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Monday, March 7, 2011

Chair

Mr. Ed Fast

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● (1535)

[*English*]

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

This is meeting number 52 of the Standing Committee on Justice and Human Rights, and for the record, today is Monday, March 7, 2011.

You have before you the agenda for today. We're continuing our review of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

Again, we have with us a number of witnesses in two separate panels who are standing by to help us with that review. On our first panel we have the Canadian Council of Provincial Child and Youth Advocates, represented by Mary Ellen Turpel-Lafond, who is from my home province of B.C. She is the president. We also have Sylvie Godin, the vice-president. Welcome to both of you.

We also have here, representing the Canadian Resource Centre for Victims of Crime, Heidi Illingworth, who's the executive director. Welcome to you.

As well, we expect that shortly we will have Professor Susan Reid here. She's a professor of criminology and criminal justice, and director of the Centre for Research on Youth at Risk at St. Thomas University.

I think you have all been told the process here. You have 10 minutes to present, and then we'll open the floor to questions.

Why don't we begin with Ms. Mary Ellen Turpel-Lafond?

Ms. Mary Ellen Turpel-Lafond (President, Canadian Council of Child and Youth Advocates): Thank you, Mr. Chairman, and good afternoon, members. I'm Mary Ellen Turpel-Lafond, B.C.'s representative for children and youth and president of the Canadian Council of Child and Youth Advocates.

As you know, beside me is Sylvie Godin from the Quebec commission. We also have with us in the gallery a number of the individual child and youth advocates from across Canada. We have the child and youth advocate from Manitoba with us today, Bonnie Kocsis. We have representatives from the Ontario child and youth advocate office. We have the child commissioner from Nova Scotia, Dwight Bishop. We have the child advocate from Newfoundland and Labrador, Carol Chafe, and we have the child advocate from the Yukon, Andrew Nieman. I understand we'll be joined shortly by the child and youth advocate from New Brunswick, Bernard Richard.

So we have a bit of a delegation with us here today. Thank you very much for this opportunity. Sylvie and I will share our 10 minutes. Sylvie will speak in French, and I will speak primarily in English.

Our organization is an alliance of the government-appointed child and youth advocates from across Canada. Nine of the 10 members of our organization are independent advocates or independent officers of the legislative assembly; they provide support to children and youth, and particularly have something of a mandate, in the area of either advocacy or review, for youth criminal justice in our respective provinces and territories. I know that a few of our advocates have already made submissions to the committee in writing or have appeared here, including Mr. Bernard Richard and Madame Godin, as well as Mr. Elman. On behalf of B.C., I made a written submission.

We're very pleased to be here on behalf of our national body. Although our roles vary and our statutory mandates vary, we generally provide some direct advocacy supports to children and youth in the justice system, and we also work on systemic advocacy to make improvements to the systems for children and youth. Essentially our organizations promote better outcomes and the use of evidence to inform policy and encourage a more inclusive and responsive system of supports for youth and especially for vulnerable youth. In particular, in our various legislative assemblies where we work, we attempt to give voice to Canadians who by virtue of their age and personal circumstances are often not heard or represented in legislative and policy-making processes.

Through our participation in the council we identify issues of mutual concern. This is the background to our presentation today. Our collective experience as advocates and our review of the evidence leads us to make a strong recommendation that this committee be encouraged to take a position to step back from Bill C-4 and reconsider the impact of the bill on children and youth.

The current Youth Criminal Justice Act recognizes the important and interdependent objectives of protection of the public and rehabilitation of youth, and we strongly concur that both of these objectives are important. We see no evidence that shows that the proposed amendments to the act will decrease youth crime or that they will increase the safety of the Canadian public. We understand that any incident of violent crime is egregious in its devastating effects on families, communities, and the public at large, and as a society we certainly have to do our best to prevent such incidents. However, despite our distress at such incidents, we must not respond by locking up more youth and handing out more adult sentences to youth. Research demonstrates that doing so is not an effective strategy. Jurisdictions that take that approach typically have worse outcomes for children and youth across the spectrum and increase the chances that a youth will become more fixed on, or choose, a criminal path.

