House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 022 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, June 8, 2010

Chair

Mr. Ed Fast

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● (1140)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): We'll reconvene the meeting.

I'd like to welcome our witnesses to our study of Bill C-4. We're continuing our review of Sebastien's Law, an act to amend the Youth Criminal Justice Act and other consequential and related amendments.

We have with us today, first of all, representing the Saskatoon Police Service, Chief Clive Weighill. Welcome.

Chief Clive Weighill (Chief of Police, Saskatoon Police Service): Thank you.

The Chair: We also have, representing la Commission des droits de la personne et des droits de la jeunesse, Sylvie Godin, as well as Claire Bernard. Welcome.

Representing the New Brunswick Foster Families Association, Judy Smith and Wendy Galpin. Welcome to you both.

We also have Moncton Youth Residences Inc., represented by Mel Kennah.

Then we have as an individual, Nicholas Bala, Professor of Law, Faculty of Law, Queen's University.

Welcome to all of you. I think you've been told that you have 10 minutes to present as an organization or as an individual, and then we'll open the floor to questions.

Let's start with Chief Weighill.

Chief Clive Weighill: Thank you, Mr. Chair.

My name is Clive Weighill and I am the chief of police for the city of Saskatoon. I'd like to thank the committee for allowing me to provide testimony today.

Youth crime, with its possible solutions, is a very serious and much debated issue in Saskatchewan. Although there has been a national trend showing reductions in youth crime in recent years, Saskatchewan has a serious problem related to criminality involving youth. The latest Canadian Centre for Justice statistics comparisons for 2008 clearly show that the youth crime rate is significantly higher in Saskatchewan than in any other province. The rate of youths charged in Saskatchewan sits at 9,255 per 100,000 population, aged 12 to 17. This is double the rate for the next closest province, Manitoba, with a rate of 4,692 per 100,000 population. By comparison, Saskatchewan has almost four times Ontario's rate of 2,718 per 100,000. In real numbers, not rates, Saskatchewan, with a population of only one million people, has charged 8,052 young offenders, compared to British Columbia, with 5,343 young persons charged out of a population of 4.5 million.

To say the least, the practitioners working in the criminal justice system in Saskatchewan have a solid grasp of the Youth Criminal Justice Act. There are positive aspects to the current act and, correspondingly, several problematic areas.

I provided testimony before this committee on March 30, 2010, and I think at that time I shared with the committee that I'm certainly a believer in social justice. I'm not one who believes that you lock people up and throw away the key. Those days are long gone. At that time I suggested to the committee that the primary reason for gang involvement in Saskatchewan is the marginalization faced by the aboriginal population in our province. A large percentage of the aboriginal population is living in poverty and poor housing, facing racism, the continued fallout of residential schools, and a restrictive Indian Act. I further suggest that in Saskatchewan the prevalence of youth crime is primarily predicated on the same factors.

Although marginalization and required social changes help explain the high numbers of youth coming in contact with the criminal justice system, I speak today of the young person who has gone past the entry level and has become entrenched in a lifestyle of criminal activity. As with most crime, the rule of thumb is that 5% of the population creates 95% of the problem. Once people are into a criminal lifestyle, they may be past preventative stages in their lives and they may have become hard core. It is about this 5% that I will direct my comments today.

As a general rule, the Youth Criminal Justice Act does an excellent job in assisting the police with diversion, official warnings, and holding youth accountable. It is within the small 5% of offenders that are habitual repeat and/or violent offenders where I believe changes in the YCJA are required.

As a case in point, recently in Saskatoon a young offender, aged 17, and an adult, aged 18, were arrested for allegedly committing 40 random street robberies and several home invasions while armed with a machete and a handgun. It is alleged that in one evening, leading to their arrest, they shot a 17-year-old male while robbing him on the street, causing the victim to be paralyzed from the chest down; they committed a home invasion, robbing eight people; and they slashed the leg of a street robbery victim with a machete. They are not from the marginalized cohort mentioned earlier; they are from middle-class families.

Other cases in point include the following. Youths engaged in gang activity and committing random street robberies allegedly stabbed a victim to death while stealing a case of beer. Youth and adults stabbed a victim 26 times because the victim made a derogatory comment. Youths involved with stolen autos are continually being released after being charged, only to reoffend and continue their actions in numbers in excess of 40 stolen vehicles. This is known to the community as revolving door justice.

I must stress that it is this type of crime and victimization that I make my comments about today, not the 95% of cases handled suitably through the YCJA.

I fully support some of the amendments contemplated by Bill C-4. In many instances, a message of deterrence has to be sent to the habitual offender. Violent crimes all have victims.

Society must be protected from those individuals who commit planned, violent crime, even if the individual committing that crime is a young person. Events such as those involving the young man mentioned earlier, who is now paralyzed, and the man who lost his life over a case of beer taken during a street robbery are not uncommon in Saskatoon.

I agree with the principle found in the current act that pre-trial detention of young offenders in general is a last resort. I do not agree with this, however, when the youth is a habitual property or violent offender. There comes a time in everyone's life when they must become accountable for their actions, and the protection of the general public must be taken into consideration. To continue releasing a habitual offender causes society to lose confidence in the criminal justice system. Unfortunately, when the public loses confidence in the system, it may attempt to force draconian remedies on the entire youth criminal justice system, thereby also penalizing the youth who could utilize the positive aspects of this act.

I take this point even further. We continually see the use of intimidation by gang members in attempts to prevent witnesses and victims from testifying or assisting the police. The acts of intimidation often include pointing a firearm at someone, assaulting someone using physical force, or threatening to use knives and machetes. This intimidation severely compromises the ability of the criminal justice system to protect witnesses and victims. Protecting witnesses and victims so that they may testify safely without intimidation is a cornerstone of our justice system. I believe an intervention is required to prevent violent and habitual offenders from inflicting further harm.

I support Bill C-4 with the notion that a young person's prior findings of guilt and pending charges should be taken into account upon pre-trial release, specifically when the offender has reached the age of 16 or 17. I also support the recommendation in Bill C-4 in relation to releasing the name of a young offender if she or he has been convicted of a violent offence and the prosecutor convinces the court there is substantial likelihood the young offender may commit another violent offence. In fact, I believe it should even be taken one step further. In cases where the police are actively attempting to apprehend a violent young offender who is believed to be a real danger to the public, his or her name could be released in an effort to warn the public of impending danger or assist with a timely apprehension. Once again, this would be used only when a youth had reached the age of 16 or 17.

In relation to sentencing, I do not support the recommendation for the use of extrajudicial sanctions at the time of sentencing. In Saskatoon, we document all extrajudicial measures and sanctions in an effort to guide our officers when they come into contact with a young offender. For instance, a youth may be caught committing a minor mischief offence and be taken home by the police to his or her parents for them to provide proper direction to the youth. Later, the youth might be caught shoplifting and receive an official police warning rather than a criminal charge. Both of these instances are captured in our data banks and will be used when determining whether criminal charges should be laid if the youth commits further offences.

