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Chair

Mr. Dave MacKenzie

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● (0845)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call meeting number 7 to order. This is the Standing Committee on Justice and Human Rights and we are studying Bill C-10.

We have a panel with us this morning. I will reiterate to the panel that opening remarks are five minutes for any organization. When the questioning starts there will be five-minute rounds. In your opening address I'll let you know when you have one minute left.

If you wish to start, go ahead, if you've chosen a spokesperson.

[*Translation*]

Mr. Pierre Hamel (Director-Advice, Legal Affairs, Association des centres jeunesse du Québec): Good morning. My name is Pierre Hamel, from the Association des centres jeunesse du Québec. With me is Michèle Goyette from the Centre jeunesse de Montréal

Mrs. Michèle Goyette (Director, Special services and Services to Young Offenders, Centre jeunesse de Montréal - Institut universitaire, Association des centres jeunesse du Québec): Good morning.

Mr. Pierre Hamel: The Association des centres jeunesse is pleased to have the opportunity to make recommendations to the committee concerning Bill C-10.

The Association des centres jeunesse comprises 16 youth centres in Quebec. The work the youth centres do is governed by the Youth Criminal Justice Act and the Youth Protection Act throughout Quebec. At present, this means they provide psychosocial or rehabilitation services to 112,000 children, in relation to either youth protection or young offenders. The youth centres are parapublic entities under the jurisdiction of the Quebec ministère de la Santé et des Services sociaux and are funded by that department.

I would like to remind you of a particular feature of the Quebec situation. In Quebec, the directors of youth protection, who are responsible for protecting children, are also designated to act as provincial director within the meaning of the Youth Criminal Justice Act. About 13,000 people work in the youth centres, 900 of whom are dedicated to working with young offenders. This tells you how concerned we are with the administration of this act.

Mrs. Michèle Goyette: We would like to make four main recommendations to the committee today in connection with the part of Bill C-10 that relates to young offenders. We are hoping to see amendments made to four aspects.

The first relates to the amendment to paragraph 3(1)(*a*) of the Youth Criminal Justice Act. The principle of the proportionality of the sentence is introduced as the main principle. We think this is the wrong track. Whether it be for the victim of the offence or for society as a whole, the public is best protected by rehabilitating and reintegrating offenders. Advocating that the proportionality of the sentence take precedence does no service to either offenders or society. Clearly we are opposed to this change.

Mr. Pierre Hamel: Obviously, we hope to see a separate system for young people maintained, and we are pleased to see this incorporated in the bill. However, for it to be separate and stay that way, it must be dissociated from the principles of adult sentencing as much as possible. The Association des centres jeunesse therefore does not take a favourable view of the introduction of deterrence and denunciation as sentencing principles. Rather, we believe in measures based on the young person's risk factors, based on their needs rather than on deterrence and denunciation.

● (0850)

Mrs. Michèle Goyette: In fact, these principles have proved to be ineffective when it comes to young persons. This principle is not the way to achieve the objectives of rehabilitation and reintegration and thus the long-term protection of the public.

The third objective that we strongly oppose is lifting the ban on publication of the young person's identity. We work with young offenders every day who are making sincere and honest efforts to rehabilitate themselves, and we completely fail to see what society would gain if these young people were branded and stigmatized because their identity had been published in the newspaper. We are completely opposed to this part of the bill and we would like it to be removed.

Mr. Pierre Hamel: Our experience shows us that we cannot assume the young person's risk of re-offending from the nature of the offence, however serious it may be; nor can we assume that rehabilitation services will have no effect on them.

The final recommendation relates to adult sentencing. We are pleased to see codification of the decisions the Supreme Court has made. However, and again in the spirit of maintaining a separate system, we do not believe there is any need for Parliament to interfere in the exercise of the prosecutor's discretion. The prosecutor is in a position to do a case-by-case assessment of the possibility of adult sentencing. We believe the law regarding adult sentencing is working very well at present to ensure the long-term protection of society and identify young persons for whom the criminal justice system is not working.

As Quebec's experience shows, very few young persons are sentenced as adults, but the rigorous exercise done every time an application is made very clearly shows that there are no flaws in the present system in this regard.

Mrs. Michèle Goyette: That concludes our review of our four main objections to the bill.

[*English*]

The Chair: Thank you very much.

[*Translation*]

Mr. Pierre Chalifoux (General Manager, Parent Secours du Québec inc.): Mr. Chair, members of the committee, on behalf of Parent-Secours du Québec, thank you for having me here today.

My name is Pierre Chalifoux. I am the general manager of Parent-Secours du Québec, which advocates for the same rights and values as its counterpart in Canada, Block Parent Program of Canada.

I completely agree with the new bill, because we have to deal with the following points, the most important points in this Youth Criminal Justice Act: protecting the public by holding young persons accountable, promoting the rehabilitation and reintegration of young persons who have committed offences, and supporting the prevention of crime by referring young persons to programs or agencies in the community.

If we take the example of Parent-Secours du Québec, in doing our background checks, we have to check all family members aged 12 and over living at the same address before issuing a window sign, to prove that the home is safe and suitable for people in distress to go to so they are safe.

For that reason, and to dispel any doubt when a good conduct certificate is issued, it is crucial, both for Parent-Secours du Québec and for any organization that applies for one, to get an accurate and true picture of any young person. Before informing the public that a young person, whether or not they have become an adult, is beyond reproach, that they have no record of violence or assault and are fit to work with children or the elderly in centres or institutions, we have to have more than the "young offender" notation in their record when the checks are done, we also have to have specific information about their criminal record. That way, we will be in a better position to assess the risks associated with young persons who have committed offences.

We therefore believe that the youth criminal justice system must systematically inform applicants about any crime committed by the accused, regardless of age and what the charge was.

To conclude, I leave it to the committee to decide on the sentences applicable to offences. For the safety of the public, I only hope we will be given a better picture of any young person when background checks are done.

[*English*]

The Chair: Thank you, sir.

Professor Nicholas Bala (Professor of Law, Faculty of Law, Queen's University, As an Individual): Thank you, Mr. Chair, members of the committee. I'm pleased to be here. I'm a law professor at Queen's University and a father of four children. For over 30 years I've been involved in doing research around child and youth issues, both for young offenders and for children as victims, and for children as subjects of custody and access disputes.

I've been the observer of changes in Canada's legal regime, first with the Juvenile Delinquents Act, then the Young Offenders Act, and now our present legislation. I've been involved in writing about the acts. Some of my work is cited by the courts. I've been significantly involved in the education of lawyers, judges, probation officers, and police officers.

When I was preparing to come here today my 15-year-old daughter Elizabeth asked me what I hope to accomplish. I told her frankly that I was not optimistic about the committee making any changes. I think the process of the committee is somewhat rushed. I'm particularly concerned about the fact that youth and adult matters have been combined into one piece of legislation. I think there are good reasons for having young people, including in a legislative review context, dealt with separately from adults.

I am, however, here to help bear witness, if you wish, for those who are not able to speak for themselves, in particular for young people and also for the many professionals who work with you and who are concerned about these measures. I'm particularly concerned that they'll be both expensive and not improve the safety of society.

Finally, I'm here to help set out some markers for future assessment of this legislation. I'll talk about that in a moment.

In my view, there are some very good parts to part 4 of Bill C-10, but there are other parts that are affected really by what could be referred to as a politicization of response to youth crime or an ideological response, rather than one that is driven by either research or on-the-ground experienced professionals.

The Youth Criminal Justice Act has been in effect since 2003, and there are certainly some important changes that should be brought to the act. I think Justice Nunn did a very good job of identifying, after a lengthy inquiry in Nova Scotia, some important areas that need to be changed. I would submit to you that the present bill goes significantly beyond his recommendations, and I have therefore some concerns about it.

I think some of the changes are going to help slow down the youth justice process but will not have any effect on outcomes. There are other changes that I think will be potentially negative and may result in increased use of custody for non-violent young offenders without seeing a reduction in youth crime.

I have a brief that I know you have. It deals extensively with all the provisions. I'll be happy to answer questions.

My greatest concerns about the act, about the amendments, are the effects it will have on less serious offenders, non-violent offenders, particularly section 38, the introduction of deterrence and denunciation. While politically it may be popular to introduce these kinds of provisions, I think it is unwise. The reality is that young people who are committing offences are not considering the consequence of getting caught. They lack judgment and forethought, and inserting deterrence into the act will not change their behaviour. It will, however, change the approach of the courts. I think we have a unique opportunity with young people to attempt to rehabilitate them, to refocus their lives, often using community-based responses. It's important not to squander our resources by sending some young people unnecessarily into youth custody.

I'm also very concerned about the provisions around pre-trial detention. I would note that this is one area where actually Bill C-10 is significantly different from the previous legislation, Bill C-4. Bill C-4 provided that for young people committing violent offences, there would be greater possibilities for pre-trial detention. That provision has now been significantly expanded in this legislation. I think pre-trial detention is an enormously important concern, as I discuss in my brief and as is widely known. Young people who are placed in pre-trial detention are especially vulnerable, for example, to being recruited into youth gangs, and this may result in a spiralling increase in their offending.

