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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

Wednesday, November 4, 2009

● (1540)

[*English*]

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

This is meeting number 46 of the Standing Committee on Justice and Human Rights. Today is Wednesday, November 4, 2009.

Once again, just as a reminder to everyone in this room, please turn off your BlackBerries and your cellphones, or put them on vibrate so we don't have disturbances while we're in session. Also, please take any phone calls outside this room.

Thank you.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Chairman, several members of this Committee found themselves forced to make a choice, following question period, as to whether we would remain in the Chamber for tributes to the 25th Governor General of Canada, or whether we would come to the Committee meeting.

Personally, I am proud of having chosen to be present for the tributes and I can defend that choice. However, I would not want members of Parliament who made the same choice, and who may not have been as quick to make the trip from the Chamber to the Committee room once the tributes were over, to be prevented from taking part in the Committee's work. So, for all those reasons, I think we should wait for them. We are not responsible for the Speaker of the House having been late with the question period, a delay that subsequently affected tributes to the Right Hon. Roméo LeBlanc, who is someone we all admire, whatever our political opinions. I would there ask that we wait for the other members to arrive. I see that Ms. Jennings has just arrived. I don't know who will be replacing Mr. Dominic LeBlanc, but as you know, he is the son of the 25th Governor General of Canada. I think it would be indecent to begin in his absence.

[*English*]

The Chair: We'll go to Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): On this very point, it is quite unusual that we can pay homage to an extraordinary character like Mr. LeBlanc, who was Speaker of the Senate, Governor General, and Minister of Fisheries.

Some of the lateness is also due to the fact that there was a rather irregular procedure involving the tabling of estimates, which I gather has not been done in a regular fashion after question period for some many years. There's an irregular circumstance. We can probably proceed with the question anytime now.

The Chair: I just want to remind everybody that we're missing only one member of the committee at this point in time. My guess is that he may be doing some television interviews.

Here we go. We have a replacement, I believe. We're okay.

Let's move on. As you know, the agenda for today is very full. We have a lot of business to get through. I also note that the bells will start ringing at 5:15. I believe the vote is at 5:30, so we'll have to be very efficient with our time.

The items on our agenda, just so everyone knows, are: clause-by-clause on Bill C-232; two further witnesses on Bill C-36; Mr. Moore's motion on clause-by-clause on Bill C-36; and clause-by-clause on Bill C-36. I also advise the committee that Mr. Comartin has advised that he has another witness he would like to hear on November 16, namely, Mr. Rick Sauvé. As well, I understand that Mr. Moore wishes to deal with the Bill C-36 motion at the beginning of this meeting rather than at the end. Clearly, I need to know what the wish of this committee is on these two requests. If we proceed with the motion, and the motion is passed, that also appears to dispose of Mr. Comartin's request for an additional witness. I need to know what the will of this committee is.

Yes, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chairman, with all due respect, I have the agenda in front of me and I would like the Committee to follow that agenda—in other words, that we proceed with clause-by-clause consideration of Bill C-232, and then hear from the witnesses that are here representing the Correctional Service of Canada. If there is any time remaining, we can begin clause-by-clause consideration of Bill C-36. Further to my request, if we don't have enough time, we will be back here on November 16, and we can proceed based on the established order. We should not be trying to rush through things in the next few days.

● (1545)

[*English*]

The Chair: I certainly concur with Mr. Ménard. If there's no motion to put Mr. Moore's motion at the top of the list, we'll just proceed as set out in the agenda.

I don't know what Mr. Moore wishes to do.

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

The only reason we might want to deal with it at the beginning is so we can better plan the rest of our days...whether the motion passes or fails. I'd like to deal with the motion now, and then we get on with the rest of the schedule.

That's what we were dealing with when we ended our last committee meeting. We were about to vote on the motion, and I think Mr. Comartin moved that the meeting be adjourned. So if we could take care of that piece of business, then we could move on with the rest.

The Chair: All right.

I don't want to deal with this any further unless there's a motion on the table to change the order of the agenda.

Mr. Stephen Woodworth (Kitchener Centre, CPC): A point of order, Mr. Chairman.

I took Mr. Moore's comments just now to be in fact a motion that his motion be put to the top of the agenda, and I raise my hand to second that motion, if I'm correct.

The Chair: Is that correct, Mr. Moore?

Mr. Rob Moore: That's right.

The Chair: All right. Then we have a motion on the table to move Mr. Moore's ongoing motion that we adjourned on at our last meeting to the top of the agenda.

Is that the motion?

Mr. Rob Moore: That's right.

The Chair: We have that motion on the table.

There's no debate.

Mr. Brian Murphy: I'm not debating.

The Chair: Is it a point of order?

Mr. Brian Murphy: A point of information.

I'd like you, if you could, Mr. Chair, to explain, because we did leave in a bit of a....

The Chair: Hurry.

Mr. Brian Murphy: Hurry, that's right.

The Chair: We had a vote.

Mr. Brian Murphy: Yes. And I think the committee members would all like to know the status of the motion—there was an amendment, a subamendment—and we want to know what motion we're actually dealing with, Madam Clerk, and what the effect of it would be vis-à-vis the order for today, Bill C-232 and Bill C-36.

The Chair: I went back to review the evidence, and the evidence is very clear that the subamendment as well as the amendment failed, so we're back with the original motion that Mr. Moore made.

Mr. Brian Murphy: And what was that?

The Chair: I'll read that to you. That motion reads as follows:

> That the Committee 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, and that the meeting not adjourn until clause by clause consideration is complete.

That is the motion that was on the table when we adjourned at our last meeting. The motion before us right now is to move consideration of that motion to the top of today's agenda.

And that's not debatable.

Mr. Brian Murphy: What happens to Bill C-232, then, in the event that this motion fails?

The Chair: It would just move down the order. If we're moving Mr. Moore's motion to the top, everything else moves down, presumably.

Mr. Brian Murphy: Move the motion, but what I want to know is the consequence of the motion failing or the motion passing vis-à-vis Bill C-232.

The Chair: If Mr. Moore's motion fails, we then move to Bill C-232, as set out in the agenda.

There's no debate on this motion.

(Motion negatived)

The Chair: So we will move forward with Bill C-232, and we have clause-by-clause consideration.

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

Yes, Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chairman, before we vote on Bill C-232, as a member of Parliament, I would like to make a statement or comment. I don't know whether the Committee is in the habit of allowing that, but I believe that a member of Parliament should have an opportunity to express his or her views before voting, so that those comments are on the record. I believe this is a very important bill and I would there ask the Chair for permission to comment before the vote goes ahead.

● (1550)

[*English*]

The Chair: To do it properly, Mr. Petit, I would call the first clause and then I would recognize you to speak to it. You will have an opportunity to speak to it shortly.

Mr. Comartin, did you have a question?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): In the past, if the author of a bill wished to address the committee before clause-by-clause consideration, it's been our practice to allow that to happen. Mr. Godin would like to do that today. It won't be very long. In effect he wants to respond to a specific point from one of the witnesses we heard; he wants to get that on the record.

That has been our practice, Mr. Chair. It has not always been exercised, but we usually honour that request from the author of the bill.

The Chair: As a relative newcomer to this committee, I'm really in the hands of the committee as to whether you want to proceed on that basis. Do we have consensus here?

Some hon. members: Agreed.

Mr. Godin, you're welcome.

[*Translation*]

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you.

[*English*]

The Chair: Mr. Godin, just one moment. How much time do you think you'll need?

Mr. Yvon Godin: I'll do it very fast. I'll be a couple of minutes.

[*Translation*]

To begin with, I would like to thank the Committee for reviewing Bill C-232, which is of vital importance to this country. As you know, we have two official languages in Canada: French and English.

Among those who appeared as witnesses, the Hon. Justice Major, retired, stated that he is opposed to Bill C-232. I was here when he gave his testimony and I listened to it with great interest. He said that, as a Supreme Court Justice, he had used the translation system and been very satisfied with it. In his opinion, that system is impeccable.

But, in your opinion, how is it possible for a person who speaks only one language to know whether the translation is impeccable? If I do not speak Italian and someone translates my words into that language, I will not be in a position to say whether he is doing a good job or not. I will not know what he is saying. I have no doubt that Justice Major was satisfied, but the fact is he was not in a position to know whether the translation was accurate or not.

