HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

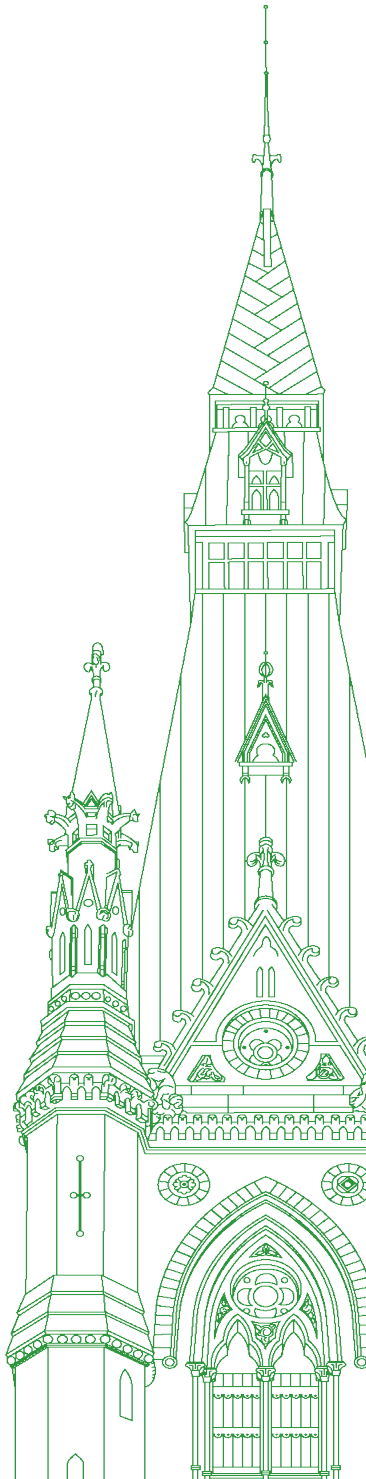
44th PARLIAMENT, 1st SESSION

Standing Committee on Public Safety and National Security

EVIDENCE

NUMBER 087

Monday, December 4, 2023



Chair: Mr. Heath MacDonald

Standing Committee on Public Safety and National Security

Monday, December 4, 2023

● (1100)

[*English*]

The Chair (Mr. Heath MacDonald (Malpeque, Lib.)): I call this meeting to order.

Welcome to Meeting number 87 of the House of Commons Standing Committee on Public Safety and National Security.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application.

I would like to make a few comments for the benefit of witnesses and members.

Please wait until I recognize you by name before speaking. Feedback events can occur. These can be extremely harmful to interpreters and cause serious injuries. The most common cause of sound feedback is an earpiece worn too close to a microphone. We therefore ask all participants to exercise a high degree of caution when handling the earpieces, especially when your microphone or your neighbour's microphone is turned on.

All comments should be addressed through the chair.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Monday, October 23, 2023, the committee resumes its study of the rights of victims, reclassification and the transfer of federal offenders.

I would like now to welcome our witness for today by video conference. We have Mr. Tim Danson, lawyer and legal counsel for the French and Mahaffy families.

Welcome, Mr. Danson. It's great to see you here.

[*Translation*]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Excuse me, Mr. Chair.

[*English*]

The Chair: We will go right into questioning. The first question is—

[*Translation*]

Mr. Rhéal Éloi Fortin: Mr. Chair, I'd like to ask something, if I may.

[*English*]

The Chair: I'm sorry. It's only Monday, Mr. Danson. Please bear with me.

[*Translation*]

Mr. Rhéal Éloi Fortin: First of all, thank you for welcoming me to the committee today, where I'm pleased to replace Ms. Michaud, who is stuck in her riding.

I wanted to know if the sound checks were done successfully for the witness appearing by videoconference.

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Chair.

[*English*]

The Chair: Mr. Danson, I pre-authorized 10 minutes for your opening remarks today, so if you want to start now, it would be appreciated.

Thank you.

Mr. Tim Danson (Lawyer and Legal Counsel for the French and Mahaffy Families, As an Individual): Thank you very much.

Thank you for inviting me to appear before this committee today on behalf of the families of Kristen French and Leslie Mahaffy, whom I have had the honour and privilege to represent for the past 30 years. Appearing in public to speak to these issues is simply too painful and emotional for the families, and they have asked me to speak on their behalf.

My representation of the families over the past 30 years informs the opinions that I'm going to share with you today. This includes guiding them through the criminal justice system, Bernardo's trial, and battling the media and certain members of the public, who unsuccessfully tried to gain access to the Bernardo-Homolka videotapes.

This was an enormous undertaking, which itself included the need for me to painstakingly review the videotapes and prepare a chart describing every frame of the videotapes and the corresponding words. This fact alone is perhaps the most significant fact that will inform some of the opinions I give today and perhaps the answers to some of your questions, because that was a very difficult process, reviewing the videotapes. This was necessary for the particular argument that we advanced at the time of the videotape motion.

We were also involved in the plea resolution involving Karla Homolka and made efforts to have Karla Homolka's plea resolution set aside, because we believed that she breached it. We dealt with a little-known potential plea bargain for Paul Bernardo to second-degree murder, which we stopped, even though it would have avoided the trial altogether and avoided the excruciating videotape issue.

We were involved in the successful gating application to keep Karla Homolka in jail for her entire 12-year sentence. We went to Joliette, Quebec, at the conclusion of her sentence, to impose post-sentence conditions on Karla Homolka, pursuant to sections 810.1 and 810.2 of the Criminal Code. During that particular process, Karla Homolka chose to stare me down in court, and I saw for myself the evilness in her eyes 12 years later, which was identical to what I saw in the videotapes.

We were involved in the appeal process. We were involved in the bone-chilling discussions we had after Bernardo was convicted and had exhausted all of his appeal routes, which led us to obtain an order to destroy the videotapes, the crime scene pictures, the autopsy photographs and the steel circular saw that he used to dismember Leslie Mahaffy. We had everything destroyed.

Now we're involved in Mr. Bernardo's parole hearings. We're currently before the Supreme Court of Canada, with the assistance of the Toronto Police Association, on a leave application regarding the families' Access to Information Act request for the records of Paul Bernardo and other offenders who murdered police officers, which is what they rely upon to persuade the Parole Board to grant them parole and what Correctional Service Canada and the Parole Board need to discharge their legislative public safety mandate.

As I said just a moment ago, all of this will inform what I have to share with you this morning, but I know this. On these issues, the public interest and the victims' interests are fully aligned—but for the grace of God go I.

With the exception of a public loonie campaign 30 years ago, which I had nothing to do with, all of my work for the families has been and continues to be pro bono. Helping these families free of charge is a far greater reward than all the money in the world.

The families wanted me to share a number of points with you.

First, all they seek is justice. They don't seek revenge. They don't seek retribution. They accept that Paul Bernardo was entitled to full constitutional protections—the right to be presumed innocent, the right to a fair trial—and he got both. They accept that Mr. Bernardo is entitled to humane treatment in jail and that he has the right to seek release on parole.

The question, though, that must be answered is this: What is justice for a convicted sadistic sexual psychopath who committed the most unspeakable crimes known to humankind and who was sentenced to life in prison and, additionally, was designated a dangerous offender? He is an offender who, after 30 years in prison, right up to his transfer—as found by two different panels of the Parole Board—had no remorse, no empathy, no insight, and was not treatable.

I wish all of you could see—and this is part of our application before the Supreme Court of Canada—or even listen to the audio recording of Paul Bernardo's testimony. It would go a long way toward people understanding who this person is.

● (1105)

In designating Paul Bernardo as a dangerous offender, the learned trial judge, who was one of the most distinguished and experienced judges in the country, Associate Chief Justice LeSage—as he was then; he later became our chief justice—recounting the unspeakable, sadistic brutality Bernardo inflicted on two innocent, defenceless teenage girls and so many others, said this to Mr. Bernardo: “You require [jail], in my view, for the rest of your natural life.... You are sexually sadistic psychopath. The likelihood of you being treated is remote in the extreme.”

For offenders like Paul Bernardo, the overarching principle must be maximum punishment in a maximum-security penitentiary. The Supreme Court of Canada tells us that sentencing is the means by which society communicates its moral values. These types of offenders can still obtain the benefit of programs offered in maximum-security federal institutions. They are still entitled to regular parole hearings, but never should such an individual be rewarded with a transfer from maximum security to medium security, when at the time of the transfer, the offender still shows no remorse, no empathy and no insight into his crimes. The medical evidence was that he was beyond treatment.

It sends the wrong message. It sanitizes the full brutality of his unspeakable crimes. It's no answer that the perimeter security is the same as maximum security, that medium security offers better treatment programs for a person who cannot realistically be treated, or that by giving him more freedoms and privileges in medium security, he might be more manageable.

