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Tuesday, June 15, 2010

Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1110)

[*English*]

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

This is the 24th meeting of the Standing Committee on Justice and Human Rights. For the record, today is Tuesday, June 15, 2010.

I want to welcome all our witnesses. I also welcome a new member, at least for today, Lise Zarac.

Mr. Dechert, you have a point of order.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Yes. Thank you, Mr. Chair.

Arising out of our discussion at the last meeting of the committee, I'd like to make a motion concerning how we deal with the witnesses and a review of the legislation on Bill C-4. If that's appropriate, I'd like to read the motion.

I move that in light of the significant number of justice bills and other important issues before this committee, and recognizing the substantial number of witnesses who have already appeared before this committee with respect to Bill C-4, it is resolved that the justice committee proceed on the basis of the earlier agreement of its members to sit for an additional half hour at each scheduled meeting in order to hear all previously scheduled witnesses and conclude the clause-by-clause review of Bill C-4 prior to the summer recess of Parliament.

The Chair: We have a motion on the table.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chair, we did not receive notice. This motion is not in both official languages. I think it is not admissible. This is the first we have heard of it. I think you should reject this motion, since we have not received a copy of it, and this is the first we have heard of it.

[*English*]

The Chair: Mr. Dechert.

Mr. Bob Dechert: It's my understanding, Mr. Chair, that the motion is in order, as it refers to committee business and it's arising out of the discussion of the last meeting.

The Chair: Mr. Woodworth.

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

The difficulty we've encountered is that we had a system set up and we had a deadline to submit witnesses. There were witnesses submitted after the deadline, so we agreed to accept them if we sat longer hours and put more witnesses in a day. Then certain parties reneged on that.

We have, all together, 39 people on our witness list already, many of them representing the same constituency. So I'm in favour of Mr. Dechert's motion and I would ask you to call the question.

The Chair: Just before we move on with debate on the motion, I've consulted with our clerk and I am advised that the motion is in order because it involves committee business and we're in the middle of a bill review. So the motion would be in order.

Next we have Mr. Comartin, Ms. Mendes, and Monsieur Ménard.

Mr. Comartin.

● (1115)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

I definitely will be speaking and voting against the motion. Personally, there is no way I can extend my hours for this committee meeting. On Tuesdays I have an executive caucus that I have to be at, at one o'clock, so an extra half hour would make it impossible for me to be here.

Secondly, from the review I've been doing of the witnesses we've already heard, there are obviously several of them who I want to call back. We got nowhere near full or adequate information from them of the expertise they brought.

Obviously we can't do it today, and the last day of the House is going to be on Thursday, so the motion really is impractical with regard to trying to finish this bill by Thursday.

The Chair: Ms. Mendes.

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

First, I don't think we even have a point in the orders of the day that allows for committee business to be dealt with today. I would suggest that, to be respectful to our witnesses, we let them speak and at the end of the meeting we reserve some time to discuss this—15 minutes at the most.

The Chair: It's my understanding that there's nothing preventing a member of this committee from making a motion. The only issue is whether 48 hours' notice is required. In other words, do we require a notice of motion or not? In this case, because it involves committee business and we're in the middle of a bill review, it is in order and it can be discussed here.

Mrs. Alexandra Mendes: We did discuss this. We have already brought this forth; we spent almost half an hour on it last week. We did discuss the reasons that we thought it would be very difficult to prolong the half hour. Mr. Comartin made the point just now that we have other things in our schedules and it is difficult to adjust. We only have one more meeting, in principle. That's the Thursday one, so it's going to be really very difficult to prolong this. I really don't know why we are coming back to this on the meeting before the last one, which is next Thursday.

We certainly will vote against it.

The Chair: Okay.

We'll move on to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): First, where is the translation? I require a French translation of the motion Mr. Dechert has made.

Second, if you decide, Mr. Chair, that the proceedings can be interrupted at any time when we are here to hear witnesses, and if you decide that a motion can be made at any time to change decisions we have already made, that rule will continue to apply for the next two hours. So we could decide in a half hour, after hearing the witnesses, to make a motion that would be the opposite of Mr. Dechert's.

Do I understand the meaning of your decision correctly?

[*English*]

The Chair: The only decision I have taken is that the motion is in order, and I would remind the committee that this would be the third time the issue has been discussed at this table. There was a decision made for two-and-a-half-hour meetings. There was a decision made that clause-by-clause would occur on June 15 and a number of other matters dealt with at that time. Then, at our last meeting before last, there was a different motion made. It was debated at the time. Today there is another motion on the floor.

It is my role simply to determine whether a motion is in order or not. I have consulted with the clerks and they advise that this particular motion is in order. It can be debated here. It can be disposed of here. Ultimately, it will be voted on by this committee, hopefully, in short order.

The next one I have is Mr. Dechert, and then we'll move on to Monsieur Ménard again.

Mr. Bob Dechert: Thank you, Mr. Chair.

The reason I brought this motion forward today is that I certainly was under the previous understanding that this committee did want to deal with this bill expeditiously in the people's interest. It's obviously a very important issue for the people we all represent, and we had agreed to sit extra time. Certainly, there was the half hour tacked onto each scheduled meeting. I personally would be quite prepared to sit other hours as well, such as are necessary, because we have this looming deadline of the summer recess, and I think this is such an important issue for the people of Canada that we should be prepared to put in a little extra time to deal with this issue.

We've heard from many witnesses, many of them, as Mr. Woodworth pointed out, coming from a very similar constituency. There is still time to have some of those other witnesses back, if Mr. Comartin wishes to recall one or two. We have extra time in the evenings and other times when we could hear this. It is very important for the people of Canada that we move this bill forward, especially given, as everyone knows, that we have a great deal of additional legislation—private members' bills and government bills—coming before this committee. We have reports to consider. I think we're getting bogged down and we need to move forward.

It was my understanding that everyone had previously agreed to sit the extra half hours and to try to deal with those witnesses whom we had already scheduled before the end of June. I don't think that's an unreasonable request.

So I appeal to the members of this committee, in the interests of the constituents who we all serve, to make a statement here that they're prepared to work a little extra time to deal with the important justice issues that are before us. This is legislation that, in my opinion, will protect Canadian citizens and prevent future victims, and it is very important to the Canadian people that we are very diligent in our review of this legislation. For those reasons, I would ask each member of this committee to support this motion, and hopefully we'll be able to move this forward. By the time we return in the fall, we will be able to deal expeditiously as well with the other important legislation, both from the private members' side and the government side, which I know will be coming before this committee very soon.

Thank you.

● (1120)

The Chair: Thank you.

The clerk's list shows Mr. Norlock, Mr. Lemay, Ms. Mendes, and Mr. Woodworth.

[*Translation*]

Mr. Serge Ménard: I am still waiting for the translation.

[*English*]

The Chair: We're going to go to Mr. Norlock and then Mr. Lemay.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair.

My apologies to the witnesses.

I somewhat agree with Ms. Mendes with regard to the witnesses being here, but if the chair has decided that this issue is a point of order to come first, we'll just simply say that Mr. Dechert said most of what I have to say, so I'll keep my comments rather brief.

My comments are not for the members of this committee. My comments are for the people of Canada, if they're listening to this. I've been on other committees. I'm on one other very important committee, public safety. We have agreed to sit longer hours. Members are able to get replacements, as we can see around this table, whenever it's necessary to get replacements if we have other exigencies of our positions as members of Parliament. We can sit longer. It is possible to sit longer. The House itself sits longer when it's necessary to do so. The argument that we don't have.... We are all very time-constrained and we have other members of our caucus to rely upon. This is, as I said for the people of my riding and the people of Canada, an obvious attempt.... We see it on other committees and we're seeing it in the House. This is an obvious attempt by the official opposition to slow down government business so that it can say nothing got done in this Parliament.

We had a previous agreement on this committee to sit longer hours. If that's the wish of the opposition, to listen to more witnesses, we can do so by sitting longer hours. I know our witnesses care very much about what evidence they're going to present to us and that they would accommodate us in order to do that. This is an obvious attempt, and I'm not going to say it again, but this is an obvious attempt to slow down the business of the governance of this country and the legislation we pass, for political reasons.

Thank you.

The Chair: *Monsieur Lemay.*

[*Translation*]

Mr. Marc Lemay: Mr. Chair, with all due respect, we are probably going to vote on this motion in a minute. I think the motion will be rejected and I hope it will be rejected quickly. We have witnesses who are waiting and waiting and whom we did not warn that there would be a motion, unlike what we did last time. We informed people at the beginning of the meeting that we would be making a motion to revisit decisions, and we did not even adopt the motion, Mr. Chair. This committee has never agreed to the possibility of sitting for two and a half hours in the evening. That was the first point.

What is even more distressing is to hear members of this government tell us they have the will, they are nice, they are intelligent, and they are ready. And yet, gentlemen, you know it was your government that prorogued the session and made us start six weeks late. Imagine where we would be on this bill if we had started in January. You know very well that the bill would have been passed. That was the second point.

On the third point, I invite you to listen again to what I said in the House concerning this bill. You don't often listen to what we say. If you did listen, you would know that I said it was an extremely important bill, that it deserved our full attention, and that we were going to take the time to study it carefully. Unlike some of you, I have already sent the list of witnesses I want to recall before the committee. There are far too many. I can assure you that none of those witnesses comes from my riding or from around my riding. Now stop going on about this. We have work to do and we have to do it right. It will take the time it takes.

