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Chair

Mr. Ed Fast

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● (1535)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting 51 of the Standing Committee on Justice and Human Rights. For the record, today is Wednesday, March 2, 2011.

Now, members, if you look at your agenda, we scheduled three different witnesses for the first half of this meeting. Because there were no witnesses scheduled for the second half of the meeting, I took the liberty of scheduling Mr. Dreeshen to speak to his private member's bill, Bill C-576. I understand and I realize that was not part of our discussions at the steering committee, but because we had that extra hour I put it in there.

I'd seek your consent to carry on with that. Is that all right?

Some hon. members: Agreed.

The Chair: All right. Thank you so much.

We're going to begin by going back to Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

We have with us four witnesses. First of all, representing the Ontario Federation of Indian Friendship Centres, we have Juliette Nicolet and also Teala Quintanilla. Welcome to both of you.

We also have, as an individual, Professor Anthony Doob, Centre of Criminology at the University of Toronto. Welcome back, Professor.

We also have with us Professor Jacques Dionne, department of psychoeducation and psychology at the Université du Québec en Outaouais. Welcome to you as well.

Perhaps we could begin with the Ontario Federation of Indian Friendship Centres. You have 10 minutes to present, and then we'll open the floor to questions.

Ms. Juliette Nicolet (Policy Director, Ontario Federation of Indian Friendship Centres): Thank you very much. *Merci beaucoup.*

My name is Juliette Nicolet. I am the policy director at the Ontario Federation of Indian Friendship Centres. I'm going to try to be brief.

The Ontario Federation of Indian Friendship Centres represents the interests of 29 friendship centres across Ontario. Friendship centres serve status and non-status first nations, Métis, and Inuit people. We provide holistic, wraparound, culture-based programming in such areas as health, education, employment and training, children, parenting, addictions counselling, seniors, and justice, of course. Eighty per cent of the aboriginal population in Ontario—80.4%—reside outside of reserves and 36% of the aboriginal population in Ontario are under the age of 19.

The justice programming that friendship centres provide in Ontario has been around for 30 years. Our court worker program is just over 30 years old. The community justice program, which is an alternative measures program, has been running since 1999, so for 12 full years.

I'm going to provide a really brief outline, some high points, of our position on Bill C-4, on the substance of it. But in general our primary concern is that it seems to mark an overall drift toward a more punishment-oriented regime that we do not feel serves the interests of the public and, more specifically, the interests of the urban aboriginal community and urban aboriginal youth.

We know that at this point already the Youth Criminal Justice Act has a differential impact on aboriginal youth in Ontario and across Canada, but I'm speaking for Ontario. A number of the amendments made are likely to worsen the effect the YCJA already has, and they don't allow us to see, in the fullness, the possibility of positive action the YCJA might have.

The first issue I will bring to your attention is detention prior to sentencing. Bill C-4 amends subsection 29(2) of the YCJA, which refers to the use of pre-sentence detention if there is a likelihood for the young person not to appear. To give you an idea, the court worker program deals with indigenous people in the courts. Thirty-two per cent of appearances of court worker clients in Ontario are for administration of justice charges. This means that there is an extremely high rate of charges that will inevitably result in the use of detention prior to sentencing, increasingly for aboriginal youth, as opposed to others, because of the high rate of non-compliance with administration of justice charges. So this is a problem to begin with.

Second, I'd like to highlight the police record of extrajudicial measures. We believe this will reduce the use and effectiveness of such programs as the community justice program, which has had a very high success rate. There has been 82% compliance with the conditions in the community justice program for the people participating, which we think is very good, as well as decreased recidivism.

The third highlight is publication of names. The OFIFC disagrees with this approach on principle. We think it's needlessly punitive, and it flies in the face of the need to minimize stigma for aboriginal offenders, who are already highly stigmatized in society.

Fourth, and last, we think that denunciation and deterrence should not be part of a youth sentencing regime. The amendments to include denunciation and deterrence are not appropriate for youth, and are not appropriate, in particular, for an aboriginal population. Sentencing, inasmuch as it is possible for it to address some root causes of criminal behaviour, should do so. Sentencing for aboriginal youth should be aimed at the reduction of criminogenic factors and should be oriented towards pro-social outcomes. Putting more of our kids in jail will not result in increased or better outcomes for our children, and inevitably will not result in better outcomes for society at large.

As a small aside, we know that in Ontario, aboriginal gangs are migrating from the prairies over to the Kenora and Thunder Bay regions, and that much of the recruitment for these aboriginal gangs takes place in youth detention centres and, after age 18, in jails. Increasing opportunities for incarceration are going to lead to an increase in criminality.

In conclusion, we at the OFIFC are very concerned about ensuring that the sentencing regime for youth provides us with alternatives and with opportunities to continue to place an emphasis on preventative, culture-based, community-driven measures and programming that address the root causes of crime—poverty, the effects of racism, and a high incidence of addictions and substance abuse—and that allow us to expand programming options. These include Kizhaay Anishnaabe Niin, which is traditional gender roles programming that teaches men and women about gender responsibilities and how to be good men or good women in the world; Streetwolf, which is specifically addressed to justice-involved youth to try to get them off that track in a culture-based way; and Wasa-Nabin, which addresses youth aged 12 to 18.

These programs have been shown to work. They keep kids out of trouble and keep kids in school, which is not the direction these amendments go.

Finally, I'd like to conclude with a request. There needs to be more time to allow the YCJA to work. More funding needs to be put into programming to allow this to happen. For aboriginal kids, the effects of the YCJA have not yet been felt. This is a result of a lack of programming. It's not necessarily a result of any inherent problems in the legislation.

Thank you.

● (1540)

The Chair: Thank you.

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

Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, As an Individual): Thank you very much for inviting me.

Because of time concerns, I will address only a limited number of the proposed changes.

In subsection 2(1), regarding the definition of “violent offence”, it would undoubtedly be useful for Parliament to define what's meant by a violent offence. In general, members of the public discriminate between violent and other offences in their views about how certain cases should be dealt with.

The normal definition of “violent” is covered quite adequately by proposed paragraphs 3(a) and 3(b) of the definition. Hence, proposed paragraphs 3(a) and 3(b) alone should constitute the definition of “violent”.

I would, therefore, suggest cutting proposed paragraph 3(c) of the definition:

> an offence...[that] endangers the life or safety of...person by creating a substantial likelihood of causing bodily harm.

Such an addition to the definition of “violent” implies that an offence could be considered to be violent if someone were to make the argument that the behaviour involved did not, but could have, created bodily harm. Simply put, this allows far too much to be included in the definition of “violent offence”. A first-time impaired driver could be seen as violent. And indeed a youth who shoplifts a candy bar from a department store and runs out the door through a crowd could be seen as endangering those in the crowd, because there is a substantial likelihood that he would run into somebody, causing bodily harm. Besides being overly broad, youths, because they're youths, will not foresee possible consequences in the same manner as will a more thoughtful adult.

If anything can be considered by some judge to be a violent offence, then the real notion of violence is cheapened. It is important to the public, I think, that truly violent offences be named as such and that other offences that truly do not involve violence not be seen as being given similar treatment. The definition of “violent offence” is important because violence is, quite properly, one of the gateways to a custodial sentence. The distinction between intentional violence and other offences should be maintained.

