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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 45 of the Standing Committee on Justice and Human Rights. Today is Monday, November 2, 2009.

You have before you the agenda for today. We have two items to deal with. First of all, we have a number of witnesses to hear on Bill C-36, an act to amend the Criminal Code, dealing with the "faint hope" clause.

After hearing our witnesses on Bill C-36, we'll move to some committee business. We have a motion up for consideration, Mr. Moore's motion, and we'll deal with it at that time.

Appearing as witnesses today on Bill C-36 we have first of all Sharon Rosenfeldt, representing Victims of Violence; we also have Kim Pate, executive director of the Canadian Association of Elizabeth Fry Societies; and finally we have Mr. Michael Mandelcorn, representing the Criminal Lawyers' Association.

Welcome to all three of you. I think you know the routine. You have up to ten minutes for your presentation. Then we'll open the floor to questions.

Mr. Mandelcorn, perhaps we could start with you.

Mr. Michael Mandelcorn (Regional Director, Criminal Lawyers' Association): Thank you.

First off, the Criminal Lawyers' Association welcomes the opportunity to appear before this committee on what we believe are fundamentally important issues that are raised in Bill C-36.

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

While the Criminal Lawyers' Association supports the proposition that offenders who have committed murder should only be released if they do not pose an undue risk to reoffend, we believe the amendments to the faint hope clause as contemplated by Bill C-36 do not advance this goal. In particular, the following in our submission should be noted:

Number one: All of the government's new crime legislation is designed to bring public accountability to the criminal justice system and restore public confidence. The faint hope provisions are about public confidence. It is the public—that is to say, the jury—who hears the evidence and is in the best position to make a decision.

Number two: There's been much said about the re-victimization that is caused by the current faint hope provisions. We must remember that by definition the convictions are at least 15 years old, the convictions themselves are not in dispute, and the finding of guilt is there. This is a prime opportunity for victims of violence to see what progress the offender has made.

Number three: The provisions provide much-needed incentive for convicted persons to fully utilize various rehabilitation and programming that's available or should be available while in custody. The fact of the matter is that eventually most offenders will be released. It is in our interests that they remain motivated to rehabilitate themselves.

Number four: As of this past April 13, 991 lifers were eligible to apply for judicial review and there have only been 174 court decisions made, resulting in the reduction of sentences in 144 cases. So it would appear it is only those offenders who have the best chance of success who are applying for reduction of parole ineligibility. In a sense they are vetting the process for themselves.

Point five: The National Parole Board has granted release with respect to the judicial review in 131 cases, although there is no information as to how many hearings after the reduction in parole ineligibility it took for the offender to achieve some sort of interim release. And it should be noted that a release doesn't mean that the offender has his sentence terminated. They are on parole for life—that's what life means. It also doesn't mean that the first initial grant will be a full-parole grant; it doesn't even mean that the first initial grant will be a day-parole grant. The reality of lifers in the correctional service is that, in order to gain a release, they have to build credibility through a series of incremental release stages whereby they gather trust from the decision-makers. So often the procedure would be that the initial release would be an escorted temporary absence; eventually you move up, if things go well, to unescorted temporary absence; from that point on—again assuming things go well and the person does not present an undue risk to reoffend—you go to a day-parole release; and then only finally at that point do you gain full parole, all things being equal and risk again being manageable. It's a very, very slow and, quite frankly, difficult process for the offender to be released even after a successful judicial review.

Point number six: From the statistics, it appears that of the seven offenders who had their full parole revoked—these are people who were released by the parole board, gained full parole, and in seven of those cases their parole was revoked, which means they were brought back into custody and their release cancelled—two were revoked for breach of conditions, three were revoked for a new, non-violent offence, and two were revoked for a new violent offence. Thus the overwhelming majority of lifers who are released do not reoffend and certainly do not reoffend in a violent manner.

● (1535)

Finally, in terms of that points I wanted to address in my opening statement, the current vetting procedure encaptured in section 745.61 of the Criminal Code—a vetting process by a judge before a case can get to a jury—is sufficient, in our view, to ensure that the applications deemed to be frivolous do not make it before a jury, and thus are cut off, if you will, at the beginning.

I'd be more than happy to answer any questions you may have.

Thank you very much.

The Chair: Thank you.

Now we'll move on to Ms. Rosenfeldt. You have ten minutes.

Ms. Sharon Rosenfeldt (Victims of Violence): Thank you.

My remarks might take a little bit longer, but not too much longer, than ten minutes. Thank you.

I wish to thank the committee for inviting Victims of Violence to present our views on Bill C-36. I am appearing today on behalf of Victims of Violence in support of this bill. I am not going to speak on the body of this bill, since all of you know it very well. However, I will touch on the historical background.

As most of you know, or have come to know, the issue of the faint hope clause is not new. The faint hope clause and the issues surrounding it began with great controversy when it was enacted in 1976 when capital punishment was abolished. In fact, it passed by only six votes. Since then, subsequent governments have continued to struggle with it through the years.

● (1540)

The Chair: Ms. Rosenfeldt, could you slow down a little bit? If you do go over time that's okay, but I'd rather you slow down so everyone understands properly from the translation coming through.

Thanks.

Ms. Sharon Rosenfeldt: There were two private members' bills introduced in the 34th Parliament that called for later access or an end to parole eligibility reviews for those convicted of first degree murder. Bill C-311 would have required those convicted of first degree murder to serve 20 years before review, while Bill C-330 would have eliminated judicial review of parole eligibility for those inmates. Both bills would have left the review process intact for those convicted of second degree murder.

There was another private member's bill introduced in March 1994. Bill C-226 proposed to eliminate parole eligibility reviews altogether. This bill was around for some time, and it sparked great debate and controversy about the faint hope clause until Bill C-45 made its appearance, which continued the widespread debate and controversy. It ultimately resulted in amendments to section 745 of the Criminal Code.

Our organization has been meeting with various members of Parliament and requesting its full repeal since 1990. Actually, we started earlier, but nobody took us too seriously at the time. We used to prepare victims by informing them of this clause after the offenders in their cases were sentenced. Some would go back to their crown attorneys, who would inform them that it was not true, that the judge had stated clearly that parole eligibility was at 25 years, not 15 years. Needless to say, it caused confusion and more emotional instability among the victims. Some even got angry with us for seemingly giving them wrong information. At that time, very few members of Parliament, and virtually none of the public, including the media, were aware that the faint hope clause even existed.

It came as quite a surprise and a shock to many victims, members of Parliament, and the Canadian public as increasing numbers of Canada's worst offenders approached the 15-year point and became eligible to initiate an application for judicial review. Parliament would once again face continuing pressure for another review of this law, which attempted to balance two often conflicting policy values: denunciation of the crime and rehabilitation of the offender. Eventually, by 1991, the naysayers finally accepted that it was, in fact, true. It became a volatile five-year public debate, which Parliament had to struggle with until 1997, when amendments were made by the Liberal government and the federal justice minister, the Honourable Allan Rock, in Bill C-45.

Twelve years ago, in 1997, there were many meetings and consultations after we were informed about what the justice minister, the Honourable Allan Rock, was proposing to do in relation to the upcoming amendments to the faint hope clause. We sought further consultation on Bill C-45. It was suggested by others that we should agree with what was being proposed. At least it was better than nothing. It was a step in the right direction as it would tighten it up somewhat, and we could still keep working toward the ultimate repeal of section 745. It was the old, commonly used "take one step at a time" solution.

You have to remember that at that time, Clifford Olson was preparing for his then automatic right to a 15-year review hearing in British Columbia. Paul Bernardo and Allan Legere by then were thrust into the picture, so the Canadian public was incensed, and there was a lot of pressure on government to do something. It was very intense at that time.

Our organization met with many victims across Canada, and we pondered giving our support to the proposed new amendments. But in the end, as I sat before the final justice committee meeting, prior to the new amendments being announced, in June 1997, I told the committee that we would accept nothing short of the full repeal of section 745. Our organization felt that it was bad law to make amendments based on a few high-profile cases of the day, such as Clifford Olson, who had made application for his hearing to be held in August of that same year. It came as no surprise, then, that the Bill C-45 amendments proved extremely controversial, given the interests and sensibilities involved.

On a personal note, for my husband and I, advocating on behalf of all victims of crime, it became a double-edged sword, because what did happen, as you all know, is that the new amendments took into consideration only multiple murderers. Many victims were very incensed. They said that they did not understand these amendments, as they implied that, under the new provisions of 1997, one murder was deemed less serious than multiple murders. They felt that this was an unprecedented and unacceptable use of volume as a measure of the seriousness of an offence.

They also felt that there were no real changes to the way the early review hearing process would be conducted, as the application hearing for early parole eligibility continued to operate with very limited information about the crime.

In addition, they felt that this was simply the creation of another level of bureaucracy and that an applicant's absolute right to a hearing had been replaced with an absolute right to launch appeals for a hearing.

● (1545)

Further, they felt the process continued to make the families of victims relive the murder and continued to cost taxpayers.