I believe the extrajudicial sanctions are useful for determining charges but not for sentencing. I suggest that only a criminal record based on court findings should be used. Extrajudicial measures and sanctions are a cornerstone of the YCJA and are used only in minor occurrences. They would not be a major factor in the cases of violent or habitual offenders of which I speak today.

I have no comments in relation to the recommendations pertaining to raising youths to adult court or whether they should be placed in a youth or adult detention facility in extreme cases. I have no background in corrections, and I suggest corrections people could provide more clarity on this topic.

Once again, I thank the committee for allowing me to provide input on this issue, and I'll certainly be open to any questions.

● (1145)

The Chair: Thank you very much.

Ms. Godin.

[*Translation*]

Mrs. Sylvie Godin (Vice-President, Commission des droits de la personne et des droits de la jeunesse): Mr. Chairman, ladies and gentlemen members of Parliament, good morning.

I am Sylvie Godin, Vice-President of the Commission des droits de la personne et des droits de la jeunesse of Quebec, and I am accompanied by Ms. Claire Bernard, legal adviser at the Research Branch.

Under the Charter of Rights and Freedoms of Quebec and the Youth Protection Act, the Commission des droits de la personne et des droits de la jeunesse of Quebec is entrusted with ensuring the protection of the interests of the child, and of ensuring through all appropriate means the promotion and respect of the rights that are granted to children under the Youth Protection Act and the Youth Criminal Justice Act.

It is thus the commission's mission to ensure that the amendments to the legislation governing the criminal justice system as it applies to adolescents are in compliance with the rights that are recognized to them. The commission discharges its mission by ensuring that the international commitments that Canada has made in the area of child rights are respected, pursuant to the Convention on the Rights of the Child and other applicable treaties.

The commission's analysis of Bill C-4 is informed by the convention, as well as the recommendations which the Committee on the Rights of the Child addressed to Canada in 2003, pursuant to the examination of Canada's second report on the implementation of the convention and the general observation the committee made public in 2007 concerning the administration of the justice system applicable to minors.

The Committee on the Rights of the Child recommended that Canada fully integrate into its legislation, policies and practices the provisions and principles of the convention, in particular the articles concerning the child's superior interest, the measures relating to deprivation of liberty, the rights of a child who is suspected, charged or convicted of a criminal offence, and rehabilitation and reinsertion, as well as the other international standards applicable in this area.

More specifically, the committee urged Canada to ensure that no person of less than 18 years of age be judged like an adult, whatever the circumstances or seriousness of the offence committed; to guarantee that the opinions of children be duly taken into consideration and respected in all legal proceedings concerning them; to see to it that the right to privacy of all children in conflict with the law be fully respected; to take the necessary measures, for instance alternate measures to the deprivation of liberty or parole, in order to considerably reduce the number of children being detained, and see to it that detention is only imposed as a last resort and for as brief a period as possible, and that in any case, children always be detained separately from adults.

Moreover, in its general observation in 2007, the Committee on the Rights of the Child addressed guidelines and recommendations to all of the states parties to the convention, so that their system of administration of justice applicable to minors be in compliance with the convention.

Our comments will thus discuss the amendments proposed in clauses 3, 4, 7, 25, 8, 20 and 21 of Bill C-4.

The bill proposes an amendment to section 3 of the act so as to make the protection of the public the priority objective of the act. The Committee on the Rights of the Child recognized that “the preservation of public safety is a legitimate aim of the justice system”. However, it “is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in CRC”. Moreover, Canada itself recently pointed out in the context of its contribution to a report produced by the Human Rights Council on the Administration of Justice, that the Canadian criminal law applicable to minors guarantees that detention is a measure of last resort and that rehabilitation and reintegration must be taken into account in any decision. The principles of rehabilitation and reintegration must constitute the priority objectives of the law and not only be means, as the bill proposes.

Clause 4 of the bill proposes broadening the possibilities of resorting to pre-trial detention. The commission reminds us that according to the rights guaranteed to children in international law, detention must be a measure of last resort and it must be as brief as possible.

● (1150)

In this regard, the Committee on the Rights of the Child firmly pointed out that “the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort.”

Clause 7 of the bill suggests the addition of two new principles to the principles of sentence determination, information and deterrence. Although this is no longer a matter of introducing a general deterrence principle applicable to all juveniles, as was the case in Bill C-25, the fact remains that the specific objectives of information and deterrence contradict the objectives of rehabilitation and reitegration which must remain at the heart of the criminal juvenile justice system. According to the Committee on the Rights of the Child, the protection of the best interests of the child means that: “the traditional objectives of criminal justice such as repression and retribution must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.” Indeed several studies conclude that measures aimed at deterrence are ineffective.

Clause 25 of the bill proposes obliging police forces to keep a file regarding extrajudicial measures taken with regard to any adolescent. From the perspective of respecting the rules of international law, this change is not problematic as such, on condition however that the provisions governing access to that register and the use of the information it would contain not be modified.

A change suggested in another clause of the bill however, clause 8, concerns precisely the use of the information involving one category of extrajudicial measures, i.e. extrajudicial penalties. The court could in future impose on a juvenile a sentence of committal to custody in light of prior extrajudicial penalties, whereas currently it can only take into account prior convictions.

● (1155)

[*English*]

The Chair: Ms. Godin, could you just slow down a little bit?

Ms. Sylvie Godin: Slow down?

Oh, I'm so sorry. I just wanted to get this within my 10 minutes.

Am I okay on the time?

The Chair: Yes.

Ms. Sylvie Godin: I'll slow down.

The Chair: Okay. Go ahead.

[*Translation*]

Mrs. Sylvie Godin: This change would run counter to a guideline prepared on this topic by the Committee on the Rights of the Child in its general observation.

The committee had indeed insisted on the fact that an admission made by a child in the context of diversion measures must not be "used against him or her in any subsequent legal proceeding".

Pursuant to clause 20 of the bill, it would be incumbent upon the Attorney General to convince the court to authorize the publication of information making it possible to identify the adolescents who were given adolescent-specific sentences according to certain defined criteria. Although this change improves to some extent the scope of the protection of the right to privacy, the category of adolescents whose name could be divulged would however be broadened.

Indeed the new provision would apply to adolescents convicted of "a violent offence", an offence whose scope is broader than the current designated offence. Consequently, this would broaden the category of adolescents who might be deprived of the right to privacy. This protection aims to prevent any stigmatization, which contributes to attaining a priority objective of the distinct legal system put in place to deal with juvenile delinquency, i.e. the adolescent's social reinsertion, as emphasized by the Committee on the Rights of the Child.

Pursuant to clause 21 of the bill, an adolescent of less than 18 years of age could no longer serve his sentence in an adult facility, even when given an adult sentence.