Second, I'm concerned that the invitation to the judge, under the changes to the sentencing principles in proposed subparagraph 38(2)(f)(ii) to try “to deter the young person from committing offences”, could have two unfortunate effects. The change would make a false promise to the public that the judge, through harsher sentences, can accomplish individual deterrence with youths. Data would suggest otherwise. My concern is not so much that the judge will be taking responsibility for and being blamed for crime by this youth, but rather that it gives credence to the unsupportable belief among ordinary members of the public that courts could, by handing down harsher sentences, reduce the level of youth crime.

More importantly, this section could encourage judges to use custodial sentences to deter the young person from committing offences when a proportionate non-custodial sentence was a possibility. Hence, it has a high likelihood of increasing subsequent offending by the youth.

Research findings suggest that incarcerating youths will increase the likelihood of subsequent offending, especially when we're talking about those who are being incarcerated for the first time. Prison sentences are sometimes necessary, but if we are sending youths to prison for the first time, we should realize that there is convincing data to suggest that this experience increases rather than decreases the likelihood of subsequent offending.

The change that is proposed to paragraph 39(1)(c) equates extrajudicial sanctions with findings of guilt. I'm concerned about this for two reasons. In the first place, it makes, for denunciatory purposes, the impact of full court processing of a case the same as the impact of extrajudicial sanctions. Findings of guilt by judges are important events and should not be equated with extrajudicial sanctions for which a youth has not been found guilty by a court. For extrajudicial sanctions, a youth "accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed" and a prosecutor has decided that there is enough evidence to proceed with the prosecution.

If a youth is in a fight, he or she might accept responsibility for an assault, but it's quite possible that defences might exist. For a finding of guilt by a court to have the special meaning it should have, accepting responsibility for a misdeed and being found guilty of a criminal offence should not be seen by the youth, or other observers, as being the same.

● (1545)

Furthermore, by equating a finding of guilt to extrajudicial sanctions for this purpose, it could be that a well-informed youth would refuse extrajudicial sanctions when extrajudicial sanctions might otherwise have been appropriate for the youth, the crown, the victim, and the court. Extrajudicial sanctions are an important part of the Youth Criminal Justice Act. They shouldn't be morphed into being indistinguishable from findings of guilt.

Generally speaking, I think the changes made to section 72, the test for an adult sentence, are an improvement over what currently exists. However, there's one addition that would be useful. It's important for Parliament to provide clarity to the crown, defence, and the court on how the presumption of diminished moral blameworthiness or culpability is to be rebutted by the crown. Otherwise, until this is settled by appeals courts or by the Supreme Court of Canada, the crown will be forced to meet a test that's defined nowhere. I think the public and the crown should know what this test is so it can be met. Furthermore, I think Parliament should be doing this rather than the courts.

I understand the changes that are being suggested to the publication bans, but before you do anything on that, there's something simple and independent of these changes that needs fixing in this area. Section 75—current and proposed—makes the publication ban or lack of it part of the sentence. The problem is that if a judge hands down an adult sentence in which the ban is lifted, the sentence is appealable but the press has already published the name. Given the nature of Internet-posted information, the name is now public forever, regardless of what the result of any appeal might be. An appeal on this issue is worthless. Paragraph 110(2)(a) should be amended to include wording like "and the time for all appeals has lapsed or all appeals have been decided".

Without challenging the purpose of the proposed replacement for section 75, I would suggest some changes. It's important to remember that the publication of names will almost certainly make reintegration of the offender as a peaceful member of society more difficult. Because the publication of the names is likely to increase the difficulty in reintegrating the youth, there should be compelling evidence that there will be some crime prevention value of the publication. In that context I make the following suggestions.

The list of cases to be subject to these changes is proposed to be very broad. As noted above, violent offence is proposed to have a very broad definition. If the definition in subclause 2(3) is not amended in the manner similar to what I've suggested, then it should apply only to violent offences meeting the criteria of paragraphs 2(3)(a) or 2(3)(b), explicitly excluding paragraph 2(3)(c). There is no point in lifting a publication ban for cases that do not cause harm or indeed an attempt or threat to cause bodily harm.

More to the point, this section is much more damaging to the possible reintegration of the youth than the limited disclosure allowed in section 127. Furthermore, it creates an important inconsistency with this section. I would suggest that you consider that the loosening of the publication ban should apply only to those offences covered by section 127; in other words, an offence involving serious personal injury. Once again, the message is clearer if the provision is restricted to those cases that have high levels of concern.

It would make sense that another pre-condition be added to the conditions that must be met to allow the publication of the name. The publication of the name should only be allowed if the disclosure already permitted in section 127 can be demonstrated not to be sufficient to reduce the risk of committing a violent offence below the level of a significant risk.

In keeping with the fact that this is part of the sentence, the test should require that the court define that the publication of the identity of the youth outweighs the benefit of the publication ban by reducing substantially the likelihood that the youth would commit an offence involving serious personal injury prior to the expiry of the sentence.

● (1550)

Finally, of course, since proposed subsection 75(4) indicates that it would be part of the sentence, the lifting of the publication ban should not be allowed until all appeals have been exhausted.

The Youth Criminal Justice Act is understandably complex and in need of some changes. Though it has largely accomplished many of its important goals and is recognized internationally for being an example of an effective youth legislation, it is not perfect. Clearly, however, I believe that some of the amendments that are before you could be improved.

Thank you very much.

The Chair: Thank you.

We'll move to Professor Dionne for ten minutes.

[*Translation*]

Prof. Jacques Dionne (Professor, Department of Psychoeducation and Psychology, Université du Québec en Outaouais, As an Individual): I want to sincerely thank the members of the committee for the opportunity to appear a second time.

The first time I appeared before you, I had three hats on, a researcher's, an educator's and a grandparent's. I will be reiterating the same core message this time around, so I will keep my remarks brief to allow more time for questions and discussion.

My core message from that first appearance still holds true today. To my mind, rehabilitating young offenders and protecting victims are two sides of the same coin. I want to tell you that it is not one or the other, but both at the same time: protecting the victim while rehabilitating the young offender. In other words, protection for victims is achieved through the rehabilitation of young offenders. That is the position taken by the Association des centres jeunesse du Québec, Quebec's youth centres association, and the Association québécoise Plaidoyer-Victimes, Quebec's victim advocacy association. Clause 3 of Bill C-4 seriously threatens that principle, which is essential, in my view.

My message is primarily supported by the entire body of scientific literature and by real-world experience that has shown that young offenders do not have the same level of development as adults and youth, in general, and that that is an important consideration in order to have a real juvenile justice system that is not merely a copy of the justice system for adults. These principles are included in the act but are seriously undermined by the wording of clause 3.

Good rehabilitation programs for young offenders produce much better results than purely repressive measures. And that is also very well-documented. In short, a law that is fair to both young people and society must not be based solely on the severity of the offence when judging an act and sentencing a young person. A fair law must be based on a complex criminal justice system specifically for young people. It is one thing to have a law, but something entirely different to have the whole system necessary to apply that law. And that system must constantly seek to maintain the uneasy balance between the needs of society and the victim, and the needs of the young offender.