In any event, it became clear that the matter would not be put to rest by Bill C-45. Indeed, opposition parties continued to call for outright repeal of the judicial review process, with at least one party using the promise of repeal as part of its platform for the next election.

The unrest and controversy continued after the amendments of 1997. It was still a confusing issue, as judges continued to state at sentencing that the offender would serve a life term with parole ineligibility set at 25 years. Victims and the public were still confused, so in 1999 the code was amended again by adding section 745.01, whereby a judge, when imposing sentence, is obliged to make a statement for the benefit of the victim's family and relatives concerning the existence and nature of the "faint hope" clause.

At this point, I would like to say I feel perplexed when I see this long-term, important issue being used as a political tool. Comments about victims being used for political gain is hurtful and not factual. We did not see that happen between 1991 and 1997, when the Liberal government had to wrestle with this same controversial issue. It is controversial. It bothers me because we're talking about real lives, the lives of the victims, the lives of family, relatives, and friends, as well as the lives of the offenders this clause will affect. This is very serious.

In 1971, just five years before the faint hope clause was adopted in 1976, Solicitor General Jean Pierre Goyer announced in the House of Commons the government's intention to stress rehabilitation of criminals even though it posed a risk to the public. He went on to say that:

> ...too many Canadians...disregard the fact that the correctional process aims at making the offender a useful and law-abiding citizen, and not any more an individual alienated from society and in conflict with it.... Consequently, we have decided from now on to stress the rehabilitation of individuals rather than protection of society.

This direction was not without controversy. With that direction in mind, our organization can only assume that this controversial direction played a significant role in the creation of the faint hope clause in 1976. It was in fact the same government. We believe that when the faint hope clause was adopted 33 years ago the Canadian public was not as educated or informed on criminal justice issues as it is today. It was not an option for victims of crime to be consulted about their opinions, as they are today. In fact, crime victim organizations were unheard of back then. At that time, the only organizations consulted were organizations for offenders' rights. So it makes sense that there continue to be amendments made to the controversial faint hope clause.

Critics argue that applications made under the faint hope clause traumatize the families of victims who must revisit the details of the case and consider the possibility of the criminal returning to a community. Proponents argue that the clause is necessary to give convicted murderers some hope, and thus prevent prisons from becoming more dangerous. One of our senators stated that "Without the presence of this clause, many offenders will feel they have little if any incentive to rehabilitate, or even to live peacefully with their fellow inmates." These are true concerns.

There is also concern about the costs to Canadians. We at Victims of Violence appreciate the concerns raised about where our tax money is being spent in the cost of housing the offender for a long time. But perhaps it is more important to consider the costs of offenders being released too early. Perhaps it is more important to factor the cost of human life into the calculations on the presence of section 745.6. Or perhaps Canadians' views should be considered regarding their tax money being spent on the faint hope clause hearings, which require defence lawyers, crown attorneys, judges, juries, court time, court reporters, expert witnesses, airfare, security guards, prison guards, and the cost of having victims' families attend. Each hearing is very expensive.

● (1550)

We at Victims of Violence believe this process is heavily weighted in favour of the offender. The emphasis is on rehabilitation rather than the crime itself, the victim, or the impact of the crime on the family and communities.

We believe that when Mr. Warren Allmand, the member of Parliament responsible for this clause, talked about the waste of the life of the offender who is kept in prison for 25 years, he seemed not to take into consideration the innocent life the offender wasted when he or she made the decision to commit murder. There is no parole or judicial review for murder victims and their families. They have no faint hope clause or legal loophole to shorten their sentence.

Victims of Violence also believes the offender is not sent to prison to be punished, but rather the sentence itself is the punishment, according to our Criminal Code of Canada. Thus we continue to ask a very simple question: Is the sentence 25 years, or is it 15 years? It cannot continue to be both.

Victims of Violence continues to have grave concerns about the changes and the amendments of 1997. At best, we hope it will prevent some families from being dragged through the judicial review hearings; at worst, it only complicates the understanding of the process and does not return the truth in sentencing. A sentence of life with no eligibility for parole for 25 years is still not what it implies. It is not right that some victim families have to endure the faint hope clause hearings and others do not, or will not have to, since the amendments of 1997.

In closing, we'd like to respond to a suggestion made by a member of Parliament to Justice Minister Nicholson in the House of Commons. He suggested that due to his concerns for the victims' families having to endure the faint hope clause hearings, perhaps there should be an interim phase built in when a judge and jury would look at the situation as the system allows for, and then not have to involve the victims' families. I wish to thank that member for his sincere concern, and I will try to answer his suggestion from the perspective of a victim. However, I do not expect it to be fully understood or agreed with by all.

Most victims of crime feel we need to attend any and all proceedings dealing with the offender who took our loved one's life. It is with humble honour and strong conviction that we represent our loved one, for you see, no matter how many years go by, there is never closure when another human being has taken your loved one's life. There is never closure in the manner in which your loved one died. It is unnatural. The result of murder is ugly. The wound of the crime in violence is always there at the surface. It never leaves, even though our lives continue and we discover some years later that there really is a life after murder.

In reality, the victim knows there is closure to certain stages of the justice system, there is a finality to the proceedings, or there is supposed to be, and that finality is a form of closure. For us, it seems it is the only form of human rights we have on behalf of our loved one, so we, the family, will always be there to represent them.

Most victims feel the offenders chose to make themselves a part of our lives when they chose to end the life of our loved ones. Henceforth, we are now, not by choice but by circumstance, a part of the offender's life in representing our loved ones, and thus we want to be a party to all proceedings, which includes any form of parole hearings.

I hope it sheds a bit of light on why it does not seem to make sense to some people that we as victims would want to put ourselves through these rigorous parole hearings time after time, even years later. Some people think it is done out of revenge, and for some, maybe it is. Others find us to be a nuisance at the parole hearing stage, and maybe we are, but mostly it is quite simple for us: the offender and the justice system may have forgotten our loved ones, but we, the victims' families, have not. Most of us will always be there to represent them and speak on their behalf. That is why victims' families attend any and all hearings, even though it opens up the wounds no matter how many years have gone by. That is just the way it is.

In our continual efforts at rehabilitating ourselves, not just the rehabilitation of the offender should be taken into consideration.

● (1555)

Maybe it is punitive action we are talking about in repealing this clause, but why do we have a law that is felt to be too punitive? If a political party and legislators feel that 25 years is punitive and that the Canadian public thinks it is too punitive, then change the law to 15 years. That way it will not disrespect the life of the victim by playing games with the true sentence of Canada's Criminal Code. That is why families feel so much unrest on behalf of their loved ones. They are living a lie on behalf of their loved ones. It is not right.

I think the only answer our legislators of today have is to uphold what our Criminal Code states, which would ultimately mean voting on the repeal of the faint hope clause. When it comes to sentencing in our Criminal Code, you cannot have it both ways. Our respected Criminal Code is in disrepute over this clause, and has been since the first cases in 1987. It will remain that way until a decision on "truth of the sentence" is upheld.

Thank you very much. Sorry I went over the time.

The Chair: Thank you.

We'll move to Kim Pate. You have ten minutes as well.

I understand you're speaking on behalf of both the John Howard Society and the Elizabeth Fry Societies.

Ms. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Yes, although I don't presume to be fully apprised of all the issues related to men, because it has been some time since I have worked with men.

I'm Kim Pate, with the Canadian Association of Elizabeth Fry Societies. I want to thank the committee for inviting us here. I also thank my co-panellists, Michael Mandelcorn and Sharon Rosenfeldt. Many of us have been here many times before.

For those of you who aren't aware, our organization works with marginalized, victimized, criminalized, and institutionalized women and girls. Across the country, we provide everything from early intervention work with women and girls, to victim services in some areas, resettlement work, and work in the prisons. There are a whole range of services. That is the context for the bulk of the information I'll be presenting. Our organization has worked with each of the women whose cases have been subject to the judicial review to date, so I can also speak specifically to some of those.

With the greatest respect for their perspective, we know there are families of victims who are part of groups such as Families Against Mandatory Minimums, which is a U.S.-based group that has strong support. Some of you also know there is a history within my own family. My daughter is without a grandfather because of a murder that happened. I don't presume to have full knowledge of the impact, but certainly I have some knowledge of the impact that losing someone in the family can have on the entire family.

One of the things I think is very key is that when the hearings were happening in 1996, before the reforms of 1997, there was a lot of information that was not correct being put forth in the media. You heard some of it. Some of the information was that section 745, or the faint hope review, changes the sentence. In fact it doesn't change the sentence. People are still serving life sentences. As you know, it changes the parole ineligibility period, if it's successful.

We know from many years of watching this faint hope process that the bulk of those who are eligible to apply to the chief justice in the province they were convicted in don't even apply. The last figures I've been able to obtain—and Michael Mandelcorn talked about actual numbers—are that it is about 39% of those who are eligible who apply. Certainly there are some, as Sharon Rosenfeldt has spoken about, who have no hope and don't get past the chief justice stage. If there's no chance of them proceeding beyond that stage, they don't. Those who do go before a jury of 12 individuals from the community where they were convicted. Having sat through a number of these proceedings, I can tell you they are very rigorous. Victims do have a say, according to the legislation, and some choose to have a say and some choose not to.

