Mr. Ed Fast

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● (1535)

[*English*]

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

This is meeting number 40 of the Standing Committee on Justice and Human Rights. For the record, today is Thursday, December 2, 2010. You've got before you the agenda for today. Today we're reviewing Bill C-48, An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act.

For the first hour we have with us the Criminal Lawyers' Association, represented by Joseph Di Luca, vice-president.

During the second hour of our meeting we hope to have with us Susan O'Sullivan, Federal Ombudsman for Victims of Crime.

Back to our first witness, Mr. Di Luca. Welcome back to our committee. I think you understand the drill. You have ten minutes, and then we'll open the floor to questions.

Mr. Joseph Di Luca (Vice-President, Criminal Lawyers' Association): Thank you very much, Mr. Chair.

The Criminal Lawyers' Association welcomes the opportunity to appear before this committee on the important issue raised in Bill C-48.

As many of you know, the Criminal Lawyers' Association is a not-for-profit organization founded in 1971. We represent over 1,000 criminal defence lawyers across the province of Ontario. The objectives of our organization are to educate, promote, and represent our membership on issues related to criminal and constitutional law.

Together with the crown attorneys, we represent the front-line workers, if you will, of the criminal justice system, and we share a direct and substantial interest in this and similar legislative initiatives. We also have experience in observing the impact that legislative changes have on how the system operates. As I am certain you all know, the criminal justice system is organic—the components of the system are in a delicate balance. The system is based on compromises, all aimed at achieving a variety of goals, from the protection of the public to the just and fair administration of punishment and the reform, rehabilitation, and reintegration of offenders.

Indeed, a long-standing hallmark of our justice system has been its measured and balanced approach to punishment. We pride ourselves nationally, and I dare say internationally, on our ability to mete out justice that is tempered. We don't simply lock people up and throw away the key; we hold out hope, some hope, even at times a faint hope. We balance the competing interests and try to make sure that no single ideology overruns all others. One need only look at the aims and principles of sentencing set out in the Criminal Code to see that this is the case.

It may come as no surprise to members of this committee that the Criminal Lawyers' Association does not support Bill C-48. In our view, this piece of legislation is looking for a problem, as opposed to being a piece of legislation aimed at fixing a problem. Put simply, I ask you what is the problem that this piece of legislation is aimed at correcting? Is there really a sentence discount for multiple murders, or is that an issue of optics, which, when properly understood, reveals no operative discount at play?

I understand that many people perceive that in cases where a person kills more than one victim, the sentence is not apportioned between the two crimes and that the optic is that the second murder is a freebie. That may be the optic; the reality, I submit to you, is different. First off, once convicted of one or more murders, the accused is sentenced to life imprisonment. In Canada, life imprisonment means exactly that; it's a life sentence. The possibility of parole, or the eligibility for parole, is a component of the punishment, but it does not change the actual sentence imposed, which is life in jail. That concept of life in jail is meaningful. Indeed, some offenders never get paroled; some die in jail.

The Supreme Court has noted the blunt fact that a life sentence is a life sentence in a case called R. v. C.A.M. They also noted that the possibility of parole does not operate to defeat the denunciatory or deterrent purposes of sentencing. This bill before you seems to implicitly suggest that multiple murders do not change the effective sentences of accused persons. I have two responses to this. First, where judges are determining parole ineligibility for multiple second-degree murder offences, I assure you that they will and are currently considering the multitude of victims as a very serious aggravating factor, resulting in an increased period of parole ineligibility. That is happening day in and day out. Second, in cases of first-degree murder, while the period of parole ineligibility cannot be increased beyond 25 years, the fact that an accused person has committed two or more first-degree murders is a fact that cannot and will not escape the attention of the parole board 25 years down the line. The reality is that those who commit more than one murder are ultimately punished more severely.

However, what this bill appears to do is inject an element of straight linear math into the equation. A single murder gets an accused 10 to 25 years minimum, a double murder should result in 20 to 50 years, and a triple murder perhaps 30 to 75 years minimum. The mathematical approach that's adopted in this bill has long been rejected in our courts. The concept of sentence totality, as it is known in the case law, prevents the simple consecutive addition of sentences and instructs judges to consider the net impact of a proposed sentence in view of all of the sentencing objectives. A sentence, no matter how serious the crime, should not be so entirely crushing as to obliterate any realistic prospect of release and/or hope for rehabilitation.

While the Supreme Court has rejected a fixed upper limit for numeric sentences, it acknowledges that:

> After a certain point, the utilitarian and normative goals of sentencing will eventually begin to exhaust themselves once a contemplated sentence starts to surpass any reasonable estimation of the offender's remaining natural life span.

Noting that fact, the Supreme Court declined to set a cap on the upper limit of sentences but looked to the discretion exercised by judges. It noted that judges, using their good sense, would protect against unduly harsh fixed-term sentences.

Set against that backdrop, how realistic is it to expect that judges will start handing out crushing sentences based on a linear scale? I say it's not likely, and even then only in the rarest of cases—cases that I submit are already the ones on which the parole board is acting properly right now and denying release.

I ask you all to keep a statistic in mind—and I wish I could give you that statistic, but I don't have it. What is the average length of time that multiple murderers are spending in jail prior to being paroled? That's the number you need to figure out. Once you know that, you will see whether this piece of legislation is actually necessary on an evidentiary basis. In the absence of having that number—I couldn't find that statistic calculated anywhere—you're really guessing as to whether this piece of legislation is required. My guess is that if you find that number, you will see that multiple murderers are already spending much longer in custody and there is really no true net discount at play.

You'll be happy to know that unlike most other times when I'm here before you on a piece of legislation and I'm asked to comment on the constitutionality of it, in this case I don't think there is a constitutional problem with this legislation right now. And I commend the committee and the drafters of the legislation for this. The legislation, at a minimum, preserves an element of discretion on the part of trial judges. I submit to you that discretion, which provides an option to a trial judge, may ultimately save this piece of legislation from constitutional infirmity.

Having said that, I accept and see it as a problematic aspect of the legislation that the discretion is binary. It's a simple mathematical addition of one parole ineligibility period to another. It doesn't vest judges with enough discretion to pick a midway point—a softer stance somewhere short of, for example, in two first-degree murder cases, either 25 or 50 years as the option.

I think there still is a risk of constitutional attack when this piece of legislation, combined with other pieces that are currently under contemplation or study—for example, the repeal of the faint hope clause—are cumulatively enacted. I draw the committee's attention to the Luxton decision of the Supreme Court, which upheld the constitutionality of mandatory life sentences with 25 years of parole ineligibility. In that decision, the Supreme Court seemed to note that the presence of the faint hope clause at least gave some attenuation to the harshness of the sentence and helped find that piece of legislation constitutional. Removing faint hope and other matters seems to have placed that at risk.

● (1540)

I will wrap up because I know my time is short.

I ask you to keep the following in mind. A lot of the new crime legislation is designed to bring public accountability to criminal justice and restore public confidence. I have no quarrel with that objective; it's a decent and fair one. But at the end of the day, I ask this committee to consider evidence of the need for legislation—hard facts—before moving. The criminal law is a blunt tool and shouldn't be used for purely political ends in the absence of some demonstrated need.

Secondly, I understand that truth in sentencing is a catch phrase. I only ask you to keep in mind that truth in sentencing—with great respect—is not the issue; the issue is public education. If the public were made plainly aware of the dynamics and the sentencing statistics in relation to murder sentences, they would likely see what this panel and this committee are struggling with in a different light.

Finally, keep in mind that the concept of parole is a carrot on a stick for people who otherwise have no hope. If you put that carrot too far away on that stick—50 years in some cases—you are effectively leaving a small and likely neglected component of our society with zero hope for ever being rehabilitated or reintegrated into our community.

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

● (1545)

The Chair: Thank you.

We'll start our round. Mr. Murphy for seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you.

Thank you, Mr. Di Luca.

This is a very interesting issue. Like any lawyer, I suppose, I can see both sides of the argument on this one.

Have you defended murderers?

Mr. Joseph Di Luca: I have many times.

Mr. Brian Murphy: It's interesting how phrases are used on both sides of this debate.

Since you're not in favour of this bill, I'd ask whether you agree with two phrases. The first is that the circumstances of every murder are different and a one-size-fits-all approach could well produce injustice in individual cases.

You'd agree with that.

Mr. Joseph Di Luca: I'd agree 100%.

Mr. Brian Murphy: The second phrase is that a fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

You'd agree with that.

Mr. Joseph Di Luca: Yes.

Mr. Brian Murphy: Isn't it curious that those phrases were lifted from the parliamentary secretary Mr. Petit's speech when he supported this bill? It's interesting that discretion can be used as an argument to keep this bill. It is one of the positive points you brought up about the bill. It's what we've been harping about for quite some time with this government. They've come around on the idea that judges are trustworthy with our laws, which is good—that's the good part; we're always looking for the good on that other side.

But let me put a hard case to you. In the late 1970s in my community, Constable Bourgeois and Constable O'Leary were murdered by Mr. Hutchison and Mr. Ambrose. I remember it as a kid. They admitted to the murders and were convicted. Of course, that was in the late 1970s, after the death penalty was repealed. They are now gradually coming up for parole.