However, other exceptions in the bill such as the one concerning pre-trial detention would not be modified and would continue to apply. Consequently, Canada would continue to not be able to comply with the obligation of detaining children separately from adults.

Since 1996, the Commission des droits de la personne et des droits de la jeunesse has made several representations both before Parliament and the federal government in order to promote the rights recognized by the Convention on the Rights of the Child and by other standards of the United Nations applicable to the juvenile criminal justice system.

The Commission intervened in the reference presented by the government of Quebec before the court of appeal in order to support the position of the Attorney General of Quebec, in particular on the inconsistency of certain provisions of the Youth Criminal Justice Act with the provisions of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The court of appeal referenced principles of international law to conclude that the provisions of the act relating to the presumption that adolescents charged with a designated infraction were subject to an adult sentence, and the presumption of publication, were unconstitutional. The Supreme Court confirmed the interpretation of the appeal court in 2008 in the R. v. D.B. case, and it also based its decision on the convention and other relevant international standards.

In conclusion, the commission urges legislators to respect the provisions and principles of the Convention on the Rights of the Child. It urges them to take into account in their review of Bill C-4 the recommendations and guidelines submitted by the Committee on the Rights of the Child. The committee emphasized a point that seems fundamental to us in the consideration of some of the grounds expressed to justify several of the changes proposed by Bill C-4.

I will summarize with an excerpt from general observation n^{o} 10 of the Committee on the Rights of the Child which reads as follows:

"[...] Reintegration requires that no action may be taken that can hamper the child's full participation in his or her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his or her society."

● (1200)

Thank you for your attention.

[*English*]

The Chair: Thank you.

We'll move on to Judy Smith for 10 minutes.

Mrs. Judy Smith (Director, New Brunswick Foster Families Association): Good day.

On behalf of the New Brunswick Foster Families Association, we would like to thank the members of the committee for the invitation to speak to you about the proposed changes in the Youth Criminal Justice Act.

The New Brunswick association is a group of foster parents who work closely with our government on behalf of foster families and foster children to make foster care a positive experience. The New Brunswick association can only speak to these changes as they affect youth in New Brunswick and we can only attest to how this would affect the youth we live with, and we live with a variety of children.

Not all provinces have the facilities or the professional community resources to meet the needs of some of these youth, especially taking into account youth with fetal alcohol spectrum disorder—which is a very hard thing to obtain a diagnosis on—and other mental illnesses such as Asperger's, bipolar, etc.

Who determines if a youth is following the rules? This should be monitored by all people involved with that particular youth. If a youth is in a detention centre, he might come in contact with six different guards, psychologists, probation workers, foster parents, and parents. Every one of these professionals has a different connection to that youth, so by having all involved, you would have a more rounded assessment of the youth's progress.

DNA should not be destroyed for serious violent offences. If a youth at the age of 14 or younger has displayed this type of behaviour, the probability of this behaviour crossing over into adulthood is very high, and therefore past DNA samples are required and necessary.

The Youth Criminal Justice Act as a whole is a well-meaning piece of legislation, but there are many loopholes in it that the youth know better than the adults do. As a society, we have allowed behaviours to become normalized, which sends the wrong message to our youth.

In conclusion, the New Brunswick Foster Families Association would like to see earlier intervention with youth, as this may prevent future crime, and more mental health courts, with treatment imposed instead of incarceration. If a probation order or a form is issued, then make the youth accountable to follow the undertaking. If legislation is going to make rules for youth to follow, make sure there is a way to follow through with consequences.

Thank you.

The Chair: Thank you for staying within your 10 minutes.

Mr. Kennah is next. You have 10 minutes, sir.

Mr. Mel Kennah (Executive Director, Moncton Youth Residences Inc.): I want to thank the committee for this opportunity to provide input to the proposed changes to the Youth Criminal Justice Act.

I am the executive director of Moncton Youth Residences and have worked for this NGO for almost 25 years now. This is the largest non-profit organization of its kind in New Brunswick, and it employs about 180 staff members who provide 19 different services to at-risk youth and their families from around the province. In addition to that, I have been a foster parent for 20 years and have worked with young people in conflict with the law as well as child welfare youth in the permanent care of the Minister of Social Development.

I think it's encouraging that your committee is looking at the YCJA in trying to make it a more effective piece of legislation. The primary goal of the proposed changes is to better protect society, which sounds compelling and well intended. Who wouldn't want to have a safer community? But is getting more punitive the way to accomplish this positive and widely accepted goal?

What concerns me is that although the proposed changes may give the appearance of creating safer communities, the actual consequences of such changes that have an increased reliance on incarceration may indeed have the reverse effect.

The profile of an at-risk youth is someone who is already marginalized and faces numerous barriers between where they are now and becoming a healthy and contributing member of society. Risk factors include, but certainly aren't limited to, mental health issues, substance abuse, issues of homelessness, family and school breakdowns, conflict with the law, prostitution, and a myriad of relationship problems.

The increased reliance on incarceration being proposed cuts the young person off from all of their community support systems and from any important relationships in their lives. It is my belief that a young person with at least one good relationship in their life has a chance for a future. A more punitive approach will further limit the opportunity for meaningful relationships, and I fear it will be at the direct expense of rehabilitation of these young people.

Jail, punishment, and punitive measures all cloud the issue of rehabilitation. Heavier reliance on incarceration, publishing a young person's identity in the press, and trying them as an adult when they are as young as 14 years old does not suggest to me a safer society. These measures will further disengage youth, isolate them from society even more than they are now, and further aggravate their existing challenges.

Labelling a youth in the newspaper may actually influence that youth to accept that label as a permanent part of his or her future. More frequent and longer jail sentences will further reduce opportunities for success in the young person's life. It will most likely magnify and multiply existing risk factors, and it will not assist with skills acquisition. Treating a young person as an adult in these circumstances will not cause them to be any more mature or responsible or effective in their decision-making.

All youth sentenced to secure custody will one day re-enter society. A more punitive approach will help to guarantee that these youth will be ultimately less invested in society and have even less of a chance of achieving their potential.

Placing more emphasis and financial investment on incarceration will have both social and economic costs that may be difficult for society to bear.

I am not aware of any studies that clearly indicate that a young person will be less likely to reoffend because of receiving more time in jail. However, there are many studies that indicate investment in early intervention and community-based services has the best chance of inspiring youth toward more responsible behaviour. Investment in youth-specific community services and fresh options are the way to get young people connected to the necessary services, skills, people, relevant information, and even their own wants and potentials that will assist them in moving forward and also steer them away from ineffective behaviours that lead to a downward spiral.

