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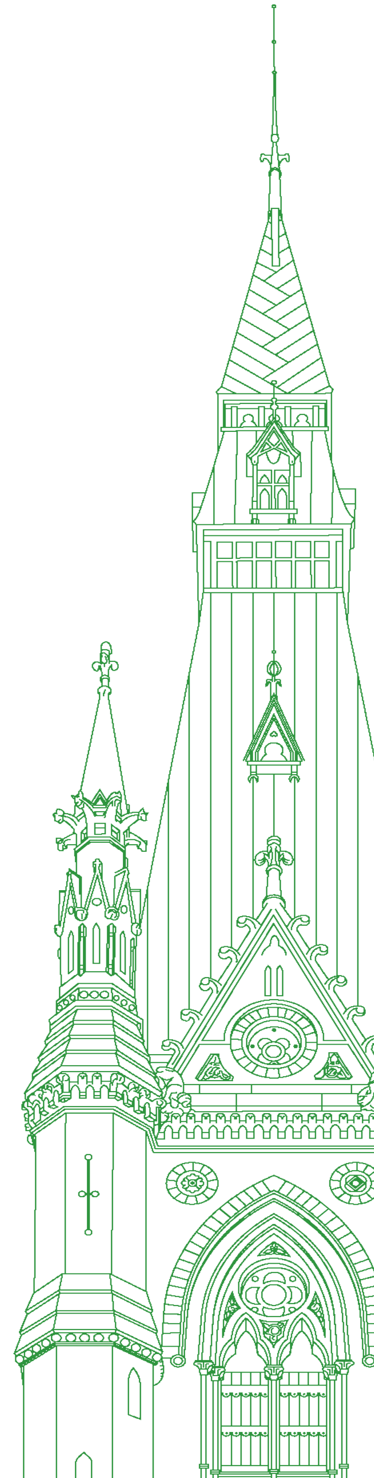

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● (1105)

[*English*]

The Chair (James Maloney (Etobicoke—Lakeshore, Lib.)): Good morning, everybody. I hope everybody is refreshed, recharged and ready to go for another week in Ottawa.

I would like to call this meeting to order.

Welcome to meeting number 32 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of March 24, 2026, the committee will begin its study of Bill C-235, an act to amend the Criminal Code, increasing parole ineligibility.

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

I would like to confirm that sound tests were made successfully.

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. For those participating by video conference, click on the microphone icon to activate your mic, and please mute yourself when you are not speaking.

For those on Zoom, at the bottom of your screen, you can choose from floor, English or French. For those in the room, you can use the earpiece and select the desired channel.

As a reminder, all comments should be addressed through the chair. For the members in the room, if you wish to speak, please raise your hand. For the members on Zoom, please use the “raise hand” function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

Appearing for the first hour today, from 11 a.m. to noon, we have the sponsor of Bill C-235, the MP for Cowichan—Malahat—Langford, Mr. Jeff Kibble.

Welcome, and thank you for joining us today.

The floor is yours for up to five minutes for an opening statement, and then we'll go to questions.

Jeff Kibble (Cowichan—Malahat—Langford, CPC): Thank you, Mr. Chair.

I'd like to thank the committee for allowing me to be here today.

I want to begin by acknowledging someone who will appear before this committee on Wednesday: Ms. Landolt, Kimberly Proctor's aunt. She's agreed to testify because she believes Parliament can do better for families like hers. I ask every member of this committee to hold that in mind as I speak today.

Bill C-235 has been tabled in Parliament four times before. In 2019, it passed committee and was set to return to the House for third reading. Then Parliament dissolved, progress died and families kept walking into parole hearing rooms they should never have had to enter. I'm here today to make sure that this does not continue.

Let me be precise about what this bill does and does not do. It does not create mandatory minimums, it does not impose new sentences and it is not retroactive. It does give a judge tools—a targeted tool applicable only when abduction, sexual assault and murder were committed against the same victim in the same event. In those cases alone a judge may, after hearing jury input, extend parole ineligibility from 25 years up to a maximum of 40 years. There's full judicial discretion every time.

That 40-year ceiling was not chosen arbitrarily. It reflects the consecutive maximum ineligibility periods for all three charges combined. The legal framework is sound. The bill was modelled after Bill C-48, the multiple murders act, which has already survived a charter challenge.

There is a further point that bears directly on that analysis: When a victim was abducted, sexually assaulted and murdered, prosecutors routinely stay the abduction and sexual assault charges and proceed only on murder charges. Under the current law, conviction in all three offences yields the same 25-year ineligibility on the murder alone, so there is no incentive to charge all three. Offenders are, effectively, sentenced only for murder, even when they committed two additional serious crimes. Bill C-235 corrects this. The extended ineligibility is not cruel and unusual punishment; it is proportionate for the three distinct crimes committed in a single incident.

I have carefully reviewed the proposed amendments put forward by the party opposite. With respect, I do not believe any of them strengthen the bill. Some are legally redundant. The law already provides what they seek to codify. Some risk making the process more complicated than it needs to be, and some, I would suggest, come close to instructing judges on how to do their jobs, which is precisely the kind of judicial discretion this bill is designed to protect. I'm happy to speak to any of them in detail through questions from the committee.

The heinous criminals that this bill targets are never going to be released. We have never found such a case: The Parole Board has been consistent. These are dangerous offenders and psychopaths, but they are permitted to apply for parole every two years, beginning at year 23. They use those hearings not to seek freedom but to terrorize the victims and their families, to recite in gruesome detail what they did, to force families back into that room and crime scene over and over. This bill would eliminate an average of eight of those hearings—eight times a family does not walk back in, eight times a sadistic offender cannot use the process as a weapon against the people he destroyed.

Fifteen years ago, 18-year-old Kimberly Proctor was abducted, tortured, sexually assaulted and murdered by her classmates on Vancouver Island. Her killers were charged as adults but, unusually, sentenced under the youth framework, with no chance of parole for 10 years. That outcome falls outside the sentencing scope of this bill, but the parole process that follows, what it costs a family to live through, is exactly what this bill addresses. Her family has already faced multiple parole hearings. They will face more, every two years for the rest of their lives.

Ms. Landolt will tell this committee on Wednesday what that costs a family. I will not speak over her testimony.

We know the names of the men and women who did these terrible things. Their names are infamous, notorious, and repeated in headlines and courtrooms for decades. Their victims' names are not. These are the names we forget, the names that history has not given the same weight as the monsters who took them: Tori, Holly, Tammy, Leslie, Kristen, Christine, Colleen, Daryn, Sandra, Ada, Simon, Judy, Raymond, Sigrun, Terri, Louise, Sereena, Mona, Andrea, Brenda, Georgina, Marnie and, of course, Kimberly. Their families are still living with what was done to them, and they are still walking into parole hearing rooms they should never have to enter.

● (1110)

Together, let's pass Bill C-235. On Wednesday Ms. Landolt will tell you in her own words what that protection means to a family.

Thank you, Mr. Chair.

The Chair: Thank you very much, Mr. Kibble.

We'll start the six-minute round with Mr. Brock.