I can tell you that to a person, Liberals and Conservatives—and even Bloc, if there were supporters in Moncton—would be appalled if they had the collective corporate memory of the people in the community that this can happen.

When you say it's not a problem, what you're really saying is we have to trust the parole board for this. I'm not sure, maybe that's a separate issue, because many people don't have faith in the parole board. Why should we have faith in the parole board? In that case, I'm guessing a local judge, local community, or local jury would have some influence in suggesting that those two individuals, Hutchison and Ambrose, should have got—and it's a clear case of two murders—parole ineligibility of 50 years. I can see that happening and a judge granting that if he had the discretion. It's a clear case to me.

Why should we trust the parole board to do what might have been a judge's job?

Mr. Joseph Di Luca: I have a couple of answers to that. One, the judges are sentencing someone 25 or perhaps 50 years before they are parole-eligible. So they are seeing a person in the span of time, likely at a point in time relatively close to when they committed the offence. It's likely they're seeing these individuals at their lowest, or close to it.

The criminal law is a blunt tool. We are all well aware of that, and at its margins that bluntness isn't nearly as nuanced as we want it to be, because Parliament has seen fit to enact a sentence of “life 25” for all first-degree murders, period, whether it's a very nasty first-degree murder or a less nasty one. I appreciate there's a range even amongst first-degree murders in terms of their calibre. But we have that one-size-fits-all sentence there.

What we did do, at least at the time, was vest the parole board with the discretion at a very long period of time away—and 25 years is a very long period of time—with the power, on an informed and nuanced basis, to look at how that person has reacted and responded to 25 years of incarceration, and then judge whether they are safe to be released. They are looking at and applying a very different test than what a judge is looking at.

A judge cannot, on the day of sentencing, say they will be safe to be released in 25 years from now or in 50 years from now. But at a certain stage the parole board does have the expertise, and it should have the expertise and trust of this committee, to sit there, on an expertise level, and say this person can now be released. I appreciate that 50 years, certainly in some crimes, like the one you just mentioned, obviously has a visceral good feel to it. You sit there and say that a person certainly deserves 50 years. But it's crushing.

● (1550)

Mr. Brian Murphy: I've only got a couple of minutes, and it's a different area. You say we don't have the statistics to find out what the average time served by a multiple murderer is. I don't think we've heard that either. But we do have the statistics on the average time spent incarcerated for first-degree murder: 28-some years, and 29 in the United States. But we have these statistics from other countries that are civilized western democracies and they are far less. Do you know why? Is there something different with the charging provisions?

Mr. Joseph Di Luca: This is perhaps a classic Canadian compromise, but in the bid to get rid of capital punishment, the trade-off was a sentence for first-degree murder, which was likely unheard of in terms of its length in other Commonwealth and similar countries. So it may have been the political cost, if you will, of winning the battle against capital punishment. But it has resulted in an incarceration rate that we as Canadians should not be proud of. We are neck and neck with the United States, and at that point much further ahead than other countries.

I think you're right. I'm not sure there's a difference in the charging, necessarily. I think it's just a difference in the availability of sentencing discretion and parole discretion.

Mr. Brian Murphy: Is there first- and second-degree murder in the U.K., for instance?

Mr. Joseph Di Luca: I don't know the exact answer to that, but I do know there's an increased measure of discretion in terms of release that is borne out by the statistics, which in the U.K. are significantly lower than ours.

Mr. Brian Murphy: It's 12 or 13 years, I think.

Thank you.

The Chair: Monsieur Lemay, seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Colleagues, you are criminal lawyers. I would imagine you have already defended cases you knew were practically lost causes, or difficult to win.

[*English*]

Mr. Joseph Di Luca: This week?

[*Translation*]

Mr. Marc Lemay: I can tell you that you are not going to win this fight. To answer your question, it is going to be very difficult, given the position of the various political parties in this room, to prevent the passage of Bill C-48. Unfortunately, it will pass.

There is only one aspect of this bill that I find reassuring. It is the addition of section 745.51, giving judges some discretionary power, as you rightly pointed out. To respond to your first question, do you know why the Conservatives absolutely want this bill to pass? You simply have to read the short title, section 1, and you will understand their entire philosophy. In fact, they will get back to it later on. The section reads as follows: "This act may be cited as the Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act". That is quite something, isn't it! Obviously, that is the only thing some of us may agree on. Regardless, on this side of the table, we want to stop the passage of section 1. That is more or less it. I will tell you why.

The discretion provided in section 745.51 reassures me. I do not know how to ask you this question, dealing with violence in penitentiaries. I have probably done what you do today. I practiced criminal law for a number of years and defended individuals accused of murder, among other things. If there is no light at the end of the tunnel, if they see no likelihood of release, do you seriously believe that rehabilitation is possible, especially in double murder cases?

● (1555)

[*English*]

Mr. Joseph Di Luca: I think rehabilitation is a tough challenge on any given day, but the minute you snuff out the light at the end of the tunnel, or make that tunnel so long that you're really removing hope, I think you really run the risk of not only ending the hope for rehabilitation—and I agree sometimes it is just a hope—but also increasing the probability of violence within institutions, of losing control within the institution, because a person has nothing to work towards. Taking someone who is 25 years old, who committed the most horrific act, and saying, "If you are good, really good, at age 75 we can try you out for parole", that person has no hope. They won't be bothered by any discipline. They're not going to care. There's just nothing, really, to live for at that stage. It's just unrealistic.

[*Translation*]

Mr. Marc Lemay: Colleagues, with respect, you are going to be hearing about this. I do not know who, among the Conservatives, will speak to it, but you will see that this is their way to protect victims. I do not know if you view things as I do, but I doubt that 50 years of detention for offenders provide better protection for victims. Either way, some Conservative Party members would bring the death penalty back, and this is a softer option: you lock someone up and throw away the key for 50 years.

It should be noted that criminals like Clifford Olson do try to get parole. Clearly, the Conservative Party is engaging in demagogy here. Everybody knew, except for Conservative Party members, that there is no way the National Parole Board or even a superior court judge would ever have given that man parole. I would like to know what you think of that. We are stuck with this.

[*English*]

Mr. Joseph Di Luca: Yes, I know. To make it more problematic, the discretion is binary, so you're giving a judge a choice, which is very blunt. It's either 25 or 50 years. I would imagine that most judges looking at a person, given those two options, will err on the side of caution and go with judicial restraint and then turn it over to parole authorities. I would imagine that this is going to be a piece of legislation that is going to be used once in a blue moon, if ever.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Thank you.

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

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Di Luca, for being here.

Some of the arguments we heard in the debate in the House before it came to committee were that we devalue the second or the third life. I challenge that. I find that a fallacious argument. In particular, one of the points I would like to make—and see if you agree with me—is that if you had a situation where there were convictions for multiple murders, and either at a subsequent trial or on an appeal the person is found innocent on one of them, do you agree that for the other, even if it's the second or third murder that they remain convicted of, they will still be serving the life sentence for the balance of their life?

Mr. Joseph Di Luca: That is correct.

Mr. Joe Comartin: That is not altered by an acquittal on one of the other charges.

Mr. Joseph Di Luca: Not at all.

Mr. Joe Comartin: With regard to the provision in the bill, proposed subsection 745.21(1), where the judge is required to put to the jury after conviction on first-degree murder whether they want to make a recommendation, I don't see any provision in the bill. I'm assuming I know the answer in advance, but will a person who is acting as defence counsel be given the opportunity to make submissions on that point?

● (1600)

Mr. Joseph Di Luca: That's interesting. The second-degree murder sentencing provisions right now allow a judge to put to the jury a similar question asking for a recommendation on the number of years for parole ineligibility. While it's not contained in the code, in practice most judges will allow counsel a few minutes to make submissions on the issue.

What's interesting is that one would expect that if the public safety were really engaged to the point where they thought all murderers should go to jail and die there, the jury recommendations would unanimously and routinely come back asking for maximum periods of incarceration. It's stunning to see how varied those sentencing recommendations by a jury are. You will oftentimes find one or two jurors at 10 years, a couple of jurors at 12 or 13 years, a few at 15 years, and one or two at 24 or 25 years. They cover the gamut. There is not consensus even amongst the very jurors who hear these cases.

Mr. Joe Comartin: In that light, if the practice remains the same, should this go through...and there is one way it won't go through, given the Liberals' attitude on this, which is that if we have an election and this government goes down. But barring that, this is almost certainly going to go through. If it does go through and the practice continues, you won't have any opportunity to put before a jury evidence such as the length of time first-degree murderers now spend in custody, will you?

Mr. Joseph Di Luca: Correct.

Mr. Joe Comartin: And you won't get any evidence before a jury on the fact that a murderer has not committed a subsequent murder once released by the parole board, will you?