Offenders like Paul Bernardo, who commit the most unspeakable crimes known to humankind, must receive the most severe sentence our legal system permits. That means spending the rest of their natural lives in a maximum-security institution.

Leslie Mahaffy and Kristen French took their last breaths in utter horror at the hands of Paul Bernardo. Upon conviction, the only rights he has left are to remain alive—we don't have capital punishment and I don't believe in capital punishment, but that's one right he has—and to spend the rest of his life, humanely, in a maximum-security federal penitentiary.

The second point the families wanted me to bring to your attention is this. They have this question. Upon Mr. Bernardo's transfer, the Prime Minister of Canada, the then minister responsible and, I believe, other political leaders, properly described the transfer as “both shocking and incomprehensible”. Those are not my words nor the family's words, but the words of the Prime Minister and the minister.

Canadians were instinctively outraged. It offended all ethical and moral standards. It was wrong. Even if Correctional Service Canada followed the rules—which I have a lot of issues with but assuming it complied with all the rules and all the laws—this is the question the families have: How can something that is “shocking and incomprehensible” remain the law of this great country? If it's “shocking and incomprehensible”, then change the laws.

This is exactly what leads to public cynicism and disrespect for the administration of justice and the rule of law.

I will never forget, after the first day of argument on the videotape issue, a discussion I had with Donna French. The courtroom was packed and there was an army of media lawyers. Everybody was robed up; it was very official. There were motion records, factums and endless books of authority piled on counsel's tables, yet Donna French cut through all of this and said to me that she didn't understand, because we have a right to protect the dignity and memory of her daughter. She said that some things are right and some things are wrong, and this was wrong.

She was right, and this equally applies to Paul Bernardo's transfer. It was wrong.

This takes me to the families' third point.

In practice—and I've been doing this for 43 years—the system treats most offenders the same. We submit to you that you cannot treat offenders who receive fixed sentences the same way you treat offenders who receive life sentences or an indeterminate sentence, as was Bernardo's case because of his dangerous offender designation. There is no cure for psychopathy or worse—for sadistic sexual psychopathy. That is a medical fact.

If the public knew that there were tough but just laws for Canada's most dangerous offenders, they would embrace the full panoply of treatment and rehabilitation programs for the overwhelming majority of federal inmates.

● (1110)

These kinds of one-size-fits-all criteria—mechanically checking the boxes—cannot apply to Canada's most dangerous offenders. There must be a separate law for these people. Only in this way will Canadians have confidence in our justice system and embrace treatment programs for the vast majority of offenders.

The fourth point they wanted me to communicate to you is this: Reliance on section 28 of the Corrections and Conditional Release Act and the requirement that the choice of penitentiary must be the “least restrictive” for offenders is completely misplaced. This is appropriate for the vast majority of offenders who serve fixed sentences, but it is not appropriate for people serving life sentences for murder, or for people who have indeterminate sentences because they've been declared dangerous offenders. This distorts the sentence itself by substituting punishment for leniency. This may be better for a parole board than for administrative decisions. However, in my experience, this least restrictive principle has been more aptly applied to NCR offenders.

The fifth point they wanted me to communicate to you is this: One of the justifications for Paul Bernardo's transfer was that he did not represent a threat of attacks on prison guards or other inmates. This cannot be a criterion for offenders like Paul Bernardo. These types of sex offenders are cowards. Paul Bernardo is a coward. He would never attack a prison guard or another inmate. He would only attack innocent, defenceless, vulnerable teenage girls and young women. This criterion must be eliminated for offenders like Paul Bernardo.

The sixth point—

The Chair: Mr. Danson, could I stop you there?

We're much over the 10-minute allotment I allowed you. I don't want to cut short some people's question time. I'm sure they're going to get to some of the information you're addressing.

Mr. Tim Danson: No problem.

● (1115)

Mr. Chris Bittle (St. Catharines, Lib.): I have a point of order.

If Mr. Danson is getting to his final point, perhaps there's unanimous consent to let him finish.

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Danson, the committee would like to see you continue, so let's continue.

Thank you.

Mr. Tim Danson: Okay. I'll do one more point and leave the last two for questions. I'll finish this last one, because it deals directly with a criticism we have with respect to justifying the transfer of Mr. Bernardo on the basis of his recent full integration with other offenders on his range.

This justification is stunningly weak and completely detached from the sheer sadistic brutality of his crimes. That range in maximum security is very limited. Further—and I think everyone on the committee knows this—the hallmark of psychopathy is an offender being cunning, deceptive, manipulative, a liar, callous, glib, grandiose, narcissistic and often intelligent. This was the expert evidence before Associate Chief Justice LeSage at the time of the trial and the dangerous offender application, and this was the evidence before the Parole Board. These types of offenders learn how to manipulate the system and the various tests being applied to them, and they learn from test to test. Therefore, there has to be a different criterion applied to these individuals.

Thank you for the extra time. I'll be happy to take your questions.

The Chair: Thank you, Mr. Danson.

We're going to start questions with Mr. Shipley for six minutes.

Mr. Doug Shipley (Barrie—Springwater—Oro-Medonte, CPC): Thank you, Mr. Chair.

Thank you, Mr. Danson, for being here today. Thank you for your patience as we tried to get you scheduled in last week and today. Thank you for all the work you've done for the families, especially—as we're hearing this morning—since it's all been pro bono. Good for you. I'm sure there have been some very trying times, as you mentioned.

Mr. Danson, on behalf of the French and Mahaffy families, you rejected the findings of the report on Paul Bernardo's transfer. You said, “We believe that Paul Bernardo should be in maximum security prison”, and that, even if the transfer was done in accordance with all applicable laws and policies, those laws need to change.

Can you expand on why you reject the findings of the report on Bernardo's—

The Chair: I have to stop you there, Mr. Shipley.

We have to suspend for one minute, Mr. Danson. We seem to be having an issue with our communication.

● (1115)

_____(Pause)_____

● (1118)

The Chair: We'll continue. I'll just remind everyone to keep their earpieces away from their microphones when speaking.

I'm going to restart Mr. Shipley's time.

You have six minutes, Mr. Shipley.

Thank you, Mr. Danson, for your patience.

Mr. Doug Shipley: Thank you.

Mr. Danson, thank you.

I'm sorry, interpreters, about that loud noise. It was loud out here too. I'm not sure what that was.

Mr. Danson, in order to save some time, I won't go back through everything I was saying exactly. I'll just paraphrase it into something shorter.

Can you expand on why you reject the findings of the report on Bernardo's transfer, and why you believe Paul Bernardo should be in a maximum-security prison for the rest of his life?

Mr. Tim Danson: The criteria that they use, notwithstanding words to the contrary, do not differentiate between these kinds of offenders—cases of someone like Paul Bernardo, which are very fact-specific—and the overwhelming majority of offenders. I think there have to be entirely different legislative and regulatory criteria for these individuals.

As I said in my opening, we must eliminate, for these types of offenders, the notion that the penitentiary sentence has to be the least restrictive. That is inconsistent with the sentencing principles, and it's inconsistent with what the trial judge, the sentencing judge, had to say about Mr. Bernardo.

Then, as I said a moment ago, on this criterion that because he's not representing a threat to the prison guards and other inmates that's a justification for transferring him to medium-security, or that he had fully integrated into a particular range that is very small, there just has to be a fundamental shift in establishing a separate criterion for Canada's most dangerous offenders. Don't put them in the mix of a criterion that applies to the overwhelming majority of offenders.

As I said, when you do that.... This is one bit of information that I think I can impart to the committee with my 43 years of experience: If you do that, if the public knows that these types of offenders are being dealt with properly, then there will be an enormous view of the public to embrace all of the rehabilitation programs and assistance for offenders to make them productive when they eventually get out, but you can't apply that to people like Paul Bernardo.

● (1120)

Mr. Doug Shipley: Thank you.

Building on that answer, Mr. Danson, in your response to Correctional Service of Canada's report, you stated, and I'll quote once again, “CSC’s heavy reliance on s. 28 of the CCRA and the requirement that the choice of penitentiary, must be the 'least restrictive' for the offender, is misplaced.”

Can you describe how the least restrictive principle being applied with a one-size-fits-all criterion is dangerous for public safety and revictimizing for victims and their families?

Mr. Tim Danson: It's contrary to the facts. It's contrary to the facts that apply to this particular offender and similarly situated offenders.

As I said, the least restrictive test is what really had currency with respect to offenders who were found not criminally responsible. It just doesn't apply to these kinds of offenders. As I say, it's fine if you apply it to the majority of offenders who have fixed sentences. They're going to get out regardless, but it just has no application and it's completely disconnected from the punishment principles of sentencing.