Finally, I agree with my colleagues here that section 75, about allowing the publication of identifying information especially for any violent offence, is a very broad and unnecessary provision that will tend to slow down the process of the youth courts. There are certainly very real problems in our youth justice system. There's a lack of support for an engagement of victims. There's a lack of resources for prevention. There's a lack of use of restorative justice and community-based responses.

● (0855)

I worry, however, that this bill, in part, will increase the use of custody for less violent youth offenders, and as a result be a costly undertaking and not increase the protection of society. Certainly, this bill has some positive features, and one thing I'm pleased to see is that it retains significant discretion for youth justice judges and youth justice courts. I think as a result of the continued discretion—

● (0900)

The Chair: We're just a little bit over time.

We'll begin with Mr. Harris for five minutes.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair.

Thank you to all the witnesses for coming to join us this morning.

Professor Bala, I read your entire brief and I welcome your insightful comments on some of the issues. In particular, you've supported certain of the changes and recommendations and also proposed others. I suppose you did touch on deterrence as a problem in the sense of using individual deterrence as a principle of sentencing, and I think denunciation is related to that.

I was struck by one of your comments here, which was that, “studies show that the principle of 'deterrence' affects judges, but not youth”. That seems to me to be capturing a criticism of using deterrence as a method to deal with youth crime. Would you explain what you mean by that and how that affects this legislation and your recommendations?

Prof. Nicholas Bala: Thank you for the question.

I think there's no doubt that young people in some sense can be and need to be deterred from committing crimes so that if they think they're likely to be caught they will be less likely to commit offences. From a social point of view, the existence of the youth justice system obviously deters young people from committing offences. If they know they're going to be caught, they're less likely to commit offences. The concern is that when you add deterrence as a new factor, when it has not been in the current act, the message to judges is that they should be imposing longer sentences in the hopes of deterring future youth crime. It will affect judicial behaviour, and in particular sentences.

On the other hand, for young people, the possibility that if they get caught and convicted and sentenced and the sentence is going to be six months rather than three months does not affect their behaviour. The reality is that young people who are committing offences, unfortunately, because of their immature state, are not considering the consequences of what the sentence might be.

Similarly, in the United States, they used to think they should have capital punishment for young people, but it was not deterring youth crime. The United States Supreme Court in the case of Roper v. Simmons specifically addressed that kind of issue and said they were not going to have capital punishment for young people, specifically in part because of the fact that the young people were not going to be deterred.

Unfortunately, young people committing offences are not considering the long-term consequences, whether of smoking, of using drugs, or certainly of offending behaviour. Their behaviour can be changed. We can rehabilitate them. But imposing longer sentences will not change their behaviour. It will, however, result in more of them serving longer periods of time in custody.

For some young people, custody is appropriate or even necessary. I'm worried that we're going to be sending the wrong young people into custody for longer periods of time.

Mr. Jack Harris: Can you tell me, first of all, what the effect of that is?

Second, you talked about denunciation as an additional principle, but I believe you argue in this brief that denunciation is already really included when a judge considers the societal impacts of a particular individual criminal act. Could you elaborate on that?

Prof. Nicholas Bala: Yes.

I think there's a lot to be said, from a lay perspective, for wanting to hold young people accountable. The present act talks about accountability and societal values.

It's very important that young people know they're being held accountable. Indeed, if anything, I'd like to see more victim involvement in the process so young people can hear from victims what they have done.

If we add the word “denunciation”, as the courts have said, it means if you in Parliament are telling us to denounce this conduct, you presumably want longer sentences. We're already holding them accountable. That must be the message you're sending out there.

Again, I worry that it's going to affect the behaviour of the courts without affecting the behaviour of young people or changing society.

Mr. Jack Harris: You are also concerned about the change in the definition of violent crime, with regard to what is violent and what is not. You do explain it here and say that it's not defined in the Youth Criminal Justice Act but is able to be used by judges. Now the definition included here talks about endangerment of others without any element of knowledge by the individual.

Could you explain the problem with that and why that should be changed?

● (0905)

Prof. Nicholas Bala: I think there is some value to changing the definition of violent offence, and Justice Nunn, in his report in Nova Scotia, addressed that issue and did suggest there are cases where a young person might be endangering the public. There was a celebrated case, for example, where a young person was driving a car involved in a high-speed police chase and didn't hit anybody. They said that wasn't a violent offence because they hadn't actually injured anyone.

So I think some expansion of the definition is appropriate, but the way it's defined in this legislation does not suggest there's any requirement for a young person to understand or even have reasonable grounds to believe his conduct is endangering the public. I would like to see that added to the definition.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

The Chair: Just before you start, I should say that we do have one other witness coming, and she's been unavoidably detained. The clerk has gone downstairs to try to speed the process to get her through security. When she comes in, we'll give her an opportunity to make her opening remarks. We'll do it between rounds.

Mr. Robert Goguen: Okay, thank you, Mr. Chair.

First off, thank you to all the witnesses for attending.

[*Translation*]

Thank you all for coming.

My question is for Mr. Chalifoux.

You are surely aware of the report Spiralling Out of Control by the Honourable Justice Merlin Nunn.

Mr. Pierre Chalifoux: Unfortunately, no.

Mr. Robert Goguen: The report did an in-depth study of the youth justice system. It was the result of a commission of inquiry in Nova Scotia. It recommended that public safety be one of the primary objectives of the Act, to try to improve the handling of violent and repeat young offenders.

Do you support the idea of public safety being one of the fundamental principles of the Youth Criminal Justice Act? Could you address that issue?

Mr. Pierre Chalifoux: I do believe it is very important to have an accurate picture, as I was just saying, of any young person who applies to work with children, for example in day camps, or to get a position in a home where persons in danger could go for safety. We have to have an accurate picture.

Police services are not uniform in Quebec. Some services will give the complete picture, others no. They will do a more thorough investigation of the individual or young person.

In fact, if a young person aged 16 commits a crime, when they turn 18 their record is no longer valid. You will not see what happened. There will have to be a much more intensive investigation, unless things have changed recently. In that case, it will show only that the person is a young offender. So I think it is important that we, community organizations, be aware that the young person has committed a crime, and get a true picture of them. That way the public will be protected from any other crime that might result from violence.

Mr. Robert Goguen: The bill is based on a series of opinions and on consultations held throughout Canada and on decisions of the courts that considered the opinions of Canadians and Quebeckers and opinions of everyone with an interest in issues that have been put to us. Briefs were submitted and a number of discussions were considered.

Overall, the predominant message was that the Youth Criminal Justice Act was working well. However, there were questions relating to less violent young people who had problems with the law. There were still, from what we heard, parts to be improved, more specifically in terms of the way the system deals with violent and repeat offenders. I stress the question of violent and repeat offenders, and not all young offenders.

Do you think the amendments proposed in this bill would allow for improvements to the youth system in that regard?

Mr. Pierre Chalifoux: I do hope that it will protect all applicants. It is not of great concern to us if a person has committed public mischief: we will still issue the window sign or the consent for the good conduct certificate. You always have to assess the reason behind why the young person did what they did. You have to have information.

I am simply trying to point out that we always have to have an accurate picture. If the person is a repeat offender, we have to know. When I say "we", I mean police services have to be able to inform the applicants, us, about any crime the young person has committed.

That applies particularly if the young person is living in a home and has turned 18. Although they have turned 18, their record has to follow so there can be recommendations. They can work in another field. I would not want the young person to be penalized, because they have to be reintegrated into society. That said, we need to be able to reintegrate them into the right place, and not with children or the elderly, if they have committed violent crimes.

● (0910)

Mr. Robert Goguen: Retaining the records and providing the information to the relevant authorities is really important for protecting the public, isn't it?

Mr. Pierre Chalifoux: Of course.

Mr. Robert Goguen: Right, thank you.

[*English*]

The Chair: You still have one minute.

[*Translation*]

Mr. Robert Goguen: A few minutes ago, Professor Bala said that increasing sentences would not prevent recidivism. Do you agree with Professor Bala on that principle? Don't you believe that increasing sentences gradually would have a positive effect on recidivism?

Mr. Pierre Chalifoux: I don't believe that increasing sentences is the solution. I think it takes guidance. We have to try to guide the young person with psychologists, psychotherapists or resource persons. I don't think that increasing the sentence will solve the problem.

Mr. Robert Goguen: You put the emphasis on rehabilitation.

Mr. Pierre Chalifoux: On guidance.

[*English*]

The Chair: Your time is up, Mr. Goguen.

Mr. Cotler.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

I just want to say, Professor Bala, that I thought your brief was comprehensive and specific in reference to the present appreciation of the legislation as against the specific recommendations that you have been recommending here.

I would like, if I may, to ask you to maybe continue from where you had to adjourn, which was in mid-sentence. I believe you were referring to why this bill would move us away from a restorative and rehabilitative model of youth justice that is found in the present legislation to a more punitive one that would be more expensive, that would not result in greater public safety or protection of society, and that would impose additional costs on the provinces.

I think that's where you may have left off.

Prof. Nicholas Bala: Yes, and thank you for that opportunity. I was hoping for a one-minute signal, but I must have missed it.

The Chair: Sorry; I should have spoken louder.

Prof. Nicholas Bala: In any event, I do want to say that in regard to the deterrence effect, which is a very important issue, in my brief I review some of the literature. There's large literature on the effect of increasing sentences on young people.