For the women whose cases I know of, six of the ten who have been eligible to date were involved in the deaths of men who were their abusers. It puts a very different light on who we're talking about. They were held responsible for those deaths. They are in jail for those deaths. They're serving sentences for first degree murder in relation to those deaths. For some, that is because they were convicted before we knew much about the plight of battered women. Others refused to have their children testify when their children were the only potential witnesses. Some were encouraged not to testify at all. And for some, it was because of other circumstances related to their own lives, or they were involved with other people who were also involved in the commission of the offence. Of those ten women I'm aware of, two have been found by the jury to be ineligible for a reduction.

● (1600)

One woman has chosen never to apply, even though she was one of the ones with an abusive husband, because it was her children who would have been the witnesses. She was concerned about the impact it would have on her children, to not only lose their father but their mother going to jail, as well as the impact of a lot of publicity around the case. She, like many women who have experienced violence, took partial responsibility. Even though legally, publicly, morally, ethically, we would not hold her responsible for the violence that she encountered, she did. When it was time for her to come for her 745 review or to apply, if she chose, she chose not to because she said that it now would be her grandchildren who would be impacted. She refused to even apply to be considered under the faint hope clause because she was concerned that the publicity would impact her grandchildren because they're from a small community.

Of those who have been successful, as we would define success in this context of having been reviewed, victims have been involved in a number of the cases and a number have not. Some of the victims were members of the same family as the perpetrator in many respects. In those cases, it takes.... After the judicial review process, after the process of the faint hope clause has commenced, which can't commence until the 15-year point, even in a successful case.... There is the application to the chief justice, then you go before the jury, and you have the consideration of all the evidence, including the views of the victim and the views of Correctional Service of Canada and people who have worked with the individual. Then the jury weighs whether in fact this person is deserving of the option to apply to the National Parole Board early for a parole ineligibility period reduction. Then they have to agree on what that parole ineligibility period reduction is.

In my experience with those who have been granted by the jury the ability to apply and have had an ineligibility period set, it is usually about three years before they will get before the parole board. Sometimes they cannot come before the parole board, if they haven't completed everything that the Correctional Service of Canada would want them to complete in order to support an application to the National Parole Board. They have to finish whatever programming they were supposed to take. As some of you know, particularly with the increased numbers of individuals in prisons, the last people on the list for programs are those serving the longest sentences.

In order to go forward, they have to have the recommendation of the Correctional Service of Canada. Then they apply to the National Parole Board, and then the National Parole Board considers whether in fact they are eligible to be released.

The primary focus of the National Parole Board is the protection of the public. They will weigh the evidence, and it can take any time length. The earliest I've seen someone come out is within two years, and most people have taken between three, four, and five years once they are eligible for the application for a judicial review.

I think the process is very onerous. This is not to diminish in any way the voices of anybody else on this panel, but it is an onerous process. It particularly looks at whether this individual has completed a process in order to be deserving of an opportunity to re-enter society and continue their life sentence in the community. That sentence never ends; it does continue.

Of those I'm aware of, there have been some returns. Some of the men have returned. There was one woman, and she's a woman with an intellectual disability. She was one of the ones I was referring to who was one of the early reviews. There was not much known about battered women at the time she was convicted. She was caught up in something, was taken advantage of in a situation. She was returned briefly to prison and then released again.

To my knowledge, nobody has been re-involved in any kind of criminal activity. The women are going on to being part of their families and raising grandchildren and that sort of thing. The risk to the public and the human and social cost and the extent to which they are still repaying.... They are paying back for the loss of life for which they were responsible. It continues. In some cases they were fully responsible, and in some cases they were partially responsible. Every one of those women still tells me routinely about the responsibility they feel and how they don't go one day without thinking about the individuals for whom they were partially responsible or fully responsible for their deaths.

● (1605)

One of the things to be aware of is that when we're looking at this approach there are huge human and social costs fully on those who are identified as the victims and those who are identified as the perpetrators. Those who have no glimmer of hope of receiving judicial review, in my experience, very rarely apply. I think Sharon gave the example of Clifford Olson, who very clearly hasn't followed that path, but certainly most others have.

So one of the things we need to do is not fuel misinformation to the public or to victims of crime. We need to be very clear that this option is only available for those individuals who work to show that they have dealt with the issues that contributed to why they're in prison in the first place. Only if they're unanimously deemed to be deserving by the jury that hears their review will they even have an opportunity to apply to the National Parole Board. Only after they have proven to the National Parole Board that they're no longer a risk will they have the possibility of being granted some form of conditional release. That can start with passes for most people and go to day parole in a half-way house.

Even after full-parole eligibility there are individuals who are still in half-way houses until the parole board is comfortable with them being released on full parole. So it's a misperception that people will walk out after 15 years as opposed to 25 years. Most people believe that happens, but in fact that doesn't happen either.

It's very important that it be clear that the reason our organization, the John Howard Society, and many other groups oppose this bill is because it appears to be the pretext of a solution for a problem that isn't there. It's a very onerous process and not everybody walks out. We have many checks and balances already in place to ensure that doesn't occur.

Thank you.

The Chair: Thank you very much.

We'll now open it up for questions.

Mr. Murphy, I believe you have the first question, for seven minutes.

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

I want to thank the witnesses for their testimonies. Everyone was listening with rapt attention.

In the previous session we had Mr. Teague, who represented his interests in terms of what happened to his own family. There was quite a revelation in that he came in with a view that was different from the view he had held previously in terms of feeling some form of...I won't go as far as forgiveness, but some empathy for a convicted person who might be able to change in the system.

Determining an appropriate sentence is a very difficult process, and judges go through this process. It's why somebody before us drafted the complicated section 718. If you wanted to give insult to section 718, you might say it is a bit schizophrenic, because it says we have to consider these principles, and they're competing principles. That's what we all have to recognize.

In my view, they're given equal weight, and judges strive to find the balance. That's what we're trying to do here; we're trying to find the balance between various societal goals. There is deterrence, and deterrence is very important. We have to have general deterrence for crimes in our society. We also have to have denunciation, because it's in the code. It's there, and denunciation is what people feel is just. Denounce what is there.

Then, generally speaking, there are elements that relate to the person who committed the crime. These are principles with respect to rehabilitation, and I know that Marlene will be rehabilitated if we move her BlackBerry away from the microphone. There's rehabilitation and there are elements of remorse, or how the person who committed the crime might be a better person.

But there isn't—and I think we're all struggling with why there isn't—anything specific with respect to what the crime did to the victims of the crime, the victimization of the event. You might say it belongs in denunciation. You might, but it's not. It's something that's perhaps missing. It's not in our code. Maybe the argument should be that we go back to the basics of the code, look at the maximum and minimum sentences, make them mean what they say, and make section 718 more responsive to how we feel we should deal with these after reviewing the evidence.

However, we're not dealing with that. We're dealing with a person who's incarcerated. We, and even representatives of Elizabeth Fry and John Howard, would have to admit that for the first 15 years in these cases, the law says there's no hope of getting out. That's for the first 15 years. With faint hope, there is no hope of getting out, so do we admit that for the first 15 years we're serving the purposes of denunciation and deterrence, and that's the sentence? Even if you had a conversion, became a very worthy person, learned the errors of your ways and all that sort of thing, after the first three, four, five, seven.... Fifteen years is a long time, and there is no hope of your getting out, no hope of parole, but between 15 and 25 years, and periodically, there may be hope through this process.

The question is, why didn't we just write it as 25 years? Why didn't we just write it as 15 years? Why didn't we just write it the way it was? How valuable is it to us to turn people while they're incarcerated? That's a very valid point. These are general questions to everyone.

I have a specific question to Mr. Mandelcorn. Do you, in your experience, believe the elimination of the faint hope provision will alter sentencing or will alter judges' sentences in particular circumstances?

Finally, I couldn't agree more with Ms. Rosenfeldt's statement that there is a spectacle of revictimization each time there is a hearing or evidence is asked for by the chief justice in the first stage. With you, I also believe very much that every victim's family—and I know many—would feel it their duty to appear, and therefore there's no bye and no alleviation of the pain, so we have to be very careful in balancing this and not put families through this incessantly.

Perhaps Mr. Mandelcorn could reply first on that specific point.

● (1610)

Mr. Michael Mandelcorn: With respect to that specific question, it has to be remembered that there is no discretion on a first-degree murder sentence. It's a life sentence. The eligibility for parole is set at 25 years.

A murder trial itself can take weeks and months; the sentencing takes five minutes, literally. It's pronounced, often even though there's no discretion on the judge's part at that point. Victim impact statements are received, because they will follow the offender through the correctional system throughout his or her history and will be used when it comes time for parole hearings and other interim release options.

