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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

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

This is meeting 53 of the Standing Committee on Justice and Human Rights. For the record, today is Wednesday, March 9, 2011.

You have before you the agenda for today. We are continuing our review of Bill C-4, an act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts.

As usual we have with us a number of witnesses to help us with our review. Today we have two panels. On the first panel we have, representing St. Leonard's Society of Canada, Anita Desai, as well as Elizabeth White. Welcome to both of you.

We also have the Canadian Bar Association back on this bill. Welcome to Gaylene Schellenberg, as well as Mr. Stroppel.

We also have returning to us Professor Nicholas Bala with the Faculty of Law, Queen's University. Welcome to you as well.

We'll begin with Ms. White. You have 10 minutes to present.

Once you're all finished, we'll open the floor to questions.

Ms. Elizabeth White (Executive Director, St. Leonard's Society of Canada): Thank you very much, Chair, for the invitation to appear before the committee.

I am speaking on behalf of the St. Leonard's Society of Canada, and as it has been some years since we have presented before you, I would simply note that we have 45 years of experience in criminal justice and social justice, supporting member agencies that provide direct service across this country. While in the past we have been best known for our focus on long-term and life-sentenced individuals and for our residential services, it is our belief and knowledge that youth are key to providing safer communities, and for that reason we are pleased to present on this issue.

I was fortunate enough to participate in the round table in Toronto on youth justice in 2008, and now that the report from that has become available, I am struck by how similar its findings are to the matters we raised in the brief we submitted to you some months ago.

At St. Leonard's Canada, we believe it is important to note that since the enactment of the YCJA in 2003, there has been a significant decrease in youth incarceration without a significant increase in youth crime. Something clearly is working very well.

Turning to Bill C-4, we are in support of the inclusion in clause 3 of "diminished moral blameworthiness or culpability" as a principle, and we also wish to express support for clause 21 on the prohibition against the imprisonment of young persons in adult correctional facilities. On the other hand, St. Leonard's has serious concerns about clauses 4, 7, 8, 11, 18, 20, and 24. I would like to take a few moments on those. We are also concerned about the broadening of the definition of violent offence through the inclusion of sweeping wording, which we believe is cause for grave concern.

We would also like to note that the act did give this country the opportunity to overcome its dubious distinction of having the highest western incarceration rate for youth. That is a big achievement.

We believe these amendments respond to isolated and somewhat sensationalized cases, not the best basis on which to reform legislation. We believe that a more thorough examination and a longer-term opportunity for this act to continue to prove itself should occur before changes are made. We find many of the issues raised by Bill C-4 to be already appropriately addressed.

Deterrence as a sentencing principle would not be useful. There is no substantive support of its effectiveness in crime prevention. We submit that the YCJA deliberately omits deterrence as a sentencing principle with good reason and that it currently addresses the needs of the court in providing appropriate sentencing for youth that offers the best chance for rehabilitation and reintegration. Based on the lack of substantive evidence to show that deterrence is effective, we are concerned about amending the rules for pre-sentence detention. The current guidance from the act regarding pre-trial detention does not lack the necessary focus. The authority to detain a young person is already included if such an action can be justified in the youth court. We believe the proposed amendment places the onus on courts to focus on detention for so much broader a spectrum of offences that very few will remain unconsidered.

Extrajudicial sanctions support the key values of the YCJA in its aim to avoid custodial sentences unless those are required, and they support more viable alternatives that increase the likelihood of positive impact on the youth. The current approach allows the youth's admission of guilt to be a basis on which to move forward rather than a means of embroiling the youth further in the system. The youth will take responsibility. Expanding the criteria to allow them as admissible evidence for custodial sentencing will reduce the attractiveness of admissions of guilt for extrajudicial sanctions for the youth, but will also deter police, we believe, from using them.

● (1535)

On publication bans, the act currently allows a ban to be lifted when it is justified to do so in the interest of the youth or public safety. We know that publication leads to stigma. We know that stigma leads to reduced opportunity and often to recidivism. That's simply not consistent with the principles of the act. As Professor Doob noted in his appearance last week, if publication is to be broadened, it ought not to occur until all appeal processes are complete.

I would like to turn briefly to the relationship between mental health and youth crime. It is suggested that about 10% of youths involved in the criminal justice system have mental health disorders. I note this because in our view the attention in youth criminality should be addressing the needs—and yes, therefore the risks—of the many youth who have mental disorders. Ensuring that supports are in place to help them avoid conflict with the law is essential. Given that more than 70% of adults with mental health diagnoses who are in the criminal justice system had pre-age-18 onsets, it is clear that addressing youth mental wellness is key to minimizing long-term health costs and human distress.

Further to this, we are concerned with recent reports of a 70% co-morbidity rate among incarcerated youth who have mental health and substance abuse problems. Additionally, it has been found that more than 30% of youth with major medical issues also have mental health issues. So it's evident that there need to be more good mental health results, which will ensure good justice results. We're not sure that these proposed amendments get at this very serious issue, and we are very sure that punitive measures will not do a great deal to address it.

There is strong evidence supporting the need to reduce the criminalization of youth with mental health disorders in order to increase rehabilitation, reintegration, public safety, and greater cost-effectiveness overall.

I want to reference an example from London, Ontario, where the St. Leonard's community services in that region have an attendance centre program. They supervise around 150 youths over a six-month period, with a high rate of success through diversion programs. In six years of operation it is estimated that the savings between custody and the attendance centre are in the neighbourhood of $7 million to $10 million. That kind of money can go a long way to assisting youth.

I also want to reference the IRCS sentence. This excellent measure is still not being used to its full potential. Indeed, this week we heard that there are many judges in this country who are not aware that it is possible to use it. So despite allocations of funding that would allow 50 sentences of this type a year, since 2003 there have been less than 80. We need to give an opportunity for this very effective intervention to become known and used to further decrease ongoing criminalization.

We believe that the extended costs of further custodial measures are not necessary or appropriate for the Canadian public. We must give this act time to work, in the view of the St. Leonard's Society. There is overwhelming consensus from the report on the round tables that the flaws are not with the legislation; they're in the system. Implementation needs more and better work.

We submit there is indeed a need for action on youth justice: not legislation or incarceration, but vastly enhanced access to interventions and support through collaborative federal-provincial-territorial initiatives that overcome the silos of governance and address what is needed.

Thank you.

● (1540)

The Chair: Thank you.

We'll move now to Ms. Schellenberg, please.

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you.

I'm Gaylene Schellenberg, a lawyer with the legislation and law reform directorate of the Canadian Bar Association. As we regularly appear before your committee and have previously appeared on this bill, I know that you're familiar with the CBA.

With me today is Rick Stroppel, who is counsel for the youth criminal defence office in Edmonton and a member of the CBA's national criminal justice section. Mr. Stroppel will handle the substance of our brief and respond to any questions.

Thank you.

Mr. Richard Stroppel (Member, National Criminal Justice Section, Canadian Bar Association): Thank you, Gaylene.

My name is Rick Stroppel. I've been a lawyer for 27 years. For seven and a half years I've done nothing but youth cases. I work as staff counsel at the Youth Criminal Defence Office in Edmonton. I've done every level of case, everything from shoplifting up to and including murder. I was involved in the CBA's submission and I'm here to support it.

I want to start by saying that the amendments that are proposed to the YCJA are, in some senses, necessary amendments. When one is dealing with a criminal statute, it's very common, one might say almost unavoidable, that as the statute is implemented and put into practice in the real world, issues come up that need to be addressed and dealt with. That's what we had with the Youth Criminal Justice Act.

I must say, with respect to the CBA's submission, that I believe we have attempted to achieve some balance in our submission. That reflects the balance of the CBA itself. Our organization includes not just defence lawyers; it includes prosecutors and judges. So when we respond to legislation like this, we like to pick out the things we see as positive, for instance, the positive changes that are proposed, and we've acknowledged that in our submission.

If I could refer you to page 5 of our submission, we have commended Parliament for including the presumption of diminished moral blameworthiness from the case of R. v. B. (D.). Referring to the top of page 6 of our submission, we agree with the prohibition against youth serving time in adult prisons. We agree with the redefinition of serious violent offence with a view towards clarification. These are some of the things we see in Bill C-4 that are positive and that we agree with. It's obvious to us that the amendments, in general terms, are drafted by people with some familiarity with youth law, with some expertise in those areas, and that a lot of thought has gone into that.

One of the things I wanted to do in my opening comments is to put the problem of youth crime into a context. I was speaking to Professor Bala before we began our appearance here today. He advised me that it's his understanding that about 80% of youth crime is non-violent. As regards the remaining 20%, more than half of that represents I think what we would objectively characterize as relatively minor violent crimes, not beyond simple assault. The people who are coming later this afternoon could give you the exact figures, but it's my understanding that less than 10% of youth crime represents serious violent crime. Whenever you appear in a context like this, you spend 90% of your time talking about the 10% of youth crime that represents serious violent crime. We shouldn't lose sight of the fact that, with respect to this act, when it comes to non-violent offences and relatively minor violent offences, it works like a charm. It's tremendously successful and we should acknowledge that in our consideration of the act.

