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Chair

Mr. Ed Fast

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• (1100)

[English]

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

This is the sixteenth meeting of the Standing Committee on Justice and Human Rights. For the record, today is Tuesday, May 11, 2010, and I will just note that today's meeting is being televised.

You have before you the agenda for today. We're beginning our review of Bill C-4, an act to amend the Youth Criminal Justice Act and to make consequential and related amendments thereto. It's also known as Sébastien's law.

To help us with our review, we have with us the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada.

Welcome here, Minister.

Accompanying him are officials from the Department of Justice's youth justice, strategic initiatives, and law reform branch. We have with us Catherine Latimer, who is the general counsel and director general, and Paula Kingston, senior counsel.

At the end of our meeting, we will leave a couple of minutes for committee business to work on the selection of some of the witnesses we're calling forward on this bill.

Minister, you have 10 minutes to present, and then we'll open the floor to questions.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman.

As you know, since coming into government, we have taken action to tackle crime and protect Canadians, but much more needs to be done.

Over the spring and summer of 2008, I conducted a series of cross-country round tables, many co-chaired by my provincial and territorial counterparts, in order to hear from youth justice professionals and front-line youth justice stakeholders about areas of concern and possible improvements regarding the provisions and principles of the Youth Criminal Justice Act. The review and other consultations permitted a variety of differing views, including those of aboriginal Canadians, youth involved in the justice system, police, the legal community, and other youth justice experts, to be brought forward and discussed. While most expressed that the fundamentals of the Youth Criminal Justice Act were sound, there was a sense that it could be improved in a number of areas, such as judicial interim release, reducing the complexity of the act, reinforcing proportionate

accountability, and targeting serious, violent, and repeat young offenders.

[Translation]

It was with this perspective in mind that I introduced Bill C-4, Sébastien's Law (Protecting the Public from Violent Young Offenders) in the House of Commons.

[English]

The proposed changes to that bill that were introduced on March 16 of this year first of all deal with general principles. Currently, the protection of society is not stated strongly enough as an objective in either the preamble to the YCJA or its declaration of principles.

The Honourable Justice Nunn undertook a comprehensive review of the youth criminal justice system in Nova Scotia, from which he produced his 2006 report, "Spiralling Out of Control: Lessons From a Boy in Trouble". Although the focus was on Nova Scotia and the services available to youth in that province, Justice Nunn did propose a limited number of changes to the YCJA, changes that targeted that small group of violent and repeat offenders. Justice Nunn concluded that highlighting public safety as one of the primary goals or principles of the act was necessary. Stating this objective expressly within the fundamental principles of the YCJA will ensure that courts keep the protection of the public in mind when sentencing violent and repeat young offenders.

The current law on pretrial detention has been viewed by some as confusing and has on occasion been applied inconsistently. As a result, the system is often powerless to keep violent and repeat young offenders in custody while awaiting trial, even when they pose a danger to society. Bill C-4 proposes to replace the pretrial detention test with a stand-alone test that targets youth charged with serious crimes. The amended act will simplify pretrial detention rules to ensure that, when necessary to protect society, violent and repeat young offenders can be detained while awaiting trial if they are charged with a serious offence and there is a substantial likelihood that the youth will commit a serious offence if released.

A serious offence will be defined as any indictable offence for which the maximum punishment is five years or more. This would include violent offences; property offences, such as theft over \$5,000, which currently includes car theft; and offences that could endanger the public, such as possession of a firearm, sexual exploitation, robbery, and murder.

Excluded offences would be primarily administration of justice offences and some minor property or mischief offences.

● (1105)

[*Translation*]

Canadians lose confidence in the youth criminal justice system when sentences are insufficient to hold violent and repeat offenders accountable for their crimes.

[*English*]

The Youth Criminal Justice Act will be amended to broaden the sentencing principles and remove barriers to custody to ensure that violent or repeat young offenders will receive sentences that reflect the seriousness of their crimes. As it stands now, deterrence and denunciation cannot be considered by a judge as part of the sentencing. What we are doing is adding specific deterrence and denunciation as youth justice sentencing principles, to allow the courts to impose sanctions, when necessary, designed to discourage a particular offender from committing further offences. These changes to the sentencing principles will ensure that youth sentences are proportionate to the seriousness of the offence and the degree of responsibility of the offender.

Currently, under the YCJA the general rule is that young persons cannot be sentenced to custody unless certain conditions are met. For instance, young offenders cannot be sentenced to custody unless they have committed a violent offence. In 2006 the Supreme Court of Canada interpreted “violent offence” under the YCJA as an offence in which the young person causes, or attempts to cause, or threatens to cause, bodily harm.

We now propose to include in the YCJA a definition of violent offence that expands the Supreme Court's interpretation to include offences in which the young person “endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm”.

The YCJA currently allows for custodial sentences when the young offender has committed an indictable offence for which an adult offender would be liable to imprisonment for a term of more than two years, and the young offender has a history indicating a pattern of findings of guilt.

The requirement for establishing a pattern of criminal activity based on findings of guilt has been criticized by some as being too restrictive in cases where a young person may have been accused of several offences for which there are no findings of guilt, but which have been dealt with through extrajudicial sanctions. The act will be amended to allow a pattern of criminal behaviour to be established through findings of guilt, by showing that extrajudicial sanctions have been used to deal with the young offender, or through a combination of both. Taking a young offender's full history into account will help the courts determine an appropriate sentence.

While adult sentences are available for those 14 years of age and over and can be used where appropriate, they are not always applied, even in the most serious cases. The proposed amendments will require the crown to consider seeking an adult sentence for youth who commit serious violent offences, such as murder, attempted murder, manslaughter, and aggravated sexual assault. The crown will also be required to inform the court if they choose not to apply for an

adult sentence, and provinces and territories will continue to have the discretion to set the age at which these obligations apply, either at 14, 15, or 16 years of age.

In May, 2008, the Supreme Court ruled in *Regina v. D.B.* that certain provisions of the Youth Criminal Justice Act violated the charter. These provisions place an onus on young offenders found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence, and to justify the continued protection of their privacy.