If one looks at section 718 of the Criminal Code, in a case like Paul Bernardo, the pre-eminent principle is punishment, and this is completely inconsistent with those sentencing principles. It has to be changed.

Mr. Doug Shipley: Thank you.

You spoke about the need for a different criterion to be applied to offenders who exhibit hallmarks of psychopathy. Can you expand on how an offender like Bernardo may be able to manipulate the test being applied to him to be granted a lower security classification?

Mr. Tim Danson: Again, as I said in my opening, the evidence that was before Associate Chief Justice LeSage at the trial, and at the dangerous offender application—and it's the same evidence that was, 25 years later and more, before the Parole Board—is that this is the hallmark of psychopathy. They are deceptive. They're cunning. They're manipulative. To have a criterion that doesn't take that into account and doesn't take into account what they learn from the various programs that are administered to them, and what they learn from parole hearing to parole hearing, is simply naive.

Thank God the majority of offenders in Canada serving federal penitentiary sentences are not psychopaths, but again, this is why you can't have a one-size-fits-all. You have to have an entirely different criterion for these particular types of offenders. It's critical.

Mr. Doug Shipley: Thank you.

This will probably be my last question, Mr. Danson.

You have mentioned many times that the parole process is harmful for the French and Mahaffy families, given that they need to testify and provide victim impact statements every two years, even though Paul Bernardo is serving an indeterminate sentence.

Can you speak to the reforms you would like to see to ensure that the parole process for dangerous offenders with indeterminate sentences prioritizes victims' rights?

Mr. Tim Danson: I could tell you that every time we get ready for a parole hearing, it is gut-wrenching for the families when we prepare their victim impact statements. In the case of the French and Mahaffy families, we prepare very comprehensive victim impact statements.

What happens is that, as a general rule, parole hearings happen every two years. The reality is that, for the families, you finish one parole hearing and the two years go by very fast. It's very difficult to revisit this every two years.

As a matter of law, they're entitled to a parole hearing on an annual basis—once a year—and then the Parole Board has six months to process that and, as a matter of practice, it just works out to every two years.

In my view, and we'll use Paul Bernardo as an example, he's now had two parole hearings, but after the first parole hearing, maybe after the second parole hearing, there has to be a shift, particularly when there's a finding that he has no insight, no remorse—

● (1125)

The Chair: Thank you, Mr. Danson.

We'll continue, and hopefully you can pick up on those comments as we go to later rounds.

Next up is Ms. O'Connell, please.

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Danson, for being here. I'm sorry for the technical difficulties last week.

I think it's really important that your clients', the families, voices are represented through you. I really appreciate having the opportunity to hear this testimony.

First of all, I want to also acknowledge and thank you for speaking about what happened during the trial. As someone from Pickering, right next door to Scarborough, I remember all too well the failure in policing for women. Your bringing it up here is part of the first time that we've talked about it, so I thank you for that because it's an important piece that has been lost in a lot of this debate. Thank you for raising that as well. It's something that is still frustrating for me all these years later.

In terms of the issue at hand, you spoke about changing the laws. We have a private member's bill before us that would change the laws for anyone who's designated a dangerous offender, and there are 921 of them. They would be in maximum security, if the bill passes, for the entirety of their sentence. However, that would mean people not criminally responsible, people who might be able to benefit from programming.... That would mean an overrepresentation of indigenous and Black offenders. There are people with determined or fixed sentences, as you spoke about.

I found your testimony interesting in that it focused on fixed sentences versus indeterminate, and that may be an area that, one, would be constitutionally something that might not be as heavily challenged—I don't know—but, two, would not create the one-size-fits-all on the reverse, where you have those who may one day be released because they are on a fixed sentence, which is certainly not the case of Paul Bernardo.

Do you have additional thoughts on the classifications for those without fixed sentences and how that could be a better application for changing the laws?

Mr. Tim Danson: There has to be a clear distinction between indeterminate sentences and people found not criminally responsible. Of course, there's an entirely different regime and review panel that deals with those individuals. It's important that be maintained, but that can't be confused with the indeterminate sentences that come from a dangerous offender application, where the criteria, as you all know, for a dangerous offender is exceptionally high. Often you see it in a situation like we have here, where Mr. Bernardo has been convicted of two accounts of first-degree murder and many other offences, and then, in addition, has been declared a dangerous offender and, therefore, has an indeterminate sentence.

In that sense, the two regimes must be treated completely differently. Quite frankly, if they weren't treated differently, it would be unconstitutional.

Ms. Jennifer O'Connell: Thank you.

You spoke in your testimony about.... You raised questions about how CSC came to this conclusion, and you kind of questioned that process.

Could you perhaps elaborate on some of your concerns of how they were, I think you said—I'm sorry; I didn't write it down exactly, and I don't want to put words in your mouth—checking off the boxes or the test that was done? Can you maybe elaborate a little more on your concerns around CSC's classification process?

Mr. Tim Danson: This is notwithstanding the fact that they think their criteria can differentiate between a Paul Bernardo—people with life sentences—and someone who has a fixed sentence.

My experience has been as a matter of practice. What I have experienced and witnessed is that they actually keep them all in the same category, and they do not make a distinction. That applies to their belief in rehabilitation. Let's be clear that rehabilitation and working with offenders with fixed sentences, who are ultimately going to get out, is critical. There must be the resources that allow Correctional Service Canada to carry out these important rehabilitation programs.

As I keep saying, you have to draw a hard line between the overwhelming majority of offenders with these fixed sentences and the Paul Bernardos of the world. As I said, one of the key sentencing principles in the Criminal Code under section 718 is punishment. When you commit the most serious of offences, you should be faced with the most serious of consequences. In my view, for someone like Paul Bernardo, that's spending the rest of his life in maximum security.

It seems they seem to forget. Maybe I'm at an advantage—or maybe it's a disadvantage—for having unfortunately had to do what I had to do with the video tapes. For anyone who actually understands what this man did, it's so horrific. When the experts are telling you that he's beyond treatment, that doesn't mean that you don't give him the treatment programs that exist in maximum-security penitentiaries, but you don't move him into medium security.

Notwithstanding that they say they would never move him into minimum security, in my experience, over time, there is a cascading effect that is of deep concern. In my view, it is the punishment side, and sending that message for, fortunately, a very few number of offenders, that has to take priority.

● (1130)

Ms. Jennifer O'Connell: Thank you.

The Chair: Thank you, Mr. Danson and Ms. O'Connell.

We're going to move on to Monsieur Fortin, please.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Danson, thank you for being here and for shedding light on the reality of victims of crime.

In Paul Bernardo's case, it goes without saying that we're all stunned by the type of crime he committed. Through you, Mr. Danson, I would like to extend my deepest condolences to the families of the victims. I can't imagine the pain they're going through.

Having said that, we're looking at changing the rules that are in place. Correct me if I'm wrong, but the most important part of your testimony is that, in some cases, such as the one before us, the least restrictive sentence principle shouldn't apply. Instead, a severe punishment, such as a life sentence, should be imposed.

However, you told us that you believe in rehabilitation. You said that, in the majority of cases, it takes a lot of effort and money to ensure that criminals who end up behind bars have a chance of being rehabilitated, so that they are no longer a danger to public safety when they are released.

All of this leads me to ask you the following question. There are cases in which rehabilitation is possible and in which the least restrictive sentence should be imposed. However, there are also cases, like Bernardo's, where rehabilitation isn't possible and where people must be kept behind bars in the public interest. Where do we draw the line?

[*English*]

Mr. Tim Danson: I agree with basically everything you say. I believe and the families believe in rehabilitation for offenders. To your question about where we draw the line, we draw the line with offenders such as Paul Bernardo. We draw the line with people who murder children and who are sadistic sexual psychopaths. As I said earlier, thank God that they are the minority of offenders, but they are who ones who grab public attention. They are the ones who cause the public to devaluate its confidence in the administration of justice. That's why I say that it is important to draw the line.

For me, the direct answer to your question is that we draw the line with sex offenders such as Paul Bernardo. It may be that, because they are a minority of offenders and the ones that the public is most frightened of, these decisions should not be administrative. Maybe these should be decisions of the Parole Board itself. There may be a hearing at the Parole Board where it decides whether or not this particular offender is appropriate for a transfer to medium security. It shouldn't be done behind closed doors. It should be done publicly and transparently, so the public can evaluate whether or not the process is working properly. If Paul Bernardo has earned the right to be transferred from maximum to medium, then let that be at an open public parole hearing. Let people hear the evidence.

Can you imagine, as I said in my opening, rewarding Paul Bernardo with this type of transfer when two different panels of the Parole Board say that, after 30 years, he has no remorse, no empathy, no insight? That can't be justifiable. I would recommend that, for these types of offenders, these types of decisions should be made by the Parole Board and not done in secret internally and administratively by Correctional Service Canada.