The simple answer to a straightforward question is that I believe not, even in those cases of second-degree murder in which there is some discretion between life 10 and up to life 25. What the judges are reviewing at that point are the circumstances of the offence itself, including the degree of gratuitous violence and the circumstances surrounding the actual act. This is not an exhaustive list; there's a whole slew of factors that go into reviewing what will be set as—

Mr. Brian Murphy: I appreciate the answer. It was very succinct on the first part.

Generally speaking, should we look at section 718? I'll ask the other two witnesses to answer briefly.

● (1615)

Ms. Sharon Rosenfeldt: I'm sorry, were you talking to me?

Mr. Brian Murphy: The comment was about looking at section 718, the principles of sentencing. Should we review that in general?

Ms. Sharon Rosenfeldt: I think we should, yes. Yes, definitely.

Ms. Kim Pate: I think we should, but I think we should also look at what we do when we ask.... Your point about a victim's feeling a responsibility to come I think is a very real issue. It's a time when many people don't want to be re-victimized and don't want to revisit, for all kinds of reasons. I think recognizing that there are different reasons for that is important.

If we're going to really focus on the needs of victims, we should be looking much earlier in the process. At the time these offences happen, there should be massive amounts of support provided for individuals, not support that feels very much like an afterthought of providing an opportunity for impact statements in a context in which our system has never contemplated that, and for good reason. I am not speaking now just as someone who works within the system, but also as someone who is a mother and has children and has had the experience that I talked about.

To pretend that we're actually providing some support and assistance to victims by allowing them to do victim impact statements at any stage is false. It's not a system that contemplates victim involvement, except as witnesses or in some other way. If we really want to meet the needs of victims, we should be looking at the very real trauma and loss that happens and how we assist in those stages, and not try to mess about with fair and due process rights and charter rights in a context in which what we really want is a fair system. We've set up the system in the way we have because we recognize that if you came to me right after something had happened to my child, I wouldn't be able to think fairly about that individual at all.

The Chair: I'm going to have to cut you off there. We're about a minute over.

We'll move on to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chair.

First, I would like to ask whether anyone who has benefited from these provisions has ever committed another murder or homicide?

[*English*]

Mr. Michael Mandelcorn: Sorry, I didn't get the translation.

The Chair: Just repeat the question.

[*Translation*]

Mr. Serge Ménard: I will start my seven minutes over again.

Are you aware of any cases where an individual benefited from that provision and then committed another homicide?

[*English*]

Ms. Kim Pate: I'm not aware of anybody.

Ms. Sharon Rosenfeldt: I'm not aware of anybody.

Mr. Michael Mandelcorn: Except for the statistics that I quoted earlier about a violent offence, but I didn't define what that violent offence was, I don't know of any new murder....

Ms. Sharon Rosenfeldt: No, I don't either.

[*Translation*]

Mr. Serge Ménard: Mr. Mandelcorn, some victims told us about how emotionally taxing it was for them to come back every two years and go through the whole procedure again. I understand that you are not in favour of this legislation, but what if it were limited? What if their applications were turned down, they had to wait five years before being able to apply again? Would you be in agreement with this?

[*English*]

Mr. Michael Mandelcorn: I should note that I'm not a historian or very good at statistical analysis. I'm not aware of a case in which the initial review was unsuccessful whether the offender would have reapplied.

I've never dealt with a case like that. Maybe Ms. Pate or Ms. Rosenfeldt know.

Ms. Kim Pate: I know of one man, but none of the women have reapplied.

Ms. Sharon Rosenfeldt: I don't know of any.

[*Translation*]

Mr. Serge Ménard: Mr. Rosenfeldt, would it be an improvement for victims to know that a new application could not be filed within five years once the first application has been filed, testimony has been given, and the application has been turned down?

● (1620)

[*English*]

Ms. Sharon Rosenfeldt: That is a difficult question to answer on behalf of all victims. I appeared here today on behalf of our organization to ask for the full repeal of section 745, which means that if it were repealed, there would not be any issues such as that.

You are asking me to possibly take a look at possibly reconsidering. I guess I could answer that question only when we find out what is going to happen ultimately with this clause. I can't answer that, truthfully.

[*Translation*]

Mr. Serge Ménard: Thank you.

Ms. Pate, you gave us some figures, not all of which I was able to write down. If I understand correctly, 10 women have filed an application. You were saying that some of these women were abused by the individual they killed.

Were these women convicted of capital murder, the most serious murder charge, which entails a minimum sentence of 25 years in prison without parole, or second degree murder?

[*English*]

Ms. Kim Pate: In the case of the woman I talked about who had an intellectual disability, it actually was considered a contract killing at the time, because she was in a bar and had asked someone to help her by stopping this man, her common-law husband, from beating her. The man who killed her common-law husband said he would help her if she gave him $100. It's unclear whether she had any idea that it would be anything more than scaring him or beating him up or something. I would question whether she even had some of the requisite ability to form the intent. Nevertheless, she was convicted of first degree murder at that time. She was one of our early reviews. She was also the woman who was returned, because she was living with some women who were committing fraud, and she was thought to be part of it. It turned out that she wasn't, and she was released again. That's the only woman who was in that kind of situation.

Two of the women were caught in the constructive murder situation. When the constructive murder provisions were withdrawn, these were two women whose cases weren't active, so they weren't reviewed. They had been convicted of first degree murder even though they were not.... They were with the men, and the men had threatened them to not warn the police, in both cases.

So those are three. One did not testify and was convicted of first degree murder. Two others did testify and were still convicted of first degree. Three acted alone, and the rest had co-accused. Ten were eligible, nine applied, and two were unsuccessful. So one has not applied.

[*Translation*]

Mr. Serge Ménard: Unless I am mistaken, it is my impression that you are telling us that, ultimately, these women should not have been found guilty of first degree murder for one reason or another and that this provision is a way, over time, of correcting the mistaken verdict made in the past.

[*English*]

Ms. Kim Pate: As you may be aware, one of the courses I teach at the law school is on defending battered women on trial for this. These are some of the reasons that it's not often that the women themselves provide the evidence. Most of the innocence projects and the conviction review groups only go on factual innocence. These are not women whose cases are easy to review, because of the manner in which we've developed review mechanisms around the way men have usually been convicted. So I would say that in my opinion and the opinion of many of those not just in my organization but in other groups, these are individuals who probably should not have been convicted of first degree murder. They were, and some of them didn't even pursue appeals; some did. This is a mechanism that in some respects one could see as an attempt after the fact to work through the system.

It's also important to note that we're now at the point that 20% of prisoners are lifers. When these provisions were brought in, they were strongly supported by corrections people, by prison guards' unions because of the view that we should create some hope amongst individuals, not just to induce them into programs—in fact, I would argue that's the last reason we should—but to induce them to their own humanity, to deal with the issues they need to deal with to move on and re-enter society. With all of the mechanisms that are in place now, we're seeing increased numbers of lifers. As a matter of principle, what are we going to do when we get to 50% who are lifers? What are we going to do when we get higher?

Going back to the question of Mr. Murphy, if part of our issue is the principles of sentencing and if we're choosing to go in a completely opposite direction from most other parts of the world and have longer and longer sentences and more people in, at what human and social costs as well as what fiscal costs will we be doing so? I think that out of all the resources we're talking about spending on this, in all kinds of ways I would much rather see considerably more of them, if we're talking about victims' issues, put into supporting victims earlier in the process.

● (1625)

The Chair: Thank you.

Mr. Comartin, you have seven minutes.

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

Thank you for being here.

Ms. Pate, how current is the figure you just gave us, of 20% being lifers in our federal prisons?

Ms. Kim Pate: The figure 19% to 20% was for 2007 or 2008. I'm told it may be as high as 25% today. I couldn't find the figure for today.

Mr. Joe Comartin: Actually, I think it's higher.

Does anybody know how many of the cases that go in front of a jury have victims appear—and I mean physically appear and give testimony in the form of victim impact statements—or how many send in written impact statements? Does anybody know?

Ms. Sharon Rosenfeldt: I don't know.

Ms. Kim Pate: I only know that of the women in the cases I was involved with, in three of the women's cases victims actually appeared—

Mr. Joe Comartin: That's three out of nine.

Ms. Kim Pate: Yes, three out of nine; and two others had written statements.

Ms. Sharon Rosenfeldt: That's a very good question.

To my knowledge, any of the victims I know do appear, and they read the victim impact statement.

I would like to say about the victim impact statement that it is not a statement in which you can go in and spew whatever you feel you want to spew. There are definite questions that are written out for you, which the victim has to answer. It's fairly straightforward.

That's a very good question, though. It should be worth looking at.

Mr. Joe Comartin: I think it's a question, Ms. Rosenfeldt, that in terms of making a decision on this we should have answered, and it disturbs me that this bill is before us and we don't have that information.

I want to add to that by way of a comment—this is anecdotal, because I can't get it from anybody else—that my impression is, regarding the numbers we just got from Ms. Pate, that fewer than 50% of victims do in fact either present a statement or appear themselves.

Mr. Mandelcorn, can you be of any help?