[*Translation*]

Ms. Sylvie Godin (Vice-President, Canadian Council of Child and Youth Advocates): Research shows that the Youth Criminal Justice Act has been highly effective in diverting youth people away from custodial environments, reducing youth crime rates, and reducing violent youth crime. It promotes an emphasis on rehabilitation and reintegration. It fosters the use of extrajudicial tools to hold youth accountable, and increases the chances for youth to become law-abiding, contributing citizens.

We strongly believe that the overall effect of the proposed amendments will be detrimental to these improved outcomes. Our views are in significant agreement with the findings of the consultation process carried out across our country, which were tabled with you on December 9, 2010. The report resulting from that process noted that there were consistent messages from all provinces and territories. Two major conclusions outlined in the report are that there is “little support for changes to the Youth Criminal Justice Act at this time”, and that we “need a strong social safety net to support implementation of the Youth Criminal Justice Act”.

We are also concerned about the impact of the proposed amendments on aboriginal youth, who are among the most vulnerable members of Canadian society. On June 23, 2010, we came together as members of council to release a paper entitled “Aboriginal Children and Youth in Canada: Canada Must do Better”, which is one of the documents submitted to you for today's presentation. In that paper, we note that aboriginal youth are grossly overrepresented in the youth criminal justice system beginning at age 12 years.

In Manitoba, for example, aboriginal youth represented 23% of the provincial population aged 12 to 17 in 2006. However, 84% of youth in sentenced custody were aboriginal youth. This pattern is replicated across the country. For aboriginal children and youth in Canada, there is a greater likelihood of involvement in the criminal justice system, including detention in a youth custody facility, than there is for high school graduation.

This is a staggeringly negative outcome, which appears to have increased in some provinces over the past decade, even while youth crime has declined. When policies and changes in criminal law move the system in the direction of more detention, we can only expect that they will have a more immediate negative effect on aboriginal youth than on any other group in Canadian society. And that is unacceptable.

● (1540)

[*English*]

Ms. Mary Ellen Turpel-Lafond: Here is another important issue that the proposed amendments do not address that the members of the council wish to bring to the committee members' attention. If it's our objective to improve the youth justice system, we must find ways to stop the criminalization of youth who have mental health issues or cognitive impairments or developmental disabilities in particular. That means strengthening treatment outside the justice system, not increasing incarceration.

In August of this past year, the council of the Canadian Bar Association passed a resolution underscoring how persons suffering from fetal alcohol spectrum disorder live with neurological and behavioural challenges. The Canadian Bar Association called on

> all levels of government to allocate additional resources for alternatives to the current practices of criminalizing individuals with FASD.

Our council supports that resolution. We understand that the federal Minister of Justice has embraced that resolution and is looking at ways, in discussion with his counterparts federally and provincially, to achieve that, and we think there is great merit in considering that before proceeding with a matter such as Bill C-4.

[*Translation*]

Ms. Sylvie Godin: As child and youth advocates, our work is guided by respect for the rights of children and youth in our country. Canada is a signatory of the United Nations Convention on the Rights of the Child; the twentieth anniversary of the convention was marked in 2009. The convention clearly underscores the need for youth justice initiatives that are consistent with the rights and best interests of children and youth. Bill C-4does not meet that test.

[*English*]

Ms. Mary Ellen Turpel-Lafond: For this reason, we respectfully ask the committee members to step back from Bill C-4 and help instead to promote measures that will further reduce youth crime and promote the safety of the Canadian public. Let's put the emphasis on promoting measures that will give full effect to the Youth Criminal Justice Act, particularly in rehabilitation and reintegration.

In our submission you can see we've made seven recommendations toward that end. We ask for the committee's attention to our recommendations in your deliberations.

We thank you for the opportunity to speak today, and of course we are here to answer any questions you might have.

The Chair: Thank you. I'll move on to Ms. Illingworth.

Ms. Heidi Illingworth (Executive Director, Canadian Resource Centre for Victims of Crime): Thank you, and good afternoon.

The Canadian Resource Centre for Victims of Crime, or CRCVC, is a national non-profit advocacy group for victims and survivors of violent crime. We provide direct assistance and support to victims across the country, and we advocate for public safety and improved services and rights for crime victims. We are pleased to appear before you today regarding Bill C-4, also known as Sébastien's law.

