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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

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

This is meeting 20 of the Standing Committee on Justice and Human Rights. Today is Tuesday, June 1, 2010.

You have before you the agenda for today, and today we're continuing with our review of Bill C-4, Sébastien's Law, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

Members, we had planned to have an in camera planning meeting at the end of this meeting. Given the fact that none of the three regular Liberal members is here, I'm proposing we cancel it and hold that meeting at our next meeting on Thursday, with your consent.

I'm assuming that none of the Liberals here have any instructions on extra meetings and that sort of thing. All right.

Now, what we've done is we've divided today's meeting into two parts, two panels. With us on the first panel are a number of organizations. First of all, we have the Child Welfare League of Canada, represented by Peter Dudding, executive director. Welcome here. The Barreau du Québec will appear in our second panel. We've replaced them with Les Centres jeunesse de l'Outaouais, represented by Yves Laperrière, who's the department head. Welcome here. We also have with us the African Canadian Legal Clinic, represented by Megan Forward, a policy research lawyer, as well as Lwam Ghebarehariat, a summer law student. Welcome to our committee.

I think you've been told that you have a certain amount of time to speak, and then we'll open the floor to questions from our members for the balance of the panel session.

Why don't we start with Mr. Dudding.

Mr. Peter Dudding (Executive Director, Child Welfare League of Canada): Great. Thank you very much, Mr. Chair.

Good morning. I am, indeed, Peter Dudding, the executive director of the Child Welfare League of Canada. I'm most appreciative of this opportunity to present our views on the proposed amendments to the Youth Criminal Justice Act.

During my 40 years of working with vulnerable children in Canada, I've worked with children under the Juvenile Delinquents Act and its successors. It is my experience that many of the provisions of the old JDA failed to meet the needs of vulnerable children and our societal objectives of rehabilitation and reintegration, as the measures were arbitrary and punitive.

In particular, I can vividly recall the harsh sentences being given to children under the particularly odious section 8 of the JDA for "incorrigibility". These children, whose behaviour was deemed dangerous and unacceptable to society, were sentenced to lengthy incarceration. The results were predictably bad in creating angry and dysfunctional adults and too often career criminals who present a life-long threat to society.

By contrast, the Youth Criminal Justice Act was one of the first pieces of Canadian legislation that was written to conform to the United Nations Convention on the Rights of the Child, which was signed and ratified by this Parliament in 1991.

The convention recognizes that all children under the age of 18 have specific and immutable rights that take into account their vulnerability due to age, their relative position in society, and their evolving capacities.

Sébastien's Law unfortunately violates some of these rights, notably article 3 of the CRC, which states that the best interests of children should be the primary concern in making decisions that affect them.

It is my judgment and experience that the amendments proposed by Sébastien's Law will reverse the substantial progress that we have made in Canada since the abolition of the Juvenile Delinquents Act. It is the youth justice system that is failing our children and not the legislation, to be clear.

The stated intentions of the government are to hold violent and repeat young offenders accountable and to ensure that society is protected. The amendments proposed by the government are flawed as follows.

The provisions of the current YCJA have proven satisfactory in addressing the needs and issues raised by violent and repeat offenders.

The proposed amendments have implications that go well beyond the application to a small group of violent and repeat offenders, which will result in more children becoming trapped in the criminal justice system. This is particularly concerning as it impacts on aboriginal and visible minority children who are already over-represented within the criminal justice system.

Finally, the proposed amendments ignore recommendations that have been made to the government to improve the implementation of the YCJA.

I will now comment more specifically on our concerns related to the proposed amendments contained in Bill C-4.

Make protection of society a primary goal of the act. This change will fundamentally alter the purpose of the YCJA so that "public safety" will supersede any other purpose of the act, and this violates article 3 of the UN Convention on the Rights of the Child. This significantly shifts the focus from rehabilitation and reintegration of the child, and the focus on the child and not on public safety was intentional and purposeful in creating the YCJA in the first place. The proposed amendment, as a primary goal—a primary goal—is not consistent with Justice Nunn's recommendation 20 in his own report.

Simplify pre-detention rules. According to Statistics Canada, the number of youth in remand outnumbers those in sentenced custody—52% of all children in custody were in remand in 2008-09.

● (1110)

Article 37(b) of the Convention of the Rights of the Child states that the arrest, detention, or imprisonment of a child should be used only as a measure of last resort and for the shortest amount of appropriate time. Rather than increasing incarceration for children, the youth court should be given greater supports to ensure that an appropriate safety plan is in place when releasing violent children into the community. Pretrial detention should only be used in circumstances of violent offences and exclude property offences or offences that could endanger the public.

In terms of specific deterrents and denunciation, there is no evidence to demonstrate that the application of these principles to sentencing is effective or appropriate. The application of these principles specifically undermines the principle of proportionality. The sentencing principles reverse the foundation of the YCJA, and, I think, rather importantly—this is the significant part—take us back to that old odious section 8 of the Juvenile Delinquents Act.

On adding, to the definition of violent offence, behaviour that endangers the life and safety of others, the current provisions of the YCJA already address these matters. Also, I would refer you to my comments related to having an appropriate plan in place when young people are released back into the community; that's really a very important thing that this committee should turn its mind to.

In terms of allowing custody to be imposed on youth who have a pattern of findings of guilt or extrajudicial sanctions, again, article 40 of the UNCRC expressly states that any child in conflict with the law should be presumed innocent until proven guilty. Rather than increasing incarceration for children, the youth court should be given greater supports to ensure the safety plan is in place.

With regard to ensuring that adult sentences are considered for youth 14 and older who commit serious violent offences—murder, attempted murder, manslaughter, and aggravated sexual assault—the current provisions of the YCJA should be reviewed in order to create a more appropriate mechanism to review the sentences of any child convicted of a serious violent offence and its application beyond the age of 18 years. The application of mandatory adult sentences should not be required.

In terms of lifting the public ban on the names of young offenders convicted of violent offences when youth sentences are given, the application of publication bans is fundamental to achieving the primary objectives of the act: rehabilitation and reintegration of the child offender. The evidence does not demonstrate any increase in public safety by releasing the name of the child offender. In fact, it violates articles 16 and 40 of the UNCRC, which protect children's rights to privacy. Again, the sentencing provisions should be supported by a plan of safety.

As members of the standing committee are aware, the YCJA was introduced in 2003. At the time, it was planned that a national review would occur five years later in 2008. It is my understanding that the minister did undertake a review, although these consultations were limited and no evaluation report was made public.

Since 2008, the CWLC has been partner with the Coalition on Community Safety, Health and Well-being in three national consultations. This is a coalition made up of approximately 28 organizations from justice, health, education, and child and youth services. It is hosted by the Canadian Association of Chiefs of Police. The summer report and proceedings are attached as exhibits 1, 2, and 3 of this submission. There are over 70 recommendations for changes to the youth justice system in Canada, including specific recommendations related to mental health, substance abuse, and violence.

At the first symposium, there were two key summary findings of note. The rights-based foundation of the YCJA and its attention to the interests of victims were endorsed.

● (1115)

The support systems for children were overloaded before the coming into force of the YCJA in 2003 and are now seriously overstressed and cannot deal with the larger number of children thrust upon them.

In addition to the specific comments already provided in this brief, the CWLC submits our position regarding changes more broadly to the implementation of the Youth Criminal Justice Act as follows: that a comprehensive review of the implementation of the YCJA be conducted by Justice Canada in partnership with provinces, territories, and key stakeholders; that provisions regarding deterrence and denunciation not be included in any new youth justice legislative proposal; that Justice Canada assume leadership in working with provincial and territorial counterparts in justice, mental health, addiction, child and family services, violence prevention, and education to address the requirements of vulnerable young people who are committing offending behaviours; that the federal government develop a national strategy to stop violence against children and youth, as recommended in the UN study on violence against children.

We know that if the federal government enacted these four recommendations, Canada would be in a much better position to prevent, address the needs of vulnerable children, and create a safer, healthier, and more productive society.

Thank you very much.

The Chair: Thank you.

Monsieur Laperrière.

[*Translation*]

Mr. Yves Laperrière (Department Head, Youth Criminal Justice Act, Centres jeunesse de l'Outaouais): Good morning, and thank you for giving me the opportunity to speak today. Allow me to introduce myself. I am the department head responsible for administering the Youth Criminal Justice Act, the YCJA, at the Centres jeunesse de l'Outaouais located just across the river, under the authority of the provincial director.

I have been working with young people and their families in the Outaouais for over 20 years. I have long experience in child protection and juvenile delinquency. Through direct intervention with young people and their families, I have been in a privileged position to observe the impacts of poverty, substance abuse, violence, all kinds of abuse and the distress and social exclusion that are often associated with the emergence of delinquency in our young people.

I am currently responsible for the YCJA department, which includes the team of probation officers responsible for all stages and avenues of treatment in young offender cases. I am also responsible for the custodial unit, which houses young offenders from the Outaouais who are sentenced to a specific term of custody or who are in pre-sentence custody at the Apprenti residence.

Representatives of the Association des centres jeunesse du Québec, the ACJQ, have already laid out the provincial position of the youth centres and provincial directors, the PDs. Obviously I support that position, but I am here before today to provide, I hope, some further information about that position by talking to you about the day to day experiences of young people and their families living in the Outaouais.

Let's talk about the position taken by the ACJQ and the PDs in Quebec. The ACJQ is sensitive to and empathetic toward victims, and they, like many experts, believe that the public is best protected by rehabilitating and reintegrating young people into society rather than by punishing them. The message sent by the present federal government is the opposite, and its effect is to create a false sense of security by implementing harsher measures. An information campaign would in fact have the advantage of promoting an informed message among the public based on the studies that have been done. Harsher sentences and an essentially punitive or deterrent approach have never been shown to be effective with young people.

The ACJQ and the PDs strongly oppose the desire to make denunciation and deterrence of unlawful behaviour in fact the primary objectives of sentencing. These are principles imported from the adult criminal justice system and transferred to the youth criminal justice system. To date, there is no evidence that harsher sentences have any deterrent effect on either young people or adults. The real effect of that approach would be that young people would be treated in a manner similar to adults.

Young people all have a sense of invulnerability. They share the perception that nothing can happen to them. This is a good characteristic, and leads to discoveries made during adolescence, but for some of them those discoveries take them down the wrong path. They have the impression that consequences only happen to other people. If a young person who is also a delinquent sees a peer getting arrested by the police, the limited reasoning ability and mistaken thought processes of an adolescent will persuade them that the other person was the victim of their own lack of skill, a mistake or simply bad luck, regardless of the seriousness of the consequences associated with the criminal act, because the young person believes that they will never get caught that way.

As well, the harsh maximum sentences introduced by successive amendments to youth criminal justice legislation are rarely applied by the courts. The case law, legal practice, assessments of young people's situations and protection factors identified by courts at all levels often mean that the judicial system shows a degree of clemency to young people. We believe this stems from the judicial system's recognition and consideration of the fact that a young person is, in fact, different from an adult, and is not fully formed, and that the sanctions imposed on them must be tailored to fit.

Rather than just come down hard on them, at the same time as protecting society, the goal is to offer the young offender an opportunity, through rehabilitation services, to acquire a prosocial lifestyle. Young people have to be held accountable for their actions. That means that measures must be taken that take into account their level of maturity, so that they understand the extent and impact of their actions, and alternatives to those behaviours.

We would also point out that serious and violent crimes, for which the federal government intends to toughen sentences, comprise only a tiny fraction of crimes committed by young people. Experience also shows that those young people are not necessarily on a distinctive path of criminal behaviour. Studies show, in fact, that they present a lower risk of recidivism after treatment, and their other offences are less violent, than young people who commit property offences.