Unfortunately, in a logical way, if young people were like adults, it might affect their behaviour. But the whole point is that they're not, and that's why it doesn't, in a nutshell.

I was suggesting at the end of my presentation—I'll just very briefly finish it—that this regime we have will continue to allow for significant judicial discretion. In that sense, I welcome the fact that it doesn't have minimum sentences, and so on, like the adults. I suspect we're going to see more variation by jurisdiction as a result of this legislation. However, we will see increases overall in the use of custody, in particular of pretrial detention and in particular for non-violent offenders. As a result, there will be increased costs and delay without any increase in public safety.

Certainly I hope to be here in four or five years to see the effect of this legislation. I think it would be great if the government's position were correct and we had a safer society as a result of this bill, but I fear, from the research we have—not only in this country but other countries as well—and from the experience of many juvenile justice professionals, professional wisdom is that this is, in significant measure, a step in the wrong direction.

I worry that we're actually going to be living through a fairly expensive social policy experiment. As a sort of researcher, I'll be here to see. Maybe the government is right, but I have serious doubts that it is.

Thank you.

Hon. Irwin Cotler: I'm wondering if you can comment, Professor Bala, on the whole question of the publication and its impact on youth.

Prof. Nicholas Bala: Our main point of comparison here is the United States. In a number of their jurisdictions they allow for wide-ranging publicity about young people.

Again, it satisfies certain public instincts to say that these young people, if we knew who they were, would be more likely to be accountable and less likely to offend, and we could take measures to protect ourselves if we knew they were back in the community.

The experience in the United States and I think elsewhere is very clearly that young people are not deterred by publicity. In fact, one of the things that happen is that if they get in the newspaper, a 15-year-old kid will hold up the newspaper to all his buddies and say, “See? I'm the tough guy.” They're not deterred by that.

I mean, a politician might be embarrassed if their name is in the newspaper in conjunction with a crime. A young person, unfortunately, is not. But once they're identified, their rehabilitation, and particularly their reintegration into society, will become much more difficult. It also, by the way, is difficult for their family, their siblings, and so on if they're identified.

So identifying them doesn't deter their conduct. It just makes their rehabilitation more difficult.

Also, if one thinks about, “Well, if it's a serious offence, if people knew who they were, then they could take steps to protect themselves”, the unfortunate reality....

There are, by the way, provisions right now that in the most serious cases, with the order of a youth court judge, it is possible to have identifying publicity if the judge is satisfied that there's a serious risk to the community. That's a very different kind of standard, though, from what's being proposed in this legislation.

● (0915)

The Chair: You have thirty seconds.

Hon. Irwin Cotler: Do you have some specific recommendations regarding rehabilitative or restorative justice approaches?

Prof. Nicholas Bala: One of the most effective things we can do in terms of helping offenders, and particularly victims also, is to have more emphasis on restorative justice. Certainly young people should be hearing from victims. The problem is, some young people who are committing offences don't appreciate the consequences of their acts. Hearing from the victims, providing more support for victims, and allowing them to hear from victims more than we do now would be an important change.

Largely, however, the legislation allows for this. We need the resources for things like conferencing, which is already in the act.

The Chair: Thank you.

Ms. Lacasse has joined us.

As the other panel members all had an opportunity to make a five-minute opening address, if you would care to do that, you can do it now. If you do, I will give you a warning with one minute to go that the time will be up. If you have an opening address, go ahead.

[*Translation*]

Mrs. Line Lacasse (As an Individual): Perfect.

Good morning to everyone here today.

I am Line Lacasse. With me is my husband, Luc Lacasse, who is seated behind me. We are the parents of Sébastien Lacasse, who was murdered on August 8, 2004, by a group of young offenders in Laval. Our son was only 19 years old.

Sébastien was stolen from us, torn from us, on August 8, 2004, with tremendous violence, by a dozen young people with no scruples and no respect for life. Life will never have the same meaning for us and for everyone who loved Sébastien. He was a lovable live wire, sensitive and loved by everyone. Feelings we had never experienced before rose to the surface: anger, rage, injustice, distress, a desire for revenge and fear. Now, we have to learn to live with his absence, his death, every day. The loss of a child is intolerable, particularly when he died so violently. What is the value of a life today? All of us here can all ask ourselves that question.

To add to insult to injury, the court proceedings were a real circus; we spent three years of our lives following these never-ending and very emotionally draining proceedings. But it was very important for us to follow all the stages of the trial in order to try to understand the incomprehensible and ensure that the murderers got a sentence that was proportionate to the seriousness of their acts.

Everyone around us, who went through our ordeal, from close up or more distantly, supports this new bill, one of the objectives of which will be to protect society.

The youth criminal justice bill, commonly known as "Sébastien's Law" in memory of our son and in honour of our determination, soothes our hearts. It is gratifying and reassuring to see that there is a government that is looking into this problem. I do not wish this kind of tragedy on anyone present here. I challenge any parent to go through that kind of ordeal and oppose this bill. I can assure you that if your son or your daughter were beaten to death and killed in such a violent way, you would vote without hesitation for this bill, which will, among other things, make it possible to punish murderers proportionately to the violence of the acts they commit.

I received a wonderful education, and my parents always told me that in life, we always suffer the consequences of our actions. The system currently in place sends young people the message that there really are no serious consequences for badly injuring or killing someone, and that violence is being trivialized. I therefore think it is essential to strengthen the Youth Criminal Justice Act.

We have to remember that this Act relates to serious crimes. It will ensure that an adult sentence is considered for young people who are at least 14 years old, 16 in Quebec, who commit serious violent crimes. We are talking here about murder, attempted murder, manslaughter and serious sexual assaults. That could be done without incarcerating them in adult penitentiaries, however. In fact, one of the goals of the bill is deterrence. And so it suggests more serious sentences for the most violent repeat offenders.

I would like to conclude by making you realize that the family serves a life sentence, when it loses a loved one in such a cruel and heinous way. To improve this justice system, let us take steps to avoid the spiral of violence, which destroys lives. Let us be respectful of life and let us have the ability to preserve everyone's safety by voting for this bill to come into force as soon as possible, to avoid the escalation of crime among our young people. Let us stop debating this bill and let us act.

Obviously that will never bring my son Sébastien back...

● (0920)

[*English*]

The Chair: One minute.

[*Translation*]

Mrs. Line Lacasse: ... but at least his death and his tragedy will have served a purpose for society.

Thank you for listening.

[*English*]

The Chair: Thank you.

Mr. Woodworth.

[*Translation*]

M. Stephen Woodworth (Kitchener-Centre, PCC): Thank you, and welcome, everyone.

I want to thank you in particular for being here today, Mrs. Lacasse. I know it is very difficult for you, but it is very important for us and for the entire country.

We know that your son Sébastien was beaten to death by a dozen young people in Laval, in 2004. You support our Bill C-10 and you say that at least his death will have served some purpose for society and also so that the young murderers will receive a sentence proportionate to the seriousness of their acts. You said that the family of a victim serves a life sentence.

One of the main objectives of the criminal justice system, including the youth justice system, is to protect the public. The government believes that in some cases, the public has the right to know whether a violent young offender has been released into the community.

Do you think the ban on publishing the names of young persons convicted of a violent offence has to be lifted?

Mrs. Line Lacasse: You're asking me whether their names must be disclosed?

Mr. Stephen Woodworth: Yes.

Mrs. Line Lacasse: Yes, I think it is important, because if you knew the person or you saw them walking around on the street, even if they were under 18 at the time, you would at lest know that they may be dangerous.

Excuse me, I'm a little nervous.

It might help people, to know that this person has done something previously in the past. It might help them protect themselves.

[*English*]

Mr. Stephen Woodworth: When the young persons who were being sentenced and dealt with in your son's case were before the courts, was it a worry to you about what they might do if they were released? Did that cause you additional disquiet?

[*Translation*]

Mrs. Line Lacasse: A lot. It worries me, right now, because exactly, one of the main accused is probably getting out soon. He is the main murderer, the one who stabbed my son. The others are all out. It is certainly worrying.

One or two years after his death, my other children—I have two other children with me—were often afraid because they ran into them all over. I can tell you that nothing could be done about that. It made my girl and my boy afraid; they were always looking behind them.

Yes, it makes me afraid and it frightens me to know that the main murderer is going to get out and he will be able to try to see us. Certainly that makes us afraid.

[*English*]

Mr. Stephen Woodworth: Would it be some reassurance to you to know that names were made public and others in the community would be able to be aware of where such persons were released? Would that have given you some small measure of reassurance?

● (0925)

[*Translation*]

Mrs. Line Lacasse: Yes, it would reassure me. I talk to people a lot who ask me the names so they can know who it is. Naturally, our part of the country is small, Fabreville and Ste-Rose. Everybody knows everybody else. Knowing who committed this serious crime, there may be young people who would not go and hang out with them, hang around where they are and all that. I think that is important. I would have liked young people to know, yes.

Mr. Stephen Woodworth: This Bill C-10,

[*English*]

our bill, targets and focuses on the 5% or so of young offenders who are violent and repeat young offenders who really do pose a threat to public safety. Do you think that prosecutors should be required to consider seeking adult sentences in certain cases?

