HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 158 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, June 13, 2019

Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (0920)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Order, please. We're going to resume, and I'll give the floor to Mr. Boissonnault to tell us what he would like to propose.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): We're essentially just going to strike the last clause out. It's "That the Committee recommends that the name of the attacker, as well as any quoted portion of his manifesto, and the section of the audio pertaining to these comments, be expunged from the Committee's Hansard."

This refers to the testimony by Mr. Cooper when we had Mr. Suri and Mr. Hussain here.

[*Translation*]

In French, we just have to end the sentence after the words "Hansard du Comité". Period, new paragraph.

[*English*]

The Chair: I think I should advise the committee that I don't think that would be the correct wording if the intention is for the committee to strike this itself. "Recommend" wouldn't be the right word then. What you want to achieve—

Mr. Randy Boissonnault: "That the committee completely removes from record—"

The Chair: —just so I understand, is that the committee do it itself and not that it have the House do it.

Mr. Randy Boissonnault: That's correct. There were 650 consensus motions at the House, and we failed to get unanimous consent. We would like to remove this. We would like this committee to vote to remove it from the Hansard.

The Chair: If that is what you want to achieve—

Mr. Randy Boissonnault: Absolutely.

The Chair: —the clerk is going to suggest the appropriate wording for the committee to consider, because "recommend" would be recommending to somebody.

Ms. Tracey Ramsey (Essex, NDP): Did we not get unanimous consent in the House for this?

The Chair: No.

Ms. Tracey Ramsey: Oh, I thought we did.

The Chair: The clerk is telling us that in order for the committee to do it itself, the wording he is suggesting would be "that the name of the attacker, as well as any quoted portion of his manifesto and the section of audio pertaining to these comments, be struck from the committee's evidence." That's what he is suggesting.

Mr. Randy Boissonnault: That's very clear.

[*Translation*]

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): It may be clear to you, but we are not too sure what you are talking about.

[*English*]

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Mr. Chair, which attacker, which manifesto, which meeting, what time, and who was the speaker? My question is, could this be any more vague? We need some details on it, and unfortunately it's going to require much specificity to do so, but I think that's required. Otherwise this gives the committee clerk the opportunity to erase from the committee record any mention of anyone who has ever committed any type of attack, anyone who has ever quoted any part of any manifesto, going back for however long this committee has been sitting, and any audio that has any relevance to any aforementioned attacks or manifestos, and then it reaches into the committee's Hansard and we make this very vague recommendation to the House.

Mr. Randy Boissonnault: Mr. Chair, I can be very specific.

The Chair: Yes.

Mr. Randy Boissonnault: This motion pertains to Mr. Cooper's question to Mr. Suri during testimony at committee during the hearings on online hate. He was here on only one day. It's the question that Mr. Cooper put to Mr. Suri during Mr. Suri's appearance here at committee, during our online hate study, and this motion refers to the attacker in the Christchurch massacre in New Zealand. That's pretty specific.

The Chair: We'll go to Tracey and then—

Ms. Tracey Ramsey: I strongly support this motion. I would like to see this removed from the record as well, and I think that being specific in this case would be helpful. We can name the date, the time—

Mr. Randy Boissonnault: It was May 28.

Ms. Tracey Ramsey: That's all I'm saying. I think we should add that in here to be specific, and absolutely the NDP supports the removal from the public record. It should never have been on the public record. It certainly wasn't a name that I knew or any of us knew until it was read into the record here, because there have been great efforts in New Zealand and elsewhere to not share the name of this person. I think if we could be more specific about the things that need to be removed, then absolutely that's something that we should do.

● (0925)

Mr. Randy Boissonnault: Mr. Chair, we can add May 28 to the date and we can add the name of the member of Parliament for St. Albert—Edmonton, Mr. Cooper, who posed the question to Mr. Faisal Suri at committee testimony on May 28 related to the manifesto of the attacker at the Christchurch massacre in Christchurch, New Zealand.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): That's good.

The Chair: Then it would be with respect to Mr. Cooper's remarks to Mr. Suri, and we'll put the right witness groups, the Alberta Muslim Council or whatever.

Mr. Randy Boissonnault: It's AMPAC, the Alberta Muslim Public Affairs Council.

The Chair: It would be "That with respect to Mr. Cooper's remarks to Mr. Suri of the Alberta Muslim Public Affairs Council at committee testimony on Tuesday, May 28, 2019, the name of the New Zealand Christchurch attacker as well as any quoted portion of his manifesto in the section of audio pertaining to these comments be struck from the committee's evidence."

Would that be what you're saying?

Mr. Randy Boissonnault: Yes.

The Chair: Go ahead, Dave.

Mr. Dave MacKenzie (Oxford, CPC): Mr. Chair, this is really ridiculous. It's character assassination by Mr. Boissonnault.

There were other statements made by Liberal members in this whole thing. That particular manifesto has been banned from being broadcast in New Zealand, not the rest of the world. You have already accomplished more than what you should have in this debate early on. To bring it up at this 23rd hour and expect people to properly debate it I think is just ridiculous, and I think it goes a long way....

We could talk about Mr. Suri being a campaign manager for a Liberal member from Edmonton. We could do all of those things too, but that's not what this is about.

We should not be trying to change what has already happened. It's already in the record. I've been here 15 years, and I've never seen a committee do what Mr. Boissonnault wants to do here, to strike something from Hansard that happened weeks ago.

This is just abhorrent. It is public here now, and I think our comments are going to be spread across a wide spectrum, but I think what we're doing here is totally wrong. We are trying to accomplish something that doesn't need to be done, can't be done and shouldn't be done.

The Chair: I'll go to Tracey, then Michael, then Ron.