Another point I'd like to make is that what's built into the legislation as it stands is a very important safety valve, which allows for the imposition of an adult sentence against a young person. There is reference in our submission to the Lacasse case. Certainly, it's a tragic case. The point is made at page 3 of our submission that this young person who was convicted of second-degree murder as an adult, or at least sentenced as an adult, received a sentence of life with no parole for seven years. That's a life sentence. That young person may spend the rest of his life in jail. Another thing that flows from that is that we can say his name here, because when young people receive an adult sentence they are treated in all respects as adults, including the publication of their name.

Some of the issues and problems that the amendments to Bill C-4 are directed at are in fact already solved by the legislation and therefore unnecessary. A sixteen- or seventeen-year-old who is convicted or pleads guilty of first-degree murder can receive up to life with no parole for 10 years, and this is pursuant to section 745.1 of the Criminal Code. That's surely an onerous sentence, so we already have a statute that's been very carefully considered and drafted to allow for the safety valve of the very tiny minority of young people who commit very serious crimes. They can receive already a very onerous sentence.

● (1545)

Ms. White has already talked about the cost savings that are associated with the decreased rate of incarceration of young people as a function of sentence. What's become apparent to us, and this is mentioned in our submission, is that when we consider the history of the act, not only has the rate of incarceration gone down, but the rate of youth crime generally has gone down. So we have to ask a serious question: what were we accomplishing 10 years ago when we were incarcerating young people at one of the highest rates in the western world? Well, one of the things we were accomplishing was we were wasting a lot of money that could have been much better spent on programs that would have helped to rehabilitate young people.

That leads to a concern on our part in that it seems that many of the proposals in Bill C-4 are aimed towards making it easier to incarcerate young people, and also, with respect to subsection 29(2), making it easier to detain them prior to trial. So we disagree with the amendments to subsection 29(2)—and this will be my last point as I see my time is almost up. In the amendments to subsection 29(2), which make it possible for a judge to detain a young person if there's a substantial likelihood that they will commit a serious offence while they're on release, we've made this point in our submission that “serious offence” contains quite a collection of things that we would characterize as frankly relatively innocuous, like cheque fraud and that sort of thing. The other problem we've identified is that “substantial likelihood” is a rather nebulous phrase.

In youth law, of all areas of the law, we would like to have some certainty and predictability, but what troubles us about this is that we're talking now about keeping people in custody who haven't been convicted of anything as of yet. It seems to us that this is contrary, first of all, to the Charter of Rights, paragraph 11(e), which provides that a person cannot be denied bail without just cause, and also to another principle that is enshrined right in the Youth Criminal Justice Act, item 3(1)(b)(iii), which says that young people are entitled to enhanced procedural protection of their rights.

Those are some of the reasons that we're opposed to subsection 29 (2). Some of the other amendments that are proposed here we think would have the very negative effect of increasing the number of custodial sentences imposed against young people and the number of young people detained before trial, which, as is noted on page 3 of Professor Bala's submission, unfortunately has gone up since the Youth Criminal Justice Act was proclaimed into force. I'm ashamed to say it has particularly gone up in the prairie provinces. It's almost like we're giving with one hand and taking away with the other. We're imposing fewer custodial sentences but making more young people remain in custody before trial.

Those are my submissions on behalf of the CBA. I'm grateful for this opportunity, and I'd be happy to answer any questions later this afternoon.

● (1550)

The Chair: Thank you.

We'll move to Professor Bala for 10 minutes.

Prof. Nicholas Bala (Professor of Law, Faculty of Law, Queen's University, As an Individual): Thank you. It's a privilege to be invited back here. I was here last June and I presented a brief, and I understand you have copies of that brief. Having been here before, I will say a few words by way of introduction.

I am a law professor, and I specialize in a range of issues related to families and children, including young offender issues. I've probably written more about youth justice issues than any other law professor in Canada; there are others who have written more from the point of view of other disciplines.

I agree it is an appropriate time to look at the act and make some amendments to it. However, I do not agree that there should be very substantial amendments. I think that while youth crime is understandably a serious problem, the legislation can only have a limited impact on youth crime. In fact, the youth justice system can only have a limited impact on youth crime.

Largely I think the legislation has been a success, or at least a qualified success, in that the rates of use of court and custody have gone down, as we've heard. Youth crime has not increased. We have achieved both a significant financial saving and a significant saving in terms of human resources.

I worry that the thrust of some of these amendments will be to increase the use of courts and custody, and that will increase financial costs, though I should say not to the federal government. Unlike some of the other changes in the criminal law where the federal government may pay for part of the cost of incarceration, this is totally placing the burden on the provinces. I worry about that.

Having said that, I think there are some good provisions in this act. We've heard about a number of them. Certainly there's the introduction of the concept of diminished moral accountability. In proposed subsection 29(2), I think the issue of pre-trial detention is extremely important. In fact, since I submitted that brief, we've had more recent data. You'll hear from Statistics Canada that we send more young people into pre-trial detention than we do into custody. It's a bigger issue now than the use of custody.

One of the problems with sending young people into detention is that their rehabilitation is very difficult to undertake. They're suddenly put in detention where there's limited programming. There is greater potential for abuse from other inmates, less access to programming, and higher levels of suicide and mental health problems. It's a very significant concern.

Having said that, I view proposed subsection 29(2) as somewhat narrowing; it clarifies the law in this area. Probably on balance it's an improvement over what we now have, but I would submit that subsection 29(2)—and I'm sure in your questions we can talk about it—is actually going to narrow the scope for using pre-trial detention from what it is now.

I will refer to two parts of the act where, along with my colleagues here and elsewhere, I share great concerns. One is about the introduction of deterrence and denunciation into the principles of the act. I think it's important that we have a youth justice system that deters young people from committing offences and holds them accountable—and, if you want, from the point of view of colloquial speech, “denounces crime”. But if we use the words “deterrence and denunciation” and put them in the act, the message to judges is to send more young people into custody. That will be its only effect. Unfortunately for the young people who are committing offences, the reality is they are not considering the consequences of getting caught. They are not thinking that the sentence Parliament has imposed is going to go from four months to six months for this offence.

Increasing sentences will not have any impact on their behaviour. There's a huge amount of research that shows that increasing the severity of youth sentence does not affect behaviour. On the other hand, putting those words into the act will affect judicial behaviour, in particular with increased sentences. I'm concerned about that.

On the issue of publicity...and one can understand the point of view of the public, let alone the victims, who say, “I want some accountability here. I want this young person to be held accountable, and I want to know that he or she is appropriately shamed.” Unfortunately, the reality is that if we put their names in the newspapers—there is experience with this in the United States, where they do allow publicity—the offenders go around saying “Look, I'm the toughest guy here. I'm in the newspaper.” It doesn't affect their behaviour, but it does make their rehabilitation much more difficult. It stigmatizes their siblings and their parents. It does not have the kind of positive effect on reducing youth crime that one might hope.

● (1555)

In other words, we have to have a sophisticated, thoughtful, research-based response to youth crime if we want to have a safer society and not do things that might intuitively but in an uninformed way be a response to youth crime that may actually lead to a society where there is an increase in youth crime.

We want to have changes in the act that are smart changes that lead to a safer society, not changes that are, if you want, dumb changes that lead to an increase in youth crime and a society that has more problems with youth crime.

I will end there. Thank you.

The Chair: Thank you.

We will start the questioning with Mr. Murphy, for seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): If I don't jump into the sort of broad issues, you should take it, witnesses, that we've been around the board on this. There are significant differences on many of the large issues between the government and this side—denunciation. I want to hone in on some very particular items.

First of all, I want to thank you all for coming. I've read your briefs and heard your submissions, and I will be getting to specific questions on the use of extrajudicial sanctions in section 39 of the act as amended.

I first want to say, though, to the CBA representatives that we appreciate your brief. It was thorough. You properly paraphrased Justice Nunn's recommendations as calling for the protection of the public not as the only and primary goal but as one of the goals and objectives, and that is what the Nunn report is all about. Opposition MPs might try to pigeonhole you into saying something else, so be careful.

I also very much appreciate your discourse, sensitively put, about Sébastien's Law. Of course, we all feel for that family. The fact, however, is that the legal outcome—as you say in your brief—was appropriate in that circumstance, and this serves a little bit to exploit the situation, so the short title of the bill is—we give a shot across the bow to the government—something we might be objecting to.

Now what I want to get into is a matter of legitimate concern, and we could go either way on this one: the use of extrajudicial sanctions in the consideration of the judge and the amendments in Bill C-4 to paragraph 39(1)(c) of the YCJA. Essentially I am paraphrasing here, but it says a judge, in deciding whether to commit the youth to incarceration, can now consider extrajudicial sanctions.

I think, Dr. Bala, you have made the point, and so have you, Ms. White, that the judge already has the ability to consider that in the case where a pre-sentence report is prepared, which shall include the history of extrajudicial sanctions and compliance therewith.

My question for all of you is, why is paragraph 39(1)(c) amended here to include extrajudicial sanctions? Is it necessary? Is it piling on? Is it for greater clarity? What can you see is the purpose for reiterating it? Or is there a legitimate concern that even though the pre-sentence report has to have this history in it, the judge does not have to take into account what's in a pre-sentence report?