With all due respect to our translators, who do an extraordinary job, the fact is there are times when they are unable to follow what I am saying in the House of Commons. When that happens, the "blues" have to be corrected. For a judge, however, there are no "blues" that can be corrected.

Mr. Chairman, someone said—and Mr. Petit may want to make this point—that unilingual MPs should not be ineligible for an appointment to the Supreme Court. In Quebec, we are talking about 14,000 lawyers. And the legislation is clear: at the time of his or her appointment, the judge must already be bilingual, and therefore capable of serving Canadians in this country's two official languages. That way, it will not be necessary to determine whether service should be provided in English, in French or in both languages. An example has to be set at the top and filter down from there.

I invite you to review the testimony of the National Defence general who appeared yesterday. He said that the bilingualism issue with respect to service delivery has to be dealt with and that it has to start at the top. That is exactly what he said in front of this Committee. I suggested that the Supreme Court be told the same thing.

I will leave this in your hands. You have a wise decision to make.

I want to thank you all for your work in relation to Bill C-232. I believe this legislation will have a profound impact on the history of our country as regards respect for our two official languages.

● (1555)

[*English*]

The Chair: Thank you.

(On clause 1)

Is there any discussion or debate?

We'll go with Mr. Petit and Mr. Rathgeber.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chairman.

I would like to begin by saying that I am a member of the Standing Committee on Official Languages, along with Mr. Godin, and have been since becoming a federal member of Parliament. I am very much alive to issues surrounding the official languages, just as I am to the intent behind this bill. At first glance, it seems to be very simple, but the words "without the assistance of an interpreter" are problematic, in my opinion.

There are a number of lawyers here in this room. Mr. Ménard, Mr. Lemay and myself are members of the Quebec Bar. M. Murphy, Mr. LeBlanc, Mr. Moore and Mr. Comartin are also lawyers. Most of them are bilingual, but—

Oh, my apologies, Ms. Jennings!

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Like you, I am a member of the Quebec Bar. I am also the former Chair of one of the standing committees of the Quebec Bar.

Mr. Daniel Petit: Most of us are clearly bilingual and able to express ourselves quite easily in either the language of Shakespeare or the language of Molière, depending on what our main language is. However, when a lawyer is appointed a judge, he will be required, without the assistance of an interpreter, to understand all the legal subtleties in the language of the person appearing before him or her. What will that mean when the discussion relates to the Civil Code, certain criminal laws, the Bankruptcy Act, and so on? Legal terminology is specialized and difficult. Even in my own language, in French, I sometimes have trouble. Even in my mother tongue, I may disagree with the French-speaking lawyer who is arguing the case at the same time. I am not talking about a general level of proficiency when discussing something with the opposing party; I am talking about legal terminology.

Official languages are absolutely critical in this country, but if we include the words "without the assistance of an interpreter", that will mean… There are approximately 22,000 lawyers who are members of the Quebec Bar, including many who handle cases outside Montreal, be that in Quebec City, in the Saguenay—Lac-Saint-Jean region or in Abitibi. The possibility of their being able to argue a case in English is practically nil. Mr. Ménard always won all his cases, but he argued them in French. He could speak English, but he would not have the same skill, without relying on an interpreter, because he has not had an opportunity to argue a case in English.

I am from Quebec City, the second largest city in Quebec. Lawyers in Quebec argue their cases in French 99% of the time. Over a 30-year period, I argued cases in French. I can speak English with you, with Ms. Jennings and with my other colleagues, but supposing I wanted or had an opportunity to be appointed to the Supreme Court, because I had won all my cases and was a good lawyer. Well, I would not be able to because, without an interpreter, when dealing with legal matters—particularly extremely specialized cases—I would have trouble and would require the services of an interpreter.

That is precisely the reason why the word "interpreter" is so important. I believe most of our Supreme Court justices are functionally bilingual. If we demand that of those sitting on the Supreme Court, this will have to move further down the chain and be demanded of all judges, in all courts, whatever they may be, at least in the province of Quebec. There are bilingual lawyers who are able to argue a case in the other language, but they require the assistance of an interpreter. And they will no longer be able to do so because of this extremely far-reaching directive.

When you work in the legal field, words are important. Those who are appointed must, first and foremost, be highly skilled members of the legal profession, which is an extremely specialized area; that is very much to their credit. Quebec lawyers who are only able to argue a case in French will not be eligible for selection; therefore, they will be discriminated against. The same thing may happen to people in other provinces. Some lawyers are only able to argue in English, not in French. So, this will create major problems. That is what I wanted to draw the Committee's attention to.

● (1600)

In my opinion, the danger is that we will shut out young lawyers who, like myself, went to Laval University and endured Bill 101. I have never had an English-speaking client. Even if I were the best lawyer ever to have argued a case, I would not be eligible for an appointment because I cannot work without an interpreter—at least, not at the Supreme Court.

Therefore, we will have to tell young lawyers that they are being excluded. Without an interpreter, working in the legal field is extremely difficult. I think the Committee should pay close attention to the fact that a word is being added here. I support official languages, I am a member of the Standing Committee on Official Languages and I am part of a government that has done a lot for official languages; so, I support them unconditionally, but I don't want to create discrimination elsewhere.

In my opinion, it would be discriminatory towards members of the legal profession—at least a great many lawyers in Quebec—if we were to tell them that, unfortunately, they cannot be appointed to the Supreme Court because they have to be able to work without an interpreter. How are we going to assess them, without the assistance of an interpreter? I don't know. Will we assess them using a grid? I don't know that either.

I believe this bill is well-intentioned, but dangerous. That is what I wanted to say, Mr. Chairman, and I ask Committee members to take a second look at it, including its effects on their own province, because I believe it would be dangerous for all the provinces.

[*English*]

The Chair: Thank you.

We'll move to Mr. Rathgeber.

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

Colleagues, I similarly am very concerned about clause 1 of this bill and will be voting against it. My concerns, I suspect, are similar to those of my friend Mr. Petit. I represent Alberta, as you all know—some would think so.

Some hon. members: Oh, oh!

Mr. Brent Rathgeber: I represent Alberta on this committee, let's say.

We have very few bilingual lawyers and even fewer bilingual jurists. When the executive director of the Fédération des associations de juristes d'expression française de common law, Mr. Remillard, was here on June 15, he told me there were 37 members of his association from Alberta. In a province with over 7,000 practising barristers and solicitors, that represents less than one-half of one percent of the practising bar who are members of his association. I appreciate that membership is not mandatory, even if one is bilingual; nonetheless, it's a very small fraction.

I hearken back to the words of Justice John Major, retired—just two sentences:

> In a practical sense it is going to be very difficult to find judges from B.C. and Alberta who have had the same opportunity to be bilingual.

Those are very sage comments, Mr. Chair. Here at the Parliament of Canada, Parliament generously offers classes in bilingualism with one-on-one tutors. I've tried to avail myself of that. It's difficult to learn a second language in your adult years, as I'm sure you all know. It's also balanced by time constraints, especially for those of us with protracted travel schedules coming back and forth from our constituencies. It's difficult to learn a second language in your forties, I would submit.

The Supreme Court of Canada is the highest court of the land. I respect Mr. Godin and I think his bill is well-intentioned. However, I think it fails to take into account that although Canada is a bilingual country, not all regions of our country are bilingual. I speak specifically of British Columbia and specifically of Saskatchewan and specifically of my province of Alberta. It is going to be difficult —not impossible, but difficult—to find a qualified and experienced jurist who meets the bilingual requirements of this bill. It would be most unfortunate if any region of this country were denied representation in the highest court of the land.

Parliament is as important, probably more important but certainly as important, as the Supreme Court of Canada. But there is no requirement, thankfully, that parliamentarians be bilingual. Parliamentarians can speak in any official language. In committee, in the House, and in the Senate we rely on the translation services. I will concede, Mr. Godin, that those translation services are imperfect from time to time, but they are functional. If they are functional and workable for the Parliament of Canada, certainly they are functional and workable for the Supreme Court of Canada—even more so in the Supreme Court, where written factums are filed. I appreciate that in real time, translation is difficult. But when a translator has time to rethink their words, as you can do if you're translating a written document, translation becomes close to perfect, if not perfect, when translating written documents such as factums and transcripts from lower court proceedings, which invariably need to be filed at the Supreme Court. Regardless, if unilingualism leaves one eligible for membership in Parliament and the Senate, I cannot subscribe to the idea that the Supreme Court should have a higher test.