Ms. Tracey Ramsey: I couldn't disagree more with my Conservative colleague. I think we have an obligation to remove this. Given the fact that Mr. Cooper is no longer sitting at this committee, obviously the Conservatives have recognized that this should not have happened at this committee. I don't imagine he was removed for anything but those particular comments and the fallout.

This is an opportunity for the Conservatives to stand and say that we do not support the sharing of a manifesto of someone who murdered Muslim people in New Zealand. That never should have been read into the record. It was completely inappropriate. It was very shocking to have that read into the record in the middle of a study trying to prevent online hate.

Regardless, Mr. MacKenzie, I believe it's beneath you to involve the witness personally and talk about what he personally was doing. If you want to talk about his testimony, I think that's fair, but you're now saying something about his being some sort of campaign manager for a member of Parliament. That has nothing to do with the fact that Mr. Cooper read into the record something he should not have read. I believe your leader has even said so. I believe he has publicly said that it shouldn't have happened, and that's why Mr. Cooper is no longer sitting at this committee.

To sit here and say we shouldn't strike this from the record.... This is extremely serious. Canadians are talking about it. They are paying attention to it. I believe if the Conservative Party of Canada wants to stand up for people, this is your opportunity to do it. If you're going to say you don't want this to be struck from the record, that speaks volumes to Muslims and to Canadians about what you're willing to do in order to create controversy on the backs of vulnerable people.

The Chair: I have Michael, Ron, Ali and Iqra.

Mr. Michael Barrett: Mr. Chair, it's clearly a stunt. My understanding is that this is a stunt after the first stunt that was pulled at the last meeting, but I have an agenda for the meeting today. This isn't listed committee business. Are we not entitled to 48 hours' notice before we get it? It's not the business of the day. It's not orders of the day.

We had an agenda item to deal with. We dealt with that agenda item. There were jokes about getting a lecture from the clerk. Now instead we're moving to another motion. The committee has already dealt with this. Mr. Boissonnault didn't get satisfaction in the House, so he's looking to pull a stunt here instead.

Are we entitled to 48 hours' notice? It's not—

● (0930)

Ms. Tracey Ramsey: It's not a stunt.

Mr. Michael Barrett: Indeed it is a stunt.

Ms. Tracey Ramsey: It is not, and I take issue with that.

Mr. Michael Barrett: Well, I take issue with your interrupting me, Tracey, but here we are.

Ms. Tracey Ramsey: I have a point of order. A point of order.

Mr. Michael Barrett: You have a point of order on my point of order. Okay. I would like to call a point of order on her point of order.

The Chair: I think I can easily put this to bed. This meeting was dealing with the report on online hate. It is part of the study on online hate. This motion relates to a meeting on online hate, which means the 48 hours' notice is not required for the motion because it deals with the meeting we are actually at.

There is no 48 hours' notice required for that motion because it deals with the study that we are now dealing with in this report, which the agenda item for this meeting.

On that issue, no. It's receivable, which is what I had said before. It's a receivable motion.

Mr. Michael Barrett: Can we get an opinion from the clerk? Is that correct?

The Chair: You want an opinion from the clerk, as far as....

The Clerk: No. I give my advice to the Chair, and he's the one who makes the final decision.

The Chair: I believe this is exactly what was ruled at the previous meeting when Mr. Boissonnault brought forward a motion. Because it was a meeting on online hate, the 48-hour notice wasn't required. On the agenda this is also a meeting on online hate, so the 48-hour notice is not required.

Now I have three people on the speakers list. I have Mr. McKinnon, Mr. Ehsassi and Ms. Khalid.

Go ahead, Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I'd like to underscore Ms. Ramsey's remarks about ad hominem arguments against the witness. That would be totally out of line. It would be just adding more to all the wrong already pertaining to this case.

I'd like to emphasize that this motion really is intended to give effect to a decision that has already been taken by this committee. We already passed a motion that says we want to get rid of these remarks.

We wanted the House to do it, but since we were unable to make the motion in the House, we want to give full force and effect to the intent of the committee as signified some days ago. I believe it was a unanimous decision at that point. Anyway, I support the motion 100%.

The Chair: Go ahead, Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): I certainly support the motion, but I have to say this is really disturbing. The member who has introduced this motion, out of respect for all members of this committee, decides not to mention Mr. Cooper, and then the opposing side, Mr. Barrett, says, “Well, this is lacking in specificity.” To satisfy that objection, we add all this information, and now you're calling it a publicity stunt. This is really outrageous.

No matter what we do, you guys think there's something terrible happening. I'm offended that you are kicking and screaming just at a very simple suggestion here. The reality, as Ms. Ramsey pointed out, is that your own party has already said that what occurred was unacceptable. Do you now want to contradict your own party by saying none of us are allowed to touch this issue because in your opinion, it represents a stunt?

No, I'll tell you what a stunt is. A stunt is that you could have said, “I think this requires more specificity. It will take me 10 seconds to provide that specificity”, but of course you didn't do so. You said that it lacked specificity, and let's just dismiss it instead of taking 10 seconds to amend it. That's a stunt, in my opinion.

The Chair: Go ahead, Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

Thank you, Mr. Boissonnault, for putting this forward.

I agree with Mr. McKinnon that it's just a way to enforce the will of the committee. We tried to do this in the House. Unfortunately, we did not get unanimous consent.

I don't think this is a political issue. Let's not politicize it. Let's not make it partisan. This is a wrong that happened in this committee in the way that we treated a witness, and it was not the right thing to do.

The space here in this committee is for Canadians to come forward and give their testimony and share their experiences, and to victimize somebody like that is quite deplorable. I think it does not belong in Hansard. I think that we need to keep this space open for Canadians, and doing so, striking this from the record will ensure that the safety of this space has been restored.

I absolutely agree with this motion and I'll be supporting it.

● (0935)

The Chair: I have Mr. Boissonnault and then Ms. Ramsey.