● (1120)

In the Outaouais, last year, we offered services to nearly 900 young offenders, out of a population of 28,500 young people between the ages of 12 and 17 years.

A majority of requests were handled through diversion, outside the courts, with a success rate of nearly 95%. In cases where a sentence was imposed, for a total of about 274 young people, two thirds received probation with supervision, of which 15 involved intensive probation; 10 received suspended custodial sentences; and 33 received custodial sentences, that is, 33 young people were placed in the custody unit. It will be observed that 33 out of 28,500 is a minority.

Some of the young people in our secure custody unit at the Apprenti residence had received multiple short sentences, the average sentence being 30 days, because of sentencing criteria that limit the use of custodial sentences for young people who are on their first offences.

When we went from the YOA, the Young Offenders Act, to the YCJA, we lost opportunities for meaningful intervention and rehabilitation work with younger offenders, for whom crime is not yet a crystallized way of life. While we could previously intervene for a few months and guide the young person for a period that reflected their needs, access to longer sentences is available to us now only in late adolescence, for young people whose path is more often more firmly formed by then. It must be kept in mind that the centres, the custody units, in Quebec are first and foremost rehabilitation centres.

The law provides the tools that are needed for intervention, but access to those tools is limited, for example in terms of sentencing criteria that reserve access to the rehabilitation centre to young people who have committed more serious crimes, or multiple repeat offenders.

In 2009, in the Outaouais, no young person was sentenced for murder, attempted murder or serious sexual assault. All of the young people who occupied spaces in the custody unit for longer periods were repeat offenders whose crimes involved property or drug-related offences.

Based on scientific data and what the case law tells us, the ACJQ and the PDs are asking the federal government to preserve a separate criminal justice system for young people between the ages of 12 and 18 years. A young person who is still developing has different needs from adults, and intervention must therefore be appropriate. Only an intervention that takes into account, in addition to the nature and consequence of the offence, both what its meaning is to the young person and their individual needs is likely to bear fruit. It must be based on an assessment of the young person and their situation, to determine the measure most likely to succeed in rehabilitating them and consequently protecting society.

Young offenders nearly all have maturity levels below their age. The personalities of young offenders are not completely formed. Early intervention based on their individual needs is the key to effective intervention in this case.

In fact, the Supreme Court of Canada delivered an important judgment in 2008. It held that the provisions relating to the presumption of adult sentencing of young people and the presumption of publication were unconstitutional. The Court therefore acknowledged that because of their age, young people are more vulnerable, less mature and less capable of exercising moral judgment. That decision helps to explain the importance of distinguishing between the treatment of young people and the treatment of adults.

It is also proposed that the name of young people 14 years of age and over who are convicted of violent offences be made public. The age limit may vary from province to province, and so the legislation in force in Quebec would mean that this law would apply to young people 16 years of age and over.

On that point, the ACJQ and the PDs call for the identity of young people 14 years of age and over to continue to be protected, to guarantee that they can be rehabilitated and reintegrated into society and thus avoid the risk of recidivism. Labelling, perhaps even stigmatizing, these young people makes it more difficult to reintegrate them and for them to acquire prosocial behaviours. Long-term protection of the public will be jeopardized, since that measure could increase the risk of recidivism on the part of a young person who anticipated more limited opportunities for reintegration.

The ACJQ reminds us that Quebec is in the vanguard in the world and has the lowest crime rate in Canada. The Quebec model for rehabilitation has stood the test and has made an impression outside its borders. In the last few years, international delegations have been meeting with actors in the Quebec system in an effort to adapt this model of intervention to their countries. In 2009, in the Outaouais, we hosted delegations from South America, and we were invited to Jamaica to explain our system. We have a solid partnership with the academic community, who are also receive international requests.

● (1125)

The ACJQ and the PDs have always advocated a balance between protecting the public and rehabilitating young people. The government should invest in social services, particularly in concrete measures to reduce poverty; it should implement programs to integrate young people into the workforce and promote access to housing, instead of taking the path of punishment and toughening the laws.

We have experienced a population increase in our region, and so have had increased pressure to respond to all requests, without investment being made to support interventions with young offenders. In the last year, we have developed an intensive intervention program for cases at higher risk of recidivism, which are dealt with in their home setting. The program is a fine example of collaboration with the partners in the network, where each of them has agreed to contribute to provide a better response to our young people's needs and target their risk factors. The interventions deal with autonomy, employability, substance abuse, peer influence, victimization and management of their financial and legal situation.

The government should invest in measures like these, measures that have a direct impact on long-term protection of the public, through supervised and ongoing rehabilitation and social reintegration for our young people.

● (1130)

[*English*]

The Chair: Mr. Laperrière, you're already a minute and a half over your 10 minutes, so you'll have to wind up.

Thank you.

[*Translation*]

Mr. Yves Laperrière: In conclusion, I would just like to express a hope that hold firmly to in the youth centres. We hope to be able to make young people's needs the central aspect of our concerns, as the best way of protecting the public in the long term. Offering young people positive prospects for the future and guidance using tools and approaches for intervention and rehabilitation that enable them to recognize and benefit from those opportunities will mean that they can be rerouted from their criminal path. This will also enable us to effectively address the concerns that we all share. Thank you.

The Chair: Thank you.

Mr. Lemay.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): A point of order, Mr. Chair.

Mr. Laperrière, you will be submitting your brief, and it will be translated. Can you send it to us, please?

[*English*]

The Chair: Yes, he can if he wishes.

[*Translation*]

Mr. Marc Lemay: Okay. Yes, please.

[*English*]

The Chair: We'll move on to Ms. Forward. You have up to 10 minutes.

Ms. Megan Forward (Lawyer, Policy Research, African Canadian Legal Clinic): Good morning.

My name is Megan Forward. I am the policy research lawyer at the African Canadian Legal Clinic in Toronto.

I would like to take this opportunity to thank the standing committee for inviting the ACLC to appear and to present submissions on behalf of the African Canadian community.

I apologize for not having been able to provide the committee with briefs to review beforehand. If, upon reviewing the brief, you have any further questions, please do not hesitate to contact me.

The African Canadian Legal Clinic is a not-for-profit legal agency established expressly to address anti-Black racism and other forms of systemic and institutional discrimination in Canadian society. In addition to providing legal services, the ACLC also operates a highly regarded African Canadian youth justice program, which provides court worker services, counselling, programming, and reintegration support to ensure successful outcomes from African-Canadian youth within the criminal justice system.

Anti-Black racism is undeniably present in all facets of Canadian society, but it seems that nowhere are its effects more pronounced or more palpable than within the criminal justice system. African-Canadian youth, who are powerless and plagued by negative stereotypes, are particularly vulnerable to discrimination at all stages of the system. They are stopped, questioned, harassed, and charged at rates disparate with youth from the general population. This discriminatory treatment also extends to sentencing. African-Canadian youth are typically handed harsher punishments and more custodial sentences that their non-racialized counterparts.

As it stands, the Youth Criminal Justice Act's primary focus is on the prevention of youth crime through rehabilitation, reintegration, and community involvement. In the revised act, while they are still included in section 3, these principles are overshadowed by the overarching objective of protection of the public. The ACLC is concerned that the incorporation of this principle will legitimize negative stereotypes about African-Canadian youth—specifically, that they are prone to violence and therefore should be avoided and feared.

At the same time, we are concerned that the addition of these principles will give police officers, lawyers, and judges yet another discretionary factor to consider in deciding how to punish young offenders. Whereas discretion is disproportionately used to the detriment of African-Canadian youth, this provision will inevitably lead to justifying more custodial sentences for African-Canadian youth—all in the name of protection of the public.

Although protection of the public is a valid objective under the YCJA, this principle ought not be framed as an overarching objective under proposed paragraph 3(1)(a). The ACLC proposes that it should be placed along the other objectives as subparagraph 3 (1)(a)(iv).

The ACLC is also concerned with the proposed inclusion of the principles of deterrence and denunciation as principles a judge may consider in sentencing. These principles require cognitive and emotional capabilities beyond those of most youth. As with the concern with protection of the public, we are concerned that the inclusion of these principles will give criminal justice officials two more discretionary factors on which to base sentencing decisions. The proposed addition of these principles is further evidence of the government's lack of awareness and understanding when it comes to the dynamics of youth crime.

We believe that in order to combat youth crime, the government must address the socio-economic conditions that drive young people to crime. Indeed, there is no evidence to support the view that increasing the severity of sentences imposed on youth will result in greater societal protection.

For these reasons, the twin principles of deterrence and denunciation must be left out of the legislation altogether. The ACLC is vehemently opposed to proposed subsection 115(1.1), which would require police officers to record any extrajudicial measures handed out in the course of dealing with young persons. Due to police officers' tendency to over-police the African-Canadian community, African-Canadian youth are stopped, harassed, and questioned by the police more often than the general population. We are concerned that this increased interaction with the police will result in extrajudicial measures being issued to African-Canadian youth at rates disparate with other groups.

● (1135)

This effect, caused by the increased contact with police, is exacerbated by the additional discretion afforded to police under this provision. Police officers have the discretion to take no further action, warn the young person, administer a caution, or refer the young person to a program or agency. We are concerned that due to the discretion involved in issuing extrajudicial measures, records created under this provision may be subject to a police officer's racist or prejudiced attitudes toward African Canadian youth. The ACLC is also troubled by the rhetoric surrounding proposed subsection 115 (1.1), which will provide police officers with the means by which to identify patterns of criminal behaviour.

Whereas African Canadian youth are already afflicted by negative stereotypes about their propensity toward crime, the ACLC is worried that the presence of extrajudicial measures on a young person's record may be further used to validate and promote this stereotype. In addition, we are gravely concerned that the extrajudicial measures record may be used to justify further surveillance and harassment of African Canadian youth. The ACLC recommends that proposed subsection 115(1.1) be removed altogether or modified to limit the discretionary powers afforded to police under this provision.

The ACLC is also concerned with proposed paragraph 39(1)(c), which would allow judges to consider the presence of extrajudicial sanctions on a young person's record as evidence of criminal tendencies to be considered in sentencing. The ACLC would like to alert the committee to the potential constitutional implications surrounding this provision, which enables a judge to imprison a youth based in part on criminal activity of which they were never officially convicted. At the same time, subsection 10(4) mandates that extrajudicial measures are inadmissible in evidence against any young person in civil or criminal proceedings. The ACLC submits that in order for the extrajudicial sanctions to establish a pattern of criminal activity, the youth court judge must accept the presence of said sanctions as evidence of the young offender having committed the crimes. We do not believe that these two provisions can coexist in the same legislation, and submit that this provision will inevitably attract constitutional scrutiny.

We also believe that proposed paragraph 39(1)(c) should be rejected, as the presence of extrajudicial sanctions on one's record may have no bearing on a young person's propensity toward crime. The presence of extrajudicial sanctions on a young person's record may be the result of discrimination at one or more stages in the criminal process. Furthermore, young offenders may accept extrajudicial sanctions because they do not have the financial wherewithal to fight charges in court or because they do not fully understand their options.

Because the presence of extrajudicial sanctions on a young person's record is not necessarily an accurate reflection of their criminal tendencies and may be tainted by discrimination, the ACLC recommends that this provision be removed altogether.

The ACLC is extremely concerned with proposed subsection 64 (2), which would create an obligation on the part of the Attorney General to consider adult sentences in all instances where a young person over the age of 14 has committed a serious violent offence. This is because where there is discretion to sentence a young offender as an adult, this discretion has been disproportionately used to justify adult sentences for racialized youth. Increasing the number of youth subject to this discretion would almost certainly exacerbate this effect. To avoid this effect, the ACLC submits that adult sentences should only be contemplated in extreme circumstances involving egregious facts and exceptionally mature accused.