Mr. Joseph Di Luca: The jury is going to be asked almost to flip a coin, without any evidentiary basis before them, because they're not going to have before them any evidence, even of the person's character or background or history or the factors that would go into a judge's decision. The jury won't have that. They're really being asked, “Look at this person. You saw what they did in this case. Tell us whether it's 25 or 50 years.” Or 10 or 20, or however they want to break it up.

Mr. Joe Comartin: They'll be faced with the same problem the judge has. They either can recommend 25 years or 50 years, but they don't have the ability to recommend anything in between.

Mr. Joseph Di Luca: Correct.

Mr. Joe Comartin: Do you have any idea of how many multiple murderers we currently have convicted in Canada?

Mr. Joseph Di Luca: I don't have the exact numbers before me, but I saw it in the legislative material prepared for this committee on this bill. The numbers of multiple murders are quite small when compared with single murders. It is a very small group of people. On a percentage basis, I believe it was 5%, 6% of murders in a year are multiple murders. I could be wrong on that, but it is a very small percentage.

Mr. Joe Comartin: Since 1997 none of them have been allowed out before they spend the full 25 years?

Mr. Joseph Di Luca: I wouldn't be surprised if that were the case.

Mr. Joe Comartin: In fact, none of them have been out, by my analysis of the numbers, in less than 30 years.

Mr. Joseph Di Luca: Sure.

Mr. Joe Comartin: If you do have a jury recommending it and a judge imposing the 50- or 75-year penalty before eligibility for parole, will the charter be invoked as an argument on individual cases as opposed to on collective ones?

Mr. Joseph Di Luca: I think the element of discretion may—may—save this provision. That's to be seen down the road—but yes, in a specific case.

Charter values obviously inform all decisions made in the criminal courts, and a charter value approach to looking at sentencing would certainly hold out some hope for an individual. So I could imagine that a judge looking at deciding whether to use the blunt tool of 25 or 50 years, viewing it through the charter lens, would certainly come to the conclusion that restraint and flexibility in a more nuanced approach would be appropriate and not apply it in the circumstances.

Mr. Joe Comartin: Mr. Di Luca, based on the experience we had in Canada before we did away with the death penalty, and faced with the experiences we're looking at in the United States, would you agree with me that the effect of this bill, if in fact it is imposed in any cases—and I agree with you, by the way, that it's probably going to be used fairly rarely, at least with our current batch of judges—will also inevitably lead, in every single case, to at least an appeal to the court of appeal of the province, and most likely most of these will also be appealed to the Supreme Court of Canada?

● (1605)

Mr. Joseph Di Luca: The minute you increase penalties, you will see not only increased litigation surrounding the penalty but prolonged litigation. Someone who has a 50-year sentence ahead of them has nothing to lose by trying to fight for everything they can.

Mr. Joe Comartin: In terms of protecting the victims from exposure to the faint hope clause, again we're going to have them exposed to trials—retrial at the appeal level and then a further appeal to the Supreme Court.

Mr. Joseph Di Luca: Sure. And what happens when one of the two murder convictions is appealed and the sentence is set aside? There needs to be a resentencing hearing because your parole ineligibility period will need to be reset in view of the fact that the person is no longer found guilty. You have to contemplate redoing a lot of sentence hearings, where there's victim impact, community input, and all that sort of material. That's a factor that needs to be contemplated as well.

And we know, just looking at the Court of Appeal for Ontario, for example, there are a fair number of murder cases that are redone. It's not an insignificant number of murder trials.

The Chair: Thank you.

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

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Di Luca, for your presentation and your presence.

I have a number of questions for you, and I'm going to help my friend Mr. Comartin with one of his.

According to Corrections Canada, as of August 2009 there were 457 individuals in Canada who had been convicted and imprisoned for multiple murders. Of those, 26% have been granted parole.

I was alarmed by that number. First I thought it must be a misprint. I thought it must be 26, but actually it's 26%. So that's 100: one out of four. I've asked officials to verify that statistic and they tell me it's accurate. If that is in fact the case, how do you reconcile that with your suggestion in your opening that this is mere optics, that there is no operative discount? Twenty-six per cent of multiple murderers have in fact been paroled.

Mr. Joseph Di Luca: The discount only arises if you know when into their sentences they were paroled. Was it after 25, 35, 45, or 50 years? If you know the number when, effectively, they were paroled and how long they had served in jail, that will demonstrate whether there was in fact a discount.

Keep in mind that even as the system stands right now, a judge looking at sentencing someone for multiple murders is not going to give the minimum parole ineligibility period. They are going to give an enhanced parole ineligibility period. I would imagine that the parole board, even if a parole board were to look at two cases of first-degree murder, one where there was a single victim and one where there were multiple victims, would be more likely, everything else being equal, to grant parole more quickly to the person who only killed one person than to the person who killed two. It is going to be and is treated, no doubt, as an aggravating factor.

Until you know how long these multiple murderers are actually spending in jail, we are really guessing as to whether there is a discount.

Let me just add this. The sentencing discount is a perception, and I think it's an incorrect perception. It's recognized in law that you can't simply take out an adding machine and add up one life sentence of 25 years for every crime committed or for every offence. In fact, our Court of Appeal for Ontario has gone on about this at length. There was an old case, many years ago, when a fellow broke into 15 cottages. The judge looked and said, well, I would give you eight months in jail for one break-in, so eight times 15 equals *x* number of months in jail, and that's your sentence. The Court of Appeal said, look, we don't sentence people that way. That doesn't take into account totality. That doesn't take into account personal circumstances, a hope for rehabilitation, or a measure of balance.

That, on the one hand, I think tempers the argument. On the other hand, we need to have that number. We don't have the statistics. The people you are speaking of, this 100 people at 25%, are maybe getting out way later than other people similarly situated who have only murdered one person.

Having said that, we all know that the parole board has some expertise in this. The parole board is not letting out people by picking names out of a hat. Convincing a parole board to be released is a formidable task. When we saw Clifford Olson, that's a lost cause. He's never going to get parole. We trust our parole board to do exactly that. That's exactly what's happening. He's going to die in jail, in all likelihood. In that way, the system is working.

Mr. Brent Rathgeber: I know that a life sentence is a life sentence. Just about everyone in this room is a lawyer, and we all know that a life sentence is a life sentence. Do you think this is commonly understood in society? Do you agree with me that many members of civilian society, if I can use that word incorrectly—but I think you know what I mean, I mean non-lawyers—think that a first-degree murder comes with a 25-year sentence?

● (1610)

Mr. Joseph Di Luca: I agree that lawyers and civilians are two different things. I also agree entirely that it is probably one of the areas most ripe for public legal education. It is one of the most pressing and most common misconceptions, both in the media and publicly, at large. Most people will tell you, oh, come on, if someone kills in Canada, they're home in seven years, in five years, in nine years, in ten years, or whatever it is. They don't appreciate that life is life.

Mr. Brent Rathgeber: So you understand that to those folks, this is not some obscure remedy looking for a problem, as you said. This is a real measure to correct what they see as a sentencing discount in that individuals convicted of multiple murders are sentenced to 25 years for all of the murders they have committed as opposed to being sentenced individually for each one.

I'm not asking whether you agree with that common perception. But you will agree with me that this is a common perception that's out there.

Mr. Joseph Di Luca: I agree that it is a common perception. My only response is that it is more a function of our needing to educate the public, get the correct statistics, analyze the issue factually, and then act, if there is that need.

Mr. Brent Rathgeber: I agree with my friend, Mr. Lemay, that an individual like Clifford Olson would never receive parole, and thankfully this week he did not. For his edification, and perhaps you may wish to comment, the reason victims of Olson and other multiple murderers are victimized is that the very thought of the hearing and their ability to participate in the hearing, if they so choose, is revictimization. And they will tell you that. We had Sharon Rosenfeldt here on another bill, the faint hope bill. She is the mother of one of Olson's victims. She will tell you eloquently and passionately that every time she reads Olson's name in the paper, she is victimized. At least it's her perception that she's victimized.

What do you say to the people who have been advocating for this type of legislation with respect to their concerns that the perpetrators of the murders against their loved ones are in fact receiving sentence discounts?

Mr. Joseph Di Luca: I have nothing but great and deep sympathy for their views on something like that. It is obvious that they have been victimized not only by the initial crime but by the process as it unfolds over the years—there's no doubt. Ultimately, I don't think there's anything that can be done to remove the name Clifford Olson forever from the media or remove the due process that the Constitution accords him. However, we despise him. It's a byproduct and we seek to limit it, but I think it's an unfortunate but required and necessary byproduct of a system that accords due process to all, good and bad.

Mr. Brent Rathgeber: With the few seconds I have left, you will agree with me that if this legislation were in place, and if Mr. Olson had to serve 11 times 25—I don't even know what that is—before he's eligible to apply for parole, and this will not be retroactive, that would spare the Sharon Rosenfeldt and the others like her of having to live through that nightmare every time there's a parole application.

Mr. Joseph Di Luca: I accept that. Taking that argument to the logical extension or conclusion, you then deny parole to anyone and give everyone life in prison without the hope of ever getting out, and you remove their name from any public display so that no one is ever revictimized by the person.