Mr. Randy Boissonnault: Thank you very much, Chair.

I appreciate that colleagues acknowledge the fact that we did refer this matter to the House of Commons and, because of the number of concurrence motions, over 600, it wouldn't have been possible for us to get this on the Order Paper within the days that we have left in Parliament.

When I rose to get unanimous consent, it was very clear from, at least one section of the House, that unanimous consent was not going to be given. I think it's really important that part of our job here as parliamentarians in this committee is to give a voice to the voiceless, people who aren't yet represented in Parliament. I think it's really important.

If we want to talk about a stunt, a stunt is printing up a manifesto that's illegal in another part of the country and walking it into a committee so that you have it as an attack on a witness, as opposed to what some people claimed was an emotional response. I want to know which Conservative staffer printed that thing up so that Mr. Cooper could have it. That's a really egregious thing to bring into the justice committee.

[*Translation*]

It is very important for Canadians to know that we are here to stand up for their interests. It is unacceptable for a member to attack witnesses who come here to provide their testimony. It is time for anything quoted from the manifesto from Christchurch, New Zealand, and the section of the recording pertaining to those comments, to be stricken from the records.

[*English*]

This is simply closing the loop.

The Chair: Thank you.

Ms. Ramsey is next, and then Mr. Paul-Hus.

Ms. Tracey Ramsey: Mr. Chair, throughout this study we've been talking to a lot of groups who feel that they're not safe online, that they're not safe because online hate is turning into real-world hate, violence and murders. In Christchurch, that's exactly what happened.

I don't know what the intention of Mr. Cooper was in bringing this into the public record initially, but what I haven't heard from my Conservative colleagues today are the reasons they think it should still be part of the record. For the life of me, I can't imagine what those could be. Why should this manifesto of hate, with this person's name attached, be part of the public record? Why is it so important to Conservatives that we leave this on the record?

I can tell you that Muslims in my community are horrified and frightened, and legitimately so, because of what happened in Quebec City and Christchurch.

What I have yet to hear from the Conservatives in this very baffling "this is a stunt" type of rhetoric is what the argument is to leave it on the public record. How does this help the safety of Canadians, online or anyplace else, or as a witness at this committee?

For the life of me, I can't imagine or fathom what that reason would be. I encourage you to dig into your conscience to say that this should be stricken from the record, because this individual's name should not have been brought into Canadian media. It's shameful that the Conservatives did that. They have apologized. Mr. Cooper and your leader have apologized, and now you're going to sit here at this committee and try to still keep this on the public record.

That's shameful. It really is.

The Chair: Go ahead, Mr. Paul-Hus.

[*Translation*]

Mr. Pierre Paul-Hus: First, if this was not a political game, our meeting could have stayed in camera, but that's fine. I know that everyone in communications is waiting to see whether the Conservatives are going to say things that will get them into trouble. The ultimate objective of Mr. Boissonnault's motion is to try and trip us up.

I think that everything has been said. Let's get the text of the motion.

Thank you.

The Chair: Great.

[*English*]

I don't have anybody left on the speakers list.

[*Translation*]

Mr. Clerk, could you read us the final motion, or do you want me to do it?

[*English*]

Mr. Randy Boissonnault: Mr. Chair, I'd like a recorded vote.

The Chair: You would like a recorded vote.

Basically, as I understand it, it would be:

> That, in relation to the statements of Michael Cooper, Member for St. Albert — Edmonton, to the witness Faisal Khan Suri, President of the Alberta Muslim Public Affairs Council, at the meeting of Tuesday, May 28, 2019, the name of the perpetrator of the massacre in Christchurch, New Zealand, and any quoted portion of his manifesto, be struck from the Committee's public record, including the Evidence and audio recording.

Now we've been asked for a recorded vote. We will have a recorded vote. I'll turn it over to the clerk.

● (0940)

The Clerk of the Committee (Mr. Marc-Olivier Girard): Thank you, Mr. Chair.

(Motion agreed to: yeas 6; nays 0 [*See Minutes of Proceedings*])

The Chair: Does anyone have any other business before we move to the panel of witnesses? If not, I'm going to suspend the meeting until the witnesses are ready, which should be in the next 15 minutes or so.

I'd ask that everyone be back at 9:55.

● (0940)

(Pause)

● (0955)

The Chair: We will resume this meeting of the Standing Committee on Justice and Human Rights, as we continue our study of Bill C-266, An Act to amend the Criminal Code (increasing parole ineligibility).

It is a great pleasure to be joined by this panel of witnesses who are here to share their expertise with us today.

We are joined by Mr. Joseph Wamback, the founder and chair of the Canadian Crime Victim Foundation. Welcome.

Mr. Joseph Wamback (Founder and Chair, Canadian Crime Victim Foundation): Thank you.

The Chair: We are joined as well by Mr. Howard Bebbington, the Chair of the Policy Review Committee of the Canadian Criminal Justice Association. Welcome.

We are also joined by Mr. Lorne Goldstein, a Partner at Abergel Goldstein & Partners, LLP, as an individual. Welcome.

Mr. Lorne Goldstein (Partner, Abergel Goldstein & Partners, LLP, As an Individual): Thank you.

The Chair: We will take the witnesses in the order in which they appear on the agenda.

Mr. Wamback, the floor is yours, sir.

Mr. Joseph Wamback: Thank you.

I'm Joe Wamback.

Mr. Chair and members of the committee, I want to thank you for for giving me the opportunity to testify today.

I am the chair and founder of the Canadian Crime Victim Foundation, which has been in existence since the year 2000. We have almost two decades of experience in dealing with victims of extreme violence from coast to coast, from Victoria to St. John's.

I've also partnered with the health sciences psychology department at York University so that we can create a greater understanding of psychopathy and extreme violence among individuals in Canada and the resulting trauma to victims and their families. We also sponsor psychological counselling for victims of extreme violence throughout the country.

