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Chair

Mr. Ed Fast

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● (1105)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 21 of the Standing Committee on Justice and Human Rights. For the record, today is Thursday, June 3, 2010.

Members, you have before you the agenda for 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.

I was hoping to actually have a planning meeting in camera at the end of today's meeting, but given the fact that we're already starting late and we have three panels to deal with, we may not get to that. If we have some extra time, we'll discuss some committee business.

Today's meeting, as I mentioned, is divided into three panels. We have our first panel with us. First of all, we have William Trudell, representing the Canadian Council of Criminal Defence Lawyers. Welcome back. We have the Canadian Bar Association, represented by Scott Bergman and Gaylene Schellenberg. Welcome back to you, as well. And finally, we have, as an individual, Simon Fournel-Laberge. Welcome.

I think you've been told that each organization, or each individual, has ten minutes to present. Then we'll open the floor to questions. If you can do your presentation in less time, it will leave more room for questions. And given that we have a fairly limited timeframe, I'd appreciate your definitely staying within the ten minutes.

We'll start with Simon.

[*Translation*]

Mr. Simon Fournel-Laberge (As an Individual): Good morning everyone.

My name is Simon Fournel-Laberge. I was invited here today following a report in which I participated on CBC Radio and TV. The subject of the show was the changes that the government wishes to make to the Youth Criminal Justice Act.

I want, first of all, very humbly say that I am not an expert in this field and I do not pretend that I have the solution to the dilemma that society faces with this particular problem. However, I can share with you my personal experience with the youth justice system.

In the eyes of many people, I am living proof that the current justice system, that is really focused on making youth aware of the seriousness of their crimes, on rehabilitation and reintegration, is working. In my case, it took three sentences in youth detention centres before acquiring the tools necessary for my reintegration. I am now 24, I am studying, I work, I pay my taxes and I do everything possible to become an acceptable, responsible and productive member of our society.

But what would have happened to me if at the age of 16, when I was still searching for my identity, I had been labelled as a re-offender and if my picture had been published on the front pages of newspapers. What opinion would I have of myself today? Would it have been so easy for me to find a job, to change my circle of friends and to find the courage and the personal self-esteem necessary to go back to school? I really wonder.

I agree totally that the public has to be protected from violent crimes, but statistics are proving that coercive and punitive measures, repression and longer custody sentences will not prevent crimes from being committed and will not decrease the chance of people re-offending. I believe in prevention and education rather than in repression. However, I am not against longer custody sentences. The last sentence that I was handed down was two years and for me, it was the most beneficial of all. It gave me more time to work on myself along with psychoeducators and my parents. I was able to make contacts with victims, make sincere apologies and make restitution the best I could.

That has allowed me to forgive myself over time and to turn the page on my past as a young offender. Would it be the same if, for example, a 17-year-old in the same situation as mine was transferred into an adult institution as soon as he reached the age of majority? I don't think so. I believe that he would have been penalized because of the lack of resources in the prison system. Prison guards are not trained or mandated to come to the assistance of inmates.

So the question is: should we treat young people in the same way as adults if they commit a serious crime? I do not believe so. We do not treat them this way in any other sphere of our society. For instance, minors do not have the right to vote, because society considers that their moral judgment is not developed enough. A youth under 18 cannot buy alcohol, tobacco or lottery tickets because we consider that he is not able to choose or decide what is good or bad for him. Isn't it, therefore, a paradox to want to judge teenagers as adults? However, this in no way minimizes the damage caused to innocent victims by these young offenders. Would it not be better to invest all this money and energy to provide appropriate resources to inmates who, in the majority of cases, have serious addictions or mental health issues, in order to give them a better chance of turning their life around?

During the difficult years of my youth, in spite of my violence, lacks and deficiencies, Quebec society and Canadian society believed in me and gave me the kick-in-the-pants and the help that I needed. Thanks to that, I can speak today before you and I am proud to contribute to building our society for the future.

And don't fool yourself, I am not the only young person in that case. I am also speaking on behalf of many other youths who make it today thanks to the system presently in place.

I thank you for listening to me.

● (1110)

[*English*]

The Chair: Thank you very much.

We'll move on to Ms. Schellenberg. You have up to ten minutes.

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform, Canadian Bar Association): Good morning. I am Gaylene Schellenberg, a lawyer with the legislation and law reform department of the Canadian Bar Association.

Thank you for the opportunity to present the CBA's views on Bill C-4 to you today.

The CBA is a national association of over 37,000 lawyers, law students, notaries, and academics. An important aspect of the CBA's mandate is seeking improvements in the law and the administration of justice, and it's that aspect of our mandate that brings us to you today.

With me is Scott Bergman, a member of the CBA's national criminal justice section. The section consists of crown and defence lawyers from every part of the country, and Mr. Bergman practises criminal law in Toronto. I'll turn it over to him to address the substance of our brief and respond to your questions.

Thank you.

Mr. Scott Bergman (Section Member, National Criminal Justice Section, Canadian Bar Association): Good morning, everyone. Thank you for allowing me to be here and the CBA to be here.

I'd like to start off by saying that although the CBA doesn't support passage of the bill in its current form, there are a number of proposed amendments that are positive and ultimately ought to be included in the YCJA. For example, the recognition of diminished moral blameworthiness or culpability of young persons is a very significant step in the right direction. Also, we support the amendment prohibiting youth under the age of 18 from ever being sent to adult institutions.

With that said, on balance, the CBA cannot recommend passage of the bill in its current incarnation. With the emphasis being shifted toward pre-trial and post-conviction incarceration of youth, the bill would be a step backwards for the YCJA. Bill C-4 represents a radical shift from the guiding principles behind the hugely successful YCJA and recognition that most youth come into contact with the law as a result of fairly minor and isolated incidents.

The YCJA recognizes the importance of diverting minors and minor incidents away from the criminal justice system, with an emphasis on extrajudicial measures such as warnings, cautions, referrals, mediation, and also family conferencing. The YCJA stresses the importance of rehabilitation and reintegration of youth offenders throughout the act, including in the preamble and also in the purposes and principles of the act. One of the key objectives is to keep young offenders out of jail except for the worst, most violent, or habitual offenders. For those violent or habitual offenders, the YCJA opened the door to adult sentences and opened it more widely and perhaps rightly so. It was a move in the right direction.

With that said, Bill C-4 is a step back to the dark days of incarceration for youth. It is a movement away from diversion, rehabilitation, and reintegration.

It appears that one impetus for the bill is Mr. Justice Nunn's report, “Spiralling Out of Control: Lessons From a Boy in Trouble”. But Justice Nunn himself has actually spoken out against over-reliance on incarceration of youth, saying recently:

> There’s no evidence anywhere in North America that I know of that keeping people in custody longer, punishing them longer, has any fruitful effects for society. Custody should be the last-ditch thing for a child....

Indeed, Justice Nunn has some disdain for certain aspects of Bill C-4 itself. He is quoted recently as saying “They have gone beyond what I did, and beyond the philosophy I accepted. I don’t think it’s wise.”

In the CBA's view, one area where the bill does go beyond what Justice Nunn recommended is the deletion of long-term protection of the public in favour of the more general concept of protection of the public. Without further insight, one can only assume that the deletion of the words “long-term” before “protection of the public” is intentional. This raises serious concerns about young people being locked up for longer periods of time, situations that should only be reserved for the most serious cases.

Except for those most serious or habitual cases—and I pause parenthetically to note that Dr. Croisdale recently talked about the most serious cases being between 5% and 10%, and I believe he testified before this committee on May 13—it's in the interests of both society and the young person to focus on how rehabilitation can best be achieved. The reality is, the vast majority of young people who come into contact with the justice system do so once or twice and likely never come back again. That's what I took from Dr. Croisdale's evidence, and that's what the CBA took from it.

The proposed addition of denunciation and deterrent as sentencing considerations is of very great concern to the CBA. On the one hand, the bill seeks to amend the YCJA to recognize youth's criminal diminished moral blameworthiness in contrast to adults. On the other hand, what the amendments do is import denunciation and deterrents. These are clearly adult-based sentencing principles. Moreover, the literature has conclusively found that incarceration is generally not an effective deterrent against a young person.

Since the YCJA was proclaimed in force in 2003, rates of youth crime have gone down consistently, while the rates of incarceration of young persons after sentence have also gone down. The empirical evidence seems clear. The YCJA is working as intended. Where is the evidence that such drastic and expensive changes are necessary right now for Canadian society? The CBA hasn't seen any such evidence. Before spending massive amounts of money on what appears to be a structural overhaul of some aspects of the system, one would think that significant and widespread public consultation should be the first order of business.

● (1115)

The government backgrounder on Bill C-4 states, and I quote, "... often the system is powerless to hold violent and reckless youths in custody, even when they pose a danger to society." Again, the CBA has seen no evidence to support this proposition. In fact, the current YCJA appears to be quite effective in keeping truly violent and dangerous youth in custody pending trial.

The amendments to pre-trial detention, with a focus on the newly created serious offence category, would not serve to keep more violent or dangerous youth off the street. What it would do is widen the net of pre-trial incarceration to include many non-violent and in some cases relatively minor offences, like assault—simple assault, that is—uttering threats, possession over $5,000, possession of a stolen credit card.

Like all Canadians, CBA is of the view that pre-trial detention is necessary for truly violent youth who pose a very serious risk to the safety and security of the public. The difficulty we have with Bill C-4 is that the proposed amendments do not align with that desired goal. In the name of protecting the public, a youth charged with a serious offence, like a schoolyard fight, could potentially find himself or herself in pre-trial detention.

Violent offence is now going to be defined as "an offence that results in bodily harm and includes threats or attempts to commit such offences". Bill C-4 expands the definition of "violent" to include dangerous acts as well. Even if an act is not violent or does not result in bodily harm, conduct that gives rise only to the risk of bodily harm or endangerment would now be considered violent. At the very least, the CBA takes the position that at least an intent or recklessness component ought to be built into the revised definition of violent offence.

It's incompatible, in our view, to say that young people have diminished moral blameworthiness and to only then create a very serious category of offence that includes endangerment of another by creating a substantial likelihood of causing bodily harm. The very notion of diminished moral blameworthiness is premised on the fact that youth do not think about the consequences or nature of the acts in the same way adults do.

While Bill C-4 contains some important and positive amendments, we cannot support its passage in its current form. In its current form it will undermine, not foster, the long-term protection of society. Practically speaking, the bill means more young people going to jail for longer periods of time. The bill is a move away from a restorative and rehabilitative model of justice toward a more punitive model, which we see as both unnecessary and contrary to sound public policy, which itself is based on well-accepted social science. The social price tag will be hefty, no doubt, but the fiscal costs will really be just as steep.

Thank you for your time.

● (1120)

The Chair: Thank you.

We'll move on to Mr. Trudell, for up to ten minutes.

Mr. William Trudell (Chair, Canadian Council of Criminal Defence Lawyers): Thank you, Chair, and members of the committee. It's an honour to be asked to come back. And I understand that you have limited time, so my opening remarks will be brief.

I want to recognize Graeme Hamilton, who is sitting behind me. He's a young lawyer from Toronto who was very helpful to us in preparing our submissions today.

I want to share with you a couple of anecdotes that describe the spectrum we're talking about here, but first I would like to congratulate Parliament for what has been accomplished so far. It strikes me that we have a successful piece of legislation that works, and all the studies and work that went into this legislation and all the background information shows that it's working. It is indeed a product of a lot of work, a lot of thought. So in some respects, before you move to really looking at whether the substance of the bill should be changed, you ought to reflect upon the success that has been generated by this piece of legislation, and a shift to denunciation and incarceration is really short-term pain for long-term pain, if I could borrow a phrase.