Mr. Michael Mandelcorn: I don't have any information beyond the cases I've been involved with. My experience has been that they have been there and have read off a statement. I don't know, in terms of the overall number of hearings, what proportion there would be.

Ms. Sharon Rosenfeldt: I'm sure that figure should be fairly easy to get.

Mr. Joe Comartin: It's not.

Ms. Sharon Rosenfeldt: It's not? You've tried?

Mr. Joe Comartin: We have Mr. Head coming from Corrections Canada on Wednesday, and he may have it, but from my information at this point, I don't think he has.

In terms of some basic information I think we should have before we proceed on this, does anybody know how many prisoners were released on the first application and how many had to reapply a second or a third time before they were ultimately successful in becoming eligible?

Ms. Kim Pate: I only know for the women. Of the nine who applied, seven were deemed—not immediately, but were deemed—eligible for reduction. Some of those reductions were immediate, and some were not.

Mr. Joe Comartin: When you say some were not immediately eligible, do you mean they would be saying yes, you can apply for parole in one, two, or three years?

Ms. Kim Pate: At 16 or 17 years, as opposed to at 15 years.

In most of those cases, they were very close to those dates, because it often takes a while to get to court. In one case, the woman was deemed to be eligible at 17 years, and by the time the section 745 hearing occurred, she was within four months of her 17-year date. Generally they're choosing a date. Sometimes it's been back to the 15 years, even though they're at 16 or 17 years when they actually get before the jury.

● (1630)

Mr. Joe Comartin: Mr. Mandelcorn, Ms. Pate gave us some sense of how long it takes, once they are eligible, to get through the parole process and actually get released. You went through stages that people go through. Do you have any figures as to the average time, once the jury has said yes, you will be eligible at this point and can apply to the parole board, how long it is before somebody is actually out in society?

Mr. Michael Mandelcorn: I think Ms. Pate had quoted in her comments that anywhere between two to five years after—

Mr. Joe Comartin: I realize that was for women. Do you have any sense whether it's the same for men?

Mr. Michael Mandelcorn: I don't think it's particularly different for men. It would just be based.... Quite frankly, in my representations at these hearings, I can't think of any case where a person serving life would achieve day parole on his day parole date. It's such a gradual process that, if you will, you're one application behind; you're going for unescorted passes, often, on your day parole date. You're going for day parole, which means release to a halfway house, on your full parole date. That's been my experience. In fact, I don't know of any cases where somebody would get out right on their dates, if they're serving a life sentence.

Mr. Joe Comartin: Are there any numbers as to how many people apply at the 15-year mark and are granted it on the first application? I've only come across one; I will throw that out on the table.

Mr. Michael Mandelcorn: If that question is directed to me, as I stated in my opening comments, what notes or facts I have are as of April this year: that of the 991 lifers—almost 1,000—who were eligible, only 174 applied. Of those 174, 144 were reduced in court. As to whether all of those were at the first appearance, I don't have information.

Mr. Joe Comartin: I have one final question before I run out of time, Mr. Mandelcorn. This was asked of Mr. Nicholson when he was here. There was some suggestion that, because of previous decisions we've had from the Supreme Court on a charter argument, if this section were repealed it might expose these sections to a successful charter challenge. Could you comment on that?

Mr. Michael Mandelcorn: What's interesting is that prior to going to life 25, when we had capital and non-capital murder distinctions—capital being a death sentence—the approximate average number of years before a non-capital murder offender was released was somewhere around 13 or 14 years. So with life 25, we're basically at very close to twice that.

I think an argument can be made, and probably would be made if it had to be made, that if there's no longer a faint hope clause, and if the person can only apply for release after 25 years of incarceration, that may constitute cruel and unusual punishment and be open to a charter remedy at that point.

The Chair: Thank you.

I'll move on to Mr. Moore for seven minutes.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you to each of the witnesses for being here.

Ms. Rosenfeldt, I think you mentioned there's no faint hope for victims. I think that's very compelling, because the victims in these cases are gone. The families are left behind.

When I was in my teens, 15 years seemed like a tremendously long time. But as you get older, 15 years seems like less time. It would seem to me those 15 years would go by for a victim's family and then all of a sudden they're faced with having to come to terms with.... You've laid it out, and we've had other witnesses here, families of victims, who made it quite clear they are going to participate in the process. So when an offender applies under the faint hope clause, the victim's family is going to participate. It seems that's the overwhelming evidence we've heard.

After these 15 years, being forced to revisit, relive, can you let us know, in your working with victims' families, what goes into the thought process, the preparation? What is the impact on families when these hearings come up? If someone could reapply after two years, I would think one would just be putting the first hearing out of their mind when there's the potential for a second application.

So could you comment on the type of preparation, the type of work, the type of communication the victims' families would have as the time approaches for the offender to apply?

● (1635)

Ms. Sharon Rosenfeldt: I'll do my best.

I can use my family's experience. We're going to attend a parole hearing probably in June or August of next year. It's not a section 745 hearing, but we're all ready. We started discussing about the middle of October that we're going next year. It usually takes quite a few months. Sometimes you think about it and other times you don't and time goes on.

The thought of the victim impact statement goes into the preparation: how you're going to be able to explain what's in your heart. I think Kim mentioned that it's really hard as victims of crime to relate to issues that affect another human life, that being the offender's. It's really hard to use actual physical realities to denunciate at a parole hearing, or to write to a person's parole hearing, because it is so filled with the thought of what's right and what's wrong. Why do we have to go to these?

I talked about closure. A lot of people use the word “closure”, and for victims of crime there is not any real closure, other than the finality of the actual proceedings. So when it happens again in 15 years, yes, it's going to definitely open it up again. Is that right? Is that wrong? Is that part of the rehabilitation?

Kim mentioned that help should be forthcoming to the victims earlier. That really does not take place; most victims are left to fend for themselves. When the 15 years come up, if they happen to know about it, if they are registered with the National Parole Board, they are informed this is going to take place. Some victims don't even know they have to be registered to get this information. A whole lot of work has to be done, and that is being done right now.

I'm not too sure how much to let you know, other than I don't think it would take a rocket scientist to figure out the impact having to go to a section 745 hearing has on a person.

Kim, you mentioned—maybe you can talk to this too—that your father or stepfather was murdered. Did you have a 745 hearing? Maybe your family can attest to that.

Ms. Kim Pate: One of the two men who were responsible was deported when he became eligible. It was a second degree murder conviction.

Ms. Sharon Rosenfeldt: Well, it would still fall under the same—

Ms. Kim Pate: No, it was a life-10 sentence. One was deported, and the other is out.

Mr. Rob Moore: Thank you for answering that.

Do I have any time, Chair?

The Chair: One minute.

Mr. Rob Moore: There is a case, which has been reported in the media, of a family living in a town bordering Mr. Murphy's and my ridings. Our ridings border on a town where this family lives. They were going through a parole hearing. Their daughter was killed many years ago and they went through the process of preparation. They travelled to Quebec for the hearing and then the offender cancelled the parole hearing after the family was already there.

Obviously that made the news and people were outraged by it. It was an egregious case of abuse. But we do have a system right now that allows that to happen. To most of us, certainly to me and the people I've talked to, it is simply not acceptable that this could happen to a victim's family.

You mentioned there is no closure for victims' families, and I can certainly appreciate that. But specifically when it comes to victims' families attending these faint hope hearings, does it not help with closure? Does it actually prevent closure? Is that a safe assumption?

● (1640)

Ms. Sharon Rosenfeldt: Yes, that's a very safe assumption; it definitely does not help with closure. All that happens when you attend a hearing is that you just wait for the next hearing. So you prepare yourself because you know you're going to be going back again.

I've always said that since we didn't have capital punishment in this country for the man who murdered my son, we have a life sentence with parole eligibility at 25 years instead. So all I really expect as a mother and a Canadian who believes in our laws is that this be true, that he does serve 25 years. But right now he has the right to apply every two years for another two years. I don't like that either; I think that's wrong. But that's a whole different situation from what we're talking about here. In fact we're addressing that as well, even though it's a different issue.

The Chair: Unfortunately.

Ms. Sharon Rosenfeldt: But regarding the 15 years, unfortunately, the amendments in the new legislation, Bill C-45, were too late for us. So we did have to go through that hearing.

The Chair: Ms. Rosenfeldt, unfortunately, I have to cut you off there because we're two minutes over our time.

Ms. Sharon Rosenfeldt: Okay.

The Chair: Ms. Jennings, for five minutes.

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

If I understand you correctly, Ms. Rosenfeldt, you and your association are entirely opposed to section 745 and would like to see it repealed, end of story.

Ms. Sharon Rosenfeldt: That's correct.

Hon. Marlene Jennings: Can I therefore conclude or assume that you do not support, or have serious problems with, the government Bill C-36, which does not repeal section 745 but allows the faint hope clause to continue to exist, albeit under some changed conditions? An inmate serving a life sentence with no possibility of parole for 25 years would still have the right to apply under that section.