We administer justice a little more passionately or compassionately in Canada, not losing sight, though, obviously, of the victims who are troubled by it. We can't legislate only because a victim's family is going to be revictimized by an element of due process.

Mr. Brent Rathgeber: I see your point, and I thank you for seeing the victim's point.

The Chair: Thank you.

We'll move on to Mr. Murphy for five minutes.

Mr. Brian Murphy: Thanks.

It's an interesting debate, because what Mr. Rathgeber's questioning led to is the agreement in the room that civilians outside the room feel that life is life and it isn't 25 or 28, which is the actual average statistic, and that there are murderers who get out after seven years or nine years, or what have you, through the working of the parole board—murderers, second degree, after 10 years, 17 years, or whatever.

That's the working of the parole board. You laud the work of the parole board because they are given the task of freeing people who have committed murders and have been given life sentences by judges. I don't think the public sees it that way. It seems like a bit of an error on the government's part not to look at—and maybe they are—either the educative aspect or the legislative aspect of the parole board. That seems to be, from their own mouths, one of the problems.

It's precisely because every murder is different. I don't think there's anybody in this room who thinks that Clifford Olson should be up for parole every so often, either. He should be in for 275 years, as the 11 sentences would be. It should never happen, but in the government's own words, they recognize the problem of murder in general.

Mr. Petit, again, the patterns of multiple murders are extremely varied. They range from cold-blooded serial killings and contract killings to unplanned killings in the heat of passion, parental killing of children, workplace killings of fellow workers, right through to killings by persons in delusional states cause by alcohol, drugs, and mental illness. I think what you're saying is there are cases where people should be given a parole eligibility because they might be worthwhile to society. I get that.

In the case of multiple murders, the Department of Justice official was exceedingly unhelpful in trying to see a way of amending the bill or seeing why there wouldn't be discretion. It seems to me that proposed section 745.51 could be amended at the end to give that judge the discretion between 25 and 50 years. He can't do it in numbers because it's the multiple of the number of murders there are, but somewhere between 10 and 20, somewhere between 20 and 40. If that were there, that would be true discretion, which the government, in its own words, believes in now with respect to judges, and I think on this side we believe in. Wouldn't that be a neat amendment? I don't think it would be outside the scope of the bill. What do you think of that kind of amendment?

● (1615)

Mr. Joseph Di Luca: I would absolutely applaud that sort of amendment because it does restore and reflect faith in the judiciary to do exactly what it is that we swear them in to do on a daily basis. They have the expertise to do that. They would have the evidence before them to do that. That measure of flexibility, quite frankly, would turn a piece of legislation that is likely never or rarely, if ever, going to be used into something that might, in the appropriate case, be used.

Let me add one other element. If you're going to look at the parole board, you can get a little more creative than using the blunt tool of criminal law and saying 25 or 50. How about perhaps introducing a screening function in the parole board? We do that with faint hope right now. You don't have an automatic right to a faint hope. You have to present your case first to a judge on paper. If that judge sees there's a reasonable prospect of succeeding, it then goes to a faint hope application. That was done to spare families of the victims from being retraumatized.

Why couldn't the parole board, quite frankly, exercise a screening function and look at an application on paper and say, “This is doomed, it's hopeless, and it's not going to go ahead to a full hearing”? A guy like Olson won't be sitting there having a public display every few years, traumatizing people. There are more creative ways to do it.

Certainly, injecting a true measure of discretion at the judicial level would be key in softening this bill and making it, quite frankly, more usable.

Mr. Brian Murphy: I think we're up now?

The Chair: One minute.

Mr. Brian Murphy: The aspect could be dealt with, I think, through an amendment. I would hope my friends would be open to that. It doesn't detract from the bill. It says that we're actually giving.... The fly in the ointment is that we agree there's judicial discretion here, but the discretion is that you can drive your car at 10 miles an hour or 100 miles an hour. Sometimes people want to go in between those. Sensible people do; sensible judges do.

Do you think judges would agree with this real discretion?

Mr. Joseph Di Luca: I think if you could find out, the judiciary's view would likely be that they have an expertise that's developed and that's based on an evidentiary foundation. The hallmark, if you will, of Canadian sentencing up until recent years has been the judicious exercise of discretion in crafting tailored and individualized sentences that try to balance all of the factors reflected in sections 718 to 718.2 of the Criminal Code.

Mr. Brian Murphy: Thank you very much.

The Chair: Thank you.

We'll go back to Monsieur Lemay for five minutes.

[*Translation*]

Mr. Marc Lemay: Mr. Murphy raised a point, but I wonder how we could amend the bill. According to section 745.51, the judge's discretionary power deals with his allowing or denying the application. That would mean 25 more years before a person is eligible. However, I believe Bill C-48 cannot allow for less than 25 years, as that does not appear in the bill. There would have to be an amendment to 745.2 or the beginning of 745, but that is not what we have here. Unfortunately, I was not expecting it, but it would seem to me, if my memory serves me correctly and based on what we have here, that the judge has no other choice. It is one or the other, either you grant discretionary power or not. I do not know if you agree with me or not. Otherwise, we would need to amend the beginning of section 745.

● (1620)

[*English*]

Mr. Joseph Di Luca: I agree that right now the choice is binary: it's one or the other, period. To change that, I agree that other sections of the Criminal Code would need to be rewritten to reflect an ability on the judge's part to exercise a more finely tuned discretion. It goes beyond the clause in this bill.

[*Translation*]

Mr. Marc Lemay: If I understand you correctly, and I agree with you, we cannot broaden the scope of Bill C-48. It is one or the other.

[*English*]

Mr. Joseph Di Luca: As it stands now, the way this bill is created, I agree with you. It's all or nothing the way this bill is worded. This legislation would need, in my view, a substantial rewrite, because it would have to impact a little more broadly the parole ineligibility periods, or at least give a judge the discretion to do it. Now, it's not a complicated matter. You can do it by reference to the sections that.... It's not complicated on my side.

[*Translation*]

Mr. Marc Lemay: It is not complicated for you, you are a criminal lawyer. It would not be for me either, nor for Mr. Murphy.

However, I believe that on the other side, it would be very complicated, because that is not what they want.

I have no further questions but I thank you very much.

[*English*]

The Chair: Thank you.

We'll go to Mr. Woodworth for five minutes.

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

Thank you very much for being with us today.

I'm going to ask you, first of all, a bit of a technical question to clear up something in my own mind. I'm not familiar with the practice under the existing section 745.2, where a jury is entitled to make a recommendation regarding parole ineligibility.

Are you saying that a judge may not delay the discharge of the jury until after sentencing evidence has been heard?

Mr. Joseph Di Luca: No. In fact, what ends up happening is that the jury comes back into the room and says, "We find the accused guilty of murder." The judge then reads to them the provision out of the Criminal Code. The jury leaves the room, comes right back again in 5 or 10 minutes, or an hour later, and says, "Here's our sentencing recommendation."

Mr. Stephen Woodworth: Is that a practice or a rule?

Mr. Joseph Di Luca: It's a practice.

What ends up happening is that at the sentencing hearing, which takes place a week, a month, or three months later, the jury recommendation is one of the factors the judge looks at in crafting a sentence.

Mr. Stephen Woodworth: So it's just a question of timing, perhaps, that the jury couldn't be kept undischarged until the sentencing hearing occurs.

Mr. Joseph Di Luca: Well, if it is contemplated that their role is to be more meaningful than just flipping a coin and deciding yes or no on consecutive sentences, yes.

Mr. Stephen Woodworth: In any event, one way or the other, that aspect of things is the way it is now. This bill doesn't change that aspect of things.

Mr. Joseph Di Luca: No. In effect, it just gives them one more question to answer.

Mr. Stephen Woodworth: Right.

Now, may I take it that you trust the ability of our judges to exercise this discretion correctly, keeping in mind that they well know it is a binary discretion, and that you trust them to exercise that discretion judicially?

Mr. Joseph Di Luca: I'm in favour of judicial discretion and in fact firmly believe that it's not only consistent with the charter but is also consistent, ultimately, with Canadian practice, nationally and internationally.

I would trust the judges to do it, but they're going to be reluctant to engage in an exercise of discretion that's so binary.

Mr. Stephen Woodworth: Fair enough. I wouldn't attempt to tell a judge. In this legislation, all we're doing is giving the judge an option that the judge didn't have before. Isn't that correct?

Mr. Joseph Di Luca: That's fair enough.

Mr. Stephen Woodworth: If you're in favour of judicial discretion, I would think you wouldn't argue too strongly against giving a judge an option that the judge didn't have before.

Mr. Joseph Di Luca: As I said at the outset, I applaud the existence of that discretion, and I think it's key in keeping this piece of legislation within constitutional boundaries.

Mr. Stephen Woodworth: That really wasn't quite what I was saying.

Do you applaud the fact that we are giving a judge a discretion, an option, that the judge didn't have before?

● (1625)

Mr. Joseph Di Luca: Absolutely. I'm happy to have it there, but I want you—

Mr. Stephen Woodworth: Because that's what this legislation does.

Mr. Joseph Di Luca: But I question the evidentiary basis upon which you see the need or perceive the need to do that.