I do not believe we should sacrifice competence for linguistic proficiency, and I'm afraid that is what would be the case—either that or that some regions, such as the region I represent, would be excluded from the Supreme Court.

On a lighter note, I think it's ironic that I myself, as a unilingual lawyer, would not be eligible for appointment to the Supreme Court, when there are so many more relevant reasons why I shouldn't be eligible for employment.

Some hon. members: Oh, oh!

Mr. Brent Rathgeber: Those are my comments, Mr. Chair. I'll be voting them.

● (1605)

The Chair: Thank you, Mr. Rathgeber.

The next person is Ms. Jennings. I believe you had a point of order.

Hon. Marlene Jennings: Yes. I simply would request that all of the votes on clause-by-clause of Bill C-232 be recorded votes.

The Chair: On that request, that's what we will do.

We'll move on to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I don't want to dwell on this at length, but I simply must respond to Mr. Petit's comments and take apart his arguments one by one.

I have 30 years of experience as a lawyer and I have argued cases in front of courts of all kinds, even the Supreme Court. I can assure you that if you are arguing a case in front of the Supreme Court, and are speaking quickly in French or having an exchange with another justice—the Hon. Justice LeBel, for example—the Right Hon. Justice Beverley McLachlin will have no choice but to interrupt you and ask you to slow down, because the interpreter is unable to follow. That is something I have the utmost respect for.

I could cite dozens of examples for Mr. Petit and colleagues opposite. There is not one lawyer anywhere in Canada who knows, the day he is sworn in, whether he may one day become a Supreme Court justice. That is impossible. If someone right here at this table or somewhere else tells me that, one day, he will be appointed to the Supreme Court, well, he is lying. An appointment to the Supreme Court is the pinnacle of a legal career. One is called to the Supreme Court. Let me draw a parallel here: it is like being chosen to be the next pope. Very few people could even think that, one day, they might be appointed to the Supreme Court.

However, with all due respect for Mr. Petit, I know of no judge in Quebec who is unable to conduct a trial in French and in English. I know that because, as Bâtonnier for my region, I sat on committees looking at judicial candidates. As soon as you get to the level of the Court of Quebec and the Youth Division, judicial candidates are asked whether they are able to speak and understand English.

So, I must say I am a little surprised to hear today that Supreme Court justices may not be able to follow a debate without the assistance of interpreters. In my opinion, this is a very good bill which will have repercussions—I readily admit that. An appointment is made to the Supreme Court only once every five or ten years. People who aspire to be appointed to the Supreme Court will have to start preparing now. The evidence was clear when the last appointment was made. No one, in Quebec or elsewhere, said that the justice who has just been appointed, and whose name escapes me for the moment, understands French. He may be able to follow a conversation or an exchange, but we believe—and I am saying this on behalf of Quebec—that an example has to be set at the top, so that it is possible to argue a case in both languages at the Supreme Court. Exchanges will be greatly facilitated as a result.

With all due respect for the Hon. Justice Major—and heaven knows, having argued a case in front of him, I have a great deal of respect for him—there is one thing he didn't say, and that is that during the sessions where Supreme Court justices get together to discuss cases—they meet as a group of nine or seven, depending on the bench that will be hearing the case—their discussions take place in English 92% of the time, because the majority of cases that come before the Supreme Court are obviously cases from English Canada. I say that with the utmost respect.

I see no problem in passing this bill, through which a good example will be set. Candidates who aspire to an appointment to the Supreme Court now have 5, 10 or even 15 years to prepare. If this bill passes, they will have 15 years to prepare themselves.

I was listening to Justice Beverley McLachlin. She is an anglophone who took immersion in Quebec, in the Lac-Saint-Jean area. I would have invited her over for a conversation in French. She would be perfectly capable of holding such a conversation, as would eight of the nine current justices.

● (1610)

In my opinion, this is a non-debate, a non-issue, and we need to send a clear signal. That's why I invite all of you to support this bill.

[*English*]

The Chair: Thank you.

Next we have Mr. Woodworth.

Mr. Stephen Woodworth: I'll withdraw my request.

The Chair: Okay.

Mr. Murphy.

Mr. Brian Murphy: Thank you.

I think what we have here is a perception that there is a taking away of a right or representational right for persons from provinces, or for provinces themselves, to be represented on the Supreme Court of Canada.

I think it's important to say that the composition of the Supreme Court of Canada is wholly a discretionary and political operation. There is nothing in the law, not even to the status of a convention, that suggests, outside of Quebec, there should be certain members of the court from certain regions of the country. It's followed, but it's not always followed.

There is some consternation in some quarters when a certain province's time comes up and it is not picked. But even if it were the case that there was an expectation to be represented on the Supreme Court, we are talking about the collision of a provincial aspiration or personal ambition with an individual right. I firmly believe that there is nothing more important than the individual's right, before the highest court in the country, to know that his or her case will be heard and understood properly.

Now I also understand, and Mr. Petit makes the point very clearly, that it's not a perfect system and it excludes in some cases qualified candidates for even candidature for the highest court. But Mr. Lemay makes the good point that one can learn the language in the course of their legal career. Let's talk about the top nine jurists or legal people in the country. Surely they have the acumen to at least learn to understand the language. For a Supreme Court judge to be on the bench, it is not a case of proficiency in oral capability, but in understanding, which means to read and understand the language.

Finally I would say that the solution—and I've discussed this idea with Mr. Petit, Mr. Moore, the Minister of Justice, our own critic Mr. LeBlanc, and Mr. Godin—is this, and I want to put it down as a marker. The law lords of England have just been retired and made into the supreme court of the United Kingdom, with 12 members. There is a myth in Canada that because the Supreme Court of the United States consists of nine judges, we have to have nine and only nine judges and that they have to sit all at the same time on all questions. All of you know that in the courts of appeal across this country, which work pretty well, there are many more court of appeal judges than sit, in a bank of three or five, depending on the issue. And this works quite well. It's really something the government should look at as a policy, Mr. Moore—parliamentary secretary, highest-ranking official here.

That is my closing point.

● (1615)

[*Translation*]

Of course, I would like to congratulate Mr. Godin on his private member's bill. Dominic and I are very proud to be part of your family, the family of New Brunswickers fighting for linguistic equality across this country. We are on the same side in this battle, even though it's a different story when it comes to politics. In any case, congratulations.

Thank you.

[*English*]

The Chair: Thank you.

We now move to Mr. Comartin.

Mr. Joe Comartin: I'll just make a few points. I won't be very long.

I think this whole discussion that I'm hearing, mostly from the other side of the room, is focusing on the interests of the legal profession and the judiciary and what is in their interests. Our role as parliamentarians is to pass laws that are in the interests of our communities and our citizens. They're our absolute, primary, first consideration. It seems to me that every Canadian has the right to expect that if they have a case that ends up in front of the Supreme Court, it will be heard by judges who understand fully what is being said.

There was a reference to Italy. I was in Italy this spring. I believe our interpreters are among the best in the world just because of the experiences I've had in various parts of the world using interpretation. But it happens that they make mistakes. They misinterpret.

In one session, we had a university professor who was more than a little long-winded. He went on—I timed it—for the better part of a minute, a minute and a half, and the interpretation lasted for about six or seven words.

So that happens from time to time. We can't rely on guaranteeing to our citizens that interpretation will always be the best.

The other point I want to make, Mr. Chair, and this is specifically to Mr. Rathgeber, is that I've now sat through the last four appointments to the Supreme Court. I think I've said this before, but I want to repeat it, because obviously Mr. Rathgeber didn't hear me the last time I said this. None of those appointments were from Quebec. The breakdown is one from the Maritimes, three from Quebec, three from Ontario, and two from the west and the territories.

So I've sat through the last four appointments that came from the other three regions and not from Quebec. In each one of those cases, in each one, we had more than enough qualified candidates who were fluent in both official languages. And I mean fluent in both official languages; all of them who were judges—not all of them were—at the lower court were already conducting trials.

That included candidates from your province, Mr. Rathgeber.

So it's not a question of availability of qualified candidates. That's not a fear we need to have, because they're there.

I want to conclude by echoing Mr. Lemay's point about the leadership that I think we will see coming from this bill being passed and brought into law. I'm going to use my own law school as an example. There's discussion going on at my law school to begin to teach some courses in French. We're not a bilingual law school at all, at this point, but there is some discussion about that happening.