The ACLC also objects to what it considers to be a widening of the net of offences eligible for custody. We are concerned that the expansion of the definition of serious offences to include property offences will be used to justify the pretrial detention of a disproportionate number of low-income youth, including African Canadians. Accordingly, such an expansion ought not to be allowed. The ACLC further objects to the expansion of the definition of “violent offence” to include any offence that endangers the life or safety of another person by creating a substantial likelihood of harm. This definition is far too subjective and ought to be modified or left out, lest it be used to target young members of the African Canadian community.

While African Canadians are very concerned about safety in their communities, many feel that this kind of tough-on-crime approach is not the answer. Youth crime must be addressed through rehabilitation, reintegration, and community involvement. Indeed, the power of these principles has been confirmed through the success of the African Canadian youth justice program.

The amendments under Bill C-4 represent a significant departure from the prevention-centred principle, which the ACLC believes will result in the further stigmatization and criminalization of African Canadian youth.

● (1140)

These are my submissions. Thank you.

The Chair: Thank you very much, and thank you for staying within your time.

We'll move on to Mr. Bagnell. You've got seven minutes for questions.

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

I am assuming the government didn't choose these witnesses.

You have a lot of good suggestions for changes to the act, and I certainly hope it comes out in the report when we do it.

Mr. Dudding, you talked about violating the UN Convention on the Rights of the Child. I think it was articles 37(b), 16, and 40. So what's the remedy to that? Let's say we did violate that convention. What's the penalty? How do you stop us from violating that convention?

Mr. Peter Dudding: That's a great question, because therein lies another problem. The fact is that we have no mechanism within Canadian domestic law to enforce the provisions of the CRC. It is one of those unfortunate disconnects between what we've stated as our international obligations and what we go about doing.

In terms of the actual legal issue that compels Canada to comply, I would in fact point you to the findings of the Senate human rights committee that looked at this very issue around the implementation of the convention and made a number of interesting recommendations for the government to consider about improving its ability to comply.

Hon. Larry Bagnell: I think most, if not all of you, feel that rehabilitation and reintegration would make better avenues to make a safer society. We've been saying that all along for several years, not just for youth but for everyone.

Mr. Dudding, you suggested that this should be studied in depth, and yet youth criminal justice has been studied in depth—it's the Nunn report. I'd just like to ask each of you this: would you have any problem if we just implemented all the suggestions of the Nunn report instead of these amendments, which most of you seem to disagree with? Are there any of those items that you would not agree with?

Don't take too much time or we'll never get through everybody.

● (1145)

Mr. Peter Dudding: I would have a problem with a number of Justice Nunn's suggestions. Of course, his sample size was one, and I think it's always a mistake when you try to fix the system based on one experience, a very experienced jurist no doubt, but limited in terms of the scope of his inquiry.

[*Translation*]

Mr. Yves Laperrière: I am not familiar enough with the report you're referring to. But we would prefer that a revision of the Act like this be done after the first five years it is in force, but a review that involves all of the actors responsible for administering it. In Quebec, those are youth centres, the association, the provincial directors.

[*English*]

Ms. Megan Forward: I agree with Mr. Dudding in that I believe the Nunn report was somewhat reactionary, reacting to some isolated incidents. I don't believe these represent the overall state of youth crime in Canada. I believe they're a little too focused on end-of-the-pipe solutions, and that instead of reforming the legislation, they should put more funding—perhaps the funding that will be associated with an overhaul of the system—into in-prison programming, more education, and community programming for high-risk youth.

Hon. Larry Bagnell: Okay.

What is the name of the student who is with you?

Ms. Megan Forward: Lwam

Hon. Larry Bagnell: Do you have anything you want to say, Lwam, on the proceedings so far?

Mr. Lwam Ghebarehariat (Summer Law Student, African Canadian Legal Clinic): Well, thanks for asking me if I have anything to say. There are maybe a few things that I might add.

The statistics show that under the YCJA, the crime rate among youth has gone down and the rate of incarceration among youth has gone down. Those were two of the main goals of the YCJA, because before the YCJA, Canada had one of the highest, if not the highest, rate of youth incarceration in the world.

So the YCJA has accomplished those goals, and I think it's important for us to keep that in mind. It begs the question of why some of these harsher sentencing guidelines are being introduced, given the fact that the youth crime rate has actually gone down.

Hon. Larry Bagnell: Mr. Chair, how much time do I have left?

The Chair: You have a minute and a half.

Hon. Larry Bagnell: Megan, you talked about stiffer sentences. I assume that is for identical crimes?

Ms. Megan Forward: Yes. Statistics have shown that where aboriginal and white youth have been accused of committing the same crime as black youth, and actually have identical criminal records, it has often resulted in harsher punishments for the African Canadian youth.

Hon. Larry Bagnell: Mr. Dudding, I wonder if you could use my last bit of time to talk about proportionality. If the sentences were not unconstitutional for adults, why would they be unconstitutional for youth?

Mr. Peter Dudding: The key concept of proportionality, of course, was to address a historical situation in terms of the youth sentencing—as we've heard from our colleagues—being highly disproportional.

The concern here actually is to move the hands of time in the reverse direction so that we're going to be incarcerating youth for a much longer period of time now in the interests of public safety. You know, there's nothing in the annals of criminology, in the social science evidence, to show that's a successful approach to keeping young people rehabilitated or the community safe.

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I was very pleased to hear your presentations. I think they are clear, and personally, I can tell you that I share your opinions for many reasons. I will start by answering a question rather than asking you a question.

Why does it not into account the progress that has been made regarding juvenile delinquency since the present Act was passed? Because unfortunately, nothing is being said about rehabilitation. The general public only notices when the system fails and thinks that youth crime is actually rising and becoming increasingly dangerous. I said earlier and I think you realize this: rehabilitation is anonymous, but failure has a face. If that face is not the face of the offender, it is at least the face of the victim, but it is that face that ends up in the newspapers, in the media-heavy world we live in and will continue to live in. We are very grateful to have people like you, who work with young offenders every day, to recommend the best approaches for us to take.

Mr. Laperrière, you mentioned that the Quebec method has a global reputation. Can you tell us how you came to hold that opinion, that is, that the Quebec method has great value that is recognized not only in Canada, but abroad?

● (1150)

Mr. Yves Laperrière: It's from what I see every day. As I said earlier, I manage the team of probation officers and the custody unit. Every day, I spend time with the young people in the custody unit, I see them change over time and I see the impact of the programs on them. I am directly involved in the unit's programs, in the young people's schedule, in the clinical activities they are offered, and in the structure, from when they are first incarcerated until they complete their supervision in the community.

So that is how the reality of that success is expressed for me: I see the tangible changes in a young person who had problems and whom we get to a place where they can live autonomously...

Mr. Serge Ménard: Excuse me for interrupting, we have so little time.

You are telling us the reasons why you are convinced of its value. What I was asking, actually, was how you became certain that the system was recognized outside of where you are, in the rest of Canada and elsewhere in the world.

Mr. Yves Laperrière: I will describe some of the comments made to me by the Association des centres jeunesse du Québec which has more to do with promotion on the world stage. As I was saying, in the last year, we have hosted delegations. One of the delegations I accompanied myself was of a group of women from South America who came to see on site how our system works, what the day to day reality looked like, both on the outside and in the custody unit. Just a few weeks ago, our provincial director went to Jamaica with Mr. Dionne, from the university, whom you will hear from later, and a representative of our alternative justice system, to make a presentation about how our system actually works, in terms of the mediation approach and so on. Those are concrete examples of people from other countries who come to us, who have direct contact with us.

Mr. Serge Ménard: Ms. Forward, I would like to hear what you have to say about the success of your program for people in the black community.

[*English*]

Ms. Megan Forward: As I mentioned before, the portion of our work that consists of the African Canadian youth justice program has multiple parts. We have a number of staff who are working in the court system as court workers, most of whom are African Canadian themselves. In the courthouses they provide a very non-intimidating, relatable presence that young offenders and their families can go to for advice on how to proceed with their charges and what their rights are as young offenders.

In addition, the clinic offers a wide range of Afrocentric programs that focus on issues such as anger management, and there is a certain amount of life skills training in order to get to the root of the reasons the young people are reoffending and to try to address that. It's actually a court-recognized diversion project. There is also a reintegration component specifically for older youth, not adults, to help them get back on their feet and develop some skills once they leave the correctional system.

● (1155)

[*Translation*]

Mr. Serge Ménard: Thank you.

Mr. Dudding, you talked about the amendment proposed to subparagraph 3(1)(a)(i) in particular, "holding young persons accountable through measures that are proportionate".

Mr. Peter Dudding: That's right.

Mr. Serge Ménard: You may have noticed that virtually identical provisions already exist, word for word, in paragraph 38(2)(c) of the existing act, but there it's to guide the judge in sentencing.

If I understand your position correctly, by moving that provision from paragraph 38(2)(c) to paragraph 3(1)(a), and particularly by removing what was already in that paragraph, it is radically changing the philosophy of the Young Offenders Act. Is that correct, Mr. Dudding?

[*English*]

Mr. Peter Dudding: That's correct. By putting it in section 3, which is about the primary purposes of the act, you have now changed in essence how the other provisions of this act are to be interpreted and understood. That's a very profound change, in my opinion.

The Chair: Thank you.

I'm sorry, but you're at the end of your time.

Ms. Leslie, you have seven minutes.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Thank you all for your testimony today. It's been very helpful.

My name is Megan Leslie, and I'm the member of Parliament for Halifax.

To the ACLC, first, I think it's incredible that we're actually looking at this legislation through a race-based lens. I really want to say thanks for coming and testifying.

The amendments here are trying to address the problem of persistent offenders. I recognize that we don't want to paint all young offenders with the same persistent offender brush, but we have heard that the majority of offences by youth are actually by these persistent offenders.

Recommendation 22 from Nunn actually recommends that when you're looking at pretrial detention, you consider patterns of offences versus patterns of findings of guilt, because that's what happened with Archie Billard in the Theresa McEvoy case.

You said in your testimony that African Canadian youth are charged more often, picked up more often, and harassed more often. When I read the Nunn recommendation, I think that's a good recommendation—let's look at patterns of offences versus guilt, so that we can stop the Archie Billard situations—but I'm wondering what the implications are for racialized communities, in particular for African Canadian youth and, I would argue, aboriginal youth.

Could you share with us your thoughts on the Nunn recommendation, and also on the changes to the bill?

Ms. Megan Forward: Well, from our perspective, the whole issue of what's now been recognized judicially is a problem of racial profiling. That's what we're talking about; that's the crux of the whole matter, that these extrajudicial measures or patterns of offences, unlike findings of guilt by a jury and judge, are not based on objective factors, they're based on measures that a police officer deems to be sufficient punishment for the youth. We're worried that it's going to disproportionately target the African Canadian community. The effect this has, this increased interaction, this stacking up of offences, makes young people resentful of the justice system, it makes them distrust criminal justice officials. If they are sent to youth correctional facilities, they may be exposed to hardened criminals, they're taken away from their families, from their culture, from their programming, and they're also disheartened. It's a self-fulfilling prophecy.

● (1200)

Ms. Megan Leslie: Mr. Dudding, I see you nodding quite a bit. Did you want to add to that?

Mr. Peter Dudding: Please—particularly in reference to the case of Archie. In that circumstance, there were plenty of reasons that Archie could have been held, and should have been held, in the Windsor, Nova Scotia, courthouse where he was—save for a fax machine, that I understand was broken. But the reality is that he was released into the community with no plan in place. Boop, there he was, out, and had to make his own way back from Windsor to Halifax. There were provisions within the current YCJA.