In this submission, we examine the proposed amendments and also provide some recommendations we have made in the past with respect to ensuring that the interests of crime victims are fully taken into account.

I wanted to share with you today a little bit about the families we help. At our centre, we receive calls from families affected by youths who commit violent crime against other youths or adults. We frequently hear concerns with respect to the YCJA and the manner in which it responds to both youth who commit crime and the victims of such offenders. As an organization, we are concerned by the effect on victims of violent crimes committed by youth.

According to the Statistics Canada report entitled “Police-reported crime statistics in Canada, 2009”, although youth crime severity has generally been declining since 2001, the youth violent crime rate was 11% higher than in 1999. While many groups have testified before you and have stated that the YCJA has been an unmitigated success, we remain concerned about levels of violent crime committed by youths in Canada.

We recognize that most youths come in contact with the law as a result of fairly minor incidents and we recognize the importance of diverting these youth away from the formal criminal justice system through the use of warnings, cautions, and referrals to community groups and programs. That being said, we feel the protection of society must be the ultimate goal of the youth criminal justice system. We agree with Mr. Justice Nunn, who recommended that in order to help solve the problem posed by the small group of dangerous and repeat offenders, both short- and long-term protection of the public should be included among the principles set out in section 3 of the YCJA.

Canadian society needs to do a better job of tackling the root causes of crime. We believe that many youth, with the proper social supports, can be steered away from making poor choices that may lead to a criminal lifestyle. We agree that it is necessary for municipal sectors such as schools, housing, municipal planning, and police to identify the roots of crime problems, develop strategies to tackle those problems, and implement and evaluate them.

Focusing particularly on reducing the number of young offenders, the CRCVC strongly calls for providing enriched, subsidized child care for all citizens, along with affordable housing. We favour school programs for anti-bullying, anti-violence, and respect for gender and diversity. In addition, we advocate programs to ensure literacy, to protect children from family violence, to provide after-school care, to make job training and shadowing available to adolescents, to encourage anti-substance abuse in schools, and to offer mental health and addictions treatment to youths in need.

We also see the need to reduce violent victimization in Canada. Working with our clients, we see all too well the devastating impact of violence on individuals and families. It is the victims who too often suffer endlessly in many ways, including emotional, physical, and psychological harm, pain and suffering, and lost productivity.

We support amending paragraph 3(1)(b) to add the principle of "diminished moral blameworthiness or culpability" of young persons. We believe that youths do not have the same amount of experience and knowledge to draw upon in their decision-making. We are pleased to see that the definition of a serious violent offence has been clarified and now includes the acts of first- or second-degree murder, attempts to commit murder, manslaughter, and aggravated sexual assault. We feel that this definition adequately captures the most serious violent offences that are committed, and it removes any uncertainty about which offences should be included.

The creation of a clear definition of these types of offences is in keeping with one of the primary goals of the YCJA—a reduction in the number of youth in custody—while also ensuring that there is a clear definition of the crimes that require more serious sanctions and custodial sentences.

We are also pleased to see the inclusion of a definition of a "serious" offence as it pertains to pretrial detention. We feel that it helps to clarify the provisions in proposed section 29, which in the act cross-referenced section 39. This created complexity in the provisions and implied that the goals and purposes of pretrial detention are the same as for sentencing. This is not always the case.

● (1545)

We acknowledge that the definition they're referring to—offences that carry a maximum adult sentence of five years or more—may seem to cast a wide net, but we would like to point out that this is but one of the criteria a judge or justice uses when determining detention in custody. This definition is necessary to allow judges and justices to hold violent and repeat offenders in custody while awaiting trial.

The addition of the definition of a “violent” offence is designed to attach significance to those behaviours that do not result in harm to any individuals but carry the risk of doing so. A youth leading a high-speed car chase through a residential neighbourhood would be an example of a violent offence under this definition, regardless of whether anyone is hurt. The fact that the chase was carried out in a residential neighbourhood where many people live, including children, makes the behaviour very high risk.

Crimes of this nature pose a significant risk to the public. They need to be acknowledged as such in order to be included in those offences for which a custodial sentence can be considered. This does not say that a custodial sentence is recommended or required in all cases that pose a risk to the public, only that they are eligible.