This complex system should include a system for applying the law where there is a differential assessment process based on the principle that every young person is different, that every case is different and that every context is different. My colleagues from aboriginal communities did a good job of demonstrating that earlier. This complex system should also include a differential intervention system that includes the possibility of alternative justice and rehabilitation, as well as a process that allows victims to participate and that gives them the support they need. That, too, contributes to rehabilitation. In addition, this complex system should incorporate an organization that promotes the participation and involvement of parents and should especially include rehabilitation, monitoring and intensive community supervision programs, as well as open custody and closed custody enforced by competent staff. I realize that creating a system of this nature extends beyond the federal government's reach and comes under the jurisdiction of the provinces, but I think the law should very clearly open the door to such a system. Finally, this system must also include an investment in research to encourage the development of better practices. That is a broader responsibility of the federal government.

Thank you for listening, and I am ready to answer your questions.

● (1555)

The Chair: Thank you.

[*English*]

I'll move to questions from our members.

Mr. Murphy, for seven minutes.

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

Thank you, witnesses.

First, when it comes to your answering, I want to ask each of you whether you were invited to participate, and indeed did participate, in the minister's round table cross-country conferences in 2008 in various cities across the country. I'll let you get to that, but I have a specific question or summary as well.

I think it's always good to look at what the act is about and what the changes are about. If I could simplify it and then ask for your comments, it seems to me it's like this. The act had, in section 3, its principles as intending to do three things, in no hierarchy—three important things: prevent crime, rehabilitate young persons, and make young people subject to meaningful consequences for their actions. Those are equal principles in the act.

However it's trying to be spun by those outside the four corners of this document, this act attempts to make the protection of the public the major and the only concern, and to make persons accountable to promote rehabilitation—not the actual fact of rehabilitation—but promoting rehabilitation and the prevention of crime as means toward protecting the public. So the simple question is, is this a complete change in what the Youth Criminal Justice Act was enacted for, and that is the three prime principles I mentioned?

And is it just reverting to a Criminal Code by another name? The Criminal Code is to protect the public with the various measures put in it. It doesn't bother to have a preamble because the Criminal Code says it all; it's a Criminal Code. This act—which was not objected to by previous Progressive Conservative governments, was not substantially attacked until now—attempts to change it completely and make it really just an addendum to the Criminal Code. Would you agree with that, would you expand on that, and could you help us in any way?

But first, please answer the question as to whether you were at those round tables in 2008.

Dr. Anthony Doob: I was at one of those round tables in Toronto.

In answer to your question, it seems to me that the original section 3 is preferable. I didn't talk about the changes to section 3 because I had 10 minutes and I was focusing on other things.

I think the issue here is that the focus on protecting the public is a narrow focus that is very difficult to accomplish. I rather liked the original construction because it was talking about, among other things, long-term protection and it was focusing on the long term rather than short term.

The difficulty with focusing on protecting the public is that the language implies that the only way one could protect the public or the easiest way to protect the public is through incapacitation, through locking kids up or locking people up. And rather than saying that what we're trying to do is to prevent, rehabilitate, and hold people accountable and through that complex mechanism we will have a better society, it's telling us to take bad people and put them away. So I'm certainly not in favour of this.

In answer to your final question about does this in effect, then, turn this into a simple Criminal Code, my answer would be no. And the reason is there is a lot in the Youth Criminal Justice Act. The sentencing provisions alone, for example, are important and much clearer than the sentencing provisions in the Criminal Code, and I think are preferable in many ways, not just for youth, but the structure of the Youth Criminal Justice Act sentencing provisions are superior to those of the Criminal Code.

● (1600)

Mr. Brian Murphy: I have a question on specific and general deterrents. If you look at the changes to section 38 of the act, there might be an argument that this is to introduce specific deterrents, and therefore we're not touching on that decision in the Supreme Court decision Regina v. B.W.P., Regina v. B.V.N., which said that general and specific deterrence are not in this act.

There might be an argument from the other side that this is just attempting to do specific deterrence on conduct that is for specific persons to prevent them from effecting crime again.

What is your stand generally on deterrence and denunciation being introduced to the YCJA? Is it effective?

Dr. Anthony Doob: We have data on this, and this is not something, in a sense, on which I have to take a moral stand. I can look at it in terms of data. What we know for a substantial group of people—particularly those being sent to prison for their first time—is that sending people to prison for the first time, which is in effect saying we're going to put this person in usually for a relatively short period of time, increases the likelihood of subsequent offending. What we're doing, rather than deterring them, is making them worse.

I'm sorry, I should make it clear. I'm not suggesting that we don't have to send people to prison and that we don't have to send youths to custody, because clearly we do in certain circumstances. I'm not suggesting otherwise, but the original idea behind this act, and in fact the principles that are in the Criminal Code as well, suggest that we should be cautious about doing it because in the long term we're making things worse.

The concern I have is that from a practical perspective we're likely to be increasing the likelihood of future offending for these youths, who could be dealt with otherwise. Second, it does give a message that really being tough on youth, and the specific deterrents in this case, is good policy in terms of reducing crime, and we know it is not. It is giving the wrong message and it's doing the wrong thing.

The Chair: Thank you.

We'll go to Monsieur Ménard, for seven minutes.

[*Translation*]

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

Mr. Doob, I am glad that someone brought up clause 3(1)(*a*) of the bill to you. I am not sure whether you noticed the same thing I did, but clause 3(1) of the bill removes paragraph (*a*) from the current section and makes the first objective of the youth criminal justice system "holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person". I noticed that the current act already provides for that in section 38(2)(*c*). But where clause 3(1)(*a*), in its current form in the bill, goes wrong is that it removes paragraph (*a*) from section 3 as it now stands, which I think does a much better job of outlining the other objectives described in the proposed amendments to the section.

Did you notice the same thing?

● (1605)

[*English*]

Dr. Anthony Doob: Certainly I have. My colleague has spoken about this as well.

The message that's given by this section in terms of what the Youth Criminal Justice Act is about is not a message we should be proud of.

[*Translation*]

Mr. Serge Ménard: With all due respect, I have to interrupt you, since we have very little time. I have come to the conclusion that we are basically better off not making a decision on paragraph 3(1)(*a*). We would not be taking anything away from what the Minister wants to add to it by saying that sub-paragraph 3(1)(*a*)(i) is important to him. We wouldn't be taking anything away from the Minister's goal of establishing "measures that are proportionate to the seriousness of the offence", since this objective already is and will remain in the legislation. However, the bill takes away elements that express the objective much better. I am glad that you have also come to this conclusion because I know how much we can count on your professionalism.

Dr. Anthony Doob: Thank you.

Mr. Serge Ménard: As I have very little time, I would like to speak to the organization lobbying for the protection of aboriginal children in Ontario.

When evaluating legislation that applies to young offenders, do you not find that young people from aboriginal communities should be treated differently from others? I am not talking about discrimination, but it's obvious that, given the poverty levels in reserves and other aboriginal communities, there are ways for aboriginals to take care of their offenders that differ from what we can do in the city. What has been suggested here is to significantly increase the use of incarceration measures in the case of young aboriginals. If we go ahead and do this, we will end up increasing the crime rate within this group instead of reducing it.

Ms. Juliette Nicolet: I will try to answer in French.