Ms. Megan Leslie: Then is that recommendation needed?

Mr. Peter Dudding: It's not.

Ms. Megan Leslie: It's not. Okay. Thanks.

Also, Mr. Dudding, you mentioned that the primary purpose of protection of the public isn't consistent with recommendation 20 from Nunn, and I'm wondering if you have thoughts about that. First of all, are you okay with that recommendation in Nunn, and secondly, do you think that looking at short-term protection of the public will have a negative implication on the long-term protection of the public?

Mr. Peter Dudding: I'll answer the second question first because it's a simpler one. Yes, I think that trying to enforce short-term protection will lead to greater incarceration and I think to a whole known trajectory.

Back to the first part of this, I think it's very tricky. It's very tricky; your question is a bit like Mr. Ménard's questions. It was quite intentional, in terms of the crafting of the YCJA, that the twin principles of rehabilitation and reintegration were there and public safety was not. When you begin to put that principle in, I can tell you which one is going to trump the others, and, as a result of doing so, where that's going to take us.

Ms. Megan Leslie: Thank you.

Mr. Laperrière, you spoke about the sense of invulnerability, the limited ability to reason; young people don't think they'll be caught. Probably all of us anecdotally know those things to be true about young people.

Who are you relying on to make those statements? Are there particular psychologists, psychological reports, or studies that you rely upon generally to say, yes, this is the way young people think and act and react?

[*Translation*]

Mr. Yves Laperrière: It is a normal component of adolescence to want to set their own limits, to challenge authority, and so on. All young people go through it: pushing the boundaries, establishing their territory, feeling that they are in full possession of their faculties, wanting to make their own decisions. That is fundamental to human behaviour.

In terms of the level of moral judgment, we have specialized clinics, for example in-patient clinics, that regularly use tools to assess young people's level of moral judgment, their level of interpersonal maturity. We see that it is often below the young people's chronological age. In reality, a 17-year-old or 18-year-old sometimes has the reasoning ability of a child of 10 or 12. The young person's age and appearance does not reflect what they are, or their psychological competencies or reasoning ability.

[*English*]

Ms. Megan Leslie: And Les Centres jeunesse relies on that to be true, in your policy? It's just yes or no.

Mr. Yves Laperrière: Yes.

Ms. Megan Leslie: Thank you very much.

The Chair: Thank you.

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

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

I will go very quickly because you know time is very limited.

Mr. Laperrière, you quoted or seemed to be using statistics possibly from Statistics Canada and *Juristat*, concerning young people. Is that where your statistics come from?

Mr. Yves Laperrière: It depends on which ones you're referring to. When I was talking about crime in the Outaouais, those were internal statistics from the Centres jeunesse de l'Outaouais.

Mr. Daniel Petit: Do you know, Mr. Laperrière, that all drug-related crimes are not covered, absolutely not covered, in what are called the uniform crime reports, which are used as the basis for the statistics, including yours? Are you aware of that?

Mr. Yves Laperrière: I have heard that. Except that the comparison is the same, in that case, all things being equal.

● (1205)

Mr. Daniel Petit: I'm asking you to answer yes or now. Are you aware of that?

Mr. Yves Laperrière: Not 100%.

Mr. Daniel Petit: And do you know that all highway traffic accidents—you do know that young people sometimes use vehicles —to which the Criminal Code applies are not in the uniform crime reports? Are you aware of that as well?

Mr. Yves Laperrière: Once again, I have heard that, but not for certain.

Mr. Daniel Petit: You said earlier that homicides are lower among young people than among adults. Did you also know, Mr. Laperrière, that in the case of homicides, in the uniform crime reports, a homicide is only recorded when the body is found, which is to be expected, while all disappearances of children and adults are not classified as homicides, they are classified as missing persons? For example, in the case of Cédrika Provencher, four years ago, she has never been found. Ms. Surprenant, 10 years ago, she was a young teenager, her case is not classified as a homicide, it is classified as a missing person.

Do you have other figures that show that in fact all the missing persons cases in the Outaouais region are not homicides? Do you have other information concerning...

Mr. Yves Laperrière: That is not what I was referring to. I did not say that the prevalence was lower among young people; what I said was that the prevalence among young people was the exception.

Mr. Daniel Petit: Mr. Laperrière, you talked about rehabilitation. Before coming here, I checked what there is in Quebec, the province I come from. We also communicated to find out exactly what the government of Quebec says about rehabilitation. We did research about Canada and Quebec. This what they say:

> [Translation] In the case of Quebec, it would appear that there are no standards for measuring the success of a rehabilitation program. In addition, most of the research that has been done seems to suffer from a lack of consistent methodology, data discrepancies or different methodologies being used to measure the results. Often, recidivism, when an offender commits another offence, is regarded as the benchmark for calculating the success or failure of a rehabilitation program. Other studies have examined other factors, such as the victim's level of satisfaction.

Do you have some kind of program at the Centres jeunesse de l'Outaouais that would show us how your rehabilitation works?

Mr. Yves Laperrière: Well in terms of financial resources, we are not a university research youth centre, like the ones in Montreal and Quebec City and other places. We don't have the financial resources.

Our academic ties are with the UQO, including with Jacques Dionne, whom you will hear later, who has worked very closely with the use of the cognitive-developmental and behavioural approach in our units.

Mr. Daniel Petit: The question is: do you have one?

Mr. Yves Laperrière: We have no research program. However, we assess success by the application and completion of an individual intervention plan for each of our young people.

Mr. Daniel Petit: A little earlier in your testimony, and not just yours, all of it, I heard a lot about rehabilitation. When we talk about rehabilitation, we are talking about someone who has gone through the system. That is what we call a person who may be a criminal, depending on the situation.

Do you have a clearly defined program for victims in your Centres jeunesse de l'Outaouais? I haven't heard a lot about that. How many victims have told you they did not support this bill?

Mr. Yves Laperrière: We work closely with the Centre d'aide aux victimes d'actes criminels; for one thing, I am a member of the centre's board of directors. Our alternative justice organization consults victims in all situations involving diversion measures and we ourselves consult in all pre-decision reports we are asked to prepare.

We pay special attention to giving victims a role, not only in terms of diversion measures, but also for sentencing. We make a concerted effort...

Mr. Daniel Petit: You understand that my time is limited.

Mr. Laperrière, there are four organizations that work with victims, and I am going to name them for you.

The first has testified before the committee, the Association québécoise Plaidoyer-Victimes. The second is the Centre d'aide et de lutte contre les agressions à caractère sexuel, CALACS, which we have where I come from. The third is the Centre d'aide aux victimes d'actes criminels, CAVAC. The last one is an association one of our senators is involved with, the Murdered or Missing Persons' Families' Association.

Do you know there are no others in Quebec, apart from those?

Mr. Yves Laperrière: I named CAVAC and pointed out that it was one of our partners.

Mr. Daniel Petit: I want to know whether there are other organizations, apart from them.

Mr. Yves Laperrière: As I told you, in the diversion program, Alternative Outaouais is our main collaborator. It is an alternative justice organization that works, in applying that program, very closely with the victims, for example on criminal mediation, conciliation and reparations. The organization is not involved in advocating for or protecting victims' rights. Rather, its role is to build bridges through the reparations that may be offered to victims.

● (1210)

Mr. Daniel Petit: Based on research we have done, precisely for the purpose of today's meeting, I will read you this: [Translation] "However, there do not seem to be any major victim assistance organizations that deal exclusively with young people." Here, we are studying a bill that relates to young people. Do you know of organizations...

Mr. Serge Ménard: A point of order, Mr. Chair.

Could we get access to the documents quoted by Mr. Petit? I think he has appeared as counsel often enough in his career to know that when you want to quote a document to a witness, the other parties have to be able to consult the document in question, so they can determine whether there are other explanations in it.

[*English*]

The Chair: I believe that at this point in time Mr. Petit has the floor. He's entitled to ask questions as he wishes.

If the witnesses refer to documents, certainly we can request that they provide them.

Mr. Petit, would you please finish? You have a minute and 15 seconds.

[*Translation*]

Mr. Daniel Petit: Was I not interrupted by that comment, Mr. Speaker?

The Chair: Yes.

Mr. Daniel Petit: In view of your job, do you personally know, in Quebec or the Outaouais, any organizations that deal exclusively with victims who are young persons?

Mr. Yves Laperrière: No. I referred to our main partners, in the Outaouais. In terms of organizations operating elsewhere in the province, I am not an expert on that subject.

Mr. Daniel Petit: Mr. Laperrière, clause 21(2) of the bill reads as follows:

> (2) No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

Do you approve of that amendment?

Mr. Yves Laperrière: Excuse me, I had trouble understanding you.

Mr. Daniel Petit: We are proposing the following in the bill.

[*English*]

The Chair: Please slow down. Our interpreters are not keeping up.

[*Translation*]

Mr. Daniel Petit: Excuse me. It's just that I only have seven minutes. The bill says:

> (2) No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

Do you approve of that amendment?

Mr. Yves Laperrière: Yes.

Mr. Daniel Petit: Do you know what the situation was, that is, before this section was drafted?

Mr. Yves Laperrière: I am not a lawyer. I would have to be able to do a comparison.

Mr. Daniel Petit: No, but you work in the field of law. This is the law that affects your work, is it not?

Mr. Yves Laperrière: I work with young people. We have a legal section that handles the legal aspects.

Mr. Daniel Petit: So you can't tell us anything on that subject.

Mr. Yves Laperrière: I would have to reread the clause, so I could do a comparison.

[*English*]

The Chair: Thank you.

We're at the end of our questioning.

I want to thank each one of our witnesses for appearing. I wish we had more time, but we don't.

We're going to take a break, just for five minutes, to allow you to leave and allow the next panel to set up.

● _____ (Pause) _____ ●

● (1215)

The Chair: We'll reconvene the meeting.

We're pleased to have with us on our second panel a number of different groups.

First of all, we have the Barreau du Québec. Representing them we have Nicole Dufour, Dominique Trahan, and Carole Gladu, all of them counsel.

Then we have the Regroupement des organismes de justice alternative du Québec, represented by Serge Charbonneau.

We also have the Criminal Lawyers' Association, represented by Michael Spratt. Welcome here.

Finally we have Jacques Dionne, professor, department of psychoeducation and psychology, Université du Québec en Outaouais. Welcome to you as well.

Why don't we begin with the Barreau du Québec.

Madame Dufour.

● (1220)

[*Translation*]

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good morning.

Thank you for your invitation.

With me is Dominique Trahan, a lawyer for 30 years and the director of the youth section of the Centre communautaire de Montréal, and Carole Gladu, a lawyer for 18 years and director of the youth and criminal section of the Centre communautaire juridique de la Rive-Sud.

We have opted to split the presentation among us. My colleague Ms. Trahan will begin.

Mr. Dominique Trahan (Lawyer, Barreau du Québec): Good morning. Thank you for your invitation.

The Barreau du Québec has some reservations regarding clause 1, about using a victim's name, particularly when the victim is a minor, in the short title. We do not think it serves any purpose to use one name when the aim is to amend criminal legislation for all Canadian youth.

It is surprising that reference should be made to that teenager's situation to support changes to the Act, as it was that Act, as currently worded, that made it possible to impose adult sentences where the evidence showed that an adult sentence was necessary. Ironically, for the various cases of young people charged with offences, the outcome was that an adult sentence was imposed where necessary, and where not necessary, the young person was sentenced to remain in the youth system.

The Barreau du Québec believes that the legislation is adequate and produces the desired effects. In this instance, application of the Act helped protect society and at the same ensured that youth were rehabilitated.

Ms. Carole Gladu (Lawyer, Barreau du Québec): I am going to talk about clause 2.