Mr. Chair, with all due respect, I think we should vote on this motion immediately so we can hear our witnesses, at last.

● (1125)

[*English*]

The Chair: Ms. Mendes.

[*Translation*]

Mrs. Alexandra Mendes: If I'm not mistaken, Mr. Lemay has called the question.

Is that correct, Mr. Lemay?

Mr. Marc Lemay: Yes, Mr. Chair.

Mrs. Alexandra Mendes: It think that's it. He is calling for a vote.

[*English*]

The Chair: We have three others on the list.

Mrs. Alexandra Mendes: Do we have to finish the list?

An hon. member: Ask the question.

The Chair: There's no such thing as calling a question.

[*Translation*]

Mrs. Alexandra Mendes: There is no reason to expedite consideration of this bill, first and foremost because up to now the witnesses have been saying, virtually unanimously, that the existing act is working very well, that it is not outdated and doesn't risk causing major problems for society. So we can perfectly well continue to consider the bill as it needs to be considered, with the gravimen required, as all the testimony heard to date has suggested to us that it should be.

As well, and in response to Mr. Norlock, I would refer him to what happened at the Standing Committee on Citizenship and Immigration. For the bill on balanced refugee reform, the Minister heard the witnesses, he heard the opposition parties, he negotiated with the parties and an agreement was reached. So it wasn't that the opposition parties wanted to be obstructionist.

We also want to stand up for our constituents' interests, and we don't all understand our constituents' interests the same way; we do it as best we can. So I reject the idea that because something comes from the government we absolutely have to approve everything without discussing it and taking the time to consider things thoroughly. That is what we're doing with this bill. It affects the lives of thousands of young people who are involved with the Canadian justice system.

[*English*]

The Chair: Thank you.

I have three others on the list. I don't want to prolong this debate, because we do have witnesses, and we owe them the courtesy of listening to them. I'm going to go to Mr. Woodworth, Monsieur Ménard—if he still wants to say something—and then Monsieur Petit, if he still wishes to speak.

Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much, Mr. Chair.

I happen to also sit on the environment committee, and we've had our difficulties recently on that committee. I know that at least a year and half ago, we began with the notion that when we were studying legislation or items we would pick representative witnesses—three or four, or a reasonable number—from a particular constituency and with a particular point of view, whether they be academics or scientists or non-governmental organization members, whatever the constituency might be. We would hear from them and get a good balanced view of all of the interested constituencies. We would have a definite timeline, and we would work to it. That's what the people of Canada deserve to get from us as parliamentarians.

They do not deserve to get a timeline that is set and then disregarded and set aside. We were, after all, originally intending to go to clause-by-clause on this bill today, and there's absolutely no reason why we couldn't have reached clause-by-clause on this bill today. We've already had hours and hours of hearings on it. Instead, we have a flood of witnesses—almost 40 witnesses—mostly from the same constituencies, with the same point of view, and that's not necessary. Now we hear that the opposition wants to prolong this even more by recalling some of the same witnesses.

Now, I won't go so far as to speculate on the motives of the opposition, but I certainly want to point out that whether or not they intend it, they couldn't think of a better way to bog down the committee process than to call dozens and dozens and dozens of witnesses all from the same constituency, which in effect holds up what many Canadians believe is an appropriate and good piece of legislation.

So that's why I support Mr. Dechert's motion.

● (1130)

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I am going to go quickly so I can respond to all the falsehoods I have just heard. There are a lot.

Let us remember a few truths. The government chose the time when we would start considering this bill. Why did it not introduce it while we were free, right at the beginning? Why did it prorogue in the first place? There have been no stalling tactics. We agreed to the resolutions at the last meeting because the witnesses said they were not happy with the time allotted to them. We had brought a large number of witnesses in at the same time. There was barely enough time to ask one of them a question. It was the witnesses who told us they were not happy with the way things went when they came to talk about this important bill, which they had studied thoroughly and about which they had serious objections.

I would remind you, for one thing, that at the last meeting there were witnesses from various fields who had not consulted one another beforehand, who all told us they were very unhappy with the conduct of the consultations held by the Minister, who obviously did not pay the slightest attention to them. They said they wanted to correct the impressions the Minister had got.

I would also remind you that the existing act, which is only 13 years old, is producing good results. Youth crime is declining. The witnesses who came here and complained that they did not have enough speaking time are convinced that if we go backwards, and that is what this bill does on certain important points, youth crime rates will go as high as before. Not everything in the bill is negative; some parts are even progress, and on those parts we will support you.

We have a different idea of efficiency. I have pointed this out to you several times. It seems that yours amounts to going as fast as possible, asking as few questions as possible and calling witnesses who will say what others have said before them. You think that isn't important, but actually it is. For example, representatives from the aboriginal nations have told us things that are similar to what was said by people from Quebec, who have the lowest youth crime rate in America, I would point out. These people see that there are dangers in the measures proposed by this bill. The fact that someone says something similar doesn't mean it is not efficient. Efficiency doesn't mean asking witnesses who agree about something not to say so.

In any event, we made a decision last time. So far, the chair has abided by it. I congratulate him for that and thank him. We are going to live with that decision. Otherwise, you are opening a Pandora's box. In the circumstances, another decision is being made, a motion with no notice, etc. Another one will be made in a half-hour, another one in an hour and yet another one at the next meeting.

I would also inform you that if I make a motion, it will be in French. Then you will see whether you are satisfied with the translation.

● (1135)

[*English*]

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chair, I am going to address only one point.

We had agreed to extend the time we were to spend hearing all the witnesses by a half-hour. But I will point out that one opposition party has not called its witnesses to date. We could have rejected that, but we nonetheless agree to it, and it created an overflow.

When that overflow was agreed to, we also had to agree to an additional 30 minutes to hear the witnesses. I think that one opposition party must really consider its own responsibility. We took an important step. We agreed that the witnesses would be heard, even after the date set by the committee. We asked for an extra half-hour, but now it is being taken away. It is being cut, from the steering committee's perspective...

I know there are witnesses waiting for us, and we apologize to them. Like everyone around the table here, I represent people. We had agreed on something. We had rules to follow, but one of the parties didn't follow them, and that is why we are stuck where we are.

[*English*]

The Chair: All right. I mentioned there was a list.

Mr. Dhaliwal, you asked to speak. We have witnesses we want to hear from.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): That's why I want to speak, Mr. Chair. Can I speak?

The Chair: You can if you wish, but then you'll be prolonging it.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair. That's where I want to go.

We have witnesses here, and with due respect to these witnesses, in the wake of extending it by half an hour we have wasted more than half an hour just beating around the bush. We should have called the question at the beginning to see if we wanted to extend, and we would have given time to do that.

This is a repeated pattern from the Conservatives, whether it is prorogation or producing those manuals to disrupt committees. This is how this Conservative Party works. I request that we call the question and give the time to witnesses.

Thank you.

The Chair: Mr. Dhaliwal, just so you know, you can't call the question like that. You'd be out of order. But we are at the end of the list of individuals who wish to speak, so I'm going to call the question on the motion.

(Motion negatived)

The Chair: We're going to continue our study and review of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts. We have a number of witnesses here with us. I extend my apologies to you for having to cut into your time a little. This is committee business. It does happen from time to time.

There may also be a vote right in the middle of all of this. So I'm extending to you my apologies in advance. These things sometimes happen. But we want to hear from you as much as we possibly can.

We welcome today Joseph and Lozanne Wamback, representing the Canadian Crime Victim Foundation; the Canadian Association of Elizabeth Fry Societies, represented by Kim Pate; from the John Howard Society of Ontario, Paula Osmok and Elsa Marie Knudsen; and from the Aboriginal Legal Services of Toronto, Jonathan Rudin.

Each organization has up to 10 minutes to present. We'll start with Mr. Wamback, please.

Mr. Joseph Wamback (Founder and Board Chair, Canadian Crime Victim Foundation): Thank you very much, Mr. Chair and honourable members of this committee.

I am a father of a young boy who was almost beaten to death by young offenders in 1999. I'm a father who recognized a system that needs change—change for both sides of what we now see is the end result of violent confrontations. I have researched this issue across Canada and beyond, and I have volunteered over 11,000 hours working with victims, families, police, and those within our medical community.

There are very few issues in the criminal justice system in Canada that have been the subject of national debate with dissatisfaction reaching the heights as there are with the existing youth criminal justice system. But it is absolutely vital to my presentation this morning that everybody here understands that this concern and this frustration have never been focused on the provisions for dealing with minor crime or youthful mistakes. Anyone who suggests that they have is being dishonest with this committee and with Canadians.

The national outrage is directed at the Youth Criminal Justice Act's inability to deal with psychopaths, killers, and repeat violent victimizers under the age of 18.

In January of this year I held a conference in Toronto that was made up of families whose children had been murdered by killers under the age of 18. Sadly, there was no problem and no difficulty in finding members to participate in this conference. These families did not ask for the death penalty. They did not ask for extreme or Machiavellian sanctions on the young persons who murdered their children. They asked that the lives of their children be recognized as having value. They asked that the Canadian Parliament recognize not only their tragic loss, but the loss of their child's future contribution to Canada.