I think if we pass this law and actually get it into effect as a full amendment to the current legislation for the Supreme Court, we will begin to see more and more of that. We'll begin to prepare more and more candidates in the legal profession to be able to speak both languages and to function in both languages in our courts.

Thank you, Mr. Chair.

● (1620)

The Chair: Thank you.

We'll go to Ms. Jennings.

Hon. Marlene Jennings: Thank you.

As a lawyer, as someone whose mother tongue was French and who became anglicized, if I can call it that, through the then-religious-based school boards in Quebec; as someone who has presided over public inquiries throughout the province of Quebec—probably in the nature of 30 to 50 over which I actually presided and an additional, equal number in which I was part of the bench, as part of the Quebec Police Commission—I can tell you that the colleagues with whom I sat who were unable to hear the witnesses who were testifying in English or hear the arguments of the lawyers who were presenting them in examination or cross-examinations without the filter of translation, and we had excellent translation as well, were quite envious. That's the first thing.

Second, I repeat and support what Mr. Comartin had to say: that our primary interest here is our citizenry. Our citizenry has the right to expect that their case and their documents will be understood in whichever official language they were submitted in, and that whoever is adjudicating will not require the filter of translation in order to understand those documents in their original language.

Finally, I'd like to say that if we truly believe in bilingualism; if we truly believe in the official languages here in Canada, then there is no better symbol or sign that can be swept across this country to all of our citizenry—those who are already breathing on this earth and those who are to come in the future—who aspire to a career in the legal profession and may at some point develop an aspiration to the highest court of the land, than to encourage them and encourage their parents to encourage them to learn both official languages and to become proficient enough in the language that is not their mother tongue to be able to actually preside without translation.

I support Mr. Godin's private member's bill wholeheartedly. I will be voting in favour of it and would encourage all of my colleagues to do so.

Thank you.

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth: I apologize for changing my mind.

[*Translation*]

Mr. Chairman, in answer to the point raised by Mr. Godin, I don't speak French very well—that is clear—but I believe I fully understood everything that was said in French today, as well as what Mr. Godin said, with the assistance of translation.

● (1625)

[*English*]

Second, I am somewhat mortified that we are considering a bill of this nature without anyone's referring to the primary role of the Supreme Court of Canada, which is a unifying role. The Supreme Court of Canada is a national institution that exists to unify laws across Canada. It is, in that sense, completely dissimilar to provincial courts of appeal. For my part, at least, that unifying role of the Supreme Court of Canada is so important that I would suggest it will not be accomplished effectively by excluding large segments of our population from eligibility on the basis of ordinary linguistic proficiency.

I really do feel strongly that this issue involves not just the question of the rights of litigants, who would be well served by a court of nine justices who will have varying degrees of proficiency in either language but who together will be able to yield sufficient justice to all litigants, and that we should not consider the overarching question of making this an inclusive court.

Thank you.

The Chair: Thank you.

We're going to go to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: My mind is already made up on this bill, but seeing how the discussion has been evolving, I think it's important to remind people of something which is not a criticism, but rather an observation, and perhaps you will then have a better understanding of my fundamental option.

In the Canada that I dreamt of when I was young, I did not believe that the Supreme Court had a unifying role. I believed that, quite the contrary, it would recognize the two distinctive legal cultures—the civil law and the common law—and be able to apply them differently, when warranted. The evolution of two cultures, united and moving forward in parallel—sometimes in war, and at other times to attain certain goals—presupposes that they will continue to evolve in parallel fashion while remaining distinct one from the other: the civil law and the common law, and the social evolution of one compared to the other. I understand that you see the Supreme Court of Canada as a unifying institution. However, there is a fine line between a unifying and an assimilating role.

Furthermore, you do not understand that a significant segment of the legal profession in this country does not have access to the Supreme Court. Must I remind you that this was the case for Quebeckers? Since Confederation, no Quebecker has been eligible for an appointment to the Supreme Court of Canada without being perfectly bilingual and proficient in the two languages. You consider that to be terrible, and I recognize that. You are now starting to understand what Canada was, what we would like it to be and what I myself recognized at one point in my life, which was that the dream I had of Canada when I was young would never be realized; and thus I preferred that we remain good friends and cooperate in a whole host of areas, with each one remaining sovereign.

● (1630)

[*English*]

The Chair: Thank you.

We will move on to the vote on the clause.

(Clause 1 agreed to: yeas 6; nays 5)

The Chair: Shall the title carry?

It will be a recorded vote, Madam Clerk.

(Title agreed to: yeas 6; nays 5

The Chair: Shall the bill carry?

It will be a recorded vote.

(Bill agreed to: yeas 6; nays 5)

The Chair: Shall the chair report the bill to the House?

Do we need a recorded vote?

[*Translation*]

Mr. Serge Ménard: On a point of order.

It would be preferable to ensure that the translation is accurate on the agenda.

[*English*]

The Chair: Repeat the question, please. I'm sorry.

[*Translation*]

Mr. Serge Ménard: It is not a question. I am just pointing out that what you are reading from the paper that was circulated contains a mistake in French. Translation has its limits. It should say: « Le comité ordonne-t-il au président... ».

[*English*]

The Chair: I'm assured that will be taken care of.

Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: That takes care of Bill C-232.

Congratulations, Monsieur Godin.

Some hon. members: Hear, hear!

The Chair: We're going to move to the next item on the agenda, which is to hear our two additional witnesses on Bill C-36.

Could I have Don Head as well as Professor Allan Manson take their seats?

Thank you.

Mr. Don Head is here representing Correctional Service Canada. He's available to answer questions. We also have Professor Allan Manson from the Queen's University faculty of law.

Both of you know the drill, I think. If you have a presentation to make, you have up to ten minutes. Otherwise, we'll leave the floor open for questions from our members.

Mr. Head, did you have any presentation to make?

Mr. Don Head (Commissioner, Correctional Service Canada): Mr. Chairman, if it's fine with you, I think the committee knows who I am and what I represent. I'd be glad to answer any questions and defer any time to Mr. Manson for his comments.

The Chair: Mr. Manson, I take it you have a presentation.

You have ten minutes.

● (1635)

Prof. Allan Manson (Professor, Queen's University, Faculty of Law, As an Individual): Thank you.

[*Translation*]

Good afternoon. I regret to say that I am not bilingual. I will therefore have to present my ideas and give my answers in English only.

[*English*]

I am here because I'm very concerned about this bill. It will place our sentencing regime, aside from those of countries that still execute people, among the harshest in the world and certainly in the western world. When I look at the minutes of the testimony, which I've read, particularly the testimony of the minister and those supporting the bill, I see no basis and no evidence for these amendments.

I see constant remarks saying, “This is what Canadians want.” I also see remarks about victims. I'm very respectful and sympathetic to victims, and I'll address that in a second, but I dispute the statement that this is what Canadians want. Just because you repeat something over and over doesn't make it true.

It's my view that if we look at the history of criminal law in Canada, the history of murder sentencing and what this Parliament did in 1975-76, what it did in 1997, and what this committee did in 1975-76, I would say Canadians respect the vitality of the human spirit. This legislation does not. This legislation wants to turn penitentiaries into ashcans of human wreckage.

I have studied this 15-year review process. I've written about it. I've been counsel in two cases and advised a number of lawyers, so I can talk to you if you have questions about how these processes work.

You've heard a lot of data. I'm not going to go through much of that again. I did prepare a submission. I had only a few days' notice about this hearing; I hope it's been translated. I'm not sure if it has, but you will have it.

The key is this. This process was created in this committee on a motion by a member named Stuart Leggatt in the spring of 1976. The original proposal for the 15-year review arose like this: the Solicitor General, who was Warren Allmand at the time, had his people do studies of Canada's experience as well as the international experience with the release of murderers. The data suggested around 10 to 15 years as the effective minimum ineligibility period.

Of course, if capital punishment was abolished, there would be a mandatory life imprisonment sentence. We're only talking about parole eligibility. The Canadian Association of Police Chiefs had taken the position that they supported retention, but if capital punishment was going to be abolished, they felt the minimum should be 25 years. It was in Warren Allmand's office that they came up with the idea of adopting 25 years while creating a window after 15 years. They took the view that the decision should be made by three judges.