Mr. Stephen Woodworth: Well, let's talk about that for a moment, particularly with reference to the Clifford Olson case.

After all, what we're really talking about here is who makes the decision about parole eligibility at that stage, whether it is to be the judge or the parole board. Isn't that correct?

Mr. Joseph Di Luca: Mm-hmm.

Mr. Stephen Woodworth: You have to say yes or no.

Mr. Joseph Di Luca: I'll say yes—

Mr. Stephen Woodworth: Thank you.

The Chair: I have a point of order.

Mr. Brian Murphy: Mr. Woodworth is very keen on the subject, and I appreciate that enthusiasm. He has cut the witness off in his response twice, and now he's saying the witness has to say yes or no as an answer.

I wish, Mr. Chair, that you would encourage the witness to answer his question fully and encourage Mr. Woodworth to let the witness do so.

The Chair: Mr. Murphy, as I have said before, I respect the independence of each member of this committee. I'm going to respect the right of each member to ask the questions as they see fit. I have extended that courtesy on both sides of this table. I will remain consistent in doing so.

The only time I will intervene is if in fact the witness and the questioner are yelling over each other so that they become unintelligible. At that point, I will intervene.

Otherwise, I'm going to allow each of our members to carry on their examination of witnesses as they see fit.

Mr. Stephen Woodworth: May I just comment on that point of order before I resume?

I appreciate Mr. Murphy's intervention. I'll certainly comply with requirements of courtesy, but I want to say that my comment to the witness about not just saying “mm-hmm” is, I suppose, a lawyer's habit, because assuming that there's a transcript kept, the “mm-hmm” doesn't really come out very well.

I was simply, as courteously as I could, attempting to ask the witness to articulate a yes or no, and I didn't mean any discourtesy by it.

May I resume? Thank you.

With respect to Mr. Clifford Olson, the only issue is whether the parole ineligibility is decided by the judge or by the parole board, at least in connection with this legislation. Is that correct?

Mr. Joseph Di Luca: That's correct.

Mr. Stephen Woodworth: At least in the case of Clifford Olson, we might now with hindsight say that perhaps it might have been appropriate for the judge to do that pre-screening. Would you agree?

Mr. Joseph Di Luca: No, I wouldn't, and the only reason I wouldn't agree is that you're asking a judge to prospectively guess where a person is going to be 50 years from now. It's an impossible position, for a judge looking at it, to say that up until 49 years from now this person is just not safe to be released, but at the 50-year mark he should be free to apply for parole.

Mr. Stephen Woodworth: Let me just say that, at least in the case of Clifford Olson, I would have to somewhat strongly disagree with you, in that I think it would have been apparent to a judge, in the case of a serial killer of that nature, and needn't have awaited the parole board.

But apart from that, I have another technical question that I wish to get to. I am no expert in parole hearings, I must confess, but my recall of the parole board is that they have policies and precedents that give guidance as to when parole will be granted or not. My recall of these is that they are keenly focused on public safety, but also remorse and rehabilitation.

I do not recall a policy or a precedent that would allow a parole board to deny parole when it was otherwise appropriate simply on the basis of the number of offences committed originally.

Are you saying there is such a policy? I thought I heard you say that a parole board would take that into account.

Mr. Joseph Di Luca: I don't think there's a formal policy that puts it in that sense, but if the parole board has to look at the degree of risk posed by an individual upon release, the fact that they have killed more than one person—perhaps in separate offences, perhaps in separate circumstances—certainly speaks to the inherent degree of risk of releasing that person.

Mr. Stephen Woodworth: When you put it in terms of risk, that's quite right. But when you simply say that it's a stand-alone qualification, I don't think so.

How many submissions have you received from your members on Bill C-48?

Mr. Joseph Di Luca: I consult with my membership and my executive directly on issues. We have a legislation committee—

● (1630)

Mr. Stephen Woodworth: So what was the number?

Mr. Joseph Di Luca: There is no specific number.

Mr. Stephen Woodworth: Have you received any submissions from your members on Bill C-48?

Mr. Joseph Di Luca: From specific members, no, we haven't. But the way our committee is set up, the legislation committee is tasked with advancing the interests of the organization. The committee meets and debates and comes up with a position that's—

Mr. Stephen Woodworth: How many people are on that committee?

The Chair: Thank you. We're at the end of our time.

Mr. Joseph Di Luca: I can answer that question. There are four people on that committee.

The Chair: All right.

Thank you so much, Mr. Di Luca. Your testimony is helpful as we move forward with this bill.

We're going to suspend for two minutes, and then we'll come back to hear from Ms. O'Sullivan.

● _____ (Pause) _____ ●

The Chair: I reconvene the meeting. We're continuing our study of Bill C-48.

It's my pleasure to welcome to our table again Ms. Suzanne O'Sullivan, who is our recently appointed Federal Ombudsman for Victims of Crime.

Welcome back. You have 10 minutes to present, if you wish, and then we'll open the floor to questions.

[*Translation*]

Ms. Susan O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Mr. Chairman and members, thank you for the opportunity to come before you again today to discuss Bill C-48, which will provide judges the discretion to order consecutive rather than concurrent parole ineligibility.

I would like to start this afternoon by providing you with a very brief description of the work our office does. I would then like to provide members with my views and recommendations on this bill and how it impacts victims of crime in Canada.

[*English*]

The Office of the Federal Ombudsman for Victims of Crime was created to provide a voice for victims at the federal level. We do this through our mandate, which includes receiving and reviewing complaints from victims; promoting and facilitating access to federal programs and services for victims of crime, by providing information and referrals; promoting the basic principles of justice for victims of crime; raising awareness among criminal justice personnel and policymakers about the needs and concerns of victims; and identifying systemic and emerging issues that negatively affect victims of crime.

In respect of Bill C-48, let me begin by stating our support for this bill and its intentions to provide the option, where appropriate, for judges to specify consecutive rather than concurrent parole ineligibility periods.

Bill C-48 addresses two specific concerns that victims have raised again and again: the need for accountability for each life taken, and the anxiety and emotional toll victims face when an offender is granted a parole hearing.

As to accountability, the desire to see justice served for the loss of a loved one is common among victims, and I would argue understandable. In the case of a serial murderer, families of victims want to see that the loss of their loved one's life is considered and valued and that the offender is held responsible for each life he has taken.

When offenders are sentenced to life in our current system, they are not entitled to statutory release. If they are granted parole, they remain for the rest of their lives under the supervision of the Correctional Service of Canada. An offender's parole ineligibility is not automatically extended based on the number of victims he has killed. As a result, there is no clear deterrent or obvious punishment for taking six lives instead of one. This is clearly a source of frustration for some victims.

Not all victims agree that the longer incarceration is the best solution. But each victim I have spoken to agrees on one thing: they never want what happened to them to happen to anyone else. Bill C-48 provides the option at the judge's discretion to impose consecutive parole ineligibility periods and to ensure that the victims and the public in general are protected. This discretion is an essential element of the bill. It provides the judge with the ability to make a decision based on individual circumstances and the best interests of all Canadians.

The second concern Bill C-48 addresses is the anxiety and difficulty victims can face in preparing for and attending a parole hearing. My appearance here today is timely. Just two days ago I attended, as an observer, the most recent parole hearing for serial killer, Clifford Olson. We are all familiar with the horrendous crimes that he has committed, and I have no wish to give him any more attention than he has already received. I do, however, want to speak to the emotional toll that parole hearings like this one can have on victims of crime.

I imagine you have all, to some extent, followed this issue in the media. Clearly, based on the offender's comments to the victims of crime, he has no remorse for what he has done or compassion for the loss his victims' families face. Regardless, he is currently entitled to apply for parole every two years, which means that the families of his victims have to face, again and again, their devastating loss.

I can tell you, after talking with Sharon Rosenfeldt, that these hearings can be very difficult. Some victims choose not to participate in parole hearings, but for those who do, preparing victim impact statements and sitting in the same room with the offender who stole the life of a son or daughter can make wounds fresh again. And the impact of that hearing is not limited to just the two days the parole board meets and makes its decision. It comes years in advance when victims know that an offender's parole ineligibility period is coming to an end. It comes months in advance when the victims are advised that the offender will be having a hearing and they need to prepare. And it continues after the hearing as families try to continue to heal. These hearings involve time, cost, and often travel for victims. For those who may be unwell or who have medical issues, this can be especially challenging.

Clearly, our justice system must be fair to all parties involved. I am not suggesting that offenders should never be eligible for parole, but in cases like these, Bill C-48 would give judges an additional tool to help ensure that victims are not subjected to this process without reason.

● (1635)

Finally, though I support this bill in its current form, I would also like to make two small recommendations for consideration. My understanding is that Bill C-48, for judges who choose not to impose consecutive ineligibility periods, states that they must provide the reasons for their decision orally or in writing. While I am aware that these decisions become a matter of public record and would leave this to the experts to discuss, I would recommend that this be amended to ensure that, first, victims are provided with the explicit right to this information should they desire it, and that, second, even in cases where a judge decides that an offender's parole ineligibility should be served consecutively, these reasons are also required to be given orally and in writing and the victims are provided the explicit right to this information should they desire it.