What are we telling these parents, as well as all of Canada, about the value of their children's lives when we refuse to impose serious sanctions on murderers? These parents want violent repeat offenders segregated from innocent children to prevent others from experiencing the horror that they live with each and every day. Additionally, they want the necessary time provided to rehabilitate those killers before they are released again, if that is possible.

During the last 10 years I have spoken to dozens of psychologists and psychiatrists who tell me that it takes an average of three years of clinical intervention to change criminal behaviour. Unless we provide mandatory clinical intervention and the time necessary to undertake this intervention, we are exposing Canadians to additional preventable victimization and not helping those young victimizers through what we are now suggesting is rehabilitation.

Canadians who obey our laws have the birthright to be protected by those same laws. The changes proposed in Bill C-4 are not about getting tough; they're about protecting our children, our society. It's about acknowledging the value of the lives of murdered children as well as providing those who are the perpetrators of violence the time necessary for positive reinforcement and reintegration into Canadian society as law-abiding citizens. I believe the proposed changes in Bill C-4 will ultimately lower victimization and, most importantly, restore faith in the Canadian justice system.

The justice system is not the sole province of lawyers, criminals, and judges. It belongs to the people of Canada. The system works when victims report the crimes that are committed against them and testify truthfully when asked. When faith in that system is lost, ladies and gentlemen, it will cease to exist, and nowhere is that faith being eroded faster than with our young people.

● (1140)

In the last three years, my wife and I have spoken to over 32,000 young people in the province of Ontario, and we are repeatedly told of their greatest concerns. They're concerned because there's no consequence for violent acts among their peer group. There's concern because of bullying, which is, in reality, criminal victimization, assault and sexual assault—of schools, police, and a justice system that do nothing or whose hands are tied by existing legislation; of parents who are frustrated and angry because they are unable to do anything. We are told that they are frightened of violent peer groups in their schools and in their communities, and we hear stories of violent peer groups victimizing them, and retaliation has become the norm, if it's been reported.

The last Canadian criminal victimization survey noted that 88% of crimes committed against young people in this country go unreported—88%. The reason they go unreported, I'm going to suggest today, is because our young people don't trust the system that should be in place to protect them. This is a result of the current Youth Criminal Justice Act.

Who are the victims of young offenders today? Canada's last criminal victimization survey showed that 37% of violent victims in this country were under the age of 18, and the majority of perpetrators of those crimes against that 37% were under the age of 18. Who will benefit from the proposed changes suggested in Bill C-4? The young people of this country, Canadians from all walks of life, our justice system, and all political institutions.

The ultimate goal, I believe, of Bill C-4 is to restore faith in our justice system, to provide rehabilitation or perhaps habilitation to criminally inclined youth, to provide futures for kids who obey the laws, and to provide safer communities.

In the year 2000 I created a petition, which I've distributed. I hope everybody has a copy of it. It has circulated across Canada. Today, it has the signatures of 1,252,223 Canadians. The proposed changes and minor alterations reflected in Bill C-4 recognize the points in that petition and, more importantly, will recognize that the lives of the victims of violent young offenders also have value.

I've heard brief after brief from those concerned with the rights and lives and futures of violent criminals under the age of 18, but those voices remain deafeningly silent when asked to comment on victims and victims' families.

Since 2000 I have worked with hundreds of families and survivors of violent crime whose children have been the victims of killers and brutalizers under the age of 18.

My petition, item number 5, stated back in 2000 that protection of Canadians and communities must be paramount, along with deterrence and societal denunciation for violent young offenders. This is the first change recommended by Bill C-4—a change that has the support not only of millions who have signed my petition, but additional millions of Canadian families from coast to coast.

I'm an engineer, I'm not a lawyer, but I believe, and I think most Canadians believe, that the laws of this country are reactive tools. It's not social policy. We should not confuse Canada's social policies and programs with criminal law measures.

I've heard it said that the proposed changes are a violation of the United Nations Convention on the Rights of the Child. I'm going to suggest that such a claim is absolute nonsense. I will argue that the existing Youth Criminal Justice Act is a violation of the UN convention on the rights of child victims and young offenders, specifically articles 13, articles 16, and articles 19, and I will go into details later, if you ask.

I also further suggest that the proposed changes in Bill C-4 are in keeping with that convention and will not only recognize the intrinsic value of the lives of child victims, but also, if we are honest, recognize that serious custodial time will create the opportunity to rehabilitate those who are victimizers.

In addition, I want to argue that the existing Youth Criminal Justice Act is a violation of the UN declaration of the rights of victims, especially child victims of young offenders, and specifically articles 4 and 5. I will go into those later, if the time allows.

I also suggest it is a violation—this is the existing Youth Criminal Justice Act—of the Canadian Charter of Rights and Freedoms, specifically the right to life, liberty, and security of the person. That clause, which is clause 7 in the Canadian charter, includes you, it includes me, and it includes our children and all victims of crime across Canada, not just those who have been accused of crime. Admittedly, it has never been used in that context, but I believe that someday very soon it will.

● (1145)

Canada is very proud of and believes in judicial independence. I ask you to let it work by supporting Bill C-4.

Current provisions in the legislation are tying the hands of justice. It was not that long ago when a judge in Winnipeg sentenced a 17-year-old boy who had just beaten a 22-year-old man to death with a pool ball stuffed in a sock. He sentenced that young man to one day in closed custody. Why? Because the law required him to impose the least restrictive sanctions available to him. He imposed that sentence and he cried out to ask legislators to help him impose greater sanctions against young killers. To this date there have been no changes.

These proposals will provide our courts and judges with the tools necessary to more fully utilize judicial discretion and independence. I urge this committee to support the changes in Bill C-4, as do millions of ordinary Canadians like us from coast to coast.

● (1150)

The Chair: Mr. Wamback, you're out of time.

Mr. Joseph Wamback: I have one last thing. I have a lot more to say, but I urge, I implore, this committee not to exercise political partisanship, but to listen to what I have said and to support this legislation.

Thank you.

The Chair: Thank you.

We'll move on now to Kim Pate.

You have 10 minutes.

Ms. Kim Pate (Executive Director, Canadian Association of Elizabeth Fry Societies): Thank you very much, and I want to thank you for inviting our organization to participate in this discussion and to appear before the committee. I know some of you. I represent 26 member associations from across the country, from coast to coast, who represent thousands of volunteers who form part of our membership but also form our board of directors.

Certainly our president sends her regrets. She had hoped to come today as well, but she was unable to be here.

Our organization, as many of you know, represents and works with marginalized, victimized, criminalized, and institutionalized women and girls across the country. We're here because of the concern we have that the potential impact of some of the proposed amendments on the lives of those women and girls is profound, certainly the girls and the young women who may potentially be impacted by the legislation.

Corresponding with the inception of the Youth Criminal Justice Act, we have seen a decrease in incarceration without a corresponding increase in crime—and I think that's an important piece—as well as, as I understand it, without a necessarily corresponding increase in victimization.

We do believe that there needs to be far more investment in the early intervention methods that certainly the witness before me spoke about, in terms of early intervention, supportive mechanisms, social services, educational services, health services—all of the things that have been cut, services that when they are not available to provide support, their lack actually contributes to young people ending up in the criminal justice system. We don't see that as a place for this legislation and in fact think that the changes proposed by the Youth Criminal Justice Act to push those cases out of the criminal justice system and into an appropriate service, whether it's mental health, social services, or educational services, are supportable and should continue.

We believe that many of the amendments proposed are unnecessary. There are already provisions in the legislation that allow for many of the approaches that are being proposed. We believe that the majority of the issues that are raised and the concerns that are raised by the proposed legislation can and should be dealt with on a case-by-case basis by the existing legislation, using the judicial discretion that already is available.

We have some concerns, for instance, regarding the removal of the presumption for pretrial release, including for property offences. We know now that if in fact there is a risk of violent reoffending, the provision already exists to keep someone in custody, where there have been mechanisms tried that have failed. All of those opportunities still exist.

We know that the more you fetter the discretion of the judge, the greater the likelihood you'll see more individuals end up in the system with fewer opportunities for them to have the cases individualized, in terms of the plans for rehabilitation and reintegration that are so key and have been so successful, we would suggest, in terms of the Youth Criminal Justice Act.

We think that the introduction of deterrence and denunciation, as well as proportionality, really, that is being suggested for the principals...these are terms that are quite subjective and difficult to quantify, and will not necessarily provide an opportunity for greater intervention for rehabilitation purposes, or ultimately therefore for public safety, but in fact will likely see exactly what we've seen in the adult system as well, which is more people coming into the system, waiting for longer periods to be assessed, with risk assessments that aren't even validated for young people being applied, and the difficulty then of trying to extricate those individuals from the very system the YCJA was initially introduced to try to unclog and has quite successfully done so.

We think the definition of serious offences now including property crimes is problematic and certainly is too far-reaching, and it will essentially disallow some of the discretion the judges currently have.

We also think the suggestion to lift more easily publication bans is another unnecessary provision. That already exists in the legislation. I believe it's section 127. Application can already be made to lift a publication ban in extraordinary circumstances.