The amendments that we are proposing will remove the presumptive offence provisions from the YCJA, as well as other provisions rendered inoperative as a result of the decision of the Supreme Court. The act will be changed to clarify the test for the imposition of an adult sentence and ensure the onus is on the crown to satisfy the court as to the appropriateness of the adult sentence.

Currently, under the YCJA the publication ban is automatically lifted where an adult sentence is imposed on a youth. Also, if the crown applies, the court can consider lifting the ban in appropriate cases when a youth sentence has been imposed in respect of an offence for which the crown was seeking an adult sentence. In practice, violent offenders who are given youth sentences are normally released back into the community anonymously.

The implication for public safety can be significant. For example, parents may have no way of knowing that a convicted sex offender is in the area. The proposed publication amendment to the YCJA would give judges discretion to lift the publication ban for youth who are convicted of violent offences for which a youth sentence was imposed. Judges would be required, when necessary, to determine whether the young person poses a significant risk of committing another violent offence and whether the lifting of the ban is necessary to protect the public against such a risk.

● (1110)

To make it easier to identify patterns of reoffending, the amendments will also require police to keep records when extrajudicial measures are imposed. Typically such measures would include taking no further action or using warnings, cautions, or referrals to respond to an alleged offence by a young person. By requiring that records be kept of these measures, police will be better informed of past allegations of offending so that they can take appropriate action in respect of subsequent offence allegations against a particular young person.

The act will be amended to make it clear that no young person under 18 will serve their sentence in an adult institution, regardless of whether they were given an adult or youth sentence. They can, however, of course be transferred to an adult institution at age 18, as is currently the practice.

In conclusion, Mr. Chairman, Canadians have told us they want action on crime and our government is delivering. With the introduction of Sébastien's law, this government is taking action to strengthen the way the young offenders system deals with violent and repeat offenders. I urge you, my honourable colleagues, to support this bill, which proposes amendments to and addresses key deficiencies in the Youth Criminal Justice Act.

Thank you.

The Chair: Thank you, Minister.

For the information of committee members, the minister has to leave essentially at noon or perhaps a couple of minutes before. He has an important meeting to attend, so you've got approximately 45 minutes to ask questions. Once the minister is finished, his supporting staff will be here to continue.

We'll go to Mr. Murphy. You have seven minutes.

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

Thank you, Minister.

I am glad that in some ways you're implementing Justice Nunn's provisions with respect to what arose out of the McEvoy incident in Nova Scotia, particularly in terms of interim release provisions. I don't think that's a controversial matter, and it's good on the housekeeping end. It's a pity we hadn't sat through these things, but there were some bumps along the road, and proration.

The other thing on which I think I could join with you is the idea of making the act less complex for judges and prosecutors to amble through. That seems reasonable.

I also think I could go halfway with you on some of the publication concerns, particularly when you said in your remarks that the discretion of judges, after taking into consideration concerns of public safety, would be uppermost in the amendments. I think it's an encouraging sign, after the four years and some months that this government's been in office, that homage to judicial discretion is now coming from a minister of justice. I notice you defend judges now in the House of Commons with respect to some persistent questions on the naming of judges, so I think we could all rejoice that this government has finally come around to realizing what we have realized for a long time: that judicial discretion is incredibly important.

I want to dig down into some broader issues. As I say, some of the amendments are good—they're housekeeping, and they're long overdue—but the core of what the changes are about here, the pith, is philosophical.

I don't want to quibble about a lot of the other aspects. I do have some questions about this kaleidoscope of standards at 14, 15, 16 years of age that are related to the onus on the crown to insist on a more onerous sentence. I wonder why.

My first question might be a very simple one. Why are you leaving it to the provinces to decide that? What happened to the Canadian Minister of Justice ideal that laws should be the same everywhere in Canada? That's maybe a short snapper.

The bigger question is whether you need, Minister, to put denunciation and deterrence, which are in section 718 of the adult Criminal Code, into the Youth Criminal Justice Act.

As you know, Minister, the act already has words to the effect that the youth shall be made to know the consequences of his or her actions. There's a preamble to the bill that is right in line with why you have a YCGA in the first place. I speak of the United Nations conventions and so on.

The philosophical question, I think, is this: if you import denunciation and deterrence, just as in section 718, is there really a need for a Youth Criminal Justice Act? Aren't you just matching it to the Criminal Code in total?

There's a larger question, then, and a short one on provincial standards.

• (1115)

Hon. Rob Nicholson: You covered a bit of ground there, Mr. Murphy.

I will say with respect to the age at which the provision you referred to kicks in that we're very respectful of the provincial role in the administration of justice. The facilities are operated by the provinces. These matters are conducted, as for the most part all criminal prosecutions are, with provincial resources. We work with the provinces and we're respectful of their role.

With respect to your comments on why we would require the crown to consider applying for an adult sentence, we're talking about the most serious crimes in the Criminal Code. We're talking about murder, aggravated sexual assault, attempted murder, and we think it's appropriate to give that guidance to those who administer justice and prosecute these cases that we do want these matters before them.

With respect to your comments on deterrence and denunciation, sometimes in my reading of some of the comments about this, it has not been made clear. We're talking about specific deterrence. We want this individual—this specific individual—not to get involved with this kind of the activity. What we are doing is tailoring the penalty for that individual and making sure that the courts have before them all the tools necessary to deal with that individual. Ultimately, we do want that individual to be deterred from doing this type of crime.

It's in his or her best interests, of course, and it's in the best interests of society. I think it works in everybody's interest for the courts to have all that discretion at their hands.

You covered about three different areas, I think, and I hope I've covered all of them for you. In response to your question, that's the gist of where we're going.

Mr. Brian Murphy: Minister, one thing we learned in speaking to people like the chiefs of police in Calgary and Edmonton, various law enforcement officials, and various community support individuals is that gang-related violence, since we're talking about the most egregious offences, is often perpetrated in the youth context by what I have called pawns in the gang hierarchy. Youth are being used by someone else, who's really directing them.