Larry Brock (Brantford—Brant South—Six Nations, CPC): Thank you, Chair.

Thank you, Mr. Kibble, for your advocacy and showing the respect where respect is due to all the victims you've named as a result of their tragic deaths by these sadistic monsters.

I especially prefer and support the title that you've created for this act.

There is one area where I require some clarification. We, as parliamentarians, should always strive to be very clear when we're amending the Criminal Code.

In your bill, proposed section 2 talks about a conviction involving the same victim and the same event. I understand the rationale behind that verbiage "or series of events", however, the phrase "series of events" is not defined.

Is there a temporal element to "series of events"? Hypothetically, can this monster decide to sexually assault a victim at one point in time, then months or years later abduct that victim, then months or years later kill that victim? Does this bill contemplate that scenario or not?

Jeff Kibble: The intent of the bill is that when those crimes are connected in the same series of events, not separated by years or separated at all. I'm certainly open to removing that word. In the case of Kimberly Proctor, it took a period of four or five days, but the events were ongoing and interconnected, so it's events that are interconnected.

I am certainly open to removing that word so that there would be no misinterpretation such as that you've expressed.

Larry Brock: Thank you.

I cede my time.

The Chair: Next is Mr. Lawton.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Thank you, Mr. Kibble, for your tremendous advocacy for victims.

I think I speak for all of my Conservative colleagues when I say that we believe victims should be front and centre when we talk about criminal justice reform. It's victims who have been failed by the last 10 years of changes the Liberal government has made to the bail system, the sentencing system and the justice system.

I saw, in my time in media, exactly what you're trying to counter here, which is families, survivors, families of victims getting dragged to these parole hearings. There is a glee in some of the offenders because they know they're not going to get out; they know they are never going to get parole, or at least not in this time frame, but they enjoy the power they still hold over families.

For anyone who thinks there is a problem with your bill, for anyone who wants to make a claim that this is not respecting the rights of offenders, can you please explain very clearly exactly which types of offenders are affected by this? Who is triggering this provision you're trying to change?

Jeff Kibble: It is Paul Bernardo and those types of offenders.

I will add further—and you said they get glee—and pardon the term, but it's noted and has been studied and documented that these types of offenders get off on retraumatizing the victims' families. In the Kimberly Proctor case it's even documented that they have shared their crimes in such heinous detail with cellmates that this caused cellmates to have to seek help and be moved.

While they know they're never going to be getting out, they actually get off on retraumatizing the families by having a free platform at the parole hearing and going into gruesome detail, as I said in my statement. This is completely wrong and unjust for the families of those I mentioned.

Andrew Lawton: You did, in your opening statement, mention the names of a number of victims. One of them was Tori, and I assume you were referring to Tori Stafford.

This was a case that hits very close to home. I remember when the search was on for Tori, being in a nearby area.

We have seen Terri-Lynne McClintic and Michael Rafferty again try to avail themselves of all these tools and tricks that have been given to them in the justice system. Terri-Lynne McClintic will be eligible for parole in 2031, so in just three years she will be, without serious change, able to do exactly what you are trying to prevent, which is to start terrorizing and traumatizing families through the parole process.

Do I understand that correctly?

● (1115)

Jeff Kibble: That is correct, and if we go on the past record and the Parole Board's performance, these types of people such as Olson, Bernardo, McClintic, Rafferty and others will not ever get out, but they will, as I said, get off on the gruesome details because they know that they can retraumatize, in this case from a distance. They did it to their victims, and they're doing it to the families.

Andrew Lawton: I know that Tori Stafford's father, Rodney Stafford, has been very outspoken, not just in southwestern Ontario but nationally about how, in his words, he's been “angry, revictimized and let down by Canada's justice system”.

What would it mean if Parliament were to ignore the cries from Rodney Stafford and other families who have gone through this horror?

Jeff Kibble: As I said in my statement, they would feel that they were being abandoned and that Parliament had let them down.

This is the fourth time for this bill. As I said, it was set to pass committee. I hope that it passes committee so that people like Rodney do not have to go through that again and can be spared that.

The Chair: Thank you.

Now we go over to you, Ms. Gladu.

Marilyn Gladu (Sarnia—Lambton—Bkejwanong, Lib.): Thank you, Chair.

Thank you, Mr. Kibble, for being here.

I grew up in St. Catharines. I lived a block and a half from where Kristen French lived. I went to school with her brother. I walked the same road that Kristen and Leslie were taken from. To watch the torment that those parents have been put through with the parole hearings is awful, so I want to thank you for bringing this bill forward.

Now, I want to talk about a few items within the bill. The first one is judicial discretion. It leaves the ultimate decision to the sentencing judge.

Why did you think it was important to allow that?

Jeff Kibble: After the consultations that I did, I felt that we didn't want to take away from our judges who do excellent work. They're the ones who delve into the detail of the cases and get to know the families, the perpetrators and ultimately the criminals. They're best suited, with advice from the juries, to make those decisions. It keeps it out of politics, and it keeps it solely in their hands. It keeps it out of the legislation, and we trust their discretion for the sentencing, whatever it may be, whether it's a period of ineligibility of four years or 10 years. This is designed to trust their discretion.

I appreciate your emotion. I just would like to add that, while there are fortunately not many of these cases in Canada, there are still too many, and you can see the impact already in our first two witnesses. They have stories that may not have affected them directly as family members, but the impact is so heinous.

You're showing incredible emotion because it was from your area; you're aware of it, so imagine having to hear all of those details as a family member over and over again. How devastating that is.

Marilyn Gladu: Thank you.

Now I want to talk a little bit about the amendments, because you mentioned that you weren't in favour of most of them.

There's one, for example, that is a coming into force of the legislation that would mean it that applies to everything in the future, but it wouldn't open the door for numerous appeals related to situations from the past.

Another one just says whatever we do in the criminal justice system, there's a parallel in the national defence system, and we should keep the same there.

Can you comment on why you don't support those types of amendments?

Jeff Kibble: Absolutely, and I appreciate your question.

I'll speak to the first one, prospectivity. The amendment is legally redundant. Charter section 11(i) already prohibits retroactive punishment.

All new legislation is prospective by default unless it explicitly states otherwise, which this does not, so this would go forward without being retroactive by default; it's already codified in the law. I don't see any value in it as a pure housekeeping measure, and it would have no effect. I certainly don't object to it, but it's just redundant, in my opinion.

As for the National Defence Act, under the National Defence Act, courts martial don't try abduction and murders that are committed in Canada, and the core offences that Bill C-235 targets are those.

Military jurisdiction is limited to offences that are committed abroad. It would certainly be worth considering a potential different bill that would address that, but it would be an amendment to the National Defence Act.

As for sexual assault, that presently remains within the military. Victims have the choice between either the military or the civilian justice system for now, but recent legislative reform will potentially transfer that jurisdiction to the civilian justice system anyway.

The combination of those offences that Bill C-235, my bill, addresses—abduction, sexual assault and murder—would therefore only potentially apply for overseas cases and, as I said, that would be worthy of being looked at potentially in a separate bill and not conflating the two.