[*Translation*]

In conclusion, it is my view that Bill C-48 will have a positive impact on victims of crime and their families. Providing judges with the discretion to apply consecutive, rather than concurrent parole ineligibility will help ensure accountability for each life lost, and, where appropriate, will delay and in some cases prevent the trauma and devastation victims experience when faced with parole hearings.

[*English*]

Victims deserve a voice in the criminal justice system. I hope I have successfully helped in bringing that voice to you for consideration here today.

Thank you. *Merci*.

The Chair: Thank you.

Mr. Murphy, you've got seven minutes.

Mr. Brian Murphy: Thank you.

I want to thank you for being here.

On your last point about the reasons, the intent of the bill, as I understand it, was for reasons to be given. How should that be different?

● (1640)

Ms. Susan O'Sullivan: One of the biggest issues and concerns and complaints we receive in the office is frustration from victims and their families, not only on their lack of rights, but on their access to information and their ability to get information. As I indicated, I understand these decisions are a matter of public record, and they're looking for the answers to the decision, whether the decision allows for the consecutive ineligibility for parole or not. They're looking for the answers to both why that decision was made and whether the consecutive ineligibility applies or it doesn't.

Mr. Brian Murphy: For reasons and the decision?

Ms. Susan O'Sullivan: Yes.

Mr. Brian Murphy: Okay. I understand that and I agree with that.

The other thing is that we've had a bit of evidence on this bill about this allowing a judge to increase the period of ineligibility, in the case of a first-degree double murder, from 25 to 50, triple murder from 25 to 75. Let's take the double murder. In my community, a heinous crime was committed when I was growing up. Two policemen were brutally and deliberately murdered by persons who, just after the death sentence was repealed, were given life sentences, which the people of Moncton thought meant life sentences. Around this room we all think life means life. We recognize that people out there think that as well. We know it means 25 years eligible. It means 28 years served, on average.

We've heard evidence that the parole board should handle these things after 25 years. I'm looking for a middle way: in a case where a judge has true discretion, he may say, for two murders, no eligibility for 45 years. In the case of one of those murderers, Mr. Hutchison, that meant life, because I think he was 40-something when he committed the murder. Do you see some middle way there? We heard evidence this morning from a lawyer who is experienced in this realm of murder defence, that given the choice between 25 and 50, with a 40-year-old convicted first-degree murderer, the judge probably is going to exercise what they call judicial restraint and go with the 25. In other words, we may get a longer period of ineligibility in certain circumstances if we try to find some sort of way in the middle. Do you understand what I'm saying?

Ms. Susan O'Sullivan: I think I do. As you're well aware, I'm here to be the voice for victims, and I can tell you unequivocally that victims do not want to see what happened to them happen to other people.

I think Bill C-48 addresses the concerns from both viewpoints and allows that discretion if there are reasons for the judge not to impose...the bill allows for that. The victims want us to keep in mind...we are talking about, if I may quote Priscilla de Villiers, “the worst of the worst”. These are people who have committed multiple murders. When I talk about accountability and compassion, it's about people, a very small percentage of people, who have committed those multiple murders, and not having to put families through repeat parole hearings like what we saw on Monday, for example. Keep in mind, from the victims' perspective, that when it comes to this legislation, that discretion is addressed by the judges, and keep in mind that these are people who have committed multiple murders, and that accountability, that life means life.

Mr. Brian Murphy: I'll take you on, on that. I think in a case where judicial restraint might be used, 35 is better than 25. I know this is all hypothetical—

Ms. Susan O'Sullivan: Yes, but I don't know if I would speculate on what a judge's decision would be. I don't know if that's my.... I hear where you're going with that, and I certainly respect what you're putting on the table, but I think at the end of they day here, from a victim's perspective, when a person has committed multiple murders, we are talking the worst of the worst. We are talking about life meaning life, and that the discretion.... In a sense, in my reading and understanding, the same three criteria that a judge uses to make that decision are the same as used with section 745. I think the same criteria are being used by the judge for that discretion as used in....

Mr. Brian Murphy: Moving onto the parole board, again in my riding, for a more recent first-degree murder, eligibility arrives 25 years later. I know this complaint has been made by me and by the family to your predecessor, in the way the parole board currently deals, in some cases, with the victims, not pre-paying their travel to a Quebec penitentiary. There are some legal issues with respect to the notification of the cancellation of a scheduled parole. These are continuing victimizations under the current system,

I wonder if you can tell me what legislation you can point to in the government or what response you're getting.... I know you're relatively knew and all that, but what kind of an input are you getting from victims on the serial insensitive aspects of some these scheduled hearings, and what progress we can expect?

● (1645)

Ms. Susan O'Sullivan: Actually, I have been in touch with the Policy Centre for Victim Issues, which is responsible for the payments. I have been advised by them that they will actually be conducting a review, as it has been in place for almost five years now. So we are looking at that. Certainly, we have open lines of communication with them to discuss any issues that may arise with regard to the payment and the use of the fund. Ultimately, we all want to make sure that victims have the necessary financial means at the appropriate time to attend these.

You're absolutely right when you talk about a victim's frustration with hearings being cancelled on short notice. That is something that the offender certainly participates in, in terms of when that can or cannot happen. You're absolutely right, and this office will continue to work with the appropriate agencies to ensure, as best we can, that we minimize that and provide input from the victims about what the gaps and the failures in the system are, and work toward those solutions and make recommendations.

Mr. Brian Murphy: I want to thank you for the good work you do. I know that here we support you very much and want you to stay on the job for as long as it takes to improve the condition for victims.

Ms. Susan O'Sullivan: Thank you very much.

The Chair: Monsieur Lemay for seven minutes.

[*Translation*]

Mr. Marc Lemay: I listened to your speech. We are studying this bill and we also considered Bill S-6. These two bills have to do with crimes like murder. According to me, there are two types of victims. I will be careful in my choice of words, so people on the other side do not start climbing the walls.

There are some victims, like Olson's victims, that you referred to. In my opinion, these victims are scarred for life. People point to Olson, but as I said several years ago, that man will never get parole. He is like Paul Bernardo, in Ontario. However, there are other types of murderers.

Earlier on, my colleague Mr. Rathgeber, or Mr. Woodworth, said that there were 424 people guilty of multiple murders. Personally I am concerned about other murderers. Let me give you an example. It could be a father who kills his wife and two children. In prison, there are far more cases like that than like Olson's. One thing I found worrisome in this bill is that there is not much of a distinction drawn between the two. In fact, there is none.

I will try to be tactful and politically correct. I believe there are two types of victims. The rest of the family of the father who killed his wife and two children will also have to live with that. It will take a great deal of time before that scar heals.

I can remember a client. Her husband, two children and she had made a suicide pact. All four were to die, but the woman survived. She was accused and convicted of those three murders. I believe prison is not the place for her. She is far more in need of psychiatric counselling than that.

I realize that I have gone on a bit of a detour, but do you believe that the discretionary power provided under section 745.51 would allow for this option? Would it not be advisable to increase this discretionary power, because, pursuant to section 745.51, the judge can use this power, otherwise the sentence is 25 years minimum?

Perhaps we should determine whether, under Section 745.2, we should not grant further discretionary power to judges. I am in favour of criminals serving over 25 years before being eligible for parole, in some cases. Judges need some discretionary power. Do you not believe that would be acceptable to victims?

● (1650)

[*English*]

Ms. Susan O'Sullivan: I understand what you're trying to very delicately speak to, and I think that anybody who has suffered a loss as a result of murder will be scarred for life. Those families will be addressing those.

I think what you're trying to address is that each case may have its unique merits and set of facts that need to be considered in decision-making. I think most victims would recognize that the same three criteria—my understanding that you're speaking to—would be applied in this legislation as well, which is that the judge will have the discretion and must consider the character of the offender, the nature and circumstances of the offence, and any jury recommendations that come forward. So in fact the same set of criteria exists in Bill C-48 as does that.

I think we all recognize that there are different circumstances and facts and issues in each case, that discretion lies with the judges in the same set of criteria, as I said. But as far as devastation to the families, I would argue that every victim has unique needs, and those needs need to be met. I would not in any way impose as to what those needs would be; that's the victim. What I can tell you what they want is option and choice.

This legislation has really been put forward, I believe, to address those very small number of cases where there is little chance of any kind of rehabilitation, and it would prevent victims from having to go through.... As I said, it isn't about the day of the parole hearing, or the two days; it's all of the trauma that goes with the lead-up: Are they going to apply? Are they not going to apply? They choose to apply. Is it going to happen on that day. I have to go through it and relive it.

In response to your question, I think this bill allows for that discretion with the same set of criteria.

[*Translation*]

Mr. Marc Lemay: Don't get me wrong. Sincerely, Ms. O'Sullivan, I prefer to see victims receive more rather than not enough information. I prefer to see them advised that a criminal has applied for parole and that the application has been rejected, rather than having them learn that he has been released. Unfortunately, that happens. We are talking about murder, but in the case of a break and enter, for example, victims suddenly learn that the man who was sentenced to 30 months in prison has been released after three months, and no one has been informed.