Can you comment on that? Maybe we'll start with Ms. White.

Ms. Elizabeth White: We believe it will encourage greater consideration of custodial sentences. We're saying it is not necessarily warranted by simply bringing the past to the fore more, but we are also very concerned, as I mentioned, that putting extrajudicial sanctions into that context for streetwise youth may well encourage them to not make an admission of guilt and to not move forward after an incident, and likewise might discourage an officer from being inclined to go that route.

So we are looking at it from that perspective.

● (1600)

Mr. Brian Murphy: We'll go to Dr. Bala. The CBA brief was a bit silent on this point.

Prof. Nicholas Bala: I should say that the provisions around the use of extrajudicial measures for diversion have been one of the real hallmarks of success of this legislation. As a country, we've moved a lot of less serious offenders out of the courts and are dealing with them in programs. As it so happens, I'm a volunteer in the program in Kingston. We have a focus, as do many other programs, on restorative justice, on bringing victims to meet with offenders and trying to serve the needs of victims in that way. These are very important provisions. They have financial implications.

By the way, of course I agree with your comment that judges already can and do take account of a record of extrajudicial sanctions, as you pointed out. But I worry that this provision and the later provision around extrajudicial sanctions and police records will tend to discourage police from using these provisions. It seems to send a message to police saying that we're using this too much—and I don't think we are, as a country. In fact, we continue to have a relatively high rate of use of courts. Many countries have significantly more diversion than we do, so if anything, we should be diverting more of these less serious cases.

So I am very concerned about these provisions. In fact, when you add up the large number of cases that they will impact, if they are or more of them are sent to courts, there will be a significant impact on costs, delay, and in that sense victim suffering in the justice system. They will be counterproductive.

Mr. Richard Stroppel: I'd like to address this issue by taking off my lawyer hat and putting on my taxpayer hat. Every time a young person goes to court, there's a judge, a prosecutor, a defence lawyer, a clerk, a social worker, and a probation officer—and they don't come for free. We have to pay for them

One of the goals of the YCJA—and I think it's a commendable goal—was to get these cases out of the regular court system. I continue to be mystified when I go to court and see a young person charged with stealing a can of pop and a bag of chips. The case goes on for over two weeks so they can consider EJS, and then it goes over another week because the consideration isn't finished yet. Then it goes on for four months so the case can be completed, and so on. If anything, we should be strengthening and enhancing the diversion process. We should encourage people in every possible way to divert more cases out of the regular court process.

I see this, first of all, as a subtle way of making it look more important. I can tell you that in Alberta—and I'm sure it's the same in just about every province—we have a kind of two-bite rule. Extrajudicial sanctions are reserved for non-violent offences for a first offender and a second offender. The cases that go to EJS are like the one I just described, and I don't think they belong in court in the first place.

There's a tremendous potential there for saving money. I see this section as kind of superficial or superfluous. If a judge is considering whether to transfer a young person to adult court—or I should say, to impose an adult sentence, which is how we talk about it now—would it make any difference that this young person stole a bag of chips and a can of pop at the beginning of their criminal history? I don't think so. I think that consideration should be focused on serious convictions, including cases that have been referred to extrajudicial sanctions.

Those are some of the reasons why we're opposed to this proposed amendment.

The Chair: Thank you.

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

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you very much for your reports, particularly since we have had the opportunity to read them since we received them on time. We did a lot of underlining.

I see that no one here comes from Quebec. The Canadian Bar Association represents all lawyers. I would like to know whether you are familiar with the specific method that Quebec has used to judge young offenders for a generation now.

● (1605)

[*English*]

Mr. Richard Stroppel: I think Gaylene and I can both speak to that.

We pride ourselves at the CBA on representing the entire country. It's my recollection that there were lawyers from Quebec involved in the preparation of this submission. It was a large group. We certainly considered their input on what's happening in Quebec. I think the substance of the submission reflects their experience and input.

[*Translation*]

Mr. Serge Ménard: If I say the principle of the right measure for the right person at the right time, does that mean anything to you?

[*English*]

Mr. Richard Stroppel: You'll have to help me with that.

Ms. Gaylene Schellenberg: Is that part of the Quebec legislation?

[*Translation*]

Mr. Serge Ménard: That's how the chief judge of Quebec's youth court summed up the intervention philosophy. I see that Mr. Bala is nodding his head. He's probably aware of it since he has written the most about young offenders.

I'm afraid of one thing. There was a concern about the changes that were made the last time. I believe that was in 2002. It was feared that Quebec would be unable to continue applying that philosophy because too many limits were being placed on judges' discretion. They were allowed to impose harsh measures for less serious offences when they were warranted by the young offender's personality and prospects. At times, they could also make more lenient decisions with regard to very serious crimes. The judges appreciated that discretion and were advised by psychologists attached to the court.

I'm sure that any amendments to this bill would be an opportunity for them to tell you whether the dangers they feared with regard to the act have materialized.

[*English*]

Mr. Richard Stroppel: I will respond to that on behalf of the CBA. We're talking about the Youth Criminal Justice Act, which was proclaimed and took effect in April 2003.

You've touched on something of concern to us. There seems to be a philosophy that not only judges but also prosecutors are not to be trusted in the exercise of their discretion. Part of the backbone of our submission is that we spend a lot of time selecting judges. We like to think we select the best possible people. My wife is a full-time prosecutor, and I deal with prosecutors everyday. I'm happy to say they are extremely professional, competent people.

Mr. Serge Ménard: Do you mean you deal with your wife everyday?

Voices: Oh, oh!

Mr. Richard Stroppel: The legislation says judges have to consider one thing and prosecutors have to consider another. That goes without saying. We think it's unnecessary. Prosecutors can be trusted to consider seeking an adult sentence in any serious case. They always do. They always will. It doesn't have to be put in the legislation. It's unnecessary. That's part of our submission.

Prof. Nicholas Bala: I think Quebec has had a different approach to a whole range of child-related issues over the past few decades. When this act came into force, there was concern that it might change the approach in Quebec. In fact, while the legislation constrains judges all across Canada, Quebec has continued to have the lowest rates of use of courts, custody, and pre-trial detention. I think it's a significant achievement. In fact, research suggests they may also have a lower youth crime rate. In that sense, we have a bit of a national laboratory. Conversely, we have other provinces that have much higher rates of custody and much higher rates of youth offending. So in some ways Quebec is a model for the rest of the country.

● (1610)

[*Translation*]

Mr. Serge Ménard: Thank you for your answer.

You criticize, and rightly I believe, the change in the definition of "serious violent offence". As experts, you're providing a significant list of crimes that will now be considered violent crimes. Can you give us that list.

[*English*]

Mr. Richard Stroppel: I need to clarify something arising from your question.There's something called a “serious violent offence” that has been redefined, and we agree with that. “Serious violent offence” was defined judicially as any “offence in the commission of which a...person causes...serious bodily harm”. There were all kinds of discussions and debate about whether that included psychological harm. It was confusing. It was troubling for the courts. It was difficult for people to predict what might be classified as a serious violent offence.

This is one of the things we agree with. The act has redefined it by including four very serious offences that make up “serious violent offences”. That's a good thing. But what you're getting at is this definition of “serious offence”. And this is addressed on page 9 of our submission. This is a different thing. Our problem with the definition of “serious offence” is that it has implications with respect to, for instance, denial of bail.

I think I can make the point by giving you an example. The definition of “serious offence” includes any offence for which an adult, if prosecuted by indictment, could get a sentence of five years or more. That includes things such as fraud, theft over a certain amount, uttering a forged document, possession of a stolen credit card, public mischief, and so on. We don't see these as objectively serious offences.

If a judge is dealing with a young person in possession of a stolen credit card and feels there's a substantial likelihood, whatever that means, that this person, if released, might get another stolen credit card, the judge is entitled to hold the person in custody before trial. We don't think that's wise. We think that's an overly expansive and vague definition of “serious offence”. So that's the part we disagree with.

The Chair: Thank you.

Mr. Comartin.

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

I don't have any questions.

The Chair: All right. We'll move on to Mr. Rathgeber for seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Chair, and thank you to all the witnesses for your attendance today. Mr. Stroppel, it's good to see a fellow Edmontonian come and testify before our committee.

I take it all of you have read the Nunn inquiry and Justice Nunn's recommendations. I'm assuming you're all familiar with that. Is that fair?

Prof. Nicholas Bala: Actually I was a witness for a couple of days.

Mr. Brent Rathgeber: I want to focus on a couple of his recommendations. The first one is recommendation 20, where he advises the Nova Scotia government to lobby us to amend the declaration of principles in the act to add a clause indicating that the protection of the public is one of the primary goals of the act. I'm assuming from your opening statements that philosophically and in principle you all support recommendation 20. Is anybody against recommendation 20?

Dr. Bala.

Prof. Nicholas Bala: I'm not against recommendation 20 in the sense that I think protection of the public is an important idea. However, I'm concerned about the specific wording of paragraph 3 (1)(a). Protection of the public is certainly one of the important aspects, and in fact one could argue it's the most.... It's the reason we have a criminal justice system in significant measure. But the wording of 3(1)(a) causes concern to me particularly because judges may ask what the legislation said before, what they changed it to, and what the significance of that change is. I worry that they'll read the change in 3(1)(a) and think they should not take into account the long-term protection of the public but the short-term protection of the public, which, in some people's minds, would mean more youth incarceration.