Ms. Sharon Rosenfeldt: My understanding—and please, committee, correct me if I'm wrong—is that Bill C-36 is a full repeal of section 745.6, the faint hope clause, other than for individuals to which it does not apply after the date it is passed. That's where the five years come in, because there are many individuals who can't go retroactive. So it's going to affect many individuals. That's just the way it is, and I don't have a problem with that.

Hon. Marlene Jennings: Thank you.

Ms. Sharon Rosenfeldt: If there's the full repeal, I don't have a problem with the rest.

Hon. Marlene Jennings: For those who are sentenced and found guilty in the future, if the bill comes into effect—

Ms. Sharon Rosenfeldt: The ones who do not fall under that.

Hon. Marlene Jennings: But for those who are currently serving life sentences, you don't have a problem with limiting that?

Ms. Sharon Rosenfeldt: I have a respect for the law the way it is.

● (1645)

Hon. Marlene Jennings: Even if there's a possibility—

Ms. Sharon Rosenfeldt: What I don't have respect for is the lie of the law the way it is before your 25—

Hon. Marlene Jennings: Thank you very much.

My other question is about a parole board report that came out on April 13, 2009 and which appears to give—I don't have the actual report, but just have a summary of it—the actual number of offenders who have been deemed eligible to apply for judicial review under section 745 since the first judicial hearing under that faint hope clause was held in 1987. It appears to state that no one who has actually received early release under section 745 has gone on to commit murder.

Mr. Mandelcorn and Ms. Pate, are you aware of any other studies that have looked at all of the statistics regarding the number of inmates since 1976 who were eligible for parole under section 745—who went through the process and were actually deemed to be eligible to go before the parole board—and went before the parole board and actually received early release, and while released actually committed another murder for which they would have been subject to a life sentence without parole?

I'm asking both of you if you're aware of that and whether it exists. Do you have any information that would indicate yes or no, or you don't know?

Mr. Michael Mandelcorn: No, but I'd just say the same statistics you quoted from mention that a total of 14 cases have been returned. Of those cases, two, I believe, were for a new violent offence, and there is no mention of it being murder. So I would say no, there are no cases where a new murder was committed while the person was on parole.

Ms. Kim Pate: And I'm not aware of any either.

Hon. Marlene Jennings: Thank you.

The Chair: Ms. Jennings, thank you.

We'll move on to Monsieur Lemay, for five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you.

Mr. Mandelcorn, you have taken clients through the process to obtain a judicial interim release or an application to appear before the National Parole Board—but I do not know for how many clients.

Do you believe that the current process ensures that the objective set out in section 745 is met, which objective is not to release an individual who is not prepared to be released?

[*English*]

Mr. Michael Mandelcorn: Absolutely. At best, a successful judicial review application allows a person to apply before the National Parole Board at some earlier date than the 25 years of a first degree life sentence. It is solely within the discretion and decision-making ability of the National Parole Board to grant a release. Fundamentally, they are the gatekeepers protecting society. Based on their reviews of materials provided to them by the Correctional Service, they are in a position to say whether that person, the offender being released, presents an undue risk to society.

So in my submission, you do not have to have revisions to the faint hope clause as it's currently enacted to better ensure the protection of society. My view is that society is protected, based on the parole board's decision-making capability.

[*Translation*]

Mr. Marc Lemay: I do not know that we have a lot of time left, but I would like your opinion. In the case of an individual who has been sentenced—and we are talking about first degree murder, so someone who has committed a premeditated crime—how much time it can take before that individual is entitled to apply for parole?

Suppose that the person has been in jail for at least 15 years. Before holding a hearing, the court must convene a jury. How much time could it take to prepare that individual to file such an application before the court?

● (1650)

[*English*]

Mr. Michael Mandelcorn: He can't make the application until he is eligible. So the starting point is 15 years. He can't do it before we get everything ready; then off we go when it's time.

I know I don't have much time, but there's a whole series of practical measures that you have to consider about the whole process of applying. Fundamentally, the person has to retain counsel. In most provinces, that goes through a legal system. In most provinces—and I can speak of Ontario—the lawyer involved has to write a positive opinion letter to say that in his or her opinion there is at least a reasonable chance of success. Assuming you get that far, you then have the written notice of application, and the gathering of documentation, where, by definition, you're looking at least 15 years' worth of Correctional Service Canada institutional files that you have to review. You then have to get the supporting affidavits and the paper necessary to support your case, and you then still have to file that with the court. The crown then gets to respond, and you're still only at the vetting stage; you're not even at a jury yet. So it takes many years, I would say, beyond the 15 years before you actually get your day in court.

[*Translation*]

Mr. Marc Lemay: In your experience, can someone who has become eligible pretend, or be such a good liar that they are able to fool the entire system and be entitled to ask the National Parole Board to reduce their sentence?

[*English*]

The Chair: A quick answer, if you can.

Mr. Michael Mandelcorn: I assume you mean the offender, not the lawyer, being the liar.

The short answer is, realistically, no. There's so much paper that follows an offender's 15 years' worth of incarceration that, quite frankly, if he's a bad apple, he's not going to be able to fake being a good one.

The Chair: Monsieur Petit, *pour cinq minutes*.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair. My question is for Ms. Rosenfeldt or Mr. Mandelcorn.

Earlier, I had thought that Ms. Rosenfeldt was talking about the suffering of victims who had to go back to court to explain.... She said that she would soon have to go back and relive something traumatic that happened several years ago.

Ms. Rosenfeldt, I want to tell you how I see this. In Quebec, on December 6, 1989, a man killed 14 young women. This tragedy is known as the Massacre at the Polytechnique. Over the past 20 years, each year on December 6, we remember what happened. There is a great deal of suffering. Fourteen young women were killed. Every year, the mothers and sisters of the victims come to mourn for their loved one. Imagine if Mr. Lépine had been sentenced to 25 years in prison. We see their suffering after 20 years: it still weighs them down.

Ms. Rosenfeldt, I would like to address another issue with you. In Quebec, a murder was committed at the National Assembly. Former colleagues of Mr. Ménard's were killed by a man called Denis Lortie. Three people were shot at the National Assembly. The murderer is not currently in prison. The families of the three people who were killed are still suffering today.

You say that we are trying to resolve the problem. Are you in favour, yes or no, of section 745.6? Is what we are doing sufficient or not?

● (1655)

[*English*]

Ms. Sharon Rosenfeldt: No, I don't agree with 745.6. I do not agree with the faint hope clause. I agree with what our Criminal Code states: 25 years is what you get for first degree murder. I believe you were talking about the case of Marc Lepine and the 14 women he killed. Marc Lepine killed himself at that time. But you're quite right, the families do carry on and have a memorial.

To me and to a lot of victims, it's just a case of truth in sentencing and a case of right and wrong. It's 25 years or it's 15 years. If this issue came up, and if legislators and the Canadian public felt that 25 years was too harsh, if it became 15 years, then that would be our law and I wouldn't have a problem with it. What I have a problem with is this business of going through the back door. I think it's wrong, and I think that it must be changed.

I don't know how else this is going to be addressed. These issues have been talked about over and over again. To me, the only question is whether it's 25 years or 15 years. If Canada does not want 25 years, then let's go to work and have it brought down to 15 years, where it seems that most people are comfortable.

Am I punitive? I don't think so. I just believe very strongly, and most victims believe very strongly, that you have to be truthful, you have to be upfront. I think the faint hope clause is just plain wrong. It's not sitting right, and it hasn't been for years. I believe we have to stay with the Criminal Code, and I believe that the 745.6 has to be repealed. However, I don't have a problem, because of our Constitution, with the retroactive question. I don't have a problem with others going through hearings, if that's the law. If the law states that's what it is, then that's what it is. I just can't see fooling around with it, and that's where it gets tricky and makes most of us victims pretty upset. It's wrong.

The Chair: Thank you.

We're at the end of our time and we still have some committee business to take care of, so I want to thank all three of you. It's a difficult issue for Parliament to deal with, and we respect your taking the time to address us. Your testimony will form part of the public record.

We'll suspend for five minutes.

● _____ (Pause) _____ ●

● (1700)

The Chair: I reconvene the meeting.

Before we get to the motion there are three items. You should have before you a budget for travel to Toronto on our organized crime study. I believe we had set that for November 30. You've had a chance to review the budget, I hope.

What is your wish? I need a mover.

Mr. Rob Moore: Is this by bus again? Are we flying?

The Chair: Would you like it to be by bus?

Mr. Rob Moore: No, I'm just asking. On our last bus trip there were no Liberals, so I would like a firm commitment that they are going to ride the bus with the rest of us.

Mr. Brian Murphy: Was there a big poster on it? Was there a big advertisement on it?

The Chair: Just so you all know, we are not in camera on this, so we should probably get to the point.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: No. In fact, I wanted to know whether this trip was scheduled for November 30.

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Marc Lemay: Are we going and returning in the same day?

[*English*]

The Chair: We would get there Sunday night. On Monday we would hear witnesses. We would be back home Monday evening.

Mr. Comartin.

Mr. Joe Comartin: I come through there. I'm using points anyway for that period of time, so I wouldn't be looking for the committee to cover it.