The definitions of "serious violent offence" and "violent offence" are being amended.

We note that the new definition of violent offence will encompass a very large number of Criminal Code offences based on a “substantial likelihood of causing bodily harm”, a factor which the accused may not have even considered at the time the offence was committed.

Regarding serious offences, the list of offences that meet the criterion of an offence carrying a maximum sentence of five years is long. The number of offenders deemed to have committed a serious offence will be out of proportion and useless given the desired effects and the risk of the label “serious offender” influencing decisions made under sections 29 and 75 of the Youth Criminal Justice Act.

Now, the changes to the Youth Criminal Justice Act made by clause 3 of the bill raise the notion of public protection to the rank of principle. Rehabilitation and social reintegration become methods, whereas they are currently considered important principles guiding decisions made under the Act.

The Supreme Court of Canada has recognized the important of the declaration of principles, writing that principles should be given the force normally attributed to substantive provisions. Our fear is that changing this declaration represents a shift toward principles of criminal law applicable to adults, and here we are referring to section 718 of the Criminal Code.

The Barreau du Québec reiterates its support for the specificity of criminal law applicable to youth, which focuses on rehabilitation as a means of protecting the public over the long term. The proposed amendment does not include the notion of long-term protection of the public. The Barreau du Québec contends that the notion of "public protection" is linked to immediate protection of Canadians, not long-term protection that promotes rehabilitation and social integration.

The English version of the proposed new subparagraph 3(1)(a)(ii) uses the word "promoting", which is rendered in French as *encourager*. This subparagraph deals with social reintegration and rehabilitation. We suggests replacing *encourager* with *favoriser*, which is closer to the meaning of "promoting".

Finally, we note that the proposed change to paragraph 3(1)(b) reiterates the notion of “diminished moral blameworthiness or culpability” recognized by the Supreme Court of Canada in *R. v. D. B*.

Clause 4 relates to the proposed changes to subsection 29(2) of the Act is to incorporate certain paragraphs of section 515 of the Criminal Code.

The Barreau du Québec contends that in matters of pre-sentence custody as a consideration in sentencing, the court must have the means necessary to impose the right sentence at the right time. We believe that the current provisions of paragraph 39(1)(d) of the Act, which allow a judge to exercise discretion in extraordinary circumstances, should also apply in matters of pre-sentence custody. We believe that if this were to be done, the bill would properly address the concerns raised in the Nunn Report.

● (1225)

Ms. Nicole Dufour: Clause 7 of the bill adds a paragraph to subsection 38(2) of the Youth Criminal Justice Act stating that the objectives of the sentence may be "to denounce unlawful conduct" or "to deter the young person from committing offences". We would note that subsection 38(2) establishes the objectives and principles of sentencing. This import from the Criminal Code is contrary to the objective advocated by the Barreau relating to the special nature of the criminal law that applies to young people.

We note also Parliament's desire to include in section 3 of the Act the notions of denunciation and deterrence. Serious studies have shown that using sentencing as a deterrent has no effect on crime.

Clause 8 of the bill amends paragraph 39(1)(c) by adding extrajudicial sanctions as elements to be considered in imposing a custodial sentence. The Barreau du Québec is opposed to this addition for the following reasons. First, extrajudicial sanctions are applied in cases where the youth acknowledges the facts of the offence. The youth thus receives special treatment: an extrajudicial sanction. This type of sanction has great potential in terms of rehabilitation given that the youth recognizes the facts. The Barreau contends that adding this item to the list of factors the court must take into account in imposing a custodial sentence will cause the benefit which extrajudicial sanctions are intended to bring to be lost.

Further, adding extrajudicial sanctions to the list of factors to be considered will have the effect of bringing into court a measure that was designed to avoid court proceedings. The Barreau is of the opinion that the distinction between extrajudicial sanctions and sanctions imposed upon conviction must be preserved. Only the latter should be considered by the court in imposing a custodial sentence.

Currently, pre-sentencing reports do not mention extrajudicial sanctions longer than two years under section 119 of the Act. Would that time period be applied in the context of the changes to paragraph 39(1)(c)?

Finally, the Barreau would like to see all means available to facilitate rehabilitation—including extrajudicial sanctions—used before an adolescent is placed in custody. Does changing the consequences of this type of sanction create a risk of this option—which has great educational potential for the adolescent—being underutilized?

Clause 8 of the bill proposes that the Attorney General be required to notify the court of his or her intention not to seek an order that the young person be liable to an adult sentence in cases where "the offence is a serious violent offence and was committed after the young person attained the age of 14 years". It provides that "the lieutenant governor in council of a province may by order fix an age greater than 14 years but not greater than 16 years for the purpose of" that obligation.

The Barreau has always opposed any form of intrusion in the professional independence of prosecutors. We contend that notice preceding an application for an order must be given in order to serve the cause of justice and allow the parties to act accordingly. The prosecutor’s decision to not seek an order has no function that would justify giving notice to the court.

● (1230)

Mr. Dominique Trahan: Clauses 20 and 24 of the bill amend the rules on lifting publication bans set out in section 75 of the YCJA. It is proposed that the court, where it imposes a specific sentence on a youth convicted of a violent offence, determine whether a publication ban, particularly a ban on identifying the victim, should be lifted. The bill further states that the principles set out in sections 3 and 38 of the Act, as amended, must be considered. We reiterate that deterrence and denunciation are among the additions proposed in the bill.

The Barreau du Québec disagrees with this change, which targets many situations brought before the court because of the new definition of violent offence. Further, the publication of information that could identify the youth and the nature of the measures imposed will stigmatize the young person, and that could hurt their chances of being rehabilitated and returning to society. We question the usefulness of treating young people 14 to 18 years of age whom the court determines to be proper candidates for the youth criminal justice system in the same way as adults, in terms of publication of their identity, based solely on the nature of offence (ranging in this case from murder to uttering threats). Should we not instead fear the ripple effect among young people seeking attention?

The legislative amendments also introduce the notion of "significant risk", of which the court must be satisfied. The Barreau du Québec is of the opinion that a definition of "significant risk" would be appropriate. Finally, the Barreau contends that the standard of proof required for an order lifting a publication ban must be the standard applied in sentencing (beyond all reasonable doubt), since it the issue of publication is tied to it. We hope that these comments will be useful.

The Chair: Thank you.

[*English*]

We'll move on to Monsieur Charbonneau.

You have 10 minutes.

[*Translation*]

Mr. Serge Charbonneau (Director, Regroupement des organismes de justice alternative du Québec): Good afternoon, Mr. Chair.

Good afternoon, ladies and gentlemen, members of the committee. I would like to take this opportunity to thank you for inviting me.

I am going to start out on a positive note by saying that I am relatively convinced that I share intentions similar to yours. I have not come here in the hope that people will be victimized or murders will be committed. For 25 years, I have worked hard to reduce crime among young people throughout Quebec and Canadian society. I am involved in a number of things. I think we are in agreement on those intentions. Our opinions may diverge when it comes to some facts and methods. I am therefore very happy that this discussion is possible and that you are allowing it. I congratulate you on holding these hearings.

Given that the Regroupement des organismes de justice alternative is not very well known, I am going to say few words about it.

We are a provincial association composed of 37 non-governmental organizations in Quebec. Those organizations work with young people and victims of crime. We work with those two clienteles with the aim of protecting society, and through referrals by the police, extrajudicial sanctions and the administration of several specific sentences as provided by law. Each year, we work with and offer services to about 10,000 young people and 5,000 victims of crime. We believe that we are, in a way, a key player in the field of justice for young people and victims. Our analysis of Bill C-4 has led us to the conclusion that in its present form, the bill will contribute neither to improving public safety nor to improving outcomes for victims of crime.

With respect to public safety, we wonder about the appropriateness of amending the Act. It has been in force for seven years now, and I think there are still several approaches to be developed. Some aspects have not been fully implemented. It is mainly the arguments you are advancing for amending the Act that is causing us problems. We can see from the figures, using all of the methods used to identify crimes, that youth crime is either stable or declining. I could quote the figures you certainly have at your fingertips, in particular the Statistics Canada data. They are easy to find. It seems to us that for the moment, there are no objective data that justify the proposed amendments to the existing Act.

Quebec, and Canada as well, in our opinion, has chosen to tackle youth crime by examining the causes of that crime and working to rehabilitate the young people. Several programs have been created with a view to remedying the harm caused to victims of crime. We want to tell you that when they are combined, the following three strategies—rehabilitation, reintegration and reparations—are recognized as being the most effective for combating crime and recidivism in young people. In our opinion, public safety will not be enhanced by applying measures that are essentially based on detention and punishment. In our opinion, the objectives of achieving more public safety are inconsistent with the methods adopted in this bill. Forgive us for giving you advice, but we will take the liberty of doing that.

We propose, instead, that you strengthen what is already working: remedial justice and rehabilitation. In our opinion, it would be a shame if considerations other than objective data and measures that are working were to result in major amendments to the Act such as those you are proposing. In our opinion, Bill C-4 is a step backward in terms of justice for minors. Clearly the overarching objective of this bill is to protect the public rather than to meet the needs of young people and provide reparations for victims. I think this bill flies in the face of the conclusions reached by several authors, who say that deterrence and denunciation are ineffective with offenders. The prospect of a longer sentence has no impact on them at the point when they commit an act. This has been demonstrated over and over. And it means that young people are no more rational then adults when they commit an act.

● (1235)

If referring young people to the adult system is contrary to the unique needs of young people, making it easier to sentence them as adults, even in small numbers, amounts to putting many components of our youth justice system, a system that has its roots in the 19th century, back on the table.

As well, it seems inappropriate to us to amend an act to cover a few special cases. It becomes a general policy that affects all young people, based on only a few of them. Why would we want to take harsh measures for the few extreme cases when the existing Act already allows for adult sentencing? The possibilities available under the present Act have been illustrated by both the Barreau du Québec and other people who have testified here. It is already possible to punish violent behaviour by young people under the existing Act.

I will move on to the question of outcomes for victims. The ROJAQ adopts the comments made here by the Association québécoise Plaidoyer-Victimes on May 13, 2010. We also oppose the way this bill exploits victims. Using victims' rights to legitimize getting tougher on crime is despicable, in our eyes. Victims are not all calling for punishment. Revenge is not a common thread among victims. Harsher punishment will not necessarily meet the demands of all victims, even if some would like to see it.

In 2001, as the AQPV noted, Allan N. Young certified in his study for the Department of Justice of Canada that there is no evidence that victims want harsher sentencing. That bias had been criticized by other countries. The ROJAQ therefore protests against Canada taking that path, in spite of the criticism leveled against it. What some victims, or most victims, want, what means most to them, is to get answers to their questions, to be able to speak about what they are feeling, about their experience as a result of the event, and to obtain reparations.

The ROJAQ believes that it would be much more appropriate for your government to propose a set of measures that would promote participation by victims in the judicial or extrajudicial process, and to support the development of restorative justice in Canada, which means supporting the existing provisions of the YCJA in that regard.

It would also have been desirable to announce improvements to the assistance provided to Canadian provinces so they could improve the criminal injuries compensation system. Thank you, sir.

● (1240)

[*English*]

The Chair: *Merci*.

We'll move on to Michael Spratt for 10 minutes.

Mr. Michael Spratt (Director, Criminal Lawyers' Association): Thank you very much.

I'd like to thank this honourable committee for the invitation. My name is Michael Spratt. I'm a criminal defence attorney here in Ottawa with the firm Webber Schroeder Goldstein Abergel. I deal with youth on a daily basis, as do most members of our organization. The CLA comprises more than a thousand criminal defence lawyers who deal on a daily basis with issues that this bill seeks to tackle.