It was in this committee that Stuart Leggatt said, “I was a practising lawyer; I trust juries.” This committee amended the bill to give the decision-making role to juries. These are Canadians, and if you look at the statistics from every province, while sometimes you see a number saying that 83% succeed, that's completely disingenuous and misleading, because in fact fewer than 19% of eligible prisoners apply. There is a process of self-selection.

I haven't done it for the past few years, and I regret that, but I used to travel to lifers' groups in the various penitentiaries around Kingston to explain this provision to prisoners. Afterward I would always talk to people about their individual cases. There is a process of self-selection. There are people who want their cases to remain quiet. They don't want to see them on the front pages of newspapers. There are people who have seen the rigours of these applications; there are people who are worried that an unsuccessful application may prejudice a future parole hearing. There are also people who just know they've not made much progress, and they're bad cases. That's why you see fewer than 19% applying.

At the end of the day, my calculations say 15.2% of eligible prisoners have received some relief. When I say “some” relief, I mean they're not made immediately eligible. A few are, but I've seen cases of people being made eligible when they served 17, 18, 19 years. The jury determines what the reduction will be.

● (1640)

In 1997 the provisions were amended to require a unanimous jury for reduction, but the actual reduction is left to eight out of the 12. It can be 19 or 20 years. They can set the time to whatever they want.

My point is this: is there a basis for this very harsh move? Ms. Jennings isn't here, but when I read the proceedings of the meeting on October 19, I noticed that she engaged in a debate with the minister about constitutionality. However, they were only talking about retroactivity, and on that point of debate the minister was right. He didn't cite it, but the case is R. v. Gamble. People in Canada are entitled to be sentenced, which includes having their parole eligibility determined, by the law as it stands at the time of the offence. But that's not the issue. The issue is the constitutionality of a murder regime set at a minimum of 25 years.

You'll see on page 3 of my submission that in 1990, when our Supreme Court constitutionalized the 25-year parole ineligibility in the Luxton case, it did so taking into account as part of its decision-making matrix the 15-year window and that possibility. If you remove that, the whole question of constitutionality is back on the table. As well, in that case there was no evidence about the deleterious effects of long-term confinement, either in general or on particular people or on groups of people. Next time there will be evidence.

So this is a bill that is constitutionally vulnerable, yet the minister comes here and tells you, “No, no, no”. I don't know that he even considered this issue. You certainly can't see it from the minutes.

Let me say a word about victims.

I accept that some of the families that have survived murder would support this legislation. It certainly wasn't the case when I was a practising lawyer, but now victims do participate, if they choose, in the criminal process. They can participate at every level of the 15-year process if they choose. We've recognized that providing these participatory opportunities to victims is an important and valuable aspect of the criminal justice system. One must respect and have sympathy for the tragic losses and grief that victims have suffered.

Yet we all experience grief in different ways, don't we? There will be myriad responses. While one needs to listen to the voice of victims, sound penal policy must be based on a set of values grounded in an experienced and reasoned judgment. It was over 900 years ago that we took penal policy out of the hands of victims. In this country it's now in the hands of parliamentarians. We expect them to have a full debate, ask hard questions, and produce rational, fair penal policy based on evidence, not emotion.

I have addressed in my submission what I call the procedural aspects of Bill C-36: the 90-day window, the five-year delay. Those would relate to those people currently in jail who have the opportunity of the 15-year review. Again, there's no evidence as to why these are necessary; it's pure harshness for harshness' sake.

The 90-day window is completely unrealistic as well. There will be mountains of files that lawyers need to go through. Plus, I don't know if anyone's ever told you this, but when prisoners are eligible for 15-year review, the juries are picked in the place where the offence was committed. Not many prisoners....

I waited. I would appreciate it if you wait as well. Thank you.

● (1645)

The Chair: Professor Manson, each witness is normally given 10 minutes.

Prof. Allan Manson: Mr. Head indicated that I could have his 10 minutes if he would answer questions.

The Chair: Well, it's not for him to make that decision. It's a committee decision as to how much time is given, so I will give you another minute to wind up. All right?

Prof. Allan Manson: I just want to point out that it was with great difficulty that I came here this afternoon—

The Chair: I understand.

Prof. Allan Manson: Thank you.

It will take me a minute to figure out where I was.

I was speaking of the 90-day window and I was saying that prisoners are not necessarily confined in the province where the case originated. They therefore have to apply to be transferred and moved back to their original province to retain a lawyer and to commence this application. To say you have 90 days from the 15-year moment is unrealistic and is just pure harshness.

I'm happy to answer questions. I'm sure you have questions for Mr. Head, who has some statistics.

My point is that you've not yet been given any evidence that suggests this is what Canadian criminal law policy should support. All you've been told is that this is what Canadians want. I doubt that.

The current mechanism is working. Juries are making the decisions. They are distinguishing between worthy cases and unworthy cases in every province. Judges at the judicial screening are making the distinction. In my submission I give a number of cases just in the past two years in which judges have said, “This case doesn't meet the test. It's not going to a jury.”

The current mechanism is working, and it reflects the fundamental Canadian view that people can be redeemed. It should be maintained.

Thank you.

The Chair: Thank you.

We'll open the floor to questions, starting with Ms. Jennings.

Hon. Marlene Jennings: I just want one minute, then I'll turn the rest of my time over to Mr. Murphy.

I simply wish to clarify something for Mr. Manson concerning the question I asked of Minister Nicholson regarding the application of the clause retroactively.

My question was precisely to highlight the hypocrisy on the part of the minister and his government, who have been crying crocodile tears about the victims of violence and saying that their legislation will actually save these victims pain, when the minister knows full well that if his legislation goes through and the section is repealed, those who have already been found guilty of first-degree murder and sentenced to life without possibility of parole before 25 years would still have the opportunity to continue to apply through the faint hope clause, although the legislation would prescribe it a little more.

Therefore, I asked him if he would make clear to victims that they would still have to go through a certain amount of pain.

Prof. Allan Manson: Could I follow? If in the future this bill passes, and if you accept the argument about pain—and I accept that it's how some people experience grief, and it lasts forever—it will still happen at the 25-year mark with the parole process, because our current Corrections and Conditional Release Act and regulations give victims that opportunity to participate in parole hearings.

Mr. Brian Murphy: I originally thought we might have seven minutes, but in the five minutes that I have, I'm very interested in the crux of your evidence, and that's with regard to constitutionality.

You were very clear.

We are, or I am, now used to three and a half years of ministers coming with laws without tabling or even referring to the constitutionality of them—charterproofing, in other words—and that's a good minister with good staff. We're used to that by now. We're numb to it. It's not great, but it's the way it is.

You mentioned the constitutional issues here, the charterproofing issues, that would be gone if the faint hope disappears. I think you're saying that someone in the new regime, newly convicted with a life sentence or convicted of treason, for that matter, would apply for a charter challenge on the basis of cruel and unusual punishment because he or she is facing 25 years without the chance of applying for parole. What kind of evidence would be led? How successful would it be? What are you relying on in terms of case law or international comparison to conclude as you will?

● (1650)

Prof. Allan Manson: First, the 1990 case, which was Luxton, was at the time when we still had some aspects of constructive murder. I'm not going to get into a big lecture about this, but those were the major issues in front of the Supreme Court of Canada, and they succeeded. Constructive murder is unconstitutional. I was very surprised that in this package of cases they also raised the constitutionality of the penalty, because they called no evidence; there was no evidence in the record.

Chief Justice Lamer said that 25 years for the gravest crime is surely not that grossly disproportionate. That's the section 12 test. He also said “taking into account the potential for individualization that exists”, and one of his major examples was this process.

I'm saying that if you do away with this process, you've reopened the question. It will be re-argued on the basis of section 12 jurisprudence, which is gross disproportionality. Viewed from the perspective either of this offender or a reasonable hypothetical, section 12 jurisprudence looks at individual circumstances and culpability, but it can be the reasonable hypothetical.

We will see evidence, like some of Canada's own studies, the one that Dr. Gendreau did in the late nineties, pointing out the impact of long-term confinement on vulnerable groups with respect to recidivism. We'll see studies from American criminologists and psychologists about long-term deleterious psychological effects. That's the kind of evidence I would think we'd want to see in front of the Supreme Court when it deals with the question afresh.

Mr. Brian Murphy: How much time do I have?