The Chair: That's great. That will reduce our costs. Thank you.

Do we have a mover to approve this?

● (1705)

[*Translation*]

Mr. Serge Ménard: We would leave on Monday morning for Toronto and come back Monday evening.

Mr. Marc Lemay: We would leave Sunday evening.

[*English*]

The Chair: No, we would arrive on Sunday evening.

[*Translation*]

Mr. Serge Ménard: For Toronto?

[*English*]

The Chair: Oui. We will all come from different places. I'll be coming from Abbotsford. Some of you will be coming from Montreal.

[*Translation*]

Mr. Serge Ménard: At least three of us would be coming from England. No?

[*English*]

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): No.

[*Translation*]

Mr. Serge Ménard: When are we coming back from England?

[*English*]

Mr. Brent Rathgeber: I'm not going, but you will be landing from England. You have the dates right, Mr. Ménard.

The Chair: We want to move this forward because we have two other short items to deal with.

[*Translation*]

Mr. Serge Ménard: Several of us sit on both committees. The Standing Committee on Public Safety and National Security is returning from Europe, I don't know exactly when. Is it on Friday or Saturday?

[*English*]

The Chair: All right. That doesn't change the fact that at steering committee we set a date of November 30.

Mr. Serge Ménard: We solved the problem.

The Chair: Okay.

Do we have a mover?

Mr. Joe Comartin: I so move.

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

The Chair: There are two other items. We're moving on to a review of Bill C-52. It's tentatively scheduled for November 16, which is the first meeting after the break. I want to make sure everybody knows we need a list of witnesses on Bill C-52. You have your formal notice. Please submit to us the list of witnesses you'd like to hear on Bill C-52, which is the white collar crime legislation.

Since we'll be moving to clause-by-clause on Bill C-36 some time in the very near future, depending on the outcome of the motion, we'd like to have your amendments as soon as possible.

It's the same thing for Bill C-232. We want to move toward clause-by-clause on that as well, so if you have amendments to that bill please get them to the clerk as soon as possible.

Mr. Joe Comartin: I'm sorry...?

The Chair: The two bills we want to move on to clause-by-clause, if we can get the amendments, are Bill C-36 and Bill C-232.

Go ahead, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Unless I am mistaken, we will begin our study of Bill C-52 on November 16.

The Chair: Yes.

Mr. Marc Lemay: That depends. Should we not first finish studying Bill C-36?

[*English*]

The Chair: That is correct.

[*Translation*]

Mr. Marc Lemay: Okay. I wanted to be sure of that.

[*English*]

The Chair: I think I qualified my comments. At some time in the near future we want to move to clause-by-clause, depending on the outcome of the motion before us.

[*Translation*]

Mr. Marc Lemay: Okay. I understand.

[*English*]

The Chair: All right, thank you. I've done my work in giving you that notice.

Now we'll move to Mr. Moore's motion. Mr. Moore, you're laying that motion on the table, is that correct?

Mr. Rob Moore: Yes, thanks, Chair.

The motion is pretty easy to understand. We would complete clause-by-clause on Bill C-36 on Wednesday. You've mentioned Bill C-52. We have another bill before our committee and other work we'd like to get moving on. I think today's our third day of testimony on Bill C-36. That's why I would like to see us with a concrete plan to complete Bill C-36. The nature of my motion would be to give us a definitive date on which we're going to wrap up Bill C-36, and that date, in my view, should be Wednesday.

Mr. Brian Murphy: Can I ask one question?

The Chair: Yes, you may.

Mr. Brian Murphy: Do you mean by this motion that we just do clause-by-clause at the meeting on November 4 or that we do other things? Is the spirit of the motion to finish clause-by-clause sometime on Wednesday, November 4?

● (1710)

Mr. Rob Moore: We are already scheduled to do clause-by-clause, I think, on Bill C-232.

The Chair: Let me tell you what is preliminarily scheduled for our next meeting. We have two more witnesses on Bill C-36, Allan Manson and the Correctional Service of Canada, which will provide us with some statistics. Then we were going to go to clause-by-clause on Bill C-36 and Bill C-232. I don't expect that Bill C-232 will take much time. Is the government proposing any amendments to Bill C-232?

Mr. Rob Moore: No.

The Chair: As there are no amendments, I expect we'll be considering that. There may be some amendments on Bill C-36, but it's reasonable to expect, if in fact those are the only two witnesses we have next meeting, that we'll be able to get all the clause-by-clause done on those two bills.

Mr. Rob Moore: Chair, to answer Mr. Murphy's question, no, my goal here is not to have us not hear any other witnesses on Bill C-36; it is just to finish clause-by-clause on Bill C-36. If there are witnesses we want to hear who are already scheduled, or others we can hear that day, ultimately I'd like to see us finish Bill C-36 after we've heard from the witnesses.

The Chair: Is there anybody else?

Okay, we'll go to Monsieur Lemay and then to Mr. Comartin.

[*Translation*]

Mr. Marc Lemay: I 'd like to make sure I understand correctly. Perhaps the translation of the motion is not clear. I would like Mr. Moore to explain to me fully. If I understand correctly, we still have witnesses to hear regarding Bill C-36. Once we have heard from them, whether on Wednesday or at another time, we will begin clause-by-clause consideration of Bill C-36 and that consideration will have to be completed before the end of the meeting.

Have I understood correctly, because that is not what is set out in the motion.

[*English*]

Mr. Rob Moore: Yes, correct, that's what I would like to see from the motion. It says “that the meeting not adjourn until clause by clause consideration is complete”. After hearing witnesses on Bill C-36, we would then start and finish clause-by-clause on Bill C-36 by the end of the meeting on Wednesday.

If I hear what the chair is saying with regard to our schedule, it seems quite doable to me to finish Bill C-232 clause-by-clause, hear witnesses on Bill C-36, and then do clause-by-clause on Bill C-36 on Wednesday.

[*Translation*]

Mr. Marc Lemay: I do not agree. I cannot agree with that, because that means that we could be sleeping here on Wednesday evening.

What do you want to do? We will have to vote, because there are votes on Wednesday in the House of Commons.

I had understood that, on the day that we start clause-by-clause consideration, we won't stop until we finish. We could do some work on this. If you are telling us that we will start on Wednesday and we won't stop, this means that we will not be going to vote, because there are votes on Wednesday.

Then, I do not agree with the motion that Bill C-36 is much too important for us to rush through it. If there are any witnesses left, I don't want to rush anyone. I don't think there are many witnesses left, and we will take the time needed to ensure clause-by-clause consideration of Bill C-36, even if another meeting is needed.

How many witnesses are left, Mr. Chair, is it two or three?

[*English*]

The Chair: There are two, and you may recall, Mr. Lemay, that at our last meeting both you and Mr. Comartin said you had three more witnesses each who you were going to present. None of them have been presented to the clerk.

[*Translation*]

Mr. Marc Lemay: No, wait, we will not stay here to fight about it all afternoon. I agree with you. We tried to reach the witnesses. Some of them are unable to come, and that is par for the course.

However, I don't want to be stuck in the situation where we would have to start on Wednesday at 5:30 p.m. and finish Wednesday evening or Thursday morning. I don't want that. We can do it at a later date. On the 16th we will have clause-by-clause consideration of Bill C-36. I would like us to take the time to hear from our witnesses, study Bill C-232 as required, and at the following meeting, meaning on the 16th, do clause-by-clause consideration of Bill C-36.

What is the national emergency, where's the fire?

● (1715)

[*English*]

The Chair: Mr. Comartin.

Mr. Joe Comartin: I'm also opposed to it. I don't know what's happened. On Wednesday I expect we'll take the better part of the first half-hour, if there are no amendments to Mr. Godin's Bill C-232. So we'll use up a half-hour then. We then have two witnesses now scheduled. I don't know of any more, but this is what I was informed as of Friday, that we have two witnesses: Mr. Head, from Corrections Canada, from whom I expect we're going to need to get a fair amount of data, and then Professor Manson from Queen's, who also has a good deal of data to give us. I expect they would take up the balance of that hour and a half.

I don't know what's happened. I think I asked for—or somebody else asked, and I would certainly support—somebody coming from the Canadian Bar Association. I don't know whether they're scheduled. Then there were either two or three witnesses, as I understood, on the list coming from the Barreau du Québec, the criminal defence lawyers for Quebec, and from Aide Juridique du Quebec. I don't know what's happened to them, if they're coming, or if there's a problem with their coming on Wednesday. I don't know what the problem is there, but I would expect that if some of them could be available, we might be able to plug one or two of them in. But that would be it, and we'd have to then finish the witnesses on the 16th, which is what I'm looking for.

A final point that I would make with regard to witnesses is that I'm still trying to get at least one and perhaps two other witnesses. It's very difficult, because of the nature of who they are, to get them to be willing to consent to come publicly with their testimony.

The final point I would make is to confirm, besides the question on the scheduling on Wednesday, that clearly we are not going to be able to go beyond 5:30, because of the votes that are scheduled. There's just no jurisdiction here, either in the chair or the committee, to prolong the meeting beyond 5:30 on Wednesday.