I note that at the same time as there is much discussion and concern about gang-related activity, one of the things we know is that the young people who we have worked with, young women in particular, often who have been—you'll pardon the bluntness and crudeness of it—gang-banged into gangs, who try to extricate themselves...if in fact, based on some of these sorts of provisions, they are exposed, it becomes very difficult for them to extricate themselves in the way that many young women we've had the privilege and responsibility of working with have been able to extricate themselves—with some anonymity, with an ability to move on, with an ability sometimes to even move geographic location. Nevertheless, if there is still perceived to be a need to lift those publication bans, there is a procedure that currently exists to allow that to be done.

● (1155)

We think the challenge of greater reporting and the demonstration before the court that young people have participated in extrajudicial measures is also a concern, in the sense that we already know some of the statistics on racial profiling and some of the issues around the overrepresentation of racialized youth, particularly African Canadian youth and aboriginal youth, and the concern that in fact there is not a need for this kind of measure.

Everybody knows now, if you work in and around the court system, that if you've been victimized, if you've been criminalized, if you've been institutionalized, this information does come into play. It can come into play in sentencing; it can come into play in the process in terms of determining whether someone is held in custody awaiting trial. All of those measures currently exist.

We do support, however, the recognition in the preamble that young people have diminished blame or moral blameworthiness and culpability. We think that is a measure that was read by many of us as implicit in the Youth Criminal Justice Act, but explicitly stating it doesn't hurt, particularly in light of the fact that there has been the introduction of a suggestion that deterrence and denunciation be introduced at the same time as we have recently had decisions of the courts that in fact that's unnecessary and not applicable to young people.

We also think the provision of clause 21, that no young people under the age of 21 be transferred into youth facilities, is something that is very supportable. We think the presumption in favour of adult sentences being repealed and replaced by the crown onus is also a positive move.

We are very happy to answer questions. We have certainly other suggestions that we can make, but we're happy to move on and don't want to take any more time from colleagues and other witnesses.

Thank you.

The Chair: Thank you very much.

We'll move on now to Paula Osmok for 10 minutes.

Ms. Paula Osmok (Executive Director, John Howard Society of Ontario): Thank you, Mr. Chairperson and members of the committee, for the opportunity to speak with you today.

My name is Paula Osmok, and I'm the executive director of the John Howard Society of Ontario. I'm here today on behalf of the John Howard Society of Ontario and the John Howard Society of Canada. Our national executive director is out of the country and not available today.

Also, we have a written submission for you today, and it will be forwarded to you, I understand, once it's translated.

As you know, the John Howard Society is an agency with 65 offices across the country that helps improve the safety of Canadian communities by working with those who are at risk of becoming involved or are involved in the criminal justice system.

Our mission is effective, just, and humane responses to crime and its causes, and our work is grounded in the research on what works to prevent crime and recidivism.

As an agency with literally decades of experience working with youth involved in the criminal justice system, as well as communities affected by crime, we have what we believe is the unique and important vantage point from which to consider the success and the challenges of the Youth Criminal Justice Act and to comment on the potential benefits and harms of the proposed amendments.

It's with this background that we speak to you today on the matter of Bill C-4, an act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts. We oppose the majority of amendments that this bill would make to the YCJA.

The introduction of the YCJA led to many positive changes to the youth criminal justice system, such as the significant decrease in the incarceration rates of young people, and, as you heard previously, without a substantial increase in the crime rate as well.

It's important to be reminded that prior to the introduction of the YCJA, Canada had the poor distinction of having the highest rate of incarcerated youth in the western industrialized world, even higher than the United States. These changes were achieved as a result of the firm and sound focus on rehabilitation, reintegration, and prevention in the act.

We believe Bill C-4 seeks to dismantle this foundation and shift the focus of the youth criminal system to a punitive approach. In the words of the Montreal *Gazette* editorial board, “The thrust of this bill, unfortunately, is to move away from rehabilitation and toward retribution.”

Punitivism and retribution are incompatible with sound, research-based criminal justice approaches that work to reduce crime and its causes.

Instead of preventing youth crime or reoffending, this bill would actually increase rates of youth in custody, leading to harsher and more adult sentences for youth, reduce the use of extrajudicial sanctions, and increase the cost of the youth criminal justice system to Canadian taxpayers overall. Most importantly, the proposed amendments will do nothing to improve community safety.

Youth crime, as all of you should know, is best prevented by tackling the root causes of crime: poverty, lack of quality education in early childhood education, employment services, and recreation, to name a few. While clearly slower, the approach of preventing crime through social development is the best and most cost-effective way to improve the safety of Canadian communities.

At this point, I would like to call on my colleague, policy analyst Else Marie Knudsen, to speak to some of the specific amendments in Bill C-4.

● (1200)

Ms. Else Marie Knudsen (Policy Analyst, John Howard Society of Ontario): Thank you.

The amendments proposed in Bill C-4 give us significant cause for concern, due to the negative impact they will have on young people who come into contact with the criminal justice system. These proposed amendments to the YCJA do not advance the goal of improved community safety. They will also be very expensive.

I'll briefly discuss our three main concerns about the bill and ask that you refer to our brief for a more comprehensive analysis.

One of our primary concerns about this bill is its expansion of the grounds for holding a youth in pretrial detention. Pretrial detention should be used as a measure of very last resort with young people and for the shortest possible time. Significant justification for restraint in the use of remand is found in a range of sources, from the research literature, to human rights principles, to arguments for fiscal responsibility. The research shows that time spent incarcerated is actually a criminogenic factor. To be clear, that means that the incarceration of a young person actually increases the likelihood that they will reoffend. The reports on the death of Ashley Smith speak to the profoundly negative impact of custodial settings on young people, particularly those with mental health concerns, as well as the dangerous spiral of pretrial detention, institutional charges, and around again, that can result from unnecessary entrance into the carceral system.

The likelihood of harsher sentences also increases. A Department of Justice study found that the detention experiences of young people, when all other factors such as prior record are controlled for, affect the likelihood of pleading guilty and receiving the most severe sentence. Those who are not released by a court after being detained at their first arrest are disproportionally sentenced to custody, as are those who have multiple stays in pretrial detention. Thus, if the goal of the youth criminal justice system includes reducing recidivism, protecting the public, and even saving money, then pretrial detention should never be used unless it's the very least restrictive measure available.

By relaxing the conditions under which a young person can be detained prior to trial, there's also an increased risk of police and the courts using remand to deliver a sort of wake-up call or short, sharp shock to youth. But pretrial detention decisions must never be made with the goal of modifying a young person's behaviour prior to their conviction for a crime. Young Canadians have the constitutional right, as we all do, to not be punished for a crime for which we've not been found guilty. Despite these concerns, Bill C-4 actually seeks to increase and expand the use of pretrial detention, and we strongly oppose this proposal.

Bill C-4 also seeks to add general deterrence and denunciation of sentencing principles. To this, the John Howard Society also strongly objects. This amendment is not supported by evidence and will not prevent crime or reduce reoffending. It will also inevitably increase the use of custodial sentences and may contradict the legal principle of proportionality. As you're aware, people who commit crimes typically do not consider the length of the sentence they might face when they're making the often split-second decision to commit a crime. Young people in particular are characterized by immaturity, spontaneity, and a sense of infallibility. Deterrence and denunciation are, unsurprisingly, without support in the academic literature as a means of preventing or reducing crime or improving public safety. There is, in fact, literature to suggest that the very issues that are correlated with criminality and young people, things like family conflict, low self-control, and school disruption, are also correlated with high impulsivity, low self-control, mental health concerns, and addictions, all issues that reduce one's capacity to perform the careful cost-benefit calculation that is required if general deterrence is to be effective.

Finally, the John Howard Society strongly opposes the amendments contained in clause 8, namely, the provision that participation in extrajudicial sanctions be considered in sentencing and contribute to the likelihood of a custodial sentence. This amendment is counterproductive and it undermines the rehabilitative focus of the YCJA. The proposed amendment can only effect a decrease in the use of EJSs by youth, which would be extremely regrettable. The focus on EJSs in the YCJA has been a wide success, and this process is effective at meeting goals of reparation and lowering recidivism in a much more inexpensive and effective way than custodial or other traditional interventions.

This amendment also raises concerns with regard to the legal rights of youth. The requirement that youth “take responsibility” when agreeing to undertake an EJS cannot be equated with a finding of guilt under the law, and to conflate the two is dangerous. The Convention on the Rights of the Child mandates that youth be presumed innocent until proven guilty, and participation in an EJS does not equate to legally proven guilt.

● (1205)

This amendment threatens to dilute the YCJA's important focus on not unnecessarily propelling young people into the criminal justice system and on not unnecessarily criminalizing what are often very minor acts.

In summary, we urge the committee to abandon or make significant amendments to the bill, which will undermine aspects of a well-functioning youth criminal justice system.

Thank you for the opportunity to speak today.

The Chair: Thank you.

We'll move to Jonathan Rudin. You have 10 minutes.

Mr. Jonathan Rudin (Program Director, Aboriginal Legal Services of Toronto): Thank you very much.

Aboriginal Legal Services of Toronto appreciates the opportunity to present our position on Bill C-4 to the justice committee.