Let me just read you two things. Our representative in the Yukon sent me this:

> In Whitehorse, the Yukon territorial government's department of health and social services created a youth justice panel, unique in Canada, which decides whether a youth is eligible for post-charge extrajudicial sanctions and what the terms will be. The panel includes a probation officer, a representative from the department of education, a member of the RCMP, a youth advocate from the Boys and Girls Club, a first nation representative, someone from Victim Services, the youth's defence lawyer, and a designated crown. It's an example of community resources being used to assist youth who have broken the law to have meaningful consequences in the community at large, rather than only in the courtroom.
>
> While many of the matters diverted are property charges, we have also successfully diverted violent and sexual offences. In addition, there is a person on contract to the government to facilitate victim-offender reconciliation conferences, which bring together the victims of crimes committed by the youthful offender, supported by adults in his life, to repair the harm he caused. These conferences have been successfully used for offences such as break and enters, assaults, and violence in group home situations. It is this type of intervention that will actually reduce crime in the long run. The spirit of the existing legislation gave rise to this very successful program in the Yukon.

In Saskatchewan, our representative talks about this:

> It may be useful for a moment to reflect that the characteristics of being far behind in education, of having a disability, of being poor, and of having a psychological or psychiatric disorder are not common among the children of Canada but are definitely common among the children who are held in custody.

There, in my respectful submission, are the two extremes. We have a very successful program in the Yukon where the principles of this legislation are being put into effect, and we have an example from one of our members in Saskatchewan of, in their experience, the type of people who end up in custody. So we know which extreme we want, and I would respectfully submit that you want the same.

So when you look at serious offence, as it's defined, it expands that definition of offences that could catch these types of young people. It doesn't deal specifically with a violent offender we're concerned about. So I would ask you to look at that definition of serious offence and really see whether it's going to punish the people who are targeted and the young persons who don't have the assistance they need.

Young people live in their heads. This is all of our experiences. And when they go to jail, they will withdraw even further unless they are as successful as the gentleman to my right who articulately talked about his experience. Kids withdraw. So if you incarcerate kids, they will withdraw further. They have already withdrawn in the community. And that's not what we want, because what they will do is attach themselves to an identifiable group of criminals in custody. That's not what we want.

● (1125)

I want to say to you that.... I'll leave it for questions, but there are a couple of issues we are very concerned about.

There is a lot of good stuff in this bill. You are reflecting changes that may be necessary; you'll decide it. But in the definition of "serious offence"—and we agree with the submission of the Canadian Bar Association—paragraph 3(c) states,

> an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

This is a direct response of Mr. Justice Nunn's report. And I would respectfully ask you to add this word,

> an offence in the commission of which a young person *knowingly* endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

"Knowingly", in the criminal definition, imports a number of degrees. You can know definitely, you can be wilfully blind, or you can be reckless. These are all terms that are embodied in the word "knowingly".

Some other learned suggestions were made about "or ought to have known". I don't think that a young person.... How many times did my mother say to me, "You ought to have known better." The point is that young people just don't. So I would respectfully submit that if you import "knowingly" into paragraph 3(c), you will catch a deficiency that Mr. Justice Nunn was talking about, and you protect, in my respectful submission, the principle of catching someone who takes a risk. He doesn't have to directly know it. He can be reckless, because that's part of the definition.

Extrajudicial sanctions, extrajudicial measures cannot be used as a trap later on. It's not like a bite at the apple or the criminal.... You are given extrajudicial measures because we want the community to deal with this. As a defence counsel, I am going to be very concerned about allowing extrajudicial measures to go ahead if I know at some point in time it is mandated that they're going to be held against my client if he or she trips up down the line. So to encourage extrajudicial measures and then to use them as a club later on.... And most of these young people don't have lawyers when they entertain this. They're going to want to have lawyers. So I really don't think, in my respectful submission, that's really where you want to go with this.

The last thing is, and I echo the Canadian Bar Association, we don't need to import the principles of denunciation in this legislation. The fact that there is a separate piece of legislation for young people, the fact that this bill, in its wisdom, recognizes a degree of moral responsibility is enough. We do not have to put in.... And I would respectfully submit that it is going to create all kinds of problems, because a judge will look at the principle of denunciation and it will move to the forefront naturally. It will move to the forefront naturally, and that's not what we want.

We want to make sure the holes are plugged where they need to be plugged, but keep the spirit of a very successful piece of legislation that can be held up throughout the world as a good example.

Those are my opening remarks. Thanks very much.

● (1130)

The Chair: Thank you.

We'll move to questions now.

Mr. Murphy, you have seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, witnesses,

[*Translation*]

to you especially, Mr. Fournel-Laberge. You testimony is very important for us and is very touching.

I have a few questions for the Canadian Bar and for Mr. Trudell concerning this specific bill.

[*English*]

Here's just a tiny preamble first. The government clearly overshot Nunn. The government clearly imported its own portable philosophy into this bill and overshot.

However, the CBA brief and even Mr. Trudell suggest that there are serious and important changes that need to be made or could be made to the YCJA. We must do our best as parliamentarians, but not to say it should all be adopted or it should all be rejected. I think there's stuff on the table here that we need to save. I want members of the committee, since we're maybe a week or a month or two away from looking at changes to this law to save it.... Indeed, in the brief of the CBA, on pages 5 and 6, they're admitting that there are some very good things to be implemented here, so I won't spend much time on that.

It's not part of my questioning, but in passing, you might want to talk about the publication bans for youth. I believe these can be saved, because the almost universal comment on our part is that it's good that it rests with the discretion of the judge. That's a positive step. In the four and a half years I've been here, it's good that the government realizes that judicial discretion is important. The criticisms in the brief are very accurate, but it seems to me that they could be fixed by tweaking some words, by making sure the judge only "shall" consider lifting of publication bans in cases where there are serious and violent offences and in dealing with repeated or habitual offenders. That seems to be the crux of the criticism of giving the judge that discretion.

I think what you also you object to, and perhaps I do as well, is the word that the judge "shall" consider lifting the publication ban. Maybe that should be changed to "may". I don't expect you to respond to that, because I think we're already thinking that we can maybe propose some amendments that might save some of these aspects.

But where the rubber hits the road, where, as Mr. Trudell put it, the real philosophical battleground lies, is with the terms "denunciation" and "deterrence". And here are my questions for Mr. Bergman and Mr. Trudell. Though it's not much talked about around here, the YCJA already has a preamble that mentions, in general terms, that the youth should become aware of the gravity of his or her offences, and that the youth should take into consideration restitution. There's no word of denunciation and deterrence, but there is an aspect that, combined with the Supreme Court's decision, I think imports a certain element of denunciation and deterrence without using those terms. You will also hear from my friends, if I could in some sense prophesy what they're going to tell you, that there is an aspect of specific deterrence that's very important for the youth, and general deterrence is left on the table for the Criminal Code.

I guess what I'm getting at is, how far can we go in changing the preamble—not as far as the government wants, of course, but far enough to take into account one of Justice Nunn's considerations about making the protection of the public a primary goal? How far can we go to beef up the aspect of the personal responsibility of youth, without crossing over, as I've said here many times, to the whole adult notion of criminal justice? As I said to one witness, why don't we just have the Criminal Code, because we're almost getting rid of the Youth Criminal Justice Act by making it a matter of total denunciation and deterrence, like section 718 of the Criminal Code.

How far can we go, Mr. Trudell, if we can perhaps start with you, to nudge it a little further along the road in wording? How can you help us with specific wording?

Mr. William Trudell: I think what you're all looking for is a balance. So I think you take the words that you find are missing and you try to incorporate them in the preamble. Accountability is part of the act. It's already there, holding young people accountable. You can import "protection of the public" as long as you understand that "protection of the public" is not a narrow term. "Protection of the public" includes looking at the individual offender and their individual needs.

I would suggest that what you could do is change the preamble to find a balance. You could say that it reflects that young people should be held accountable for the protection of the public, in keeping with the presumption that young persons are to be held to a less.... You know exactly what the words are. You can put it all in there so that it's balanced.

What happens is, if you use just the word "denunciation", what you're doing is denouncing the crime and you're taking away from the spirit of the act, which is a reflection that these are young people, and before we move to the ultimate incarceration we have to look at the balance.

I would respectfully submit that might be the way to do it. Put all the principles that we're trying to protect in your preamble, not just add "deterrence" and "denunciation", reflecting the spirit of why we have this legislation. If that's what you do, then when a judge looks at it, a judge can say, "Okay, we have to protect the public". What that means is we not only protect the public by throwing away a key, we have to protect the public by looking at the spirit of the act and how the accountability of this young person fits in.

If you take the preamble and the emphasis on denunciation, and you take it and you do not give as much emphasis to the uniqueness of this legislation, then you gut the spirit and you take away the discretion that's really important. It's not only the discretion of the judge, but it's the discretion of the crown attorney, for instance, to be able to make the decision.

Rigid terms translate into a rigid system, and I think the collective wisdom around this table should be able to find a balance in the preamble that reflects everyone's concerns.

● (1135)

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Your presentation was very interesting, but unfortunately too short as usual. I do not understand why, in the name of efficiency, we only give a limited time to witnesses who appear before us. I wish we could give everyone of them the time they deserve given the time they put into preparing for their appearance. I shall then feel compelled to be very brief.

Mr. Fournel-Laberge, first of all, congratulations for having come here. Most of the people who have gone through the same thing as you want to remain anonymous for the rest of their lives. Consequently, the general public is only aware of the failures of the system. So, I am happy to hear that there is a great deal of success, but unfortunately those cases remain anonymous in our society.

You seem to have the necessary education, and certainly the intelligence to have identified the difference in attitude between prison guards and the psychoeducators that were in the detention centres. Could you be a little more specific on that?

Mr. Simon Fournel-Laberge: The psychoeducators that I had the opportunity to work with were role models for me. They were the people who had the keys and who locked the doors, but that it is only part of their work. They bent over backwards to help young people and they went so far as to putting in extra hours. They have all kind of activities and programs that are individually suited to each youth. They completed specialized studies for doing that work. They identify what a youth requires. They channelled my energies and identified my potential so that I would exploit this to the maximum. They acted differently with youth who had different abilities and different potential. They don't work in the same ways with each person. They adapt their work methods to the youth in question.

I made such strong bonds with these people that we are still in touch today. This is how I had that interview with the CBC. We worked hard, and it is a source of pride for myself and for them. These people believed in young people, they believe in rehabilitation and reintegration or they wouldn't do that work.

Mr. Serge Ménard: We do not have much time, but could I summarize your comments by saying that they were really devoted and that they had received special training?

● (1140)

Mr. Simon Fournel-Laberge: Yes.

Mr. Serge Ménard: Thank you very much.

I read with great interest, yesterday evening, the brief of the Canadian Bar Association which I found excellent and also perfectly clear and succinct, which is rarely the case. However, after listening to you this morning, I am still having trouble understanding exactly what your position is concerning the new definitions of a violent offence. On the one hand, if we look at all the offences for which people can get more than five years, and there are few in the Criminal Code for which a person would be liable to less than five years, I think the definition is too broad. On the other hand, you seem to conclude that a violent offence should be redefined.

I would like you to clarify that for me in order for us to decide if we should amend this bill or if we should keep it as it is.

[*English*]

Mr. Scott Bergman: Thank you for those comments.

I'm not necessarily saying it needs to be redefined completely, but it needs to be narrowed. It needs to be constricted. If you have a definition of a violent offence that effectively is five years or more, you've captured—except for all of the offences that are kind of administrative offences and some other summary conviction offences—a huge umbrella and a huge number of offences within that. That opens up those offences to the pre-trial detention regime, and that's the difficulty with broadening the concept and creating this broad concept of violent offence, because you've now made accessible to pre-trial detention a whole bunch of offences that perhaps currently under the YCJA wouldn't be there, and maybe ought not to be there.

One of the examples I used was that of a schoolyard fight. For simple assault, you could be liable—if you were proceeded by way of indictment—for five years, and, as a result you could potentially find yourself in pre-trial detention if all of the other factors under the bail regime came into play, and they easily can come into play. As someone who's in bail courts on a daily basis, I know these things happen.