We're in a quandary in our organized crime study as to how to get to the directors of the pawns, who do these things just along the lines of YCJA for reasons that an adult probably wouldn't, such as self-esteem, self-grandeur, acceptance, and all those things.

Can you think of a way to get at the directors of the pawns—the kingpins, so to speak—in gang violence, whether or not it's through the YCJA?

• (1120)

Hon. Rob Nicholson: Many of these pawns, as you describe them, are adults who are getting involved with trying to direct or get these individuals. I can tell you that you will have legislation before this committee that deals very specifically with the gangs and organized crime.

The drug bill that I introduced in the last week specifically targets the people who are involved with drug trafficking, because what law enforcement agencies tell me is that these are the gangs. These are organized crime. These aren't one-offs, and you're right: they employ other people. Sometimes they employ young people, and law-enforcement agencies have been telling me consistently that we have to update the laws of this country, which are inadequate to deal with the sophistication of crime that is developing in this country.

I can go right down the line. It's like auto theft. They tell me that not having specific provisions with respect to auto theft and having provisions about possession of stolen goods that were written many decades ago are inadequate provisions to deal with the gangs, the individuals, who are involved with this.

The legislation that I've had earlier that passed—there was identity theft, auto theft, a drug bill—is to get everybody who is a part of the process, you see.

Pardon me?

Mr. Brian Murphy: Why did it take four and a half years?

That problem was evident at the beginning of my term here. Why did it take four and a half years to bring this stuff in? I'm not sure you'd get a lot of opposition.

Hon. Rob Nicholson: Do you want me to get into how long that bill sat? Your colleagues in the Senate wouldn't pass that drug bill for over six months. The auto theft bill sat for over six months.

Mr. Brian Murphy: Minister, you didn't bring it in for three years.

Hon. Rob Nicholson: We did get the Tackling Violent Crime Act through, but it was very difficult. I remember telling the Senate in February 2008 that if they didn't pass that bill by the end of February, my recommendation to the Prime Minister was that he call an election on that. That finally focused their attention on getting these things done, but I always say to people that just because this is a minority Parliament is no excuse not to stand up for victims and law-

abiding Canadians. If you look at the pieces of legislation we have had passed and the legislation we have introduced into this Parliament, it's all consistent with that principle, so—

Mr. Brian Murphy: They were victims of prorogation, Minister, victims of prorogation—

Hon. Rob Nicholson: —I'm urging you and I'm urging your colleagues to get these things passed. Let's get them done. This country will be better off for it. I'm going to tell you something: when you go back to your constituencies, Canadians will thank you that you stood up for law-abiding Canadians and stood up for victims on this and made the criminal justice system work better. I am absolutely convinced of that.

The Chair: Thank you.

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

[*Translation*]

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

Mr. Minister, you decided to change the statement of principle that appears in the existing act. You are now saying that the following principle should apply to the present act: "holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person".

In paragraph 38(2)(c) of the existing act, in reference to sentencing, it says that "the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence". You will recognize that this is essentially the same language, except that in one case it talks about sentencing and in the other it talks about measures. Why this change? What do you expect this addition to do?

[*English*]

Hon. Rob Nicholson: I think we've been consistent throughout that we do want the individuals to take responsibility. That's the first step in the process of rehabilitation: an individual who is prepared to admit a mistake and is prepared to do something about it.

Now you didn't quite mention it, but one of the things we've done is introduce those principles as the protection of society. That's in everyone's best interests as well. Protecting society, protecting individuals, the rehabilitation of the individual, and getting that individual to acknowledge the seriousness of the offence are very important considerations, and we want that to be taken into consideration in every case. This is why we have changed the wording in the Youth Criminal Justice Act to make it more specific. It's so that we're all on the same page, so to speak.

• (1125)

[*Translation*]

Mr. Serge Ménard: We are all in perfect agreement on that, Mr. Minister. The question is just: why are you moving a section that applies to sentencing, that you are leaving in sentencing? You are moving it to general principles. But I look at what you are removing, and what you are removing is what you just said you want to pursue.

In fact, paragraph 3(1)(a) of the Youth Criminal Justice Act says: "the youth criminal justice system is intended to prevent crime by addressing the circumstances underlying a young person's offending behaviour"—what you are taking out of the act, right, you are removing it—"rehabilitate young persons who commit offences and reintegrate them into society, and ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public".

You are taking that out and replacing it with a principle that is already in the act in relation to sentencing. I acknowledge that, in addition, you are in fact adding something that must be encouraged.

Myself, I see a difference between the objective of rehabilitation and protecting society by reintegrating and rehabilitating young people and the objective of simply promoting rehabilitation. Did you intentionally incorporate that difference, or is that a mistake on your part?

[English]

Hon. Rob Nicholson: I don't really see the inconsistency, Monsieur Ménard. It's an overall approach. We all agree that we do want the rehabilitation of this individual, but we want that individual to be responsible for his or her actions. To the extent that we're making the clarification, at one point you said it's not necessary to put that in the sentencing provisions. Well, giving guidance to the courts is our responsibility as legislators, so I believe that indicating that in the sentencing principles will be of assistance to the courts. Ultimately we all want to do that—we want to assist the courts—but at the same time, we want to do everything that's possible to help that individual and have that individual take responsibility for his or her actions.

[Translation]

Mr. Serge Ménard: I don't have the impression that you understood me, but because we have so little time, I'm going to move on to another subject.

You went across Canada to get information about this issue. You realized, when you were in Quebec, that Quebec was particularly proud of the way it deals with young offenders, that it believes it has achieved the greatest successes in America, and that it would like to be able to retain that system? You understood that?

[English]

Hon. Rob Nicholson: I do. With respect to those areas of provincial jurisdiction, you heard your colleague, Mr. Murphy, who was asking why I am leaving it up to the provinces with respect to certain age requirements. I did hear that the provinces that are in the business of administering this law—of having the detention centres and everything that goes with this—want a certain flexibility.

As you can see, there is that discretion and judgment placed in there, and I think that's appropriate. Ultimately, even though we write the laws at the federal level and we have a huge responsibility with respect to the criminal justice system, for the most part it's administered by our colleagues at the provincial level. I'm very respectful of that.