I am here today in support of Bill C-266. I believe it is a win-win situation for all involved. The bill maintains the judicial independence that we all seek in Canadian society. Secondly, it prevents the continued revictimization of those who have suffered so much through acts of horrific crime in Canada.

We're not dealing with a large constituency. We're dealing with a handful of individuals who have created such devastation in Canadians' lives that we have to find a better way of dealing with them than by revictimizing those who have to attend Parole Board hearings time and time again.

My first introduction to this type of situation was Clifford Olson. We are now friends with 11 family members of victims of Clifford Olson. The revictimization that those individuals had to suffer and live through during those parole hearings—Clifford Olson was a master at calling for these hearings almost every year—was just unprecedented.

Throughout the 20-year history that we have been working with victims of crime and from the 20 years of research, we've specifically seen increases in disease. Cancer is four times the national average in that particular constituency, as well as heart disease and mental illness. The revictimization that occurs through continued parole hearings takes it toll on the lives of not only the direct victims but also on the victims' families. It is a large circle, and it gets larger and larger as time goes on. For example, when my son was hurt, my grandmother passed away. She could not deal with the injuries my son incurred.

Typically when you're debating and deliberating on criminal justice changes, measures and policies, including parole, for the most part those debates have ignored one vitally important variable, which is the victims and their families. I believe the victims' lives have value that is of equal value to anybody else's in this country. They should not be ignored when we are concerning ourselves with any factor in criminal justice reform. Our obligation here, as Canadians, is harm reduction. I'm convinced that Bill C-266 is a step in the right direction.

I've looked at the Parliamentary Budget Officer's report, which indicates that we're dealing with nine to 10 individuals a year, but I don't know where he got the number from statistically. If they were kept incarcerated for another year, the cost is approximately $1 million per incarcerated individual. That was the end of the report.

Unfortunately, the analysis—either intentionally or unintentionally—did not consider the cost to society of allowing earlier parole applications for those most violent individuals who are targeted by Bill C-266. It deals singularly and specifically with the increased length of incarceration.

It does not consider the cost of repeat offender parole programs, which police-based statistics tell us are in the tens of millions of dollars annually. It does not consider the financial impact of social services for supporting the victims. I have witnessed first-hand the agonizing grief and revictimization forced upon victims, families and even their communities at large when they must relive the horrific details of the most heinous crimes committed against their loved ones.

● (1000)

Trials, convictions and sentencing are not cathartic for survivors. Grief is a never-ending journey, and parole hearings extend and reignite that grieving process. Many victims, survivors, friends and family members are unable to work for months before a hearing. After the hearing, they are terribly affected by having to relive those experiences. Some lose their jobs. They can't participate. They can't continue to become participating members in Canadian society. They can't pay their taxes or any other societal obligations, and many rely on the social safety nets we have in Canada today. All these have costs that are associated with revictimization.

My research also demonstrates that divorce is the inevitable consequence of a child homicide, which creates incredible financial and societal inequities for siblings of homicide victims. Some become a permanent burden on Canadian society. Medical complications are rampant, and revictimization is rampant, equally staggering and profound.

In 2016, Alberta justice minister Kathleen Ganley stated that consecutive parole ineligibilities can be a “useful tool” as a signal to criminals that multiple crimes may lead to a longer sentence. She stated, “It can potentially have a beneficial effect in terms of signalling to people who are doing these things that it's not a good idea.” These are direct quotes, by the way. “It can have a sort of deterrent effect. That being said, obviously it's only intended to be used in certain circumstances.”

She is referring to the most violent and horrific of crimes. We don't see a lot of those in Canada, fortunately, but they are becoming more frequent. I've just attended a conference in Toronto on mass homicides. People in this country and around the world are dealing with this, because it's becoming more and more prevalent as society moves forward. We've had two of them in Toronto just recently. One was the van attack on Yonge Street. The other one was the shooting on Danforth Avenue.

The victimization that occurs, and the cost of that victimization, cannot be calculated. It's the same thing with parole hearings. When victims have to attend parole hearings and face the individuals who have harmed their child or loved ones, the effects are devastating.

My hope is that you will give great consideration to Bill C-266 to allow the judiciary to introduce extended parole ineligibilities for the worst of the worst.

I want to thank you for your time.

The Chair: Thank you very much.

I will now move to Mr. Bebbington.

Mr. Howard Bebbington (Chair, Policy Review Committee, Canadian Criminal Justice Association): Thank you, Mr. Chair and honourable members. We appreciate this opportunity to appear to express our views on Bill C-266.

For those who are not familiar with the Canadian Criminal Justice Association, let me take a minute to tell you that we are a voluntary sector organization. We were originally founded in 1919 and are celebrating our 100th anniversary this year, so we've been around for a little while.

We have approximately 700 members across the country and we represent all aspects of the criminal justice system: lawyers, academics, the police community, correctional officers and victim support officers. We are one of the few voluntary sector organizations working in the criminal justice field—and working to improve it—that attempts to accommodate all perspectives on the criminal justice system. I think that makes our views stronger.

At any rate, with respect to the matter at hand today and with the greatest respect to victims—including the families of those who have suffered tragic events like the ones contemplated by the bill—I must say that we are opposed to this bill.

In our criminal justice system, all persons convicted of murder are sentenced to life imprisonment. This means that anyone convicted of murder, whether or not they are ever released on parole, will be under the control and supervision of correctional authorities for the remainder of their natural lives. There is no warrant expiry for an offender serving a life sentence.

For first degree murder, as you know, the mandatory 25 years specified is not the sentence imposed by our courts but the period of parole ineligibility that the offender must serve before being considered for parole. After that time, the decision on whether or not to gradually release and reintegrate the offender into society is made by the Parole Board.