So I think the prudent thing to do is to vote against this motion and leave the scheduling, so that we would still have the opportunity to have witnesses on the 16th and finish clause-by-clause on the 16th. I'm not anticipating, from having talked to all parties now, any amendments. As far as I can see, there aren't going to be any amendments, so that we could deal with clause-by-clause on the 16th and finish it at that point.

The Chair: Mr. Murphy.

Mr. Brian Murphy: Well, I guess that was part of my question. I'll take it as a given that there really can't be any amendments to this, because this is eliminating a structure. It's not something you can tinker with, so there probably wouldn't be any amendments; therefore, you probably could deal with some of it on the....

The other point is that I have to take Mr. Comartin's word that at the Wednesday meeting, the first half hour is Yvon Godin's bill, and then, conservatively—a word I don't use much—there would be an hour for the testimony of the witnesses, including Mr. Head and Professor Manson.

So would we expect to do the clause-by-clause in a half hour, at the very best?

The Chair: Do you have a response?

Mr. Joe Comartin: I don't know what's happened to the other witnesses, including the Canadian Bar Association and then the three who were on the list from Quebec.

The Chair: Well, let me respond.

There was a long list that we went through. Many of them have appeared.

Let's start with UCCO, the Union of Canadian Correctional Officers. They declined.

L'Aide juridique du Québec gave no response, despite efforts.

The CBA declined, but they did issue a brief, which we have received.

Le Barreau du Québec declined.

L'Association des avocats de la défense du Québec declined.

The Criminal Lawyers Association was here today, of course.

Victims of Violence were here today.

The John Howard Society was confirmed, and then they spoke through Ms. Pate.

Allan Manson is coming in the next meeting.

Stats Canada declined, but CORCAN is taking their place.

That is it. That's the complete list that was given to us. I trust the clerk to follow up when these requests are made, and it's pretty clear that right now we've exhausted that list, and all we have is Mr. Manson and CORCAN coming for the next meeting.

● (1720)

Hon. Marlene Jennings: Is that for an hour and a half?

The Chair: Yes, and then for half an hour we could deal with clause-by-clause. It appears there are no amendments on either one of those two bills, so we could typically do those by way of an omnibus vote.

Mr. Brian Murphy: So we will get to clause-by-clause, likely, on Wednesday, but are not mandated to finish it. That's the bottom line.

The Chair: That's not what the motion says. The motion said—

Mr. Brian Murphy: No, I'm asking you as the chair. It's expected that we'll get to clause-by-clause at about five o'clock on Wednesday.

The Chair: Yes.

Hon. Marlene Jennings: And if this motion is not carried, then on Monday, November 16, we would continue clause-by-clause, if we have not finished it on November 4. If we do get to clause-by-clause....

I'm sorry, I'm speaking out of turn.

The Chair: No, I understand.

If the motion before us fails, we just continue work on Bill C-36, whatever that may entail.

Hon. Marlene Jennings: Therefore, on Wednesday, we would deal with Mr. Godin's bill, I believe it is, for the first half-hour—somebody's bill for the first half-hour—and then have an hour and a half for Bill C-36. We would hear from witnesses; if we completed the witnesses prior to 5:30 in the afternoon, we would then proceed to clause-by-clause.

Now, I'm talking about the case if this motion is not carried. At 5:30, if we have not completed our clause-by-clause, then on Monday, November 16, at 3:30 in the afternoon, when our committee is regularly scheduled to come back, we would continue clause-by-clause and most likely would finish it on November 16.

The Chair: That's certainly one scenario that could play out.

Hon. Marlene Jennings: And another scenario is that we proceed to clause-by-clause on Wednesday, November 4, and actually complete it before 5:30.

The Chair: That's certainly a scenario.

I just want to raise this with members. Tentatively I had scheduled us to deal with clause-by-clause on Bill C-36 right after the witnesses and then move to Bill C-232.

Hon. Marlene Jennings: You mean not do Bill C-232 first?

The Chair: Exactly. That's right.

Mr. Comartin.

Mr. Joe Comartin: I have to challenge you on that. It's in our minutes; we adopted this. Bill C-232 was to start the meeting on Wednesday, not Bill C-36.

The Chair: I understand that, but we also have a motion before us, so in anticipation of the motion.... That's why I said "tentatively scheduled". I have used the word "tentatively", I think, four or five times.

Hon. Marlene Jennings: And it's based on this motion being carried; and if the motion is not carried, then the decision of the steering committee—

The Chair: Would survive.

Hon. Marlene Jennings: —to have Bill C-232 dealt with first on Wednesday, November 4, will go forth?

The Chair: That is correct.

Mr. Joe Comartin: On a point of order, it was not just the steering committee; it was this committee. We adopted the recommendations.

The Chair: It was adopted, yes. Absolutely.

Mr. Moore.

Mr. Rob Moore: I think the motion is quite doable. We've laid out how it could work by time, with Bill C-232 and clause-by-clause on Bill C-36. Rather than belabour the point, I'll just move that we vote on the motion, if I can do that.

The Chair: I would rule that to be out of order.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I am going to move the following amendment to the motion: That the Standing Committee on Justice and Human Rights begin clause-by-clause consideration of Bill C-36, An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act) on Wednesday November 4th [...]

The rest of the sentence would be dropped and replaced by the following: [...] and that if clause-by-clause consideration is not completed on November 4th, it be continued on November 16th, and concluded November 16th.

Pardon me, Mr. Chair, I am going to clarify that in the following way: [...] that if it is not concluded by 5:30 p.m. on November 4th, it be continued and concluded on November 16th.

There. I think I have covered everything.

● (1725)

[*English*]

The Chair: Let me read that back. The amendment would delete the last 13 words in the original motion and replace them with the following: "And that if clause-by-clause study is not completed by 5:30 p.m. on November 4th, that it continue on November 16th, and be completed on the 16th of November."

[*Translation*]

Mr. Marc Lemay: There.

[*English*]

The Chair: You have before you the amendment to the main motion.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Does that mean that Bill C-232 would go as planned, first thing in the meeting on Wednesday?

The Chair: Yes.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, here is how I understand the situation: On November 4th, we are going to study Bill C-232. We will hear from the two remaining witnesses. If we have any time left, we are going to begin clause-by-clause consideration. If we do not complete it by 5:30 p.m. on November 4th, we will do so on November 16th.

[*English*]

The Chair: There is one proviso. I think you suggested that clause-by-clause on Bill C-36 would start on November 4 if there was time. The actual amendment that you suggested says it will start on November 4, but if it's not completed it continues on November 16, when it will be completed. Am I correct?

[*Translation*]

Mr. Marc Lemay: Yes.

[*English*]

The Chair: So the amendment stands as I read it.

Ms. Jennings.

Hon. Marlene Jennings: Am I allowed to suggest a subamendment?

The Chair: Yes.

Hon. Marlene Jennings: This is to deal with the point you just made. It would read, “That should the Standing Committee on Justice and Human Rights begin clause-by-clause consideration of Bill C-36, an act to amend the Criminal Code...”.

The only thing I'm adding is the word “should” after the word “that” at the beginning. So in French it would be:

[*Translation*]

[...] that if the Standing Committee on Justice begins clause-by-clause consideration [...].

Mr. Marc Lemay: Mr. Chair, we could...

The Chair: One moment.

Mr. Marc Lemay: Okay.

[*English*]

The Chair: Just to confirm, the subamendment Ms. Jennings is proposing would insert the word “should” after the word “that” at the beginning of the motion, and before the words “the committee”. Right?

Hon. Marlene Jennings: Yes.

The Chair: All right.

Subamendments are debatable, I believe. Is there any debate?

Mr. Comartin.

Mr. Joe Comartin: The concern I have is the potential for my wanting one more witness to come. As I understand this, it would not preclude another witness being called on the Wednesday.

I'm seeing Ms. Jennings nodding her head and I'm assuming Mr. Lemay agrees as well.

If I am able to locate this other witness and then get them here, this amendment would not preclude that from occurring.

● (1730)

The Chair: No, it wouldn't preclude it.

Mr. Joe Comartin: I was going to say, Mr. Chair, that I was going to raise a point of order and ask you to adjourn this meeting, since we're now past 5:30, but I won't do that.

The Chair: Thank you.

Why don't we move to the subamendment. You've heard the subamendment, which would modify the amended motion as proposed, inserting the word “should”.

(Subamendment negatived) [See *Minutes of Proceedings*]

The Chair: We're now left with the amendment. You have heard the amendment.

(Amendment negatived) [See *Minutes of Proceedings*]

The Chair: Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, I will now move that the meeting be adjourned, as we're past the assigned time.

The Chair: All right. I have to take it.

So the meeting is adjourned.

Mr. Joe Comartin: We have to vote on it.

The Chair: My apologies, my mistake; we have to vote on the motion to adjourn.

Let me just check.

I'm advised that we do have to vote on the motion to adjourn.

(Motion agreed to)

The Chair: The meeting is adjourned.

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