Mr. Serge Ménard: Your French is very good.

Ms. Juliette Nicolet: Of course, the legislation does not explicitly mention aboriginals, but we anticipate that the proposed amendments will help maintain the already strong trend according to which aboriginal young offenders are overrepresented in the prison system. These amendments would make things even worse. I think it's inevitable.

I would also like to follow up on what Professor Doob said when he talked about the vocabulary used in discussing public protection. The wording used makes it seem like victims and criminals are two completely segregated and distinct groups. However, we know all too well that, in the aboriginal community, there is only one group of people because victims and criminals belong to the same group. Therefore, I feel that the message is inaccurate, if you will, and that we failed to recognize the fact that the public encompasses everybody, even criminals. How can we create legislation that reflects the fact that a society consists of all its members, not only of the squeaky clean ones?

● (1610)

Mr. Serge Ménard: A characteristic of Quebec's legal system in the way it deals with young offenders is the application of the right measure at the right time. This approach makes it possible to treat people in accordance with factors that are present everywhere, such as their sociological condition and poverty level. This is the kind of philosophy you would like to see applied.

However, when we apply pretrial imprisonment provisions and take into consideration extrajudicial measures that are imposed, we end up with too many objectives. This prevents judges from having the discretion they need to really apply the right measure at the right time, to apply the measure that will ensure that no subsequent offence takes place or will reduce the likelihood of a person reoffending.

Ms. Juliette Nicolet: The issue of judicial discretion is pretty layered. I think that, as much as possible, it's important to allow judges to take into account the practically permanent conditions that are part of urban aboriginal communities. This is impossible and it's actually an issue recognized by the Criminal Code and by the Youth Criminal Justice Act. I think that taking this discretion away would adversely affect young aboriginals.

The Chair: Thank you.

[*English*]

We'll go on to Mr. Comartin for seven minutes.

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

And thank you to the witnesses for being here.

We've had a great number of witnesses who work in the criminal justice system, specifically with youth, who have suggested, in some cases quite passionately, that this legislation is grossly premature given, really, the recent history of the current youth justice system. I'd ask each one of you for a comment in that regard, if you agree with that and if there are any specific sections in this bill that you think would be useful in enhancing our system and making it more just.

I'll start with you, Ms. Nicolet.

Ms. Juliette Nicolet: Thank you.

The first part of your question was about....

Mr. Joe Comartin: Just generally, is this premature? Should we be waiting?

Ms. Juliette Nicolet: Yes, I'm sorry. We believe it is premature. We believe that, for instance, on extrajudicial measures, aboriginal youth have not seen a decrease in their incarceration rate as a result of the YCJA, yet there has been a decrease in the incarceration rate of mainstream youth. The effects of the YCJA have not yet been felt in the aboriginal population, certainly not in Ontario. So I would argue that yes, it is very premature; we have not yet arrived at a place where the appropriate programming and services have been put in place in order for the YCJA to have the effect that's needed in the aboriginal population. For sure it's premature in that regard.

Mr. Joe Comartin: Okay.

The second question is, do you see any parts of this that in fact you would be supportive of at this period of time?

Ms. Juliette Nicolet: I do. They do not spring to mind instantaneously, but I know they are mentioned here.

Mr. Joe Comartin: Let me go on to Professor Doob while people are thinking about that.

[*Translation*]

Professor Dionne, could you answer?

Prof. Jacques Dionne: To answer your first question, I think it is clear this reform is premature. A research group was established in Quebec and was given a two-year mandate to assess the effects of the YCJA seven years after it came into force. In two years, we should have factual and empirical data that will help us determine what elements were worthwhile and well-applied under the YCJA, what the repercussions are on young offenders, on programs and on public protection. So, a group of researchers will assess the Quebec-wide effects of the YCJA over the following year.

I think that, if we want a reform, there will be enough information to proceed with one. Some elements could be interesting, but for various reasons—I feel that section 3 is the problem—I think that the amendment is impractical. It will have very negative consequences. Interesting elements of the YCJA are currently being applied, but this legislation also has a negative side. That side should be well-known and well-documented, so that we can make recommendations to legislators and can point out the best ways of improving our justice system. I think that we are currently flying blind, so to speak, basing ourselves on poorly founded premises.

● (1615)

Mr. Joe Comartin: Are there not a couple of provisions you could support at this stage?

Prof. Jacques Dionne: If we want to amend section 3, it's possible. Then, the rest will follow.

[*English*]

Mr. Joe Comartin: Professor Doob.

Dr. Anthony Doob: Whether it's premature, I'm not sure. My simple answer to that is that there are sections that I think should be changed and should be changed relatively soon. Let me give two examples of that.

Section 29, which has to do with pre-trial release, is important, and it has obviously been a controversial topic. It strikes me that this is a good beginning of what might be looked at because what it lays out in the Youth Criminal Justice Act, separate from the Criminal Code, is the beginning of, in effect, a code for what kinds of youth should be held in pre-sentence custody and what kinds of youth should be detained. For example, the test that the person should be charged with a serious offence, and the judge is satisfied that either of those two conditions should be met, is important. It restricts it more than the adult system does, so it's a good start.

I would also have wanted Parliament to look at the conditions and the relationship of the conditions to the purpose of the act as well. When a youth is released on bail, there should be more attention put to what kinds of conditions are put on the youth and for what purposes. At the moment it seems as if large numbers of conditions are put on the youth, and what we do see is large numbers of youth coming back into the system with new charges of failure to comply with those bail conditions. But I think the idea that the test is that there be a substantial likelihood that the youth is going to do one of these things, including commit a serious offence, not just a shoplifting, is important. So I do see that as a good start.

I've already mentioned that I think proposed section 72, which is a different test for the imposition of an adult sentence, is good. I don't think it goes as far as it should, because it doesn't indicate to the crown what the test is for rebutting the presumption. It should rebut the presumption. I think the original section 72 was flawed and that this is an improvement.

So it's a mixture of things, some of which I spoke against, but in previous times I've made it clear that there are other things that I think are important in this. For example, the pre-sentence custody, starting from what's there and looking at it, if this committee were to take that on as a serious project, I think you could well come forward with something that would build on and improve upon, from every perspective—and this is not an issue of political parties—that I think you could probably agree on would be a better system of detention before trial than what we have here or what we have in the proposed amendments.

The Chair: Thank you.

We'll go to Mr. Dechert, for seven minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Mr. Chair, if I have time left over, I'd like to share that with Monsieur Petit.

Thank you, ladies and gentlemen, for being here this afternoon. I appreciate your expertise.

I'd like to start by asking Ms. Nicolet a few questions. I want to say at the outset that I've visited some of your friendship centres, and I want to acknowledge the good work that you do through those centres.

You mentioned, Ms. Nicolet, that in Ontario 30% of the indigenous population is under the age of 19. Could you tell me how that compares with the non-indigenous population? Is it different substantially?

● (1620)

Ms. Juliette Nicolet: Yes. Thirty-six per cent are under the age of 19. Fifty per cent are under the age of 27. Generally speaking, mainstream populations under the age of 27...you're talking about roughly what the under 19 proportion is. So thirtyish per cent are under the age of 27 in the general population.

Mr. Bob Dechert: Under 19, what would that be?