● (1135)

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you.

Mr. Danson, I hear what you're saying about crimes of a sexual nature. Your perspective on transfers is another thing I'd like to come back to.

Am I to understand that you think Paul Bernardo is an exceptional case among sex offenders? I suspect—and correct me if I'm wrong—that not all sex offenders deserve the same treatment. From what I'm hearing, Paul Bernardo is an extreme case, and frankly, it's not hard for me to agree with you, because obviously we don't see this every day.

In terms of where the line is drawn, I'd like to know whether, in your opinion, all sex offenders should no longer be eligible for transfers or parole.

[*English*]

Mr. Tim Danson: No, again I draw a distinction even with sexual offenders, because, as we know, there is a full continuum. All sex offences are horrific, but there is a continuum from less serious to most serious. Obviously, there are a number of sex offenders who may be amenable to rehabilitation.

Again, it is a minority. I'm talking about sex offenders who are psychopaths and have committed murder or have committed egregious, sadistic physical harm on children and women. That's where I draw the line. That's why I say that it's an easy solution, because this is what the public sees. When the public sees that you treat someone like Paul Bernardo—and that the criteria are, in practice—just like everybody else, that brings cynicism and disrespect to the administration of justice. I think we can draw a hard line.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Thank you, Mr. Danson.

Thank you, Mr. Fortin.

We're going to move on to Mr. Julian now.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Words can't describe the profound condolences that we all feel for the French and Mahaffy families.

Mr. Danson, I wanted to thank you profoundly for the work that you undertook to destroy the horrific videos that Bernardo made. I just can't imagine in today's social media environment what that would mean. Your work has been fundamental in preserving the dignity and memory of those daughters for those families. I'm sure it gives some small measure of peace in the absolutely horrific circumstances. Our profound thanks to you for that work.

We are studying now the system of transfer within the Correctional Service. We had Ms. Kelly from Correctional Service Canada. She came in and testified a week ago, saying that victim statements and statements from victims' families are taken into consideration, and at any time the victims can submit a new victim impact statement.

That says to me that the onus is on the victims' families to keep track of what the Correctional Service is doing. The onus is on the families to try to keep up to date, to ensure that the victim impact statements and victim statements are there. To what extent do you feel it is a disrespect to victims' families that the onus is on them?

Then we couple that with the fact that the Correctional Service doesn't provide the information that is so important on possible transfers. What is the impact on families when we have this double jeopardy of the onus being on the victims' families and the Correctional Service not informing them about transfers?

● (1140)

Mr. Tim Danson: Certainly the way they handled this case on the transfer was dreadful. We didn't find out until the transfer was in motion and actually happening. We were not given any opportunity to respond. I take it that was probably very calculated and deliberate, and that's unfortunate.

The only time that they really prepare victim impact statements is when getting ready for the parole hearings. That, as I said, is a gut-wrenching process for them. It takes them back to day one. It's very difficult.

It's also why we have this access to information application, which is now currently on a leave application to the Supreme Court of Canada. Correctional Service Canada says that everything is private and you're not entitled to anything, even though that's not the law. Let me just back up by saying that we need this information to prepare proper victim impact statements and to make sure that the evidence is out there to make a determination—whether it's a transfer or a parole application.

These are—like parole hearings—public hearings. These offenders are asking for a public remedy. They've asked to be relieved from the full consequences of their life sentence and to be reintegrated back into the community. This is a public hearing. They're asking for a public remedy, yet Correctional Service Canada and the Parole Board throw up the privacy rights of these offenders. Anyone who has attended these parole hearings knows that the most detailed personal information comes out at these hearings. This notion of not sharing the relevant information for an informed decision in a constitutional democracy, where the public has a right to know so it can evaluate whether the government institutions are conducted properly.... It requires transparency.

This is very difficult for the families. As I said, this matter is now on a leave application before the Supreme Court of Canada. Hopefully, leave will be granted and we can get some clarity from our highest court with respect to these issues.

Mr. Peter Julian: Thank you for that answer.

We also had testimony from correctional officers, their union and the Union of Safety and Justice Employees. Often the prison guards and others may be aware of the kind of behaviour that a psychopath like Paul Bernardo would exhibit. As you mentioned, it is easy to manipulate certain tests, particularly if they're predictable. It is less easy to manipulate what is the daily behaviour of the inmate.

Do you believe that there needs to be a vast consultation, even within the institution, to ensure that we don't have psychopaths with psychopathic tendencies trying to manipulate tests, and so we actually get a better sense of how that inmate is behaving in prison, and that this needs to be a criterion that is considered before there's any sort of attempt to transfer that inmate?

Mr. Tim Danson: I agree with that completely. It's also why I say, with these particular types of offenders, that maybe this is something that should ultimately be determined by the Parole Board and not administratively by Correctional Service Canada.

For sure, it has to be considered, but we need transparency. We don't have transparency at all. They gave us nothing on our access to information requests, based on the privacy rights of Paul Bernardo, in this case, and the privacy rights of two other offenders who murdered police officers—one who was executed.

Transparency is the quintessential soul of our justice system and our democracy. We need more transparency.

● (1145)

Mr. Peter Julian: Are there other things that you believe we need to be considering in terms of the French and Mahaffy families, things that would have made this process less traumatic for them, things that would have given them more of a measure of peace? Are there other things you can recommend to us?

Mr. Tim Danson: Certainly, in this particular case, it would've been much easier for them if they'd had advance notice and an opportunity to voice an opinion, even if it was quietly behind the scenes. However, to be told, effectively, after the fact of the transfer was a kick in the gut for them. It was just horrific.

The Chair: Thank you, Mr. Danson.

We're moving on to Mr. Baldinelli, please, for five minutes.

Mr. Tony Baldinelli (Niagara Falls, CPC): Thank you, Mr. Chair.

Thank you, Mr. Danson, for being here. Thank you for your steadfast advocacy in support of the French and Mahaffy families throughout all these years.

Mr. Danson, you made reference to Justice LeSage in your opening, who spoke of the likelihood of Bernardo being treated as remote in the extreme.

Last week, Commissioner Anne Kelly was here. In defending her decision, not only at the news conference, she repeated last week that the fact that Bernardo has been transferred does not negate the fact that he is a psychopath.

As well last week, my Liberal colleague Mr. McKinnon also tried to defend this decision, saying, in speaking with Ms. Kelly, “I notice a common thread in questions from my Conservative colleagues. There seems to be, still, an impression that somehow the reclassification of Mr. Bernardo to medium security is somehow a mitigation of his sentence. Can you tell me if the pillows are softer in medium security?”

Mr. Danson, you said that this decision sends the wrong message. It sanitizes the full brutality of the crimes. I fully agree with you. I feel that it brings, for my constituents at home and for the families, the administration of our justice system and our corrections system into disrepute. It leads to the question, and they simply ask, “Who does the justice system serve?”

I'm just wondering if you can comment on some of that.

Mr. Tim Danson: The glib comment about pillows is.... If I shared that with the families, that would be gut-wrenching for them. That would be a shock to them—to make light of this by talking about whether the pillows are softer or harder in medium security versus maximum security.

To suggest that transferring Bernardo to medium security does not disconnect us from the fact that he is a psychopath, to me, is just words. The fact of the matter is that he will have a lot more freedom and a lot more rights in medium security.

That's why I said earlier that the fact that the perimeter security may be the same for maximum security and medium security is irrelevant to me. This is not a discussion as to whether Paul Bernardo is going to escape from a federal penitentiary. However, he definitely has more rights, and the justification seems to be that there are more treatment programs. However, the evidence, even found by the Parole Board, is that he's not treatable.

Again, I apologize for repeating this, but it does not take into account the sheer brutality of what this man did and that the punishment side of the sentencing principles must prevail in this case.

That's my short answer to your question.

Mr. Tony Baldinelli: You also mentioned that there must be a law, a separate law.

I've put forward a private member's bill, Bill C-342—and a colleague of mine has also put forward another one, Bill C-351—that would require that all court-ordered dangerous offenders and mass murderers be permanently assigned a maximum-security classification. It also would repeal the Liberal's “least restrictive environment” standard for assigning inmates to prisons and restore the language of “necessary restrictions”.

I thought, perhaps, you could comment on that.

Mr. Tim Danson: As it relates to the dangerous offender indeterminate designation, they should be in maximum security. That's when we're talking about the most dangerous offenders. As I say, we have to remember that the criteria under the Criminal Code to be designated a dangerous offender is a very high standard that the Crown has to prove on medical evidence beyond a reasonable doubt. There's our starting point.

Of course those types of people, when the prosecution can prove that criteria beyond a reasonable doubt, should be in maximum security.