Mr. William Trudell: Can I respond very quickly?

There are two terms. One is serious offence, and serious offence is that grab bag of offences that you referred to for which the punishment is more than five years. That is the jumping-off point for a pre-trial detention. We're concerned about that, but there's another offence, and that's violent offence. It's a different offence. When we were talking about violent offence, I was asking you to import "knowingly" into paragraph 3(c). When you talk about serious offence, it's such a grab bag, don't you really mean serious violent offence? Isn't that what you're trying to say?

We have to be very careful not to mix up "serious offence" with "violent offence" in the section. I think we're all saying that "serious offence" is too wide. It's not targeting who you want to have in custody prior to trial. We're also saying that "knowingly" should be imported into the the definition of "violent offence" in reflection of the concern that Justice Nunn had.

[*Translation*]

Mr. Serge Ménard: In the good that you recognize within the current legislation, I think there is the first paragraph of section 3 which, in this case, is removed to the benefit of another provision, coming, I believe, from section 38, whereby the judge has to take into account the principle of proportionality and other factors for sentencing.

Am I to understand that we should not touch that section 3 because that is where the current philosophy concerning young offenders that has been a success in Quebec, in New Brunswick and in Yukon, as we heard this morning, is really laid out?

[*English*]

Mr. William Trudell: The bill is not easy. In an attempt to be clear and clarify terms, the bill raises new issues about serious offences, serious violence offences, etc.

Let me respond to this. The existing text of subsection 29(2) has been replaced, and this is bail. The previous subsection 29(2) says:

> In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(b) of the Criminal Code, a youth justice court or a justice shall presume that detention is not necessary.

That's been taken out. It should go back in with the other concerns that you have in relation to the type of offence that should merit detention. That's one thing.

In relation to disposition and sentencing, at the other end of the spectrum, it's a completely separate issue that you have to deal with.

One of the problems you eventually have when you go clause by clause is that I think we all have to be satisfied on whether we're going to be able to interpret it. Young people certainly aren't going to be able to interpret it. They're not going to think about the differences among serious offences, serious violent offences, and violent offences.

In attempting to be clear, I think the act creates some problems.

● (1145)

The Chair: Thank you.

Monsieur Ménard, you're already a minute and a half over.

[*Translation*]

Mr. Serge Ménard: It is not me, it is Mr. Bergman.

[*English*]

The Chair: Ms. Leslie.

[*Translation*]

Mr. Serge Ménard: I believe that Mr. Bergman wanted to answer my question.

[*English*]

The Chair: Monsieur Ménard, you're already a minute and a half over your allotted seven minutes.

[*Translation*]

Mr. Serge Ménard: I exceeded my time, but the witness did not.

[*English*]

The Chair: I'm going to move on to Ms. Leslie for seven minutes.

Mr. Brian Murphy: I have a point or order.

The Chair: A point of order has been raised by Mr. Murphy.

[*Translation*]

Mr. Brian Murphy: I have a lot of sympathy for Mr. Ménard and for the witnesses as well. Mr. Bergman has not had the opportunity to answer my question either. Perhaps it is my fault as well as Mr. Trudell's perhaps. It proves that not enough time is allotted to witnesses. We shall have to discuss that very soon, Mr. Chairman.

That's my point of order.

[*English*]

The Chair: Thank you, Mr. Murphy.

Ms. Leslie, for seven minutes.

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

I have my own set of questions, but if you would like, Mr. Bergman, you may respond to Monsieur Ménard.

Mr. Scott Bergman: Thank you very much, Ms. Leslie. I'll be very brief.

Mr. Ménard's question was directed towards serious offences and violent offences.

One of the things I talked about is on serious offences being five years or more and the implications with respect to the new bail regime that's being proposed here. I completely agree that removing the presumption against detention is a very problematic factor, because it plays into the entire structure of rehabilitation and reintegration that's currently in the system.

Then there are also violent offences. One of the things that's concerning about violence offences is in terms of the definition. I won't repeat the portion about building in a knowledge-based or fault-based element to that last tier, which is paragraph (c). If you're convicted of a violent offence and you're a young person, under this regime the crown and the judge automatically have to give some consideration to whether you ought to be sentenced as an adult.

It's interposed and it interplays very subtly but in a very real way. If you're convicted of an offence where you didn't even know there was a risk of harm, but the risk of harm was there and you didn't give any thought to it, you're then convicted of a violent offence and you're potentially sentenced as an adult.

That's what I wanted to add.

Ms. Megan Leslie: Thank you.

Thank you to all the witnesses for appearing today.

I'd like to start with Monsieur Fournel-Laberge. In the beginning you said that rehabilitation works and could you image if my picture was in the newspaper. Could you talk to us about the publication ban and the fact that they're telling judges to consider whether or not this publication plan should be lifted? What would that look like for young people?

[*Translation*]

Mr. Simon Fournel-Laberge: As I was saying, often, young people are searching for their identity. During adolescence, we are trying to find out who we are or whom we associate with. If you put his picture in the paper and identify him as a criminal, a repeat offender, a danger to society, a youth is more likely to identify with that image and say that's who I am. The youth who is searching for his own identity is given the answer right in the paper. In my opinion, that's killing the person's potential and chances for success right from the outset.

[*English*]

Ms. Megan Leslie: Thank you.

And to the CBA, thank you for your brief. It is excellent. I wish I had written it.

When it comes to publication bans, can you tell us, where would a lifting of a publication ban actually serve the interests of the public when it comes to a young person and protecting the public?

● (1150)

Mr. Scott Bergman: This also dovetails back to Mr. Murphy's question, so I want to make sure I answer both of them at the same time, because I think they're similar.

Right now there's a nice balance that is struck. If a young person, for example, commits a very violent crime, and is out on the lam, so to speak, and there's a real risk to the public because this person is armed and dangerous, or potentially a risk to the public, then there's a discretion. The crown attorney and the police apply for an order, they lift the publication ban, it's very tightly monitored in terms of how long the publication ban can be lifted for, it hits the newswires, they end up catching the person—and usually when they're young people they're not going very far, because they have a very small circle to go in—and then the ban is removed. If after, for example, 24 hours, which is when the order would be enforced, they haven't found the young person by that point, they go back to court, it's judicially supervised, and there's a request made to extend that order, and that's exactly what's done.

So those are the kinds of circumstances right now where it works, and I think it probably works quite well.

The issue with broadening the publication ban—and this is to Mr. Murphy a little bit too, and I think you know the witness over here had a lot of interesting things to say from a very first-hand perspective—is right now the YCJA is about rehabilitation and reintegration, and what we heard is if you lift the ban what you do is you inhibit the ability of a young person to reintegrate. So what you're doing, in a sense, by lifting a ban is you're undercutting one of the primary driving principles of the YCJA, and I think that's a fundamental concern.

Ms. Megan Leslie: Thank you.

Very quickly, do you know of any studies that show that denunciation and deterrence works with young people?

Mr. Scott Bergman: I'm not aware of any. I don't think the CBA section is aware of any.

Ms. Megan Leslie: Thanks.

At the last meeting we had, the African Canadian Legal Clinic appeared and they talked about the impact on, specifically, young black men in Canada, and how young black men have a greater chance of being picked up, of being charged, not necessarily linked to criminal behaviour, and they talked about racial profiling. I'm wondering if the CBA has any thoughts to share with us about this kind of implication, what profiling would mean with these changes.

Mr. Scott Bergman: To be quite frank and to be fair, I think that's maybe a little bit outside the scope of our submission, so I don't know if we should really be going there, if we're the best authority to go there.

Ms. Megan Leslie: That's fair. Thanks, I appreciate your honesty.

You made the statement that these amendments will undermine the long-term protection of the public, and I'm surprised, actually. Well, "surprised" is a strong word. You represent a broad range of people, with lots of ideas and opinions, and I think that's a pretty bold statement for the CBA to make. It's pretty definitive. I love it, but if you want to expand on it, I would appreciate that.

Mr. Scott Bergman: The fact is, whether you're talking about the YCJA or you're talking about the Criminal Code generally, the long-term protection of the public is a principle that's now built into the YCJA. And I should stop to say, of course, that the CBA section that I'm here representing.... I am a criminal defence lawyer, but there are also crown attorneys who put a lot of time and effort into reviewing this. So it's a joint effort. It's not as though a criminal lawyer's coming before you. I'm coming on behalf of crowns and criminal lawyers. And when, as stakeholders in the justice system, we define "the public", crown attorneys work in the public interest just as defence lawyers do, and the public interest includes everyone who's part of that justice system. When you're protecting the public, you protect everyone who's a member of the public.

So to undercut some of these principles, you may very well incarcerate people longer, as Mr. Fournel-Laberge said, and what you end up doing, potentially, is you create the image in them that they are who you say they are, and when they're released, because most of these people will be released, they're not better off for it; they're worse off for it. And as a result, we're worse off for it, members who are normal law-abiding citizens of the public.

So that's why a statement like that's made.

The Chair: Thank you.

We'll move on to Mr. Rathgeber, for seven minutes.

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

Thank you to all of the witnesses for your appearance here this morning and for your presentations.

Mr. Fournel-Laberge, I'd like to congratulate you on the efforts you've made to turn your life around and for the stock that you place in rehabilitation and reintegration. But it begs the question, if rehabilitation and reintegration are so successful in the youth criminal justice system, why did it take your third custodial sentence before you began to rehabilitate yourself?

● (1155)

[*Translation*]

Mr. Simon Fournel-Laberge: To answer your question, as I said, it was the longest sentence which was the most beneficial. The first sentences, four to five months long, were for minor offences. You do a third of the sentence and you begin right away to be reintegrated into society. I said the longest one was the most beneficial because I had a longer period of time to work with the psychoeducators and my parents and that is why it worked. I could make some trials and errors. In the beginning of my reintegration, I made some mistakes and I was put back in custody. They told me that there were a few things that I had not understood and we were able to start again and try new things.

This is why I say that I am not against longer sentences, but they have to go hand in hand with rehabilitation and reintegration. I don't think that jail time on its own will have any positive result.

[*English*]

Mr. Brent Rathgeber: Merci. I thank you for that.

Mr. Bergman, how do you feel about that? In your presentation, you believe that if Bill C-4 passes, young persons will be going away for a longer period of time. Well, Mr. Fournel-Laberge just indicated that going away for a longer period of time was what made the difference in his rehabilitation.

Mr. Scott Bergman: Of course you have to approach everything on a case-by-case basis, so I can't really answer for Mr. Fournel-Laberge's incident, and I can't say what the conditions were of the place where he was versus those of other places, or what kinds of programs were available to him. Based on—

Mr. Brent Rathgeber: The question is, why do you believe that longer sentences generally are detrimental to the rehabilitation of young persons, which is what I understood you to say, when you said that young persons would be going away for a longer period of time? You said that in a negative context when describing this bill.

Mr. Scott Bergman: There are two things about longer sentences. The first thing is pre-trial detention, which is apparently on the rise, based on some of the StatsCan figures that were released. With pre-trial detention, for example, you don't have access to any of the programs you would need as rehabilitative efforts. That's on the one hand—

Mr. Brent Rathgeber: I'm talking about sentences, not pre-trial detention.

Mr. Scott Bergman: Right.

Mr. Brent Rathgeber: Why do you think that longer sentences are bad?

Mr. Scott Bergman: Why? I don't think that there is a rehabilitative aspect, necessarily. When you have a young person getting one, what are they doing? They are going to go into a jail or a facility. They're going to associate potentially with people who are hardened criminals and have committed criminal acts. They're going to associate with a criminal element; you're not addressing the underlying social root of the problem. What you're doing is teaching a person a certain way of life. The longer you expose them to that way of life, the worse it's going to be for us as a society when they get out.

Longer periods of incarceration are going to be problematic for exactly that reason. What you're doing is teaching criminality, potentially.