[*Translation*]

Mrs. Line Lacasse: Yes. In certain cases, it is important because they are committing an adult act. I think that when someone commits a murder, commits a serious crime or a sexual crime, certainly ...

Excuse me, I lost the train of your question.

[*English*]

The Chair: Your time is up, Mr. Woodworth. We'll have to come back to that. Thank you.

Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair. Thank you, everyone, for being here.

I am trying to find a happy medium between protecting the public and fairness in sentencing, and so on. It is not always easy, and I don't envy the job of Crown and defence counsel and judges in these circumstances.

Professor Bala, you talk about the issue of seeking an adult sentence. I want to quote part of your brief, that you provided to us, and I would ask you to explain what you mean by the following:

> If the Crown decides not to apply for an adult sentence, then Counsel must inform the youth court that it is not doing so. This provision suggests a disrespect for Crown Counsel and a mistrust that they are properly exercising their prosecutorial discretion in violent cases. This amendment may place Crown counsel in the awkward position of having to put their refusal to seek an adult sentence on the record in every case, and adds to the complexity of the youth court process.

Can you explain why you say that?

[*English*]

Prof. Nicholas Bala: Yes, and I think there are clearly offences for which adult sentences are appropriate, and homicide would obviously be one of them. The act does allow for that, and it requires the crown to make a very difficult decision about whether or not to seek an adult sentence. In some cases that will clearly be appropriate. We have had other cases in which it may not be.

Sometimes the homicide, for example, involves another family member, and the crown may look at all the circumstances of the events and conclude, taking account of the age of the young person and the relationship with the victim, that it's not appropriate to ask for an adult sentence, and also that the circumstance is a first-degree murder as opposed to a manslaughter situation. In that circumstance I think we have to respect the role of crowns to say they're not asking for an adult sentence, as opposed to requiring them to explain to the court why they are not doing that.

I don't think it is an appropriate role for the justice system to be holding crowns accountable in that particular way. I think it's certainly appropriate for the crowns to be discussing the matter with the police, and indeed with the victims. In some provinces, like Ontario, legislation requires that victims are to be consulted. They're not to make the decision. Victims should have an important role, should have more support, should have more respect, but largely that's not going to come from legislation. That comes from training, resources, providing victim support workers, and that kind of thing.

I think we all feel profound sadness in hearing what happened to Sebastien. He is not alone. There are many victims of youth crime, including youth homicide. The question is not whether there are victims but what we should do that's going to be effective to make that kind of offence less likely in the future. We all imagine how you and your family have suffered, and are suffering and will suffer, but we have to think about what will actually make society safer as opposed to what we think...oh, that sounds like a good idea. We can see that other jurisdictions have tried some of these initiatives. We can publicize the names of all young people—that sounds like a good idea; it sounds as if it would increase public protection. But we can look at the experience of other jurisdictions where they tried it. They said actually this doesn't make society safer. It actually makes society less safe.

● (0930)

[*Translation*]

Ms. Françoise Boivin: It's just, in your recommendation on the definition of "violent offence" that is proposed in Bill C-10, you suggest that the idea of endangerment be added, even though the conduct itself was not intended to cause and did not cause bodily harm.

Your recommendation is as follows:

> The term "violent offence" should be defined to include cases of endangerment, but there should be an element of intent or recklessness, to take account of the limited foresight of youth; the words "young person knows or ought to know would endanger the life or safety etc..." should be added into sub (c) of the definition.

Can you explain what you mean by that recommendation?

[*English*]

Prof. Nicholas Bala: Yes. This relates both to the Nunn inquiry and to litigation in some cases across Canada. The present definition of violent offence actually requires an intent to do harm. I support the intent of the amendment. It comes out of the Nunn inquiry, among other places, to say that if a young person, for example, has been involved in a high-speed automobile chase involving the police and doesn't actually injure anybody, that could be considered a violent offence, and in appropriate cases there would be custody or pre-trial detention. That was the issue in the case that Justice Nunn was looking at.

However, this provision, in my view, goes beyond that as it does not require the young person to actually be aware of the fact that he or she is likely endangering the public. So while I support the amendment to violent offence to include public endangerment, my submission is directed toward making sure it's an appropriate definition. It would be my concluding—

The Chair: Your time is up.

Mr. Wilks.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you very much, Mr. Chairman.

My question is to Professor Bala with regard to restorative justice. Being involved in one of the first restorative justice programs in 1996-97, back in Sparwood, British Columbia, with Jake Bouwman and Glen Purdy, I saw the great benefits to first-time offenders being diverted from youth court into a restorative justice system.

For those who are put in front of the courts and are convicted, do you see a benefit to providing a segment of that restorative justice system so that part of the sentencing would also require the accused to go in front of the victims, in certain cases where the victims' families feel comfortable, to provide some form of explanation to the victims, even if they are convicted?

Prof. Nicholas Bala: I think what you did in Sparwood is a national inspiration. You did tremendous work there. I think having more situations in which young people actually hear from victims and hear in some cases about the tremendous damage they have done.... I would even sometimes consider this in some property offences. I think it's very important for offenders to hear about how people whose property has been damaged feel about that.

The problem, and this goes back to deterrence, is the way in which young people's brains develop. They have full physical stature but their brain is not fully developed. They don't understand the consequences of their acts, whether those acts are starting to smoke or unsafe sex practices, and in the context of violence, they often don't appreciate what it is they're doing to the victims. Sometimes that's why their acts are incredibly callous. So I think hearing from the victims is very important.

Actually, our present legislation does allow for that. It does allow for conferencing. For example, in Alberta we have the Calgary community conferencing model. The present act does have that kind of model of restorative justice. Many victims actually feel better about that than about going to court, or in addition to going to court. The reason we don't have it is not because of legislation; it's because of provincial implementation. Here in Ontario we don't have nearly enough resources devoted toward this kind of process of conferencing and engaging victims. If the issue is that we want to see changes in the youth justice system to have a safer society, I completely agree. The question is how we're going to achieve that.

In this context, is it a problem with the federal legislation, or is it how the provinces are implementing it? I think many of the problems that we see in the youth justice system are actually issues of provincial implementation, some of which have to do with resource issues, some of which, perhaps, are philosophical, and some of which have to do with the attitudes of professionals who've been in the system for a long time. So changing the attitudes of police officers, which is one of the things that happened in Sparwood, is really important, but it takes time to develop that, to get professionals to focus on the needs of victims as well as of the justice system.

● (0935)

Mr. David Wilks: Thank you.

The Chair: You still have one minute.

Mr. David Wilks: I defer my time.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you very much.

I had an opportunity to practise criminal law in Alberta for a period of time and to work with youths. I have to say, Mr. Bala, I'm very impressed with your credentials. I've had an opportunity to review them.

And my sympathies in relation to your diagnosis with cancer as well.

Certainly, you have some excellent publications.

In the legal system for youth, I did find that once the court got hold of them, they seemed to have a much better opportunity to rehabilitate. By that I mean that often the crimes they would commit would be against other youth; first of all, violent offences—I see you're nodding your head—and also property crimes, mostly break and enters, which obviously are detestable in the view of most people.

Don't you find that once they're in the court system itself, once they have been charged or received alternative disposition of some kind, they have a better opportunity to be dealt with by the experts that can deal with them? Often I found parents saying to me, “Please put them in the court system. I can't do anything with them. They're beyond control.” I see you're nodding. Don't you find at that stage, once they're in the court system, they have a better chance at rehabilitation?

Prof. Nicholas Bala: Certainly, if you're talking about the court, there are some young people for whom diversion to extrajudicial sanctions is going to be the most effective way of dealing with things. But if the case is more serious, even in the case of a first-time offender, let alone someone who is a repeat offender, the court can have an important role. But judges are not magicians either, so the question is, what we are going to do with them. Do we have the community-based resources, and in appropriate cases in custody, is there access to therapeutic services to turn them around?

We do—

The Chair: I'm sorry, the time has ended. Thank you.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Good morning. My questions are for Mrs. Goyette and Mr. Hamel from the Association des centres jeunesse du Québec.

Given that the Quebec model for administering the YCJA has demonstrated its effectiveness, and is even the envy of a number of countries in the world, with a crime rate among the lowest of all Canadian provinces, I would like to ask Mr. Hamel what the other provinces could learn from the Quebec model, in his opinion.

I would also like to ask Mrs. Goyette whether there was a serious consultation process before Bill C-10 was prepared, and if not, what would have allowed for that kind of process.

Mr. Pierre Hamel: Thank you.

As we said earlier, the Quebec model places considerable emphasis on compensation for victims. Under the extrajudicial measures system, about 5,000 young people are seen every year. We focus first on having the young person acknowledge measures to compensate the victims. At present, at the pre-decision report stage in the judicial process, we apply measures, meetings to open a dialogue—obviously only with consent—to enable victims who so desire to describe the effects, the harm and the damages they have suffered because of the young person's act, all of this also being with the goal of making the young person understand this and be accountable.

We think these measures are more constructive in terms of promoting the long-term protection of the public. The Quebec model involves more of a rehabilitation approach. It addresses the risk factors for recidivism on the part of the young person, after an exhaustive assessment of their situation, rather than based on the offence. Serious offences are sometimes committed by young people, but no matter how unspeakable the crime may be—in the case of the lady who spoke before, for example—some young people show significant chances for rehabilitation. Obviously, a majority of these do not involve serious crimes, but those chances are sometimes present even in the case of violent crimes.