We still have the Parole Board. This is really important. I know this is really important when you go through the Supreme Court of Canada jurisprudence, even in the more recent Bissonnette decision. There has to be some escape route in terms of not throwing away the key forever. You have to have a process in place, which is the parole hearing process.

As long as that is in place, the rule should be that these people spend the rest of their lives in maximum security.

● (1150)

Mr. Tony Baldinelli: Thank you, Mr. Danson.

Chair, if we could, I would like to see unanimous consent to have another round of questioning.

[*Translation*]

Mr. Rhéal Éloi Fortin: I was under the impression that we were at the second round.

[*English*]

The Chair: It would be the third round, Mr. Fortin.

[*Translation*]

Mr. Rhéal Éloi Fortin: Okay.

[*English*]

The Chair: We're in the second round.

[*Translation*]

Mr. Rhéal Éloi Fortin: I respect your decision. I'm an intruder on your committee.

[*English*]

Mr. Tony Baldinelli: Since we only have an hour, I am hoping we could get unanimous consent for another round of questions before the voting starts. It would be a third round.

Some hon. members: Agreed.

The Chair: We'll continue.

Thank you, Mr. Baldinelli, for your questions and, Mr. Danson, for your answers.

We're moving now to Mr. Bittle.

Mr. Chris Bittle: Thank you so much, Mr. Chair.

Mr. Danson, I would like to echo what Mr. Baldinelli said about your work on behalf of the families.

I know I speak for a lot of residents of Niagara when I say thank you for your service to the families and also to the community that, as a whole, went through a great deal—not to undermine what your clients went through. Thank you for continuing to act for your clients. It's very important not only to them but to our community as well.

We granted you more time for your opening statement. I think you still might have cut it a bit short.

Can I lend you some of my time? Were there other points you wanted to elaborate upon from your opening statement?

Mr. Tim Danson: There is a point the families wanted me to make if time permitted, which is that, when we look at the issue you're dealing with in terms of the transfer, the families want to emphasize that solutions and dealing with victims' rights have to be looked at in a broader framework and not piecemeal.

A point they did want me to bring to the committee's attention in respect of the greater picture for understanding victims' rights is that the families are deeply disturbed by Parliament's failure to reenact section 745.51 of the Criminal Code, following the decision of the Supreme Court of Canada in Bissonnette to strike down the section.

For the families, and I'm sure for most Canadians, it is outrageous that Paul Bernardo's period of parole ineligibility was not increased by a single nanosecond for the brutal murder of Kristen French. In terms of parole ineligibility, Paul Bernardo got a free pass for the second murder. That shocked the good conscience of all Canadians, in my view.

It's important to appreciate that the court struck down section 745.51 because of the stacking of periods of parole ineligibility in blocks of 25 years. I could draft you a new 745.51 that is constitutionally bulletproof and meets all the concerns of the Supreme Court of Canada.

When we speak in terms of transfers from maximum- to medium-security prisons, this needs to be considered in that larger legal context dealing with dangerous offenders at large. That framework should also include amending the CCRA to make parole hearings for offenders like Paul Bernardo every five years instead of every two years. They wanted me to make the point that there has to be a greater, comprehensive response to the victims' issues.

● (1155)

Mr. Chris Bittle: Thank you so much.

If you have a draft of that potential amendment, I was wondering if you could send that to the committee.

Mr. Tim Danson: I probably do have a draft somewhere, but I'm happy to do that for the committee and send it to you.

Mr. Chris Bittle: If you don't have it, I won't hold you to it, but if it is available—and I think I speak for myself—I would like to see it. I think the importance you're talking about is precision in amending the legislation, and that the offenders that you and your clients—the families—are talking about are very specific and very small in nature versus a broader change to the Criminal Code.

I have perhaps a more broad question. Can you tell the committee how you think victim services in Canada need to be improved?

Mr. Tim Danson: That's an interesting question. I work with many of the victim services, but they are, in my view, heavily circumscribed by the policy directives within Correctional Service Canada. I think that at least the people who I deal with are good people. They try to assist the victims. However, I think they have their hands tied behind their backs.

We get notices of parole hearings without any regard to what.... Let me back up. I'll give you an example. With respect to the transfer of Paul Bernardo, they happened to do it at the same time as the anniversary date of Leslie Mahaffy's murder. You would think that, in a case of this profile and this importance, they would appreciate that maybe that's not the time to do the transfer.

When you get notices of parole hearings, they'll say that you need to have your victim impact statement in within, let's say, two or three weeks, even though the hearing may be many months away. There is no sensitivity or feeling that, in preparing these victim impact statements, the victims take this very seriously. I think for anyone who participates or is at the parole hearings of Paul Bernardo, and certainly for the other people I represent, a very serious effort is put into these victim impact statements. There has to be more sensitivity in terms of the timeline for those to be completed.

The Chair: Thank you, Mr. Danson.

We'll move on to Mr. Fortin, please.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Danson, I would first like to clarify a point with you. I thought I understood that your position was that psychopathic criminals like Paul Bernardo should remain in a maximum security penitentiary for the duration of their sentence, without being eligible for parole.

Afterwards, I heard you say that security clearance should be assessed every five years rather than every two years. If an assessment is done every five years, that means that there's a possibility of a transfer to a medium-security prison. Could you clarify that for me, please?

[*English*]

Mr. Tim Danson: Thank you for the question. I apologize. It must be my failure. I didn't communicate my view clearly.

The five years that I was referring to was not the reclassification for transfers from one penitentiary to another. I was referring to the continuity of parole hearings and not the transfers. For the parole hearings for offenders like Paul Bernardo, once they hit the 25-year mark there is a parole hearing. Instead of the parole hearing thereafter happening every two years for the rest of their lives, it should be every five years.

With respect to parole, while it's my view—and it was the view of Associate Chief Justice LeSage—that Paul Bernardo should spend the rest of his natural life in prison, that's not suggesting he is not entitled to appear before the Parole Board and persuade them of a different view. I think that, in order for all of us to be constitutionally sound, these offenders, no matter what they've done, must always have the right to go to an independent tribunal like the Parole Board and try to persuade them to release them.

That's why I've been emphasizing that we need much more transparency. I think there should be legislative change in this regard, recognizing that.... Actually, it's already recognized by the Canadian Victims Bill of Rights that these parole hearings are integral to the sentencing and the criminal justice system, and that they're public and everything has to be transparent. Then at least we can evaluate whether or not the system is functioning properly.

● (1200)

The Chair: Thank you, Mr. Fortin.

We're going to move to Mr. Julian, please, for two and a half minutes.

Mr. Peter Julian: Thanks, Mr. Chair.

Mr. Danson, you talked about the victim impact statements, the fact that there isn't enough notice and that often, in terms of parole applications, victims are asked to prepare what is a gut-wrenching victim impact statement—of that we have no doubt—sometimes with a few weeks' notice, but that potentially won't be used for months in the future. It's a gut-wrenching process because the victims' families believe they're really the bulwark against a criminal psychopath being released into society and creating other victims.

What would be an appropriate time in terms of advising families for victim impact statements? How long is a process that is reasonable? How can we make the justice system actually respond to the needs of victims?

Mr. Tim Danson: I think it should be recognized that they should have a good number of months to prepare, not weeks, and should not receive a form letter that it has to be done in two weeks. In fact, we take the time that we need and they allow it, but it creates huge pressure on the families when they get an official letter from the Parole Board and from the Correctional Service that they have a limited period of time, so I think they need a number of months.

The other thing that needs to be recognized—and I have seen this a lot, especially as Bernardo's now coming up for his third parole hearing and I have other offenders who have had five, six or seven—is that the only constant in the parole process are the victims themselves, because we have a different composition of the Parole Board with each different hearing. It's the families, more than anybody else, who are able to identify how the offender is manipulating the system and saying one thing to one Parole Board panel and something to another Parole Board panel—and they don't know.

That's why in our application, which as I say is before the Supreme Court of Canada, we want public disclosure of the audio recordings of previous parole hearings and the evidence and the testimony of the offender, so that the victim impact statements can be very informative and helpful in assisting the Parole Board in effectively adjudicating the issues before them.

The Chair: Thank you, Mr. Julian. That's your time.

We move now to Mrs. Thomas, please, for five minutes.

Mrs. Rachael Thomas (Lethbridge, CPC): Thank you very much.

Mr. Danson, thank you for your time today and for taking this opportunity to speak on behalf of the families. We very much appreciate that.

My first question for you has to do with the classification system and the reclassification of an inmate. Right now the language that is used to determine that is an inmate is supposed to be in the “least restrictive” area or the “least restrictive measures” are supposed to be applied, but the former language was “most appropriate”. I'm wondering if you can explain for us the difference in this use of language and what you would advise is needed.

Mr. Tim Danson: I prefer the former language.