Creating more community-based services and a heavy reliance on community-based sentences is what is needed to create safer communities. There are too few of these youth services in New Brunswick, especially in the small rural communities. Investing time, energy, and resources on the front end will obtain better results in the long run. With front-ended investment in community-based services for these at-risk youth, pressure will be taken off addiction services, hospitalization, social assistance, and incarceration. Such investment will enhance rehabilitation and will assist in holding youth accountable for their actions. The earlier the intervention, the better chance of success and the greater savings, both socially and economically.

I'm going to tell you a brief story of something that happened to me with my own teenage foster boys last weekend. We had a plugged toilet, which I tried to fix. That didn't work very well. The problem quickly grew into a flood and working with a plumber for the rest of the evening.

● (1205)

The plumber's conclusion was that we had a problem with our main sewer line running from the house to the septic tank. It had collapsed and I was going to have to dig up the yard. So I said, “I'll do that, and you can come back when I have things dug up.”

I then went to my foster children and said, “I could use a hand with this. Would anybody be interested?” They all replied, “Yes, we'd be happy to participate.” So the next Saturday morning we went out there and worked for about three or four hours. I can tell you that after that time they were smiling from ear to ear. I couldn't have created a greater opportunity for happiness or self-satisfaction if I had taken them to the circus for the day. Why was that? I think it was because they gained a sense of making a contribution to resolving a collective and immediate problem. They could see progress because of their efforts. They learned about teamwork and effective communication, and they had a strong sense of achievement.

You need to do esteemable things in order to build self-esteem. I believe increased emphasis on punishment will starve this growth, and emphasis on community-based options and services are the best way to promote this growth. As President Roosevelt once said, “We cannot always build the future for our youth, but we can build our youth for the future.”

In conclusion, I want to make a couple of brief points on Bill C-4, which I certainly support. First, I agree with the provision prohibiting the imprisonment of young persons in an adult correctional facility. I was actually surprised that this didn't already exist.

With some hesitation I mention the second point. Clause 25 of Bill C-4 requires that police keep a record of extrajudicial measures taken to deal with a young person. I think that maintaining a written record of this information would be more useful than not when it comes to decision-making purposes later on.

I have one final almost miscellaneous comment based on some discussions I had with one of our youth court judges and a crown prosecutor. It pertains to young people who are continuously breaching their probation and breaching undertakings to a judge. In those circumstances, in some instances, the intervention of a short, sharp shock of incarceration has proven to be beneficial in the past for some young people.

I hope the committee will give some consideration to my comments, so as to maintain that important balance between protecting society and supporting at-risk youth.

Thanks very much.

● (1210)

The Chair: Thank you very much.

We'll move on to Professor Bala for 10 minutes.

Professor Nicholas Bala (Faculty of Law, Queen's University, As an Individual): Thank you. It's a privilege to be invited to appear before you.

I believe you all have copies of a brief that I had submitted. It sets out my views in greater detail.

I am a law professor at Queen's University. I believe I've done more research and writing about the Youth Criminal Justice Act than any other academic in Canada. I was also a witness before the Nunn commission for a couple of days. I've been involved in the education of police, judges, and lawyers about the legislation, and I'm engaged in ongoing research, much of it with criminologists and others, in other disciplines. And I should say that in Kingston, where I live, I also work with victims and young offenders.

In terms of the Youth Criminal Justice Act, I think it's important to remember that this is legislation that deals with adolescents, with teenagers. One of the things we have a better sense of today than we may have had 20 or 30 years ago is brain development. We know that at least until the age of 18, the brain is not fully developed. When people say, “Well, that young person was not acting rationally or responsibly; it seems like he had a hole in his head”, the answer is, “He probably did, and you can actually see where it is.” Unfortunately, it's the part of the brain that deals with judgment and future planning that is often the last part to be developed.

Sometimes young people do commit absolutely horrific offences, but they're not adults. Even if they commit the most serious crimes, they should not be treated in exactly the same way as adults. That doesn't mean they shouldn't be held accountable, or in some cases even receive adult-length sentences.

One of the challenges in this area is that it is true that we can look back—at the age of 20, let's say—and say that a small group of young people became serious and habitual repeat offenders; the difficulty is that when you look at someone who is 14 or 15, you can't accurately predict which of those will end up in that small group. It is much easier to “post-dict” than it is to predict what is going to happen.

I think the Youth Criminal Justice Act has been a success, at least a qualified success. I've set out some diagrams and statistics there, showing that while we have substantially reduced the level of use of custody and courts, we have not experienced an increase in youth crime in this country. We still have a relatively high rate of use of custody compared with New Zealand and some western European countries. Although our rate has gone down, it is still much higher than in some other countries.

Custody clearly has a place, both in terms of accountability and protection of the public, but one also has to be aware of the costs of custody. One of the costs is financial. The cost—there are different estimates—of incarcerating a young person in a youth custody facility ranges from $40,000 to $100,000 a year. It is very expensive. Sometimes it's appropriate.

Furthermore, once a young person is in custody, they will be stigmatized in their community. People talk about gangs, but the number one place where gangs recruit is in custody. One has to be very careful about not overusing or misusing custody.

I think Bill C-4 is certainly a timely review of the act. Certainly some provisions are very appropriate. I have concerns about others.

Speaking about the specifics, with regard to the change in the declaration of principle—in clause 3—I'm concerned that the long-term protection of the public is removed from this version of the bill. While some reworking of the principles may be appropriate, it's very important to keep in mind the long-term protection of the public, which is most likely to be effected by rehabilitation.

As was pointed out almost without exception, young people who are sent into custody, even for adult-length sentences, are going to get out. The question is this: are they going to get out and be a greater risk to the community or a lesser risk to the community? Their rehabilitation has to be a central concern.

I think proposed paragraph 3(1)(b), the proposal to add the presumption of diminished moral blameworthiness, is a very important and worthwhile amendment. I certainly support that.

I'll turn now to the definitions, and I'll talk particularly about the issue of violent offence; I know this was a concern of Justice Nunn in his report. I support this change, although I have some concerns about the specific wording. He was concerned that the Supreme Court of Canada held, in the C.D. case, that a young person who was involved in, among other things, a high-speed police chase through a city, unless there was an accident, was not committing a violent offence and could not be placed in custody. I think those offences that do endanger the public and, for that matter, the young person themselves, should be regarded as violent offences.

● (1215)

Before the Supreme Court decided, there were some other cases. The Alberta Court of Appeal, for example, I think took a broader approach to the concept of violence. I think that this recommendation, which reflects what Justice Nunn was saying, is appropriate, although I would say that there should be some element of knowledge or recklessness or lack of foresight on the part of the young person committing an offence, and I've proposed some specific wording.

The issue of pretrial detention or remand is extremely important. As the graphs that I've included in the materials point out, we are actually now sending more young people into remand custody than we are into custody after findings of guilt. In other words, we are sending more young people who are not guilty or not yet found guilty into custodial facilities than we are young people who've been found guilty. This is a serious concern not only in terms of presumption of innocence but also in terms of the nature of the programming that could be provided.