We therefore think that focusing on the risk factors is more promising than focusing on the nature of the offence. Certainly, the sentence must be proportionate to the crime committed by the young person, but we think that focusing on the risk factors and the deficits present for the young person promotes long-term protection of the public in the long term. We can neutralize the offender in the short term, but if we do not tackle the factors that contribute to their criminal behaviour, we run the risk, when they come out of the youth centre, in the case of Quebec, that these issues will not have been resolved, that we will be facing the same situation.

I will let Mrs. Goyette expand on my answer.

● (0940)

Mrs. Michèle Goyette: To answer your question, I will say that in fact, when the Youth Criminal Justice Act was brought into force, it was promised, in a way, that a broad study of the results would be done after five years, and based on that we would see whether changes had to be made. To our knowledge, though, that broad study was never done in Quebec. There was a very piecemeal consultation. In particular, no study was done to determine whether what was brought into force had improved the situation or made it worse, and what approach should be taken to further improve protection of the public and rehabilitation of young people.

So I am not really certain that by toughening the previous Young Offenders Act, the Youth Criminal Justice Act has provided greater protection for the public. In addition, there is nothing to show that the current amendments will do that.

Mr. Bala has presented some very useful ideas about what experiences in other countries have produced. We have to base our decisions on probative data, and not just on common sense, before legislating. I think this consultation would have and should have taken place before continuing with the process of Bill C-10.

Mr. Pierre Jacob: Thank you, Mrs. Goyette.

You talk as well about the Association des centres jeunesse du Québec in your brief. You say we have to maintain a balance between protecting the public and rehabilitating young people. You also talk about measures that it would be worth investing money in to promote prevention and victims. Tell us about that.

Mrs. Michèle Goyette: In fact, we say that protecting the public and rehabilitating young offenders are not opposing principles. On the contrary, rehabilitating young offenders protects the public in the long term. These rehabilitation measures range from prevention to intervention for the most serious cases, and they have to be adapted to each young person's situation and needs. For example, extrajudicial sanctions were mentioned a few minutes ago. These are very effective measures. The young people who go ...

[*English*]

The Chair: I'm sorry, the time is up.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

I want to ask a couple of question of the Association des centres jeunesse du Québec. Unfortunately, it's going to be in English, because my French is not up to what it should be.

You made a number of points, in one of which you state that denunciation should not be part of the criminal justice system. What I find interesting is that we often talk about not wanting to fetter a judge's discretion. Many people who have come here to this committee have said we should not have mandatory minimum sentences, because having them takes away a judge's discretion. From my review, adding denunciation is just giving a judge another tool to use discretion in certain cases.

With that in mind, many of us here in the greater Toronto area remember the case of Stefanie Rengel, who was murdered in a plot between a boyfriend and a girlfriend. The girlfriend was jealous of what she thought was some flirtation going on with her boyfriend. They plotted this murder, and she was stabbed to death in front of her parents' home. I don't understand how you can say that denunciation of a crime like that should not be considered by a judge.

Can you please comment on that?

[*Translation*]

Mr. Pierre Hamel: In fact, we are sending the wrong message with denunciation. We are sending the message that it will have an effect. Professor Bala explained this clearly, and I won't repeat his comments earlier about the impact of deterrence and denunciation. So the idea is that the belief that denunciation has effects has no basis. Imposing a harsh sentence will not deter other young people from committing offences.

We think the existing law allows the court to impose a sentence that is entirely harsh enough, and this allows for denunciation. Denunciation takes place in the exercise of determining a sentence that is proportionate to the crime and that takes into account the risk factors associated with the young person. Beyond that, it is punishment.

We think a young person is a developing individual who can change their behaviour, and we are telling you that denunciation serves no purpose. This is the wrong message to send, because it give the public the impression that they are better protected, when they are protected only by a variety of measures, ranging from prevention to the right measure applied to the right young person.

That is why we say that focusing on serious crimes and situations is the wrong track, because the seriousness of the offence is not necessarily a predictor of the risk of the young person re-offending. These beliefs have no basis. In our experience on the ground, we know that this has no impact on young people who commit crimes on impulse, who give in to the magical thinking that they will not get caught. That is what a lot of adults do too, you will say. But it is more the case for young people.

All these measures will never produce the expected results. Rather, targeted, individualized intervention with the young person, based on the factors that characterize their situation, will protect the public in the long term, rather than considering the offence they have committed. We can neutralize the offender for a period of time. But beyond short-term neutralization, our aim is to ensure that they will not commit more crimes when they get out. That has to be done by imposing a sentence, not that denounces, but that genuinely targets the risk factors associated with that young person.

● (0945)

[*English*]

The Chair: I'm sorry, but the time has elapsed for the panel. One hour was scheduled. We've gone a little bit over. We started a little bit late.

I want to thank the panel for being here today and for giving us your views.

We'll take a two-minute break and reconstitute another panel.

● (0945)

(Pause)

● (0950)

The Chair: We'll call the meeting back to order for the second hour.

I will tell the panel that each group has an opportunity to make a presentation of five minutes in length. I will let you know at the four-minute mark that you have one minute left. The question and answer sessions are five minutes each, and I know most of you were here and saw that five minutes goes by fairly quickly.

In addition to the panel that's here, we're joined by Mr. Comras, via teleconference from Florida. He appears on the monitors on each side of the room.

Welcome, Mr. Comras.

We'll start with the panel that's here. If you wish to make an opening address, go ahead. I will cut you off at the five minutes, but the members of the panel here can ask you to complete it during their time.

Ms. Basnicki.

Ms. Maureen Basnicki (Founder Director, Canadian Coalition Against Terror): Thank you, Mr. MacKenzie.

My name is Maureen Basnicki and I am a co-founder of C-CAT, the Canadian Coalition Against Terror, which represents terror victims from across Canada.

About six weeks ago I marked the 10th anniversary of the murder of my husband Ken. Ken had been on the 106th floor of the north tower of the World Trade Center on the morning of 9/11. On that morning, I watched the tower and my life as I had known it collapse on TV while sitting in a hotel room in Mainz. I was there on a layover in my capacity as a flight attendant for Air Canada, and it was on that terrible morning that my long journey to this committee hearing began.

I would like to thank you all for giving me the opportunity to be here today and to express my support for the Justice for Victims of Terrorism Act, recently introduced as part of Bill C-10, Safe Streets and Communities Act. It has now been seven years since C-CAT initiated the campaign for the passage of this type of legislation. During this time, no fewer than 10 such bills were introduced in the House of Commons and the Senate, with Bill C-10 being the most recent iteration. C-CAT looks forward to the passage of the eleventh and final version of this bill within 100 sitting days, as promised by the government.

I am testifying today on behalf of Canadians who are victims of terror and on behalf of Canadians who are not yet victims of terror. I am here because it is a fundamental right of every Canadian, of every person, not to be a victim of a terrorist attack. JVTA speaks precisely to this right. If this bill is effective even once in deterring a terrorist attack, it will have served its role in safeguarding that right. It will have been worth the thousands of hours of effort invested by Canadian terror victims in getting this measure passed.

But while C-CAT believes that this legislation has great potential, we are also of the opinion that certain provisions in the JVTA must be amended to ensure that the bill meets its stated objectives of providing justice for victims and accountability for those who victimize them. While C-CAT has consistently advocated for a more comprehensive list of changes, the document we will be distributing to the committee lists only four proposed amendments. We believe these changes are the minimum required to enable the legislation to be effective in deterring terrorism and most applicable to the greatest number of Canadian terror victims. These proposed amendments are based on Senator Tkachuk's private member's bill, which was the precursor to the government's current version of the legislation. The senator's version of this bill has broad support and was endorsed by many experts who testified before the Senate in its favour.

While it's difficult for me as a non-lawyer to describe the amendments, I am summarizing them because our advisors have said they are vitally important.

Number 1, cases against foreign states brought under the new bill will primarily involve acts outside of Canada, and the only connection to Canada in these cases will be the Canadian citizenship or permanent residency of the victim. However, due to recent court rulings, our lawyers have concluded that it's likely that citizenship or permanent residency will not be sufficient to establish a real and substantial connection to Canada, which the bill states is necessary for a case to go forward. It is entirely possible, then, that the vast majority of actions will be stopped on jurisdictional grounds, completely undermining the most basic intent of the bill. It is therefore essential that the legislation ensure that a person's Canadian citizenship or permanent residency status be enough to establish a real and substantial connection to a Canadian jurisdiction.

Number 2(a), the government bill presently allows civil suits only against foreign states that have sponsored a listed terrorist entity but not for directly committing a terrorist act.

● (0955)

The Chair: One minute.

Ms. Maureen Basnicki: This would mean that in a case like Lockerbie, where Libya used its intelligence services to blow up the plane, Libya could not be sued, but if Gadhafi had decided to use one of his terrorist proxies, Libya could be sued. It's somewhat nonsensical. C-CAT proposes that the bill be amended to allow suits in a Lockerbie type of case, but only if the country is listed as a terror-sponsoring state and there's been a judicial determination that the state in question should have its immunity lifted for sponsoring a listed terrorist entity.