To be clear and to be consistent, I don't have a problem with “least restrictive” as it relates to the majority of offenders with fixed sentences—I know I'm repeating myself on that—but you cannot apply that criteria to Canada's most dangerous offenders. There have to be entirely different criteria that have, as their number one principle, punishment. That's why I'm saying, at least in the case of Paul Bernardo, that we actually have two Parole Board findings about how dangerous he remains. Transferring someone who doesn't illustrate one iota of remorse, empathy or insight....

When you talk about “least restrictive”, what does that mean in a practical sense to these particular types of offenders? Why should someone who commits an offence, which as I say.... Thank God the videotapes were destroyed. If you just saw the cruelty, the sadistic brutality of these offences, the horror.... Thirty years later it still gets me emotional.

To think that we're talking about the least restrictive punishment for this person, that it has any reality, this is what Canadians will not tolerate. They will tolerate all kinds of progressive remedies and rehabilitation and programs for the majority, but not for people like this. Therefore, “least restrictive” is dangerous because it sanitizes the brutality of what's happened in cases like this.

● (1205)

Mrs. Rachael Thomas: Thank you for responding to that.

In one of the other comments that you made in your opening remarks, you asked the question, “How can something that is 'shocking and incomprehensible' remain the law of this great country?” Of course, in asking that question you're referencing something that was said by the former public safety minister when he supposedly found out that Mr. Bernardo was being transferred. He said that it was shocking and incomprehensible. Now, we later found out that actually that was misleading. He had known since March. He had known for quite some time before the transfer actually took place in June. Nevertheless, you make this statement that, if it is in fact shocking and incomprehensible, then why would we allow that law to stay on the books?

Mr. Danson, if you had to propose one change, the one that we should start with in order to make our system more robust and in favour of victims, what might that be?

Mr. Tim Danson: That would be to establish legislatively a different criterion and regime for the Paul Bernardos of the world. That's where you start. I'd be more than happy to help with the particulars of that. That's where it has to start.

We have to stop treating all offenders the same and using the same criteria. As I say, the “least restrictive” is the least restrictive for some who commits a non-violent, white-collar crime, yet that's the same criteria we'd use for a sadistic psychopath. It just defies common sense. We have to have a separate regime for these individuals, while obviously having due regard for constitutional criteria. That must be the starting point for bringing some sense to this process.

Mrs. Rachael Thomas: Thank you.

In your expert opinion, do you believe that it's possible to make that differentiation in the law?

Mr. Tim Danson: It's easy.

Mrs. Rachael Thomas: Thank you very much.

The Chair: Thank you, Mrs. Thomas.

Now, we're moving on to Mr. Gaheer, please.

Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.): Thank you, Chair.

Mr. Danson, I echo the comments that have been made by the committee so far in thanking you for your participation before the committee.

We received correspondence to the committee on October 5 from St. Catharines' city council. It called on the federal government to review the guidelines for transferring dangerous offenders who show no remorse or empathy for their crimes to medium-security prisons. In your capacity as a lawyer, would you agree with this request and why?

Mr. Tim Danson: I would agree, because the current system is broken. It's not responsive to the gravity of the offence. That's why I've said repeatedly that we need to bring in an entirely different regime for these particular offenders.

Mr. Iqwinder Gaheer: How would that regime be different? Could you go into detail regarding that?

Mr. Tim Danson: Are you talking about the difference in the regime for the purposes of transferring from max to medium?

Mr. Iqwinder Gaheer: It's specifically for the individuals who show no visible signs of remorse or empathy for the crimes that they've committed.

Mr. Tim Danson: My view on that is that, if the evidence—as in this case—as found by the Parole Board, is that the offender has no remorse and no insight, then he cannot be even considered for a transfer out of maximum security. It's just absurd to think that they somehow get a benefit after, in this case, 30 years in prison. Having no insight...?

I'm telling you.... Again, I don't mean to repeat myself. It's why we have this leave application before the Supreme Court of Canada. The entire country should listen to the public audio recordings of Paul Bernardo's evidence at both parole hearings. He talks about what he did to my clients like all of us would talk about the weather. When he's asked by the Parole Board, “Why did you have to inflict such pain?” he says, “They weren't doing what I asked them to do, so what do you expect me to do?” This is the evidence. We're transferring this guy to medium security? That's what I'm talking about. They're sanitizing the brutality of what he did.

There was no remorse, no insight, no empathy, nothing. That's the hallmark of psychopathy. You don't get transferred into medium security. You don't get a favour. You don't get a benefit. You don't get the extra freedom that you get in medium security.

● (1210)

Mr. Iqwinder Gaheer: Thank you. This is obviously a very difficult topic. We thank you for your testimony.

You've indicated to the committee that more information, including parole hearing records, should be shared with victims so they can prepare proper, more meaningful victim impact statements. These files could, however, include psychiatric assessments and disciplinary records.

Could you explain to the committee why you think this information is needed for victims to share their concerns?

Mr. Tim Danson: That's an important question from our perspective, because we're met all the time with, “Under the Privacy Act, this is very personal information, so we can't share with you the psychiatric and psychological reports that have been generated with respect to a particular offender.”

Let's remember that what the Privacy Act says is that, if it is personal information and it is private, you have to weigh the public interest against the privacy interests of the particular offender. Let's understand that legally. Everyone throws up privacy rights, and they just ignore the law that requires there to be this evaluation, this proportionality, between the public interest to know and the offender's right to privacy.

Those very reports that you refer to, they are discussed openly at the parole hearings, so where's the privacy interest? I urge the committee to read both Parole Board decisions as they relate to Paul Bernardo and look at the incredible amount of personal information—as there should be—that is in their decisions, which are a matter of public record.

It's like closing the barn door after the horse has bolted. This is not personal, private information. This is part of the criminal justice system. This is part of a public parole hearing. This is asking for a public remedy.

Of course we should have access to the information rather than just trusting the Parole Board. In this case, they did a good job with Bernardo in the last two hearings, but the principle is transparency. The public has a right to see this evidence, just like like they did at the trial and at his dangerous offender application.

This notion that, because they are psychological records, psychiatric records or things of that nature, he's asking, as are other offenders similarly situated.... He's relying on that very evidence to persuade the Parole Board to let him out of jail to integrate with the public.

Does the public not have a right to know that evidence?

The Chair: Thank you, Mr. Danson.

We're going to move on to Mr. Baldinelli, please, for five minutes.

Mr. Tony Baldinelli: Thank you, Chair.

Again, thank you, Mr. Danson.

In earlier testimony, when you were speaking with my colleague Mrs. Thomas, you were talking about legislation and changes that we could make. You talked about different criteria, a regime that is needed for the Paul Bernardos of the world, and that all inmates cannot be treated the same. When she asked if it would be difficult to make that change, you indicated right away that it would be easy to make that type of change.

I was wondering if you could follow up. Do you have recommendations that you could share with us, share with this committee, on things that we could do to make some changes to improve our system?

Mr. Tim Danson: I'm happy to post this and submit some further submissions to answer that. I think I would start with defining the Paul Bernardos of the world, these sexual psychopaths, define what that is and the criteria that makes up a diagnosis of psychopathy. There's psychopathy and then there's sexual sadistic psychopathy. Define it. You start there, and you separate them from all other offenders.

That's why I said earlier that, if the Canadian public knew that these people are taken care of, they're safe from them and there's a rational criteria and system, they will open up their arms to rehabilitation and treatment for all other kinds of offenders.

In the limited time I can't do much more than that, but I think you start off by defining this criteria and separating it, and then the recommendations flow from that.

● (1215)

Mr. Tony Baldinelli: Perhaps you could submit something in writing to the committee to provide something more fulsome with regard to that. Again, thank you for that.

Also, I just want to follow up on this. In our previous committee hearing we had Benjamin Roebuck, who is the victims ombudsman. He mentioned the system that strikes the wrong balance between victims' rights and prisoners' privacy rights.

We had discussed the system and, for example, the transfer and whether or not the victims' families had any input or could provide statements for consideration, so that they are considered prior to a transfer ever being made. I wonder if you have some thoughts on that.

Mr. Tim Danson: I agree with him. I think that would be helpful, because in this case, of course, there was absolutely no input. We weren't even asked. It was just a *fait accompli*.

Again, on the whole notion of the transfer, the problem I have is more fundamental. There really does have to be what I characterize as a very different regime for these kinds of offenders. Because they are a minority of the federal inmate population, I don't think these should be administrative decisions. These may be something that the Parole Board could consider and give direction on if certain criteria are met. You have to know that the criteria they're using right now is defective.