Mr. Brent Rathgeber: Or, as in the case of our fine witness, that period of time allows them access to programs. You have to acknowledge that in some cases, because we have an example here.

Mr. Scott Bergman: Absolutely. I'm not saying that there are no exceptions to the rule.

Mr. Brent Rathgeber: Both you and Mr. Trudell have indicated or believe that the current system is working quite well. In fact, Mr. Bergman, you've noted that youth crime is down under the Youth Criminal Justice Act. I think generally that's correct. But I need you to acknowledge that violent crime perpetrated by youth is in fact up. If we go to the period from 1998 to 2008, for example, it has gone from 1,590 incidents per 100,000 young persons to 1,887 incidents per 100,000 persons. So violent crime among youth is actually up. Will you acknowledge that?

Mr. Scott Bergman: I don't know that. What were you referring to there?

Mr. Brent Rathgeber: It was Statistics Canada's Canadian Centre for Justice Statistics' uniform crime reporting survey for 2008.

Mr. Scott Bergman: I don't happen to have that in front of me, so it's very difficult for me to comment on exactly that.

What I have is “Youth custody and community services in Canada, 2008/2009”. Is that what you're referring to, or is it something different?

Mr. Brent Rathgeber: This is the uniform crime reporting survey of 2008.

Mr. Scott Bergman: I don't have that. I don't know what everything else around it is and I don't know the scope of the study, so it's very hard for me to comment on it.

Mr. Brent Rathgeber: Is it your impression, based on whatever studies you're familiar with, that violent crime among Canadian youth is up or down in the last ten years, or since 2003, when the new legislation came into force?

Mr. Scott Bergman: I hadn't walked away with that impression from the studies I reviewed. But in fairness, that's not why we're here today. We're not here quoting study after study. There are other people who can do that, I'm sure, for the committee.

Mr. Brent Rathgeber: In your presentation you said that youth crime was down.

Mr. Scott Bergman: That's based on the study that I mentioned, which indicates so.

Mr. Brent Rathgeber: In the study that you're referring to, is violent youth crime up or down, or is it not broken down?

● (1200)

Mr. Scott Bergman: I believe it says it's down.

Mr. Brent Rathgeber: Mr. Trudell, you look as if you might have something to add. No?

Mr. William Trudell: I think if you do careful studies and call experts, you're going to find that violent crime is down right across the country. You will find, however, that there are pockets where violent crime seems to be on the increase, and you've addressed this issue in relation to your organized crime study. You have gang problems in some centres.

I don't think that figure can be taken as you present it. I think the trend in crime is down, including violent crime.

There are of course the serious offences that happen—they're almost anecdotal—that cause a lot of attention among the public. Those are the ones concerning which we have to be careful about changing the Criminal Code in response to certain cases. But quite frankly, I disagree with that statistic.

Mr. Brent Rathgeber: But may I ask, should we as legislators be happy and satisfied that 50,000 incidents of violent crime per year are committed among youth? Or should we look to fine-tune the system to try to lower those numbers?

Mr. William Trudell: Well, there's no question. Nobody in this room—whether we're defence counsel, crown, police, legislator, or whatever—none of us likes violent crime. But you don't sledge-hammer it. What you do is gather experts and ask whether there really is a problem. And fine-tuning is quite different from changing the philosophy of legislation that's working. That's my response.

The Chair: Thank you very much.

Given the fact that we started about ten minutes late, we're just going to do one quick round of two minutes each. We'll go to the Liberals and then to the Bloc and then to one from the government.

Ms. Mendes.

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

[*Translation*]

Mr. Fournel-Laberge, my questions are for you. I think that we might have got the wrong impression of your position on incarceration.

First of all, I would like to congratulate you for your testimony and the courage you have shown. It also shows that the system does work, that we can rehabilitate a young person to build up his confidence to come and speak before parliamentarians.

I would like to ask you first where were you rehabilitated?

Mr. Simon Fournel-Laberge: It was at the Maison de l'Apprenti and at the Résidence Taché.

Mrs. Alexandra Mendes: Is it a facility for youth?

Mr. Simon Fournel-Laberge: Yes, it is a detention centre for youth.

Mrs. Alexandra Mendes: It is for youth. This is where you went the last time and where you really got on the right path?

Mr. Simon Fournel-Laberge: Yes, I was there from 16 to 18 years old.

Mrs. Alexandra Mendes: When you established your rehabilitation plan, did you work on it with the professionals around you?

Mr. Simon Fournel-Laberge: Yes, absolutely; that's part of the process. There I learned to know myself, to know what I wanted to do, what I liked, and they gave me all the opportunities.

Mrs. Alexandra Mendes: How many people were there, usually, to support you?

Mr. Simon Fournel-Laberge: Are you talking about educators, psychoeducators?

Mrs. Alexandra Mendes: Educators, psychoeducators, and so on.

Mr. Simon Fournel-Laberge: I had one main educator, but I worked with several others at the same time.

Mrs. Alexandra Mendes: Did you meet your educator every day?

Mr. Simon Fournel-Laberge: We met at least once a week, but as that person was on the same floor, we were constantly working together.

Mrs. Alexandra Mendes: So, that very personalized approach was the reason for your success, in your opinion?

Mr. Simon Fournel-Laberge: Yes. I have spoken in favour of longer sentences, but it must be accompanied by rehabilitation. This is from my personal experience. I needed several episodes of incarceration to understand, but I personally know people who understood right away. They did their three months sentence and never went back. As I was out of control, it took me several trips there before I understood. I got a six month closed custody sentence, but the reintegration began after the third of the time. At least it was the case when I was there. And I don't know if it's still like that today. So I started gradually to go back to school, to work and to visit my parents on weekends and when I had a relapse, I was sent back in for a month because I had to understand a few more things. This occurred until I was finally released, and it had positive results for me.

Mrs. Alexandra Mendes: But you were always very well supported.

Mr. Simon Fournel-Laberge: Yes, I was always very well supported.

[*English*]

The Chair: We'll move on to Monsieur Ménard, for two minutes.

[*Translation*]

Mr. Serge Ménard: I want to talk to the people who have legal training. The philosophy of the Act is set out in the beginning, in section 3 of the law. Currently, in 3(1)(a), it says:

> (a) the youth criminal justice system is intended to prevent crime by addressing the circumstances underlying a young person's offending behaviour, (rehabilitate young persons who commit offences and reintegrate them into society, and ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;

You will agree with me that this is the fundamental philosophy of the law and that it has an effect on the decisions made by judges.

The bill before us intends to take that out and to replace it with the following:

> (a) the youth criminal justice system is intended to protect the public by
>
> (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person, [...]

Do you agree with me that this is a radical change in the philosophy of the law? And as lawyers, do you agree that this will have an effect on the sentences that will be handed down by judges?

● (1205)

[*English*]

The Chair: We'll go to Mr. Bergman first.

Mr. Scott Bergman: I agree that there's a radical change, but I don't think the radical change, from our perspective, is in the proportionality situation. That's already built in. The change comes in adding the protection of the public right at the top, so that it's emphasized for a judge right off the bat, and also in the removal of "long-term", and that's what I referred to back in my submission. Now what we'll be doing is wanting to protect the public in the short term, and the way to do that is to incarcerate more youth, because in the short term that's what to do.

We currently have it as the "long-term protection of the public", and that's what all of these concepts and the ideas in paragraph 3(1)(a) are based on. Items (i), (ii), and (iii) of paragraph 3(1)(a) and paragraph 3(1)(b) are all there "in order to promote the long-term protection of the public". So there's been an inversion and a removal of "long-term", and that's of concern.

[*Translation*]

Mr. Serge Ménard: I have another question.

[*English*]

The Chair: Thank you.

We will move to Mr. Woodworth, for two minutes.

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

I'd like to address a question to Mr. Bergman, if I may, in relation to clause 2 and the definition of "violent offence" and the question of adding in the "substantial likelihood of causing bodily harm".

I have looked, and the only place in which I can see that the characterization of a violent offence makes a difference is that in paragraph 39(1)(a) it gives a judge the discretion to impose a custodial sentence. Am I right that this is the only place in which the definition change of "violent offence" will matter?

Mr. Scott Bergman: Is it paragraph 39(1)(a)? I'm just taking a look at the section.

Mr. Stephen Woodworth: I scanned the act. I can't see any other place where a violent offence in itself has any relevance.

Mr. Scott Bergman: I think that probably is right, with this one caveat, though: if you look at—

Mr. Stephen Woodworth: Let me stop you, because at the moment I'm not interested in your caveat; I'm just interested in confirming that the only place that violent offence comes into play is in paragraph 39(1)(a) and that in that case it gives the judge the discretion to impose a custodial sentence. Is that correct?

Mr. Scott Bergman: It's not completely correct.

Mr. Stephen Woodworth: Then tell me where it's wrong.

Mr. Scott Bergman: If a young person commits what is deemed to be a violent offence and that violent offence will be subject to five years or greater, which all of them probably will be, it's also a serious offence, and a serious offence then comes into play when you're talking about bail. So violent—

Mr. Stephen Woodworth: Let me stop you. A "serious offence", I agree, is any offence subject to five years or more. But that's a different issue. I'm simply talking about the definition of "violent offence" and trying to understand why it makes a difference to you to allow a judge the discretion to impose a custodial sentence.

If, for example, as in the case that was described to us the other day, someone shoots off a gun in the area of young people, perhaps without any intention of hitting someone but perhaps endangering their lives, section 39 doesn't say a judge "must"; in fact, section 39 says that even if it's a violent offence, the judge has to explore other alternatives, and only if there is no other alternative but custody, then —

● (1210)

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: So what's your problem, then?

The Chair: Did you want to answer?

Mr. Scott Bergman: Sure.

The Chair: It has to be yes or no, really. We're out of time.

Mr. Scott Bergman: No.

Some hon. members: Oh, oh!

The Chair: I want to thank all of our witnesses for appearing.

I want to thank Mr. Fournel-Laberge. This is your first appearance before a committee. You were probably a little nervous, and you did very, very well. Congratulations to you as well.

We're now going to take a two-minute break, so that the witnesses can clear out, and we'll have the next set come.

We're suspended for two minutes.

● (1210)

(Pause)

● (1215)

The Chair: We're continuing our study on Bill C-4, and we have our second panel with us.

First I want to welcome representatives from Statistics Canada. We have Julie McAuley, Mia Dauvergne, Craig Grimes, and Rebecca Kong.

Representing Justice for Children and Youth we have Martha Mackinnon. Welcome.

Finally, representing Defence for Children International—Canada we have Agnes Samler and Les Horne.

Welcome to all of you. Time is in short supply, so if you can keep your submissions under ten minutes that will be helpful, because we probably have a lot of questions we'd like to ask you.

We'll begin with Statistics Canada and Ms. McAuley.

Mrs. Julie McAuley (Director, Canadian Centre for Justice Statistics, Statistics Canada): Thank you for the opportunity to present to the committee regarding Bill C-4.

Statistics Canada does not take a position on the proposed amendments in the bill. The presentation we have prepared contains our most recent data on youth criminal justice. All data sources used are clearly indicated as are any pertinent data notes. Distributed for your consideration are the most recent Juristats related to youth crime, youth courts, and youth corrections. Furthermore, in July, Statistics Canada will be releasing new crime and youth court data, which may also be of assistance during your examination of Bill C-4. My colleagues Ms. Mia Dauvergne, Ms. Rebecca Kong, and Mr. Craig Grimes will help to answer any questions.

Using data received from police services across Canada, we can examine trends in youth accused of police-reported crimes. Over the last ten years, there has been a substantial shift in the trends regarding youth aged 12 to 17 accused by police. The rate of youth charged has dropped while the rate of youth cleared by other means has increased. Cleared by other means includes, for example, judicial sanctions and police discretion.