As you say, I did go right across this country and I did have the opportunity to hear slightly different approaches, but there were some common elements. As I pointed out in my opening comments,

sometimes some simplification was wanted with respect to the complexity of the law. There was a concern about a relatively small group of violent repeat offenders, and this came across loud and clear across the country.

As one of your colleagues pointed out about the Nunn report, that's one set of recommendations, but we try to get recommendations from Canadians right across the country. This bill is a good reflection of those consultations.

• (1130)

[Translation]

Mr. Serge Ménard: If Quebec tells you that by changing the principles in the act, as you have done, you are going from a primary objective, that the sentence be proportionate to the crime committed, to a secondary one, to rehabilitate offenders to the extent possible and thus protect society in the long term.

Would you be prepared to reconsider the amendments you want to make to this act to put rehabilitation back to the forefront?

[English]

Hon. Rob Nicholson: I don't see any inconsistency with that. It's an overall package, Monsieur Ménard.

Rehabilitation course is a part of that, as is protecting society. If you look at the incident that sparked the Nunn report, the individual himself said that if he had been detained, the tragedy that took place might not have taken place.

We do want rehabilitation and we want protection of society, and I see no inconsistency with that. We're all part of a process by which this individual hopefully will become a productive member of society.

The Chair: Thank you.

Monsieur Ménard, you're out of time.

Before we go to Mr. Comartin, Ms. Leslie also wants to ask questions. I believe they're going to split their time. I believe Ms. Leslie will be participating in future meetings on Bill C-4. Does anyone have any objection?

Seeing none, I'll ask you to go ahead, Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair, and thank you to the committee for that consideration.

Mr. Minister and officials, thank you.

Mr. Minister, with regard to clause 21 of this bill, the amendment to subsection 76(2) of the law, are you knowledgeable as to how many youth are currently under 18 but are in custody in adult prisons?

Hon. Rob Nicholson: How many more would be...?

Mr. Joe Comartin: No, I mean how many there are currently.

Hon. Rob Nicholson: I don't have the provincial statistics with me; they're kept by each of the provinces.

Ms. Paula Kingston (Senior Counsel, Youth Justice, Strategic Initiatives and Law Reform, Department of Justice): The provision in the amendment refers only to young people with adult sentences. Currently most youth get youth sentences, and the rule is that if they're under 18, they must serve that in a youth custody facility. We're only speaking about the possibility of those who get an adult sentence and are under 18. Currently there are very, very few of those young people. To the best of our knowledge, it's either one or two a year, but it's none at the moment. It's very few.

The principle is very important—it will mean that no young person will be able to go up to an adult facility—but at the current time there are very few that it applies to.

Mr. Joe Comartin: So you're saying it's fewer than five per year in the whole of the country?

Ms. Paula Kingston: Yes, definitely.

Mr. Joe Comartin: Does that include youth who have not been convicted but are being held in facilities that also have adults being held in them? Just so I'm clear, would this section not apply to those people?

Ms. Paula Kingston: That's right. This section—

Mr. Joe Comartin: Are there any at this point who are being held pre-conviction in settings that also have adults in them?

Hon. Rob Nicholson: I'm told by territorial officials that because of the lack of resources in some cases, sometimes it's necessary to do that, but every provision is taken to make sure they're not physically together. Sometimes it's in the same facility. This is a pretrial situation.

Mr. Joe Comartin: Is there any reason why this section didn't include pretrial?

Hon. Rob Nicholson: It's in terms of our consultations with them. The territorial AGs were very specific on that. They say it may not be possible. You may pick up an individual and to transfer somebody several hundred miles overnight may not be possible, but we made it clear—and they understand we are putting this provision in—that any individual who serves a sentence will not serve that sentence in an adult facility.

Ms. Kingston, did you want to say something?

Ms. Paula Kingston: In the current provisions on pretrial detention, they could only be kept separate and apart from adults, and only if a judge looks at that particular case and considers whether it would be in the young person's best interest. An example would be whether it would be in the young person's best interest to be kept in an adult facility closer to home or to the trial, or to be moved far away.

• (1135)

Mr. Joe Comartin: Mr. Minister, in terms of cost, has any analysis been done either by the Department of Justice or by the provincial governments that will tell us what we are expecting in terms of additional incarceration rates, both pretrial and post-conviction?

Hon. Rob Nicholson: No, we don't have any studies on that.

Mr. Joe Comartin: Are you aware if any of the provinces have done an analysis of that kind?

Hon. Rob Nicholson: I'm not. They're aware of what we're doing, and we've had consultations with them. They are the ones that provide the facilities, but of course there are ongoing negotiations on a regular basis with the federal government with respect to cost sharing.

Mr. Joe Comartin: In that regard, in terms of the cost sharing, have you specific requests from any of the provinces to do additional cost sharing or for additional funds from the federal government to cover the costs of this increased incarceration?

Hon. Rob Nicholson: I'm unaware of any. They would probably go to my colleague, the Minister of Public Safety.

Mr. Joe Comartin: Those are all the questions I have. Ms. Leslie will ask some.

Ms. Megan Leslie (Halifax, NDP): Two minutes is a short time, and I have a few questions, so I'm wondering, Minister Nicholson, Ms. Latimer, and Ms. Kingston, if I could ask a few questions and ask for a written response. Is that possible? Thank you.

First, concerning the Nunn Commission, recommendations 24 and 25 are not in this bill, and I'm wondering if you can provide us with reasons as to why they're not included. Thank you.

You used the language “diminished moral blameworthiness”, and I'm wondering where that language comes from.

Next, concerning denouncing unlawful conduct, I'm wondering if you can forward to the committee the studies or reports you're relying upon to show that deterrence would work with young people.

If there is time for a verbal answer for this one, I'm wondering about sexual assault, specifically when it comes to pre-sentence detention, which is prohibited unless it's a serious offence. As you know, sexual assault covers a range of behaviours. At our office we had a young man who grabbed the breast of a girl in the bus school lineup, so it can be a pretty broad range. Will it constitute a serious offence in all cases, or is there latitude there?