● (1120)

Marilyn Gladu: Another amendment speaks to having an ability to appeal a decision. Typically, in the court system, you have a mechanism to appeal. There isn't one here, so one of the amendments speaks to adding that.

Why do you oppose this?

Jeff Kibble: That's a good question.

The first one was the right of appeal for an offender where a judge would order...extended beyond the 25 years. Extended parole eligibility under Bill C-235 already results from deliberate judicial discretion informed by a jury input. Adding an offender appeal right layers more process onto sentences designed for the most aggravated murder cases. It would undermine the finality and potentially expose victims' families to prolonged litigation, which is precisely what this bill is aiming to protect them from.

The Criminal Code already provides for a robust appellate review of sentencing. This amendment, I believe, does not fill that gap. Rather, it would create one.

Marilyn Gladu: Thank you.

One of the other amendments requires the judge to give the reasons for why they are extending a sentence beyond 25 years. This would be very helpful to prevent appeals that are not based on some additional information.

Why do you oppose having a judge give reasons for extending a sentence?

Jeff Kibble: Judges already provide reasons for their sentencing, whether it's 25 years, 10 years or 40 years in the most heinous cases. This obligation is established in law. A statutory requirement specifically targeting this provision, in my opinion, would imply a distrust of the judiciary. Parliamentarians and Canadians should trust our judiciary. They already include it. Indeed, they give specific answers that are already required. In my mind, it would add procedural weight, and this is designed to be streamlined.

The Chair: Thanks, Ms. Gladu.

Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

Mr. Kibble, thank you for your bill. Thank you for being here today.

You raise an important issue. My heart goes out to the families of the victims who, in a way, are victims of the hearing process before the Parole Board of Canada. That said, I think that, to some extent, this may be a mandatory or necessary process.

I understand your proposal to increase the time before an offender is eligible for parole. However, beyond simply extending the wait for hearings from 25 years to 40, do you think there are any other measures that could help ease the burden on victims' families?

● (1125)

Jeff Kibble: Thank you for the question.

[*English*]

We looked at various measures. We wanted to keep this very tight and targeted, such that it would provide deterrence—although deterrence is obviously considered very low when it comes to very heinous individuals. People have said things like, “Why do the families have to go to the parole hearings?”, but families feel compelled or obliged to give a voice to their loved ones or the victims who are no longer able to speak.

That's just one example. Other possibilities do not provide the same effectiveness that we can put into this legislation. There are other ways to mitigate it through the parole process. Legally speaking, this would be a very powerful and effective way to do it.

[*Translation*]

Rhéal Éloi Fortin: The Supreme Court of Canada has already ruled on these issues, of course. I'm sure you have read those decisions carefully. One of the ones I'm thinking of is the Bissonnette case in 2022, which notably stated that it was unconstitutional to impose consecutive ineligibility periods.

On the very essence of these decisions, the Supreme Court stated that “Parliament may not prescribe a sentence that negates the objective of rehabilitation in advance, and irreversibly, for all offenders”. That means that rehabilitation is at the heart of our justice system.

First, I would like to know whether you believe in rehabilitation as something possible and desirable, or whether you think rehabilitation is impossible in some cases.

[*English*]

Jeff Kibble: That's a fair question, and, yes, I do believe in rehabilitation. More importantly, I believe that criminals found guilty should have the opportunity for rehabilitation.

In the Bissonnette case, which was struck down, it was for parole ineligibility periods of 50, 75 and even 100 years. It's very different. In this case, as I mentioned in my presentation, it's just a combination of the total. That's how we arrived at 40 years. There is opportunity for rehabilitation.

Furthermore, this was modelled after Bill C-48, protecting Canadians by ending sentence discounts for multiple murder acts, which also extended ineligibility. It did survive a charter challenge. In the scope of the 40 years, it has survived the charter challenge. It is a long period from the 75 and 100 years within the Bissonnette decision. It allows for the possibility of rehabilitation. However unlikely it may be in this case, I do agree that it is a valid requirement for the possibility of rehabilitation.

[*Translation*]

Rhéal Éloi Fortin: If the belief is that rehabilitation is possible, wouldn't it be entirely legitimate and desirable to conduct a reassessment at fixed periods to see whether the convicted offender is benefitting from rehabilitation or whether there are other more appropriate measures than detention?

Wouldn't that seem desirable to you?

Twenty-five years is a long time. In that context, conducting a review every two or five years, as the case may be, would make it possible to assess whether there has been rehabilitation.

Wouldn't that seem like the best way forward?

[*English*]

Jeff Kibble: Indeed, I said, “possibility of rehabilitation”. Regardless, it's not for me to decide what that is. That's what judicial discretion is for. It allows the judges, who know these types of cases and these types of offenders, to be the ones who make those decisions. We should all put our trust in the judiciary to do that.

You said that 25 years is not a long time. It's actually at 23 years when offenders can first apply if they're given that chance every two years. However, these are criminals. These are the ones who have taken away lives and who have lasted for more time. The lives that are lost are for more than 25 years. If you're a family member, that 25 years is not a very long period for grieving.

As you approach the 23-year period—even in advance of that, as you will hear on Wednesday—preparations in advance of a parole hearing are not just something that turn up at the last minute. There are decisions made, letters received and statements are prepared. It consumes a very long period of time.

To summarize, that's not up for us as parliamentarians to decide. That should be with the judiciary.

● (1130)

[*Translation*]

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Mr. Gill, we'll go to you for five minutes.

Amarjeet Gill (Brampton West, CPC): Thank you, Mr. Chair.

Thank you, Mr. Kibble, for introducing this important bill.

As the member of Parliament for Brampton West, every week I'm hearing more and more from victims of violence in my community. Violent crime is on the rise in my community and across the country. Extortionists, murderers and gangsters act without consequences. I know I'm not the only member in this room who regularly hears from constituents concerned about the Liberal crime crisis.

It is now more important than ever to put victims first, because this government has not done so for 11 years. Our job today is to work together to put victims ahead of criminals for a change. That's why Bill C-235 is so important.

Mr. Kibble, do you think we neglect families in the trial process?

Jeff Kibble: I agree with your assessment of crime across Canada. You gave various examples. This bill specifically deals with the most heinous and gruesome criminals. It is focused very much on that. I do agree that victims and families should be put ahead of criminals. I believe very much that this bill does exactly that.

I don't really know what else to say beyond that. That is certainly the goal. I think that it will achieve that. We've also seen that in Bill C-48.

You spoke about the court process protecting families. Though not related to this case, my own daughter's boyfriend was murdered. I went with her to trial every day for a fairly long period. The courts were very sympathetic and supportive, but the process can be particularly challenging for families. I have a small window into what families are dealing with in these types of cases, but I wouldn't begin to imagine what they're going through.

Regardless of the supports there that you receive, the sympathies that you receive from the Crown and defence prosecutors, and the understanding that they give—I'm not knocking them in any way, because they are positive—it still can be particularly tough on those families.

Amarjeet Gill: We know crime of any nature has devastating impacts on families and their loved ones. Is this about everyday cases or is it about the worst of the worst?

Jeff Kibble: The short answer is, it's about the worst of the worst. It's Clifford Olson, Paul Bernardo and so on.