Crime can be classified into two categories: violent and non-violent. Most crime committed by youth is non-violent. This has been a consistent trend over the last ten years. In 2008, seven in ten youth accused of crime had committed a non-violent offence. The rate of non-violent crime committed by youth in Canada has been decreasing over the last ten years, while the rate of violent crime has remained relatively stable. As the youth crime rate is predominantly driven by non-violent crimes, the overall crime rate as reported by police services in Canada has also dropped over the last ten years.

The top ten offences accounted for 93% of all police-reported offences committed by youth aged 12 to 17 in 2008. Seven of the ten shown are classified as non-violent crimes. The most common police-reported offence committed by youth in 2008 was theft under $5,000. This along with mischief and assault level one accounted for about half of all police-reported offences committed by youth in 2008.

I will now turn to what happens once charges laid by police move into Canada's youth courts. In 2006-07, theft was the most common type of case completed in youth court, followed by assault level one and break-and-enters. The composition of cases being heard in youth court is changing. We are seeing fewer cases involving less serious offences, such as possession of stolen property, and an increase in more serious offences, such as uttering threats and weapons offences. Since the introduction of the YCJA there has been a 26% decline in the cases completed in youth court. While there is variability in the magnitude of the decline in caseload, all provinces and territories have experienced a decline since the YCJA.

In addition to the decrease in the total number of cases, there has also been a decrease in the number of guilty cases stemming from youth courts. While the decline began in the early 1990s, the introduction of the YCJA coincides with a decrease in both the total number of cases completed and the number of guilty cases.

Of the approximately 56,500 cases heard in youth courts in Canada in 2006-07, 60% resulted in a guilty finding. For those cases where the youth was found guilty, the most frequent sentence was probation. In recent years the proportion of violent cases resulting in a custodial sentence has been declining. In 2006-07, these cases were at their lowest levels in 15 years. Since the first year of the YCJA, all provinces and territories have experienced large decreases in both the numbers and proportions of guilty youth cases receiving custodial sentences. The use of custody has also decreased across all offence categories.

The average length of custody for all youth cases in Canada was 72 days, compared with 124 for adults. When split by violent and non-violent offences, we see that there is a difference in the length of the custodial sentence imposed: 117 days for violent cases versus 54 days for non-violent cases.

● (1220)

By far, the average length of custody was the longest for homicides, at 1,084 days, which is almost three years, followed by attempted murder and other crimes against persons. On any given day in 2008-09, about 900 youths aged 12 to 17 were in sentence custody, which was down 8% from the previous year and down 42% from 2003-04. In fact, the number has been declining annually since 1995-96.

Looking at slide ten, we see that the youth in remand outnumber those in sentence custody. In 2008-09, 52% of all young people held in custody on any given day were in remand.

Youth continue to spend fairly short periods of time in remand. Four of the eight jurisdictions that provided data in 2008-09 indicated that youth spent, as a median number of days, one week or less in custody. Since the implementation of the YCJA, the median number of days spent in remand has varied across jurisdictions. Overall, in 2008-09, 54% of youth released from remand had spent one week or less in remand. This proportion has fluctuated between 53% and 56% since 2004-05.

For youth there are operationally two levels of custody: open custody, which is less restrictive, such as halfway houses; and closed custody, which are secured facilities and would include detention centres. Among the reporting jurisdictions, the trend in time spent in open and secure custody has fluctuated.

Once again, thank you for the opportunity to present to the committee. This ends my presentation.

● (1225)

The Chair: Thank you very much.

We'll move on now to Martha Mackinnon from Justice for Children and Youth. You have up to ten minutes.

Ms. Martha Mackinnon (Executive Director, Justice for Children and Youth): Thank you very much for the opportunity to address you on legislation that affects the lives of all children.

Justice for Children and Youth has been acting both for young offenders and young victims since 1978. Just as it says in the submission of the Canadian Bar Association, we feel that we understand the issues from the perspective of both those desiring to be more safe and those who have offended.

The first thing I have to do, unfortunately, is apologize. I would normally just ignore this, but because our written submission says the exact opposite of what I mean on one page, I want to point it out now. On page 7, the last sentence of the first complete paragraph says “If this amendment is passed, we can expect a return to much higher rates of detention at great taxpayer cost but with increased public safety”. I mean “without” increased public safety. I will send an amended submission to reflect that change, but I wanted to apologize now in case I misled anyone about my views.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Madam, a moment please. I do not have that document. I don't know what you are talking about. I am sorry, Ms. Mackinnon, but I do not have your brief.

[*English*]

The Chair: Monsieur Lemay, we're just circulating it now.

Ms. Martha Mackinnon: The submission I sent says "Justice for Children and Youth's Submissions re: Bill C-4" at the top. It is the last sentence under the subtitle "Endangers or is likely to endanger the life or safety of another person" in a section entitled "Expanded Grounds for Pre-trial Detention".

The Chair: Ms. Mackinnon, I'll just have you continue with your presentation.

Ms. Martha Mackinnon: Thank you very much.

The first thing, substantively, that I wanted to say is that the Supreme Court of Canada has made findings about youth and their reduced moral blameworthiness and the principles of fundamental justice as they apply to youth. I would like to praise Parliament for its consideration of amending the Youth Criminal Justice Act to incorporate those findings. Those, generally speaking, relate to moral blameworthiness, the definition of "serious violent offence", and the onus provisions where it's not presumed that kids will be treated as adults are.

But Justice for Children and Youth disagrees with the proposals to make the act harsher, because the legislation currently is working. In fact, it is the current legislation that allowed the young man who presented before you to receive the very sentence he said was beneficial. That's the current legislation that got him to where he was.

I was lucky enough to have participated in the national consultations with respect to this legislation. There was one, I believe, in every province. The consultation I attended was attended by police officers in significant numbers, crown attorneys, probation people, criminologists, psychologists, sociologists, lawyers on both the crown and defence side. In those consultations, every single person said the legislation is working—every single person, after repeated questioning.

I'd also point out about the current legislation that in the case of Sébastien, the young offender received an adult sentence. It is the current legislation that was working and that achieved an appropriate sentence for that young offender.

I would echo the submissions you've heard from so many others that denunciation and deterrence do not work. They cannot work. I would encourage you to look at our written submission, which refers not just to the criminological and psychological research that's been done on this point and which is quite conclusive, but also to some quite new research done by a neuroscientist for the Department of Justice, in which he has taken MRIs of young peoples' brains, and photographically, they look different—the impulse control. Putting language in legislation cannot make their brains work differently. So it does not work.

In addition, if I tie this back to the broader general principles of the act and to what makes criminal justice seem fair to people, sentences must be proportionate. They must be proportional to the thing you've done wrong. It cannot, in my submission, be proportional to punish a young person for something some other young person might do or to punish them for what they might do in the future but haven't done. To maintain proportionality, in my view, you cannot have deterrence and denunciation as sentencing principles.

My next point is that the long-term protection of the public should not be changed. Young people, no matter what they've done, are going to spend more time out of custody than they are in custody. It is the long-term protection of the public that's essential. When they are finished with the youth criminal justice system, I want them to be contributing, positive members of society. That must be the long-term focus.

Anyone can trip on any given day. There is nothing we can do to guarantee the short-term protection of the public other than by locking everyone up in boxes and not letting them out. People, if you live in Toronto, are going to get shoved on the subway. It will be an assault. It will even be kind of deliberate. It won't be what most of us think of as a crime, but we will be on the subway and we will get assaulted. You can't eliminate that.

I would also like to point out that in a time of restraint, I think it is critical that Parliament not spend money on anything that cannot be shown to work. All of the evidence suggests that the proposed amendments will not work, and there is no evidence, to my knowledge, that says they will work. In my view, it would be irresponsible to be spending taxpayer dollars on something that may make someone feel good about thinking they're doing something, but if there is no evidence, we shouldn't be spending money on it.

● (1230)

To summarize, it is my submission that we don't actually need any amendments, even the ones that I like. Lawyers would be all right if you didn't do it, because we've got the Supreme Court of Canada and it has already said those things, but I think it's a good thing to amend the act to reflect those rulings of the Supreme Court of Canada, because, fortunately for the world, not everyone is a lawyer. They don't all read Supreme Court of Canada decisions, and it's important that the law be as clear as it can be within the statute itself.

If you must amend in other areas, I have some cautions. One is that I'm personally ambivalent about requiring police to record extrajudicial sanctions. On the one hand, if a police officer at a crossing or an intersection made a written note of every warning he or she gave to people to be careful of oncoming traffic, you'd be surprised, and that's a warning, right? That's a police interaction with you, and it's a warning.

I don't think they have to all be written down. I think most of them are written down at the current time, but my caution is that if you mandate that they get written down, you must also mandate the destruction of those records.

If a young person is charged, goes to court, is found guilty after a trial, and gets the least reprimand, the record of that reprimand lasts for two months. Surely however long we keep police records should be less than that, because it's clearly less serious. If a record is going to be kept, I urge you to mandate its destruction and sealing as well.

Research does show that longer sentences don't work. They don't reduce recidivism. And as I've said, the current laws can already address that.

Finally, I ask the members of this committee to ask for and read the results of the consultation. I sat in rooms where every single individual was asked repeatedly whether they wanted deterrence as a sentencing principle, and uniformly they, including all the police officers, said no. I ask you to ask for and examine the costs of any proposed amendments, and I ask you to ask for and examine all the research about what works, because all of us want our children who have misstepped to be rehabilitated.

● (1235)

The Chair: Thank you very much.

We'll move on to Ms. Samler. You have up to ten minutes.

Ms. Agnes Samler (President, Defence for Children International-Canada): Thank you.

I'm Agnes Samler, president of Defence for Children International—Canada. My colleague Les Horne is the volunteer executive director. We've both worked extensively with young offenders in Ontario and across the country and we both have been child advocates in Ontario; in fact, Les was the first child advocate in North America. Defence for Children has sections all over the world, and its purpose is to promote the UN Convention on the Rights of the Child and to work towards its full implementation.

I'll pass over to Les.

Mr. Les Horne (Executive Director, Defence for Children International-Canada): Thank you.

I'm not a lawyer, but I'm an advocate. I'm going to start with a quotation from Michele Landsberg: “So that's our Canadian contradiction: every time we're confronted with the results of our dysfunctional 'tough on youth crime' approach, we call for more and tougher punishments.” That was 1999. It hasn't changed.

I have a story, which I will end with. During the last ten years of the last century we appeared at every inquest on a young child who had died in the care of the state. And bit by bit, we found that the way in which to change what was happening at the inquest and to let people's hands get off the evidence and stop controlling the evidence in the public was to bring along a team of young people to listen, who had the same experiences as the people who had died in custody, to give evidence to the lawyer that she could use in the inquest. Bit by bit, we found that was the way to get truth into the situation, because the whole protective wall was taken down.

The final inquest was the Meffe inquest at the end of the nineties. The outcome was that the jury asked for immediate closure of the institution, and the Toronto Youth Detention Centre closed as a consequence of that. Since then, another major detention home has opened in Ontario, and that home has already collected many indications that putting kids in jail is the last thing you would do with them—the very last thing you do with them. It's dangerous, expensive, wasteful, and those kids are our children.

When I came to Canada in 1959 I came to work with delinquents, and I was amazed. The first person I met was a little boy, 14 years old, shuffling around in irons with two huge gun-carrying guards beside him. It was Steven Truscott. Over and over again.... I opened a little place called White Oaks in Ontario, and we brought in the children who were under 12—all of them were under 12—from different parts of Ontario, who had been sentenced for up to two years. The first two who walked through the door were two little brothers from Red Lake who could barely speak English, and they were there for an indeterminate amount of time. They were there, in fact, for about three weeks, and we got them right back to a home and to a different, decent kind of existence.

It was just frightening to me at that time, and I've never ceased to be shocked since with what I see when I go and visit people in institutions. I still work with people who come out of institutions and I see the damage it has done to them, and it's all done in the culture.