Hon. Rob Nicholson: You covered quite a bit of ground, Ms. Leslie, and we'll see what we can do about adding those. I'll start at the top. It looks as if the chairman is warning me already, but we'll get back to you on this.

We did take most of the Nunn Commission recommendations and we'll provide you with a written response with respect to the other two. The other two provisions we did not include are generally working well, and they weren't raised with me by other provincial attorneys general as an area we should direct our attention to.

In the end, when you're trying to put together one of these bills, you're trying to balance everybody's input. Whether we get input from the Province of Quebec or from Nova Scotia—and this is theirs—we try to balance it all. I tried to take into consideration what various provincial attorneys general were telling me about where they thought the changes should be, and this bill is a reflection of that.

With respect to those others, we'll do our very best to provide you with a response.

The Chair: Thank you.

Go ahead, Mr. Norlock. You have seven minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair. Thank you, Minister and department officials, for coming today. So far it's been very informative and helpful to me.

Minister, once again I'd like to thank you for attending my riding's round table on public safety and justice. During the deliberations at that meeting you would have heard from community policing committees, who are the representatives of the general populace in specific communities vis-à-vis justice and public safety matters. If you recall, some of these issues and serious concerns about the YCJA were brought up at that meeting.

I'd like to go in particular to what this bill actually does cover. Of course, the recent Speech from the Throne states that:

Our Government will also ensure the youth criminal justice system responds strongly to those few who commit serious and violent crimes, while focusing on the rehabilitation of all young offenders.

I wonder if you could explain to the committee and, more importantly as far as I'm concerned, to the folks at home who are watching this exactly what that means.

• (1140)

Hon. Rob Nicholson: First of all, Mr. Norlock, thank you very much for putting that crime round table together. Let me publicly thank you for your commitment to reforming the criminal justice system in this country. I very much appreciate it. Those of us here in Ottawa, and I'm sure people back home, are appreciative of your concern and your interest in this area.

I heard a number of things, and you're quite correct that across this country people are worried about a relatively small group of out-of-control, violent, many-times-repeat young offenders who are a danger not only to the public but to themselves. This bill, Sébastien's law, is a reflection of that, and many of the recommendations that I have received target those particular individuals.

I was asked about the Nunn report by Ms. Leslie. The Nunn report was concerning an individual who was being arrested, released, arrested and released on the same charge. It was auto theft, or theft of over \$5,000 as it's currently known. He posed a danger to the public and to himself. The interpretation of the law wasn't responding to that very particular concern, so we have to look at that and say that for the individual who was involved in mischief or a minor offence, we understand there are many routes to take to try to help that individual get intervention, including extrajudicial measures. Yes, we're all onside with that.

However, with respect to this other group of individuals, we have to clarify the law and we have to make sure that the public is protected. By protecting the public you're protecting the individual. That came through loud and clear in the Nunn report. The individual himself would have been better off if there had been clarification within the law. That's the kind of thing I've heard across this country.

I mentioned in my opening remarks that people say the bill's too complex and that it's very difficult to read and to administer. Law enforcement agencies mentioned that to me as well. On a number of occasions as you go through this on a clause-by-clause basis, you'll see that we're trying to clarify what we want. For the most part, we're all moving in the same direction, but we want clarification. We tried to put in that balance and put it in together, and this is what you have before you. You have Sébastien's law, and I'm hoping this matter will move expeditiously through the legislative process.

Mr. Rick Norlock: Thank you very much for that explanation, Minister.

I'd like to go back to the meeting we had, because those are the people who give me my marching orders here vis-à-vis public safety and justice. Those are the people who actually work with all segments of society. In my previous occupation as a police officer, working with crown attorneys and defence counsel and judges, we brought in restorative justice. I think that deals with some of what we call the smaller crimes, but what seems like a smaller crime to some people isn't necessarily small in the eyes of the victim.

In this committee we heard evidence from the victims that was specific to Sébastien's law. Minister, when you've met with these victims in your capacity as Minister of Justice, are there any particular meetings you can recall that bring to mind situations that are best covered by this law?

Hon. Rob Nicholson: I make a point of meeting with victims, victims' groups, and victims' advocates on a regular basis. The challenges victims face are as broad as society as a whole. On some occasions I'm meeting with victims of white-collar crimes, for instance, and as you say, the pain is in the eye of the victim. I've had people who have been defrauded and lost their life savings tell me that the pain is as difficult to bear as it would be if they had been beaten up or stabbed or shot.

With regard to the provisions we are putting in to require the courts to look at the possibility of adult sentences, detention prior to the disposition, and lifting the publication ban, I heard loud and clear that people want to know about what's happening. They want to be able to protect themselves when necessary, so you'll see changes in there with respect to the possible lifting of publication bans.

In your community I heard loud and clear messages from individuals who want to see changes. I say to you and to all committee members that this was very helpful to me and to those working with me in putting together the legislation that you have before you.

• (1145)

Mr. Rick Norlock: Thank you.

The Chair: Thank you very much.

We'll move over to Mr. Murphy for five minutes.

Mr. Brian Murphy: I am concerned. I know you, and I know you clearly care about victims' rights. I might ask you what happened to our non-renewed Mr. Sullivan. Other than the fact that he wasn't fluently bilingual and may have been a few issues with that, he handled himself quite well. Why is he not being renewed, when do you think there will be a replacement, and will you ask opposition members—and government members, for that matter—for some input on that? That's a short snapper.

The other question I have is about the 14-, 15-, and 16-year-old limits of onus that I went on at you about in the first round. I can clearly understand Monsieur Ménard's point. In Quebec they have a highly developed system of treating youth justice issues, and I understand their AG might have asked for this. Point-blank, Minister, did any other attorney general in any other province ask for this varying standard? If it is giving some leeway to Quebec, I think we're all grown up around this table and we understand, but I would like to know if there are others.