As I said, and I would like to repeat it, fortunately, there are not many of these cases in Canada relative to other crimes, but I think that the impact, as Ms. Gladu showed, is huge for so many people across Canada. This would help bring that support to the families.

Amarjeet Gill: Thank you.

We know the Supreme Court's habit of finding mandatory minimums cruel and unusual in fringe cases. Could you see that applying here?

Jeff Kibble: Could you perhaps define for me what a fringe case is? I am not a lawyer.

I'm thankful that there are not many of these cases, although every one is too many. They would all be unique. I'm not quite sure what you mean by a fringe case.

Amarjeet Gill: I'll move on to my next question then.

The Bissonnette decision basically allows murderers to get discounts on additional murders or on other crimes. Why is it important that murderers face justice for all their crimes?

● (1135)

Jeff Kibble: Under a judge's discretion, I think there are many cases where sentencing should be consecutive. Unfortunately, we've seen in a few other areas this has not been approved in the House. For example, I think consecutive sexual assaults should be consecutive. It has to be a balance between deterrence and justice for victims and families, while also allowing for the possibility, however slight it might be, of rehabilitation.

I believe that Bill C-235, although it may sound harsh, based on the harshness of those cases that we've described, finds and meets that balance.

The Chair: Thank you.

Ms. Begum, you're up for five minutes.

Doly Begum (Scarborough Southwest, Lib.): Thank you very much, Mr. Kibble, for coming in today and introducing this legislation.

I echo the sentiment of Ms. Gladu and many others in regard to how important it is for us to have a strong sentencing regime for offenders. You've named a few, and I just want to say that I really appreciate how respectful you are to some of the victims in the way you highlighted that.

I think it's really important that we pass any legislation with as much scrutiny and care as possible, and allow for it to do justice. That's just an unintentional play on words.

One of the things you talked about, in terms of judicial reasoning.... Actually, before I go into that, I'll speak a little bit about prospective application. You mentioned in your introduction that the prospective application provision is redundant.

If it changes nothing legally, what is the concern with providing additional clarity and certainty directly in the bill?

Jeff Kibble: I appreciate your very good play on words. I also couldn't agree more that any new law needs to be taken seriously and scrutinized, such as we're doing through this process in committee and with our witnesses for the next hour.

I have nothing against putting in an amendment about making it not retroactive. It's simply redundant and potentially risks setting a precedent for some other case or law. I don't think that it is worth putting in. Perhaps our departmental witnesses could better speak to that, but to me, it's already a law. It is not retroactive. Therefore, it would simply be redundant to put it in.

I would keep the legislation cleaner.

Doly Begum: I understand that Parliament regularly includes clarifying provisions in criminal legislation, so I wanted to ask why this bill should be treated any differently.

Jeff Kibble: Why should it be treated any differently from what?

Doly Begum: Why should it be treated differently from any other legislation in terms of clarifying and having something that is put concretely in order? I think it also challenges anything...because I feel this bill is so important in what it aims to do, and I really salute that effort. I hope that we can help make it even stronger. If Parliament can play a role in clarifying some of these provisions and making it better in terms of having this legislation, shouldn't we do that?

Jeff Kibble: Again, I'll state the agreement. It's legally redundant. Charter section 11, provision 11(i) already prohibits retroactive punishment, and all new legislation is prospective by default unless it explicitly states otherwise, which this bill does not. Codifying prospectivity on the face of the bill could invite litigation over the line between clarification and limitation, potentially narrowing the bill's reach in ways Parliament may not have intended.

That said, if the committee views it as a pure housekeeping and an important measure, while it has no substantive effect, I don't have a serious objection to it.

● (1140)

Doly Begum: Thank you for stating that. I have one more question. You said that judges already provide reasons for these decisions. If they already do, what is the harm in making that expectation explicit in the legislation?

Jeff Kibble: That's fair enough. I appreciate your question.

As far as mandatory reasons into a decision are concerned, a judge already provides reasons in the sentencing. It's an obligation that's established in law. A statutory requirement specifically targeting this provision implies distrust of the judiciary, and it may invite formulaic compliance rather than genuine deliberation. It also adds procedural weight to a mechanism deliberately designed to be streamlined and victim-centric.

If the committee finds comfort in making this explicit in the language, it certainly would have to be very carefully drafted to avoid constraining the very judicial system the bill was designed to create. I feel that it is not necessary, and it would certainly be a fair question to pose of our departmental witnesses.

The Chair: Thank you.

Mr. Fortin, it's over to you for two and a half minutes.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Kibble, the statistics I see here tell us that people serving life sentences account for about 10% of parole applicants. Of those 10%, only 27% are granted release. I don't have the exact figures, but that seems rather low to me.

Under the current system, they must serve the 25 years. At the end of the 25 years, the Parole Board of Canada will look at whether they should be released, whether they have been rehabilitated and so on. Twenty-seven per cent of 10% is roughly equal to 2%, if that.

Wouldn't that be enough of a barrier to avoid releasing people who have committed serious crimes?

[*English*]

Jeff Kibble: I'm not here to second-guess what the parole boards do. They're very capable of making decisions.

You said 10% and 27%, but these cases that I'm speaking about are a very small percentage of those. In the research we've done, we were not able to find anyone whom the Parole Board has allowed to be set free in this very tight and narrow scope of crimes.

Again, it is also left to the judge's discretion to come up with the correct sentencing that would determine when a person would be eligible for parole. There may be cases where it would be after only 12 years, and I would respect that judge's decision.

[*Translation*]

Rhéal Éloi Fortin: We completely agree on that, Mr. Kibble. I, too, tend to leave the decisions to the courts. Most of the time, I think we're well served.

Earlier, I asked you whether you believe in rehabilitation, and you answered that you do. We're talking about increasing the time required to be able to apply for parole from 25 years to 40, which would add 15 years behind bars.

Do you have the impression that this will help rehabilitate more offenders?

[*English*]

Jeff Kibble: It's a bit loaded because, as I said, in these cases, we've seen that the parole boards have not found any of them to be suitable for rehabilitation.

Yes, to moving it from 25 to 40 years.

If somebody had committed these crimes all in a row, independently, with different victims over the course of a week, they would get 40 years.

In this case, because it's all the same victim at the same time, the judge stays the abduction. They stay the sexual assault charge. They just prosecute the one, because they're all connected. The perpetrator would be getting 40 years if these were separate cases, but because this is all in one, it's only 25 years.

I'm glad to hear your agreement. We have a solid agreement here that we do trust the court's wisdom, the judiciary with input from the judges, to decide when that opportunity for rehabilitation is. I will leave it to the discretion of the judiciary and then the parole boards to make those decisions.

● (1145)

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Kibble.

[*English*]

The Chair: Mr. Baber, it's over to you, for five minutes.

Roman Baber (York Centre, CPC): Mr. Kibble, welcome to the justice committee.

Thank you for bringing this bill forward.

I did not know that someone related to your family had experienced a personal tragedy. Please accept my deepest condolences on behalf of all of us at this committee, our staff and everyone who helps us work here at least twice a week.