We are in agreement with the inclusion of deterrence and denunciation in the principles of sentencing. They are both important objectives that are currently missing from the YCJA. While there is evidence that youths do not consider the sentence they may get for committing a crime, the criminal justice system nonetheless must hold them specifically accountable for the harm they have caused, especially when it is serious harm. There is a public expectation that it do so.

There also needs to be a component of the youth justice system that allows judges to specifically denounce very serious crimes. This is not to say that young people should not receive treatment and rehabilitation. We believe that denunciation is important to Canadian society, and especially to the victims and survivors, as it is an expression of the abhorrence of the actions of an individual and the harm that has been caused. We know that it can be healing for victims to hear a judge publicly acknowledge the harm they have suffered. We believe that it may also be beneficial for a young person's understanding of the true impact and consequence of his or her actions to hear the violent act denounced by a judge.

With regard to record-keeping, we believe that the provisions in the amendments will allow a judge or a justice to take into account a youth's full criminal history when considering a sentence and to thus determine what sentence is appropriate and if a custodial sentence is warranted. This amendment should not interfere with the discretionary powers of police or deter them from considering extrajudicial sanctions as an option for keeping a youth out of the justice system. Rather, it allows the youth court to pinpoint patterns of escalating frequency or severity of criminal behaviour.

Subclause 11(1) of Bill C-4 adds proposed subsection 64(1.1), which requires crown counsel to consider whether it would be appropriate to apply for an adult sentence in a particular case. If the crown decides not to apply for an adult sentence, they must inform the court that they are not doing so. We feel that this does not encroach on prosecutorial discretion; rather, it creates more openness and accountability in crown decision-making, something that victims and the public in general often request.

Regarding publication bans for youth, the provision that allows a judge to consider lifting a publication ban for a conviction in a violent offence is something we have long advocated. There has been an assumption that by not identifying youths, we are somehow protecting them. We have always questioned the wisdom of doing so for repeat serious young offenders. Part of accountability and responsibility is facing the community. Also, what protection are we offering innocent citizens who may not know of a young person's record of violence or sexual assault? As a society, we must remain cognizant of why we are protecting a young person and whether such protection is in keeping with the broader protection of all of society.

To conclude, I would like to say that we generally support the proposed amendments to the Youth Criminal Justice Act. Unfortunately, the YCJA can only be reactive. It can only deal with people who have already broken the law. As a society, we must invest more strongly in social development programs to ensure that all children benefit. Schools, housing, social services, municipal planning, and other municipal services all have key roles to play in addressing local crime and community safety problems.

● (1550)

We must also remember that not all communities are able to provide social services equally. The YCJA must address some of those gaps legislatively, and it must recognize that there are offenders who require more serious interventions.

As I said previously, we support diversion programs to keep youths out of custody for non-violent offences. However, when we are dealing with serious violent crime, youths must be held accountable for their actions. For some who are very dangerous and/or out of control, the use of incarceration is necessary to protect the public.

Justice must be seen to be done, even when we are dealing with young offenders. When the justice system does not respond in a serious manner to serious harm no matter what the age of the perpetrator, the public loses confidence in the justice system.

We urge that the committee support this bill and the amendments to the YCJA as they are proposed.

At the end of our presentation, you'll find a couple of recommendations we've made in the past, specifically regarding the rights of victims in the YCJA.

Thank you.

The Chair: Thank you.

I note that Ms. Reid isn't here yet. When she does appear, we'll let her make her presentation. I understand she was travelling, and her plane may have been delayed.

We'll move to questions from our members.

First of all we'll go to Mr. Lee. You have seven minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

My first question will be to Ms. Illingworth of the Canadian Resource Centre for Victims of Crime.

I understand the perspective of the centre, and I understand your advocacy on behalf of victims. I would like to ask if in all of that work you do, which would generate the perspective your centre has, whether you have any contact with offenders, particularly young offenders. Do you have experience within that envelope of activity? I'm asking whether you have had influence in that area of activity in generating your advocacy on behalf of victims.

● (1555)

Ms. Heidi Illingworth: Generally our work is with victims and survivors of violent crime. When we're providing support during a case or following sentencing, there are issues having to do with the offender that arise at all instances of the processes, but our work is generally for survivors, not for people who are accused or convicted.