Before I start, I'd be remiss if I didn't thank Jennifer Myers and Ildiko Erdei for their assistance in evaluating the bill.

That said, and cognizant of the limited time I have, I'll jump right into it. I'm sure you'll cut me off if I go over.

There are some positives in this bill. I'm going to tell you all the things that I think are negative or need reconsideration, but I'd like to start with talking about some of the positives: reversing the unconstitutional onus that was present before and was struck down by the Supreme Court; and provisions such as mandating that youth serve their sentence in a youth facility. Providing that there is adequate funding for these youth facilities, I think we can all agree that this is something that is advantageous.

However, there are some major difficulties with the bill: the shift in principle from rehabilitation and reintegration to deterrence and denunciation; problems with judicial interim release; the broadening of the definition of serious offence and the implications this will have with the number of youth who are in pre-sentence custody; the broadening of the definition of violence and the impact that will have on the number of youth who find themselves in custody following conviction; the consideration of extrajudicial sanctions and determination as to whether a youth should be sentenced to custody or not; and the associated problems with the publication of the youth's name.

Before I discuss those issues in whatever detail I can, given the time, I think it's important to look at the context in which this legislation is being proposed. The current legislation, from our perspective, is successful. There is a decrease in youth crime, specifically a dramatic decrease in property crime committed by youth. The YCJA corrects the historic problem of over-incarceration of youth and has demonstrated that an emphasis on rehabilitation and integration works.

The use of custody for property offences was a great problem preceding this bill. Of course, the over-incarceration of youth has a number of negative impacts, both on the youth themselves and on the system, and that shouldn't be a goal that we're striving towards.

The context here is that the justice minister has said that the protection of the public is a primary goal—and I couldn't disagree more—but the protection of the public can best be achieved through rehabilitation and reintegration, not through abandoning those principles in favour of a short-term fix that may not ultimately in the long run serve the goals that we all find valuable.

The bottom line is that the system works. Youth who engage in serious and violent behaviour can be detained and are detained under the current legislation. There are always isolated examples to the contrary, but what works shouldn't be abandoned over a few isolated incidents.

I'd like to speak about denunciation and deterrence. Again these principles are a move away from what is working currently, and they're not consistent with what we know about youth. I'm sure this committee has heard a lot of evidence from people much more expert than I am about how youth think, what they respond to, and how they are less affected by general deterrence and denunciatory sentences. In the government's own legislative summary, there are studies from Professor Bala and Professor Grondin and others cited to support that principle. I'd commend to the committee to consider in detail those studies and the evidence that I'm sure you'll hear from people like that.

Deterrence and denunciation aren't effective on youth. Youth are recognized to be more vulnerable, less mature, less able to exercise judgment. Re-incorporating those provisions, which run contrary to what we know is working under the YCJA, is going to result in more jail, either jailing of a youth who is presumed innocent before his trial or a custodial sentence after trial. More jail, I submit, leads to more crime and ultimately less protection of the public.

● (1245)

On the topic of jail, I'd like to speak about pre-sentence custody. The starting position here is that the youth are presumed innocent and should be detained only when necessary. Again, the justice minister has said that violent repeat offenders can't be held under the YCJA. That may be the public perception, but that's not correct. Currently, yes, there is a presumption against release, for very sound and very valid reasons, but with violent offences, youths who have demonstrated non-compliance can be detained. They can be detained if the offence is serious.

On the topic of seriousness, the new legislation as proposed defines very broadly what a “serious offence” is. Under the new legislation, a youth can be detained if a serious offence is committed. We can all agree that certain violent offences are serious; however, the legislation goes beyond that and includes property offences. Property offences, which we have seen under previous forms of youth legislation, have posed significant problems that lead to over-incarceration. These serious offences would include offences such as theft, possession, being unlawfully in a dwelling house, fraud, and possession of break-and-enter tools such as a screwdriver.

Jail is not the best place for the vast majority of youth. Separation from family and community support networks, disruption of a youth's routine and schedule, aren't desirable. Of course, putting a youth in custody in a custodial institution with the youth who probably deserve to be there is not advantageous either. Youth are vulnerable and open to influence. This bill could lead to a youth who has committed property offences being in an institution with much more violent youth who deserve to be there. Of course, no one wants to create a training school for young criminals. It's rehabilitation that works, not warehousing.

From a practical standpoint, increasing the chance that a youth who has committed some of these offences may find himself or herself in pre-sentence custody raises a number of issues. I can tell you that there will be more bail hearings, more delays; there will be more costs associated. I'm sure you'll hear from crown attorneys who will tell you that the courts as they are now are overburdened. I'm sure you'll hear from correctional institution officials who will tell you the problems of funding their institutions as well.

There will be litigation. The over-incarceration of youth, given the circumstances unique to them and their development, may leave this section open to attack under section 7 or other sections of the charter. And of course there are ripple effects throughout the charter. Paragraph 11(b), the right to a speedy trial, may come into play, with youth who are detained ultimately suffering more prejudice than those youth who would have been released under previous legislation. And of course, at the end of the day, these youth who commit property offences, who under this bill could be incarcerated, may not and in my experience likely would not ultimately be sentenced to a period of incarceration.

Moving on to sentencing, there's a removal of the consideration about the seriousness of crime and of the circumstances of offence; that language is taken out. That's what should be considered. Violent youth currently can be sentenced to custody and can be sentenced as an adult.

The broadening of the term “violent offence” is also problematic. It's an over-broad definition that could capture such offences as threats. Of course, by including “recklessness” in that definition, many more youth will be captured, through that provision. When we're looking at youth, it has to be remembered that a youth does not have the foresight that an adult may have or that we can impute to an adult. By including recklessness, we might be over-incarcerating youth who again aren't going to benefit from a custodial sentence.

● (1250)

Also of great concern is the consideration of extrajudicial sanctions when looking at whether a youth can be incarcerated. Of course, those aren't judicial findings. They are, to a great part, discretionary. There's less procedural protection, and ultimately, a youth may be punished more harshly in the future for accepting responsibility of acts in the past.

Again, with these sentencing provisions, there will be more trials, there will be less incentive to resolve, and there will be less incentive to take responsibility, which has an impact not only on the youth and their rehabilitation but on the system as a whole.

I'll hold my remarks on potentially publication issues. I think others have spoken to those, and they flow through largely the same concerns.

The Chair: Thank you very much.

We'll go to Monsieur Dionne for 10 minutes.

[*Translation*]

Prof. Jacques Dionne (Professor , Department of Psychoeducation and Psychology, Université du Québec en Outaouais, As an Individual): Good afternoon, ladies and gentlemen, committee members, Mr. Chair. I would like to thank you very much for inviting me to speak to you.

Like every member of the public, when the media report a heinous crime, whether committed by a young person or an adult, my first reaction is to hope that the person guilty of the crime will be punished very severely, and I sometimes even think the expression "very severely" would not be adequate for the seriousness of the harm done to victims or the anger I feel. But as in many other situations in life, our first impulsive reaction is rarely the right one, and in many cases, the consequences may be the complete opposite of what we want. Life teaches us that in situations like that, it is important to stop and think.

I do understand the need felt by some members of the public and some parliamentarians to believe that toughening the Act will provide better protection for victims of crimes committed by young people, but it would be a serious mistake to believe that and to proceed to amend the Act on that basis.

My core message is that rehabilitating the young offender and protecting the victim are two sides of the same coin. It isn't an either-or choice, as the public discourse would currently have us believe; it is both one and the other, when it comes to protecting the victim and rehabilitating the young offender. In other words, the best way to protect victims is to rehabilitate young offenders. I therefore strongly support the position stated by Mr. Dudding of the Child Welfare League, who spoke a little earlier about clause 3 of the bill.

In what capacity am I appearing before you? I am wearing three hats: first, as an researcher studying the development and evaluation of leading edge practices in the rehabilitation of young offenders; second, as an educator involved in the rehabilitation of young offenders for over 40 years; and third, as a member of the public and grandfather of grandchildren.

As a researcher, first, I would like to highlight a few facts. All of the literature on intervention with adolescents shows, first, that nearly all adolescents, and I would ask some of you to remember this, commit at least one criminal offence during adolescence. The research data show very clearly that 95% of boys and 75% of girls commit an offence during adolescence. Some of those offences may be serious, and even very serious, but most of these young people are able to make reparation for their acts, to develop, to become responsible citizens and not to become criminals. Only a small proportion of them, fewer than 5%, will pursue a career as young offenders and as criminals once they become adults. So it is important to realize that adolescents have multiple different development trajectories and it is important to take this into account in a youth justice system.

Second, contrary to certain beliefs conveyed in the media and elsewhere, it is possible to rehabilitate young offenders, and it works. There are very good programs and effective methods for doing that. Canada is even a world leader in terms of prevention and in alternative justice and rehabilitation methods. In terms of rehabilitation and open custody, for over 30 years, nearly 65% of young people who participated in the program at Boscoville, in Montreal, did not reoffend after their time at that institution.

In more recent experience dealing with serious instances of crimes committed in the community at the Centre jeunesse de Montréal, we have achieved similar and even slightly better results. Research data show that contrary to what was said a few minutes ago, rehabilitation programs work with young offenders if conditions are placed on them. However, when those figures were collected, they also measured young people who had simply been placed in detention with no treatment or rehabilitation. In that case, over 90% of the young people reoffended within a few months after their placement.

● (1255)

The use of deterrent sentences, as shown by a multitude of studies, produces no results and results contrary to the desired effects. Not only does this not protect society, it worsens youth crime.

In order for interventions with young offenders to be effective, that is, for them to succeed in preventing recidivism and promote reparations to victims and harmonious reintegration of the offender, there are some essential prerequisites. The first is that the criminal justice system must be different from the adult justice system. All of the scientific and professional literature shows very clearly the extent to which a young person is not yet an adult, that they have not finished developing, not just in physical terms but also in cognitive and emotional terms, and thus that they have needs that are different from adults' needs.

The second prerequisite is that the entire criminal justice system be guided by the principle of differential intervention. The principle of differential intervention means that because not all young offenders are the same and they do not all have the same needs, the intervention must take those differences into account. For example, a young person with a minor delinquency profile who was placed in a secure custody institution with intensive intervention would be at risk of leaving the program with a more serious delinquency profile. Conversely, a young person with a serious delinquency profile for whom only minor intervention is used will have a strong chance of engaging in more serious delinquency afterward.

It has also been shown that certain intervention methods work well with certain types of young offenders but are ineffective with other types of young people. That is why it is important to adapt the intervention to the young person's delinquency profile.

If the law is to punish the severity of the offence, it must also allow for the young person's profile and needs to be taken into account. A formula that would also be an objective was suggested in Quebec, in response to the report by Judge Jasmin: the right measure at the right time for the right young person.

Researchers elsewhere in the world, and particularly here in Canada, have developed assessment methodologies that make it possible to get a better idea of the risks of recidivism and the needs of these young offenders—Andrews and Bonta, among others. These methodologies are necessary and we have them, and they have proved their usefulness. It is important that before sentencing a young person, allowance be made for using methodologies like these to assess each offender's situation. That would mean that the sentence would be based not only on the seriousness of the offence, but also on the needs of each young offender and on their chances of being rehabilitated and not reoffending.

And in addition to all that, it is important that the criminal justice system offer various forms of intervention, ranging from alternative justice methods and mechanisms, mediation with victims and community service to rehabilitation on probation and open or secure custody, all of which is currently possible under the YCJA, without amending it.