Mr. Kibble, I want to understand the nature of your proposal very clearly. For those who are convicted of an abduction, sexual assault and murder in the same event or in a related event, your bill will allow the court the discretion to increase parole ineligibility from 25 years up to a maximum of 40 years.

Is that correct?

Jeff Kibble: Thank you, Mr. Baber, for your kind words and thoughtfulness. It means a lot, and I appreciate that.

Yes. I will just add that it also requires the same victim and being found guilty of abduction, sexual assault and murder in the same incident, absolutely. Then it would be at a judge's discretion to determine, in the specifics of that case, the length of parole ineligibility. Regardless, there's always a life sentence.

Roman Baber: May I confirm that the reason for the bill is essentially to limit the exposure of victims' families to persons who abducted, assaulted and murdered their loved one from showing up at a parole hearing, and to prevent them from potentially being revictimized again by hearing an account from the convicted murderer? Is that correct?

Jeff Kibble: Absolutely. As I alluded to earlier, for these types of heinous criminals there is little deterrence.

Roman Baber: May I—

Jeff Kibble: If I could finish quickly, the focus is absolutely on the families, which is why my statement focused on the impact that it has on the families. I'm going to a parole hearing in an unrelated case, to support a constituent. I will be able to experience some of the trauma that he's experienced.

You're absolutely right. The focus is on the families, preventing the revictimization caused by bringing the families back to the parole hearing where they're in the same room as this heinous criminal and have to hear in gruesome detail from someone about what they did to their loved one who has no voice anymore. Those heinous criminals, as I stated, get off on sharing those details as gruesomely as they can to impact the families.

Roman Baber: Thank you, MP Kibble.

I want to go through some of the mechanics. As far as I understand, in cases of first-degree murder and high treason, the Criminal Code provides that the offender must serve at least 25 years. For second-degree murder, the period of ineligibility for parole ranges from 10 to 25 years.

If I understand your math here, the maximum of 40 years was determined by looking at the maximum ineligibility for each of these three offences separately, and adding them together to be served consecutively, rather than concurrently.

For murder, it is 25 years without parole. For abduction, it is 10 years. For sexual assault, it is about four and a half years without parole. That's a total of just 39.6 years, hence the 40 years. Is the thinking here to essentially have the parole ineligibility run consecutively for those three heinous offences?

Jeff Kibble: Yes, thank you for putting that together. I appreciate your excellent math at 39.6 years, which we rounded to 40. As I answered earlier, if a criminal had committed those three crimes separately, one day after the other with three separate victims, and they were found guilty in all three, they would be facing that type of time, potentially. Of course, that's up to a judge's discretion.

Second-degree murder and high treason certainly don't apply in this bill.

Roman Baber: I want to confirm in the little time I have left, Mr. Kibble, that this is not about mandatory minimum sentences. It's about parole ineligibility.

There is no concern here that there will be compliance issues with section 12 in terms of cruel and unusual punishment. To add to that, we are dealing with the worst of the worst in society. We're dealing with the Paul Bernardos. We're dealing with the Olsons. That's who we're targeting here. We're targeting the worst of the worst, to protect the families of these victims from being revictimized.

I'll give you the final word.

● (1150)

Jeff Kibble: Thank you. I appreciate that there's little time for my answer. I'll be very concise.

This is not about mandatory minimums. These are people who are getting life sentences. They may never get out. It's just the parole ineligibility period. It has passed the charter challenge, as it is modelled after Bill C-48, and yes, these are the worst of the worst.

Thank you.

The Chair: Thank you, Mr. Baber.

Mr. Housefather, I'll go to you for five minutes.

Anthony Housefather (Mount Royal, Lib.): Thank you very much, Mr. Chair, and thank you very much to Mr. Kibble for bringing forward this bill.

I also want to extend my sympathies to you for the tragedy that your family has suffered. I had not known that either, but I share Mr. Baber's condolences.

I sat on this committee in 2019. I chaired it when James Bezan's Bill S-266 came forward. I supported it then, and I still support it now.

I have two questions.

Mr. Kibble, you seem to be reluctant to support the amendments that various members had suggested. I understand the goal of a cleaner bill, but if the amendments create certainty for other people and certainly don't interfere with the overall objectives of the bill in terms of changing the thrust of it.... The thrust of it is that juries can recommend to judges and that judges can decide on longer parole ineligibility periods.

Do you have an objection based on substantive grounds, or is it just that you don't think they're needed and would rather that the bill be cleaner?

Jeff Kibble: I very much appreciate your kind words.

I offer you much respect, as well, for chairing the committee previously. I know you worked on that bill, so you would have a very solid knowledge. Also, thank you for signalling your support.

Your question refers to amendments. I'm certainly open to amendments. For me, it's very important that procedurally and legally it is done in the correct way, so that's what I would want to support.

I believe that some do interfere with the process, but I would defer to the departmental experts. It would be best to ask them those questions. I'm certainly open to amendments—not amendments that would provide certainty for parliamentarians but, rather, amendments from departmental officials that would provide accuracy, as recommended, and be procedurally correct. I certainly am open to that. If that is what it takes to get certainty for our parliamentarians, I'm certainly open to that.

I've offered my assessment of those based on what I've been able to research, not as a lawyer but as a former naval officer. I certainly will defer and be very open to any potential improvements, corrections or accuracy that departmental witnesses could provide.

Anthony Housefather: That's an excellent answer. Also, thank you for your service. I hadn't realized you were a naval officer; that's very impressive.

I think you're right. We have to ask these questions to officials, and officials can then clarify whether or not those amendments make sense in the context of the bill. I totally agree.

I want to give you one other question.

One of the things our committee did in the period between 2015 and 2019 was an entire study on juries. The jury is an incredibly important part of our system that is often overlooked. Can you talk to us about what your view is on the importance of jurors making recommendations to the judge in this context and the place of juries, as average Canadians, in determining what someone's sentence should be?

Jeff Kibble: That's an excellent question, and I thank you for that.

As someone who sat through a trial that touched my family and as someone who has seen and learned the process of a jury giving a recommendation, I think it's hugely valuable. The jury members generally don't have a legal background, but they're a temperature for the community, and what they provide is very important.

I know that some have said in discussions that it should be only the judge who should do that. I think the jury's input is important. Of course the judge, as you know, has the ability to determine the period of ineligibility, but he takes and considers their input after very detailed instructions to the jury. Having seen that process, I think it's a very valuable process and should certainly continue. I support that fully.

● (1155)

Anthony Housefather: I completely agree.

Thank you, Mr. Chair.

The Chair: Thanks, Mr. Housefather.

We have five minutes left in the first hour. I'm proposing we give two minutes to each party and give Mr. Kibble further opportunity to speak to his bill.

We'll start with Mr. Brock and then go to Ms. Lattanzio and Mr. Fortin. You have two minutes each.

Larry Brock: Thank you, Chair.

Mr. Kibble, you indicated during your opening remarks that this has gone through several iterations over the last few parliaments. You indicated that one had actually passed with government approval but was shuttled because of prorogation. Is the content of that previous bill identical to your bill?