As I read the amendment to section 29, it will actually somewhat focus on that and may tend to address that problem in a way that Justice Nunn supported, so I support proposed subsection 29(2).

On the issue of extrajudicial sanctions and their use, I was very pleased to hear the words of the chief. I would fully endorse his position and those of other police officers and prosecutors who point out that extrajudicial sanctions are intended not to be findings of guilt and will confuse the process if they are treated the same way. Therefore, I would suggest that those changes should not be made.

Finally, with regard to the issue of the change in the sentencing principles added by proposed paragraph 38(2)(f) on denunciation and deterrence, on some level I can understand why one would want to see both denunciation and deterrence as factors in youth sentencing, but these are words that have a specific meaning and will have an effect on the youth justice system that I think is undesirable.

We would all like to see young people deterred from committing crime, and indeed arresting young people and bringing them to youth court in and of itself will have a deterrent effect, but I'm concerned. In the paper I refer to some other research I did with Professor Cesaroni, and one of the things we know is that if you put the word "deterrence" back into this legislation, it will affect judges. Youth court judges will sentence young people to longer sentences—we know that—but if you think that will deter young people from committing crimes, unfortunately that is not the reality.

There is a wealth of information about the fact that longer sentences do not deter young people. The problem is that the young people who are committing offences are not thinking about the future at all. They're not thinking about getting caught. They're not thinking about the consequences of their act. Knowing that if they get arrested and if they get to court, they might get a sentence that's twice as long six months later is not going to affect their behaviour. It would be wonderful if it did, but there's a huge amount of research proving otherwise.

Rational adults think that sending accountants who defraud companies to jail actually has an effect on the behaviour of accountants. They're rational adults and they're reading what's going on, so their behaviour is affected. The problem is that young people are not affected by longer sentences. There is research that suggests they are affected by, for example, more effective policing, so thinking they're more likely to get caught may affect their behaviour. If sentences go up, it does not affect their behaviour. By the way, that's why the American Supreme Court abolished capital punishment for young people. They realized it was not protecting society.

Similarly, denunciation is a word that has a legal meaning. While I think accountability is very appropriate, if we are saying that young people are going to have limited accountability reflecting their moral development, as in proposed paragraph 3(1)(b), we should not turn around and denounce their conduct. We should hold them accountable; denunciation has a meaning that will simply result in longer sentences.

Finally, on the issue of publicity for young people who do not receive adult sentences, in some states in the U.S.A. it is not uncommon for there to be identifying publicity as soon as a young person is arrested. Actually some young people who are arrested rather like the publicity. They take the papers around and show them to their friends in custody in the detention facility, saying, "Hey, see what a tough guy I am?" The problem with publicity is that it doesn't deter their behaviour and it doesn't make them more accountable, but when they get out, it does make it more difficult to rehabilitate them and to reintegrate them into the community.

If we impose an adult sentence, it seems fair to say that there's going to be publicity, but if we're treating them as young people and sending them into youth custody, putting their names in the newspaper will not increase the protection of the public. It will simply make it more difficult for them to be rehabilitated.

● (1220)

Thank you.

The Chair: Thank you. You were right on the mark at 10 minutes.

We're going to open the floor to questions. I'm going to use my discretion and say that we do one round of six minutes and then a second round of four minutes. Is that acceptable?

Seeing no objection, we'll move to Mr. Murphy.

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

I want to thank all of the witnesses for their testimony.

I want to say, first off, Mr. Kennah, that you made me, as a former mayor, a little nervous when you started talking about faulty sewage systems. I was ready to understand that it was a private septic well, and not part of the system that I think I left intact.

To tie that together, in this bill we see some good and necessary parts, and we see some parts that are quite questionable. I want to zero in on some of those elements that were on the bubble, as it were, so that the whole bill doesn't go down the drain, Mr. Kennah. That goes to two points: the record keeping on the use of extrajudicial sanctions and the lifting or not of the publicity ban.

I want to say to the witnesses that we have a significant philosophical difference on the big issues, like denunciation and deterrence. So don't think for a minute that we're not cognizant of that. But I want to zero in on some of the things. If you compare the position of Professor Bala with the position of Chief Weighill, there may be some common ground.

First of all, on record keeping, the quick question I have, Chief, is about the fact that there is some discretion currently in departments across the country about whether or not to keep records in cases where, I suppose, you must think they would be useful for the protection of society. The bill as proposed suggests this should be mandatory. Do you see that as an improvement? When is that discretion used to keep or not keep records, and why would it be necessary to make it mandatory?

Chief Clive Weighill: I can only speak for the Saskatoon Police Service. Any time we come into contact with anybody, we enter that into our data banks so that we have a record of it. I think it's useful for us in our work. If there are future occasions where we come across that youth, we know the background of that youth, and we can, I think, deal with it more appropriately because we then actually have a written, documented background. You're not going by hearsay or what somebody thinks or somebody knows, but you actually have some proof to say, this is what happened with the youth before. It helps us work with the social agencies when we're trying to get the youth help. Once again, if it gets that serious that we must lay a criminal charge, it helps us put a background to it.

Mr. Brian Murphy: I recall, Mr. Kennah, that you suggested it wasn't a bad idea.

But, Professor Bala, I think you suggested that wasn't necessary, that the discretion in place was fine. Do you hold to that? Do you have any evidence that police departments are using it with some discretion?

Prof. Nicholas Bala: First of all, I think that practice varies to some extent across the country in terms of the kinds of records that are being kept, particularly around extrajudicial measures and, to a lesser extent, about extrajudicial sanctions. They're the two categories. And there are questions about how that information is shared between police forces and how it is kept.

One concern I have, if you will, is philosophical. Why are we singling out this provision and why are we telling police forces that we don't think they're doing their job properly and that we think they must have it there? I think in principle it is desirable for forces to keep those kinds of records. Of course, increasingly with computers they have records of all kinds of things, not just of extrajudicial sanctions. Every time they talk to someone on the street, it's in their data bank.

I worry about the symbolic message this sends, first of all, by telling police forces what they're doing, and, secondly, about the nature of programs intended to divert young people and not to treat their offences as criminal. It sends a very mixed message. That's my biggest concern.

● (1225)

Mr. Brian Murphy: I get that.

Just on the publicity aspect then, this bill suggests that the judge "shall" consider whether it be lifted. In my view, that still leaves it to the discretion of the judges.

Mr. Kennah, you should know that Mr. Bala suggests that sometimes youth use this as a badge of honour, but that it rolls back on the families and is anti the impetus, in that it doesn't help reintegration. I think Chief Weighill would suggest that it might be a bit of an improvement for the purposes of public security in some cases. You're in the trenches, you people.

How much time do I have left in total? I'd like each of the three witnesses to respond to the idea of leaving judicial discretion with the judges to lift the publication ban in certain cases.

The Chair: You have a minute and a half.