Mr. Derek Lee: So you don't have that much contact with the so-called “bad guy”?

Ms. Heidi Illingworth: Right.

Mr. Derek Lee: Okay.

Now, this question is a little bit technical. I'm going to ask the other witnesses too.

At some point in our hearings, it suddenly hit me that I was starting to see things over again, a kind of déjà vu. At some point it hit me what the déjà vu was. It was back when Parliament adopted the principles of sentencing, the first time we codified them. It was back at some point in the early nineties, 1990-something. The committee did a substantial amount of work at that time.

Ms. Illingworth, what I was remembering, as we go about amending the YCJA, is we're starting to see the general sentencing principles of the Criminal Code show up here almost word for word in the YCJA. As I recall, it was never the purpose of the YCJA. If all we're going to do under the Youth Criminal Justice Act is readopt the provisions in the Criminal Code, what's the point of having separate sentencing principles for young people? What's the sense of having a separate system?

I'm going to go through this by chapter and verse so you can understand my perspective. In the YCJA now, subsection 38(3) lists about six principles in determining sentencing. If you just read them in reverse, it starts to look an awful lot like section 718 of the Criminal Code, which is the purpose of sentencing. You just read them in reverse. I'll go through it.

Paragraph 38(3)(b) looks like subsection 718(f) in the main code.

Paragraph 38(3)(c), dealing with reparations, looks like paragraph 718(e) in the Criminal Code.

Paragraph 38(3)(d), with the same words changed around a little bit, looks just like paragraphs 718.2(b) and 718.2(c).

Paragraph 38(3)(e), on previous findings of guilt, and paragraph 38(3)(f) relate to paragraph 718.2(a), which deals with aggravating and mitigating circumstances.

Then we add denunciation, which is just like paragraph (a) of section 718.

Then you add deterrence, which is the same as paragraph 718(b).

It's as if we've gone right back to square one with our sentencing principles.

I'll put this to all the witnesses: is this what we've done as a society—gone full circle and come back to where the sentencing principles for young people are now starting to emulate the principles that we use to sentence adults? Is that where we are? Is that where you want to be? I'll ask you that as witnesses, and I'll stop there.

Ms. Heidi Illingworth: I think, as I said in my submission and on behalf of the people we work for, some of those principles are very important. Though taken from the adult system, if you will, some are currently missing from the youth system. It doesn't mean that you can't still treat youth in an age-appropriate way, and the system is much more focused in rehabilitation and reintegration. These are just some considerations that our centre thinks are necessary, especially when we're talking about the commission of serious violent crimes.

● (1600)

Mr. Derek Lee: Ms. Turpel-Lafond, would you comment?

Ms. Mary Ellen Turpel-Lafond: I think the view of the council is that there is a creep into the Youth Criminal Justice Act of concepts that are really more appropriate for adults and not appropriate for youth.

In particular, some of us participated in a national consultation on the YCJA that led to the development of a background paper that I know was released to the committee in December. It was a national consultation process in each of our provinces and territories. In that consultation paper there was a very strong view taken that the summary of that national consultation was that the YCJA should not be changed just for the sake of change, and that the flaws are not in the legislation but in the services and supports that need to be there in the system.

I participated in British Columbia, Ms. Godin in Quebec, and others of us participated in our provincial consultations. We found that there was no appetite in our consultation process for this change to adopt the adult sentencing principles into the YCJA.

Obviously, I have the additional benefit of eight years as a provincial court judge in applying the YCJA in the youth court. We do apply the offences in the Criminal Code when we're dealing with offenders who are young people, but the procedure is different on purpose, which is that it reflects the best evidence we have with respect to the cognitive and developmental circumstances of adolescents.

For instance, on the issue of deterrence there is scant, if any, evidence that it is effective with respect to young people. There is evidence with respect to adults—that's different—but not with respect to young people.

Certainly as a council we're very concerned about converting the Youth Criminal Justice Act into an adult regime, which it wasn't supposed to be. We're very supportive of holding young people to account and for their being responsible, and for having a successful reintegration and rehabilitation of young people when there has been antisocial behaviour, but we don't see evidence that placing them essentially into an adult system will work.