Ms. Juliette Nicolet: I'm not sure what the number is, but I can find it for you.

Mr. Bob Dechert: Would it be substantially lower?

Ms. Juliette Nicolet: Absolutely.

Mr. Bob Dechert: Okay. Given that, could you tell me what percentage, in your view, of indigenous young offenders would be described as violent and repeat offenders?

Ms. Juliette Nicolet: A very low percentage would probably be described as that.

Mr. Bob Dechert: That was my assumption as well. Most of the things we're talking about in Bill C-4, the changes, are aimed at violent and repeat offenders. I just want to make the point that I don't think in that regard it likely negatively affects the indigenous population to a greater extent than perhaps the non-indigenous population.

Ms. Juliette Nicolet: You asked about serious violent offenders.

Mr. Bob Dechert: Violent and repeat offenders.

Ms. Juliette Nicolet: As differentiated from repeat offenders.

Mr. Bob Dechert: Correct.

Ms. Juliette Nicolet: Repeat offenders would include a very high proportion of the aboriginal—

Mr. Bob Dechert: That would be things like property crimes, I assume.

Ms. Juliette Nicolet: Property crimes, yes.

Mr. Bob Dechert: I want to point out, and I think those who are listening would know, that most of the provisions of this bill are aimed at people who are described as both violent and repeat offenders, not just one or the other.

I appreciate your clarification on that point. Do you know how that statistic compares with the non-indigenous population in terms of repeat and violent offenders?

Ms. Juliette Nicolet: I don't know, but I have the statistics on violent offences. This is the court worker program. This is for adults.

A voice: Youth.

Ms. Juliette Nicolet: This is for youth? Okay. So 32% of offences are for administration of justice offences, 14% are serious, 10% are for violent offences, and 14% are for property offences. So it's fairly high. It's low, it's not the vast majority, but it's still higher than you would find in the mainstream population, which is why we say there's a disproportionate—

Mr. Bob Dechert: Violent is higher.

Ms. Juliette Nicolet: Absolutely.

Mr. Bob Dechert: I'm happy to know that. Thank you.

Professor Doob, you mentioned that the YCJA is in need of some changes. I think you highlighted some of those in the answers to the question posed by Mr. Comartin. Is there anything else that needs to be done to the YCJA that you didn't cover in that answer?

Dr. Anthony Doob: I'm sure there is. Certainly in discussions that I've had with various people, various things have come up. The pre-sentence detention or the pre-trial detention is the largest single area of concern that I would have.

Mr. Bob Dechert: In that regard, does Bill C-4 improve the situation over the current legislation?

Dr. Anthony Doob: I think it does. I think there are still some concerns about the circumstance where a person has committed a minor offence, for example, and doesn't appear in court. I think these are very difficult issues. I think if you go through the proposed change to subsection 29(2), it could be improved in the sense of making it clear when a person should be detained or can be detained and when a person can't.

I think pre-trial detention is such a serious matter that I wouldn't have stopped there. My colleagues mentioned one of the problems, which is that the administration of justice offences often arise in these circumstances. We know that we have in parts of Ontario large numbers of conditions being put on that don't appear to relate to the offence the youth has committed and don't seem to relate to the likelihood that the youth would show up for trial. When the youth violates one of those conditions, we have another charge put on him or her.

Taking 29(2) as a starting point, this committee could well come forward with a better total package that would include many of the proposals, or in fact much of the wording that's currently in the proposed changes to subsection 29(2).

● (1625)

Mr. Bob Dechert: May I ask you another question? I know our time is short here.

As you know, a significant amount of this Bill C-4 flowed from the conclusion of the Nunn report. In that report Justice Nunn concluded that highlighting public safety as one of the goals or principles of the act is necessary to improve the handling of violent and repeat young offenders. Would you agree with Justice Nunn in that statement?

Dr. Anthony Doob: No, I wouldn't, and the reason I wouldn't is that it seems to me that largely what the Youth Criminal Justice Act is about is responding to youths who have committed offences. So if you focus on what are, in a sense—no matter what you might call them—the punitive aspects of the criminal law, which is what criminal law is about, it seems to me that the difficulty is that we're not going to accomplish public safety through changes to the various punishment sections of the Youth Criminal Justice Act.

What I would say is, for example, in the pre-sentence custody issue, or the bail issue, which is clearly something that was an issue for Justice Nunn, that what we should be doing is going back to our kind of basic principles, which I think, quite frankly, is a good beginning too, because it's saying that the youth has to be charged with a serious offence and the judge has to be satisfied that detention is necessary to meet one of those conditions.

The Chair: Thank you.

I think we have time for another round of two minutes apiece. Are you open to that?

Some hon. members: Agreed.

The Chair: All right.

Ms. Jennings, two minutes.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you.

I have two simple questions.

[*Translation*]

Mr. Dionne and the representatives have not answered my colleague Mr. Murphy's question.

Did you attend the roundtable meeting organized by the federal Department of Justice?

Ms. Juliette Nicolet: Yes, in Toronto.

Hon. Marlene Jennings: Very well.

Prof. Jacques Dionne: I have worked with colleagues who attended the roundtable, but I was not there myself.

Hon. Marlene Jennings: My second question is for you, Professor Dionne.

You said that a working group was set up to conduct a large-scale study on the application of the current legislation. The study will be conducted over a two-year period and will focus on all Quebec regions. Who is funding the study and how?

Prof. Jacques Dionne: The study is currently being funded by the Government of Quebec and is being conducted under the guidance of Professor Denis Lafortune, of the University of Montreal's School of Criminology. We are about ten researchers in the group, which is supposed to cover various regions and a number of considerations. The study is titled *La Loi sur le système de justice pénale pour les adolescents, sept ans plus tard: portrait des jeunes, des trajectoires et des pratiques*.

Hon. Marlene Jennings: Do you know why the federal government is not providing funding for this study? Do you have any idea?

Prof. Jacques Dionne: No.

Hon. Marlene Jennings: Do you know whether similar studies are being conducted in other Canadian provinces or territories?

Prof. Jacques Dionne: Possibly, but I don't know. A quick study subsidized by the department was conducted within one or two years of the legislation coming into force, but to my knowledge, there have been no studies to determine what has been working well, and not so well, in terms of application.

The Chair: Thank you.

Mr. Lemay, you have two minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good afternoon. I'm sorry for being late, I had another commitment.

I am very concerned about the aboriginal issue. My question is for Ms. Nicolet.

You said that you attended the roundtable in Ontario. The following is an excerpt from the roundtable report: "Participants in Ontario expressed the need that the Ontario government do everything possible to increase diversion and implement some of the new sentence options."

Do you share that view?

● (1630)

Ms. Juliette Nicolet: Yes.

Mr. Marc Lemay: Okay. I listened to the questions asked by my colleague Mr. Dechert. However, the number of aboriginal adolescents placed in custody has apparently not decreased.

Ms. Juliette Nicolet: It has not decreased.

Mr. Marc Lemay: I am a member of the Standing Committee on Aboriginal Affairs and Northern Development and, based on the information we get, not only has the number not decreased, but it has actually increased. Can you confirm that?

Ms. Juliette Nicolet: Yes.

Mr. Marc Lemay: We're not talking about serious crimes—and I'll try to choose my words carefully—such as murder. The crime rate has gone up because aboriginal communities are plagued by serious problems and demands have not been met. Is that right?