As an educator, I worked for 20 years as a psychoeducator at Boscoville in Montreal. For several decades, Boscoville has been a beacon in the rehabilitation of young offenders. The institution has had tremendous influence not only in Quebec, but also internationally, to an extraordinary extent. My experience in that institution involved working with and getting to know a large number of young people who had extremely positive experiences with rehabilitation and social reintegration. That is the case for most of the ones I have known. Of course there are very sad cases that failed. For the most part, they became responsible, well integrated citizens. They are now labourers, business people, teachers, company managers and artists in various fields. Some of them are have families of their own and are happy and proud to come and introduce their offspring to us, their former teachers. Most of the young people who successfully completed rehabilitation have also taken action to make reparation to their victims, during or after the rehabilitation process. I think full rehabilitation necessarily requires some effort to make reparations to the victims, directly or indirectly.

Fifty years ago, educators in the vanguard went and got young people who had been placed in Bordeaux prison in Montreal to give them a chance to take part in a new rehabilitation program they were creating. Personally, over the years, I have had the opportunity to visit young teenagers placed in adult prisons in the United States, in Chile and in other countries. Every time, I saw how terrible a situation it was, how degrading and how disrespectful of the fundamental rights of those young people. Those consequences are terrible for them, for their victims and for society. For these young people in prison, one of the worst consequences is to find themselves in a situation in which they are in despair, and that can only exacerbate their delinquency and violence.

● (1300)

For the victims, the human degradation of the young offender provides no real relief and may even heighten their fear of a recurrence of the violence committed by the young person when they get out of prison. The same is true for society in general.

A just law therefore must not base the assessment of the act and the sentence imposed on a young person exclusively on the seriousness of the offence. That is where this bill goes wrong. A just law must be based on a complex youth criminal justice system that is constantly trying to strike the difficult balance between the needs of society and victims and the needs of the young offender. That complex system, and this is where the government may have a job to do, should include a system for administering the law in which there is a series of components: first, a differential assessment process based on the principle that each young person is different, that each case is different; second, a multimodal system of intervention that includes the possibility of alternative justice measures, mediation, reparations to the victim, etc., and rehabilitation; third, a process that allows victims to participate and provides them with the support they need; fourth, a structure that encourages parents to participate and be involved; fifth, rehabilitation programs while under supervision, while being intensively monitored in the community, and while in open and secure custody, administered by competent personnel; and sixth, an investment in research to promote the development of best practices and to evaluate the effects of the law.

To conclude, as a member of the public and a grandfather, I am concerned that our laws be just, both for the welfare of society and for the protection and development of my grandchildren and other people's grandchildren. If one of my grandchildren commits an offence, I would fervently hope that not only the seriousness of their offence, but also their needs, will be taken into account. My fondest wish would be that we help them to rehabilitate themselves and make reparation for their criminal act or acts. In the event that one of my grandchildren was a victim, I think my first reaction would be a desire for revenge, but once that passed, I would sincerely hope that whoever assaulted them would get help and be able to rehabilitate themselves. In holding this dialogue about Bill C-4, we must not lose sight of the fact that the future welfare of our society depends on the welfare of our children and grandchildren.

[*English*]

The Chair: Thank you.

We'll go to Ms. Mendes for seven minutes.

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you, Mr. Chair.

[*Translation*]

I would like to thank you all very much for being here and for your presentations. I am not really surprised to see that you are unanimous in your views. I think it is fairly clear. We were not expecting anything else. I don't think you have made a single argument that I could oppose or be against. I would like to have clarify a few little things and I have a question for whoever would like to answer. Do you think this bill is necessary?

[*English*]

Do you think it's a necessary bill?

[*Translation*]

Prof. Jacques Dionne: I think it is much too precipitous and not appropriate because at present it is part of a reactive movement. It is important that we be able to step back and think about it. The YCJA has been enacted, efforts have been made to determine and evaluate the Act's effects, by doing research. If we waited until we had the empirical results of the evaluations that are being done or are in preparation, we might be in a much better position, in a year or two or three years, to implement or improve the existing system so that it would be even better at meeting the two objectives, protecting society and making reparations to victims and also rehabilitating young people and prevention.

● (1305)

Mr. Dominique Trahan: On that point, it has always been said, over the years, that the public has to be informed about what we want to do with young people. From one new act to the next, that aspect has never been met.

Mrs. Alexandra Mendes: In how the public is informed, in this case, I think it is important to make people understand that in terms of the social costs, rehabilitation is much more profitable than punishment or incarceration. That is one of the main objectives, after what you are saying.

Mr. Dominique Trahan: In fact, that is part of the information that should be conveyed to society.

Mrs. Alexandra Mendes: I don't recall which of you talked about strengthening what we have that is working. Could you talk about that in more detail?

Mr. Serge Charbonneau: I would like to pursue that point. I said the Act is young. We are starting to get a handle on all of the provisions of the Act. Certainly there were approaches in terms of services to victims that started with the Young Offenders Act. We really put the emphasis on developing those measures and made arrangements for informing victims of crime. So information is not just information for the public.

A lot of arrangements were made elsewhere in Canada, as we did in Quebec, to inform victims about what is happening, the things being done with the young person, and to a certain extent the programs that might be used to influence the young person's behaviour. That is already working, as Mr. Dionne described. We know too that there are rehabilitation programs, but there are also programs for reparation and mediation that are working very well.

Mrs. Alexandra Mendes: Are they working in both senses, that is, not just for the offender, but also for the victim?

Mr. Serge Charbonneau: Exactly. I think we are starting to understand something. The youth criminal justice system consists of the procedural provisions for young people, but it is also a system of justice for victims.

On that point, we can congratulate the government, because it is becoming increasingly aware of this. These provisions of the YCJA, which we found encouraging and to which we have adapted very well, have to be strengthened, to promote participation by victims. Victims participate, even in extrajudicial measures or in relation to specific sentences.

Elsewhere in Canada, as some of my Canadian colleagues can tell you, victims participate in the pre-sentence report, in meetings with the young people, at the request of judges, Crown counsel or probation officers. Victims want to participate at those stages, and it works. We should support the elements that are working and that are being transformed...

Mrs. Alexandra Mendes: And that are already provided in the Act.

Mr. Serge Charbonneau: ...and that are already provided in the Act.

[*English*]

Mrs. Alexandra Mendes: From what you understand of the bill, who defines violent crime or offences? Who will make that definition?

Mr. Michael Spratt: The definition as it stands in this bill is very broad. It includes threats, it includes substantial likelihood of harm and concepts such as that.

When we look from the prosecution side, there will be some discretion vesting in whomever the crown attorney is prosecuting to decide from their perspective if that definition is met, and ultimately a judicial officer will make that determination.

Part of the problem is that when we're looking at detention of youth prior to that judicial determination, do they get bail or not? Quite often a justice of the peace determines whether one should be released or not, and at that very early stage, this bill casts the net too wide, especially in the definition of serious offences.

You had asked earlier if what we have now works. We've heard from people much more expert than I am about how rehabilitation works. I see that every day in the clients whom I work with; many young people from disadvantaged backgrounds are charged with property offences or schoolyard offences. I see how the rehabilitation works, and part of the reason I see how it works is that I never see the client again after I'm done with him.

My firm specifically has represented youth who were charged with very serious offences. We represented a youth in Ottawa charged with a very high-profile homicide. I can tell you that youth was detained, he was tried, he was sentenced as an adult. So when we're speaking about rehabilitation, it works currently, and when we're speaking about serious offences, the ability to detain and the practicalities, are these youths detained? In the vast majority of cases, they are.

● (1310)

Mrs. Alexandra Mendes: Thank you very much.

Do I still have time?

The Chair: That's it. Sorry about that.

We move on to Monsieur Lemay for seven minutes.

[*Translation*]

Mr. Marc Lemay: Thank you very much for being here today. I don't want to talk for too long, because I want to leave more time for you.

Mr. Dionne or Mr. Charbonneau, I would like to hear your comments. If I have time, I will also have a question for the representatives of the Barreau.

Do you believe that there can be complete rehabilitation of a young person, with the existing Act, if they are not sensitive to what happens to the victims of the crime they have committed?

Prof. Jacques Dionne: The rehabilitation process is a process designed to do exactly that. To begin with, a young offender is so egocentric and primary in the way they function that the victim doesn't figure in their concerns, other than because they were arrested. So the rehabilitation process means that along the way, gradually, they can start to open up to other people and realize that other people exist, and develop a capacity in terms of social skills, the capacity to put themselves in someone else's shoes. When they are able to do that, they are ready to embark on a process with the victim. The processes involving the victim can be part of alternative justice projects, where there is incredible creativity. If the offence is relatively minor, say, a young person who did something stupid that had much more serious consequences than they thought, that young person will be sensitive, and in many cases meeting or working with the victim will in itself be an extremely rewarding rehabilitation exercise, and, I would also say, an exercise in education and maturity for the young person.

However, for a young person who is a very disturbed repeat offender, it will take several weeks, several months, before they show any concern for the victim, and that is where something can be done with the victim. That is why I said a few minutes ago that the process with the victim can take place during or afterward, at the end of the rehabilitation process. It requires a certain amount of time to be done.

Mr. Marc Lemay: With regard to what you are telling us, do you think that what is in the existing act is enough to achieve the objective you have described?

Prof. Jacques Dionne: I think it is. What I would like to happen, as Mr. Charbonneau and I said, is that we give ourselves some time. Currently, there are procedures in place to evaluate the effects of the act. That should be one of the questions we ask, we have to look at various places, in the various provinces with the various existing programs, to see how well we are achieving that balance. I can't answer that right now, except to refer to certain clinical impressions and details that come from anecdotes reported by people I may work with and collaborate with.

Mr. Marc Lemay: Mr. Charbonneau, I imagine you agree with what Mr. Dionne said.

Mr. Serge Charbonneau: I agree completely with it, and we are in the process of adapting to the principles. We had adopted measures in the past, but the act states, in the declaration of principle, that participation by victims has to be encouraged, even in relation to specific sentences. We have projects in Quebec that will mean that victims are able to participate in the pre-sentencing process, during the sentencing phase and even post-sentencing. While the young person is in custody or on probation, we encourage victims to participate in the process, we are increasingly creating spaces to encourage them to participate.

Mr. Marc Lemay: I would like to hear the representatives of the Barreau du Québec. Mr. Trahan, I know you have long experience in the courts, you have appeared on many occasions, we even met in that locale several times. I want to talk about the proposal to amend section 3, the effect of which is to make protecting the public the top priority. In terms of the existing provision, of what is happening right now, do we not already have what we need with section 38? And I would reiterate what my colleague Mr. Ménard said. Why take one part of section 38 and put it in section 3?

● (1315)

Mr. Dominique Trahan: Why do that? Maybe your colleagues can answer that, but the danger in doing it—

Mr. Marc Lemay: Yes, that's right, that is exactly what I want to hear about, the danger in doing that.

Mr. Dominique Trahan: My colleagues could certainly also answer that, but the danger in doing it is that by incorporating that principle in section 3, it becomes a general principle of application. After that, we will see, if that provision becomes law, that as the courts make decisions, that criterion will be given priority and everything else will follow. We will be talking about protection as the priority and rehabilitation will come after, because in the bill, the paragraph we are talking about is given top priority.

Mr. Marc Lemay: I imagine you agree, Ms. Gladu and Ms. Dufour?

Ms. Nicole Dufour: Yes.

Mr. Serge Ménard: There is also what this removes.

Mr. Marc Lemay: Go ahead.

Mr. Serge Ménard: You see what it removes: it removes the existing section—

Ms. Nicole Dufour: Yes, yes.

Mr. Marc Lemay: This surely displaces it.

Ms. Nicole Dufour: No, no, but it removes something.

Mr. Marc Lemay: Go ahead, you have a good memory.