Mr. Brent Rathgeber: We'll come back to that.

Mr. Stroppel, do you agree that protection of the public should be one of the goals of the Youth Criminal Justice Act?

Mr. Richard Stroppel: I do, but I think we need to put this in context, and we've done so on page 2 of our submission. As we say there—quoting directly from the Nunn report—we think the protection of the public should be recognized as one of the goals, but not the only primary goal of the act. What troubles us, what concerns us, is the proposal to take out the idea of long-term protection of the public, because we think a prime strength of the act is the way rehabilitation and protection of the public work together.

In other words, the best way to protect the public is to rehabilitate the young person, which in many cases does not involve incarceration, and in fact incarceration may have the opposite effect. It may render the young person more dangerous. So we seek to have that principle put in a context.

● (1615)

Mr. Brent Rathgeber: Ms. White, from your opening comments, I think you support protection of the public as one of the goals of the act.

Ms. Elizabeth White: I support the concept. Like my colleagues, I am concerned about the positioning, the wording, and the inference. I considered recommendation 20 in the context of the commentary in the commission's report, which in that area said this is not to be taken in any way as "a call for major reform". It is a tweaking. While highlighting public safety in the act is necessary, it is only one of the goals or principles.

Mr. Brent Rathgeber: So qualified support of recommendation 20.

Am I safe to assume that if one promotes recommendation 20 and believes that protection of the public ought to be one of the goals of the act, it could very well, and should very well, include specific deterrence and denunciation?

I'll start here again with Professor Bala.

Prof. Nicholas Bala: I don't think including specific or general deterrents will in fact protect the public. I know there is a lot of research, and my own personal experience would suggest that the problem with young people committing offences is that they are not thinking about the consequences of their act, let alone thinking about the severity of the sentence. Increasing the severity of sentences will not deter their behaviour.

The Supreme Court of Canada in R. v. B. (D.), in discussing the whole issue, said, and I think this is an important point, that the youth justice system, the effect of the system, should be to deter crime. So having police catch young people, having them brought before their parents, having them brought before a judge, that will have a deterrent effect. But if you say deterrence should be a factor in the principle of sentencing, you will be increasing sentences, which will not have an effect on youth crime. It will have an effect on youth sentences and youth court judges.

Mr. Brent Rathgeber: You said in your opening statements that the length of the sentence and increasing the sentence will not affect the behaviour of the young person. I'm troubled by that. Perhaps I look at this in all too simplistic terms, but it occurs to me that if an individual is sentenced to incarceration for 12 months versus six months, for that increment of six months there is a period where that person is not committing crime. Help me out. Where is my logic faulty there?

Prof. Nicholas Bala: That actually would not be considered deterrence; that would be considered incapacitation, which is a different issue.

There is no doubt that rational adults are affected by the length of sentence. If, for example, we want to stop corporate fraud, having longer sentences and having a more effective securities legislation will deter accountants and lawyers and others, but it will not affect the behaviour of younger—

Mr. Brent Rathgeber: Okay.

So you'll agree with me, then, that incapacity does serve the protection of the public.

Prof. Nicholas Bala: Yes, but could I just say that we also have to be aware when we are incarcerating of whether we are rehabilitating. As is often the case, unfortunately, custody is a place where gangs recruit young people, where young people are not rehabilitated, and they are more likely to reoffend. So I think it requires the kind of individualized determination that now goes on under this regime.

Mr. Brent Rathgeber: I'd like to give my last minute to Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much. I'll see what I can do with one minute.

By the way, Professor Bala, it's nice to see you back again, and also Ms. Schellenberg.

I don't think I've met Mr. Stroppel, so welcome.

Are you comforted by the fact that Bill C-4, in clause 3—which in fact amends paragraph 3(1)(a) of the act to move the concept of protection of the public from the last line to the first line—still says that:

> (a) the youth criminal justice system is intended to protect the public by

—among other things—

> (ii) promoting the rehabilitation and reintegration of young persons

That seems to me to be exactly what you are in agreement with, so I want to be sure that it is of comfort to you and that you haven't overlooked it.

● (1620)

Mr. Richard Stroppel: I take some comfort from the fact that the principle is still there. But on balance we feel that the act was fine just the way it was. Certainly the Supreme Court of Canada agreed with us. In the R. v. B. (D.) case, there is substantial consideration of these principles.

Mr. Stephen Woodworth: I just want to be sure that no one at this table is trying to make off to the public as if somehow protection of the public is going to exclude the principle of rehabilitation and reintegration. You agree with me that we are maintaining the notion that it is okay to protect the public by rehabilitation and reintegration.

Mr. Richard Stroppel: It is still there, yes.

Mr. Stephen Woodworth: Excellent.

I'm out of my one minute.

Thank you.

The Chair: Thank you.

You're well out of time.

Ms. Jennings, five minutes.

[*Translation*]

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

Thank you very much to all the witnesses.

I have two questions. My first question is for Professor Bala, but if the other witnesses wish to answer it and there's enough time remaining, I invite them to do so.

[*English*]

Professor Bala, in clause 4 of Bill C-4, the one that would completely replace subsection 29(2) of the YCJA, my understanding is that you are in favour of the Bill C-4 amendment. And I do know that the Quebec Bar Association is also in favour of this. This is where the youth justice court or justice may order that a young person be detained in custody only if the young person has been charged with a serious offence and the judge or justice is satisfied on a balance of probability that there is substantial likelihood.... Do you have an idea as to how the "substantial likelihood" term might be determined? Is there any case law on what constitutes a substantial likelihood? That's my first question.

My second question is on how Bill C-4 would include, in the determination of sentencing, the extrajudicial sanctions in paragraph 39(1)(c) of the YCJA. I have your brief before me here, Professor Bala, and you state:

> Judges already have a discretion to use the fact of prior youth participation in extrajudicial sanctions as a factor in youth sentencing [see s. 40(2)(d) (iv)]. Amending s. 39(1)(c) to make further specific reference to extrajudicial sanctions seems contrary to the intent of these programs, which is to give youth a "second chance," and may be inappropriate since youth usually agree to participate in these programs without an opportunity for having legal advice.

For the benefit of the members sitting around the table and any Canadian who is watching these proceedings, would you explain how extrajudicial sanctions actually come about? Just give us a hypothetical case so that people would understand what you're talking about when you say that it happens before a youth may have access to legal advice, for instance.

Prof. Nicholas Bala: Thank you.

I think I heard three questions.

Hon. Marlene Jennings: I can't count.

Prof. Nicholas Bala: One is, I think, about the issue of detention. The first question you have to ask yourself is, do you intend to increase the number of young people in detention, or some of them, or do you want to decrease it? As I pointed out, we've had a significant increase in detention, not in custody. I would suggest, and in fact the national round table consultations suggested, that we should see a decrease in the use of detention. Some young people, however, probably should be there and are not, but on the whole we have too many young people in detention.

If you agree with that, the question is, are the wrong young people in detention? Particularly, we have young people in detention sometimes now for so-called administration of justice offences—they don't show up in court. They are then detained, not because of what they've done to the community, but because they're not showing up in court, they're not showing up at school, and they're not showing up at other places.

I would believe that this provision, on the whole, will tend to narrow the scope and have a more appropriate focus. In some cases where we do not have detention as a possibility now, we will have it, but on the whole, it will tend to narrow the scope of pre-trial detention. That's why I favour this as an improvement over the present law. Also, it's significantly clearer. The present subsection 29 (2) has a lot of different interpretations. It's very complex. That's the first point.

On the issue of "substantial likelihood", although I can't offhand think of where it is, it's not an unfamiliar kind of phrase, and I think it's a fairly high onus on the crown in that situation. That's one of the reasons that will narrow this legislation in pre-trial detention.

On the issue of extrajudicial sanctions, the way this typically works right now is the young person is arrested by the police, who, either alone or in consultation with the crown prosecutor, say that this is a less serious offence; we're thinking of dealing with it outside the court system, and we're going to send you to a program run in the community, perhaps by the St. Leonard's Society or volunteers in the community. Maybe you'll meet with the victim, have some kind of appropriate reconciliation, and be held accountable there, but not through the court process. However, when they go there, they don't have an opportunity to talk to a lawyer, typically.

If a young person goes to court and is charged, they effectively, under section 25, have the right to have a lawyer and to get advice about whether they should plead guilty. So the concern is that some young people, and I've seen this myself, will be pressured by their parents' saying, "Let's get this over with through extrajudicial sanctions. It's faster, it's cheaper for us as a family, and it'll just put this behind us." The young person says, "Okay, okay, if that's what you want", and they haven't talked to a lawyer. They may end up accepting responsibility for the extrajudicial sanction, even though they're not, in law, guilty. That is one of the concerns about this provision, and that's why putting it into legislation is a concern for that reason, among others.

● (1625)

The Chair: Thank you.

We'll move on to Monsieur Lemay for five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman.