Ms. Juliette Nicolet: Yes.

Mr. Marc Lemay: Thank you, Madam.

[*English*]

The Chair: Thank you.

We'll move to Monsieur Petit for two minutes.

[*Translation*]

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

Mr. Dionne or Mr. Doob, either one of you could answer my question. Do you agree that the new legislation should, as it's been suggested, contain provisions that would allow judges to know about the extrajudicial sanctions involved in the case? You know that in Quebec, judges cannot know about extrajudicial sanctions. We're talking total confidentiality, and the system is very similar in other provinces. Do you agree that a judge should have full knowledge of all the extrajudicial sanctions that have been imposed on a young person going back seven or eight years, in order to be able to hand down the appropriate decision at the person's trial? The problem right now is that judges know absolutely nothing about the young offender being tried and sometimes render inappropriate decisions.

Are you favourable to this suggested change, Mr. Doob or Mr. Dionne?

[*English*]

Dr. Anthony Doob: I don't agree with the change that is proposed to paragraph 39(1)(c). The reason for that is that 39(1)(c) is the gateway to custody. If we were talking about the judge being aware of them, that would be one thing, but it seems that we're loosening the conditions that allow the judge to put the youth in custody.

It's no longer a pattern of findings of guilt; it's a pattern of findings of guilt and extrajudicial sanctions. A middle ground, and it might well be a very appropriate middle ground—I would have to think about where it was going to be used and how—is that the judge would be aware at sentencing of the various kinds of things having to do with extrajudicial sanctions. But I think putting it in as equivalent to findings of guilt in proposed paragraph 39(1)(c) is wrong.

The Chair: Thank you very much. I want to thank all four of our witnesses for....

Monsieur Dionne.

[*Translation*]

Prof. Jacques Dionne: Mr. Petit, I would like to add something to the answer provided by my colleague Mr. Doob. I think that it would be acceptable if this provision were perhaps added to the current legislation intermediately. Earlier, I talked about the importance of conducting a differential assessment and enabling the judge to take into consideration the adolescent's background and social situation. I think that this would be the best way to do things. Skilled professionals should conduct an adequate and rigorous assessment without necessarily revealing the details involved in previous brushes with the law. I think that judges should have the opportunity to get a clear picture of the situation with the help of an assessment before they hand down a sentence.

The Chair: Thank you.

[*English*]

I want to thank all four of our witnesses for their time.

Your testimony will form part of the public record, which well help us in moving forward on Bill C-4.

Thank you, to all of you.

We'll suspend for two minutes while our next witness takes his place.

● _____ (Pause) _____

●

● (1635)

The Chair: I'll reconvene the meeting.

Pursuant to the order of reference of Wednesday, February 9, 2011, we're considering Bill C-576, An Act to amend the Criminal Code (personating peace officer).

We have with us today our colleague, Earl Dreeshen, the MP for Red Deer. Welcome to our committee, Mr. Dreeshen.

I think you know the process. We'll ask you to introduce the bill to us and explain why it's necessary. Then we'll open the floor to questions.

● (1640)

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Mr. Chair.

Through you, Mr. Chair, I express my sincere appreciation to each of my colleagues for this opportunity to address the justice and human rights committee regarding my private member's bill, Bill C-576, personating a peace officer.

I'd like to start by saying that I appreciate the support received during second reading, which allowed this bill to be sent to your committee, and the willingness of my colleagues from all parties to carry this discussion forward.

As the committee is aware, I was moved to table this bill following discussions I had with the victim of a horrendous crime in my central Alberta riding of Red Deer. Flashing lights and a police uniform were used as weapons to abduct a 16-year-old who had just earned her driver's licence. This brave young woman was held captive for 46 hours and brutally assaulted before she managed to escape from her attacker. The cold fact of the matter was that she was abducted only because she thought she was doing the right thing. When confronted by someone she thought was a police officer, she did what she had been taught to do: she stopped and she followed instructions. And in this case, she ultimately lost any opportunity she might have had to protect herself.

When citizens see a police uniform, they naturally trust the authority that comes with it. Personating a police officer is a serious breach of the public's trust, and it has the same effect as using a weapon: it forces the victim to submit.

It has another effect that is also of great concern, not only for the general public but for the police who are out there trying to do their jobs. Mr. Chair, for this young woman, the police uniform no longer represents safety and security. With time, she will cope with this fear and will hopefully regain her trust in authority. But every time we hear of these types of incidents, one more person has had this trust shattered.

The police I have spoken to in my riding, both RCMP veterans and serving members, have also encouraged me in my quest to have the Criminal Code amended so that the personation of a peace officer in the commission of another offence be considered an aggravating circumstance for sentencing purposes.

This bill seeks to add one short section following section 130, which committee members will have before them. That is all it does. It does not seek to affect any interpretation of the offence. It would simply direct a sentencing court to consider an aggravating circumstance when dealing with the conviction under section 130.

To expand the discussion further, there are aggravating circumstances defined in section 718 that apply to all criminal offences. There are also some special cases of aggravating circumstances attached to specific offences within the code. To be clear, this bill seeks to be a special aggravating circumstance in regard to the specific offence of personating a peace officer.

Of course, within the parameters of the maximum sentence for personating a peace officer, the appropriateness of a sentence would still rest with the sentencing court. But it is up to us, as legislators, to establish sentencing provisions in the Criminal Code. Therefore, we should recognize that this is a crime that can have varying degrees of harm and therefore should be penalized accordingly.

I was aware that with the changes introduced with Bill S-4, the maximum sentence for personation was increased to five years from six months. The specific case I have outlined was dealt with prior to its passage, so there was only a six-month sentence allowed. But it did beg the question of whether personation of a peace officer is not just as serious to a victim as being abused by a person in a real position of authority, which is considered to be an aggravating circumstance.

Some of the specifics I encountered when I first started looking at this issue related to section 718 of the Criminal Code, which sets the principles of sentencing. In section 718.2, we see that aggravating circumstances would be involved if there was “evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim”. This would apply if an offender had an existing relationship with the victim, such as a teacher or a coach, or it would apply to a real police officer who may have abused a position of trust, but it doesn't apply to offenders who are posing as police officers.

● (1645)

I hope this committee will recognize this gap in the law and work with me to fill it through the acceptance of my private member's bill.

Mr. Chair, during debate in the House, all parties remarked about the lack of credence that was given to this type of public deception. It was only in the preparation of comments that the prevalence of this deceit in the commission of crimes in Canada was brought to a conscious level for members. For victims, it's always at a conscious level.

In section 130, the crime is in the deception of the public about a person's status as a peace officer, whether or not it was for the specific purpose of facilitating another crime and whether or not another crime is actually attempted or committed. But in cases where the deception is intended and in fact does facilitate the commission of another more serious crime, this is an extremely serious instance of the offence of personating a peace officer and therefore it deserves an appropriately high sentence.

In conclusion, let's give the sentencing courts the tools they need to apply appropriate sentences in serious cases and thereby seek to protect innocent people from these types of crimes.

Again, thank you, Mr. Chair and committee members, for your prompt study of this bill. I am pleased to answer questions from members.