ALST earlier appeared before the House and Senate justice committees regarding the development of the YCJA, and we're proud to say that our appearances contributed to having the wording of paragraph 718.2(e) of the Criminal Code explicitly placed in the YCJA.

In addition, we were an intervenor at the Supreme Court of Canada in the case of R. v. B.W.P., which is the case that confirmed that deterrence does not have a role in the sentencing of young offenders. The bill before you, if passed, will overturn that decision.

In our submission we do not wish to go over the amendments line by line. Rather, we'd like to focus on the overall impact of the amendments, and that impact will clearly be that more youth will be jailed either on sentence or on remand. Before embarking on such an approach, however, we would ask that this committee look beyond the rhetoric and consider the realities of the youth justice system today.

In April of this year, Statistics Canada released a *Juristat* study entitled "Youth custody and community services in Canada, 2008/2009". This report makes clear what has been a very disturbing trend over the years since the enactment of the YCJA, and that trend has been for youth jails to become the increasing preserve of aboriginal youth. Indeed the overrepresentation of aboriginal youth in custodial facilities today far outstrips the overrepresentation of aboriginal adults in prison, and this bill will only make a very, very bad situation even worse.

In 2008-09, aboriginal youth made up 36% of all youth in sentenced custody, despite the fact that aboriginal youth are only 6% of the youth population. This overrepresentation is not some geographic anomaly. The report indicates that all jurisdictions showed evidence of overrepresentation. If we look simply at the situation of the overrepresentation of aboriginal girls, the figure is even more striking. Forty-four percent of girls in sentenced custody in Canada are aboriginal.

In 1999, the Supreme Court of Canada, in the decision of R. v. Gladue, referred to aboriginal overrepresentation as "a crisis in the Canadian criminal justice system". The current figures for aboriginal overrepresentation in youth jails are much higher than the figures were for adults in 1999, at the time Gladue was decided. If overrepresentation was a crisis in 1999, what words can describe the situation today?

Among the problems with this bill, in our opinion, is that it will allow judges to rely on deterrence to justify jailing youth. You have already heard today, and I know you've heard earlier, that there are studies that illustrate that deterrence, both general and specific, does not work. While we agree with these studies, we would suggest that levels of aboriginal overrepresentation themselves show that deterrence is not effective.

Ever-increasing levels of aboriginal overrepresentation in the adult and youth justice systems mean that aboriginal people know better than most that if you break the law, you will go to jail, yet those same, ever-increasing levels of aboriginal overrepresentation show that this fact does not stop the phenomenon. If deterrence worked, we would see a decreasing proportion of aboriginal youth and adults in jail, but we don't see that. This bill will contribute to ever-increasing levels of overrepresentation by allowing judges to send young people to jail to send a message that no one will get.

Let's be clear. Allowing deterrence into the sentencing equation will mean that youth, and disproportionately aboriginal youth, will be sent to jail, not because it will serve any purpose for them, but to satisfy a mistaken and wrong-headed belief that someone else will be dissuaded from criminal activity as a result of those sentences.

It is cruel to punish a person by taking away their liberty in order to send a message to someone else. It is beyond cruel to do so when we know that no one will get that message.

This bill will also make it easier to detain young people before trial, and this too will have a disproportionate impact on aboriginal youth, who, not surprisingly, are also overrepresented among those on remand.

Why is there such a great need to increase the youth remand population? If we look again to the *Juristat* article, we find that in 2008-09, for the second year in a row, there were more youth in Canada on remand than there were in sentenced custody.

● (1210)

The idea that it is difficult to remand a young person in custody is belied by the facts. Indeed, one quarter of the youth detained on remand were there for offences against property only. Making it even easier to rely on remand will increase those numbers even more. Reliance on remand means that sections of the YCJA that look to alternatives to custody are made irrelevant because young people will already have served their sentence before they're actually sentenced.

In his appearance before this committee, the Minister of Justice referred to consultations he undertook in 2008 on the YCJA. ALST attended the consultations that were held in Toronto on July 16, 2008, with the minister and with the Attorney General of Ontario. At that meeting, there were representatives of many different organizations, including the police. While minutes of those meetings were not released, I can tell you, as a participant, that no one in the Toronto consultations advocated that deterrence be added to the YCJA. No one argued for more reliance on remand. No one felt the YCJA was too lenient.

We would never make the mistake of saying that what people in Toronto think is necessarily representative of what the whole country thinks, but it is significant that the amendments being advanced here are not addressing the concerns that were expressed at that meeting.

As I mentioned, we are already seeing that youth jails in Canada are really aboriginal youth jails. In some provinces this has already occurred. In Manitoba, 87% of boys and 91% of girls in custody are aboriginal. In Saskatchewan, 73% of boys and 93% of girls in custody are aboriginal. This is an incredibly disturbing trend. If these amendments are passed, this trend will just accelerate.

Is this development going to make communities safer? Is it going to address the root causes of aboriginal offending? No. We need to recognize in Canada, in both our adult and youth systems, that we increasingly reserve incarceration, our harshest penalty, for aboriginal people. Almost always when legislators toughen up the criminal justice system, that translates into more aboriginal people going to jail, and these amendments are no exception.

When important decisions are made in the aboriginal community, people are often reminded by the elders to think seven generations ahead. We realize that it's often difficult for politicians who must regularly run for re-election to think 10 or 15 years down the line, much less seven generations. The sad reality, the tragedy, of aboriginal overrepresentation can at least be partially understood by the fact that decision-makers have often not looked at the impact of their decisions on aboriginal communities.

We urge you to resist the pressures of those who believe the problem with youth justice is that we have not been tough enough. Resist those pressures, because bowing to them will result in the perpetuation of practices that do not work, practices that lead to the continued over-incarceration of aboriginal people, practices that do nothing to change the behaviour of those who commit offences, practices that, in their short-sightedness, do not increase community safety but rather make communities more dangerous by placing aboriginal young people into the revolving door of the prison system.

Thank you, *merci, meegwetch*.

● (1215)

The Chair: Thank you very much.

We'll move on to questions now, and we'll start with Ms. Mendes. You've got seven minutes.

Mrs. Alexandra Mendes: Thank you very much, Mr. Chair.

Good afternoon to all. Thank you very much for your testimony.

I would like to start with Mr. Wamback. When you mentioned the victims, were you talking about children in school, school-aged children mostly, young people of school age?

Mr. Joseph Wamback: In my presentation I'm talking about children who are under the age of 18, the victims of victimizers who are under the age of 18, yes.

Mrs. Alexandra Mendes: Okay, so mostly in schoolyards?

Mr. Joseph Wamback: No, no, the school is part of it; school is only part of their lives. When they leave school, when the clock strikes three or four o'clock, their lives are still not free of intimidation. They have difficulties after that, anywhere in the community.

Mrs. Alexandra Mendes: You would describe that intimidation as a violent crime?

Mr. Joseph Wamback: Yes.

Mrs. Alexandra Mendes: So that's a violent crime, in your opinion?

Mr. Joseph Wamback: Intimidation?

Mrs. Alexandra Mendes: Yes.

Mr. Joseph Wamback: No—physical assault, being beaten into a coma. We have visited hospitals across this country where children do not make the front pages of our newspapers, but they are still lying in vegetative states after five and six years of violent physical assaults as a result of violent confrontations with their peer group.

Mrs. Alexandra Mendes: How do you think our current Youth Criminal Justice Act could be made better to prevent that?

Mr. Joseph Wamback: One of the things that I think is an extreme shortcoming of the existing Youth Criminal Justice Act is the fact that there is no provision for mandatory counselling. If we really want to see violent people, who are placed within the system after they have been convicted of committing a violent act, reintegrated into our communities, if we really want to help them—and I've heard the word "rhetoric" used—if we don't want to use rhetoric, then let's make sure that whatever warrant expiry date is set, they receive that counselling. Currently it does not exist. Currently it is not mandatory.

Mrs. Alexandra Mendes: But it is not in the new bill either.

Mr. Joseph Wamback: It's not in the new bill either. I'm also suggesting other things that should be included in this new legislation. In my meeting in Toronto, many things were recommended.

Mrs. Alexandra Mendes: It's part of the rehabilitation that we would like to see being a part of this bill.

Mr. Joseph Wamback: That's correct, but rehabilitation will not happen on the streets of the city.

Mrs. Alexandra Mendes: Oh, absolutely, but counselling is part of the rehabilitative process. That is not part of this bill at all; you agree with me.

Mr. Joseph Wamback: I agree with you, yes, but I also want to suggest to you or state to you that the concept of deterrence and denunciation should not be overlooked and should not be underestimated. The school children we've talked to...there are several instances in my own community where a young boy has been beaten almost to death, and the individual who committed that particular act was arrested, brought before a JP, and was brought back into the same school wearing a bigger badge of courage than he had the day before he beat that young man.

The fact that there is no consequence, or no perceived consequence, for individuals who are young offenders is, I believe, a huge factor in perpetuating this type of violence in our community.

● (1220)

Mrs. Alexandra Mendes: That's precisely one of our objections to lifting bans on identification, because it does create the impression that they have gained some sort of badge of honour. That's precisely why we object to it, and you're just proving—

Mr. Joseph Wamback: I'm sorry, I missed that point completely.