You can change all the laws you want, but unless you change the culture in institutions and the culture of this province in looking at crime and criminal behaviour, you're not going to change anything. Because that culture seizes the institution and controls it. As we used to say to the guards, “You don't run this institution. You know who runs it. The inmates run it.”

I will leave it at that, except that what I object to personally, and what DCI objects to, is the vindictiveness of the legislation, in our view. The way of looking at young people who are still children, still under 18, by the Convention on the Rights of the Child.... This document, for some reason, seems to have been pushed into the background in Canada, although to me it's the greatest document in the history of human rights that this world has produced. Even bringing that into play could change a whole lot of things, if it was rightly and properly done.

● (1240)

The Chair: Thank you.

Ms. Agnes Samler: Our overall concern is that this bill seems to have a law and order approach, get tough with young offenders. And we believe that the result of the bill as it stands will be that there will be more young people in custody. That truly causes us concern.

I want to talk briefly about two things. First are the principles under subclause 3(1) of the act. People have spoken about this before.

We're moving away from a focus on youth, addressing the circumstances underlying their offences and rehabilitation. We're moving to a focus on public safety, and not even long-term public safety. We're talking about public safety, and we believe this will just incarcerate more kids, and that's not what we should be doing.

We think this section fundamentally changes what the act is about. By moving it away from youth to public safety, I think we have in some ways gutted the original intent of the act. So I would suggest that this be looked at very carefully before people change it.

I've had some comments that it's really just a reordering of the intent of the principles. If you look at it clearly, it's more than that. And if it's simply reordering, maybe it should just be left alone. That might work well.

With regard to institutions, Les has talked a little bit about our experience. But in large institutions we see two groups: we see victims and we see bullies. And when we talk about the victims, just read the inquests about kids in state care in Ontario. I'll speak to Ontario because it's what I know best.

James Lonnie was a young man who was 44 hours in a concrete box intended as segregation for one person. He was placed with another aggressive young man who understood that Lonnie was a rat and he headed out to get him. And Lonnie spent that time screaming and yelling for help, without getting any. In the end he was beaten to death.

We have David Meffe, who was so bullied in a detention home in Toronto that he hanged himself. At the inquest that heard that, which was not made up of bleeding hearts, these ordinary citizens were so appalled by the conditions that they said the institution should be closed. That was their first recommendation.

And I listened to the young man this morning and I could see no reason why the things he was saying, the help he got, could not have been given to him outside a lock-up. He talked about the relationship with people and so on. I'm not sure you have to lock people in custody to get that kind of assistance. We should definitely see the kinds of things people are locked up for, and we should see locking kids up as a last resort.

On the other side, you have bullies. You have kids who are smart; they get in and they affiliate themselves with the toughest group in the place. They may never have beaten up anybody or stolen their food or just had them do degrading acts. Suddenly they are in an institution where, in order to survive, that's what you do.

Martha spoke about people coming out and wanting kids to be rehabilitated in the long term, and that's the safety feature. If we're going to get there, that's what we need to do.

Les, you have that one closing statement.

Mr. Les Horne: 1994 was a good year. It was a good year because the Convention on the Rights of the Child was beginning to be noticed. It's a very wise document.

I was at an international conference for young people in Victoria in 1994. We had gathered groups from all over the world to talk about the convention. There was a group of Quechua from Tena in Ecuador, Maoris from New Zealand, street kids from Vancouver, and a youth leader from Belfast. It all happened in a huge auditorium at the University of Victoria. The last afternoon of the conference came, and the grand finale was to be piped onto a gigantic screen. It was a show from Charlottetown, P.E.I., performed by a professional cast who were celebrating the marvel of Canada and what it could mean to all the young people who were there. There was singing and dancing, and the message was that Canada was some sort of heaven that had been found by all these happy refugees who had escaped the horrors of their home country to live a new life in Canada.

But then we noticed that the message was not getting across. The crowd in the auditorium was shrinking. They were gathering in pockets of space. And at first the conversations sounded confused. Then the confusion turned to anger. With amazing courage, the organizers closed down the pipeline to Charlottetown and people slowly moved to the large platform. It didn't happen by arrangement; it just happened. People went up to the mike, said a few words, and stepped away. People told stories. People cried. I felt so lucky; we all did, and we all knew how lucky that was.

The anger had started because Charlottetown was trying to sell a phony promise, and we all knew that it didn't apply to everybody, but our anger had faded to amazement. We had rights because we had taken ownership of the promise. That is what actually happened, and if you want confirmation, give Senator Landon Pearson a call and ask her. She led the conference in the Lord's Prayer and a peace came down on us all, a happy peace.

That's what should come out of these hearings—a peace that could wrap our angry and hurting offenders and bring healing to them, and a peace that will ease the pain of the victims and help them to reach out and touch hands for the sake of the children who will have the opportunity to rebuild justice in a world that we will have to leave to them.

● (1245)

The Chair: Thank you.

We'll move to questions.

Monsieur LeBlanc, let's make it five minutes, please.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Mr. Chair, I think my colleague is going to ask a question on that issue. Maybe this is a point of order. I'm looking for some guidance.

We've spoken informally on this side of the table. We're quite unhappy with the way we're rushing through these witnesses and going until 1:30. Some of us have question period meetings at one o'clock. That's not going to work. The schedule having an evening meeting and rushing into this stuff I don't think does a service to the witnesses. We're not having time to let them answer questions. The panels, in my judgment, are too big. I think there's a bit of consensus on our side with that issue.

I'm wondering, Mr. Chairman, if perhaps as the first item of business before we hear witnesses on Tuesday morning next week, you would put committee business on the agenda so we can clear some of this up. Otherwise I think we're heading for a collision around some of this stuff. It's unfair to witnesses, some of whom are travelling considerable distances.

We'd like to reorder some of this. Because of the time and witnesses today, we're not going to be able to do it before 1:30, but I'd like to deal with it as the first item off the top on Tuesday morning. I don't know if you want a motion to do that, or if we can just quickly agree to do that and then go on to questions.

The Chair: I think we can agree to do that by consensus.

Are there any problems with that? No. We'll do that.

I'll set aside 15 minutes, or do you want half an hour?

Hon. Dominic LeBlanc: I think we could do it quite quickly and we could even speak informally before the meeting on Tuesday. I don't want to drag this on, but personally I don't think the way we're doing it now should continue for the next few weeks.

The Chair: We'll set aside 15 minutes at the beginning of the next meeting. We may have to cancel a witness or two who we've already scheduled.

Hon. Dominic LeBlanc: Thank you, Mr. Chair.

Mr. Brian Murphy: I want to echo the comments about short-changing witnesses.

The evidence was much appreciated, and I have some questions.

Ms. Mackinnon, I enjoyed your brief. You did a great deal of homework. Most politicians just turn to the first page and the last page. Under recommendations, you have 13, which is good. I wanted to ask you about a couple of them, because they've come up in our hearings before.

With respect to questions, no one seems to be able to answer this one in the affirmative. In point nine, your theme is that amendments should be based on evidence and facts. I suppose it's putting the cart before the horse, because the best evidence is from Juristat and Stats Canada. But in your opinion, and based on the evidence you have, how would you answer these questions? First, is violent youth crime in Canada, in certain communities in Canada, on the rise? Second, is there evidence that incarceration with or without proper rehabilitative treatment is effective? Third, do legislative deterrents actually have a deterrent effect on youth? This last is a theme we've dealt with a lot across the country. As you so poignantly pointed out, their brains are different. I've got three youth at home, and I know their brains are different. I don't need an MRI for that, but I'd appreciate seeing the evidence.

● (1250)

Mr. Marc Lemay: Now you have the proof.

Mr. Brian Murphy: Luckily, they won't be watching this, even on reruns.

On those points, perhaps you could help us, and maybe Mr. Horne and the other group could also answer.

Ms. Martha Mackinnon: The evidence is really that the more intense the intervention in a young person's life—i.e., the more intrusive police are, the more frequently they're charged, the more court appearances they have, the longer sentences they have—the worse the outcome, the worse the recidivism, the slower rehabilitation will be.

I hate to say this, because it would mean we could all just go home, but an awful lot of what we have to do for young people is just keep them safe till they grow up. They will outgrow violence. They simply will. They'll have kids and a mortgage, and they will be too tired to be climbing over fences or doing any of that stuff. So some of it is just keep them safe, train them, support them, educate them, give them all the resources they need. That will produce the best outcome.

You asked about increases in crime. There are pockets; there will always be pockets. Maybe the factory closed and a bunch of parents got laid off and the families are poorer. There could be a multitude of reasons, but there will always be pockets where there are increases in various types of crimes. You'll see that car theft goes up in one neighbourhood but there are gangs and there is gang violence in other neighbourhoods. Does length of sentencing affect that? No.

I think you asked a third thing, about evidence, and I'm afraid I've forgotten it.

Mr. Brian Murphy: I asked about deterrence having an effect on youth.

Ms. Martha Mackinnon: Oh, no, deterrence has no effect. Certainly general deterrence has no effect. What affects individuals is not actually the notion of the sentence; it's the likelihood of being caught. It's like the kitten or puppy, right? There's absolutely no point in swatting them on the nose, if that's what people still do with puppies. What's effective is a guarantee that they'll be caught and dealt with really fast. There is evidence that this type of deterrence works, but not the kind of specific deterrence we have.

The Chair: Thank you.

We'll move on to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: Thank you.

I was awaiting impatiently for the representatives of Statistics Canada in order to get answers to some questions that we have been asking clearly, since the beginning.

I recognize the scope of all the statistics that you have given us. However, I find it hard to get an answer to some basic questions I was asking myself. Where is the youth crime rate in the statistics that you have provided us?

[*English*]

Mrs. Julie McAuley: So what we have provided you today is the pattern of youth crime split by violent and non-violent. But the actual youth crime, looking at the 2008 figures, is—

[*Translation*]

Mr. Serge Ménard: Could you show us this?

[*English*]

Mrs. Julie McAuley: It's in the police-reported crime statistics in Canada, 2008, from Juristat, which I don't think was tabled. I think we tabled three other ones. For 2008, it was 6,454 per 100,000 youth population.

● (1255)

[*Translation*]

Mr. Serge Ménard: Could we have that on paper? My research assistants have found in Statistics Canada's data one type of youth crime rate, but I know that there are two. They found the one calculated using diversion, but the other one is calculated from the uniform crime reporting survey that police officers fill out across the country when they are called to a crime.

Do you have that second type of statistics somewhere?

[*English*]

Ms. Mia Dauvergne (Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada): The rate of youth crime in Canada is calculated using data from the uniform crime reporting survey. What we are able to do from those data is to determine youth who are charged and youth who are not charged, which may be what you're referring to as being diversionary programs, because that's one of the ways in which youth can be accused but not charged.

So in slide 2, we've given the trend line for both of those types, for the youth charged and the youth not charged. If you were to combine those—the numbers that represent these lines—you would come up with the total of youth charged.

[*Translation*]

Mr. Serge Ménard: Could we get—

[*English*]

Ms. Mia Dauvergne: I'm sorry. It's the total number of youth accused. Excuse me.

[*Translation*]

Mr. Serge Ménard: Could we get the rate by provinces?

[*English*]

Ms. Mia Dauvergne: Absolutely.

[*Translation*]

Mr. Serge Ménard: You don't have that here.

I am back to a basic question that we are wondering about. I appreciate that you have given us all these statistics. However, the statistics on crimes against young people do not really help us to deal with youth crimes.

I looked at statistics on crime rates—I think that there were starting in the 1970s—and I saw a few things. The Province of Quebec has a very specific way of dealing with young offenders. We have noted that before 1985, Quebec had a higher crime rate than the Canadian average. But since 1985, there has been a distinct difference and this lowering trend continues. If my memory serves me well, the youth crime rate in Quebec has decreased by 57%.

Why don't I see that reflected in the statistics? Where should that be?

[*English*]

Ms. Mia Dauvergne: We have that information and could certainly provide it to the committee. I do have the 2008 information in front of me for youth accused by province. I could read it into the transcript if you'd like, or we could provide the information back to you.