On the issue of consultations, my BlackBerry must not have been working that day, but I don't remember getting an invitation to one in Moncton. I understand those were very well attended and I understand that much of the input, including that from prosecutors, was laudatory towards how the YCJA is working. I think when you bring amendments like this and you have the statements made around the table that have been made, sometimes it results in a loss of confidence in the system. I'm looking for you, Minister, to say, "Well, the YCJA does work in great measure, but we're fine-tuning it".

My question goes to the consultations and the results of those consultations, the without-prejudice aspects of them. Can they be shared at least in an in camera way with members of the justice committee, or on a larger scale? Perhaps the public would like to know about the public consultation. It seems ironic that you'd have public stakeholder consultation and not publish the results thereof for everyone to see verbatim. It might shorten our journey here to find out what people are saying.

Hon. Rob Nicholson: You've covered a number of different areas.

One of the things I'm most proud of, and I know my colleagues are too, is the creation of the Office of the Federal Ombudsman for Victims of Crime. One individual, of course, has had a term, for which we thank that individual. We posted to the public the job requirements and indicated that people were allowed to apply for that job, and a decision will be made shortly on that.

I'm very pleased to be part of a government that created that office. I think it is an idea whose time had certainly come three years ago when we moved forward on this. Having an individual whose job it is to stand up for victims in this country and to deal with victims' issues was an idea that was overdue in this country, so I'm very proud that we've done that, and we will be naming a federal ombudsman in due course.

With respect to your comments about provincial discretion with respect to 14-, 15-, and 16-year-olds, it currently existed under the presumptive provisions that were in the Youth Criminal Justice Act. The presumptive provisions, as you know, were struck down by the

Supreme Court of Canada in its decision on *Regina v. D.B.* That said, we've continued them in the provisions with respect to adult sentences. It's perfectly consistent with the laws as they already exist in this country.

With respect to the public consultations, I believe they were quite extensive. I would challenge anyone to say on other areas that there wasn't greater consultation, because I went to every single province and every single territory. We encouraged input from people like you on the Department of Justice website. I was looking forward to any input, any provisions on these.

For me and my colleagues, this has been a priority, as is all our criminal law legislation. At the Liberal conference, did you hear anything about fighting crime? Were there any papers, any discussions, any inputs? I didn't hear any, but believe me, if the Liberal Party or anybody else wants to have input with respect to cracking down on crime in this country and standing up for victims, I would welcome it. I would very much appreciate anybody who wants to come forward with that. As you know, I'm waiting for a little more priority from my colleagues outside the government on this matter, but if there's a conversion or a reawakening of people's interest in fighting crime in this country, I would certainly welcome it.

In any case, we had very extensive consultations, and the result of those extensive consultations is Sébastien's law, the law that you have before you here today, Mr. Chairman. This just shows you that consultation does work when we talk to all the stakeholders and we come up with a bill such as the one you have today.

• (1150)

The Chair: Thank you.

Monsieur Lemay, I believe you're going to go next. You have five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Minister, I am going to give you a solution for looking after victims very quickly. Eliminate the right to release after one sixth of sentence. Do that immediately, this afternoon, and you will see what victims, particularly the victims of Earl Jones and Norbourg, have to say. You want a solution, well I am giving you one, and it can be done very quickly.

Second, Mr. Minister, concerning young offenders, I would like to know whether you have statistics, or you could send them to us, that show that there was a rise in crime committed by young offenders between 2004 and 2008. In fact, all our figures show that there was a decline in violent crimes committed by offenders under the age of 18 over the last three years.

Do you have figures about this and could you send them to us if they exist?

[English]

Hon. Rob Nicholson: Monsieur Lemay, I will be glad to send you any statistics that we have. I've had this discussion with you before in terms of the challenges we face with young people and others committing gun crimes and violent offences, but you're certainly welcome to get any statistics in that area. I'm glad to hear you've woken up and you're buying into what we've been saying about parole and all these things.

As you know, this government has had a wide range of legislation. We had legislation today. One of my colleagues has introduced a bill on pardons and white-collar crime. You'll be one happy individual, I think, by the end of this Parliament when you see all the different areas, because we're not leaving anything untouched. It's very focused and covers a wide area.

[Translation]

Mr. Marc Lemay: Excuse me, Mr. Minister.

[English]

Hon. Rob Nicholson: I'd be very pleased to have your support. That's for sure.

[Translation]

Mr. Marc Lemay: I adore you, Mr. Minister, but you know I have only a little time left, and so you will be able to use as much time as possible for your answer.

I don't agree with you. I don't share your opinion. In Quebec, statistics clearly show a decline in crime. You have those figures. You know there has been a constant decline in crime.

At present, not only does the proposed reform run counter to the fundamental values of Quebec when it comes to rehabilitation, but the theme chosen for of the bill exhibits enormous cynicism. It is called Sébastien's Law. Let me tell you that the young criminal was given an adult sentence under the current Young Offenders Act. That has been established; that is the reality.

You say that the current act does not stand up for victims. The priority in Quebec is awareness. A rehabilitation program is based on the accused's awareness of the harm they have caused to the victims.

I agree with you, there are criminals, and young people get lost, perhaps, but that might be one in 100,000, in Quebec. I can't speak for the other provinces, but I speak for Quebec.

Can Quebec assert its difference and continue to apply the act that it has been successfully applying?

[Editor's Note: Bells ringing]

• (1155)

[English]

The Chair: Members, given the fact that the minister has to leave at noon, I think we're going to suspend for a moment to allow him to leave. Ms. Kingston and Ms. Latimer will remain.

We'll suspend for five minutes.

• _____ (Pause) _____

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• (1230)

The Chair: We're reconvening the meeting.

Thank you, Ms. Kingston and Ms. Latimer, for coming back. We don't have a lot of time. We have 15 minutes for questions.

I am going to go to Monsieur Petit for five minutes.

You got caught, Mr. Petit.

Did you have a question, Monsieur Lemay?

[Translation]

Mr. Marc Lemay: There was no time left for more questions? If I understand correctly, my turn was over? I didn't have any time left?

[English]

The Chair: You were very close to finished. I believe you had a minute left, so I'll give you an extra minute on this round. Is that all right?