Thanks to the witnesses for being here.

Professor Bala, I read your brief carefully and would like you to help me interpret chart 1 because right after your presentation—it's not that we want you to go—we will be speaking with representatives of Statistics Canada. I really want to discuss the same figures, and yours are interesting. First, I would like to know whether those figures come from Statistics Canada, or whether these are figures that you compiled yourself in order to produce charts 1, 2 and 3.

[*English*]

Prof. Nicholas Bala: Charts 1, 2, and 3 are based on Statistics Canada data, yes. Some of it is unpublished data interpreted by myself and particularly by my colleague, Professor Peter Carrington, but it's based on Statistics Canada data, which comes from courts and police. So it should be consistent, yes.

By the way, I think they'll have one more year of data for you. They may have—I don't want to say that. You'll still see it going out one year.

[*Translation*]

Mr. Marc Lemay: There was an increase in the crime rate in 1990-1991. What interests me very much is diversion. Based on your figures, are we to understand that there was a sharp increase in diversion from 1998 to 2003 and that this has since levelled off? Since these sections in the act were implemented, we have had an increase in crime and a level rate of diversion at the same time as a decline in the number of cases brought before the youth courts.

[*English*]

Prof. Nicholas Bala: Yes, that's correct.

I should say that reported youth crime in Canada as reported by the police peaked in 1992. That's a measure of crime based on what people report to the police, and then the police have a choice either to charge or to divert. The middle line shows the number of cases in which they are charged. Initially that was above the line for diversion, and now it's below the line for diversion. So we are now diverting more people than we are charging. And I should say that we still have a relatively high rate of use of courts and a low rate of diversion compared to those for many other countries.

But I do think your interpretation is correct.

● (1630)

[*Translation*]

Mr. Marc Lemay: Thank you for your answer.

Professor Bala, I also read your recommendation regarding the publication of information, and I heard what you said earlier. Based on the experience of the United States, where the identities of young offenders are released and published, the publication of this information is even a source of pride for certain young offenders.

My question is for Mr. Stroppel and Ms. Schellenberg. In your practice, have you or your colleagues, who drafted the brief with you, observed or had any knowledge that, when there is this kind of publication, young offenders are very often proud to appear in court saying that they've been charged with something. This is a source of pride for them, particularly in school yards, at comprehensive schools and those kinds of places.

[*English*]

Mr. Richard Stroppel: I've seen that phenomenon, and I've also seen a phenomenon in my practice—and as I indicated earlier, I've been doing nothing but youth cases for seven and half years—that it becomes kind of a self-fulfilling prophecy. If you tell a kid that he's really bad, he's going to think, well, I'd better act bad because everybody thinks I'm bad, and they want me to be bad, and that's all that's expected of me. On the other hand, if you give a young person a chance, if you say we're going to let you start without this black cloud hanging over your head, and we're going to give you another chance to make your way in society and make yourself into a useful citizen, then without that handicap, he could do that. In the long run, isn't that what we all want? Isn't that what serves society—for that young person to make a good life for himself and become a productive citizen?

[*Translation*]

Mr. Marc Lemay: Since I don't have a lot of time, I'm now going to talk about the recommendation.

I'm speaking to the Bar Association representatives. Professor Bala made the following recommendation: "Publication of identifying information should be restricted to cases where an adult sentence is imposed: s. 75 should be repealed." Are the Bar Association representatives in favour of this recommendation?

[*English*]

The Chair: Could we have a short answer?

Mr. Richard Stroppel: That's what the act says now.

As I mentioned earlier, when a young person receives an adult sentence, they are treated in all respects as though they were an adult, which means their case can be publicized.

The Chair: Thank you.

We'll go to Mr. Dechert for five minutes.

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

Thank you, ladies and gentlemen, for your appearance here today.

Perhaps I could start with Mr. Stroppel.

Mr. Stroppel, you mentioned in your comments that 80% of youth crime is non-violent.

Mr. Richard Stroppel: Yes.

Mr. Bob Dechert: I don't think you put a number on it, but you said most of the violent offences—which would be the 20%—are actually relatively minor, and that less than 10% of youth crime represents what you would describe as serious violent crime. Is that what you said?

Mr. Richard Stroppel: That's right.

Mr. Bob Dechert: Okay.

Given that Bill C-4 really concentrates primarily on serious and repeat offenders, the changes we're talking about are going to affect a rather small percentage of young offenders. Isn't that correct?

Mr. Richard Stroppel: I would disagree with that.

Many of the amendments are not directed at serious violent offenders. I've already made the point that the definition of serious offence, which would effectively reverse the onus, in a certain sense, onto the young person to justify their release, includes all kinds of property offences.

Mr. Bob Dechert: Yes, but to be clear, serious offences are indictable offences for which the maximum punishment is imprisonment for five years or more. So they're fairly serious property offences, I would suggest, then—

Mr. Richard Stroppel: Well, in some cases they might be.

Mr. Bob Dechert: Let me ask you a question. I'm not sure that I completely followed the discussion when you talked about the vagueness of the words "substantial likelihood". As I read clause 4 of Bill C-4, which amends subsection 29(2) of the act, it says:

> A youth justice court judge or a justice may order that a young person be detained in custody only if the young person has been charged with a serious offence and the judge or justice is satisfied, on a balance of probabilities
>
> (a) that there is a substantial likelihood that [he will flee] or commit [another] serious offence

There's a "serious offence" there again, and there is:

> (b) no condition or combination of conditions of release that would reduce... the likelihood of [a secondary offence being committed]

and

> (3) the onus of satisfying the youth [judge] is on the Attorney General [or the prosecutor].

● (1635)

Mr. Richard Stroppel: Yes.

Mr. Bob Dechert: You mentioned something about a credit card case, but it seems to me that what we have here is pretty clear, thoughtful, and circumscribed language to make it clear that these are for people who are serious offenders and have a substantial likelihood of committing not just another offence but another serious offence. Am I reading that correctly?

Mr. Richard Stroppel: You're reading it correctly—and smart people can disagree, if Professor Bala feels this is a good amendment.

The position is as set out in the paper. We're opposed to the amendments for the reasons we've set out. It would certainly be a lot easier to accept if it said something like "will commit a serious violent offence" or "will commit a violent offence". That would make us more comfortable in defining the situations where a young person should be detained before trial.

Mr. Bob Dechert: My understanding is that this wording, this proposal, really flows from the Nunn commission report. My recollection is the case that gave rise to the Nunn commission in the first place was one of a young person who had a history of stealing cars. After he was charged with stealing one car, he stole another car, and in the commission of the second offence he killed somebody. That's theft of property. The car might have been worth only a few hundred dollars, but it was used in a way that ended up killing someone. That's what gave rise to the whole Nunn commission, which resulted in these proposals and Bill C-4.

The Chair: Professor Bala, do you have a comment?

Prof. Nicholas Bala: I was a witness there and actually met the family of the poor woman who was killed. The issue there is as much about the definition of violent offence. This is a place where I support the legislation and perhaps disagree with some of my colleagues here. What happened in Nova Scotia was not just that they stole a car, but that the young person was involved in a car theft and a high-speed police chase. The Supreme Court of Canada said it wasn't a violent offence because no one was hurt. Then the second time he stole a car, unfortunately, he was driving down the road with the police following and he killed somebody.

Justice Nunn wisely, in my view, said that the concept of violent offence should be broadened to include situations where there's danger to the public. That's the definition of violent offence in here. We don't all agree about that. I certainly support the bill on that point. It's really Justice Nunn's recommendation.

The Chair: Thank you.

We're going to excuse our witnesses. I want to thank all of them for either coming back or coming for the first time. We'll have the other witnesses from Statistics Canada take their place.

In the meantime, we'll suspend for a few minutes.

● (Pause)

●

● (1640)

The Chair: We reconvene the meeting, and we're continuing our study of Bill C-4.

Our next panel welcomes back representatives from Statistics Canada. We have Julie McAuley back, and we have Craig Grimes, Rebecca Kong, and Mia Dauvergne. Welcome to all of you.

Do you have a presentation to make? You do. Please proceed.

Ms. Julie McAuley (Director, Canadian Centre for Justice Statistics, Statistics Canada): I think the presentation has been distributed.

Thank you for the opportunity to present to the committee regarding Bill C-4. Statistics Canada does not take a position on the proposed amendments in the bill. The presentation we have prepared contains our most recent data on youth criminal justice and has been updated since our June 2010 appearance to inform this bill.

All data sources used are clearly indicated on the slides, as are any pertinent data notes. Distributed for your consideration are the most recent *Juristat* reports related to youth crime and youth courts.

My colleagues with me, Ms. Mia Dauvergne, Ms. Rebecca Kong, and Mr. Craig Grimes, will help answer any questions.

Please turn to the second slide in the deck. Using data received from police services across Canada, we can examine trends in youth accused of police-reported crimes. Over the last 10 years there has been a substantial shift in the trends of youth accused by police. The rate of youth charged has dropped, while the rate of youth cleared by other means has increased.

In 2009, 45% of youth accused of a police-reported crime were charged or had charges recommended against them. The remaining 55% were cleared by verbal warnings, written cautions, referrals to a community program, referral to an extrajudicial sanctions program, or other means, including incidents where the complainant declined to lay charges.