Number 2(b), the government bill currently allows for a foreign state to be sued only if it provides support to a listed terrorist entity. C-CAT therefore seeks to amend the government bill to allow foreign states to be sued for providing support to a terrorist group that is not a listed entity, provided that the unlisted entity is acting at the direction of or in association with a listed entity.

● (1000)

The Chair: Thank you. The time has gone.

Ms. Maureen Basnicki: The time has gone?

The Chair: Yes.

Ms. Maureen Basnicki: Okay.

I would just like to thank everybody and include three more things.

The Chair: We'll have to come back. Sorry.

Ms. Maureen Basnicki: Okay. I will when I come back, then, because these are legal matters that must be attended to.

As a Canadian terror victim representing others who have suffered similar tragedies, I ask that you support this bill and our proposed amendments. It is a very Canadian response to a brutal threat that has yet to claim its last victim.

The Chair: We have to end there.

Ms. Maureen Basnicki: Okay.

The Chair: You may get an opportunity to finish. Just mark your spot.

Ms. Maureen Basnicki: Thank you very much.

The Chair: We'll go to Ms. Stoyles.

Mrs. Jayne Stoyles (Executive Director, Canadian Centre for International Justice): Distinguished members of the committee, I want to thank you for the opportunity to speak to you today about part 1 of Bill C-10, the Justice for Victims of Terrorism Act.

I am the executive director of the Canadian Centre for International Justice, which is based here in Ottawa.

CCIJ is a charitable organization that works with survivors of torture, genocide, and other atrocities to seek redress and to bring the perpetrators of these crimes to justice. I am a lawyer, and I previously directed the global campaign, based in New York, to establish the International Criminal Court.

I want to say first that I think it's very positive that Parliament is considering creating a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters, as part 1 of Bill C-10 would do. Victims of such serious violations of international law as terrorism need recognition, support, compensation, and other forms of redress. I know that the families of those killed in the Air India bombing and those who lost family members in the September 11 attacks in New York have waited for many years to have a bill passed that will allow them to seek redress from those responsible for acts of terrorism.

I also believe firmly in the possibility that at least some of those who plan and carry out such horrific acts of violence can be deterred if it becomes likely that they'll be held responsible in a court of law. Those dual goals of allowing victims to seek redress and deterring future atrocities of this magnitude are at the heart of a global trend towards creating and using mechanisms that allow foreign governments, and even their individual officials, to be held responsible in courts of law.

With that general statement of endorsement for the goals behind the Justice for Victims of Terrorism Act, I'll focus my remarks on the sections that seek to amend Canada's State Immunity Act so that the act cannot be used to shield foreign governments and their agents from lawsuits for terrorism.

There are three key points I want to put forward today. The first is that I think it's entirely appropriate, and indeed overdue, for the State Immunity Act to be amended in this way. The second is that I am aware of one major concern about the approach to this amendment, which I'll discuss. And the third is that it's also important that Parliament pass a similar amendment to the State Immunity Act, in this bill or in a parallel piece of legislation, that would allow victims of the equally serious act of torture to pursue those who harm them.

First, with regard to the proposed amendment to the State Immunity Act for acts of terrorism, as I said, it's entirely appropriate to do this. The principle of state immunity generally prevents the courts of one nation from sitting in judgment of another country's official or sovereign actions. Today, however, most nations acknowledge that they should not be immune from everything, particularly when they are engaged in activities that are contrary to international law and therefore cannot be said to be within their sovereign powers.

Canada's State Immunity Act, passed in 1982, reflects this restrictive approach to immunity, as it sets out exceptions for which immunity will not be granted. For example, foreign states are not immune from civil liability for commercial activities, nor are they immune for any death, bodily injury, or property damage that occurs in Canada. These exceptions were included because the underlying activities are not deemed to be within the sovereign powers of the state.

My second point, having endorsed the idea of amending the State Immunity Act in this way, is that I am aware that both academics and lawyers who work in this area believe that it's not appropriate to have a list of foreign states that can be sued for terrorism that is established by the government. Rather, they believe it should be up to a court of law to determine when responsibility for terrorism should be assigned.

My third and final point is that it's absolutely essential that Parliament pass a parallel amendment to the State Immunity Act for torture, war crimes, crimes against humanity, and genocide—

The Chair: You have one minute.

Mrs. Jayne Stoyles: —which, along with terrorism, are considered among the most serious violations of international law.

I know that you're all familiar with the case of Zahra Kazemi, a Canadian citizen who went to Iran in 2003 with a permit to take photos. She died of the extreme torture to which she was subjected after having been imprisoned. In the seven years since her death, no one has been held accountable.

There are other examples of Canadians being brutally tortured and killed in other countries and their families being left with no opportunity to seek some form of redress. They cannot get justice in the country where the crimes were committed, and they cannot seek justice in Canada. In fact, as has happened in the case being brought by Zahra Kazemi's only child, Stephan, the Government of Canada ends up on the wrong side of the courtroom, with those responsible for torturing a Canadian citizen arguing against justice because of the State Immunity Act.

In the hierarchy of international law, the prohibition against torture is at the top. It is the international equivalent of a constitutional norm. It binds all nations, and as a result, torture is not an act for which Canada should be providing immunity.

● (1005)

The Chair: Thank you.

Mrs. Jayne Stoyles: Thank you very much.

The Chair: Mr. Gillespie.

Mr. Paul Gillespie (President and Chief Executive Officer, Kids' Internet Safety Alliance - KINSA): Thank you very much, Mr. Chair.

Ladies and gentlemen, my name is Paul Gillespie. I'm the president of the Kids' Internet Safety Alliance, KINSA. I'd like to speak for a moment or two on part 2, regarding amendments to the Criminal Code and issues in relation to children and the child exploitation that occurs on the Internet.

KINSA helps to protect, rescue, and heal child victims of abuse whose images are shared on the Internet. We accomplish this by helping to train police officers from developing nations on how to be better cyber cops, basically.

We have to understand and get our heads around the fact that this is basically community policing. We have one global community of offenders and we have one global community of law enforcement officers. Unfortunately, there are many more bad guys than there are good guys out there.

It is extremely expensive to hire a police officer in Canada and ask him to be a cyber cop in Canada, because that's just not possible. So we help to train officers who are already cyber cops in places such as Poland, Romania, Brazil, Indonesia, and Africa. We give them the final tools to add to their arsenal so that they know exactly how to investigate these specific offences and thus make a difference in the lives of children. One of our trainees from Brazil was involved in the identification and rescue of ten children down in Tracyville, New Brunswick, and the arrest of a fellow by the name of Michael Gary Gilbert.

We need to understand this global community. The reason I bring this up is that the new offences involving offenders who communicate with each other for the purpose of abusing a child or who conspire to abuse or teach each other.... This is a very common occurrence on the Internet. As these global networks of criminals are now more exposed as we have more law enforcement officers working together cooperatively with Interpol, the FBI, and the RCMP, this is a very important piece of legislation that will allow us, as more intelligence comes in, to have a greater effect on keeping children safe and identifying the offenders and learning more about their methods.

Overall, on behalf of KINSA, Kim Chisholm and I would like to say that we absolutely support this legislation and the direction the government is moving in. Anything that can be done to help keep children safe is simply a good thing.

That's all I have to say. Thank you.

The Chair: Thank you very much.

Mr. Comras, I appreciate your waiting for us. If you have an opening address, please go ahead.

Mr. Victor Comras (Attorney at Law, Comras and Comras, PA, As an Individual): Thank you, Chairman, for this opportunity to present views again on this important counter-terrorism legislation.

I first spoke to a parliamentary committee on this legislation some three and a half years ago. At that time I expressed my strong support for holding the perpetrators of terrorism and those who knowingly provide them material support, including state actors, accountable to the people of Canada and to the victims of terrorism. Such legislation, I believe, would act as a strong deterrent to those considering supporting terrorist groups, and it gives a long overdue recognition to the rights of the victims of terrorism by affording them a real recourse to hold those who employ and support terrorism responsible.

The proposed legislation has varied in certain respects since I first testified, and the exemption from sovereign immunity has been somewhat narrowed. It now would apply only to countries that have been listed by the Government of Canada as state supporters of terrorism. Frankly, I would have preferred to see an exemption more broadly applied to any state engaged in providing material support to known terrorist groups, particularly when realistically no other recourse to justice was possible. Even so, I believe that the passage of Bill C-10 now is very important and will constitute a real step against terrorism.

It would also be a welcome step to providing justice to the victims of terrorism. Last month’s tenth anniversary of 9/11 served as a poignant reminder that so many have suffered from the hands of terrorists. It also stirred broad reflection on the progress made and the steps that have to be taken still to quell international terrorism.

And there is so much still to be done. According to a recent U.S. National Counterterrorism Center report, there were more than 11,500 terrorist incidents last year alone, resulting in more than 13,000 deaths, 30,000 wounded, and 6,000 hostages.

While the vast majority of these attacks were concentrated in Afghanistan, Iraq, and Pakistan, terrorist incidents have been reported in more than 70 countries during that year. The consequence of these attacks continues to cause staggering casualties, security implications, and costs worldwide. The fact is that we can't afford even a second here to let down our guard.