I've talked to the commissioner as well. I've expressed this. How can you justify a transfer, as I've said repeatedly, when the Parole Board itself has determined, based on all the evidence, that the offender is beyond treatment at this stage and has no remorse, no empathy and no insight? They apply a criteria that they say they follow properly, but they nevertheless justified this transfer. Plus, I would repeat the earlier comments that I've made about the particular offence this person committed. That's why it's shocking and incomprehensible. That's how Canadians responded. Instinctively, it was shocking and incomprehensible.

This is so hard for the families. I think everybody on the committee and.... I've always tried, for the last 43 years, to be non-partisan on these issues because I think it is non-partisan. We're protecting people from dangerous people and dangerous offenders. That we can allow something that the former minister, the Prime Minister and other political leaders called “shocking and incomprehensible” and then leave it.... What do I, as their counsel, tell them? What is the answer to that question?

There is no answer. I take all the political leaders at face value as being genuine and sincere when they talk about this being shocking and incomprehensible. Then we turn around and ask what we are going to do about it. Hopefully your committee will do something about it, because it has to be changed. This is the type of stuff—

The Chair: Mr. Danson, that's a good point to end on. Thank you so much.

Mr. Fortin, go ahead, please, for two and a half minutes.

[*Translation*]

Mr. Rhéal Éloi Fortin: I'm sorry, I thought it was the Conservatives' turn to speak.

Mr. Danson, since I only have two and a half minutes—

[*English*]

The Chair: It's actually my mistake. I admit to that mistake. It's actually the Liberal Party's turn.

● (1220)

Mr. Rhéal Éloi Fortin: I don't mind if you give me five minutes. That's okay.

Voices: Oh, oh!

The Chair: I'm going to Mr. Schiefke. Is that correct?

Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.): Thank you very much, Mr. Chair.

Mr. Danson, I want to begin by thanking you for your steadfast work in representing the families who, unfortunately, fell victim to the brutality of Mr. Bernardo.

Your testimony is very valuable to the work we're doing here. We very much appreciate your time today, particularly with your 40 years of experience and the work that you've done with the families.

In solutions mode, looking forward and trying to do things better, my question is how victims' rights could be better considered in the offenders reclassification process.

I had mentioned in last week's testimony that I was taken aback to learn that the victims and the families were only informed the morning of the transfer. What could have been done better? What needs to be done better?

In particular and in detail, what are you recommending to this committee that the government do moving forward with regard to that?

Mr. Tim Danson: First of all, I would strongly recommend that the victims be notified well in advance so that they're not shocked or reading about it in the paper from the media. That's important: that they're not blindsided by such a decision. I do think—

Mr. Peter Schiefke: I'm sorry to cut you off, Mr. Danson. When you say “well in advance”, I'm looking for a detailed response here because I don't want any misinterpretation. “Well in advance” could be a day. It could be two days, depending on the person who's reading it. What would your suggestion be? Would it be a week? Would it be two weeks? Would it be a month?

Mr. Tim Danson: Fair enough. I would think that.... I was about to make this point too, and I'm going to answer your question directly. When we talk about transfers, as I say, there's always a continuum of seriousness, and I'm just focusing on the serious offenders who have life sentences—not fixed sentences—because there just have to be different criteria. Otherwise, it's not going to be workable, even for Correctional Service Canada.

For people who have life sentences or indeterminate sentences, I think their victims should have advance notice by a number of weeks. Certainly, anywhere between three to four weeks is my view. Again, I apologize for repeating myself, but there has to still be this different legislative regime dealing with these kinds of people before you even get to whether or not a transfer is appropriate.

Mr. Peter Schiefke: Thank you.

When you're talking about an overall regime, let's talk a bit about Bill C-320. In your opinion, what does it do that's good and, in your opinion, what needs to be done above and beyond what is being proposed?

Mr. Tim Danson: I have to say that I'm not familiar with the numbers. I know that everything is a bill with a number—

Mr. Peter Schiefke: I'm sorry. It's about the “disclosure of information to victims” that is being proposed.

Mr. Tim Danson: I don't feel qualified to answer that question today because I'd have to study it, to read it. It would be unfair of me and inappropriate to comment on something that I'm not properly informed on.

Mr. Peter Schiefke: I guess I'll pose it this way, Mr. Danson: How can Correctional Service Canada be more transparent with survivors and victims' families and friends?

Mr. Tim Danson: When they get an Access to Information Act request, like they have from many of my clients, they should fairly and properly comply and not use, as an excuse and a pretext, the privacy rights—so-called—of the offender, for information that the offenders themselves are relying upon at a public hearing in order to be released from the full consequences of their sentences. It literally is that simple. It starts there. There has to be transparency.

When we do our ATIP applications, our Access to Information Act applications, do you know what I get from Correctional Service Canada and the Parole Board? They send back to me the victim impact statements that we've prepared. They literally send back information that we provided to Correctional Service Canada and the Parole Board. They give us nothing with respect to the facts relating to issues that are relevant to public safety, which is the statutory mandate of Correctional Service Canada and the Parole Board.

● (1225)

Mr. Peter Schiefke: Thank you, Mr. Danson.

I have one last question, if the chair will permit. I want to give you the opportunity to share with us perhaps something else that the families shared with you and asked you to share with us and that you think would be helpful in making the necessary changes moving forward.

Mr. Tim Danson: I'm sorry—

Mr. Peter Schiefke: Is there anything else you'd like to share with the committee, sir, that has been shared with you by the families and that you think would be helpful?

Mr. Tim Danson: I think I've covered it off. The different regimes treating it differently.... I'd just be repeating myself. I've given you their main concerns. Also, the huge concern with respect to transparency is of vital importance to the families.

Mr. Peter Schiefke: Thank you once again, Mr. Danson.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Danson.

Now we'll move to Mr. Fortin, please.

Mr. Rhéal Éloi Fortin: For five minutes...?

The Chair: I'll be generous, Mr. Fortin.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Mr. Chair. Do I really have five minutes?

[*English*]

The Chair: You have two and a half.

Mr. Rhéal Éloi Fortin: Two and a half...? Okay.

[*Translation*]

Mr. Danson, the system currently requires victims of an offender serving a sentence of more than two years to register with the Correctional Service of Canada and the Parole Board of Canada in advance to obtain information on the offender in question.

Is that working? Wouldn't it be better to automatically provide this information to victims and their families? What limit should be set on the information that would be provided to victims and their families? At the moment, we're trying to protect the confidentiality of certain information on inmates, but we also want to properly inform victims.

[*English*]

Mr. Tim Danson: I suspect there has to be some system of registration, because the numbers could be significant. Some victims want to stay totally involved and others don't. I don't have a problem with the registry. I prefer.... It's easier for the victims if they're automatically informed. I've not had any of my clients object to registering. That way, you have proper addresses and phone numbers.

They communicate. They let us know when parole hearings are coming up, whether there's been an escorted temporary absence and things of that nature. The information is very limited. When it comes to matters that count, such as the parole hearings themselves.... There are certain situations where parole boards do paper reviews instead of full parole hearings. That's a real problem for the families. That's a whole other issue that I think needs to be addressed.

In terms of the registration itself, we don't have a problem. At least it gives them the current contact information.

[*Translation*]

Mr. Rhéal Éloi Fortin: Can you add any comments on the nature of the information that can be passed on? I'm thinking in particular of the protection of the confidentiality of information concerning inmates in relation to victims' rights.

[*English*]

Mr. Tim Danson: I come back to the essential theme of what we've been sharing with you today. The moment—

The Chair: Mr. Fortin, I was generous. Believe me.

Thank you, Mr. Danson. Hopefully, someone else will pick that up.

Can we go to Mr. Julian, please?

Mr. Peter Julian: Thanks.

Mr. Danson, in your earlier answer to my question, you talked about the impact on victims and the amount of time they get as notice for preparing new victim impact statements. You implied there is a form letter that goes out. That's unbelievable to me when I think of what those families have been through.

To what extent do we need to overhaul Correctional Service and the Parole Board so that they are trauma-informed? What kinds of supports have the French and Mahaffy families received from the federal government as they've gone through this? Have they received psychological or mental health support?

To what extent are we providing supports to victims going through and reliving this trauma?

● (1230)

Mr. Tim Danson: In terms of the French and Mahaffy families, there's no support, other than a person with victims' services at Correctional and the Parole Board who is there to provide information. Other than that, they're on their own. In their particular case—I've been working with them over the past 30 years—we're taking very seriously the preparation of these victim impact statements. It's through this process that....

One of the most gut-wrenching things for the families is when they're sitting in a parole hearing and hear the testimony of the offender. Questions are asked by the parole board. Two years later, they're at a different panel and can see how the system is being manipulated and how no one is catching it. That's very tough on the families. Talk about victim impact. That has a huge impact.

This takes me back to my transparency point and to access to information requests, so that important evidence can be presented, and the manipulation and contradictions identified. A parole board can use it as it will. However, often, if not for the victims, it won't even know these inconsistencies exist.