It is our view that if we don't have confidence in the parole system's ability to get this decision right, we should look at improving the parole system for the sake of all parole decisions, rather than look at amending the sentence for first degree murder, as is proposed in Bill C-266.

If Parliament does amend the law for this type of case, we could easily be caught in an endless cycle of amending the law to further increase the parole ineligibility period to respond to yet another case presenting even more horrific facts. Regrettably, it is always possible to imagine a more horrific fact pattern. I won't delay you with details, but I suggest as an example that if you add to the circumstances contemplated in this bill, torture or extreme brutality are not necessarily covered. Do we keep increasing the parole ineligibility period? In the case of criminal harassment, an intentional killing committed in the context of criminal harassment is not covered by this bill. If this bill is passed, will we see on the order paper more bills suggesting we increase it to 50 years?

● (1005)

The Chair: I'm sorry, but I need to interrupt. I see the bells are going.

Do we have consent to continue for a period of time?

Mr. Dave MacKenzie: No.

The Chair: I'm checking with the clerk.

We don't have consent to continue.

Let me ask the members of the committee. Do you wish to return after the vote to finish this meeting to give the witnesses a chance to provide their testimony?

Mr. Randy Boissonnault: Absolutely.

The Chair: We are going to suspend this meeting. We will return after this vote.

I'm very sorry to interrupt you in the middle of your remarks, sir.

Mr. Howard Bebbington: I'm almost done, though. I must say I can complete it in two more minutes if I can proceed.

The Chair: I'll ask again. Do we have consent to let him go two more minutes to finish his remarks?

Mr. Dave MacKenzie: Yes.

The Chair: Thank you, Mr. MacKenzie.

Please continue.

Mr. Howard Bebbington: I would make one final point. We fear that passing an amendment such as this can only add to the confusion in the public's mind about the actual nature of the sentence for first degree murder. Under our current criminal justice system, the mandatory sentence is life, not just 25 years, yet we so often hear inaccurate reports in the media about someone being sentenced to 25 years for first degree murder.

I fear that if this bill is passed, we will hear reports of 25-year sentences and 40-year sentences, both of which are incorrect. The sentence is life.

Thank you, Mr. Chair. That concludes my remarks.

The Chair: Thank you very much.

We're going to suspend. We'll come back for Mr. Goldstein's remarks as soon as the vote is over.

Again, I apologize to the witnesses.

● (1005)

(Pause)

● (1055)

The Chair: We will come back now to the testimony of the witnesses.

We will turn to Mr. Goldstein. Mr. Goldstein, the floor is yours.

Mr. Lorne Goldstein: Good morning.

Thank you very much for inviting me to speak about this rather important piece of legislation.

I bring to you today the perspective of a criminal lawyer as a practitioner.

So that you know who I am and where I'm coming from in my testimony and give it the appropriate weight, I will tell you that I'm certified as a specialist in criminal law by the Law Society of Ontario. My practice is exclusively in criminal and quasi-criminal law. My firm has an appeal division, and prior to coming today, I consulted with them rather extensively.

Writ small, what that means is that I'm the trial lawyer who will be dealing with this legislation if it passes. What I bring to you is, I hope, both something of the 30,000-foot approach, but it's also about what happens when I see this in the latest Criminal Code.

I'll give you a précis of what I'm going to say: There are significant problems with this legislation.

First I should say that despite the flaws in the proposed bill, the goal is laudable. Mr. Bezan has brought forth this amendment to the Criminal Code for the purpose of alleviating the stress and suffering of the families of victims. That is a noble goal and one that is supported by all stakeholders in the criminal justice system, both Crown and defence. Nobody wants to see victims suffer or suffer again and again.

However, the question is how to do that. It is critical to remember that this bill is not designed to be punitive, but if it passes and is challenged, that is going to be an issue in the inevitable charter challenge.

Mr. Bezan has been quite clear: This legislation is designed to target a small group of individuals who have committed such egregious crimes that they statistically and realistically are not going to be paroled. They are the Clifford Olsons of the world. By narrowing the legislation in this way, Mr. Bezan seeks to ensure that the benefits of the bill, such as preventing families from having to attend numerous parole hearings, are not truly in competition with the deleterious effects of preventing release for persons who would otherwise be released. In other words, the people targeted by this bill are not getting out. That is the premise upon which this bill is proposed.

Mr. Bezan is not seeking to balance freedom against victims' rights. This is important, because if the legislation were designed to be punitive, it would run into a whole new series of challenges under section 12 of the charter, and these are challenges that it would likely not survive.

However, even if we accept that this is not a punitive bill and is strictly a procedural bill to alleviate the suffering of the families of victims, this is the wrong forum for it.

My first argument is that the Criminal Code is not where this problem should be remedied or where this goal should be set out.

The Corrections and Conditional Release Act, CCRA, is the statute that governs the parole process. Modifying it to change the frequency of parole hearings for this narrow group is much easier than modifying the Criminal Code, and it would not trigger any of the problems that I will be discussing.

Further, modifying the CCRA so that the families of victims can have their evidence recorded and played at subsequent parole hearings would also alleviate the pain of providing evidence at each parole hearing.

One or the other or both of these modifications to the CCRA accomplish the goal of alleviating their stress. It would not complicate trial matters. It would not lead to an infringement of the charter. It would also receive little or no push-back from any constituency or stakeholder.

My second argument is that Bill C-266, as it's written now, is likely unconstitutional for the following reason: The text of Bill C-266 reads, “In respect of a person”—and I underline the following —“who has been convicted, in respect of the same victim and the same event or series of events....”

What you need to understand is that with regard to murder, there is a provision under section 231 of the Criminal Code that allows second degree murder, which is all murders, to be elevated for sentencing purposes and classification purposes to first degree murder.