[Translation]

Mr. Marc Lemay: A point of order, Mr. Chair.

Given that we don't have much time and we have matters to discuss relating to the study, could we ask the Department's representatives to come back for a one-hour meeting?

[English]

The Chair: We'll consult with the departmental officials and see if that can be made to work.

Go ahead, Monsieur Petit.

[Translation]

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

Good afternoon, ladies. I will ask my questions as quickly as possible given that time is extremely limited.

I would ask you to look at clause 21 of Bill C-4. That clause states: "No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary."

That means that formerly, they could be incarcerated in a penitentiary for adults or that this was never done?

[English]

Ms. Paula Kingston: It is possible under the current YCJA, but only in very limited circumstances. If a young person has received an adult sentence, and the judge, in determining placement.... There's a presumption against putting someone under 18 into an adult facility, but the possibility is there. It's there, but it's very rarely used, if ever.

[Translation]

Mr. Daniel Petit: It's a very simple question. Are there statistics about young people under the age of 18 years, or for Quebec, young people between the ages of 16 and 18 years, who have been incarcerated in a prison or a penitentiary? I'm not talking about a youth centre. The difference is that it should say "youth detention centre". A prison is for adults, as is a penitentiary.

Do you know whether people have been incarcerated, when they were under the age of 18 years, in a prison or a penitentiary?

[English]

Ms. Paula Kingston: We don't have a specific study on that, but we do know that very few young people get adult sentences, and by the time they're sentenced, they're usually 18 or over. Because the presumption in the legislation says that they shouldn't be sentenced or placed in an adult facility, we're confident that it happens very rarely, but we don't have the exact numbers.

[Translation]

Mr. Daniel Petit: I'll repeat the question. Do you know whether people under the age of 18 years have been incarcerated in a prison or a penitentiary? I'm not talking about people who reach the age of 18 years and can then be incarcerated in a prison or a penitentiary.

Is it accurate to say that no one under the age of 18 years has been incarcerated in a prison or a penitentiary?

[English]

Ms. Paula Kingston: No, we can't say that. It can happen and it has happened, but it's very, very rare. We don't know the exact numbers, however.

[Translation]

Mr. Daniel Petit: You're saying that it has happened, but they are rare cases. What do you mean? Do you have a statistic that allows you to say that? You must have a statistic?

[English]

Ms. Paula Kingston: We had statistics from before the YCJA came into effect. In that case, even before the presumption against doing this, there were, at most, five a year. The law against that has been strengthened, and now that presumption, under the bill, will become a prohibition.

• (1235)

[Translation]

Mr. Daniel Petit: Under the existing act, no young person under the age of 18 years will be incarcerated in a prison or a penitentiary. Have I understood correctly? Right, thank you.

Mr. Chair, how much time do I have left?

The Chair: One minute.

Mr. Daniel Petit: Can I give that time to Mr. Woodworth?

The Chair: You have the floor, Mr. Woodworth.

[English]

Mr. Stephen Woodworth (Kitchener Centre, CPC): I'm very happy to see that this bill is still focused and almost surgical in the things that it addresses. In particular, the provision to reverse or do away with the presumption of adult sentences requires only that an

adult sentence be considered for murder, attempted murder, manslaughter, and aggravated sexual assault—not simple, but aggravated.

Can you tell me how that will work out in practice? What's the role of the crown and the judge in those circumstances?

Ms. Catherine Latimer (General Counsel and Director General, Youth Justice, Strategic Initiatives and Law Reform, Department of Justice): As you probably know, under Regina v. D. B., the Supreme Court struck down the presumption. If this bill is passed, it will require crowns to indicate whether or not they will be seeking an adult penalty when the young person is accused of having committed murder, manslaughter, attempted murder, or aggravated sexual assault, so the possibility of an adult penalty will be in play if one of those serious offences has been alleged against the young person.

Mr. Stephen Woodworth: Will the reasons be put on the record by the crown?

Ms. Catherine Latimer: The bill doesn't specify that reasons must be on the record, but most of the courts are courts of record, so I would assume that they would record them.

That doesn't preclude the crowns from seeking adult penalties in other cases as well where they think it's appropriate. But this requires them to make a statement, address the court about what their proposal is.

The Chair: Thank you. We'll go to Ms. Mendes for five minutes.

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

[Translation]

Good afternoon.

If possible, I would just like to know what you think about common assault and sexual assault in the sense that they are going to be considered to be serious offences. What is going to be considered to be serious offences is not identified or clarified at all. Considering that adult sentences are going to be imposed, or not, based on that definition, I would like to know who is going to determine the seriousness of the crime committed and what criteria are going to be applied to this type of offence, please.

[English]

Ms. Catherine Latimer: The bill proposes three changes in definition. One is the "serious violent offence". The specific offences that would constitute a serious violent offence are actually articulated in the bill. The next is an expanded definition of "violent offence". The third is the "serious offence" definition, which has application in the pretrial detention provisions.

The definition that is being used for “serious offence” in this bill is the same as that being invoked in the Criminal Code, which is offences for which an adult could receive five years or more. That includes a great number of offences and excludes less serious offences such as theft under, administration of justice offences, and some mischief offences. Things like that would be less. There should be a chart in the back of the Criminal Code that indicates the range of sentences for various offences, and it would be those that are under five years.

Mrs. Alexandra Mendes: That will come under the regulations that...

Ms. Catherine Latimer: Five years or more would be defined as a serious offence.

[Translation]

Mrs. Alexandra Mendes: Has a cost assessment in connection with implementing this provision been done? Have you established or studied what the budget impacts of this bill are?

[English]

Ms. Catherine Latimer: I think the minister may have spoken to that. We understand that there will be pressures. We expect that the provinces will be looking to assess what the impact of these provisions will be on their costs. There are also some offsetting provisions—for example, the pretrial detention provisions—because they only apply to serious offences. With regard to those who had previously been detained for less serious offences, there may well be some savings, because the detention numbers wouldn't include them.

Mrs. Alexandra Mendes: We understand that it is the provinces that are going to have to take on these costs.