We know that terrorist organizations rely heavily on financial and material support from certain states, entities, and individuals who condone and support their cause. That's why we have promulgated so many laws, regulations, international conventions, and UN Security Council resolutions to outlaw and suppress such support.

Despite these efforts, we have not stemmed the flow of funds, nor have we held those responsible accountable. Much of the funds are garnered from countries that lack the political resolve or the wherewithal to stop this flow. We must face up to the fact that it is not viewed as illegal in many countries today to continue to fund terrorist organizations, even groups linked to al Qaeda. Yet in the global environment in which we now live, the effects of these lapses can and do have major consequences for our countries and our citizens.

The United States has been among the most active in ferreting out those who provide funding for terrorism and trying to put them out of business or behind bars, whether they are in the United States or overseas. In order to protect our national security and our citizens, we have passed legislation that extends well beyond our borders, and we've used our extensive leverage over international financial institutions to dissuade them from providing a conduit for terrorist funding. How can we combat terrorism effectively if we do anything less? To my knowledge, we are still the only jurisdiction where victims of terrorism are able to hold those who finance terrorism accountable.

Our experience has shown that the risks that such civil tort or tort-like litigation poses to foreign entities and international financial institutions have done much to foster much greater compliance worldwide with our counter-terrorism norms. The cases brought under our legislation have proved to be workable, and the utility of permitting such civil litigation against terrorists and against providing them material support has produced results. They have produced also a body of jurisprudence that has served to delineate and address many of the complex issues involved.

● (1010)

Perhaps the most difficult issue to be addressed here is the question of sovereign immunity. It's ironic that in the global environment we live in today we have already seen fit to place large exemptions from sovereign immunity on a state’s commercial activities, but we are still so hesitant to do so when it comes to their flagrant violation of international law and conventions.

You have a chance here, Mr. Chairman, to begin to rectify this anomaly. In the legislation you are considering today, I believe it will be a major step in the direction of holding those who fund terrorism accountable, including state sponsors of terrorism.

The Chair: Thank you, sir.

Mr. Victor Comras: If you pass this legislation, you will be adding significantly to our arsenal for combatting international terrorism.

Thank you, Mr. Chairman.

The Chair: Thank you very much.

We begin with Mr. Harris.

Mr. Jack Harris: Thank you, Chair, and I want to thank the presenters for giving us their presentations and insight.

I want to start by asking Ms. Stoyles, who suggested that, in addition to the terrorism, what's missing here is the notion of torture by states, and I noted that you indicate in your brief that you don't see this as opening the floodgates because there would have to be a connection to Canada.

I'm not sure how that would fit into the terrorism situation. The connection with Canada could be someone who received refugee status and is now a Canadian citizen and wants to sue the state that carried out the torture against that person. Would this be something that you would see as being valid, or the family of someone whose child or relative in Libya, Sudan, or Syria was tortured by the state—or Turkey, for that matter? Is this something that you would foresee as plausible and practical, particularly with our country lists notion that is contained in the bill?

● (1015)

Mrs. Jayne Stoyles: Thank you.

I didn't get a chance to get to those points in my brief.

My point about requiring a real and substantial connection to Canada is to address the question that is sometimes raised. If we open the doors to survivors of torture in Canada, or terrorism for that matter, will that not open the floodgates for many cases to go forward?

When a civil case is brought in Canada, of course, there is a requirement that there be a real and substantial connection to Canada. I do think that perhaps being a family member of a victim could be sufficient to satisfy that. What's important to know is that there's an additional check, which is that you can provide a challenge to the case going forward in Canada if there is another forum that is better for the case to proceed, because victims and witnesses are there; there's a functioning judicial system.

I didn't have a chance to say that in fact there was a bill to do this that was proposed as a private member's bill by Irwin Cotler. It had the support of an MP from each of the other federal parties. I've provided you copies of Bill C-483. It provides an additional check, which is that all of the available remedies in other countries must first be exhausted.

There are quite a number of checks in terms of limiting the number of cases that go forward. I think it would be entirely appropriate to include it here, although I would be very concerned—even more so—in the case of human rights claims, about having a predetermined list of countries because of changing circumstances. Given the need to apply principles of law, it is much more appropriate for a court to determine when those acts have been committed.

Mr. Jack Harris: Thank you.

I'm going to Mr. Comras. Can you help us here?

You talked about it being workable with results, for example, in the United States. Of course, the United States is the only country with such legislation, but when I read about the fact that the lists have been changed by the State Department on numerous occasions —North Korea is removed, Libya was removed in 2006, and I believe Iraq, for various reasons to suit the American foreign policy of the day.

How do you see it as being effective, with the exception, I suppose, of the pressure it may have put upon Libya to settle the lawsuits for other reasons? Can you give me examples of the effectiveness of legislation in the United States?

Mr. Victor Comras: Yes, I'd be glad to.

The legislation is broad. It applies not only to states but also to terrorist groups and those groups that provide material support. Of course, the sovereign immunity exemption doesn't apply to many of those defendants in these cases, and in such cases we have successfully put out of business a great number of entities, non-government organizations and others, that have been involved in the financing of terrorism.

In addition, we certainly dissuaded a great number of institutions from engaging in questionable activities and have significantly increased the compliance worldwide by international financial institutions, which really are very concerned about the possibility of being brought into a court as a conduit for providing material support to terrorists.

With respect to the sovereign immunity issue, I would agree with you, the arrangements we have in the United States are not serving their purpose. It's too political an issue to list a country specifically as a terrorist-supporting organization and then to have it removed.

It seems to me the act speaks for itself. That's why I've been a strong proponent here in the United States and internationally of the concept that sovereign immunity should not apply to countries that so clearly violate the norms of international behaviour. Where terrorism is concerned, it's very clearly now part of our customary international law that those involved in terrorism are acting outside the purview of acceptable international conduct.

● (1020)

The Chair: Thank you. Your time is up.

Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

I think Maureen Basnicki had something to add to her statement.

Did you want to complete your statement, Ms. Basnicki?

Ms. Maureen Basnicki: Yes. Thank you for the opportunity.

There are two more points to the amendments that I think are absolutely necessary.

Number 3, if a foreign state funds a terrorist body that commits a terrorist act–-it is usually impossible to prove that those specific funds caused a specific attack; thus, it is very difficult to establish causation, a necessary element of successfully suing terror sponsors. Therefore, C-CAT proposes that a deeming provision be added that establishes clearly that supporting a terrorist entity will make one liable, even if you can't prove that this specific dollar bought that specific bullet.

Number 4, states successfully sued should not be able to shield assets through instrumentalities or proxies they direct or control. In order to increase the effectiveness of the proposed legislation, we recommend expressly referencing these types of legal entities. Since the ownership of many private companies is not publicly disclosed, we also suggest adding a provision enabling the government to assist, to the extent that is reasonably practical, any judgment creditor in identifying and locating the property or any agency or instrumentality of the foreign state. This would potentially be of invaluable assistance to victims, but within carefully crafted limitations.

Mr. Robert Goguen: Thank you.

Ms. Maureen Basnicki: You're welcome. Thank you.

Mr. Robert Goguen: The other question I'd like to address is to Paul Gillespie.

Mr. Gillespie, I recently attended a conference on child pornography offences. In talking to some of the crowns, one of the things they seek on sentencing is some sort of a prohibition order of the offender going on the Internet. Of course, that has very real and practical limitations.

Do you have any thoughts on how something could be bolstered? Obviously, we can't be in a state where 50% of the people are watching the other 50%. Any thoughts on the use of this and what might be implemented?

Mr. Paul Gillespie: In a perfect world, it would be nice to restrict activities in exactly the same area that people had previously been convicted of working within. It is very difficult. I do believe, however, that there may be technological solutions out there, certain softwares, that will monitor offenders. The challenge is if they change computers or leave their house; it is very difficult. But I do believe, again, the technological solutions are very close to being available; however, law enforcement would need additional access to ensure behaviour was being complied with.

Mr. Robert Goguen: Assuming such technological developments could occur, how much adaptation would it take for the police authorities to zone in on this kind of an activity? Do we have the adequate resources to do that? Should we dedicate them?

Mr. Paul Gillespie: I think law enforcement resources, when it comes to Internet crimes, are severely understaffed, and there never will be enough, to be honest with you. There are millions of men around the world who are using children and trading these horrible images. However, I think we need to look at it in different ways, and I'll just say two pieces very quickly.

We really need to sit down with people, all the stakeholders in this, including the younger generation, who have a much better handle on technology and the effects of the Internet and the impact on society. I think we need to really listen to them, and then we can come up with some solutions to help in this area. Unless we also use the capacity that's out there and try to build greater capacity outside of our borders—because there are no borders on the Internet—it is not simply something we can try to throw a few more dollars at, hire a few more cops. It's going to make a difference, but it ultimately will not make a large difference unless and until we figure ways to develop capacity around the world and foster a greater thinking that we're all working together.

Mr. Robert Goguen: Am I done? Yes.

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I also want to commend the witnesses for being with us today.

May I begin by saying that I want to commend Maureen Basnicki in particular for her sustained advocacy over the years. You've taken a personal tragedy and converted it into the kind of action and advocacy that inspired me when I was Minister of Justice to propose —and when we were defeated could not go ahead with it—civil remedies for victims of terrorism. It was one of my first recommendations, as you may recall, that I made to Stockwell Day. With the incoming government, I'm glad this legislation is now before us, as well as your four clarifying amendments today, which I support.