Jeff Kibble: I drafted it a fairly long time ago. There were some minor amendments as it went through the legislators, but they were small and technical. It's nearly identical. It was Bill C-266 in the 42nd, Bill C-296 in the 44th, Bill C-478 in the 41st.

Larry Brock: I appreciate that you're not a lawyer, but I'm going to ask the question nevertheless, because I don't know about any consultations you've had with any constitutional experts or anyone from the DOJ.

This largely dovetails as a response to the Bissonnette decision, that horrible decision from the Supreme Court of Canada that ruled that this particular monster's sentence in the circumstances was contrary to section 12. The Supreme Court of Canada, however, did not rule on whether the imposition of any period of ineligibility exceeding 25 years was unconstitutional, and that's precisely what your bill is attempting to address.

As you indicated, you're not a lawyer, but based on the consultations you've had, how confident are you, sir, that this is going to pass a constitutional test?

Jeff Kibble: I'm fully confident, and thank you for the question.

It is modelled after Bill C-48, which did pass a constitutional challenge. As a result of input from my colleagues and lawyers and people who helped us work on this bill through its previous iterations, I am very confident that it will pass any potential charter challenge.

Larry Brock: Thank you, Mr. Kibble.

The Chair: Go ahead, Ms. Lattanzio.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Kibble, for bringing forward your private member's bill. I think there's a broad agreement around this table this morning with regard to the objective you're seeking with your bill.

As legislators, as you know, our responsibility is not just to pass legislation but also to ensure that it works as intended and ultimately stands the test of time.

Would you agree that if there were opportunities to strengthen the framework without changing the substance of this bill, this committee should seriously consider them?

Jeff Kibble: Absolutely, I would.

As I said earlier, when I spoke against some of the amendments, it was to make it correct. If there's something that is going to make it better and stronger—and it's not just somebody's crazy idea, but actually a solid, recommended, proven and debated amendment that would achieve the goal of protecting families, which is ultimately the goal—I would absolutely consider it. That's very important, and it would be foolish not to do it.

We've tried to consider everything in the drafting of this production over many years, but if there's something that could make it better, then by all means, yes.

Thank you again for signalling your broad support for our objectives here.

Patricia Lattanzio: Would you agree that there is a difference between an amendment that would change the policy and intent of the bill and an amendment that simply helps ensure that the bill achieves the intent in a legal and sustainable way?

Jeff Kibble: I'm not exactly sure how to answer that.

If there is anything that would make it better and achieve the objective, without broadening the scope of it, because I think that would get into a whole more complicated process.... If it would keep it tight to the scope of the specific crimes and circumstances of this and achieve results for the families—you will hear the impact on them on Wednesday—I'm certainly open to discussing and making improvements, if required.

● (1200)

The Chair: Thank you.

Mr. Fortin, you have two minutes.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Kibble, you just said that you think your bill would pass the constitutional test.

In the event that it didn't, do you think we should consider using the notwithstanding clause provided for under section 33 of the Canadian Charter of Rights and Freedoms?

[*English*]

Jeff Kibble: First of all, I believe it will withstand a charter challenge. As far as speaking on a notwithstanding clause is concerned, that would be above...it would need a government-wide or a party-wide consultation to determine the best path forward.

I am confident that this will, as Bill C-48 did, withstand a charter challenge. We'll cross that bridge if we get there, but I don't expect that we will.

[*Translation*]

Rhéal Éloi Fortin: In the event that the bill doesn't pass the test of the Canadian Charter of Rights and Freedoms, can you propose other measures?

I'm talking about measures to provide better support or mitigate the impact of the various parole application measures on victims' families so that they don't have to travel or come back to testify.

Wouldn't written testimony suffice?

There are probably all kinds of ways to envision a process that is respectful of families and victims but that also allows for parole applications to go ahead.

Do you think there are any measures that we should be looking at?

[*English*]

Jeff Kibble: Modifying the process to help families outside of legislation covers only part of what this legislation does. That would certainly be an independent project, which I'm sure people are always considering and looking at.

Let's stay focused on what this is. This legislation is about helping the families, providing potential deterrence and ensuring that all three of those charges would then be answered for and dealt with in court, and not just stayed. There are other processes, and they're independent and separate from this. We're staying focused on this particular process so that we can help victims with something that is within our power.

If parole boards or other organizations look to help families, I commend that as well, but I'm staying focused on this particular mission.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Kibble.

[*English*]

The Chair: Mr. Kibble, thank you very much, first of all, for presenting this bill. Let me add my voice to those thanking you for sharing your personal stories. I extend my sympathies to you and your family. We're very grateful for your time.

We will suspend now for a few minutes to bring in the officials.

● (1200)

_____________________(Pause)_____________________

● (1210)

The Chair: I call the meeting back to order.

Welcome to the second hour of the meeting.

Today, we are joined by two familiar faces from the Department of Justice. We have Joanna Wells, senior counsel and team lead of the criminal law policy section, and Erin Kelly, legal counsel.

Thank you both for being here today.

I understand that you do not have any opening remarks, so we'll jump right into questions.

We'll start the six-minute round with Mr. Gill.

Amarjeet Gill: Thank you, Mr. Chair.

Thank you, Justice officials.

This is the fourth version of this bill. People have been trying to pass it in Parliament for the last 15 years. Every time, it was overwhelmingly supported.

Why has the department not taken the initiative to include this in government legislation?

Joanna Wells (Senior Counsel and Team Lead, Criminal Law Policy Section, Department of Justice): As the committee knows, decisions on what does or does not go into government legislation are made by the Minister of Justice. It is not the department officials who decide one way or the other to include these things.

Amarjeet Gill: Do you think the Minister of Justice didn't feel the need for this to be added?

Joanna Wells: I can't speak to what the minister did or didn't feel. As you know well, having studied the bill fairly recently, this initiative does not form part of any of the government bills, but it's on Parliament's agenda to be studied.

Amarjeet Gill: In 2019, all members agreed that this bill respected both judicial discretion and section 12 of the charter. A lot has changed on both of those subjects since 2019. We are in the worst phase of criminal activity in our country.

Mr. Kibble stated in the House that this bill respects those two concepts. Does the Department of Justice believe that is the case?

Joanna Wells: Could you reformulate the end of the question? I missed the question at the end, Mr. Gill. I apologize.

Amarjeet Gill: I will repeat it.

In 2019, all members agreed that this bill respected both judicial discretion and section 12 of the charter. A lot has changed on both of those subjects since 2019. We are in the worst phase of criminal activity in our country.

Mr. Kibble stated in the House that this bill respects those two concepts. Does the Department of Justice believe that is the case?

Joanna Wells: I can speak to the concepts in the bill. Certainly, we would agree that there is judicial discretion proposed in Bill C-235 with respect to whether or not to increase parole ineligibility. You are correct that the landscape on section 12 and parole ineligibility has changed since 2019 with the release of the decision in Bissonnette.

The department is of the view that any change to parole ineligibility would be closely scrutinized by the court under the charter.

Amarjeet Gill: Does the department have numbers for how many cases this would impact per year?