Mr. Brian Murphy: That's 30 seconds for each. Great.

Prof. Nicholas Bala: Well, I—

Mr. Brian Murphy: Sorry, Mr. Bala, but I'd like to hear from the three community groups.

Mr. Mel Kennah: I don't see any benefit to publishing a young person's name in the newspaper. Sometimes labels are difficult things to shed, I think. As was mentioned, sometimes this can even be used as a badge of honour. I don't see it creating a safer community; I see much more of a downside than an upside to publishing names.

Mr. Brian Murphy: Do you think the judges would use the discretion appropriately, because that's what they're doing here?

Mr. Mel Kennah: I suppose they would use it appropriately. I don't know that there's going to be an advantage, though, of them actually making a decision to include this at any given point in time. I'm just not seeing where there would be any possible advantage, so I would prefer to see it not at their discretion.

Mr. Brian Murphy: The foster group?

Mrs. Wendy Galpin (Secretary, New Brunswick Foster Families Association): I see two sides to this point. If we give the judge the discretion...as long as he's willing to listen to the people around the table who are working with this young person, because I live with these young people who go to jail quite often and it is a badge of honour for them. They do align themselves with gangs inside the system, and that's how they keep themselves safe in there. I'm speaking from experience, so they would see that as a plus, to have their name in the paper.

Mr. Brian Murphy: Madame Godin.

[*Translation*]

Mrs. Sylvie Godin: Thank you.

Clearly, we take the opposite position. That is to say that we are against any removal of limitations on publication, and feel there should be discretion in this regard.

[*English*]

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

Mr. Weighill, unfortunately, we did not receive your brief ahead of time. It was not translated, and you read it rather quickly. I would like to check something with you as it seems quite important to me in what you had to say. You talked about an awful evening where a young person, together with someone who was a little over 18, committed several crimes. They shot someone, it seems to me; some of the details escaped me. There is something I did not understand. Was this young person referred to an adult court?

[*English*]

Chief Clive Weighill: No, the person hasn't been sent to an adult court yet.

[*Translation*]

Mr. Serge Ménard: Did you say “yet”?

[*English*]

Chief Clive Weighill: Yet—it's still being decided by a prosecutor.

[*Translation*]

Mr. Serge Ménard: So it was decided?

[*English*]

Chief Clive Weighill: No, that's why I'm careful. This is all alleged, and it's still before the courts, this case I'm talking about.

[*Translation*]

Mr. Serge Ménard: As horrible stories go, what you related seems even more serious—because this is another one—than what happened to the young Sébastien Lacasse. The killer in that case was a juvenile, and the other participants in the assault were over 18. The heaviest sentences were four years, and the young person who killed him was sent to an adult prison and was condemned to life in prison.

With regard to the young people you were talking about, would you normally expect that this is what would happen, that is to say that they would be referred to an adult court?

● (1230)

[*English*]

Chief Clive Weighill: I would expect that it would get raised to adult court. One was 17 and one was 18, so they're very close. One is an adult; one would probably be raised.

I think, and I may be speaking out of line, our society is so desensitized to what goes on with violence; you hear about stuff in the paper every day and it goes in one ear and out the other. We seem to forget about the victims. Yes, I strongly believe in social justice and giving everybody the chance they need, but there are some people who, for the good of society, must be stopped from what they're doing. Somebody has to say stop, because people aren't safe. We see this day in and day out on our streets in Canada. I believe in social justice, and I believe in giving everybody a chance, but some days you have to say stop.

[*Translation*]

Mr. Serge Ménard: Thank you, Mr. Weighill.

Mrs. Godin, did Canada sign the convention you were referring to? The Convention on the Rights of the Child?

Mrs. Sylvie Godin: Yes. The Convention on the Rights of the child was adopted 20 years ago. Canada was one of its major promoters and one of the first signatories. Currently out of all countries, only the United States and Somalia have not signed it, but Canada was one of the first signatories. The reports I was referring to are implementation reports that were occasionally prepared by Canada. They concern the implementation of the principles recognized by the convention.

Mr. Serge Ménard: In the remarkable brief you submitted, Mr. Bala, which was translated—unfortunately I received the translation very late and only read half of it—you convinced me that you are indeed one of the most knowledgeable people in Canada when it comes to how to deal with juvenile delinquency.

You say that you are often consulted by the federal government. Were you consulted in the preparation of the bill that is before us?

Prof. Nicholas Bala: Thank you for your kind words.

[*English*]

The federal government had a series of consultations across Canada with different groups and individuals, and I participated in a couple of them, but I think it's fair to say that the consultations that I attended are not fully reflected, and there are some very significant points of divergence between not only what I said but what others said and what is in this bill. I would suggest that some parts of it seem inconsistent not only with the research that I have summarized and others have written about, and the consultations, but also with research in other countries as well. So there are some problematic parts.

I certainly agree there are some young people who do need to be in custody—there's no question about that—but we have to think closely about who we're sending there, why we're sending them there, how long they're there for, and what we are going to do to make sure that when they get out they're less likely to commit offences.

[*Translation*]

Mr. Serge Ménard: You don't say so in your report, but I imagine that you are familiar with the Quebec philosophy which the chief justice summarized in these words: the right measure at the right time for the right person.

Do you think that the amendment that is proposed in clause 3 will allow Quebec to pursue that particular philosophy, which I am sure you yourself would acknowledge—in fact you provide statistics—gives remarkable results with regard to young offenders? Do you think this will force Quebec to amend that philosophy?

[*English*]

Prof. Nicholas Bala: I completely agree that Quebec and actually some other provinces—British Columbia, and to a lesser extent Alberta—have programs that really focus on trying to rehabilitate young people, trying to keep them out of the courts. And the role of provincial implementation is very important.

I think that each province will continue to have a somewhat different philosophy and set of programs, but when you change the federal law, it will also have an impact on the system. So while I would see the variation continuing, I would expect that given what has happened with the Youth Criminal Justice Act, when we had that act, in every province rates of custody went down. Similarly, if you start some of these amendments, in every province you will tend to push up rates of custody, but with a different impact in different provinces, taking into account differences both in crime level but also in the philosophy of provincial governments.

The Chair: Thank you.

Ms. Leslie for six minutes.

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

And thank you all for your testimony. It has been very helpful.

Mr. Bala, I have a pretty quick question, I imagine, for you. We had the African Canadian Legal Clinic testify, and they give a really interesting perspective using a race lens, if you look at the fact that young black men are picked up more often, they're charged more often, and then there is a disproportionate impact on young black men when it comes to pretrial detention, etc.

When Statistics Canada was here, I asked if they had numbers about racialized youth in custody, and charges, and they said they didn't. I'm wondering if in your research you have any of that data.

● (1235)

Prof. Nicholas Bala: Statistics Canada doesn't keep that kind of data.

Ms. Megan Leslie: Yes.