Crime can be classified into two categories, violent and non-violent. As can be seen on slide 4, most crime committed by youth is non-violent. This has been a consistent trend over the last 10 years. In 2009, seven in ten youth accused of a crime had committed a non-violent offence. The rate of non-violent crime committed by youth in Canada has been decreasing over the last 10 years, while the rate of violent crime has remained relatively stable.

As the youth crime rate is predominately driven by non-violent crimes, the overall crime rate as reported by police services in Canada has also dropped over the last 10 years.

The top 10 offences shown on slide 5 account for approximately 80% of all police-reported offences committed by youth in 2009. Eight of the ten shown are classified as non-violent offences. The most common police-reported offence committed by youth in 2009 was theft under $5,000. This, along with mischief, assault level 1, and administration of justice violations accounted for about half of all police-reported offences committed by youth in 2009.

On slide 6 we turn to what happens once charges laid by police move into Canada's youth courts. In 2008-09, theft was the most common type of case completed in youth courts, followed by Youth Criminal Justice Act infractions, break and enters, and common assaults. These 10 most common offences shown accounted for just over 75% of total youth court cases in 2008-09.

The composition of cases completed in youth court is changing. We are seeing fewer cases involving less serious offences, such as possession of stolen property, and an increase in more serious offences such as robbery, major assault, and uttering threats.

Please turn to the next slide. Since the introduction of the Youth Criminal Justice Act, there has been a 23% decline in the cases completed in youth court. While there is variability in the magnitude of the decline in caseload, all provinces and territories have experienced a decline since the YCJA.

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

● (1645)

Turning to slide 8, of the approximately 58,500 cases heard in youth courts in Canada in 2008-09, 59% resulted in a guilty finding. In half the cases where the youth was found guilty, probation was the most serious sentence imposed.

As seen in slide 9, in recent years, the proportion of violent cases resulting in a custodial sentence has been declining, and in 2008-09 they were at their lowest recorded levels. All provinces and territories have experienced large decreases in both the numbers and proportions of guilty youth cases receiving custodial sentences since the first year of the YCJA. The use of custody has also decreased across all offence categories.

On the next slide, in 2008-09 the median length of custody for all youth cases in Canada was 36 days, compared with 30 days for adults. When split by violent and non-violent offences, we see that there is a difference in the median lengths of the custodial sentence imposed: 65 days for violent cases versus 30 days for non-violent cases sentenced to custody. By far, the median length of custody was the longest for homicide, at two and a half years, followed by attempted murder and sexual assault.

On any given day in 2009-10, about 835 youth, aged 12 to 17, were in sentenced custody, down 7% from the previous year and down 46% from 2003-04. In fact, the number has been declining annually since 1995-96.

Looking at slide 11, youth in remand outnumbered those in sentenced custody. In 2009-10, 53% of all young people held in custody on any given day were in remand compared with 35% in 2003-04.

Youth continue to spend fairly short periods of time in remand. As seen in slide 12, four of the eight jurisdictions that provided data in 2008-09 indicated that youth spent, as a median number of days, one week or less in custody. Since the implementation of the YCJA, the median number of days spent in remand has varied across jurisdictions. Overall, in 2008-09, 54% of youth released from remand had spent one week or less in remand. This proportion has fluctuated between 53% and 56% since 2004-05.

For youth there are operationally two levels of custody: open custody, which is less restrictive, such as a halfway house; and closed custody, which means secure facilities and would include detention centres.

As shown in slide 13, among the reporting jurisdictions, the trend in time spent in open and secure custody has fluctuated.

Once again, thank you for the opportunity to present to the committee.

● (1650)

The Chair: Thank you.

We'll begin with questions.

For the Liberals, Mr. Murphy.

Mr. Brian Murphy: There is a lot of information here, and I can't seem to see much correlation between what the statistics say and why we're amending the Youth Criminal Justice Act.

You talked about informing the bill. From 1998 to 2008, the non-violent cases as a percentage of guilty cases declined from about 30% to about 15%. That's quite a drop. These are cases that result in custody, right?

Ms. Julie McAuley: Yes, they are.

Mr. Brian Murphy: A youth commits an offence, is found guilty, and is sentenced to custody. We know, because we've just discussed what the bar for that is, what the judge must consider. We're seeing that non-violent cases resulted in a higher degree of custody than violent cases. Then in 2008-09, that inverses itself so that, as I would have expected, violent cases outstrip non-violent cases.

Can you explain why the two roles reversed? It would seem to me that violent cases would result in custody more often than non-violent cases. Is there an explanation for that?

Ms. Julie McAuley: All we can provide to you is the data. We wouldn't be able to provide you with the explanation underlying the data. What the graph is showing you is the trend in non-violent and violent cases that are sentenced to custody, over time.

We can look at that percentage and we can see that since 2003-04, with the implementation of the Youth Criminal Justice Act, the number of violent cases sentenced to custody has decreased. In 2003-04, it was that 21% of violent cases were in custody. We are now, in 2008-09, sitting at 17%.

Mr. Brian Murphy: I have a further question on this, about the whole graph for the whole period. I think I got my answer that the YCJA's implementation had an effect on this. I am a liberal arts major, so help me here. The percentage of guilty cases is 30% for 1998 and about 26%.... There are other percentages of guilty cases. How do you classify them? What's left after non-violent and violent cases?

And then, overall, you get about 55% of cases going to custody, and now, in 2008, you get down to something like 35% resulting in custody. There are fewer guilty cases that end up in custody in the 10-year period, first of all. I guess my primary question is, what are the other categories?

● (1655)

Mr. Craig Grimes (Chief and Advisor, Courts Program, Canadian Centre for Justice Statistics, Statistics Canada): The way the data have been organized for this chart is that all the violent cases would include homicide, attempted murder, robbery, sexual assault, other sexual offences, common assault, criminal harassment, uttering threats, and other crimes against a person.

The non-violent cases would include all the other offence categories, including other federal statutes, which would include CDSA offences. Everything else is in the non-violent category.

Mr. Brian Murphy: Go ahead.

Ms. Julie McAuley: If you look at the graph, on the left hand side the legend is showing it's the percentage of the guilty cases. If we look at that graph in terms of the percentage of the guilty cases, for violent cases, it's approximately 17% of all cases going before the courts, and if you look at the non-violent cases, it's approximately 15%.

Mr. Brian Murphy: Would it be going to court, or going to custody?

Ms. Julie McAuley: Sorry, it would be going to custody. Excuse me.

Mr. Brian Murphy: In 1998, 55% of guilty cases ended up in custody? No?

Ms. Julie McAuley: In 1998, if you add those two together, you would have slightly over 55% of cases where they are guilty being sentenced to custody. If you look at that trend over time, we are now closer to 35%, 37%.

Mr. Brian Murphy: Thank you.

I have remaining time to—

Mr. Craig Grimes: The overall percentage is around 15% going into custody. You're not simply adding those. You have to rework the percentages because we're talking about percentages.

Ms. Julie McAuley: The rest of those would have gone to probations, fines, and other things, when you take the entirety of all cases found guilty.

Mr. Craig Grimes: In 1998, 29% of guilty cases were sentenced to custody—that's either opened or closed custody—and that declined, up until the introduction of the YCJA, down to approximately 22%. For the first year of the YCJA, it was 22%—2003-04—and it's now 15%.

Hon. Marlene Jennings: Thank you.

Do I have more time left?

The Chair: Yes, a minute and a half.

Hon. Marlene Jennings: On two of your slides, where it talks about median number of days served by youth in remand and median number of days served by youth in custody, you state that some of the provinces are not included due to unavailability of data. Could you explain why there's no data from Quebec? That's one.

The second question would be this. In my understanding of the Young Offenders Act, at the time that that was in existence, of all of the provinces, Quebec had the lowest percentage of youth who were "judiciarized", brought before the courts. Once they were brought before the courts, there was a higher rate of incarceration, and at that time, with the Young Offenders Act, there was actually a lower rate of recidivism amongst Quebec youth. Was that the case? Secondly, given the statistics that you've shown here, I believe one of our previous witnesses, if not you, said that even today Quebec has a lower rate of recidivism under the YCJA. Is that correct?

Ms. Julie McAuley: I'll ask Ms. Kong to respond about the Quebec data.

I don't have specific information about Quebec and the recidivism rate in front of me, unless others brought it with them.

Mr. Craig Grimes: I can't comment on the rate of recidivism in Quebec, but I do have some statistics in front of me on the proportion sentenced to custody in Quebec and all provinces. In 1999-2000 the proportion sentenced to custody for guilty cases in Quebec was 23%. The national total was 28%. In 2008-09 in Quebec it was 12%, and the national proportion was 15%.

The Chair: Thank you.

We're going to have to go to Mr. Ménard.

[*Translation*]

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

Thank you for the effort you made to send us the statistics in advance. However, you seem to be using the latest versions of software available on the market. Unfortunately, I noticed that I did not have them. I nevertheless managed to open the documents after a number of tries. However, you'll see that there are differences between my version and the one here.