Ms. Nicole Dufour: It is said that the measures taken against a young person must aim for rehabilitation. However, that aspect has been left out completely in the amendment.

Mr. Marc Lemay: If I understand correctly, by amending section 3, it is completely ousting the whole rehabilitation aspect. It will be protecting the public and nothing else.

Ms. Nicole Dufour: No priority is being given to it now.

Mr. Marc Lemay: It is becoming virtually a Criminal Code statute.

Ms. Nicole Dufour: That is what we're afraid of.

Mr. Marc Lemay: You are not in favour of it.

Ms. Nicole Dufour: That's right.

Mr. Serge Ménard: The minister tells us he drew on the Nunn report a lot in preparing this bill. Obviously, the Nunn report deals with a case that happened somewhere, and others have referred to it.

Do we in Quebec have a fairly major study on how the system works, an evaluation of it?

Mr. Dominique Trahan: There are certainly studies, but if we are talking more specifically about a case that might be similar to that one, it is very rare, and in fact I would say it is never the case, for young people to be released if they have no address to give the court.

Mr. Serge Ménard: We have very little time left, Mr. Trahan.

Let's talk about the Jasmin report, which dates from some time ago now. Is it still topical, can it be used to understand the good method we apply in Quebec? Mr. Dionne could answer as well.

Mr. Dominique Trahan: Some things apply, certainly.

Prof. Jacques Dionne: There is still an ideal objective. However, with the data I have provided, I can't evaluate the system as a whole. I think that would be the subject of a whole other very complex study. As a researcher, I can fantasize about our provincial or federal governments giving us these opportunities, to do this kind of research.

The Chair: Excuse me, Mr. Dionne.

Prof. Jacques Dionne: We have specific studies about programs.

Excuse me.

[*English*]

The Chair: Monsieur Dionne, we're over time, so I'm going to have to cut you off.

We're going to move on to Ms. Leslie for seven minutes.

Ms. Megan Leslie: Thank you, Mr. Chair.

Thank you all for your testimony. It's very much appreciated, and I'm very much on the same page as all of you with a lot of what you said.

First, to the Barreau du Québec, I see in your submission—the electronic version has hyperlinks, and unfortunately I didn't click on the hyperlink for one of your footnotes—you talk about your Bill C-25submissions:

> We note also Parliament's desire to include in section 3 of the Act the notions of denunciation and deterrence. Serious studies have shown that using sentencing as a disincentive has no effect on criminality.

Then you referred to your Bill C-25 submission from 2008.

I'm assuming there would be a detailed list of studies in that document about denunciation and deterrence not working.

● (1320)

[*Translation*]

Ms. Nicole Dufour: In fact, in our letter about Bill C-25, we referred to various studies that confirmed that the effect was completely minimal.

Ms. Megan Leslie: Thank you.

[*English*]

Unfortunately, we don't actually have a lot of that kind of evidence before us here.

Mr. Chair, could we get the Barreau's submissions in 2008, a letter concerning Bill C-25? Is it possible to have that made available to the committee and be part of the record?

The Chair: Yes. Anything we ask for can form part of the record, and the Barreau can provide us with that.

Ms. Megan Leslie: Wonderful. Thanks very much.

My question is, I think, for everybody. I'm from Nova Scotia, so I'm a little hung up on the Nunn commission report. I come back to his recommendation about looking at patterns of offences versus patterns of findings of guilt. Really, all the recommendations were about persistent offenders.

Again I will say that I understand that we should not paint all young people with the same brush, that they're not all persistent offenders, but there are a large number of crimes committed by persistent offenders. I asked Mr. Dudding if this recommendation by Nunn was warranted, and he said he didn't think so, that the YCJA works as it is.

Can you tell me if you agree with that? Nunn was specifically looking at persistent offenders to prevent that case from happening again. How do we reconcile those recommendations with not wanting a blunt instrument and locking up all our young people unwarranted? I'm just trying to figure out how to bring those two together.

Maybe we can start *avec le Barreau*.

[*Translation*]

Mr. Dominique Trahan: Earlier, in response to questions from Mr. Ménard, I said that...

It is rare for a young person who has no address or place of residence, who is not living with parents or family members, or at a youth centre or a Children's Aid Society centre, to be released. At least, that is the case in Quebec, and also elsewhere, from the experiences of colleagues in other provinces I have discussed this with. That is included in some of the conditions. So regardless of the number of offences, if that condition is not met, the young person will not find themself on the street the next morning.

Something specific may happen, a particular case, that means a young person was released. Where was the mistake made? I don't know. I haven't examined the case, and I was not involved in the investigation. That kind of situation would not happen where we are.

That doesn't actually settle the matter, and what we may have been able to prevent in the past, everything that has happened.

[*English*]

Ms. Megan Leslie: Any others?

Mr. Michael Spratt: When one is looking at a pattern of behaviour, one has to be very careful. You talked about using a blunt instrument; it's equally dangerous to be over-broad in the type of conduct you're looking at. When you broaden looking at a pattern of behaviour to include such things as extrajudicial sanctions, which are a discretionary measure, to a large extent, imposed by police, or something agreed to at a very early stage in a proceeding, is that going to be helpful and relevant in determining a pattern of behaviour?

One has to recognize that with such dispositions as that, there aren't the procedural protections that would normally be available when one goes to trial or is involved in the justice system. There often isn't a defence counsel or even a crown attorney involved. You've heard submissions about how disadvantaged groups can be targeted by that sort of discretion.

Most importantly from a practical standpoint, when I have a youthful client who is offered extrajudicial sanctions, and the alternative is to engage in a lengthy trial with potentially some very serious consequences, there is a severe incentive to accept the extrajudicial sanctions. On one hand that's good—it's an acknowledgement of behaviour and provides for reparations—but one has to remember, when looking at these EJS patterns of behaviour that's going to be on a piece of paper that may determine whether you're released or not, and may determine whether you're sentenced or not, that there can be an extreme incentive to perhaps inappropriately and against one's long-term benefit accept those instead of the alternative, which is being sought to be avoided.

● (1325)

Ms. Megan Leslie: Thank you.

The Chair: Thank you.

We'll move onto Mr. Woodworth, for seven minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you, Mr. Chair.

I want to state at the outset, for the record, that I note that there's not a single Liberal at this table. That speaks volumes about the approach of that party to this study and this evidence.

I want to also say at the outset that I've heard many things today that are simply not correct about Bill C-4. There has been no abandonment of the principles of rehabilitation and reintegration in Bill C-4. In fact, there is no new paramountcy of the public safety provision in Bill C-4 than didn't exist in the previous bill. There's certainly no requirement of mandatory adult sentences, as a previous witness suggested. The same witness suggested that there was a section 8 Juvenile Delinquents Act incorrigibility offence here; there is no such thing in this act.

I have some questions for the Barreau du Québec. I don't know for sure who is the primary speaker, so I'll just pick Mr. Trahan.

In your written brief, you describe clause 7 as applying to "section 3 of the Act".

I'm assuming that's simply an error and that the reference should be to "section 38". Is that correct?

Mr. Dominique Trahan: On page 3, you mean?

Mr. Stephen Woodworth: Yes. I'm assuming that your reference to "section 3" is simply an error and it should say "section 38". Is that correct?

Mr. Dominique Trahan: It's section 3 of the law.

Mr. Stephen Woodworth: No, that's not correct, because section 3 has nothing to do with denunciation and deterrence. It is section 38, is it not? That's simply an error, correct?

Mr. Dominique Trahan: No, no. Our brief says—I'll say it in English—that, "We note also Parliament's desire to include in section 3 of the Act the notions of denunciation and deterrence."

Mr. Stephen Woodworth: All right. Well, then, you show me where in Bill C-4 section 3 is amended to include denunciation and deterrence, sir.

I'm sure this is just a simple error on your part. Section 3 is not being amended to include denunciation and deterrence, right?

[*Translation*]

Mr. Dominique Trahan: When you read the text, you see that the principles are reversed. That is what I was responding to a little earlier. When the principles are reversed, some of them are given priority.

[*English*]

Mr. Stephen Woodworth: I'm just amazed that you can't acknowledge a simple error of that nature in your brief. But I'm going to move past it.

With regard to the phrase "protect the public"—*protéger le public*—do you agree with me that this can encompass both long-term and short-term protection?

[*Translation*]

Mr. Dominique Trahan: I don't see it. Could the gentleman repeat that? I was thinking about the previous comments.

[*English*]

Mr. Stephen Woodworth: The phrase "protect the public"—*protéger le public*—can encompass both short-term and long-term protection, *n'est-ce pas*?

[*Translation*]

Mr. Dominique Trahan: Yes, neither one precludes the other, in itself.

[*English*]

Mr. Stephen Woodworth: *Merci*. This is why I disagree with the contention on page 2 of your brief that the notion of "public protection" is linked to immediate protection of Canadians, not long-term protection.

I next wish to draw your attention to page 4 of your brief, the discussion of clause 11, in which you contend, "The prosecutor's decision to not seek an order has no function that would justify giving notice to the court."

Do you agree with me that a young person's decision to plead guilty or have a trial is likely to be influenced by a prosecutor's decision to seek an adult sentence upon conviction?

● (1330)

Mr. Dominique Trahan: Not necessarily.

[*Translation*]

I can't answer a statement like that yes or no, because distinctions certainly have to be made among individual cases.

[*English*]

Mr. Stephen Woodworth: Do you think that a young person has the right to be informed of material considerations before entering a plea of guilty or not guilty?

[*Translation*]

Mr. Dominique Trahan: Certainly.

[*English*]

Mr. Stephen Woodworth: And do you not think that the crown attorney's decision to seek or not seek an adult sentence is a material consideration for a young person deciding to plead guilty or not guilty?

[*Translation*]

Mr. Dominique Trahan: Certainly those factors will be taken into consideration. However, in the previous formulation, all those things are not necessarily happening at the same time.

[*English*]

Mr. Stephen Woodworth: The fact is that the materiality of the crown's decision to seek an adult sentence or not seek an adult sentence in my view means there is a very important function for the crown to be required to disclose that before the plea is entered, as required by clause 11 of this bill.

[*Translation*]

Mr. Dominique Trahan: Under the existing act and under the amendments, the Crown can do it right up to when the trial begins, and even, sometimes, right up to sentencing. So announcing that decision—

[*English*]

Mr. Stephen Woodworth: Precisely. That's a little unfair to the offender, isn't it? To find out after he's entered his plea that the crown is going to ask for an adult sentence—don't you think that's unfair to an offender?

[*Translation*]

Mr. Dominique Trahan: I didn't understand your question. I'm sorry.

[*English*]

Mr. Stephen Woodworth: Don't you think it's a little unfair to the offender not to know, before he or she enters his or her plea, that the crown is or is not seeking an adult sentence?

[*Translation*]

Mr. Dominique Trahan: In the practice of law, whether with young people or with adults, before entering a plea of guilty to an offence for which an adult sentence could be asked for, you are going to make sure you get all the information that is available. That is why, at first appearance, even if it is announced, you will plead not guilty.

[*English*]

Mr. Stephen Woodworth: As you yourself pointed out a moment ago, under the present system the crown might not announce that decision until the point of sentencing. I just don't see why you would not find that unfair. However—

The Chair: All right. We're out of time, unfortunately.

Mr. Stephen Woodworth: Thank you.

[*Translation*]

Mr. Dominique Trahan: If it was unfair, I would make the submissions I need to make to the court when the time came.

[*English*]

The Chair: We are at the end of our time. I want to thank each one of our witnesses for appearing today. Your testimony will form part of the evidence. We'll discuss Bill C-4 probably about a month down the road and move to clause-by-clause.

Again, thank you to all of you.

The meeting is adjourned.

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