Prof. Nicholas Bala: It only keeps it by aboriginal status, and by the way, aboriginal youth are vastly overrepresented in the youth justice system.

There are individual studies, population studies, at specific facilities and so on that certainly reveal that the rate of detention of particularly Afro-Canadian youth and some other minorities is very much evident.... There's research that clearly supports that. We don't have nationwide data. As you mentioned, there are a lot of issues, and there have been in Canada about whether we should keep data by race, how we would define race, and so on. But there have been studies of police intervention, detention, and custody, and overrepresentation of visible minority groups clearly occurs at every stage.

There's an argument about all this. Some people say it's because they're committing more crimes. Some people say it's because there's systemic bias. My belief is that there is probably some of both, and you could probably document some of both of those things going on.

Ms. Megan Leslie: How do you see it, when we consider things like pretrial detention and being able to actually look at a pattern of findings of guilt but perhaps also a pattern of offences, so when no guilt is actually found yet? Do you see the potential of clause 4 having a disproportionate impact on racialized youth?

Prof. Nicholas Bala: I think there is no doubt that some of these changes will disproportionately affect disadvantaged youth broadly, including on the basis of race, aboriginal status, and certain visible minority groups. In fact, one of the tragic ironies of this legislation is that as we've seen rates of custody go down, we've actually seen the portion of aboriginal youth, whom we have the best data on, actually going up.

Ms. Megan Leslie: Okay. Thank you.

My next question is about relating the Nunn recommendation 22 —which I can explain—to clause 4. I'm from Nova Scotia, and the Nunn inquiry really captured the imagination of people in Nova Scotia. With that situation, that inquiry, we had a youth who had..he had not been found guilty, but he had been on a spree. So recommendation 22 says, and I can read it to you, that when you're considering pretrial detention, you should be able to look at a pattern of findings of offences versus patterns of findings of guilt, or some kind of similar wording, to determine the appropriateness of pretrial detention.

I've asked this question of quite a few witnesses, who have said to me that the YCJA works just fine the way it is in that respect and we don't actually need that change. I'm not necessarily convinced of that. I'm wondering what your thoughts are with the balance between this very small group of persistent offenders who we need to address, versus the vast majority of offenders who get caught once or twice and don't do it again.

Prof. Nicholas Bala: As mentioned, I appeared before the Nunn commission, and I actually had the privilege of meeting some members of the McEvoy family—the family of the woman who was killed. By the way, they were very concerned about what happened in that case and they want to see changes, but they recognize very much that real changes to have a safer society are largely in our school system, our social service system, and in working with young people.

On the specific legal question, this bill, in my view, approaches that issue in a somewhat different way than Justice Nunn contemplated, but in a way that I actually think is consistent with the spirit of what he intended. The change in the definition of the word “violence” would I think certainly capture the specific case that he was concerned about, and similar cases. The change to the definition of “violence”, combined with the change in the test for pretrial detention, would cover those situations. It could have been dealt with in a different way, but unless one gets into rewriting a number of sections of the proposed bill now and restructuring the whole thing, it's going to be hard to capture his exact words, in my view.

● (1240)

Ms. Megan Leslie: My follow-up question was going to be this. If we look at proposed subparagraph 4(2)(a)(i), is there a substantial likelihood that this young person won't appear in court when required by law to do so? I imagine that captures looking at guilt in other cases, but also offences. I'm inserting into there recommendation 22.

Prof. Nicholas Bala: I think that is probably correct.

One of the things I would say is that it's always interesting. As a researcher, I've been invited to a number of these hearings, and Parliament...as a group, you have a certain set of ideas. Judges may, five years later, find that it's not going to be.... That's why I think probably a periodic review is very good.

To be candid, my own view was that the Supreme Court of Canada in C.D., and that's a big part of the problem, took a too narrow approach. Whatever words are used, you'll have to see how they're interpreted by the courts, both by the appellate courts and by the trial courts, on what's going to be the overall impact of these kinds of legislative changes.

The Chair: Thank you.

Ms. Megan Leslie: Thank you.

The Chair: I will move on to Mr. Woodworth for six minutes.

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

And thank you to all the witnesses today.

This is an important piece of legislation. I know the focus is often on critiquing the provisions in the bill, but I want to invite any of the witnesses who may wish to propose amendments that would deal with the existing deficiencies of the existing act to send them to me for consideration.

I want to address some questions to Chief Weighill. I thank you, Chief, for your presentation, which I thought was refreshingly balanced, looking at some of the good things in the act and some things that you might do differently. I was particularly interested in your comments about the problem of intimidation of victims and witnesses. That rang a bell with me because we heard from a mother whose son was beaten to death. She had a second son who was terrified because on at least one occasion someone pulled up in a car and started shooting from it in his vicinity.

Now we've heard from some witnesses whose position is that no matter how much violence might exist in a person's conduct or how dangerous a person's conduct is, unless you can prove an intention, we shouldn't consider it violent. As was pointed out by another witness, young people's brains aren't fully formed until age 18, so we don't even know if we can prove that they knew or should have known that something was going to endanger someone. But without that proof, witnesses have said we shouldn't say that an act or a conduct is violent.

The mother of the victim I mentioned to you earlier had a different view and felt that whether or not the person who shot the gun in her son's vicinity intended...or should have known it was a danger, and she felt this was a violent act. Consequently, she would like to give a judge the discretion to impose a custodial disposition.

I tend to lean toward the mother's point of view, but I wonder how you view that, from your experience, particularly around issues of proving intent.

Chief Clive Weighill: I agree with everything that everybody has said about the impulses of youth, which I think has caused some of the problems. And I would like to see judges have some discretion when they're dealing with youthful offenders.

A lot of times I don't base my thoughts on a one-time incident. I'm basing them more on a pattern in life of a youth where these changes have to come. Obviously if it's a one-time thing, we always have to be thinking about the victim. But I'm more concerned that I'm seeing this every day—the intimidation, the violence that's going on among youth—and it's continuing, provoked over and over again by the same people, and those are the ones we have to work with.

● (1245)

Mr. Stephen Woodworth: In terms of the definition of what's violent, do you think it's acceptable to allow a judge the discretion to consider a custodial sentence where there is no reasonable alternative for somebody who commits a violent act, whether or not they intended violence?

Chief Clive Weighill: No, I think there has to be some kind of intent. I believe in that fundamental philosophy of law.

Mr. Stephen Woodworth: Mr. Kennah, I notice you are from a youth residence organization. It's been a few years for me, but we used to have open custody, closed custody. Does your organization offer residences for youth on a custodial basis?

Mr. Mel Kennah: We have only one home for youth serving an open custody disposition.

Mr. Stephen Woodworth: Do you think it assists young people in improving their rehabilitation and reintegration?

Mr. Mel Kennah: Very much so. It turns out that this particular home—and there is another one in Saint John—has become more a provincial resource than a local community resource, because of reductions in funding by the Department of Public Safety.