The Chair: Thank you. I'm sure members will have questions.

Ms. Jennings, you have the floor.

Hon. Marlene Jennings: Thank you, Chair.

Mr. Dreeshen, I'd like to commend you for bringing forth this private member's bill, which is, I believe, well drafted. I think it is very narrow in scope, but it addresses a real issue and I wish to commend you.

It is not often that we receive private members' bills that are well balanced and don't claim to do something that they will in fact not do. So I'd like to commend you.

I have recommended that my caucus support this bill. This is why we supported sending it to committee, and I will be recommending that my caucus vote in favour at clause-by-clause, report stage, etc., as long as the bill stays in the state that it is now.

Mr. Earl Dreeshen: Thank you very much.

Hon. Marlene Jennings: By the way, if any of the Conservatives want to take a transcript of what I just said and put it on their fliers or any of their advertising, feel free to do so.

An hon. member: Unedited.

Hon. Marlene Jennings: Unedited.

Mr. Earl Dreeshen: Thank you.

Mr. Bob Dechert: I'm going to frame it and put it on my wall.

Hon. Marlene Jennings: Yes, you do that.

The Chair: I'm going to the Bloc.

Mr. Lee, why don't you go ahead. You still have five minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I'd love to be as kind as my colleague. I don't mind being as kind, but my purpose in asking this question is really technical.

Is there any particular reason why you or the drafters decided to use section 130.1 as the numbering for this proposed section rather than just keeping this new phrase or subsection as part of section 130? It could easily have been added as paragraph 130(2)(c).

Is there any particular reason why you added a whole new section?

Mr. Earl Dreeshen: Mr. Lee, when we were looking at it, we thought this was specifically speaking to the personation of a peace officer and that would be the opportunity to be able to address the consequences of someone who had been charged, I would assume, under section 130. But definitely I am not the person to get into the majority of technical information.

Mr. Derek Lee: I would just ask you then if you would have any objection to an amendment—if members of the committee thought it was appropriate—to move this whole section, as it is currently written, back into section 130, either to subsection 130(1) or subsection 130(2). The sentencing section of section 130, which is subsection 130(2), could easily receive a new subsection because subsection 130(2) deals with the sentencing for that section on personation. Your amendment adds an aggravating factor to the sentencing and could easily be built in.

Are you aware of any technical reason why that would be inappropriate to your purposes?

● (1650)

Mr. Earl Dreeshen: No, I'm not aware of any technical reason why that would be the case. My intent, however, is to make it as clean as possible so that when we look at it, it could move as quickly as possible. That is the reason why.

Mr. Derek Lee: We can do amendments very quickly here. We have.

The Chair: Thank you.

We'll move to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I'll make this quick.

When I read your bill for the first time, I told myself that, if a judge must render a sentence for a person who impersonated a police officer in order to commit another offence, he will probably consider the impersonation to be an aggravating circumstance and take that fact into account when handing down a decision. I think that goes without saying.

Have you looked into the case law of sentences related to section 130 of the Criminal Code? Have you found cases where, under similar circumstances, the judge did not deem this type of behaviour to be an aggravating circumstance?

[*English*]

Mr. Earl Dreeshen: No, I hadn't. Basically, what I was trying to do was focus on the seriousness of the offence. When I first spoke with the victim and her family, I talked for over an hour just about the types of concerns that existed and how that actually.... The personation was the weapon that was being used, if one could use that terminology, and therefore I was trying to look for something that would show the significance of that. Then when we started looking at it, we found that was not the case. So that was the rationale for concentrating specifically on the aggravating circumstances at that position.

[*Translation*]

Mr. Serge Ménard: Regarding the specific case you considered, which made you propose an amendment to the legislation, were you aware of the sentence imposed on the person who did this to the lady?

[*English*]

Mr. Earl Dreeshen: Yes, I was.

[*Translation*]

Mr. Serge Ménard: Did the judge consider this as...

[*English*]

Mr. Earl Dreeshen: But there were other—

[*Translation*]

Mr. Serge Ménard: Did the judge consider the fact that the person impersonated a police officer to be an aggravating circumstance?

[*English*]

Mr. Earl Dreeshen: There were other issues that were associated with that, such as the age of the victim, and so on, so where that might have come in, I couldn't give that information, I'm sorry.

[*Translation*]

Mr. Serge Ménard: Was this not a written decision?

[*English*]

Mr. Earl Dreeshen: Yes, it was a written decision, but I didn't build my case based on what had been read out of the decision.

[*Translation*]

Mr. Serge Ménard: I know that, but have you read the decision in question?

[*English*]

Mr. Earl Dreeshen: No, I did not.

[*Translation*]

Mr. Serge Ménard: I still think that this is a useful addition, even though I believe that most judges would consider such behaviour to be an aggravating circumstance.

Mr. Marc Lemay: Is there any time left?

[*English*]

The Chair: You have three minutes.

[*Translation*]

Mr. Marc Lemay: Okay.

Mr. Dreeshen, we know each other because we are both members of the Standing Committee on Aboriginal Affairs and Northern Development. You talked about a Bill S-4 clause that would amend section 130 of the Criminal Code, which deals with sentences. I would like to know which clause you had in mind. You talked about it in your presentation. You talked about a section that would be amended so that a five-year sentence, I think, is imposed. I would like to know which clause you were talking about.

In addition, do you think that the amendment you are proposing will result in the imposing of a consecutive sentence, or could the judge impose a concurrent sentence under section 130?

● (1655)

[*English*]

Mr. Earl Dreeshen: The amendment is strictly to section 130. What I had described was section 718, which described various aggravating circumstances. So that was what I was speaking of at that particular point.

When it comes to consecutive sentencing, that, in my mind, is still being left with the judges.

[*Translation*]

Mr. Marc Lemay: All right, but you are proposing to amend the section by adding section 130 because section 718 does not contain this provision.

[*English*]

Mr. Earl Dreeshen: That's correct.

[*Translation*]

Mr. Marc Lemay: That's why you are proposing it.

[*English*]

Mr. Earl Dreeshen: That's right.

[*Translation*]

Mr. Marc Lemay: Okay, thank you.

[*English*]

The Chair: *Merci*.

Mr. Comartin.

Mr. Joe Comartin: I don't have any questions. I'll just indicate I'm supportive of the bill, and hopefully we could move on to try to get it done today.

The Chair: Thank you.

Anybody on the government side? Everyone's okay?

Mr. Dechert.

Mr. Bob Dechert: Just a brief comment in the spirit of cooperation I'm seeing around the table. I also want to commend you, Mr. Dreeshen, for bringing this bill forward. We need to send a message to people that they shouldn't be posing as police officers and using that in any illegal activity. People are taught from a very young age in this country that the police officer is your friend, he's your protector, he's somebody you can rely on, you look up to. That's certainly what I was taught as a young person in this country. I don't want to see that changed, so I'm really pleased that you brought this bill forward. Good for you.

I'd also like to thank Ms. Jennings, as the Liberal Party justice critic, for indicating that the Liberal Party will support this bill unamended. I appreciate that.