The Chair: You have basically a minute to go.

Mr. Brian Murphy: Still, for all your remonstrances here, you haven't fleshed out what kind of hard evidence there would be. You talk about disproportionality and you talk about American studies and the study by Dr. Gendreau. You said earlier that in the seventies, a lawyer introduced the aspect of the jury reviewing—

Prof. Allan Manson: It was a member of this committee.

Mr. Brian Murphy: Well, a member of Parliament, presumably. Sorry for jumping to that conclusion.

But we are legislators. We could make this law that says 25 years ineligibility is what we believe the law should be. How would that be attacked, other than what you just said, which to me doesn't get you home, counsellor?

Prof. Allan Manson: You'd go through the section 12 jurisprudence—I can give you the names of the cases, Smith, Gault, Morrisey, Ferguson—and you make your claim about gross disproportionality in terms of blameworthiness and the effects of punishment. The effects of punishment are front and centre under section 12. That's why you'd want evidence about deleterious effects of long-term punishment, which was not in front of the court in the 1990 basket of cases. They argued that 25 years is too long, and the Supreme Court said, well, no, it's the gravest punishment with the gravest penalty.

The Chair: Thank you.

We're going to move on to Monsieur Ménard. You have seven minutes.

[*Translation*]

Mr. Serge Ménard: Mr. Manson, we did not receive your brief because it had not been translated. Did you have an opportunity to read the written representations made to us by the Canadian Bar Association?

● (1655)

Prof. Allan Manson: No.

Mr. Serge Ménard: That's too bad because, for once, they were brief, succinct and highly convincing. Even at recent meetings, I have still been hesitating, because I consider murder to be an odious crime. Capital murder is still a wilful homicide, planned and executed in cold blood; it is the worst of crimes. Genocide and the like are even worse. Having read the brief submitted by the Canadian Bar Association, I must say I am firmly convinced that we should not change the legislation. I may not have to read what you have written on the subject.

If you have been following our proceedings, you may have noted that I was considerably moved by the testimony of Ms. Thérèse McCuaig, who recounted the circumstances surrounding another of these odious, heinous crimes. It was the worst crime committed by the worst of offenders.

As a member of Parliament, we often visit seniors residences. I always tell them—and they seem to appreciate this—that I am discovering, as I grow older, that there is one faculty that does not erode over time, and it is a person's sensitivity. The proper balance involves not only reason, but also a form of sensitivity. Indeed, I was very moved by her testimony.

I was wondering if I should change my view, but the representations made by the Canadian Bar Association convinced me. There is a very clear response that could be given to Ms. McCuaig. I re-read subsection 745.63(6) of the Criminal Code, which sets the timeframe and answers one of the arguments that also greatly impressed us, which was that victims could be invited to attend proceedings every two years. That subsection reads as follows:

> (6) If the applicant's number of years of imprisonment without eligibility for parole is not reduced, the jury may
>
> (a) set a time, not earlier than two years after the date of the determination or conclusion under subsection (4), at or after which another application may be made by the applicant under subsection 745.6(1); or
>
> (b) decide that the applicant may not make another application under that subsection.

There is no doubt in my mind… and I, too, have argued many a case in front of a jury. I know of no jury that would have arrived at a similar decision in the case involving the heinous crime that Ms. McCuaig described. No jury would have agreed that he be present.

I fully agree with what you say. If the Minister is claiming that the Canadian public wants this law to be changed, it is important that he realize that we are talking about a decision made by 12 citizens that must be unanimous. How could anyone think that there would not be at least some members of that jury who could be considered representative of the Canadian population? I take comfort in the idea that this law was developed with great care—"carefully designed", as the Supreme Court said, with a view to attaining the intended objective.

I wanted to say that we were not insensitive—quite the contrary—to the testimony given by victims who appeared before us. I sympathize, within the full etymological meaning of the word "sympathy", which means to "suffer with".

● (1700)

[*English*]

Prof. Allan Manson: May I respond, Mr. Ménard? I agree completely that we should be sympathetic and respectful to the loss of victims. What I'm saying is that the loss of victims is not the issue here.

With respect to your remark about juries, not only can the juries reject the application and set the time for the next hearing, but they can also say there will be no hearing. They can say, “This person cannot come back,” and Canadian juries have done that. When they've looked at dreadful cases, they've said, “We reject it, and you're not coming back.” These are members of the community where the offence took place.

The Chair: Thank you.

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

Mr. Joe Comartin: Thank you, Mr. Chair.

Thank you both, gentlemen, for being here.

I have a series of questions for data that I would like to have that the minister and his officials didn't have. I think, Mr. Head, it's the primary reason why we asked you to come, because we were told that StatsCan's *Juristat* didn't have this information, that it would be repositoried with you. So I'm just going to ask these.

There was a study in 1999 that showed the average age of incarceration for those found guilty of first-degree murder and not eligible for parole, up to the 25 years...they in fact stayed in to 28.5 years. From speaking earlier to Mr. Manson, I understand that this figure may in fact be higher now. Do you know that?

Mr. Don Head: Yes, we know that most offenders who receive this kind of sentence usually come into the system at around the age of 20 or 21. About 40% come in between the ages of 20 and 39 and they go out at their first release around the age of 44, 45, 46. So they're serving anywhere from 21 to 23, 24 years of a sentence for indeterminate sentences.

Mr. Joe Comartin: I want to be clear on this, because that's contradicting the evidence we already have. You're saying that the time in custody is shorter than it was in 1999 for the average person?

Mr. Don Head: I'd have to go back to see exactly the framing for the 1999 study, whether that was just those who were serving an indeterminate sentence or just the 745 cases. The information that we've got is for all indeterminate offenders, so everybody. The majority, of course, are murder one and murder two.

Mr. Joe Comartin: So that would include the murder two cases who would have perhaps been given no eligibility for parole until 17 years?

Mr. Don Head: That's right.

Mr. Joe Comartin: So they would have been eligible for parole at 17.

Mr. Don Head: Yes.

Mr. Joe Comartin: So you don't have the other figure for just those who are subject to the faint hope clause on the 25-year eligibility.

Mr. Don Head: No, we'd have to go back and do an individual extraction of data, and we just didn't have time to do that when we got the questions posed to us.

Mr. Joe Comartin: Do you have any data as to how many are successful on their first application?

Mr. Don Head: I can give you how many have been successful. Again, it would have required a manual extraction of data as to whether it was first application or second application.

We know that since 1987 there have been 174, 175 cases that have gone forward, and the reductions that have been granted have been in the order of 144. Of those, 134 have been granted parole by the National Parole Board.

Mr. Joe Comartin: You can't tell us how many on the first application, though?

Mr. Don Head: No. We tried to go back to see if we could come up with that number as quickly as possible, but it requires us to go back into a file review of every one of the cases to see whether there was one or two applications. There was no simple data collection process for us to just push a button and do that, but we tried to do it and we couldn't come up with a quick system.

Mr. Joe Comartin: I'm assuming you're not going to be able to answer this next one, but I'm going to pose it anyway because I think before we vote on this we should have this information. Can you tell us how many would have applied a second time, how many a third, and if there were any more than three applications?

Mr. Don Head: No, that's the problem. We couldn't get that data without doing a full review of the total number of cases that made application. If we had another week or two to do this, we could do a manual pulling of the files, but we couldn't get it in time for this meeting.

● (1705)

Mr. Joe Comartin: Well, at the rate this meeting is going, you may have that time. We'll see what the fight is like when we go to adjourn today. But if we do have that, Mr. Head, I would like that and as many of the answers to these questions as you can get us. I'm pushing hard to put the meeting over final vote on this until a week from Monday. We're not here next week.

You heard Professor Manson's estimation. His analysis is that only 19% apply, and these again are the eligibility only after 25 years in custody. It's somewhere less than 20%. Do you have any reason to agree or disagree with that analysis?

Mr. Don Head: Just to give you an example, 174 cases have been in front of the courts since 1987. As of today, there are 1,023 cases that are eligible to apply for judicial review. Those are individuals who have served at least 15 years. If I were to break that down even further to those who have not passed their day parole eligibility date, which is three years prior to the full parole date, I have about 236 offenders who were in that situation back in August anyway. But as of today—well, actually a couple of weeks ago—1,023 individuals are eligible to apply for judicial review, and they've already served 15 years past their arrest date.