Erin Kelly (Legal Counsel, Department of Justice): We don't have exact figures on how many people this would affect per year. I can tell you that the latest figures we have are from the period of 2000 to 2020, and there were approximately 26 offenders in CSC custody who would have fit the fact pattern considered in this bill. In that period, six new offenders entered custody.

Amarjeet Gill: Has there ever been a case whereby a criminal who would fall under Bill C-235 has been granted full parole?

● (1215)

Joanna Wells: That kind of question is not within the expertise of the Department of Justice. That would be under the purview of our colleagues at Public Safety or the Correctional Service of Canada.

Amarjeet Gill: This bill would require a jury to recommend a higher sentence. If a jury imposes a higher sentence, does that reflect a public view of how evil these crimes are?

Joanna Wells: It's fair to say one of the reasons juries are such an integral part of the criminal justice system is that they provide the peer review, if you will, in a criminal case. The bill mirrors the approach that already exists in the Criminal Code to allow a jury that has heard all of the facts to make a recommendation for the judge to consider.

I think you could view it as the public input into what the appropriate sentence would be, but from that particular small set of the public that heard the facts of the case.

Amarjeet Gill: Judges are not bound by a jury's recommendations. Would you expect a judge not to impose an unconstitutional recommendation?

Erin Kelly: Judges would have the discretion to make the sentencing decision, and they would be well aware of the decision in Bissonnette when they are making those decisions.

Amarjeet Gill: Thank you.

The Chair: That takes us to Ms. Lattanzio.

Patricia Lattanzio: Thank you, Mr. Chair.

Thank you, officials, for being with us here today to clarify a few questions we have for you with regard to this new PMB.

Officials, we heard testimony this morning suggesting that this PMB raises little or no charter concern. I want to have your opinion on this.

Given the Supreme Court jurisprudence that we've cited this morning—the Bissonnette case in particular—regarding the lengthy parole ineligibility periods, would it be fair to say that this piece of legislation, extending parole ineligibility to as much as 40 years, would attract charter compliance scrutiny?

Erin Kelly: Yes, it's fair to say that this would likely have some charter scrutiny. There are serious liberty interests at stake, and it would extend the punishment beyond what is currently allowed under the code. In light of what happened in Bissonnette, we would expect that there would be some charter scrutiny.

Patricia Lattanzio: The Supreme Court has emphasized the importance of maintaining a meaningful possibility of release. Could you explain why the principle is relevant when Parliament is considering increasing parole ineligibility from 25 years to 40 years?

Erin Kelly: The court, in Bissonnette, was clear that the door needs to be left open for some possibility for rehabilitation. It is, I will say, an important distinction between what is proposed in this bill and what was at issue in Bissonnette, which is the level of discretion that is afforded to judges. In this case, judges do have discretion to put a sentence within a range of 25 to 40 years for a parole ineligibility period, which would allow them to appropriately tailor the final sentence in a way that would respect constitutional principles.

Patricia Lattanzio: Do you see any issues with that?

Erin Kelly: I can really point to only what the court has said, and it would be for the court to look at and scrutinize this law, accordingly, should it be challenged.

Patricia Lattanzio: Okay.

We have heard that the provisions clarifying the prospective application may be redundant—this is what the testimony revealed this morning—because of existing legal principles that we have in place.

From a drafting and implementation perspective, what value, if any, is there in including clarifying language directly in this legislation?

Erin Kelly: I'll say that it's not unusual to provide clarifying language, especially in scenarios like this where this would be a very serious punishment and would be a change to the code. The common law is quite clear on how legislation would apply if there were no discussion on the temporal application.

In this case, the courts would assume a prospective application if the law is otherwise silent. The committee may still wish to consider whether further clarification in the bill would be helpful.

● (1220)

Patricia Lattanzio: The testimony this morning also revealed that there were other versions of it brought forward before Parliament and the committee. A witness explained to the committee that the difference is only technical. Is that your opinion?

Joanna Wells: If I may ask for a point of clarification, is the difference between—

Patricia Lattanzio: It's between the previous drafts and this one. Would it just be technical differences?

Joanna Wells: In our view, the substance of the bills is the same, and the intent is the same, whether or not there were minor amendments. I haven't done a side-by-side comparison, but our understanding is that the objective of the bill is exactly the same.

Patricia Lattanzio: Okay.

Would it be fair to say that measures such as appeal rights, judicial revisions and implementation clarifications are not about weakening the bill's objective, but rather about ensuring that legislation is complete, transparent and legally robust?

Erin Kelly: I think it's fair to say procedural safeguards that could be added to this bill would not impact on what we understand the core objective of the bill to be.

Patricia Lattanzio: Thank you.

The Chair: Mr. Fortin, please go ahead.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Ms. Wells and Ms. Kelly, thank you for being here.

You may not be able to answer my question.

Do you know how many individuals would be affected if the parole ineligibility period were increased from 25 years to 40?

I think there was mention of 26 cases earlier, but I'm not sure if those were cases in a year.

[*English*]

Erin Kelly: Between the year 2000 and 2020, there were 26 offenders in the custody of Correctional Services who would have fit the fact pattern of the bill. That doesn't necessarily mean they were convicted of all three elements that would be required in the bill, but the fact scenarios of their crimes would have fit that pattern had they been convicted of all three.

[*Translation*]

Rhéal Éloi Fortin: Given the Supreme Court's previous decision, do you think it would be appropriate to use the notwithstanding clause to pass this bill, to protect it from a potential review by the Supreme Court?

I understand that there are distinctions to be made between the Bissonnette decision and what's being proposed here, but there are still similarities.

[*English*]

Erin Kelly: This government has not stated any intention to use the notwithstanding clause in relation to this bill, and we cannot comment further on that.

[*Translation*]

Rhéal Éloi Fortin: Yes, I understand, but I'm not asking for your personal or political opinion on the matter, obviously. I'm more interested in your opinion as a lawyer.

In legal terms, wouldn't it be easier to pass this kind of bill if it included a notwithstanding clause?

I'm not asking you to advise the minister on this. In legal terms, wouldn't the use of the notwithstanding clause make it possible to protect the bill in the event of a review by the Supreme Court?

[*English*]

Joanna Wells: Thank you for that question and for the clarification.

As my colleague indicated, this government is not on record as wanting to support this bill using the notwithstanding clause. The federal government, as you know, has never invoked the notwithstanding clause with respect to federal legislation but it does remain a legal tool available should the committee feel it's an appropriate use of section 33(1) of the charter to limit charter scrutiny of this particular provision.

[*Translation*]

Rhéal Éloi Fortin: Do you think the bill, in its current form, would withstand a Supreme Court assessment of constitutionality? Would it be acceptable?

[*English*]

Joanna Wells: As we have indicated, we expect, and as the committee seems very alive to, that this bill, should it pass, would definitely receive significant judicial scrutiny. We know, because it's a penalty that comes post-conviction for a murder, that the likely charter lens would be under section 12, and the decision in Bissonnette from the Supreme Court would very much guide the considerations. I can't provide any more than that to the committee, but it certainly would be novel.

● (1225)

[*Translation*]

Rhéal Éloi Fortin: If the belief is that rehabilitation is possible, don't you think it would be unreasonable to increase the wait to apply for parole from 25 years to 40?

