BRIEF TO THE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Bill S-6

An Act to amend the Criminal Code and another Act
(Serious Time for the Most Serious Crime Act)

June 17, 2010

Canadian Resource Centre for Victims of Crime
100 -141 Catherine Street
Ottawa, ON
K2P 1C3
Tel: 613-233-7614
www.crcvc.ca

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit advocacy group for victims and survivors of serious, violent crime. We provide direct assistance and support to victims across the country, as well as advocating for more services and rights for crime victims and for increased public safety. The CRCVC is pleased to appear today before the Standing Senate Committee on Legal and Constitutional Affairs to take part in the debate over *Bill S-6 An Act to amend the Criminal Code and another Act (Serious Time for the Most Serious Crime Act).*

On a daily basis, we assist Canadians whose lives have been affected by serious, violent crime; the vast majority of these victims have been impacted by homicide. Homicide is perhaps the most atrocious crime that exists. Homicide has devastating consequences for families, the loss is felt forever and the effects never go away. Family members may eventually learn to live with the horror of the crime, but a void will always exist. The intense anguish felt by homicide survivors is aggravated by the provisions in our law that allow for offenders who commit first- and second-degree murder to seek, and in most cases, be granted a reprieve on their parole eligibility periods. Consider the following example; an offender is held in custody for three years while awaiting trial for a murder. He is convicted, but has several appeals that drag through the courts for an additional seven years. By the time the court process is finished, the family is subject to the prospect of a Section 745 hearing just five years later. Even if the offender does not apply immediately, it hangs over the family's head, wondering if he will apply.

The judicial review process is tantamount to cruel and unusual punishment for homicide survivors, who lose their faith in a criminal justice system that removes from them the small measure of justice they thought they had won on behalf of their loved one. Section 745 of the *Criminal Code* is contradictory. Offenders convicted of first- or second-degree murder should

serve the time the court intends them to before being eligible to apply for parole. The changes put forward in this legislation will lessen the suffering that these families feel by further restricting access to judicial reviews, and eventually eliminating the process for all murderers.

The CRCVC has long advocated for the abolition of the so-called “faint hope” clause. It is our belief that an offender who is convicted of murder and sentenced in a court of law to life imprisonment without parole for more than fifteen years, should serve the time the court intended before parole eligibility. First-degree murder convictions are difficult to obtain, as are second-degree murder sentences with a parole ineligibility period of over fifteen years. There is a discretionary parole eligibility decision made at the time of sentencing in the case of second-degree murder. The decisions that are made which result in these convictions and sentences are not taken lightly. Victims place trust in the judicial process that convicts and sentences the offenders who harm their families, and the 745 provisions not only destroy this trust, they force the victims to be re-victimized as they go through the faint hope process. The committee heard from Department of Justice officials that there are supports in place that assist victims who participate in the judicial review. These supports do not change the fact that this is a terrible process for victims to go through.

There are two distinct aims of this legislation - to remove the faint hope possibility for any future murderers, and to restrict the ability of current offenders to be granted a reprieve on their parole eligibility. We know, from the families that we work with, that there are some offenders who are truly evil, who feel no remorse, and whose actions serve only themselves. These are the offenders who apply for a 745 hearing every two years, even though they have not done anything to demonstrate that they are working towards release. These offenders only seek to continue to harm their victims.

The judicial review process harms the victims. Victims who choose to attend section 745 hearings are forced to relive the events and emotions surrounding the homicide as they may be asked to update their victim impact statements for the court. It is also particularly difficult and offensive for victims to sit in court and listen to the offender describe his accomplishments and aspirations. He or she is described as a wonderful person who has earned the chance to apply for early eligibility, and sometimes family members are shocked by the information that is presented to support this, for example numerous escorted passes into the community. Victims are often unaware if the offender has or will make an application for early release, and may not be notified if an application has been made. They are forced to face the offenders much sooner than anticipated, to relive the details of the crimes committed by the offender, travel to hearings at great personal and monetary cost (despite some financial assistance from the federal government), and face the prospect of release for the offender, something that hurts and terrifies many victims.

The potential repeal of Section 745 is an important achievement for victims and their advocates, but Bill S-6 does not remove the right of current offenders to apply for a judicial review. It does, however, impose limits that make it more difficult for offenders to be given a hearing. These limits, such as the increased burden of "substantial likelihood", the strict window of ninety days to apply after they first become eligible, and the five year wait period between applications, will help victims, but many offenders that are currently in the prison system will have the opportunity to re-victimize their victims' families by initiating the 745 process.

Representatives from the National Parole Board maintain that the judicial review process is independent of the hearings that determine whether an offender is granted parole. This is true, but the statistics show us that approximately 93% of those offenders who are granted the right to apply for parole before their eligibility date are granted parole shortly after. It has been our

experience that this is a release rate that is much higher than that for murderers who apply at or after their original eligibility date. The Board maintains that this is because the offenders have a lower risk of recidivism. Unfortunately, we must rely on the statistics here, and they can only capture acts of recidivism that are caught by police. Perceived recidivism rates aside, we cannot ignore the fact that this process takes those offenders deemed to be the worst offenders and grants them an opportunity to avoid the sentence that has been imposed upon them. Victims of these crimes feel that this is a contradiction that must be eliminated.

The elimination of the faint hope clause has been debated for many years. The movement began in the late 1990's, when hearings began to occur more frequently. There have been several bills introduced that sought to eliminate the provisions, but they have, for a variety of reasons, failed to succeed. Some recent amendments have limited access to the process and removed multiple murderers from eligibility, but this is not enough to ensure public safety. This bill proposes to remedy that. The CRCVC strongly urges that the committee support this Bill and ensure its speedy passage.