● (1100)

The language of this deemed elevation is subsection 231(5):

> Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person

—and I underline this part—

> while committing or attempting to commit an offence under one of the following

What are the differences?

In Bill C-266, a conviction for one of the offences is required. In section 231, which is already the law and has already passed charter scrutiny, no conviction is required. What does this mean practically?

If the trier—the jury, usually—based on the charge of the judge finds that a sexual assault occurred as part of the same series of events but not “while committing”, a second degree murder would not be elevated to first degree murder. This is the trickiness, right?

If it's part of the same series of events but it's not “while committing”—there's a temporal break, or a location break, or the jury's left in doubt in respect of those differences of wording—you're not going to trigger the elevation to first degree murder, but you might be triggering Bill C-266. What that means is a charter challenge, because you're punishing a second degree murder more harshly than a first degree murder. The jury may acquit a deemed first degree murder under section 231 and the offence would still be captured.

In other words, the series of events is not as clear as “while committing”, and that is likely a charter violation.

I know from reading the Debates that the member proposing this legislation believes that only a very few people would be captured. Respectfully, he's wrong. What will happen is that the trial Crowns, the people who are tasked with implementing the laws you pass, will have to start charging sexual assault and forcible confinement on the indictment, so an indictment that used to have a single count of murder—very clean, comparatively easy—will now have to have a minimum of three counts: the murder, the underlying sexual offence and the underlying confinement offence.

Presently when those facts are present but not necessarily charged, the Crown can charge first degree and rely on the facts as proven of the forcible confinement and/or sexual assault to elevate the murder to first degree, but because Bill C-266 requires a conviction, the Crown would now have to charge those offences. If the Crown did not charge those additional offences, the victims' rights advocacy groups would quite properly take the Crown to task for not taking the steps to trigger the most onerous sentence possible.

Thus, when the Crown does charge those additional offences, you would have a judge charging a jury that they might find that the sexual assault occurred, but to what standard? If charged, it would have to be beyond a reasonable doubt. There would be a necessarily complex and full charge on the elements of that offence, and then what happens if the jury is left in reasonable doubt about whether or not the sexual assault occurred? What happens to the underlying murder elevation? Would there still be a first degree murder conviction if there's a reasonable doubt about the separate charge of sexual assault on the indictment? We don't go into the jury rooms. We don't know.

What we do know is that the more complicated you make the indictment, the more complicated you make the judge's charge to the jury. The more complicated you make the judge's charge to the jury, the more likely an appeal.

Also, if we're talking about alleviating the stress on the families of the victims, imagine the year that it takes to get to the prelim, and then testimony on the prelim, and then the year it takes to get to trial, and then the testimony on the trial—and now there's an appeal. There's an appeal because this is not clear.

What if the appeal is successful? That's another year for the appeal, and then there's a retrial, which is another year. Now we're talking about four or five years not of potential parole hearings but of annual testimony, not of having the option of reliving the nightmare of being a family member to a victim as captured here, but of actually having to testify and actually having to hear the evidence of the forensic officers and the witnesses and reliving the traumatic effects of the trial.

This is a mess, because it's treating potential second degree murder charges like firsts and adding in a number of complications. It's ripe for challenges.

My third argument is a similar legal argument. It is the question of subsumed offences.

Forcible confinement is often an element of the offences of both murder and sexual assault, so where a choking is part of the sexual assault, it would now be charged separately, and that necessarily means another and more complicated charge.

● (1105)

The people who were contemplated and mentioned in the debates would not be captured by this, because they were not charged separately. What you will have is not the few people intended, but necessarily many more people charged on much more complicated indictments, leading to many more appeals, and that is not the goal.

I urge the committee to reject this bill and invite modification to the CCRA to accomplish the same goal.

Thank you, Mr. Chair.

The Chair: Thank you very much.

Given the time frame—we all know we have another vote—may I ask the committee's agreement that we do four minutes in each of the rounds? It will take 16 minutes. We should all then make it to the vote with no problem. Is everybody good with that?

Some hon. members: Agreed.

The Chair: Perfect.

We'll start with Mr. MacKenzie.

Mr. Dave MacKenzie: Thank you, Chair, and thank you to the witnesses who appear before us today. You've all brought a different perspective on the same issue. My understanding is that you'd all like to see the same result at the far end, but how we get there is the important part.

Mr. Wamback, you have spent a great deal of your life dealing with victims who are traumatized over and over, frequently by the parole process. What is your view of Mr. Goldstein's suggestion that the change could be accomplished through other legislation, as opposed to the Criminal Code, to give us that end result of keeping victims from being revictimized by people such as Clifford Olson, who used the system to abuse family members?

Is that an equal possibility to fix this?

Mr. Joseph Wamback: I'm not a lawyer and I certainly can't debate any of the technicalities that my colleague brought up. What I will tell you is that appeals are inevitable. In any form of extremely violent criminal act, there are always appeals. Victims and their families are always dragged through appeals again and again.

In terms of being able to pre-record a victim impact statement, the feelings you experience and the grief you live with during the trial and during the deliverance of a victim impact statement are completely different from when you deliver a victim impact statement at a parole board hearing. Having a recording of something that happened 15, 20, 25 years ago and dealing specifically with a parole board hearing today are two completely different things, because they involve a completely separate realm of emotional experience and grief. There are other people and other family members who are dragged into it as well.

Again, I'm not going to argue the technicalities and legalities of Bill C-266. What I am going to state very emphatically today is that this would reduce the harm done to those who are survivors and victims of extremely violent, horrific crimes in Canada. I'm very much in support of it, as is the constituency that I've spoken with prior to coming here.

● (1110)

Mr. Dave MacKenzie: Sure.

I believe you brought up the PBO report—

Mr. Joseph Wamback: Yes.