I know that this is perhaps not the time to talk about that, as we are talking about Bill C-48, but I think that work remains to be done regarding information provided to victims. Does too much information lead to greater victimization? Does less information lead to victimization? Victims suddenly learn that the person has been released and the situation explodes. I am of two minds on that.

[*English*]

Ms. Susan O'Sullivan: I have to say that I'm in total agreement with you. We need to be doing a better job in enshrining victims' rights in terms of access to information. We're in total agreement that victims need to have more information and timely information, and we certainly respect the privacy issues. As a matter of fact, this office has published a report on 13 recommendations to the CCRA, which we hope will alleviate some of those. We look forward to presenting in front of committee on those issues as well.

You're correct. Victims need information. They need the information at the right time. They need to be part of it and to be able to have input into that process. And they need to matter.

The Chair: Thank you.

Mr. Comartin, seven minutes.

Mr. Joe Comartin: I don't have any questions, Mr. Chair. Thank you.

The Chair: Okay. Then we'll go to Mr. Dechert for seven minutes.

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

Thank you, Ms. O'Sullivan, for being here and for the good work you're doing to represent victims.

Like you, I don't want to give Clifford Olson any more publicity than he should have. However, a number of the families of his victims spoke at the parole hearing you attended about Bill S-6, which we dealt with a week ago, and about this bill, Bill C-48. I think their words should be heard.

I'm reading from an article that was posted on the CBC website on December 1. The headline is "Olson victims' families want tougher parole law":

> The federal government as well as families of Clifford Olson's victims say the process by which serial killers can seek parole has to change.
>
> Inmates like Olson have the right to request a parole hearing every two years once they have served the bulk of their sentence, but the families of their victims must be put through the process of restating their opposition to any release.
>
> "Oh, it's very painful," Raymond King, whose son was killed by Olson, said after the hearing Tuesday. "Every time we hear his name, we live this all over again. And to have to come all this way for this...it's really hard."
>
> Sharon Rosenfeldt, the mother of another boy killed by Olson, said no family should have to go through this every two years.
>
> "If they can pass some kind of a law, so that the families don't have to go through this grief and aggravation every two years, that would be great."

Those words were also reiterated by Michael Manning, who is the father of another girl who was killed by Olson.

> "People like him, multiple murderers, will not be able to have a hearing every two years," said Rosenfeldt.

> Michael Manning, whose daughter was killed by Olson, came to Tuesday's hearing to support fellow families and the proposed law. “If they can pass some kind of a law, so that the families don't have to go through this grief and aggravation every two years, that would be great.”

I think those are important quotes that people need to hear.

There are people in this room and people representing the criminal defence bar who would say you don't have to worry about people like Clifford Olson because he's never going to get out; he's not going to get out, so he's not going to revictimize the families.

But I think we need to hear his words. This is what Clifford Olson said on Tuesday:

> I'm here because I have a right to appear, he said. I'm not asking the board for parole, because I know I'm going to be turned down.

He made those victims' families come all the way to that parole hearing from across Canada to relive the pain again because he had the right.

The article points out that he will have that right again in two years' time. Do you have any comment on that?

● (1655)

Ms. Susan O'Sullivan: I think you've represented the victims' perspective. They recognize that this legislation, and it is their understanding, is going to help them to not have to attend at these kinds of parole hearings. Again, as I indicated in my earlier testimony, this is a small group of multiple murderers.

They also recognize that if there are unique circumstances or sets of facts, there is discretion still left with the judge with the same criteria as in section 745.

Mr. Bob Dechert: Thank you.

I don't know if you had a chance to hear any of the previous testimony by the gentleman who was here on behalf of the Criminal Lawyers' Association, but he made a case for Canadians being compassionate. That's why we need to have the right to allow murderers, multiple murderers, first-degree murderers, even those like Clifford Olson, the right to apply to be released after as little as 15 years.

In my view, we also have the right and the obligation to—

The Chair: A point of order has been raised.

Mr. Comartin.

Mr. Joe Comartin: That's not what Mr. Di Luca said. Mr. Di Luca pointed out very clearly that multiple murderers don't have access to the faint hope clause. If Mr. Dechert is going to be giving a factual situation and a recount of the evidence that we heard from Mr. Di Luca, he should at least do it accurately so that Ms. O'Sullivan can then respond to the actual facts that were given in evidence by Mr. Di Luca, not the ones that have just been made up by Mr. Dechert.

The Chair: I'm sorry, Mr. Comartin, that is not a point of order. As you know, it's a point of debate. Members of this committee often—

Mr. Joe Comartin: It is a point of order if—

The Chair: —have different perspectives on the testimony. You know the rules.

Mr. Joe Comartin: I do know the rules. You're not applying them.

The Chair: In the House, there are rules of debate and there are the rules of order that relate to procedural matters. In this case, Mr. Dechert is entitled to his perspective of the testimony that was given. You have your perspective. You passed on your opportunity to ask questions of the witness.

I'm sorry, it's not a point of order.

Mr. Joe Comartin: As the chair, Mr. Chair, you have the responsibility to make sure that the witness is not given evidence that is misleading, and that material that Mr. Dechert put forward is misleading to this witness. You have a responsibility here, Mr. Chair, to protect the witness from that type of statement.

The Chair: First of all, it's not my duty to protect the witness against any statements. It's Mr. Dechert's right to ask questions as he wishes. So it's not a point of order.

Mr. Dechert.

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

Anyone who is listening to the audio feed of this session can check the record. They will be able to check the transcript in due course, probably within 24 or 48 hours. I'd encourage everyone who is listening to do that, and Mr. Comartin can do that as well.

What I heard that gentleman say—and my point is simply this. He was making the point that early release for a murderer, whether he's a single murderer or released after 25 years for a multiple murder, which is currently the law...we do that in Canada because we're compassionate about the lives of the murderers.

I hope Mr. Comartin is listening, because he seems to have completely missed this—members of the Bloc miss it; some of the members of the Liberal Party get it and some Liberals miss it, but the point I wanted to make and what we're talking about on this side of the table is compassion for the lives of the families and friends and communities of the victims. In my view, they are lives that are important too. For each murderer who's incarcerated, and might be incarcerated for 25 years or more for each life they took, there are many more victims.

Take the case of Russell Williams—I hate to mention his name. There is a whole community that was traumatized there. In 25 years he is going to have the right to a parole hearing every two years, and that entire community is going to relive those awful murders. That's what we're talking about.

We're not focusing on the one person; we're focusing on the many. We're also focusing on the view the entire country has about the integrity of a criminal justice system that when our courts impose a life sentence, it actually means that. Somehow they miss that, and the criminal defence bar misses that, and they constantly go back to being compassionate about that one person who's in prison for having taken one or more lives from all those families, friends, and communities.

I'd like to hear your view on that. Thank you.

● (1700)

Ms. Susan O'Sullivan: As indicated in my testimony, we feel that this bill addresses two specific concerns that victims have raised: the need for accountability for each life taken, and the anxiety and emotional toll victims face when an offender is granted a parole hearing. It's going to assist the legislation in both of those issues.

If I could say, the most powerful statement I've heard from a mom who lost her son and whose son's friend was killed was, “The most basic right is the right to life.” When a person takes that right away, not from one but from many, that compassion has to be expressed to the families as well.

The Chair: Thank you.

Ms. Neville, you have five minutes.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you.

I don't know whether I have five minutes' worth or not, but I would like to ask a question. I'm not a regular member of this committee, and I've not met with you before. I'm listening to you here speaking on behalf of victims, and I understand that there was a parole hearing very recently and many of the families of victims were present. How do you gather your information from victims to make a presentation here or to speak on their behalf? Do they come to you? Do you do surveys? How does it come about?

Ms. Susan O'Sullivan: It comes in several ways, but you have touched on something that we're looking at expanding. It is by talking individually to victims, to victims who have suffered loss. It's also by talking with national victims' organizations, such as, for example, the Canadian Resource Centre for Victims of Crime and Victims of Violence, those types of agencies that are out there.

I am fairly new to the position, so I'm building on the foundation of the office. As you may be aware, it's about three years old. One of the priorities that we have is to broaden the national framework for consultation and dialogue. We have commenced that. I have personally met with different organizations and victims' groups and spoken to them across the country. There are many other ways that we're going to be investing to broaden that base.

Hon. Anita Neville: So when you come before a committee like this—and I realize it's not an everyday occurrence—to speak on a particular piece of legislation, how do you gather your information?

Ms. Susan O'Sullivan: We have been out talking to victims' groups on different issues that are out there. As this committee is probably aware, I believe my ask to come to this committee was made on either late Monday or Tuesday—

Hon. Anita Neville: Not a lot of time.

Ms. Susan O'Sullivan: —so I had very little time. I consulted with as many as I could prior to coming here, and also looked at the previous work and previous conversations, particularly in some of our prep work around Bill S-6 as well, to talk to those national organizations and people like Sharon Rosenfeldt, Heidi Illingworth, Priscilla de Villiers.