To Jayne Stoyles, I think your contribution, in terms of advocating a civil remedy for victims of torture, war crimes, crimes against humanity, and genocide, deserves support as well. I hope that will be done, if necessary by independent legislation. You, too, have inspired me to introduce a private member's bill in that regard.

My question, though, will be for Mr. Comras, because with regard to this particular legislation before us, I recall your testimony before the Senate Standing Committee on Legal and Constitutional Affairs. Relating to this legislation, in particular to the listing mechanism, you said don't go there; don't enact that legislation. Your exact words were, “If we had to do it over again, I have no doubt we would have done it without a list,” and you concluded your testimony with the words, “Please learn from our lesson. ...do not make the same mistake.” I just want to say that that inspired me to introduce a private member's bill that supports in principle the legislation before us, but without the listing mechanism.

I'm wondering if you can just elaborate as to why you think the listing mechanism would be a mistake, apart from the political arbitrariness involved, and what would be an effective alternative to a listing mechanism.

● (1025)

Mr. Victor Comras: Thank you.

As you've seen from our own history of litigation in the United States, there have been a number of cases flowing both from the 9/11 incidents and other terrorist attacks that have affected American citizens internationally, where the attempts to hold those responsible have been thwarted because of the failure to put the state on a designated terrorist list.

One can look at the State Department's report of states involved in terrorism, and the number of states that have supported or actively encouraged terrorist organizations is quite large, yet the number of states that have been put on the terrorist list is very small. That list is out of date, and it has proven the unworkability of a system that puts upon the government the responsibility of designating a country that can have a major impact on its foreign relations and be a major impediment in its dealings with that country.

It's better to leave it to our courts to decide that a terrorist act has been conducted and that the state is engaged or involved in providing support for terrorism; place the burden on the plaintiff to demonstrate that to the court. Then the court has an opportunity to move forward without engaging the whole set of bilateral relations that are engaged when the United States itself declares a state as a terrorist organization.

Also, once a state is declared as a terrorist-supporting state, there are many other pieces of legislation that come into play and have a major impact in our whole relationship. I think it would serve our government well, as well as our citizens and our courts, to leave that issue to the courts to decide that terrorism itself is an act that is contrary to the customary conventions of international law. States that engage in that should be held accountable. Where there are grounds for jurisdiction, such cases should be allowed to proceed.

I hope that somewhat answers your question

The Chair: You have 30 seconds.

Hon. Irwin Cotler: I have one thing. Would there be any value to put in a provision removing the listing mechanism, but in order to protect against any frivolous or vexatious proceedings, to say that no action will lie against a state, for example, with which we have an extradition treaty?

Mr. Victor Comras: Yes, there are a lot of ways of controlling that. There should be requirements that all other jurisdictions be exhausted before these cases go forth.

The Chair: Thank you, Mr. Cotler.

Mr. Wilks.

Mr. David Wilks: Thank you, Chair.

My questions are directed to Mr. Gillespie. As a former police officer myself, I understand the trials and tribulations the police officers have with regard to trying to investigate some of these crimes.

In particular, we recognize that children are the most vulnerable when it comes to sexual abuse and exploitation. In fact, they are the major victims of all police-reported cases of sexual assault. With regard to Bill C-10, do you find the timeliness of this being introduced is something that will help in dealing with child sex offences, which are on the rise in Canada?

● (1030)

Mr. Paul Gillespie: Absolutely. As you know, these crimes are overwhelming. I think the Internet has opened a window to something that most of us were not aware was actually occurring. The sooner we can get this piece of legislation into law, the better. It will make a difference. As I said before, the direction we're moving in is very necessary.

Canada has some of the best laws in the world. I travel all over the world. I'm lucky enough to attend conferences and make presentations, and I'm often asked about the legislation we have in place and legislation we're discussing and trying to get implemented. Our legislation is regularly copied by many countries around the world.

I would say we're moving in the right direction, and we have been for some years now. I'm very happy about this.

Mr. David Wilks: Secondly, with regard to mandatory minimum sentences, certainly those young victims of sexual abuse, whom you have investigated and I've investigated, are traumatized for life. They will never be able to understand why that happened to them at such a young age. People will remember it well into their later years of life.

From that perspective, do you believe the minimum sentencing being brought in by Bill C-10 is appropriate? In my opinion, sometimes it's not enough, but is it appropriate?

Mr. Paul Gillespie: I believe it is absolutely appropriate. It's very hard to measure the long-term impact of abuse. One of the biggest challenges I've always had is that we can never fully document or understand how victims are unable to eventually realize their full potential to be the future lawyers, teachers, wonderful mothers, and politicians—how they never turn into something they should have become.

I will say in regard to mandatory minimum sentencing in this particular case that I think it's short and sharp. I think it sends a message. I think it also allows for judges, if they choose, to impose more severe sentences on the upper end. I think this is the frustration for most Canadians.

I am no longer a police officer. We do have great laws. We have the opportunities to sentence people appropriately. I find we don't always do that. I think the mandatory minimum is, however, something that is very important, and it also might incent others not to commit these offences.

Mr. David Wilks: Thank you very much, Chair.

The Chair: You have one minute left.

Mr. David Wilks: I will defer to my colleague.

Mr. Robert Goguen: Do you feel, Mr. Gillespie, that one of the benefits of the minimum sentences is taking away the possibility of home arrest, and securing the public, additionally?

Mr. Paul Gillespie: Yes, absolutely. To me, house arrest in the particular cases of the Internet being used to commit crimes against children simply defies logic. The fact that the legislation removes that opportunity for some offences simply makes a great deal of sense. It certainly makes a great deal of sense to the victims.

Mr. Robert Goguen: It takes away the public outrage.

Mr. Paul Gillespie: Absolutely.

Mr. Robert Goguen: Thank you.

The Chair: Your time is up.

So the panel is aware, we do have to end five minutes early. We have some committee business to address.

Madam Boivin will be the last questioner.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

Does Mr. Comras understand French?

● (1035)

[*English*]

I'll speak in English.

Mr. Victor Comras: I can understand French, but I'd prefer to answer in English. So I'll take it in either French or English.

Ms. Françoise Boivin: Okay. Excellent. Thank you very much.

I'll practice my English for once. I understand—

Mr. Victor Comras: I'm getting silence right now.

Ms. Françoise Boivin: That's okay. It's probably lost in translation anyway.

Mr. Comras, I understand the point you are making about the list and the fact that maybe we should leave it to the court. My question on that matter, though, is this. Aren't you afraid that it might just make matters more complicated for the court? It might just make the length of trials a bit longer, having to establish if they are a terrorist country, if they are harbouring terrorists and participating, and so on?

I understand that there is politics involved, and we try to remove politics as much as possible to help the victims, because that's basically what this bill should be about. How do you conciliate both the political aspect and at the same time the fact that leaving it to the court might just lengthen the trials on such matters?

Mr. Victor Comras: Ironically, I think that leaving it to the court would shorten the time for trial. Right now these issues are just as much involved, as every attempt is being made by attorneys to find a way to circumvent the restrictions caused by sovereign immunity.

These issues have all led up and down our court system for years with motions, with briefs, and with reconsiderations, so that the average time to deal with one of these cases now goes seven to ten years before we actually even get to any resolution.

I think the issue is straightforward. The focus on the issue of whether or not the state engaged in providing material support to terrorism contrary to international law—if that were the issue the court dealt with—would eliminate so many other collateral issues being used to get around the system. In the end it would be a much more economical use of our courts for resolving these issues.

Ms. Françoise Boivin: Thank you for that answer.

My second question to you is this. We know in the United States victims can sue certain states—following on what my colleague Mr. Harris was asking. A lot of victims might sue, and they might sue successfully, but when the time comes for execution of the judgment, they come up on the short end of the stick.

I'm a lawyer myself, and I used to have clients in my office and I would tell them that we could win the case, but the person in front of us had zero and we would never be able to execute judgment.

So what can we do to make sure these judgments can be executed?

Mr. Victor Comras: I'm sorry, some of what you have asked was lost in the transmission, but if I get the point, yes, there is definitely a problem with respect to the collection of judgments against the states that enjoy sovereign immunity. This is an issue that needs to be addressed more clearly here and overseas.

In 2008 Congress passed new legislation trying to make it clear to the courts that these judgments should be able to be executed against those assets that are available. We still find one impediment after another. The attorneys dealing with these cases have become very active internationally trying to seek the ability to enforce those judgments here and overseas. One of the problems is that certain states, those limited number of states now enjoying sovereign immunity, have very few assets here. So when cases are brought against Iran, there are almost no assets in the United States that can be grabbed.

I still think we should move forward where we can now, and as we can deal with the issue of collection of judgments, we should do so. But that shouldn't inhibit us from moving ahead now with providing the foundation for such lawsuits.

The Chair: Thank you very much.

Our time has ended. I want to thank the panel. I want to thank Mr. Comras. We took you out of the sun for a little while this morning, sir, but we appreciate the evidence you provided, as we do with all of the panel.

We need to take a very short break. We will go in camera, so we need to clear the room.

[*Proceedings continue in camera*]

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