Prof. Allan Manson: That's 18%.

Mr. Joe Comartin: Your math is better than mine, Professor Manson. I would have had to do it manually.

Are those just the ones who have been sentenced to 25 years?

Mr. Don Head: No, that's everybody. It's 15 to 25.

Mr. Joe Comartin: On the question of the victims presenting statements, whether writing them or actually attending at the hearings, do you keep any data on that?

Mr. Don Head: At the courts, no.

Mr. Joe Comartin: Do you know of anybody who does keep data on that?

Mr. Don Head: I assume they would show up as a victim impact statement at the time of the hearings, so it would be with the courts. Our role at the court is just to provide factual information in terms of the offender's history and participation during his time in our custody, so we don't keep track of any of the administrative processes in the court. We just present our reports, then wait for the outcome, and then respond to that accordingly.

The Chair: Thank you.

We'll move on to Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you, Mr. Chair, and thank you to both witnesses for your attendance here this afternoon.

Professor Manson, I'm confused by your comments regarding the 1990 Supreme Court decision in the Luxton case.

Before I talk about that case specifically, you no doubt are aware that the government has introduced multiple bills this session regarding criminal law amendments that are dealing with ending the two-for-one allowance for pre-trial custody and minimum mandatory sentences for drug dealers. You're familiar with all those or most of them. Would I be safe to assume you would be of the opinion that each and every one of those bills is constitutionally suspect?

Prof. Allan Manson: No. I mean, I think some of them may be bad policy, but being bad policy isn't the same thing as constitutionally suspect. Parliament is responsible for policy. The charter provides minimum standards of constitutionality, so whether I agree or disagree with the policy doesn't make it constitutionally suspect.

If you gave me a specific example, I might—if I had a chance to think about it—give you an opinion, but I wouldn't agree with that.

Mr. Brent Rathgeber: Well, we'll go directly to the bill under consideration.

The Supreme Court said that life sentences with no eligibility for parole for 25 years were constitutional.

Prof. Allan Manson: Yes.

Mr. Brent Rathgeber: But you believe that taking away the possibility to expedite that period of parole eligibility somehow constitutes cruel and unusual punishment?

Prof. Allan Manson: Number one, that is arguable, but my point is that if you look at the actual paragraph—and I quoted it in my brief—Chief Justice Lamer immediately says, “I reiterate that even in the case of first degree murder, Parliament has been sensitive to the particular circumstances of each offender”, and he cites this process. So you take that out of the decision-making matrix and you've got a whole new issue. He's saying he accepts the constitutionality of the 25-year minimum and in doing so he recognizes what Parliament has structured, including the 15-year review. If you take the 15-year review...it's opened everything up.

● (1710)

Mr. Brent Rathgeber: But conceptually—and I've read the decision—if a 25-year period of parole ineligibility is constitutional, it's counterintuitive to suggest that taking away the right to reduce it is cruel and unusual punishment.

Prof. Allan Manson: No, because you see, our Supreme Court has said time and time again that sentencing is an individualized process, and section 12—cruel and unusual—looks at the individual, either the offender or a reasonable hypothetical, and compares culpability with that person's circumstances. It is individual.

So when you've got a process like the one you have now, which includes this safety valve for the 15% who can show a change of circumstances in relation to culpability and therefore essentially be resentenced by a 12-person jury, the Supreme Court says “I buy that system; it's okay.”

If you take away the safety valve, it's a different system. So you're completely wrong when you say it's counterintuitive.

Mr. Brent Rathgeber: Well, I don't know if I'm wrong.

Prof. Allan Manson: Your logic is wrong. Your argument is up to you, but your logic is wrong.

Mr. Brent Rathgeber: We'll have to disagree on that point.

I know you sat as a district court judge in the Yukon at one point in your career. With respect to the 15-year parole eligibility, do you believe—

Prof. Allan Manson: I was deputy territorial court judge for a year.

Mr. Brent Rathgeber: —that the public differentiates between a life sentence and a life sentence without parole for 25 years, or possibly 15 years? It's my suspicion that the non-legal population believes that the penalty for first-degree murder in this country is 25 years.

Prof. Allan Manson: You could be right. I think that's unfortunate. I'm constantly trying to remind the media that we have a mandatory penalty of life. There are differences with respect to parole eligibility, but the person sentenced for murder is supervised for life.

Mr. Brent Rathgeber: I understand that, but it's my suspicion that the general population doesn't get that. You've already agreed that it's quite possible.

Prof. Allan Manson: It's quite possible, and I think it's unfortunate that we don't do a better job of informing them.

Mr. Brent Rathgeber: If the population thinks that the penalty for first-degree murder is 25 years, wouldn't you agree that they're going to be outraged if they learn that the penalty is only 15 years?

Prof. Allan Manson: No. If the public suffers from a misconception, then we ought to correct the misconception. We shouldn't be pandering to it. This legislation panders to a number of misconceptions.

Mr. Brent Rathgeber: This has been the law since 1976.

Prof. Allan Manson: And I'm suggesting that we maintain it. This bill wants to do away with it.

Mr. Brent Rathgeber: Yes, but in 33 years the legal profession, which you're part of and which I was formerly part of, Parliament, the media—we've all been unsuccessful in educating the public about what a life sentence really means.

Prof. Allan Manson: Maybe, but I don't know that. You said you suspected it. Maybe we have to do a better job. If we've done a bad job of educating the public, surely the answer is do a better job, not to fiddle with the nuts and bolts of the sentencing regime for our most serious crime.

Mr. Brent Rathgeber: I'm not going to ask you to speculate on the constitutionality of any of the other pieces of legislation that might be unfair, but do you agree with any of Minister Nicholson's safe streets and safe communities agenda?

Prof. Allan Manson: I would have to look through it in detail before I could comment.

Mr. Brent Rathgeber: How about two for one for pretrial?

Prof. Allan Manson: I appeared in front of the Senate when the Senate committee amended that.

Mr. Brent Rathgeber: So you're opposed to it.

Prof. Allan Manson: Yes, and as I point out in my brief, there's going to be much more delay in the criminal justice system if you add those layers on. To suggest that this has been done to reduce delay is unfortunate.

● (1715)

Mr. Brent Rathgeber: So I'd be safe in saying that you don't generally support the government's law and order agenda.

Prof. Allan Manson: You'd have to give me an example, but I think criminal law policy should be determined by Parliament and based on evidence, experience, reason, and judgment—not on ideology. These bills represent what criminologists call “penal populism”. It's a way of pandering to an electorate by creating fear, and I think that's unfortunate and unbecoming of this body.

Mr. Brent Rathgeber: Thank you.

The Chair: I think we're at the time the bells will start ringing. Perhaps I could get the will of the committee. Is there interest in coming back after our votes?

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chairman, because of the tributes to Mr. LeBlanc, the vote will be somewhat delayed. We have been told it will be at approximately 5:40 p.m. So, we are able to continue a few minutes longer.

[*English*]

The Chair: I wasn't aware that the vote was pushed back. Thank you for that clarification.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Mr. Head, when the minister and officials were before the committee, we asked about the percentage of reoffence among the people who had been released. I thought it was kind of astonishing that the figures they gave suggested that the recidivism rate was much lower than the prison population in general. That would lead to the question of why, as a committee or as a government, we would have as a priority maintaining in custody not the most dangerous offenders, because of course almost everyone gets out, and the most dangerous ones are the ones who will reoffend.

Mr. Don Head: I think what you see is the impact of individuals who have stayed in an incarceration setting for a much longer period than the general population. Once they come out, it seems that they're much more amenable to the supervision conditions placed on them. There's a huge readjustment. They're trying to get on with their lives. We do see with these individuals, particularly those who have been released, that they're not actively involved in committing other offences. They do get revoked for non-offence activity, such as not following their conditions, but not at any greater rate than other offenders. In terms of involvement in other criminal offences, the rate is lower. But we're talking about a very small population here as well.

Hon. Larry Bagnell: Thank you.

Mr. Manson, I know you didn't finish what you were going to say. I'll give the rest of my time to you to finish what you wanted to say.

Prof. Allan Manson: No, I've covered all the points I wanted to cover, other than some specific arguments. I'd rather listen to questions and respond to them.