Mrs. Alexandra Mendes: The ban on identification that is currently in the justice act—to ban identification of underage criminals—is precisely also to avoid the fact that they create this badge of honour because they have committed a crime.

Mr. Joseph Wamback: Seriously, in any community where an individual has committed the crime I've just explained, every kid within that school knows who it is; most of the people in those communities know who it is. The people who don't know, because of publication bans, are people in the rest of the country. But suggesting that a publication ban is going to alter that individual's behaviour is I think wrong-headed.

Mrs. Alexandra Mendes: It stops the child from necessarily creating an even more inflated opinion of himself.

Mr. Joseph Wamback: Absolutely not, not within his own community. I disagree with you for the reasons I've just stated. When that individual returns to that community, there isn't a child who doesn't know who he is and what he has done.

Mrs. Alexandra Mendes: What would you propose should be done then? That the child should not be returned to that community?

Mr. Joseph Wamback: I believe the individual should be.... Again, I premised my arguments and my position here before I started by saying that I'm talking about killers, psychopaths, rapists, pedophiles, and the worst—

Mrs. Alexandra Mendes: How many of those do we have in Canada, Mr. Wamback? We are one of the safest countries in the world.

Mr. Joseph Wamback: You may suggest that we are, and *Juristat* may suggest that crime rates are coming down, but crime victimization surveys are showing that crime among young people has doubled in the last ten years. We are one of the safest countries in the world. I love my country; I think it is one of the greatest countries in the world, but one of the things that we are not doing is looking after youth who follow the rules, looking after young people who do the right thing by providing them with the protections that are necessary.

To suggest that denunciation and deterrence, which is what I believe this discussion started out as, doesn't mean anything I think is incredibly wrong. I think if individuals who commit acts of violence—and many of those individuals are a part of gangs and they choose who their peer groups are. If it is well known in that community that if you do this, this will happen, then I believe this will prevent a lot of the crime we see today. That is the concept of social denunciation and deterrence.

Mrs. Alexandra Mendes: Thank you.

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard: Thank you.

I would like to address Mr. Wamback first.

Mr. Wamback, I think you have experienced a terrible tragedy in your life. It is still palpable today. First, I would like to offer you an expression of my own sincere sympathy in addition to those you have been given in your life.

I have been lucky, since nothing like that has happened to me, and my children are my greatest joy. I haven't checked, but I think that everyone here is a parent. Personally, I have been a grandparent for nearly a year; my daughter has made me happy by bringing twins into this world. My son has just informed me that his wife is pregnant. You can be sure that if anyone touched those children, you would have to hold me back, because I don't think I could control myself. I have tremendous sympathy for you. Although I have never experienced such very profound suffering, I have no difficulty imagining it.

Like us, you will agree that we will never completely put an end to crime and youth crime. That is a fact of life. Isn't that right?

[*English*]

Mr. Joseph Wamback: Yes.

[*Translation*]

Mr. Serge Ménard: But all we can do is try to reduce it. Do you agree?

● (1225)

[*English*]

Mr. Joseph Wamback: Yes.

[*Translation*]

Mr. Serge Ménard: You can be sure that this is our primary goal.

If look back at the past and look around us, we have enacted a law in Canada that was partially, not completely, based on a model I will talk about again. We succeeded in reducing crime. Isn't that right?

[*English*]

Mr. Joseph Wamback: If I can speak to that decrease, one of the things I recognize is that various government statistics have come out saying we've had a 35% decrease in the incarceration rate or in criminality among young people. Prior to the introduction of the Youth Criminal Justice Act, under the Young Offenders Act, breaches of probation and breaches of parole were separate indictable offences. They represented 55% of the total charges against young people in this country. When the Youth Criminal Justice Act was brought in, these separate indictable offences were no longer indictable offences. I would have expected the crime rate to drop by 55% in Canada among our young people virtually immediately. That is not the fact.

Violent crime, and I'm not talking about a crime where somebody makes an honest or silly mistake—we've all made silly mistakes and we all deserve a second chance—is increasing at an exponential rate across this country for people under the age of 18. As guardians of our young people, we have a responsibility to protect innocent children and see that those who commit violent acts receive the attention they deserve to try to change that criminality. We are not going to do it by reducing or eliminating sentencing. That is the appropriate place to make sure the experts dealing with that are able to deal with those people.

[*Translation*]

Mr. Serge Ménard: I understand that you don't interpret the statistics the same way. I recognize that. I would also like to ask other people here to testify.

I think you are all aware that Quebec had a particular system for handling youth crime. In Quebec, youth crime is actually markedly lower than in the rest of Canada. In fact, for the existing act, it drew partly on that experience, as Ms. McLellan had in fact promised me when I was Minister of Justice in Quebec. She incorporated part of that experience in the act. We achieved a reduction.

You also raised the problems of specific groups, like aboriginal people. Others have also talked about people of colour and certain immigrant groups. You undoubtedly know about the desire to amend section 3 of the Young Offenders Act, which establishes the general principle of aiming for reintegration, rehabilitation and prevention by giving sentences proportionate to the offence committed and to the person. A similar provision already existed.

Do you think that this change to the general principle will make it possible to treat minority clienteles more fairly? Those clienteles are in the minority in the population, but unfortunately are in the majority in young offender detention centres.

[*English*]

Ms. Kim Pate: I'm glad you raised the example of Quebec.

[*Translation*]

I apologize for not being able to answer in French.

[*English*]

I think the fact that you have more complete social services, starting with child care that is more universally available—not universally available, but more universally available—and more of a focus on the social development components that others have spoken about is a key to why it has worked well in Quebec.

With some of the measures being proposed, while you may include rehabilitation and continue to focus on rehabilitation, once you start to talk about deterrence and denunciation, we know the cognitive development of young people, even by 18, often may not be at the stage where they can think abstractly and plan in the ways we'd like them to. As a mother, I'd certainly like my 19-year-old to be able to plan a lot better, but that's not what I'm here for.

Right now we see young people being held accountable. We do see rehabilitation and reintegration as a focus in sentencing. We do see occasionally very good intensive rehabilitation and treatment—the IRCS options. But those aren't available enough. Our concern with these kinds of changes that are proposed is that we'll see those being even less available. There will be fewer opportunities, with more focus on risk assessments, as we've seen in the adult system, and less focus on treatment. As my colleagues have raised, we have enough examples of young people who have been failed by the system.

● (1230)

The Chair: Thank you. Unfortunately, we're at about seven and a half minutes.

Mr. Comartin, you can allow the witnesses to continue answering. You have seven minutes.

Mr. Joe Comartin: Thanks, Mr. Chair.

And thank you, witnesses, for being here.

Mr. Rudin, go ahead. I'm going to ask you some questions anyway, but you can respond.

Mr. Jonathan Rudin: I'll speak briefly. It's nice to have principles in the act that may restrict the use of incarceration; the difficulty is we don't see them working particularly well.

Paragraph 718.2(e), which was in the Criminal Code and is now 39(2)(d) of the Youth Criminal Justice Act, says that a judge should look for all alternatives to imprisonment for everyone, with particular attention to the circumstances of aboriginal youth. But this has not significantly reduced aboriginal involvement in the youth justice system, and, as I mentioned, the proportion has gone up.

I'm not as optimistic about what may be seen as general terms like that in terms of helping reduce levels of incarceration. However, I am certain that if words like “deterrence” and “denunciation” are put in the act, those will definitely lead to more young people going to jail.

Mr. Joe Comartin: Mr. Rudin, with respect to the statistics you gave us in terms of the proportional representation by aboriginal youth in the system, did you draw them from *Juristat* or from other sources?

Mr. Jonathan Rudin: Those are from *Juristat* .

Mr. Joe Comartin: Do you know if the *Juristat* figures include Métis and other non-status—

Mr. Jonathan Rudin: The *Juristat* figures take a self-identification notion of aboriginal people, which in our experience means they're a floor. We have generally found that when many jurisdictions count the number of aboriginal people in the facilities, they undercount; many people who are aboriginal simply aren't counted. I would look at these numbers as a minimum number. As I said, they're the floor. The actual numbers will be higher.

Mr. Joe Comartin: The African Canadian Legal Clinic was here a couple of weeks ago. *Juristat* doesn't keep figures on anybody other than the aboriginal community. Everybody else is lumped in together.

Have you seen any studies—and I'm looking at academic studies at this point, or maybe government studies—that have isolated other populations other than the aboriginal population?

Mr. Jonathan Rudin: I have not. Maybe some of my colleagues have.

Mr. Joe Comartin: Do they exist?

Go ahead, Ms. Pate.

Ms. Kim Pate: The comment I made about the increase is based on visiting the institutions and visually seeing increased numbers of racialized young people.

Mr. Joe Comartin: Okay—but that's anecdotal.

One of the things that has been troubling me, to pick up on perhaps some of the points that Mr. Wamback has been making, is that I'm trying to draw a conclusion that I wonder if any of you either support or oppose. We know that we are able to deal with the most violent youths—identified with murder and other really serious crimes—by moving them into adult sentencing. I have the impression, and I won't say it's any more than that, that there's another relatively small group—I know that Mr. Wamback won't agree with this, in terms of its size—that our courts would not consider treating as adults for sentencing purposes but the existing system is not able to cope with. A lot of these would be repeat offenders, starting off with less serious crimes and moving into more violent crimes before moving up to that final stage and going into the adult system.