The Chair: Could you provide that to us?

Ms. Mia Dauvergne: Certainly.

The Chair: That would be great.

[*Translation*]

Mr. Serge Ménard: But—

[*English*]

The Chair: We'll move on to—

[*Translation*]

Mr. Serge Ménard: This is happening once again, in the name of efficiency.

[*English*]

The Chair: That was five minutes.

We'll move on to Ms. Leslie.

Ms. Megan Leslie: Thank you. It's five minutes tops, so I'll jump into it.

On deck 8, I looked at this and drew a line at 2003, when the YCJA came into effect. So if I look at deck 8 and have my line here, this is telling me, then—I just want to confirm—that incarceration rates of youth are going down post-YCJA. Is that correct? Is that what I'm reading?

Mr. Craig Grimes (Chief/Advisor, Courts Program, Canadian Centre for Justice Statistics, Statistics Canada): That is correct.

Ms. Megan Leslie: Okay. Sorry. It just happened so fast.

Mr. Craig Grimes: One of the additional caveats I can add is that the dates in here represent completed cases. At the time of the implementation of the YCJA, there would have been cases in the system that were still pending when the YCJA was enacted on April 1, 2003.

Ms. Megan Leslie: Perfect. That's good to know. Thank you.

When I look at deck 2, and again, I've drawn the line at 2003, indicating the YCJA, it is telling me that overall, youth crime is going down, whether they are charged or not. Is that what this is saying?

● (1300)

Ms. Mia Dauvergne: Slide 2 represents the rate of youth charged and youth not charged for overall crimes.

Ms. Megan Leslie: Does “youth not charged” mean every kid who has never had a charge?

Ms. Mia Dauvergne: It means youth who commit crimes who come to the attention of police but are not formally charged by the police.

Ms. Megan Leslie: Okay, thank you.

Are you able to provide us with data showing youth charged who are sentenced to custody? Do you have that information by race or ethnicity?

Ms. Mia Dauvergne: No, we do not.

Ms. Megan Leslie: You do not.

Do you have any racialized data that would be useful to us for understanding who these youth are?

Ms. Mia Dauvergne: We collect some information on the aboriginal status of persons who come to the attention of police. However, there are many police services that do not provide that information to us. We would have to look at the data quality to determine whether it would be appropriate to release.

Ms. Megan Leslie: So we just don't have that data?

Mrs. Julie McAuley: We are currently working with police departments across the country, and we did a feasibility in Saskatchewan to look at whether that information could be collected directly at the time of interview. That was discussed at the deputy ministers of justice meeting in January, where there was an agreement that CCJS, our centre, should go back and see how we could effectively collect that information.

In terms of aboriginal data, the best source of data for actually looking at the aboriginal component would be our corrections program.

Ms. Megan Leslie: They are in custody.

Mrs. Julie McAuley: Once the person is in either remand or sentence custody, we have that information.

Ms. Megan Leslie: That is only for aboriginals, not for other....

Is it possible for us to get that?

Mrs. Julie McAuley: Yes, we can provide you with that information.

Ms. Megan Leslie: Thank you. That's important.

I'm probably....

The Chair: You can have one quick question.

Ms. Megan Leslie: Justice for Children and Youth, should we amend this bill, or should we just abandon it?

Ms. Martha Mackinnon: I said that I actually believe that putting the principles mandated by the Supreme Court of Canada into the legislation helps, for sure, non-lawyers. But section 3, as people have talked about, is already currently the balancing. It talks about long-term protection. It talks about educating the public about how the act is working. It is already the balancing. To include reduced moral blameworthiness is a good thing. It is a principle. It's good to know up front.

Ms. Megan Leslie: What about the rest of it?

Ms. Martha Mackinnon: I identified the three things the Supreme Court has ruled on. They affect more than three sections, because the presumption stuff occurs in different contexts, but that's for clarity, not for necessity. Indeed, the rest, in my view, would make things worse than they currently are, and at a great cost.

The Chair: Thank you.

I'm going to use my discretion and cut it off here. I know that the government typically gets a question, but we are running short of time. We want to hear from Mr. Elman and Mr. Tustin as well.

I'm going to thank the witnesses for appearing. Your evidence will form part of the considerations.

While the witnesses are moving out and we're having Monsieurs Elman and Tustin take their places, there are a couple of items of committee business that are really important.

First, we circulated the budget for this review of Bill C-4. I need approval of that.

Mr. Brian Murphy: I move its adoption.

The Chair: We have a motion to adopt the budget.

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: The second is that we have the second report of the subcommittee, the steering committee, which is sort of stale-dated, because we've now agreed to meet in the first 15 minutes of our next meeting to deal with the issue of the number of witnesses.

Mrs. Alexandra Mendes: Should we wait until then?

The Chair: It is a report from the steering committee. It might be stale-dated, but we need to approve it. That's all I need.

Mrs. Alexandra Mendes: Okay, fair enough. I move to approve it.

The Chair: Thank you for that.

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: We'll take a two-minute break.

[*Translation*]

Mr. Serge Ménard: I have a meeting at 1 o'clock, like Mr. Dominic LeBlanc. We have a preparatory meeting for the question period. I understand that you, on the government side, don't have that.

● (1305)

[*English*]

The Chair: Monsieur Ménard, the notice for two and a half hours went out to you. This should come as no surprise to you.

[*Translation*]

Mr. Serge Ménard: Excuse me?

Mr. Marc Lemay: Yes, notice was given, but this is the last time.

[*English*]

The Chair: There is an agreement at committee that we go to two and a half hours.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Mr. Chair, one minute people want longer and then when you give them longer they complain that they have to be out of here quicker.

The Chair: We're going to deal with this at our next meeting.

We'll suspend for two minutes.

● (1305)

(Pause)

● (1305)

The Chair: We'll reconvene the meeting.

I want to invite Mr. Elman. And I said Mr. Tustin. My apologies, Ms. Tustin. Welcome to our meeting.

You've got ten minutes to present, and then we'll open the floor to questions from our members.

Please.

Mr. Irwin Elman (Provincial Advocate, Office of the Provincial Advocate for Children and Youth (Ontario)): Thank you.

I want to say that I feel very privileged to be here, particularly in light of the last discussion, about witnesses and time. I feel very privileged because I know many Canadians have a real interest in the work of this committee and this bill, including young people themselves.

As you know, I am the provincial advocate for children and youth in Ontario, and I am joined today by one of my advocates, Lee Tustin, who I can tell you is one of the foremost experts on the Youth Criminal Justice Act in the country and has done some work on it. She's also modest. I hope our presentation can be helpful to you.

I want to begin my comments by saying something about process. As you know, when the YCJA was created there was quite a process of consultation and participation at all levels, including the House of Commons committee. What was created was a youth justice renewal strategy. That became the YCJA in 2003, with several years of studying, consulting, and talking to people before making any changes to our youth justice system. I would guess that even in that process few young people were consulted about what they thought might be helpful in terms of changes. Yet there was a consultation process.

In 2008 Bill C-25, which had changes similar to Bill C-4, was introduced without any prior consultation. I'm told by other provincial advocates, as I wasn't in my position at the time, that round-table discussions were held throughout the country on Bill C-25 after it was introduced. I've heard again today and I think I've seen on websites that the report from those consultations has not been made public. Certainly I haven't seen it, or any of my staff. I think that certainly is curious when you're contemplating Bill C-4, which again I feel has not had any true consultation. This is true particularly because the consultations haven't been open and public, and my understanding is there has not been consultation with young people who might be affected by the bill you're speaking to.

I think it's really important that young people and the people who work with your legislation be consulted. I spent the last 25 years working with young people in child welfare and youth justice systems, and I can tell you that the most important things I learned did not come from a lecture or professor I was listening to or from a book I read. It came from the lived experience and wisdom of young people. I urge you, before you make any decisions, to find out what that lived experience and wisdom can say to you. People are saying this act is to some extent about public safety. I want to remind you that young people are every bit as much members of the public as I am or you are, the same way your children are members of the public, and they have a right to be consulted too.

I also understand there's been some discussion of the Nunn commission report about how protection of society should be a primary goal of the act and that a tool should be given to courts to ensure that the protection of society is taken into account. But the Nunn commission also said the Youth Criminal Justice Act is sound legislation, and the report expressed concern about deviating from the sound underlying principles that are enshrined in the act. This is exactly why I think we need a true consultation process before we change what basically seems to be, as people are saying, a sound piece of legislation.

Even some of the questions I've heard you asking today, and I know you have limited time.... It strikes me that to consider changing a piece of legislation fundamentally without knowing some of the information that you need to know—for instance, statistics with regard to racialized members of our community entering into the youth justice system—is a little bit, and perhaps this is too harsh a word, irresponsible without knowing and understanding. So I urge you to take your time and consult widely.

I've thought a great deal about what I wanted to say. I know that I'm one of a group of characters you're going to meet, and probably because of my position and where I've worked, you could probably guess the kinds of things I'm going to say. I want to get beyond that.

● (1310)

Recently in Ontario, we've had quite a debate about a particular youth justice facility outside Toronto. Because we've been on one end of the debate raising the voices of children and youth, particularly youth who have been involved in that facility, people have said there is—and these are their words, not mine—the “hug-a-thug” group, and somebody referred to it as “bleeding hearts” earlier. And then there's the “law and order camp”. I think the polarization of those two camps is particularly difficult, and I want to find another way of having a discourse about youth justice. I think it comes from the voices of young people themselves. My act, which governs what I'm supposed to do, tells me I'm supposed to elevate the voices of children and youth, in this case in conflict with the law.

I spent, and have spent in the last year or two years, quite a bit of time in youth justice facilities in Ontario speaking to young people, meeting them when the veneer of their lives is stripped away, meeting them in these facilities. When I meet them, I don't know why they're there, but I'm talking to them. They're kids. As somebody said, they're every bit as much children or youths as is the child of anybody sitting around this table. You get to understand that they have hopes and dreams. And you get to understand that they are our future. You ask them what they want to do in the future, and they want to be a plumber, a doctor, a parent. They're somebody's sons or daughters. They are people.

To understand the issue with that in the forefront, with them in the centre of this room, you might make different decisions about the act you're contemplating. I really believe that. It also provides us with common ground, because I believe that people in my so-called “camp”, people who are the characters coming to tell you what's wrong with that, believe as much as you do that we want the best for our children and youth. We want public safety too. Speaking about these young people and understanding them will allow us to act differently, I think. That means also listening to them.

I want to say something else, and I'm thinking about what they might want me to say. In one of the places I was visiting—and it's happened many times—I was with young people in their unit, and suddenly there was a call for a lock-down, what the institution called a "code blue". So all the young people had to go to their rooms, and they were locked in. This is not atypical from any other province. After they came out, I was able to talk to a young person again, and I said, "What happened?" He said, "Well, we were locked down. We have three CDs we're allowed to listen to on our unit, and one of the CDs was missing, and they needed to lock down all the units in the institution—not just this one—to try to find the CD." It seemed curious to me. By the way, when they tried to find the CD, there were strip searches. They take everybody's clothes off, one at a time. They go in the rooms and look for the CD.

I'm not criticizing, and I don't work in the justice system, and maybe they're thinking—and I think they were—that the CD could be used as a weapon, and that it was a matter of safety. But I asked the young person how often this happened. "Well, two or three times a week".

It occurred to me that if at any moment the guards who guard the Parliament Buildings could come in here and tell us to go to our rooms, take our clothes off because they had to look for something that was missing.... If that happened three times, and we didn't know it was going to happen, but we just got used to it happening, we might even think we understood why it was going to happen. When you're in custody in that situation, that's a common situation, and it's just one common element of what it means to be in custody. That's punishment enough in terms of what we need to do to young people if we're going to think we're punishing them. But—and young people will say this—it doesn't do a lot. It's common sense when you think about it.