Mr. Peter Julian: Would it help the French and Mahaffy families if they were provided supports, even now, having relived this trauma numerous times? Would it make a difference if supports were provided?

Mr. Tim Danson: It's a good question. It's something I haven't recently talked to the families about.

At this stage, they would much prefer just to be left alone and to never hear the names of Paul Bernardo or Karla Homolka. They recognize that, when these parole hearings come up, they have to—

The Chair: Mr. Danson, thank you.

That was a good question, Mr. Julian.

Now we're moving on to Mr. Motz, please.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you very much, Chair.

Mr. Danson, thank you for being here. As others have said, thank you for your continued advocacy for the families of the victims of these horrific crimes.

I have a couple of questions.

You indicated in your opening remarks that there needs to be some change. There's the shock of this to the Canadian public. Can you make any suggestions?

Many people in my riding and across the country have suggested that the government has the full right and authority to insert itself into this. The minister can revoke this particular transfer. Is that something that the families would find to be of value to them, given your comments today?

Mr. Tim Danson: Absolutely.

I respect and the families respect that to a very large extent, the independence of Correctional Service Canada and the Parole Board—the Parole Board being different because it's a quasi-judicial tribunal, although some people would quarrel with that language.

When we come back to what we said earlier, that the Prime Minister and the former minister of public safety and others were talking about shocking and incomprehensible decisions and then said there's nothing they can do about it, I don't buy that. The buck stops with the government. It stops with the minister. It stops with the Prime Minister. They're the ones who are answerable to the public. If they see something that is rotten or that is “shocking and incomprehensible”, absolutely it would be the exception to the rule, but they need to insert themselves, take a leadership role and correct it.

Mr. Glen Motz: I appreciate those comments.

Mr. Danson, also in line with the frequency of parole hearings, you indicated the negative impact that this has on families who deal with this. I know that from my own past experience in law enforcement.

With regard to the frequency with which the current system handles parole hearings for designated dangerous offenders, is it something you think should be extended so that it's not every two years—it could be every five or greater—especially for someone in this circumstance who has shown their incapacity to be changed?

● (1235)

Mr. Tim Danson: Absolutely. As I said earlier, you have no idea how quickly two years goes by. There's the emotional trauma that the families go through to prepare their victim impact statements, to then attend at the hearings and give their victim impact statements, and then all of a sudden within a year and a half they're getting notice of the next parole hearing—which on average is every two years—without any change in circumstances for the offender.

In my view, they're entitled to their parole hearing—and we're talking about these offenders like Paul Bernardo, not the majority—but it shouldn't be every two years. I recommended anywhere between five and seven years.

Even at seven years, what I would propose in terms of any legislative amendments would be that, if the offender or their case management team within Correctional Service Canada believe there's been a breakthrough medically or a significant change in circumstances, the offender can apply to the Parole Board to have an earlier hearing. That's so that you have all of the constitutional protections and the due process protections in place.

I believe it should be seven years for someone like Bernardo, after their first hearing. However, they have to have the opportunity to apply to the Parole Board to move that up if there's a change in circumstances.

In this case, we've had two parole hearings for Bernardo. There's been no change in circumstances, so why put the families through this every two years?

Mr. Glen Motz: Thank you. I couldn't agree with you more.

Mr. Danson, Public Safety Canada and Correctional Service Canada claim that the Privacy Act places significant limits on their capacity to share offender information. The former minister of public safety repeated that excuse in the media.

However, the Privacy Commissioner has directly rebuked that claim, noting that the commissioner of corrections can share information in exceptional circumstances.

Can you discuss your opinion with respect to how the personal information of dangerous offenders that is normally protected under the Privacy Act should be handled to prioritize victims' rights over offenders' rights in these exceptional circumstances?

Mr. Tim Danson: First of all, I reject that we require exceptional circumstances. That's not the law. That's not what the statute says. I think that's important because Correctional Service Canada and the Parole Board are always looking for these exceptional circumstances. The way they define "exceptional circumstances" would mean that there are no circumstances in which they would ever make disclosure of the personal information of an offender, even though it's the personal information that's going to be disclosed at a public hearing.

In the Dagg case, the Supreme Court of Canada says that the Access to Information Act and the Privacy Act have to be read in harmony. The purpose—and I just have it in front of me—of the Access to Information Act is as follows:

> The purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.

That's the legislative purpose.

Then section 19 of the act takes you to the Privacy Act, and it's the Privacy Act that then says that they can disclose the information if the "head of the institution feels that "the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure".

It's clear that—

The Chair: We have to end there.

Thank you, Mr. Danson. We appreciate that.

Now we're going to move on to the final questioner, Ms. O'Connell.

Ms. Jennifer O'Connell: Thank you, Mr. Chair.

Thank you, again, Mr. Danson, for staying longer than scheduled. It has been helpful testimony.

Last week, Mr. Motz spoke about the minister being able to issue an order and revoke the transfer. However, we heard testimony at this committee that there is no such legal mechanism to do so. Although it may feel right—because, certainly, the public and your clients' friends and families want to see that happen—it would actually cause even more upheaval to do something in the public realm that could not withstand a court challenge and would have Paul Bernardo in the news even more with more court cases.

I just think that it should be clarified that it was clearly said in this committee that an order from the minister on an individual offender's classification or transfer would not be a legal order that CSC would be able to accept, and it would certainly not withstand a challenge. I just think that should be clarified.

When we're talking about notification for victims and victims' families, particularly around transfers, we heard testimony—and I certainly agree—that the issue of families finding out in the news or on the day of is completely unacceptable.

I think there could be challenges around the physical transfer taking place and wanting to ensure that nobody interferes in the physical transfer, but there has to be a better balance. Do you think that there would be an opportunity to, for example, say that a transfer is imminent or that something is going to happen but without, maybe, the specific dates, times or locations? Would that be a better mechanism to give time, for example, to your clients and the friends of the victims, who were very clear that they needed time to process this?

Could there be a better balance in terms of making sure that the operational standard is upheld while also giving time for families, victims and their friends to process what might be occurring?

● (1240)

Mr. Tim Danson: From my clients' perspectives, the issue is not the actual date of the transfer. It is the shock of finding out after the fact. As long as there is appropriate consultation prior to the transfer so that they have the ability to absorb it and say what they need to say, they don't need to know the actual date.

I don't accept.... I've heard the argument before that they may be concerned about someone trying to interfere with the actual transfer. To me, that's a bit rich. They can handle these transfers without worrying about people trying to stop them.

Having said that, the issue is not about knowing the exact date, time or mechanism of the transfer. It's, rather, about having advance notice.

Ms. Jennifer O'Connell: Thank you.

Certainly I understand, in this case, that the date and time may not be an issue, but I could see, in the case of organized crime, for example, that you would certainly want to make sure there are some protections around who knows what and when. However, there would be victims included as well, so there has to be a better mechanism and process while making sure.... Again, this case may not be the example, but as we've seen in Correctional Service Canada, sometimes these processes affect a variety of cases, a variety of offenders and a variety of risks, so I'm appreciative of your perspective on that.

In terms of the notification, we heard testimony from the victims' friends, as well, that they need additional supports as to how to even communicate their feelings prior to a decision being made. Do you have any experience in that realm with clients, not only in helping them prepare statements, if they even know a statement is needed, but also in allowing them to access services? I think my colleague Mr. Julian brought up, as well, the need for counselling to be able to process something that might be occurring or a change in an offender's status.

Is that something you've ever heard of or come across? Do you think it could be helpful?

Mr. Tim Danson: Yes, I have heard of it. I think it would be very helpful.

I was directing my comments toward the Frenches and the Mahaffys, where I spent significant amounts of time and worked with them, but obviously there are lots of victims who don't have counsel at all. I think it's very important that they have access to resources to help them emotionally. I think that's obviously the role, in my view, of victim services, and it should be properly funded.

Ms. Jennifer O'Connell: Thank you.

The Chair: Thank you.

Mr. Danson, that concludes our questions for you today.

Thank you for your input on a very emotional issue for everybody. We're certainly glad we were able to have you here, finally.

With that, I thank you. Hopefully we will have you back again sometime, but maybe on a better issue. Thank you.

Mr. Tim Danson: Great.

Thank you very much.

The Chair: Committee members, the clerk circulated the committee budget earlier today.

The committee has completed its fourth meeting on the study of the rights of victims, declassification and the transfer of federal offenders. A project budget for this study in the amount of $3,000 was distributed by the clerk earlier today.

Do I have agreement to adopt the following motion?

> That the proposed budget in the amount of $3,000, for the study of rights of victims of crime, reclassification and transfer of Federal Offenders, be adopted.

(Motion agreed to)

The Chair: Is the committee in agreement to adjourn the meeting?

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

Thank you.