Hon. Larry Bagnell: In the case of cruel and unusual punishment—I think the witness last time talked about a woman who shouldn't have been there in the first place—by putting in this law that says that someone would never get out before 25 years, might a judge be forced to say, "Under the circumstances of this murder, that would be cruel and unusual punishment, and I can't now convict her, although I would if I knew that there was a chance after 15 years"?

Prof. Allan Manson: In the criminal process there's a distinction between the adjudication of guilt and the sentencing stage. In murder cases, other than for second-degree murder in the 10- to 25-year period, the sentence is mandatory. A judge would have to make a constitutional ruling on part of the regime in order to avoid the mandatory nature of the regime.

● (1720)

Mr. Brian Murphy: You were pretty quick to jump on Mr. Rathgeber about his logic. Let me use the word "tautology" on you. You seem to know logic.

You said that the Supreme Court of Canada accepted 25 years because of the faint hope clause—

Prof. Allan Manson: I didn't say that. I only took that into account.

Mr. Brian Murphy: —because it allowed the "out", if you like, based on what Parliament decided. This is a new Parliament. It's a new day. If it were to decide that 25 years was the period before there was eligibility, is it not the case that the Supreme Court of Canada would respect that as a policy decision?

Prof. Allan Manson: No. The Supreme Court....

Mr. Brian Murphy: Your argument is that they would go back to the finding of a previous Parliament. That was your argument.

Prof. Allan Manson: No. My argument was that they would have to look at the purpose and effect of the sentence to determine gross disproportionality, which is the test for cruel and unusual punishment. They would do it afresh. They weren't being deferential to Parliament. They were saying that Parliament struck the right balance. That's not being deferential. That's agreeing that in terms of a constitutional minimum, Parliament, in 1976, struck the right balance. They would look at it afresh. So this is hardly tautologous.

The Chair: We'll go to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Manson, are you the A. Manson who wrote, with P. Healy and G. Trotter, *Sentencing and Penal Policy in Canada*?

Prof. Allan Manson: Yes.

Mr. Marc Lemay: You wrote in 2000.

Prof. Allan Manson: No, that is the second edition—the 2008 edition.

Mr. Marc Lemay: Fine. I am going to arrange to obtain a copy.

[*English*]

Prof. Allan Manson: The publisher is Emond Montgomery. They'd be happy to fill your request.

[*Translation*]

Mr. Marc Lemay: Excellent.

Mr. Head, how many years have you been Commissioner?

[*English*]

Mr. Don Head: Since June 2008.

[*Translation*]

Mr. Marc Lemay: Do you have access to statistics?

[*English*]

Mr. Don Head: Yes.

[*Translation*]

Mr. Marc Lemay: Since 1996 or prior to that, have individuals been released based on the process laid out in section 745, and so on? Have the individuals who were released committed other murders?

[*English*]

Mr. Don Head: One individual has committed an offence. We're still going back to find out what that was. The initial indication to me before I came to the committee was that it was not murder, but I need to see the file to confirm that. So I can't say definitely, but the initial information is that it was not a murder offence.

[*Translation*]

Mr. Marc Lemay: Could you get that information to us quickly—say, within a week?

[*English*]

Mr. Don Head: Yes.

[*Translation*]

Mr. Marc Lemay: I have a question for you, Mr. Head.

I invite my colleagues who have not yet done so to read the brief submitted by the Canadian Bar Association. It says that this provision provides an incentive to inmates serving a life sentence to behave well and get involved in rehabilitation programs. It also improves the safety of guards and other Correctional Service employees.

Do you agree?

[*English*]

Mr. Don Head: To definitively say that this is the sole factor, I can't agree with that. Is it a contributing factor? That's quite possible.

[*Translation*]

Mr. Marc Lemay: Could you repeat that, please?

[*English*]

Mr. Don Head: If you're asking the question, is this factor alone the one that leads to security, the answer is no. Is it a contributing factor? It's possible.

● (1725)

[*Translation*]

Mr. Marc Lemay: Do you believe that someone who has lost all hope could represent a danger in detention? I am talking about someone in custody, and they throw away the key.

[*English*]

Mr. Don Head: It's a hypothetical question, one that I'm not sure I can answer. I think you would have to pose that question to the individuals who face that situation.

I can give you situations where the level of danger for somebody who has a two-year sentence is higher at that point.

[*Translation*]

Mr. Marc Lemay: Based on your experience, would you say that someone in the current system, which is a very lengthy one, could lie, double-cross the prison system and the commissioners and basically make up a story without anyone realizing it? If that were so, someone might be released who should never have been let out.

[*English*]

Mr. Don Head: Have I seen people who have done that? The answer is yes. Have I seen others who have been sincere? The answer is yes.

[*Translation*]

Mr. Marc Lemay: The entire system is designed so that the individual appears before a jury in the community where the crime was committed. Is the system working at this time?

[*English*]

Mr. Don Head: The statistics suggest, to some extent, that it works and that there are certain safeguards.

The bigger question is, why don't more offenders in this situation take advantage of it?

The Chair: We're out of time. That's five minutes. Monsieur Lemay, you've gone over five minutes.

Before we adjourn, I need to have some direction from the committee. Mr. Comartin has come up with a request for one more witness on Bill C-36, whom he wants to have come—

Mr. Joe Comartin: A point of order. I don't want Mr. Head to leave. Given that we're obviously not going to get to this until the week following next week, I want to confirm with him that he will try to get me as much of that information as he can in that period of time and provide it to the committee.

The Chair: Yes, understood, and Mr. Lemay also had some questions for which he wanted responses.

So, Mr. Head, if you could communicate that information to the clerk—

Mr. Don Head: That's what we're undertaking, sir. Yes.

The Chair: That would be fine, and we'll circulate it from there.

I just need some direction from the committee. Do you want that witness to come, or are we moving directly into clause-by-clause?

The witness is someone by the name of Richard Sauvé.

Mr. Joe Comartin: He's one of the people who has been through it successfully.

The Chair: We also have the minister coming on the 16th on Bill C-52, and my guess is it's going to take some time. We have at least four, if not five, amendments, government amendments on Bill C-36. So for me to add him, I'm going to need specific direction from the committee.

Hon. Marlene Jennings: I would like to hear from someone who's been through this process, and from what Mr. Comartin tells us—

The Chair: Okay, so you do. Mr. Comartin obviously does.

Hon. Marlene Jennings: —this witness that he suggests we have....

Is he available on the 16th?

The Chair: If the witness is available, given the fact that a majority on the committee want to hear the witness, we will have.... I'm discerning a consensus here; not a consensus....

Okay, why don't I just call for a vote? How many are in favour of hearing one additional witness on November 16?

An hon. member: Are we going to get to clause-by-clause on the 16th?

The Chair: I have no idea.

An hon. member: Well, it kind of matters.

Mr. Rob Moore: We would like to move to clause-by-clause on the 16th. We had a discussion about moving to clause-by-clause today. We're prepared to have clause-by-clause today, and now I see this being dragged out. We keep bringing out new witnesses on language.

The Chair: Mr. Comartin, the majority want to bring in your witness, but please, in the future—I'm not lecturing you—for my benefit, when we ask for a list of witnesses.... That probably happened about a month ago, and now at the last minute, we add another witness; it does throw some difficulty into the process.

● (1730)

Mr. Brian Murphy: Mr. Chairman, a point of information.

Lead us here; we're all amenable. You're going to have witnesses for what times, and then we're going to get into clause-by-clause by what time? On the 16th, that is.

The Chair: We've just received this request from Mr. Comartin, so the clerk and I haven't decided.

Mr. Brian Murphy: What do you think is a good idea? You're the chair.

The Chair: You shouldn't ask me that question. You may want to ask Mr. Moore what a good idea is.

Mr. Brian Murphy: We have witnesses for an hour. Witnesses for an hour and clause-by-clause for an hour. Can we do that?

The Chair: No, because we have the minister coming on Bill C-52 on the 16th of November. That's the difficulty here. Had we known—

Hon. Marlene Jennings: May I propose that we have the minister—I'm assuming we have him for an hour.

The Chair: That's correct.

Hon. Marlene Jennings: We then move to the witness Mr. Comartin suggested and this committee voted to hear from. If there's time, then we move to clause-by-clause on Bill C-36. If not, it becomes the first order of business on Wednesday, the 18th.

The Chair: All right. We will hear the witness on the 16th. We will schedule clause-by-clause for the 16th as well and we'll see where it goes at that point.

The meeting is adjourned.

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