So I guess I have two questions. One, if my perception is correct that there is that group, could you confirm that or deny it? Two, if you confirm it, are there any suggestions as to how we might deal with them from a legislative standpoint? That's if we should deal with them differently from what we are now.

● (1235)

Mr. Joseph Wamback: To answer your question on adult sentencing, Mr. Comartin, one of the greatest misconceptions in this country is the fact that an individual under 18 who commits a serious crime, first- or second-degree murder, in an adult sentence will spend a great length of time in a custodial environment. The reality is that they will spend a longer time in a custodial environment if they are sentenced as a youth than if they are sentenced as an adult.

Our concern with these particular individuals.... One of the committee members asked how many people we were talking about. I admit that we're not talking about a great number of people in this country who are under the age of 18 who commit these horrifically aberrant crimes. But we do not have the ability in this country, through our existing criminal law measures, to be able to deal effectively with them, to provide the appropriate sanctions to ensure that they have that rehabilitation that we all seem to want so much for violent youth.

The most important thing we represent is the people who have been on the receiving end of extreme violence, who see the murderers of their children back out on the street in less than 18 months—murderers who, in that particular 18-month period, have not been required to undergo any form of counselling or support or rehabilitation. They are back out on our streets, wearing a larger badge of courage, creating greater havoc in communities of young people.

That is our concern. That is why we are here today, to try to express our perspective and the perspective of millions of Canadians who are extremely frustrated with....

I support your position on aboriginal youth, about the over-representation of certain groups. That is a social issue that I hope one day I could work with you on to try to correct or resolve. It's the same with some people who are otherwise...but we have to be able to deal with that, and we can't.

Mr. Joe Comartin: To anybody else, is my perception is wrong? Any comments?

Ms. Kim Pate: Most of the police services...and certainly when I worked in Calgary with the police service, we had what they called a "serious habitual offender comprehensive action plan"; it then got shortened. The comprehensive action piece was the most effective intervention we saw. It brought child welfare folks and education folks together.

We saw with those young people that they were persistent, but they were predominantly without any other supports in their community. When you were able to build those supports around them, you could actually see a change. That was the way the Calgary police became supportive of a program—I was actually with John Howard at the time—where we worked with those kids and did intensive intervention and support for them.

I don't think the current changes to the legislation will achieve that at all. I do think some of the suggestions around moral blameworthiness, and increased focus on rehabilitation, and increased focus on getting those kids out of that system and into a more appropriate service base is important. The difficulty is that most of those service bases have been underfunded. The stripping of resources in order to fund criminal justice responses has happened at the youth system and has happened at the adult system. I'm not sure you can achieve that through legislative change, except through the continued presumption of not having them come through the system, all the more so when you're talking about aboriginal young people.

The Chair: Thank you.

We'll move on to Mr. Woodworth. You have seven minutes.

Mr. Stephen Woodworth: Thank you, Mr. Chair, and thank you to all of the witnesses for being here today.

I have a question that I'd like to pose to each of our four social workers, for want of a better phrase, if I may, but because of my time limits I'm going to ask you the unfair duty of just trying to answer with a yes or a no.

I'm going to read to you a statement that I find in the report on the National Invitational Symposium on Youth Justice Renewal, in which were participants from the Coalition on Community Safety, Health and Well-being, the Child Welfare League of Canada, and the Canadian Association of Chiefs of Police. I'll ask you whether you agree with it. The statement is as follows:

> The least intrusive measures may not be in the best interests of the young person, whereas very intrusive interventions may be the ones that will serve the young person best.

It says "may be the ones".

Ms. Pate, do you agree or disagree?

Ms. Kim Pate: Out of context, you can't agree or disagree with that, because certainly I've worked with many young people where we've had very structured, very supportive, very intrusive interventions that have not been involved in the judicial system at all and in fact have been very effective. So it depends on the context.

Mr. Stephen Woodworth: You are not able to answer my question on whether you agree that the least intrusive measures may not be in the best interests of the young person, whereas very intrusive interventions may be the ones that will serve the young person best.

● (1240)

Ms. Kim Pate: No, I have answered your question. I just haven't been able to answer with a yes or no because you can't answer.... That's exactly the point of the Youth Criminal Justice Act, to have that discussion.

Mr. Stephen Woodworth: I'll ask Ms. Osmok, then.

Do you agree or disagree?

Ms. Paula Osmok: I have to respond the same way. The question has no context. I think you have to look at individuals. So in terms of answering with a one-word answer, I'm not able to do that.

Mr. Stephen Woodworth: In fact, the statement does suggest an individualized report and suggests that very intrusive interventions may be the ones that will serve the young person best.

Do you agree or disagree?

Ms. Paula Osmok: I think we're talking at times about two different things as well. Again, the question can't be answered by a one-word answer, I'm sorry.

Mr. Stephen Woodworth: Ms. Knudsen, anything different?

Ms. Else Marie Knudsen: No.

Mr. Stephen Woodworth: Mr. Rudin.

Mr. Jonathan Rudin: I guess the difficulty is, first, I don't know what “intrusive”.... Certainly, there are young people who will do a lot, if they're prepared to do it. It can be very intrusive, but I—

Mr. Stephen Woodworth: I have to stop you there.

Ms. Knudsen, forgive me for asking this, but I wasn't sure if you were a lawyer or not.

Ms. Else Marie Knudsen: No, I'm not.

Mr. Stephen Woodworth: Okay. You are an analyst and you have looked at existing subsection 29(2) of Bill C-4. Correct? That's the pretrial detention.

Ms. Else Marie Knudsen: Yes.

Mr. Stephen Woodworth: I'm reading it that a youth court justice may order detention only if no combination of conditions of release would result in lowering the likelihood of committing further offences. Do you read it the same way?

Ms. Else Marie Knudsen: Yes. I don't have it in front of me, but....

Mr. Stephen Woodworth: It seemed to me that this was in fact preserving the idea that detention is a last resort. Do you agree with that?

Ms. Else Marie Knudsen: I think the provisions that expand the definition of “serious offence” and “violent offence”, which would then expand the grounds for pretrial detention, raise some significant concern about whether pretrial detention would be ordered in what truly would be the least restrictive—

Mr. Stephen Woodworth: Proposed paragraph 29(2)(b), in fact, says that no matter whether it's a serious offence or not, if there is a combination of release conditions that will mean that there is no substantial likelihood of a further serious offence, the judge cannot order detention.

Ms. Else Marie Knudsen: Certainly.

Mr. Stephen Woodworth: Mr. Wamback, I want to especially say that I agree with just about everything you had to say, and in particular I was impressed with the astute way you answered the question about publication. I think you're right that the kids and young people who are around the offence all know what went on, and the reason we want to increase the opportunity for publication is to let others know if there's a danger to their safety. So I'm grateful that you made that point.

If I have a moment more, I'd like to read to you, Mr. Wamback, a quote from the symposium that I mentioned earlier and ask if you agree with it. It reads:

> The pendulum has swung from overuse of custody to an inability to use custody when circumstances suggest that it would be appropriate.

Do you agree or disagree with that?

Mr. Joseph Wamback: I absolutely agree, and I understand the parameters very well.

One thing I want to add about pretrial custody that I feel is very important for the members of this committee to understand is that the boys who hurt my son were not in any pretrial custody, and during that time they broke another young boy's arms and another boy's ribs. The boy who murdered Matti Baranovski was not in pretrial custody for previously beating up another young boy with a baseball bat. The boy who murdered Jack McLaughlin's son in Winnipeg as a young offender was ordered to anger management classes instead of pretrial custody for almost killing another young man, and while he was returning from his court-appointed anger management classes, he kicked young Anthony McLaughlin to death.

Mr. Stephen Woodworth: That's very powerful evidence, and I hope all of the members present here understand and appreciate it.

Do I have any additional time?

I do want to ask Ms. Knudsen, the analyst, if she is aware of the World Health Organization's definition of violence. The *World report on violence and health* by the World Health Organization defines violence as:

> The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.

Are you aware of that?

● (1245)

Ms. Else Marie Knudsen: I am now.

Mr. Stephen Woodworth: Okay.

Do you agree with it?

Ms. Else Marie Knudsen: I think that defining violence in the criminal justice system has a tremendous impact and that it must have a common-sense meaning when we're discussing—

Mr. Stephen Woodworth: The chair said I only had a brief moment.

Do you agree with the Worth Health Organization's definition of violence?

Ms. Else Marie Knudsen: I don't agree that it's the only definition of violence, no.

Mr. Stephen Woodworth: All right.

Thank you.

The Chair: Thank you.

We're going to start another round. We'll keep it to four minutes, and that way we can get in a full round.

Is that all right?

Some hon. members: Agreed.

The Chair: Okay.

Ms. Zarac.

[*Translation*]

Mrs. Lise Zarac (LaSalle—Émard, Lib.): Thank you, Mr. Chair.

Mr. Wamback, no parent would want to experience what you have. What happened to you is terrible. It is entirely to your credit that you are the chair of a foundation. It is proof that your child was lucky to have you, that you were a good parent.