You've presented us with a lot of statistics to enable us to judge what happens once young offenders are arrested. I would have liked to begin at the beginning and have the youth crime rate in Canada and for each province. I know that police officers across Canada have a form that, I believe, is entitled the uniform crime report in which all the information on a crime is reported in the same manner. That's the first thing I expected to see. Is youth crime increasing or declining? I believe the reports made by police officers when a crime is reported provide a specific, although not absolute, idea of the crime rate. We don't have that. Would it be possible to get it and for the information to be spread over a longer period?

● (1700)

[*English*]

Ms. Julie McAuley: I will refer you to the crime *Juristat* that was provided to you with the materials that were sent out, the "Police-reported crime statistics in Canada, 2009". In there, at the end, a number of detailed data tables will provide you with time series information for the last ten years, looking at the total crime severity index, the violent crime severity index, and the non-violent crime severity for Canada in total, and also the crime rate in Canada in total. We also have specific information starting I think at table 7A, looking at the youth crime severity indexes,1999 to 2009, and following through with youth on a variety of information by province and territory.

[*Translation*]

Mr. Serge Ménard: When did you send that to us? This is the first time I've seen it. Is that the document you're talking about?

[*English*]

Ms. Julie McAuley: Yes. That information was released by Statistics Canada in July of 2010 through the daily publication. We brought this as a table drop today, but it is publicly available on the Statistics Canada website.

[*Translation*]

Mr. Serge Ménard: All right, but when did you send it to us? Was it today?

[*English*]

Ms. Julie McAuley: I would have to check with our parliamentary relations officer if it was sent in advance.

She's letting me know that the materials were sent last week.

[*Translation*]

Mr. Serge Ménard: In future, we'll have to check our means of communication because I haven't received it and that's precisely what I was looking for.

I see the article was written by Ms. Mia Dauvergne. Further to what Ms. Jennings asked you earlier, is it true that the youth crime rate is lower in Quebec than elsewhere in Canada?

[*English*]

Ms. Mia Dauvergne (Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada): If I could refer you to table 9 of that report, we do have information on the youth crime rate in Canada and it's broken down by province and territory.

[*Translation*]

Mr. Serge Ménard: What's the page number in the French document?

[*English*]

Ms. Mia Dauvergne: On the English copy it would be page 35. On the French copy....

[*Translation*]

Ms. Julie McAuley: It's just before the references at the end of the article.

[*English*]

Ms. Mia Dauvergne: Okay? And yes, you can see from that table that the youth crime rate in Quebec was the lowest in the country for 2009.

Ms. Julie McAuley: These data are only 2009; however, if it is of interest to the committee, we can provide this going back in time.

[*Translation*]

Mr. Serge Ménard: You could have given it to us, but you didn't.

● (1705)

Ms. Julie McAuley: I didn't have them with me today, but I can provide them to the committee if necessary.

Mr. Serge Ménard: You didn't provide us with any tables that would show us whether crime had increased by province or not.

[*English*]

Ms. Mia Dauvergne: There is a Canada total chart, which is available at chart 15, which is also toward the end of the report, but it is not specifically broken down by province and territory over the long-term period. But as Ms. McAuley said, we could certainly provide that to the committee.

[*Translation*]

Mr. Serge Ménard: I'd like to get that information, please.

[*English*]

The Chair: *Merci.*

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

Mr. Joe Comartin: I don't have any questions, Mr. Chair.

The Chair: All right. We'll go to Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I have seven minutes? I don't have enough questions; I'll share my speaking time with Mr. Dechert.

Ms. McAuley, I have a question for you. You provided us with some documents, and you explained them to us a little earlier before the committee. For example, on page 12, we have a table entitled: "Median number of days served by youth in remand, by selected province and territory". Is it appropriate to tell the people listening that this excludes Prince Edward Island, Quebec, Saskatchewan, Alberta and Nunavut? Do you agree that this table, which refers to remand, does not contain any figures for those provinces for 2008-2009? I would even say that you have no figures on remand for the period prior to 2008. Is that true or false?

[*English*]

Ms. Rebecca Kong (Chief, Correctional Services Program, Canadian Centre for Justice Statistics, Statistics Canada): No, we didn't receive data from those jurisdictions for 2008-09, but we do have data for prior years for these jurisdictions.

[*Translation*]

Mr. Daniel Petit: It's different in the table on page 13. We're talking about "Median number of days served by youth in custody, by selected province and territory". This is the most frequent case in Youth Court. As the note states, somewhat as in the previous table, this excludes Prince Edward Island, Quebec, Saskatchewan, Alberta and even the Northwest Territories and Nunavut. So you have no statistics for nearly half of Canada. Not only are you telling us you don't have the figures for 2008-2009, but you also have nothing for the period prior to 2008.

[*English*]

Ms. Rebecca Kong: No. For the ones that are excluded from this graph, as per the note, we didn't actually get data for them on this particular data point, which is the median number of days served. Some jurisdictions are not able to provide that piece of information. We rely on the information that they collect through their offender management systems.

We would be able to provide historical data for these jurisdictions, if that is requested. I don't have it with me, but we can provide it to the committee.

[*Translation*]

Mr. Daniel Petit: Ms. McAuley, you speak on behalf of Statistics Canada. You may have heard other people say that the amendments to the act would increase or potentially increase the number of incarcerations. In view of what you've presented to us and of the fact that this excludes Prince Edward Island, Quebec, Saskatchewan, Alberta, the Northwest Territories and Nunavut, how can we make a decision if we have no statistics indicating that there are more or fewer incarcerations or days spent in custody by young offenders? Can you provide that information to us for 2008-2009? You indicated at the bottom of the page that data were unavailable. How can I make a decision? Some people have told us in this committee that we would be increasing the number of incarcerations, while others have told us the contrary. And yet I checked and we don't have complete data for 2008-2009, and you don't have it either for 2006-2007. You don't seem to understand that we need you in order to make a decision, but we have no statistics to assist us. How do we go about finding them? Do you have any documents that would enable us to find them?

● (1710)

[*English*]

Ms. Julie McAuley: We work in collaboration with all of the jurisdictions across Canada in order to provide data to us. We have national data requirements, and we aim for all jurisdictions contributing data to a survey to meet those national data standards.

In some jurisdictions it is simply not possible for them to convert their data into our national data standards at this time. We are working with those jurisdictions to see what would be possible over time.

Ms. Kong may have something she'd like to add at this point.

Ms. Rebecca Kong: I'd like to also clarify that those particular graphs are addressing the question of time spent in remand and time spent in custody, for youth. As I said, that is something that some jurisdictions can't provide to us. If you're looking for information on how many youth are in custody and what the trend is, I would refer you to slide 11, which gives us information on the average daily counts.

We have seen that the average number of youth in sentenced custody on any given day has been declining. We have much better coverage for that information; it's only Nunavut who hasn't been able to provide us data for these years.

That coincides with the information that Ms. McAuley provided on the decrease of cases in youth court, as well as the use of custody. This slide 11 also provides the average daily count of youth in remand, if that's the type of information you're looking for.

Ms. Julie McAuley: I will also refer you to the youth court statistics, *Juristat*, which was provided to you. If you look on page 32, table 8, you can see the percentage of youth cases sentenced to custody since 2002-03. We have that information from the youth court survey going back to 1990.

The Chair: Mr. Dechert, one minute.

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

Just quickly, Ms. McAuley, can you tell us the percentage of young people between the ages of 14 and 25 that cohort—if I recall my demography terminology correctly—represents as a percentage of the total population of Canada? How has that been changing over the last 10 or 20 years, and certainly since 1999? I think most of your statistics are presented over that period.

I don't see that anywhere in these statistics.

Ms. Julie McAuley: I don't have that information in front of me. I would have to provide that percentage or proportion of the population to the committee afterwards.

Mr. Bob Dechert: Please provide that to us.

If I go back to the book by the demographer from the University of Toronto, David Foot, my understanding is that we may be in that bust period where we have less people in that cohort than we did at an earlier time. To a certain extent that would perhaps explain why we have a declining rate of youth crime.

Ms. Julie McAuley: I wouldn't be able to comment on that without the information in front of me.

As we do show the information by rate per hundred thousand population, we could look at the population trends for the 12- to 17-year-olds over time, but we could also look at the number of incidents that have come to the attention of the police for that group.

The Chair: Thank you.

Mr. Lee, for five minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I was sort of in the same envelope as Mr. Dechert. This data doesn't provide us any sense of outcomes for the youth involved. It's a statistical overview, and we're all, of course, very interested in outcomes, but that's another story. I just want to comment—and bring it to a very quick conclusion with a comment from you, if you have one—that since 1991, in the last 20 years, there has been this huge drop in the youth court caseload, a material drop in youth court cases and crime. All the data you're showing us shows a material decrease.

We're not sure why. Mr. Dechert says maybe the population in this cohort has dropped, but youth court cases have dropped from 95,000 25 years ago to about 58,000 in 2009. That is about half. I don't think the youth population has been cut in half.

There are a whole lot of people out there doing something right, or something huge is happening in society to get that kind of a trend line. Is there something else that you would be aware of, as statisticians, that could explain to me why that trend line is so precipitously down? We are interested in that.