Ms. Catherine Latimer: Yes. These are largely administration of justice and corrections costs. They are borne by the provinces. The federal government has funding arrangements with all the provinces and territories. They also contribute to the overall costs.

Those agreements are currently in place, and there are always discussions about the appropriate share of provincial and federal contributions to those.

• (1240)

The Chair: Thank you.

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

[Translation]

Mr. Marc Lemay: I'm going to try to go quickly. I want to go back to clause 21 of Bill C-4, which says: "No young person who is under the age of 18 years is to serve... ."

I'll let you read the rest. A young person aged 15 years is sentenced to serve 10 years in prison for a serious crime. We agree that it is a serious crime. Am I to understand that under this clause, the young person, aged 15 years, is going to serve the first three years of their sentence—until the age of 18 years—in a youth centre, and then they will be transferred to a penitentiary? Is that what I am to understand from the clause?

[English]

Ms. Paula Kingston: If it's a youth sentence, which the vast majority are, that's a sentence of 10 years at age 15. It's already clear in the YCJA that for a youth sentence, they can only serve it in a

youth custody facility. The rule is generally that the young person would stay there until the age of 20.

However, at the age of 18, there can be an application to a court to ask whether that particular young person should be moved up into adult custody. The judge will look at all the circumstances and will hear from the family, the youth, the prosecution, and the corrections people. The judge will also consider what is in the best interests of the young person, but there is the possibility that the young person could be moved up at age 18.

If they're serving a sentence and still in custody at the age of 20, they can then be moved up without going to a court, but they do not have to be moved up. There is still discretion for the province to keep that young person in the youth facility. For instance, if only a few months or a short portion of the period of the sentence is left, they wouldn't move the young person up to adult custody.

The Chair: Thank you.

Monsieur Lemay, I was wrong. It's not six minutes. It's actually one minute, and I gave you two minutes.

We'll move on to Mr. Rathgeber for five minutes.

It will be the last question, unfortunately, because we have to go in camera.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Could I split my time with Ms. Glover?

The Chair: That would be fine, yes, provided there is no objection.

Mr. Brent Rathgeber: Thank you for your attendance here today.

I know this bill was at least in part a response to a Supreme Court of Canada ruling. I assume the bill has been constitutionally scrutinized to some extent. I wonder whether either one of you could comment on that aspect of this proposed legislation.

Ms. Catherine Latimer: Yes, the Supreme Court of Canada decision you're referring to is *Regina v. D.B.*

This is also somewhat in response to your question, Ms. Leslie.

In that case, they actually determined there was a constitutionally protected fundamental principle of justice of the presumption of diminished moral blameworthiness. We looked at ensuring that the provisions of this bill respected the charter, particularly in light of the new fundamental principle of justice that the Supreme Court articulated in *Regina v. D.B.*

Mr. Brent Rathgeber: Thank you.

I know that once this bill becomes law, the crown is obliged to consider an adult sentence for the most serious crimes. Are the most serious crimes specifically defined as to when the crown will have to request an adult sentence?

Ms. Catherine Latimer: Yes, they are.

Mr. Brent Rathgeber: Is it anything with a five-year maximum?

Ms. Catherine Latimer: No, that's a serious offence, and it's one that applies to the pretrial detention provisions.

The serious violent offence is specifically defined in this proposed bill. The serious violent offence includes the four specific offences of murder, manslaughter, attempted murder, and aggravated sexual assault.

Mr. Brent Rathgeber: Thank you.

Mrs. Glover has a question.

• (1245)

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you.

I want to preface my question with a little history. I spent eighteen and a half years with the Winnipeg Police Service and was actually one of the trainers on the YCJA.

I know you've already commented on the fact that the YCJA actually limits the number of times that a youth might perhaps be sentenced to an adult facility. I want to be very clear on this. The bill will now prohibit that, which is exactly what my friends from the Bloc Québécois should be very happy about. I would expect they should be voting with us on that, because it is exactly what they were hoping for.

Is that correct? You said this bill will prohibit it from happening,

Ms. Paula Kingston: Yes, that's correct.

Mrs. Shelly Glover: Excellent.

My mother spent her entire career as a correctional officer in a youth facility. Manitoba Youth Centre is where she worked, and I can assure you I spent a number of Christmases and so on with the inmates. That happened to be something our family did regularly. I know there were adults in that detention facility, because I met many of them. Some of them in fact stayed until they were 21.

My mother has now been retired for some time, but I have a constituent whose son was murdered. They were my neighbours. A young fellow by the name of Paul Cherewick was murdered by a youth. The youth later was released on bail, although he was charged with the murder, and then later went on to stab and almost kill

another person. I am very pleased to see that Sébastien's law will address those violent repeat offenders who look to get bail.

The case is still before the courts, so we should generalize, but could you clarify for me how a youth in such a scenario—a youth charged with a murder—would be dealt with by way of bail to protect society under this new bill?

Ms. Catherine Latimer: The bill changes the proposed rules associated with pretrial detention. If a young person has been charged with a serious offence—and murder would certainly be classified as a serious offence—because the possible sentence for an adult is in excess of five years, then the young person can be detained without relying on the presumption of whether he would be put in custody at the end of the day, which was one of the problems for the Nunn Commission. He would be detained if he posed a risk to society—and if there were some suggestion that he was going to continue to be aggressive and stab people, that test would certainly be met—and if there were no sets of conditions that would limit that particular tendency towards violence.

Mrs. Shelly Glover: Excellent. I am hopeful that this will have some bearing upon all members of Parliament, because we've seen a number of cases in which, unfortunately, some people who perhaps ought not to have received bail did pose a significant threat and in fact committed further serious crimes against people in our communities.

Is my time up?

The Chair: Yes, it is.

Mrs. Shelly Glover: Thank you very much for indulging me.

The Chair: Thank you, Shelly.

We're going to thank our witnesses for being here and for coming back after the fire alarm.

We're going to suspend for two minutes to allow the room to clear. Then we'll go in camera.

[Proceedings continue in camera]

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