[*English*]

Joanna Wells: The bill proposes discretion between 25 and 40 years. A judge could find that 26 years would be appropriate or 27 years. It wouldn't automatically be 40 years. The difference, as my colleague indicated earlier with the Bissonnette analysis, was that in that case the court was looking at 50 years as the floor, as the starting point for the next period of parole ineligibility, so there are significant differences here with respect to the discretion and the time that the court could order the offender to serve.

[*Translation*]

Rhéal Éloi Fortin: To your knowledge, are there currently any other mechanisms in the legislative arsenal to support or better protect victims' families when there are parole hearings?

[*English*]

Joanna Wells: I think the question you're asking is whether or not there are supports for victims with respect to attending parole hearings. Those, again, are not within our expertise.

In our understanding, there certainly are lots of supports available for victims should they choose to attend parole hearings. I understand that's not the intent of the bill, which is to eliminate the parole hearings, but there are existing measures in place to support, yes.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: We'll go to Mr. Brock for the beginning of the five-minute round.

Larry Brock: Thank you, Chair.

Thank you to the officials for being here.

I want to start with a general observation. I often hear it, particularly at this committee, when I hear from department officials: Anything that we do as parliamentarians with respect to any amendment in the Criminal Code will always be subject to charter scrutiny.

We should never abrogate our responsibilities or shy away from pushing the envelope in terms of addressing what Canadians want us to address. I think it was well put by Mr. Lawton in the opening round. This country has seen 11 years of a complete removal of any consideration of victim rights. I'm not going to repeat myself because I've repeated it numerous times, but in my view, anything we do will be subject to charter scrutiny.

With all due respect, Ms. Wells, on your comment to Mr. Fortin that in any charter challenge, particularly in the area of this particular private member's bill, the Bissonnette decision would influence anyone bringing a charter challenge, I want to point out that Bissonnette specifically dealt with the stacking element of parole ineligibility. Paragraph 71 of that decision specifically did not rule on the imposition of any period of ineligibility exceeding 25 years as being unconstitutional. They simply were not asked or were not presented with that particular argument.

The two pillars as to why Bissonnette was ruled to be unconstitutional are that it did not provide a realistic prospect of a release within the context of human dignity, and it completely negated the whole concept of rehabilitation, when, in these circumstances, rehabilitation would rank among the lowest of all sentencing considerations. Bill C-235 includes human dignity components, talks about a realistic prospect of a release and certainly talks about rehabilitation.

Given that this has been altered with Bill C-235, are you still confident that this not only could receive significant charter scrutiny but also would be successful as being contrary to section 12?

● (1230)

Erin Kelly: I think we would still expect that there would be significant charter scrutiny. This is a very serious penalty. It would expand beyond what is currently the harshest penalty under the Criminal Code. In light of those factors, we do still believe it would be scrutinized.

Whether it would pass a constitutional challenge would really be up to the courts. I think Ms. Wells and I have both mentioned the key distinguishing factor in this case being the level of discretion that judges have. I think that would be a key consideration in a charter challenge under section 12.

Larry Brock: Thank you, Ms. Kelly.

Would your position be the same if this were a government bill?

Joanna Wells: If I may, I'll ask for some clarification.

Larry Brock: If you had to put together a charter statement, would your commentary today be the same as the commentary you would provide in a charter statement had the government introduced legislation along these lines?

Joanna Wells: Any charter statement that would be prepared by the government with respect to this would analyze the proposals in Bill C-235 through the lens of section 12, and in doing so would use the analysis in Bissonnette—

Larry Brock: Is that a yes, that your position would be the same?

Joanna Wells: —to guide its analysis.

The elements that you pointed out, Mr. Brock, as being different, would certainly be considerations that would factor in.

Larry Brock: Again, my time is limited, Ms. Wells. Is the answer yes, that your position today to the Minister of Justice would be the same, should he have decided to bring this type of legislation? Please answer yes or no. It's a simple question.

Joanna Wells: It can't be a yes or no question because we are unable to provide advice to anyone other than the minister, including the committee. I think my answer stands. As I said earlier, section 12 would be the lens through which it would be analyzed.

Larry Brock: Have you done a comparison to any other common law jurisdictions that have a similar type of approach to expanding parole ineligibility?

Joanna Wells: The comparison that we've done in international jurisdictions looks to penalties for murder, and Canada is amongst the harshest—

The Chair: Thank you.

Joanna Wells: —with respect to the penalty for murder.

The Chair: I'm sorry. I didn't mean to cut you off.

Thank you, Mr. Brock.

Ms. Gladu, go ahead.

Marilyn Gladu: Thank you, Mr. Chair

Thank you to the officials for being here today.

In earlier testimony, we heard about the amendment we'd like to bring to put a coming-into-force date, to make sure that people are not going to fill the courts with previous convictions. The witness told us that it's redundant because section 11(i) of the charter would prevent that. However, my understanding is that, if you hoped it would happen and it didn't, and then you did a charter challenge, it would take a long time. Is that fair?

Erin Kelly: There is a common law presumption against retrospectivity, meaning, essentially, that when a law comes into force, especially with regard to punishment, it is assumed to apply prospectively and would not have retroactive applications. Courts, in applying new legislation or applying this bill, would look to that common law presumption. They would look to sections 11(i) and 11(h) of the charter and apply that accordingly. It would be less about, necessarily, a challenge on the basis. It would be more about the guiding principles in the charter.

Marilyn Gladu: Thank you for that.

Another discussion we had was about trying to make sure that what we put into the Criminal Code is matched with the same things in the National Defence Act. Is that kind of amendment within scope of the bill?

Joanna Wells: As departmental officials, questions of scope do not fall within our area of expertise. Those are certainly questions for the committee.

Since you've asked, all I can say is that Bill C-235 doesn't propose to open the National Defence Act. The committee would likely turn its mind to whether or not it is within scope.

We'll also flag that there are parallel amendments in the National Defence Act for murder, so you may want to turn your minds to that.

● (1235)

Marilyn Gladu: That's very good advice. Thank you.

One of the other things we were hoping for was that we could amend the bill so that the judge would be able to provide reasons that they picked a longer time, be it 26 years or 27 years. Why was it 27 and not 40? Why was it 40 and not 27? The thinking is that, perhaps, it would not only give clarity to the victim's families but also...in terms of appeals. Is this something that appears in other types of legislation?

Erin Kelly: It does. There is a common law requirement for judges to provide reasons. Where I might draw a distinction is that, for first-degree murder, currently it is an automatic life sentence and an automatic 25-year parole ineligibility, so currently, there's not much to appeal on those grounds. As this would provide judicial discretion for a longer parole ineligibility period than is allowable currently under the code, it may be a helpful signal to the courts to ensure that reasons are well documented and set out. We leave that to the committee to consider.

Marilyn Gladu: Thank you so much, Mr. Chair.

I see the bells are going.

The Chair: You beat me to the punch. The bells are ringing. We would need unanimous consent to continue, if we were to do that.

Do I have unanimous consent?

Some hon. members: No.

The Chair: The meeting is adjourned.

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