Hon. Anita Neville: This is my last question. Some of the names you raise I'm familiar with. Do you find that you go back to the same people over and over on different issues, or is it broader than that?

● (1705)

Ms. Susan O'Sullivan: You've hit one of our priorities. I thank you for asking that question because one of the things this office wants to do, again being a new office, is we're going to be building that. We have started our outreach and awareness in looking at identifying provincially and territorially, not just national organizations but also looking at key people and NGOs amongst the provinces and territories, so we can start to broaden that framework for discussion and consultation, so that when we come back before committees we'll be able to come back with a broader voice.

Hon. Anita Neville: Thank you.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I'll take the rest of the time, if I could.

The Chair: Yes, Mr. Lee. You still have two minutes.

Mr. Derek Lee: Sure.

In your remarks, Ms. O'Sullivan, you referred to a safety dimension in this. I think I understood it, but implicit in your remarks must have been a thought that in some respect now, safety is not adequately provided for when it comes to potential release of convicted killers.

Ms. Susan O'Sullivan: Could I ask you for a bit more? I'm not sure I understand what you're asking me for.

Mr. Derek Lee: In your remarks I believe you said that the passage of this amendment would enhance safety.

If you don't—

Ms. Susan O'Sullivan: Public safety?

Mr. Derek Lee: Public safety.

Ms. Susan O'Sullivan: Was that in my opening statement, the last comment? Is that what you're referring to?

Mr. Derek Lee: It was at about the two-thirds mark of your own remarks.

It's okay. If it wasn't a major piece of your remarks and submissions on this, that's okay. I was just curious. There seemed to be a suggestion that safety would be enhanced, and therefore if it was going to be enhanced then it must not be provided for well now in the current legislation—that we're somehow at greater risk now before the passage of this bill. But if you didn't intend that, that's okay. I may have taken it the wrong way.

Ms. Susan O'Sullivan: What we were referring to was that this bill would allow victims not to have to be revictimized through a parole process for those least likely to be rehabilitated or released. They wouldn't have to go through that process, and there is the issue of accountability, life for a life.

The Chair: Thank you.

Monsieur Lemay

[*Translation*]

Mr. Marc Lemay: With all due respect, Ms. O'Sullivan, I think that Mr. Dechert should review some of the sections of the Criminal Code, because he would have seen that Mr. Olson appeared before the superior court judge where the murders were committed.

No victims testified. He has the right to apply, but above all, the court has the right to reject his application. That is what people should understand. That individual, I will repeat this and I have said so openly, will never obtain parole. I don't think that any judge with the least amount of wisdom... That is why we have legal discretionary power, and that is why the Criminal Code was amended. It was to enable the judge to establish guidelines and preside over the first step. That is what Mr. Dechert and his team don't understand. The problem...

[*English*]

Mr. Bob Dechert: I have a point of order, Mr. Chair.

The Chair: There's a point of order.

Mr. Bob Dechert: I just want to be clear. I think Mr. Lemay is misrepresenting. He said that Mr. Olson made a statement to a judge of the Superior Court in Quebec. He did not. He made that quote, which I read, to the National Parole Board on Tuesday, November 30. I have the transcript here, sir, if you'd like me to—

The Chair: Mr. Dechert, that is not a point of order. Just as in Mr. Comartin's case, it's a point of debate.

I'll go back to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: He told the parole board that. I don't think that Mr. Dechert has ever gone before the parole board, because he would know that its main interest is to defend victims. That is its main concern.

Not another point of order, Mr. Dechert!

The debate is on the following question: how can we protect victims? They are not informed. The best way is to not inform them that Mr. Olson appeared before the board. That way, they won't be traumatized. No, they must be informed! That is where the problem lies, and I would like to hear your view on that, Ms. O'Sullivan.

How can we prepare victims for the fact that a murderer who has reoffended may one day appear before a judge or the parole board, when everyone knows that he will not be paroled, even if he wants to make an application?

That is the essence of this question about information and protecting witnesses. Are you preparing anything on that? How can we prepare these victims? Unfortunately for some Conservatives, others will go before the parole board, or judges. Has that been looked at? Do you foresee doing that?

● (1710)

[*English*]

Ms. Susan O'Sullivan: Can I answer, in a sense, in two ways? One is if this legislation is passed, then the families won't have to go before the parole board if the person is given consecutive sentences. That would be one issue. Second is if it is not a situation where it's consecutive and they have to appear before the parole board. These are the kinds of issues that certainly our office is looking into and working with, and I've had discussions with both the parole board and Correctional Service Canada, with their victims' services and with the policy centre for victims, about how—we know there are issues there—we can keep those open lines of communication to make sure that we leverage all of our knowledge and experience to be able to ensure that victims can be....

How do you prepare someone? How do you prepare someone to face the person who murdered their loved one? I don't know. In a sense, what I have seen from a lot of the victims' families is such strength, such commitment, and they're there because they're representing the people who can't speak, their loved ones whom they've lost.

When you ask me a question, I'm being very respectful. These are very difficult questions about how we can support.... And you have identified one of the biggest needs, which is the need for timely information, and not just about process. Again, I don't want to take up too much time, but a lot of those issues that you're raising have been identified in the recommendations that have been put forward by our office, and we look forward to having an opportunity to speak to those in the future.

Thank you for raising that.

The Chair: Thank you.

We'll move to Mr. Norlock for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for coming today.

I'd like to go back to something you mentioned. I want to thank the member, Mr. Lemay, for being sensitive to me because I'm a very sensitive person.

You said that the most basic right is the right to life. Would I be correct in saying that as part of your raison d'être as the victims' ombudsman, you feel an obligation to represent those who can no longer speak for themselves—and that's the deceased—the persons who can no longer have that right? Their right was taken away from them. Would I be correct?

May I ask how you see that happening as you progress in your job and your function as victims' ombudsman?

Ms. Susan O'Sullivan: I would phrase it this way. I can't replace the voice of those parents or those sisters or those mothers who have lost. What I can do is be an amplifier for their voice. It's their story. It's their pain. It's their suffering. I have to say this. Victims understand that in many cases a large portion of offenders will be released. They don't want them to reoffend; they want them to have the supports they need. That's when we talk about the general population of offenders.

As I said at the beginning of my testimony, one of this office's biggest roles is to help bring that voice to the table. I also know that this committee and many committees have had the privilege of listening to people who have suffered loss and people who are national voices, in telling their stories and the need for change within the criminal justice system.

When we talk about rights, one of the number one issues is that they have more rights. In many cases, it's not about an either/or. It's about ensuring that their rights, that those legs of the stool, start to be equal, because right now they're not.

I build on Mr. Lemay's comments. How do we provide that information to them? How do we bring their voice to the table to have input and influence?

I also want to build on the other comments about how we broaden that national framework. This office is very committed to doing that. We've been very active in doing that so that we can bring the best information and voice possible to this table.

Thank you.

● (1715)

Mr. Rick Norlock: Just as a quick recap—of course, we know your background as a police officer—in the 30 years that you were a police officer, did you see a beginning in the early 1970s...? I can recall there really was no such thing as victim services, or at least if they did exist, I didn't know about it. As I retired I saw a great change in the attitude.

You talked about the legs of the stool being equal. We gauge the perception and the people we think most about, or the people we want to get our message out, at least at committees, by the witnesses who we ask to appear. In some areas, especially in the legislation that we're introducing, we see a pantheon of witnesses who are very concerned about the rights of the people who are accused of crimes, and we try to bring in, of course, the victims and the voices of those who have had the crimes perpetrated against them. I suppose that is supposed to be a balance, and I'm hoping we achieve that balance.

When you look at some of the hearings that this committee has, if you have suggested witnesses, feel free at any time.... I know as ombudsman, I would think that's your job, to recommend witnesses. So please feel free to do that for us.

When I go into classrooms and talk to young people, the first thing they talk about is their rights. I say, “Your rights devolve from your responsibilities as a citizen. So before you can have rights, you have responsibilities.”

If you were to go and talk to, let's say, a group of young people, would you take that tack? How would you go about talking about your job and what you feel is the most important part of your job when it comes to telling people out in the public who you are and what you stand for?

Ms. Susan O'Sullivan: I went through the priorities and the mandate of the office. Interestingly, I know Mr. Comartin, at another committee meeting, talked to me about what the U.K. was doing. In some senses they're ahead of us because victims' rights are entrenched. Their conversation isn't around whether the victims have rights; It's about how do they implement.... That's the kind of conversation we should be having in Canada.

Mr. Rick Norlock: Have you a recommendation for this committee, for our researchers, as to how we can go about that?

The Chair: Give a quick answer.

Ms. Susan O'Sullivan: I'd be happy to provide some.

The Chair: All right. Thank you.

I note that we have about 10 minutes left.

Mr. Comartin, you didn't ask a question, and I'm prepared to allow you a question if one has come to mind. You have none?

Does anybody else wish to ask a question? None.

We want to thank you, Ms. O'Sullivan, for coming back to our committee. I'm sure we'll have you back again. Thank you for appearing.

We're adjourned.

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