The Chair: Thank you.

Now we'll go to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I would first like to ask Ms. Turpel-Lafond a question.

My understanding is that you were a judge in juvenile court for some time. Is that right?

[*English*]

Ms. Mary Ellen Turpel-Lafond: I am a judge on leave from the Provincial Court of Saskatchewan, performing the role as representative for children and youth in B.C., so I have a position I'll go back to.

[*Translation*]

Mr. Serge Ménard: I thought you looked too young to be retired. If I understood correctly, you have eight years experience. Have you worked under the current act only?

[*English*]

Ms. Mary Ellen Turpel-Lafond: Yes, I sat as a judge under the Young Offenders Act. I worked as a lawyer with the Juvenile Delinquents Act, and then I was there when we brought in the Youth Criminal Justice Act in the Province of Saskatchewan and nationally. I've seen the changes through the different systems.

[*Translation*]

Mr. Serge Ménard: Like Ms. Godin, you have all participated in the hearings held by the Minister of Justice across Canada. You are familiar with the results and with the position of other organizations. So if anything had to be improved, it's not the act itself, but the resources. The resources have not lived up to the expectations people had when the legislation was passed.

Ms. Sylvie Godin: Yes, absolutely. That's actually in our recommendations. In addition, based on the findings of our report in general, a new trend is on the rise, which includes mental health issues. We talk about it in the recommendations. These new problems are definitely on the rise. We need to pay attention to them, take concrete action and provide the appropriate resources.

● (1605)

Mr. Serge Ménard: Some of the changes made to the legislation have to do with publishing the names of the young offenders. According to some of the people who testified before us—and I will just refer to them for now, even though I know many others who share the same opinion—young people in gangs seem to think that having their names published in newspapers is something to be proud of rather than something to deter them from committing offences. Is that the feeling you are getting too? Have you also been experiencing this?

[*English*]

Ms. Mary Ellen Turpel-Lafond: I think the challenge we see with the proposed amendments is a very ambiguous position about when the names would be released if this act were to come into force. It would lead to very protracted proceedings.

Also, again going back to the position of what the evidence is, is there any evidence to suggest that the publication of the name of a youth would actually lead to a reduction in offences? I think you've identified an issue. We do have some groups of extremely vulnerable youth sometimes being actively recruited into gangs or what have you. We want a very pro-social approach, and the exposure of their names could in fact make them targets for more offending behaviour, if you like. It can increase the likelihood that they will offend again, because they may be acting out specifically for that purpose. They may not oppose that, because they wish to be named, yet a few years down the road—they're 17, say—they decide that this was a terrible thing and their life circumstances have been permanently changed through this.

So we're quite worried about the publication of the names. There are very significant privacy issues. The child may consent to have that name released but may not be able to understand the consequences for their life course and for their rehabilitation and reintegration.

[*Translation*]

Mr. Serge Ménard: Sometimes, cases are appealed. Should the names only be released at the end of the proceedings, when the results of the appeal are out and the ruling has been confirmed?

[*English*]

Ms. Mary Ellen Turpel-Lafond: I think, again, it depends on the purpose. It would appear in the draft of Bill C-4 that the publication of names is connected to some types of deterrence, to the notion that if the name is out there, it will deter future offending behaviour. I think it's a very weak link between this device and that outcome.

What is the purpose of naming, then? Is it just simply retribution in the community—social stigmatization at school, and so forth? I think it's unclear in this bill what the purpose is. It's not clear to us that there's been enough deliberate and thoughtful consultation and review of this issue to support this provision.

[*Translation*]

Mr. Serge Ménard: The child and youth advocates we have just heard from raised the point that the publication of names enables people to protect themselves. What do you think about that?

[*English*]

Ms. Mary Ellen Turpel-Lafond: There's no evidence to support that. On the adult side, we routinely have names published. When we see a name published in a newspaper, we don't cut it out, clip it, put it on the refrigerator, and say, “Here are the names of the individuals we should be careful of; they have committed a car theft”. It anticipates something that doesn't exist in reality.

I think the key issue for the advocates is that youth should be held to account for their wrongdoing—with an emphasis on rehabilitation, reintegration, and pro-social development—but it's best, given their vulnerable circumstances, that they be held to account within a system that is designed uniquely around their developmental needs.