I'd like to share my time with Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): If I might, I guess I always say for the people at home who might be interested in what we're doing here—and I'm sure they are—that the amendment actually says "peace officer", not "police officer". I think that's a very important thing to note, because in Ontario and in our parks, we have people who wear uniforms and do carry out many of the duties that a police officer does, although it's restricted in nature. The appropriate word, of course, is peace officer, and the intent is for anyone who is exercising the duties of someone who would be in uniform, which is very important. I mention that only because some folks at home might say "police officer"? It's actually peace officer, which includes other people who wear uniforms, etc.

Thank you.

The Chair: Thank you very much.

I think we appear to have general consensus on the bill. We can move to clause-by-clause.

There is the issue that Mr. Lee raised, on whether it should be a separate section. I'm just consulting here to find out exactly how that would be numbered, to make sure it's properly drafted.

It can be done either way.

Mr. Derek Lee: This looks easy. It always does until you take it to a drafter. I know this from many years' experience. But my suggestion is that this be added to section 130 as a new subsection (3), and that the wording within the amendment be changed; instead of referring to section 130, it simply say "this section".

● (1700)

The Chair: Mr. Lee, the analyst is suggesting that we actually include it under the punishment section. That would be 130(2)(c).

Mr. Derek Lee: This is also viable?

The Chair: Is that okay?

Mr. Derek Lee: Yes, it is.

The Chair: As opposed to 130(1).

Does anyone have any objection to setting it up that way? We can do it by consent.

Right now we're with Mr. Dechert, and then we'll go to Monsieur Ménard.

Mr. Bob Dechert: As I mentioned a moment ago, Mr. Chair, I have no objection to the substance of the bill at all. However, Mr. Dreeshen consulted with Department of Justice officials and they recommended to him that it be numbered as it's currently drafted. In the absence of the Department of Justice officials to answer Mr. Lee's question, I think it would be a mistake for us to go off and add it to some other provision. I don't know, and there's no one here today who's an expert who can answer what the impact might be of adding it to the subsection you're suggesting. I don't think that's good legislative drafting.

I'm wondering what the purpose of suggesting the amendment is. I thought we had an agreement. I heard the Liberal justice critic say that the Liberal Party would support Mr. Dreeshen's bill unamended. Maybe we could have that transcript read back to see what exactly that was. She apparently suggested we put it in our householders and our ten percenters, and I even volunteered to frame it and hang it on the wall in my office—

Hon. Marlene Jennings: Unedited.

Mr. Bob Dechert: —unedited.

Hon. Marlene Jennings: I meant my statement in its entirety—

Mr. Bob Dechert: I will do that so long as—

Hon. Marlene Jennings: —with my picture, which I've approved of, next to it.

Mr. Bob Dechert: —there's no amendment to the bill as presented by Mr. Dreeshen. Now I see that there's another member of the Liberal Party who apparently is amending the bill.

Hon. Marlene Jennings: It's not an issue. Come on.

Mr. Bob Dechert: I'm confused as to what's going on over there.

The Chair: I think we can resolve this.

Mr. Ménard, you had some comments, and then I'll go back to Mr. Lee.

[*Translation*]

Mr. Serge Ménard: If we approve Mr. Lee's suggestion—I am personally in favour of it—it would read as follows: "Where a person is convicted of an offence, the court imposing the sentence on the person shall consider as an aggravating factor...". It won't be necessary to specify that it is "an offence under section 130".

That being said, I will just add one more thing. We could very well, once again, approve the bill in its present form right away and add a section to the Criminal Code. The good intentions of the proposer will be respected. But, in my opinion, it is desirable to write legislation correctly. It seems to me that the Criminal Code has been awfully complicated to read for at least a generation now. So, adding more elements to it, when there is no logic, is not desirable.

The best thing to do would be to send the bill to be drafted using language that complies with the drafting conventions of the Department of Justice. If we unanimously agree that it has to be added, we also agree that it has to be added in a similar way to what is already in the Criminal Code. This is because it has to do with adding an aggravating factor that will determine the sentence in the case of another offence.

It would actually be a lot easier to send it to the drafters. They know what we want and they will provide us with a text that will have unanimous support.

[*English*]

The Chair: Thank you.

We'll go to Mr. Lee and then Mr. Murphy.

Mr. Derek Lee: Mr. Dechert asked the question—

● (1705)

[*Translation*]

Mr. Daniel Petit: He's in a meeting.

[*English*]

Mr. Derek Lee: He's consulting in depth.

He asked why there would be an amendment. I'm going to make an inference that Mr. Dreeshen drafted his bill more than a few months ago. It was drafted under the old section 130. Old section 130 was amended in 2009. If you look at the old section, you can kind of see why Mr. Dreeshen's bill was drafted the way it was. Given that section 130 has already been changed and it now has two subsections, there is no apparent need to create a whole new section of the Criminal Code to deal with a sentencing aspect of section 130. It's much more rational to have the sentencing issue drafted by Mr. Dreeshen added to section 130. I see Mr. Dechert nodding his head.

Mr. Bob Dechert: You're not correct, and I'm going to tell you why.

Mr. Derek Lee: Okay. Go ahead.

You're nodding, but you should be shaking your head.

The Chair: Before we go to Mr. Dechert—

Mr. Derek Lee: Let me finish then.

Mr. Bob Dechert: Yes.

Mr. Derek Lee: While there's nothing wrong with the subsection, I just don't see the need to create a whole new Criminal Code subsection to deal with a sentencing aspect of the section above.

Mr. Bob Dechert: Would you like to hear the answer?

The Chair: Mr. Murphy.

Mr. Brian Murphy: I'm anxious to hear what Mr. Dechert says. However, I just have a question.

Mr. Dreeshen, you've sought the advice of the drafters?

Mr. Earl Dreeshen: Yes.

Mr. Brian Murphy: Did they have before them the amended section 130, the newest version of section 130?

Mr. Earl Dreeshen: I would assume so.

Mr. Brian Murphy: Can I ask you when you actually had it drafted and presented? That should be on the bill, I guess.

Mr. Earl Dreeshen: I've had it probably about six months or so, but as far as when it was drafted and presented, it was in....

[*Translation*]

Mr. Marc Lemay: It was in October 2010.

[*English*]

Mr. Brian Murphy: This latest amendment, if I'm right, October 1, 2010, is when you first tabled this, and we don't know when the drafters looked at it, but the amendments to section 130 looked as if they were 2009. I'm going to go way out on a limb and think that the drafters had the most current version of the Criminal Code in front of them when they were helping you. I'm also going to assume they suggested this subsection 130.1. The best information you have is what you have.

Mr. Earl Dreeshen: That's correct.

Mr. Brian Murphy: I'm sorry. I'd like to hear from Mr. Dechert.

The Chair: We should put this to bed.

Mr. Bob Dechert: I asked the DOJ officials by e-mail to respond, and their response is that it was drafted that way because it not only deals with the circumstance of an offence under section 130, and they have in quotes, “and another offence”; therefore, it is somewhat distinct from section 130, so it should be in a separate provision in there.

Mr. Brian Murphy: Let's move it.

The Chair: We will move to clause-by-clause.

(Clause 1 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill the House?

Some hon. members: Agreed.

The Chair: Thank you. We've completed another item of business.

Thank you, Mr. Dreeshen, for bringing this bill forward.

Mr. Earl Dreeshen: Thank you very much to everyone.

The Chair: The meeting is adjourned.

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