Mr. Dave MacKenzie: —and the cost of keeping somebody incarcerated for an additional year being a million dollars. I don't think the PBO did the research on how many of the Clifford Olsons don't get parole anyway. He's going to be kept in custody. I think it's a difficult challenge for the PBO to quantify those costs.

Would you have a different view than I do? Do you feel that the PBO is in a difficult position in trying to quantify the costs associated with this bill by looking only at incarceration?

Mr. Joseph Wamback: That was my issue. Either intentionally or unintentionally, the issues related to the victims were completely ignored. Then there's the cost to Canadian society; never mind the cost to families. We are aware of families in which fathers who have lost a child to extreme violence have ended up alcoholics, ended up being sound asleep at their son's grave for years after the event.

Everybody, every human being, will react to grief differently. Everybody does. The people who have lost a child will live with that grief for the rest of their lives. To have it brought again in front of their faces is absolutely horrific, and we should not allow this to happen in Canadian society.

Mr. Dave MacKenzie: Thank you.

The Chair: Thank you very much.

Mr. Fraser is next.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Chair. Thank you to all of our guests for being with us today. I really appreciate your presentations and your thoughts on this issue.

I can't stress enough, and I'm sure everyone around this table would agree, that whatever we can do to minimize the impact on victims and their families being re-traumatized is of utmost concern.

Mr. Goldstein, I understand that the charter issue you're raising is that it may lead to charges of second degree murder perhaps receiving harsher penalties then a first degree murder charge would.

Is that basically the idea behind the charter challenge?

Mr. Lorne Goldstein: That is one obvious one, just from the plain reading of it, yes.

Mr. Colin Fraser: Okay.

You also talked about the fact that it would inevitably or likely lead to Crowns contemplating more complicated indictments in order to perhaps pass the test that Bill C-266 considers in order to have the possibility of a higher parole ineligibility period.

Would having more complicated indictments before the courts have an impact on court delays?

Mr. Lorne Goldstein: Significantly.

As we have seen with some of these cases.... In the Pickton case, for instance, a judge simply said he would not proceed on all of those counts and was proceeding only on six. We see indictments pared down all the time. The Crowns, who are people too, are those trying to actually do the work of prosecuting these crimes. They have to contemplate what's in the best interest of getting the trial moving forward. The more complicated the charge, the longer the trial takes, and the more likely it is that there will be delays, both in pretrial motions and also in getting the time necessary for the trial, getting the witnesses together and all of that. There will inevitably be delays associated with the passing of this bill, yes.

Mr. Colin Fraser: Would it be possible that those court delays, given the Jordan decision, could result in matters actually being disposed of before a conviction could be entered?

Mr. Lorne Goldstein: It's legally possible, yes. In the fact scenario contemplated here, in practical terms it's unlikely.

Mr. Colin Fraser: Okay.

Can you talk a little bit, any of you, about the frequency with which parole hearings happen now? If somebody is convicted and has no eligibility for parole for 25 years, I assume that they would have the ability to have a parole hearing at that stage. How often do they happen after that?

Mr. Joseph Wamback: Every two years is my understanding. It used to be every year. I know from experience that certain individuals, especially those who enjoy continued victimization of their victims, will push for parole hearings as often as they possibly can. I believe the legislation or the rules were changed some years ago to reduce the number of parole hearings or change the time between parole hearings.

In cases we've been involved in, the individual has demanded his hearing and the families have flown in from Red Deer, Alberta, to attend the hearing. Then 20 minutes before the hearing, he says he's changed his mind.

● (1115)

Mr. Colin Fraser: Right.

Mr. Joseph Wamback: They've had to go back to Red Deer, Alberta, and 24 hours later, he says no, he wants the hearing. They go on with the hearing without the families in many cases because the families just cannot afford to fly back to Ottawa or Kingston or wherever the hearing is being held.

Yes, it happens.

Mr. Colin Fraser: Mr. Goldstein, you're saying that if it happens every two years, let's say, the frequency with which that happens could be changed. Then the impact on the family would be lessened. If you had a recording of their feelings at the very first instance after the 25 years, then that could be captured going forward and not require the same level of traumatization on the families.

Mr. Lorne Goldstein: These are possibilities that affect the same outcome without complicating or destroying the trial process and the inevitable court proceedings.

I should also note that while there are exceptions like the ones Mr. Wamback spoke about, the vast majority of individuals are not captured by this. They go to their parole hearings when they are ready. They waive their parole hearings more often than not until the programming is completed.

Again, it's important that you legislate for policy purposes and principled purposes, but not for the rare exception, particularly when there is an alternate route available, as I proposed.

Mr. Colin Fraser: Thanks.

The Chair: Thank you very much.

Ms. Ramsey is next.

Ms. Tracey Ramsey: Thank you so much.

I want to echo my colleagues' comments and certainly some comments made by you all as well. For the NDP, alleviating the stress and suffering for victims and families is of paramount importance. Progressive crime and justice legislation is something that we would like to see pursued here, but we do have concerns similar to the ones that have been laid out by Mr. Goldstein and Mr. Bebbington.

I want to ask if any of you believe that this bill could be applied retroactively to offences that were committed before the legislation comes into force?

Mr. Joseph Wamback: I think there would be a serious charter problem with the retrospective or retroactive application of anything that would change, in effect, a sentence.

Ms. Tracey Ramsey: I think it's unclear.

Mr. Howard Bebbington: If it proceeds by way of the Criminal Code, that's true. If it's pulled and then the CCRA modifications come in, it's a whole new ball game. That is an excellent question that could be asked of that bill.

Ms. Tracey Ramsey: My other question is this. Do you believe that allowing judges to increase the parole ineligibility in the cases that are set out here encroaches on the function on the Parole Board of Canada? How would that work, when that currently falls with the Parole Board of Canada?