However, that is not the case for everyone. There are young people who live in situations that mean that they don't do what they should do. As they say, they make a wrong turn.

Do you think those people can be rehabilitated? Do you think that if we give those people support, we can succeed in giving them the life they deserve?

[*English*]

Mr. Joseph Wamback: Thank you.

Again, I want to preface my response by suggesting that the first thing I said during this committee meeting was that my comments were for those who commit extreme violent acts and who take or destroy another human life.

I believe that everybody makes mistakes, especially when they're young. I did, and I'm sure we all did. We do silly things, and that's part of growing up. But there is a line that we, as Canadian society, have to draw for everybody who owes a responsibility and a duty as a citizen of this country to ensure that they do no harm to other human beings, to other lives. Once you cross that line, I believe it's a completely different set of circumstances.

Do they deserve the right to be rehabilitated? Absolutely, without question. But under the current system, we're not even trying to rehabilitate those individuals, by not legislating mandatory counselling once those individuals are incarcerated.

[*Translation*]

Mrs. Lise Zarac: But Mr. Wamback, the bill says that it is going to lengthen sentences.

Although Ms. Knudsen told us that the statistics tell us different, do you think that if sentences are lengthened, if we incarcerate young people for longer times, that is more valid than trying to offer them support? If you had to choose between the two...?

[*English*]

Mr. Joseph Wamback: Well, I'm going to answer your two questions.

One, I don't believe that the bill is asking for longer sentencing. I've already stated earlier that adult sentencing may actually have shorter custodial times than sentencing under the provisions of the Youth Criminal Justice Act. What is important is that we as a society use the social programs, or create those programs, that we know in our hearts should be mandatory, to try to change the outlook and the perspectives of extremely violent individuals. If that is the objective, we cannot do that by providing absolutely minimal sentences or zero consequences, or zero denunciation or deterrence in Canadian society.

Our kids are extremely bright and they see what goes on when individuals steal cars and there's no consequence. They see what goes on when an individual rapes a 14-year-old girl and there is no consequence for that. We need to be able to set examples as adults, as parents, so that other children grow up in our societies with a respect for the law and a respect for human rights.

[*Translation*]

Mrs. Lise Zarac: I'm going to come back to Ms. Knudsen.

You gave some statistics showing that crime had declined. I don't know whether they have been presented already, but if not, it would be worthwhile for you to provide the committee with those statistics.

● (1250)

[*English*]

The Chair: Right. Thank you.

If you could—

Ms. Else Marie Knudsen: That's from Statistics Canada's *The Daily*. I think when I stated that youth crime and violent crime by youth have decreased in recent years, it was from *The Daily* of July 21, 2009.

Mrs. Lise Zarac: I think you also gave us a statistic from a study that indicated that even if a sentence is longer, it doesn't affect the crime rate.

Ms. Else Marie Knudsen: Yes, I said it wouldn't reduce recidivism. Again, that's actually from the Government of Canada. Certainly I'll confirm that.

[*Translation*]

Mrs. Lise Zarac: Thank you.

[*English*]

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard: I would like to come back to a subject that has been addressed by others, publication of the identity of young offenders. Last week in particular, there were other witnesses before you who told us that for some gang leaders or some young people, publication in the papers is a badge of honour. I understand Mr. Wamback, who says that in any case they are still known in their communities.

But when we were told that, I pointed out that we, as politicians, are in a good position to know that visibility in the newspapers is something we seek out. Obviously, we don't seek it out to get a bad reputation, but we understand that for young people who have embarked on a life of crime, it is exciting to see their name in the newspapers, and it's a source of pride when they are incarcerated, which is what happens most of the time.

[*English*]

Mr. Joseph Wamback: I'm not suggesting that what you're saying is incorrect, but why should we provide them with further anonymity by shrouding and hiding their names so that they can go into other communities and start additional gangs and recruit additional people to be involved in more and more criminal activities? These are all hypothetical situations that I'm speaking about.

[*Translation*]

Mr. Serge Ménard: Yes, but you understand that the reason they want to do that is that for a majority of young people, having their criminal record broadcast might interfere with their rehabilitation later. That applies to the vast majority of young people.

And then young people do not have the resources adults have to travel from one community to another. Generally, there is a responsible parent who sets limits.

If you are in a community and you learn that a young person committed a crime, what are you going to suggest to your children to protect themselves against that young person?

[*English*]

Mr. Joseph Wamback: I think I have to go back to my original stance, that my comments here are based on individuals who have committed the most extreme and abhorrent crimes in Canadian society. We are not suggesting, I never suggested, that an individual who has made a silly mistake, stolen a car or broken the law in some other respect, have their names publicized.

What I am concerned about is an example that I will cite about a young man in the town of London, Ontario, who was a rapist and a pedophile. His name was shrouded under the Young Offenders Act back eight or nine years ago. As he returned back into the community, nobody knew who he was. His name was shrouded and he was unidentified, and within 48 hours of his release he abducted and murdered Naomi Almeida, at five and a half years of age. If his name had been publicized, if people in his community knew who he was, then perhaps this young girl would still be alive.

I believe that publication of names is also part of accepting responsibility for the crimes you have committed. Even in aboriginal sentencing circles, the identification of the individuals who have committed the crimes is mandatory because that's part of the sentence; that's part of the sanction.

The Chair: Thank you.

We'll move on to Mr. Dechert for four minutes.

Mr. Bob Dechert: Thank you, Mr. Chair, and thank you, ladies and gentlemen, for sharing your views with us today.

Mr. Wamback, in your earlier comments, your opening remarks, you made a statement that struck me. The statement was that in your view—and I think you had some statistics behind the comment—up to 88% of youth crimes go unreported.

About two years ago I had a conversation with a senior officer in the Peel Regional Police Force who told me something that tends to corroborate that. He said that his police officers had so little faith in the Youth Criminal Justice Act that they very frequently didn't process young offenders. They felt they would go through a lot of effort and the young offender would be back out on the street in a very short period of time, and that nothing was really served by doing so. That just indicates to me that there is a fair amount of crime that's going on that's unreported.

I wonder if you could tell me if you've heard similar stories from police and law enforcement.

● (1255)

Mr. Joseph Wamback: I've spoken to police officers in Toronto, Durham, York Region, and across this country, and I hear exactly the same thing. They're frustrated with their inability to be able to provide some form of protection to the kids who follow the rules. We seem to provide all kinds of resources to those who break the rules, and yet we're not doing anything, including providing some sort of protection or sanction, for those who really follow the rules.

I know a lot of police officers personally who have left the force because of exactly that thing. We're losing good people. We're creating legislation that is tying the hands of the police officers who we entrust to protect our communities, and we're tying the hands of the individuals within our court system and our judges to be able to impose sanctions that we as Canadians, that millions of Canadians, are asking our government to do.

Mr. Bob Dechert: Thank you.

A few months ago this committee travelled across Canada reviewing and examining the root causes of organized crime. A number of law enforcement officials told us that they've encountered young offenders who have been put up to their crimes by older gang members who have asked them, or convinced them, to commit these offences in order to take advantage of the lighter sentencing and other provisions of the Youth Criminal Justice Act. Have you run across that at all?

Mr. Joseph Wamback: Yes, I've seen it with Asian gangs in our city, exactly the same, exactly what you're saying.

This is a very difficult, complex, social problem we're talking about, and it's probably one of the most misunderstood pieces of legislation in this country. But if we're here to discuss social policy, I will leave the room because that's not my strength; that's not what I'm looking for.

What I'm trying to do is not to convince but to at least let people understand what criminal law measures are supposed to be in the belief of ordinary Canadians. What we believe—and I'm an ordinary Canadian—is that the law should be there to protect us. If we want to create social programs for aboriginal youth, black youth, or Asian gangs, then let's do that, but let's not do it under the auspices of a Youth Criminal Justice Act.

Mr. Bob Dechert: If we have a young offender who's been put up to an offence by an older gang member, wouldn't it make sense to keep that young offender away from the older gang members—

Mr. Joseph Wamback: Absolutely.

Mr. Bob Dechert: —and give them an opportunity to separate themselves from that gang?

Mr. Joseph Wamback: Yes, that's a part of what needs to be done. We need more intervention. We need more support, such as the petition—and I hope everybody in this committee will have the opportunity to read something that I circulated 10 years ago. There's nothing dangerous, there's nothing Machiavellian, there's nothing that will violate anybody's human rights. What it will do is protect ordinary kids in our communities, and that's what I believe this legislation will do.

The Chair: Thank you.

I want to thank each one of our witnesses for appearing today. Your evidence is helpful as we complete our review of Bill C-4. Again, thank you.

There is a point of order from Mr. Woodworth.

Mr. Stephen Woodworth: Is it possible to note for the record that, as we conclude this hearing, there are only three opposition members in attendance?

The Chair: Mr. Woodworth, it's generally accepted as a parliamentary rule that we don't note the absence of other members of Parliament. I just want to remind you of that.

Mr. Stephen Woodworth: I didn't mean to mention anyone specifically.

The Chair: Well, it doesn't matter. We want to be courteous here and respect as much collegiality as possible.

Thank you. The meeting is adjourned.

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