When you think about your children, it doesn't do a lot in terms of rehabilitation and possibilities for reintegration. So the fewer young people, our children, we can put in that situation.... It's kind of obvious that we shouldn't be doing that.

● (1315)

That's the piece I wanted to say. I also wanted to say a little more about some of the pieces in the act, and I think that with Lee, during questions, we can speak specifically to those.

To me, the declaration principle that people have talked about that shifts the philosophy is really important, because I believe it blatantly ignores parts of the UN Convention on the Rights of the Child, which is also mentioned in the act and which the Canadian Parliament and Ontario's legislature have adopted.

I know there's been some discussion here to the effect of what good is that convention anyway, how enforceable is it, and that maybe that's the reason not to worry about it so much in the act. But what a message that is. It's particularly ironic when we're considering youth justice legislation and are honouring what we as a society say we need to commit to as people, and are teaching our young people how important laws are, that in regard to an act and a convention that Parliament and provincial legislatures have agreed to, we say that because it can't be enforced, it doesn't matter. What an irony it is to take that position.

My time is up. There is so much I wanted to say. There is a group of young people here from children in care. Yesterday they were speaking to Senators Pépin and Munson, talking about their struggles to make it through the child welfare system, how difficult it was. They had made it or were making it, but some of them were in group homes too. Under this legislation, they could be charged and end up in custody and have a completely different path, if they threw a glass at someone in a group home because the abuse they had suffered was triggered by something in that home. I want them to be remembered here too.

I know I'm out of time, but that's my message.

The Chair: Thank you.

You're out of time, but you did provide us with a written copy of your submission, and that will be distributed. It will be translated and will form part of the public record.

Mr. Irwin Elman: Thank you.

The Chair: I'd like to give some time for questions.

Mr. Woodworth.

Mr. Stephen Woodworth: Is a copy of the English version available at this time?

The Chair: No, it is not. That's a process we follow at committee: if it's not in both official languages, we have to wait until it's translated.

Mr. Murphy.

Mr. Brian Murphy: Thank you for your testimony.

Just briefly, did you say you were part of the government consultations?

Mr. Irwin Elman: I was not.

Mr. Brian Murphy: You were not.

I wholeheartedly endorse your comment. It's not as if we haven't asked, but it seems to me that we've heard a number of times now that there were people who were not in the discussions, or the consultation process in each province, who should have been, like you.

We've also heard from people who were part of the consultations. One said just recently—and maybe you were in the room—that she didn't hear a person speak against the way the YCJA was working.

So I think it behoves us as members of the committee—and you will recall people asking the minister and members for a report on those consultations—to drive that point more strongly. I thank you for echoing those concerns.

My question is the following. The YCJA is working adequately. What this bill does, however, is it seeks on its face to address some of that act's shortcomings in a positive way, changes most of us agree with. The government, in perhaps over-reaching, to use my term, seeks to put a little philosophy in there that perhaps we on this side disagree with. To use the phrase "throw the baby out with the bath water", what I fear is that we will throw the whole thing out and not achieve some meaningful amendments, or the whole thing will come in and do some irreparable harm in some regard.

I'll zero in on one very specific part of this, because we've had a longer debate on some of the deeper issues. I'd be very interested in your comments on the publication ban. Your group obviously cares very much about youth, but there is this element of protection of the public, and we heard that in some cases there ought to be a lifting of the publication ban.

Do you think that if the wording were a little more specific around "violent" and "serious" offences involving repeat offenders, even though they are youth, and if we still have that stopgap of judicial discretion, that would be effective?

● (1320)

Ms. Lee Tustin (Advocate for Children and Youth, Office of the Provincial Advocate for Children and Youth (Ontario)): I think I can answer that.

The lifting of the publication ban is really one of the violations of the UN convention, in my view, specifically of the young person's right to privacy. It also undermines a young person's ability for rehabilitation and reintegration.

In answering your question, I would say we need more consultation on it. We need to hear from the people all over the province. We need to hear when it works and when it doesn't work, before we change anything.

Mr. Brian Murphy: Knowing that our time is short, I'm going to cede the rest of my time around the table to you, Mr. Chair, to use when you have time.

The Chair: Thank you for ceding your time, Mr. Murphy.

Go ahead, Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: Ms. Tustin, could you send us a copy of the international convention article that you just made reference to?

[*English*]

Ms. Lee Tustin: Do you mean the article from the UN?

[*Translation*]

Mr. Serge Ménard: Yes.

[*English*]

Ms. Lee Tustin: Yes.

It's actually article 16 of the UN convention, if you happen to have a copy.

The Chair: Actually, could you get that to the clerk? Then she'll distribute it.

Thanks.

[*Translation*]

Mr. Serge Ménard: Do I understand you—

[*English*]

The Chair: Mr. Norlock has a point of order.

Mr. Rick Norlock: On a point of order, Mr. Chair, if we're going to get the article, could I also ask for a list of the countries that are signatories to it so that I can compare which countries are telling us how we should be doing our business? Thank you.

[*Translation*]

Mr. Serge Ménard: I understand that Canada is one of these countries.

You will tell me if you do not agree, but I believe that the basic philosophy of the current legislation is well expressed in section 3 of the Act. You will note that a significant change is proposed to section 3 in the bill. What is important and troubling is not so much what is added than what is removed.

Do you agree with me that this change could result in significant differences in the way sentences will be handed down by judges? You are saying yes and Ms. Tustin, you are almost saying yes, is that right?

[*English*]

Ms. Lee Tustin: I do agree with you. I think our position is that section 3 ought to remain the same. That change, we feel, is really making a change for a small group of individuals and ignoring the rest of the group of youth justice folks, and it really changes the philosophy. It shifts the philosophy of the principles, and I think it would make a huge difference in every decision that's made throughout the entire process. It actually ignores article 3 of the UN convention as well, so again it's a contradiction of the preamble of the YCJA.

● (1325)

[*Translation*]

Mr. Serge Ménard: In your answer, you were alluding to a small group of violent and dangerous re-offenders. They are a tiny group among the youth that are being treated, is that right?

You are nodding, but I must remind you that you are not on camera.

[*English*]

Ms. Lee Tustin: Yes, I'm nodding, but I'm also thinking that part of the concern we had with most of the amendments is that it is based on one report as well.

[*Translation*]

Mr. Serge Ménard: II would like to know if you think that, with the current provisions, judges are able to make the most appropriate decisions for that small group of violent and dangerous offenders?

[*English*]

Ms. Lee Tustin: I would say yes.

[*Translation*]

Mr. Serge Ménard: Thank you.

[*English*]

The Chair: Ms. Leslie is next.

Ms. Megan Leslie: How are we proceeding?

The Chair: We've got your question, and then I'll go to the government side.

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

Thank you very much for your testimony. You raise a good perspective in pointing out that true consultation wasn't done and that consultation is needed.

Mr. Elman, you said that perhaps you could get into the nitty-gritty of some aspects of the bill during questions.

Ms. Tustin, you said a publication ban is one of the things that you believe violates the UN Convention on the Rights of the Child. Can you let us know if other amendments or other pieces of this bill violate that convention, in your opinion?

Ms. Lee Tustin: Yes, we just mentioned article 3 in the preamble. Article 16 and article 3 are two of the major ones.

Ms. Megan Leslie: I don't know them by article. Can you tell me what the subject is, like denunciation insurance?

Ms. Lee Tustin: Article 3 is that the best interest of the child is to be the primary concern in making decisions that affect youth. Putting the protection of public safety first is violating that article.

Article 16 is the right to privacy, and the publication ban lifts that right to privacy.

Ms. Megan Leslie: Do you think the change is about deterrence and denunciation, adding those into the bill? The principles in sentencing, do you think that's at odds with the convention?

Ms. Lee Tustin: Yes. We didn't get an opportunity to go through the specific pieces of the bill we have concerns with—it's in the written piece—but, yes, deterrence and denunciation are two of them.

Ms. Megan Leslie: Okay.

My last question is for Mr. Elman.

If the crown must consider adult sentences, and then give a reason why they're not going to pursue adult sentences, when you were working with young people at the grassroots level, face to face, how did you see that mandatory consideration impacting the relationship between crown and youth?

Mr. Irwin Elman: I'm trying to understand the question you're asking.

Ms. Megan Leslie: It's okay. I haven't been that clear. I understand.

If there's a change to the act that says the crown has to consider an adult sentence for youth, and if they're not going to recommend an adult sentence, then they have to explain why. Do you think that would alter the relationship, if there is a relationship between crown and youth, or do you think it would alter the experience that youth have going through the justice system?

Mr. Irwin Elman: I would say of course. It sets up the crown certainly as the enemy of the young person who is considering making a determination that would not be what the youth probably would consider is in his best interest. That's how I would answer that.

I'm not convinced that the YCJA is working well. We don't know. It's like a car I might have bought that I always wanted, a Mustang, and it's in my garage. You ask me how my car has been and I'd say I hadn't driven it yet. It looked good, but I couldn't tell you, and I didn't have any gas for it.

In terms of the provinces, and from talking to my colleagues, implementation of the YCJA needs some gas, it needs some resources. We can't tell how well it's working. Some of the issues that created the situation that forced the Nunn commission to come into being were a lack of resources.

We need to ensure that resources are in place to implement the act, and that's why consultation is so important, to understand where we're at in implementing the act before we change it. We're in the right direction, but our worry is that we're shifting course before we get to port.

● (1330)

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth: I notice we're right at 1:30, so I'll try to abridge my remarks a bit.

I want to speak to Mr. Elman. I appreciate your comments and I've been impressed by your sincerity. I know you have it in your heart to advocate for children; that comes through loud and clear.

I wonder if you have ever had the opportunity to speak to or counsel a parent whose child has been beaten to death.

Mr. Irwin Elman: I would say I have met, I wouldn't say in that particular circumstance, but, yes, I've met victims. I've met parents of victims—

Mr. Stephen Woodworth: The question was a parent whose child had been beaten to death.

Mr. Irwin Elman: Not beaten to death, no.

Mr. Stephen Woodworth: I asked that question because we had an opportunity to speak to a parent whose child had been beaten to death, and in the aftermath, what was even worse was that she had another child—I forget if the other child was 11 years old, or something in that range—who was threatened by other young people and who ultimately had shots fired at him from a vehicle and was simply terrorized. The evidence was that perhaps there might be something we could do to improve the law to assist 11-year-olds or other young children who find themselves in that situation.

What improvements to the Youth Criminal Justice Act would you propose to protect children who are terrorized by such violence?

Mr. Irwin Elman: That's a good question.

Mr. Stephen Woodworth: It's the question we're here to answer, by the way.

Mr. Irwin Elman: Here is what I've learned from all the years of working with young people. Because it was a very pointed question, I want to say to you that sometimes the young people I worked with and the children I worked with would rather have been dead than to go through what they went through.

While I don't know, when speaking to a parent of somebody who's died—and I can't imagine it, having children myself—I know what it's like to live a torturous life from a young person's point of view.

Mr. Stephen Woodworth: We have so little time.

Mr. Irwin Elman: I hear you, but I want to answer your question.

Mr. Stephen Woodworth: Do you have any suggestions? I'd like to hear the suggestions.

Mr. Irwin Elman: Yes, the solutions and problems are not always connected. You've raised a very important problem, and I think it would be important for this committee to consider that, but perhaps the solution isn't to change the YCJA. There are other solutions you should be considering.

Mr. Stephen Woodworth: That's what I'm waiting to hear.

Mr. Irwin Elman: I'm sorry. There are other solutions, such as building our communities, providing resources to parents and families, looking at issues around racialized youth and how they're treated in society.

The Chair: Mr. Elman and Mr. Woodworth, unfortunately we're out of time. I'm going to have to adjourn the meeting.

I want to thank Mr. Elman and Ms. Tustin for appearing.

If you have further written submissions to make, please hand them in. Thank you.

The meeting is adjourned.

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