Mr. Lorne Goldstein: The Parole Board of Canada has a very specific and distinct function. They would never say this, of course, but having their hands tied for *x* number of years would have an impact both on them and on correctional services, because they're the ones who have to figure out the programming, such as the housing and keeping this person alive and fed and occupied for up to 15 years.

Would it necessarily impact on them? Yes. Would it encroach? I don't think anyone would say that, but necessarily it would.

Ms. Tracey Ramsey: Mr. Bebbington, would you comment?

Mr. Howard Bebbington: I don't think I can add to that usefully, except to say that when Parliament expresses the sentence for imprisonment in legislation, the parole board simply has to accept that as a starting point. However, if we're talking about the mandate of the parole board to reintegrate individuals—we heard earlier about harm reduction—or if we're talking about the mandate of the system to see if the risk of offenders can be managed and they can be reintegrated in a way that is useful to society and themselves, then increasing the parole ineligibility period beyond 25 years would certainly encumber that.

Ms. Tracey Ramsey: Can you speak a little bit about how this would apply to a youth, to someone who is 18 years of age or under?

Mr. Joseph Wamback: It doesn't.

Ms. Tracey Ramsey: It wouldn't apply. Okay.

Mr. Howard Bebbington: That's unless an amendment is made to the Youth Criminal Justice Act. This is purely a Criminal Code amendment.

Ms. Tracey Ramsey: Okay.

Mr. Joseph Wamback: I'd also like to clarify that the primary objective of the parole board is protection of society. It is not the reintegration of the individual.

I have seen many parole board hearings where parole board members have recommended against the release of an individual, and yet that was overruled and the individual was released back into the community.

Mr. Howard Bebbington: Not to contradict my friend, it is true that the paramount consideration is the protection of society, but both the principles guiding parole board decisions and the criteria for granting parole refer to reintegration where the risk can be managed and where it is safe to do so.

● (1120)

Ms. Tracey Ramsey: Thank you so much.

The Chair: Thank you very much.

Mr. McKinnon is next.

Mr. Ron McKinnon: Thank you, Chair.

Thank you all for sticking with us through our vote.

Mr. Goldstein, you talked about interesting changes to the CCRA. We certainly aren't going to be able to modify this bill to encompass those, but would you be able to submit the changes you would recommend to the committee through the clerk, so that at some follow-up time they could perhaps be acted on?

Mr. Lorne Goldstein: Thank you. Of course.

The Chair: Sorry. Could I get unanimous consent to continue for four minutes, just until Mr. McKinnon's questions are over?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Ron McKinnon: My understanding from Mr. Garrison, who was here the other day and was commenting from his experience, is that one of the problems with a much longer ineligibility period for parole is that the inmates would then not feel able to commit to a program of rehabilitation or any kind of therapy, because what's the point if they can't get out for 40 years anyway?

Would you all like to comment on that, please?

Mr. Joseph Wamback: Sure. Those specific constituents, the worst of the worst—I can't think of a better expression—individuals in our society who are incarcerated for that length of time for these extremely heinous crimes, are not interested in rehabilitation. They're psychopaths. Psychopathy is a science that we are still learning about. We hear numbers that anywhere from 2% to 5% of our society are psychopaths.

Not in the Criminal Code or the CCRA or in any of the legislation that we currently have in this country are there provisions that are able to deal effectively with psychopaths, people whose prime objective is their own self-gratification. That's why we need extended periods of parole ineligibility. These are the individuals who can convince anybody. They can convince even the most seasoned forensic psychiatrist or psychologist that there's absolutely nothing wrong and that they're completely normal. Once they return to society, their existing behaviour will continue. They're not interested in any of these things.

Especially with some young offenders who I believe are psychopaths, are they interested in rehabilitation or learning? They're not. They refuse, and part of the prison release system that we have in Canada is that it's not mandatory for any individual to complete a rehabilitation program. They can say, “No, I don't want to”, and they can say that for the duration of their incarceration, yet they can still be released into our society.

I hope that answers your question.

Mr. Ron McKinnon: Thank you.

Does anyone else want to add to that?

Mr. Howard Bebbington: I'll just add that fortunately for all of us, the diagnosis of psychopathy is very rare. We're talking about an extremely small number of people. For those who may be amenable to treatment and reintegration, my understanding is that the Correctional Service of Canada, which is strained for resources, often doesn't offer any program unless it's close to the potential release date, so we're dealing with a long period of time when habits get ingrained and when behaviour gets ingrained.

I'd also point out that given the offences listed here, not all of the people who commit this type of crime will be psychopaths. I think we have to bear that in mind in dealing with even the limited population identified here.

Again I take us back to the harm reduction comment that was made by my friend. Surely there is value in attempting to offer someone an incentive and some ability to come to terms with what they've done and perhaps at some point become a responsible member of society. For those who are not amenable to treatment, it is only a parole board that can release an offender who is subject to a life sentence. There is no statutory release and there is no warrant expiry, so if the individual is not participating in treatment, doesn't show they've come to terms and that their risk has been reduced, they're not going to be released on parole.

The Chair: Do you have a brief last comment, Mr. Goldstein?

Mr. Lorne Goldstein: I share Mr. Bebbington's comments that warehousing is a bigger problem than non-participation, and I caution against the pejorative use of the term “psychopath”. It is a personality disorder not recognized by the DSM. There's a very specific test built by a Canadian and it is a useful tool as part of risk assessment, but it does not necessarily correlate with anything we're talking about today.

The Chair: I would like to thank the witnesses. Your testimony has been very, very helpful to us.

I'd like to remind committee members that amendments must be submitted by five o'clock Friday for this bill, and we will move to clause-by-clause study next Tuesday.

Thank you very much, everyone.

This meeting is adjourned.