The bill, in some context, is suggesting we have to focus on some deterrence and denunciation here for youth, when there is no evidence in the statistics that these factors are relevant at all, especially given the fact that the sentencing is down, the crime is down, the number of youth involved in court is down, etc.

● (1715)

Ms. Julie McAuley: I would refer you to slide 2 of the presentation, which looks at youth from 12 to 17 years old accused of police-reported crime by the type of clearance status. You will notice that it shows the rate per 100,000 youth in Canada from 1999 through to 2009. The reason we include a rate is to deal with any variations in the population, whether of those accused or of those who are victims, so you would be looking at a true measure over time of what was happening in terms of police-reported crime in Canada.

What you can see over that trend is that the number of youth who are charged, or for whom charges are recommended, has decreased over that time period while the rate of youth cleared otherwise has actually increased. Again, it is the rate we are showing here.

Mr. Derek Lee: What is meant by "youth cleared?"

Ms. Julie McAuley: I will refer you to slide 3 for that, which breaks down the statistics for 2009. "Youth cleared" is looking at verbal warnings, written cautions, referral to community programs, referral to extrajudicial sanctions programs, and other means. "Other means" would include such things as the complainant declining to lay charges or cases in which the youth may have died or is already incarcerated.

Mr. Derek Lee: So just a quick look at this chart 2 might show a slight decrease in crime among youth, if I can put it that way, but the rates of youth crime are not as precipitously down. Am I interpreting this properly, that between youth cleared and youth charged you still have about the same rate throughout the whole period?

Ms. Julie McAuley: What you are seeing here is the youth accused of a police-reported crime. If you would like to look at the youth police-reported crime rate, I would refer you to slide 4, which looks at the total of the non-violent crime and the violent crime, at the rate per 100,000 youths in Canada over time.

Mr. Derek Lee: I can see a slight drop in the non-violent crime.

Ms. Julie McAuley: What we can say is the youth crime rate over time has been dropping as a result of the changes in the non-violent crime, as seven out of ten crimes of which youth are accused in Canada are non-violent offences.

The Chair: Thank you.

We'll go to Monsieur Lemay for five minutes.

[*Translation*]

Mr. Marc Lemay: I have a document here entitled Police-Reported Crime Statistics in Canada, 2009.

Does it concern all crimes committed, both by young offenders and adults?

[*English*]

Ms. Julie McAuley: That report is our annual *Juristat* on police-reported crime in Canada. There is a section that talks about police-reported crime in general, police-reported crime for adults, and police-reported crimed for youth. So I would refer you...throughout the article there are references to the youth population and specific tables as well that include simply the youth.

[*Translation*]

Mr. Marc Lemay: Now I'm going to go to the document entitled *Youth Court Statistics 2008/2009*.

There has been a 23% decline in cases handled by the youth courts in Canada since 2002-2003. Is that correct?

● (1720)

[*English*]

Ms. Julie McAuley: Since the introduction of the Youth Criminal Justice Act, there has been a 23% decline in cases completed in youth court in Canada.

[*Translation*]

Mr. Marc Lemay: I know the question isn't for you, but rather the people opposite.

Why are we discussing an amendment to a bill when there has been a 23% decline? It's the same thing for violent crimes. According to the statistics on page 4 of the text entitled Background Statistics Related to Youth Criminal Justice in Canada, which you presented to us, I conclude that violent crime has remained stable. Is that what the red line means?

[*English*]

Ms. Julie McAuley: The violent crime is the red line. It has remained relatively stable in Canada since 1999.

[*Translation*]

Mr. Marc Lemay: On page 5 of *Youth Court Statistics 2008/2009*, it states: "In 2008-2009, nearly half of the cases with custody and supervision had terms of one month or less (48%)." Mr. Petit must be reassured since that includes Quebec. It includes all crime, including violent crime. Everything is there, Mr. Petit. It's It's unfortunate that you don't know how to read. You should go and see what's written on those pages.

[*English*]

Ms. Julie McAuley: That is all youth crime that came to the attention of the courts. So it is youth crime where an individual was accused and moved into the court system, and in 2008-09—that one fiscal year—nearly half of cases with custody and supervision had terms of one month or less.

Mr. Craig Grimes: That represents the most serious sentence for the most serious offence in the case, and each case can include multiple charges.

[*Translation*]

Mr. Marc Lemay: As a lawyer, I understood that this was about the most serious crimes. Page 25 is extremely interesting, with all due respect once again for Mr. Petit, who has not read it. In the statistical tables on youth courts on pages 25 and 26, we see that, between 2002 and 2009 in Quebec, as well as in the other provinces, there was a constant decline in cases completed in youth courts. That amounted to a total decline of 23.4% and cases involving violent crimes.

[*English*]

Ms. Julie McAuley: Could you let us know the table number you're referring to?

[*Translation*]

Mr. Marc Lemay: It's in the Youth Court Statistics for 2008-2009.

Ms. Julie McAuley: At the top of the page, which is it?

Mr. Marc Lemay: At the top, it's Table 1. Pardon me. These are Tables 1 and 2. There was a 23.4% decline between 2002-2003 and 2008-2009, including violent crimes.

[*English*]

Mr. Craig Grimes: That's correct. It includes all cases.

[*Translation*]

Mr. Marc Lemay: So all crimes are included.

[*English*]

Mr. Craig Grimes: It includes all cases—Criminal Code and other federal statutes. So it would also include CDSA offences and others.

[*Translation*]

Mr. Marc Lemay: What does CDSA mean?

● (1725)

[*English*]

Mr. Craig Grimes: CDSA is the Controlled Drugs and Substances Act.

[*Translation*]

Mr. Marc Lemay: It was really important for you to clarify that.

[*English*]

The Chair: Thank you.

We'll go to Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair. Thank you, ladies and gentlemen. It's good to see you again, Ms. McAuley.

The last time you were before our committee you presented to us on Bill C-54. The question I'm going to ask is relevant to the bill we're studying today. Your presentation included a topic called, "Most serious sentence in sexual assault cases in adult criminal courts, Canada, 2000/2001 to 2008/2009". It showed a stark increase in custodial sentences after approximately 2005.

My understanding is that the former Liberal government had instituted a number of mandatory minimum penalties for some sexual offences around 2005 or just prior to that. I'm not sure of the exact timing. Am I correct that there was a significant increase in custodial sentences? Perhaps you could let us know what you understand the costs of those increased custodial sentences to be. Were the projected cost increases of those custodial sentences presented by the former government at the time, which introduced this legislation in Parliament?

Hon. Marlene Jennings: I have a point of clarification. I have a question I'm sure Mr. Norlock will be able to answer. Were the minimum mandatory penalties instituted by the previous Liberal government for sex-related offences for adult crimes?

Mr. Bob Dechert: Yes, they were adult crimes. As I say, the reason—

Hon. Marlene Jennings: That's the only question. Thank you for the clarification.

Mr. Bob Dechert: I realize that from that perspective it's different. As we have discussed, there will be an increased cost to the taxpayer flowing from the provisions we're studying in Bill C-4, and I wanted to see the comparison.

Ms. Julie McAuley: That information refers to adult criminal courts. I don't have information in front of me for youth courts, which would inform the discussion of this bill. It is also the most serious sentence for "other sexual offences", not for "all sexual offences". "Other sexual offences" would include things like sexual interference, sexual touching, sexual exploitation, and luring a child through the Internet. There are a number of things included in there.

Mr. Bob Dechert: These are the types of things we're talking about in Bill C-4.

Ms. Julie McAuley: Exactly. For adult criminal courts, there has been an increase in the custodial sentence as the most serious sentence for "other sexual offences". I would not be able to comment on the cost of that custodial sentence.

Mr. Bob Dechert: Were the projected costs of that legislation provided to this committee at the time the legislation was introduced in Parliament?

Ms. Julie McAuley: I do not know.

Mr. Bob Dechert: I'd like to share my time with Mr. Woodworth.

Mr. Stephen Woodworth: I have information from a 2006 youth crime rate publication. It seems to say that in 2006 both the number and rate of youth aged 12 to 17 years accused of homicide reached their highest point since data was first collected in 1961. I would like to request information regarding the number and rate of youth aged 12 to 17 years accused of homicide in 1961, 2006, and at present, so I can compare them. Maybe I should include 1997, because the information I have suggests that the youth homicide rate rose 41% between 1997 and 2006. That will allow me to track it.

The information I have suggests that the violent crime rate among youth rose 12% between 1997 and 2006, and 30% since 1991. I wonder if I could get the violent crime rate for 1991, 1997, 2006, and today, so I can see if we're anywhere near getting back down to the 1991 level in violent crime.

● (1730)

Ms. Julie McAuley: Certainly, we'd be able to provide you with that information. I would refer you to page 33 of the *Juristat* article on police-reported crime statistics in Canada. Table 7b looks at overall police-reported crime from 1999 onwards. We would happily provide you with the information for the homicide rate. We will also provide you with the information on violent crime, and along with that we will provide you with the definition of violent crime, as it may have changed over time, given new introductions to the Criminal Code.

The Chair: Thank you, and my thanks to our witnesses for coming. We will have you back, I'm sure.

We stand adjourned.

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