Nonetheless, by maintaining youth—ideally in their community of origin, but at least maintaining youth—the advantages are that the youth are linked with so many different support systems and are still able to serve their sentence. We see much greater and better results than having a young person going to secure custody and being cut off from all of these. In some cases it's almost like going to a school for crime, when they can come out more disengaged, having learned the wrong set of skills.

Mr. Stephen Woodworth: So what kinds of young offenders would benefit from a custodial disposition in the home that you're referring to?

Mr. Mel Kennah: Well, we've had people with a variety of different conflicts with the law that have been there—in some cases very severe conflicts with the law. In some cases it's used as a step-down facility, where people are actually leaving secure custody. That's a good way to reintegrate them back into the community.

I suppose the largest number of related crimes would be theft-related crimes, but almost anything you can imagine.

Mr. Stephen Woodworth: All right. Thank you.

I have a question—

The Chair: Thank you. We're at the end of our time.

Monsieur LeBlanc, four minutes.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chair.

I'll be brief. I have two specific questions.

Professor Bala, I thought your presentation was excellent. Certainly I hope the document you left with the committee will inspire a lot of reflection when we get to actually looking at amendments and so on. So thank you for the document you presented.

You didn't have a chance because of time, or at least I didn't hear you, to talk about the mandatory provision for the crown to consider adult sentencing. I'm wondering if you wanted to elaborate on that particular element. It appears, on the face of it, fairly innocuous. It's not directed at the judge; it's directed at the crown, who has to give reasons.

I'm wondering if you could explain why you don't think that is a particularly positive amendment.

Prof. Nicholas Bala: Thank you for the opportunity, because I didn't address it.

I think in part it has to do with what we see as the role of Parliament as opposed to the professionals who are implementing the act, whether they're police officers or crowns. What's the message that we want to send to crowns? And then what will be the effect of this kind of provision?

One of the things is that proposed subsection 64(1.1) as worded will be very broad. In other words, there's a very broad range of cases in which the crown will be required to address the issue of adult sentencing. It's much broader I think than anyone would actually contemplate cases where there would be an adult sentence.

I worry that sometimes it is a very difficult decision, and I can't imagine that any crown in the country does not consider inappropriate cases. There may be reasons not to bring the application—they may think their evidence is not strong enough, they may think the youth is amenable to rehabilitation—but that they haven't thought about it is inconceivable to me. So it raises a question about that.

And then I worry that—and they are difficult decisions—they may conclude on balance that it's not appropriate to be seeking an adult sentence. The fact that they're putting it on the record or are required to discuss it in this way may lead to a discussion, with the judge starting to try to interfere or the media making those decisions more difficult. Although you don't have reporting of identifying information, there's non-reporting. You know, why is the crown doing this?

So I think it's inappropriate for Parliament to do this. And indeed they don't do it in any other context. We don't say the crown shall say why they're seeking a summary conviction with adult rather than indictable. We just say of course we rely on the crown to make those decisions.

While I do think the crowns certainly have some responsibility to inform, particularly victims and victims' families, about why they're making decisions, putting this on the record is not an appropriate role for Parliament. I worry that it may well lead to an increase certainly in the number of applications for adult sentences in a way that may not be appropriate.

I think our adult sentencing provisions are largely working quite well. There are some horrific cases, and some young people should have adult-like sentences, and largely do. I worry about this.

I should say, coming back.... It was pointed out that some of the proposals here—for example, about not placing adolescents in adult facilities—are very welcome. So there are some very good parts to this bill.

● (1250)

The Chair: Thank you.

Is it Monsieur Lemay or Monsieur Ménard?

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I have a few questions.

Chief Weighill, can you tell me what the population of Saskatoon is?

[*English*]

Chief Clive Weighill: Two hundred and fifty thousand.

[*Translation*]

Mr. Marc Lemay: And out of this population of 250,000 inhabitants, how many are aboriginal?

[*English*]

Chief Clive Weighill: Approximately 20,000.

[*Translation*]

Mr. Marc Lemay: Concerning the crime rate, what percentage of crimes are committed by aboriginals in the Saskatoon region, according to you?

[*English*]

Chief Clive Weighill: The rates would be around 80% for first nations and Métis. Probably 80% of the people who are incarcerated are of first nations or Métis background, a vast overrepresentation.

[*Translation*]

Mr. Marc Lemay: Those are the statistics on aboriginals.

Would it be possible to send us those statistics? If we are talking about young offenders—and that is what this bill is about—would you say that the percentage is the same?

[*English*]

Chief Clive Weighill: No, it's overrepresented in the aboriginal population. It's not the same as—

[*Translation*]

Mr. Marc Lemay: So there are a lot of young aboriginals who are charged with crimes.

[*English*]

Chief Clive Weighill: Yes, many more young offenders who are charged come from an aboriginal background.

[*Translation*]

Mr. Marc Lemay: Fine.

Do you think that the bill as it stands, with the amendments that have been submitted, is adapted to criminality among young aboriginals?

[*English*]

Chief Clive Weighill: That's a tough call. In my line of work, I come after the crime has been committed, so we're dealing with the people who have already committed the crime. We have to work with what we face and then try to deal with it. I don't know if there is an answer for that. I really don't know.

[*Translation*]

Mr. Marc Lemay: Professor Bala, you interest me a great deal. You will probably be on my list of witnesses I would like to see again before the committee. I have a question for you. If you can't answer it right away, I would ask that you think about it.

Do you have any statistics on young aboriginal offenders? Have you done analyses throughout Canada on juvenile criminal justice as it applies to young aboriginals?

[*English*]

Prof. Nicholas Bala: I think there is a significant body of research about aboriginal youth and their overrepresentation in the youth justice system. On a national and provincial basis, we have Stats Canada data that breaks it down by aboriginal status in every province and compares the absolute rate with the population-based rate.

Then we have research about individual projects that are intended to respond to young people. We also have work on some of the social factors, like fetal alcohol syndrome, that result in higher rates of youth offending. As with other issues, there's a complex interaction between the social factors and the legal factors.

The Youth Criminal Justice Act specifically refers to aboriginal status. It is something that should be taken into account in sentencing, but this is not always done. For probation officers, there's the so-called Gladue portions of probation reports, which are intended to address this matter. They're not always completed.

● (1255)

The Chair: We're out of time.

[*Translation*]

Mr. Marc Lemay: Be prepared, because we are going to ask you to come back.

You as well, Mrs. Godin, because I wanted to ask you these same questions.

I am putting your names down on my list.

[*English*]

The Chair: I want to thank our witnesses for appearing before us. Your testimony will form part of our deliberations as we move forward with this bill.

I'm going to ask you to clear out of the room fairly quickly because we have another in camera session going on right away.

Professor Bala, you and the Justice officials can stay behind for now.

[*Proceedings continue in camera*]

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