Having their names published, as your question indicated earlier, could actually lead to more offending behaviour. That's our fear. It could escalate the level of offending behaviour and provoke a bit of a public recognition spree, rather than deter it or actually inform the public.

● (1610)

[*Translation*]

Mr. Serge Ménard: I—

[*English*]

The Chair: Monsieur, your time is up.

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

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Madame Godin and Ms. Turpel-Lafond, there are three prosecutors sitting behind you, and they're going to come up in the next hour. They propose some amendments to respond to the Nunn commission's idea that what we really need to do is deal with that...probably somewhere around 5%—no more than 10%—of the really serious offenders.

They proposed some material when they were here the last time, five months ago now. I don't know if you've looked at that material—that's my first question—and if you have, do you see it being a possibility of dealing with that very small percentage of the offenders who commit, as they say in some of their material, as much as 46% of the serious offences?

Ms. Mary Ellen Turpel-Lafond: First of all, I haven't studied their material at length. I understand the position, I understand the findings in the Nunn inquiry, and we've looked at a number cases. I think the Nunn inquiry in particular was very persuasive to say that there are systems to deal with violent offences.

Wherever you have prolific, violent offences on the part of youth, what we see, particularly in British Columbia, where I'm from, is projects with police targeting prolific repeat young offenders; in these cases, you have stronger law enforcement, community supervision, and, of course, an understanding who the young offenders are, particularly young people committing offences in British Columbia. They're frequently young adolescents who are living out of the parental home; they're children in care, in multiple foster placements; they may not have a stable home; they may be aboriginal children who have experienced a great deal of trauma and abuse in their lives.

We see some great success around projects in which police are promoting public safety and identifying greater stability with young people. We think there are many tools in the act that are being used to deter that crime.

On the issue of some very specific recommendations around pretrial detention, there's a discussion about whether amendments to that part of the Youth Criminal Justice Act are acceptable, if you like, and have evidence supporting them, versus everything else in the act.

At the national council we really haven't taken a position on that question. I know that some of the individual advocates.... In my individual brief I said that I think there are some merits in some of these principles, but it's the overall focus that's of concern to us. There are strategies that can be taken, but taken in the whole, the broader strategy of having a more retributive and deterrence-based system is one that we don't think will get at the circumstances of those offenders.

Mr. Joe Comartin: Let me hold you just to the pretrial detention area for now. Justice Nunn was quite clear that he felt that the existing act needed strengthening with respect to targeting that small percentage of repeat offenders in particular, those individuals who clearly were at high risk for violence; is it possible, in your opinion, to amend the act to deal specifically with that group without doing the catch-all that, in my opinion, this bill does?

Ms. Mary Ellen Turpel-Lafond: Certainly I think the three provisions that jump out from Bill C-4—the provision in proposed paragraph 3(1)(b) on "diminished moral blameworthiness", the pretrial detention provision in proposed subsection 29(2), and the place of detention in proposed subsection 76(2)—are what I would call clarifications of the original intent and approach of the Youth Criminal Justice Act. They are learning from practice in areas where things needed to be improved and where there was clear evidence to support a change.

The issue that concerns the advocates is that all of the other things that have been layered on top of these are a concern, and that these smaller issues may be lost in some bigger consequences that may target and increase incarceration for vulnerable youth.

Mr. Joe Comartin: That's all, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Comartin.

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

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I am going to share my time with my colleague. I have a very quick question for either Ms. Godin, Ms. Turpel-Lafond or Ms. Illingworth.

In section 21, we read the following: "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."

Ms. Godin, have young people in Quebec been put in penitentiaries or prisons for adults?

● (1615)

Ms. Sylvie Godin: I'm sorry, are you asking whether, in Quebec, young people—

Mr. Daniel Petit: —have been sent to adult prisons?

Ms. Sylvie Godin: Absolutely.

Mr. Daniel Petit: When?

Ms. Sylvie Godin: Unfortunately, I don't have the statistics for Quebec.

Mr. Daniel Petit: What if I were to tell you that there were none for Quebec?

Ms. Sylvie Godin: For Quebec? Oh, maybe not. No. I don't have the statistics for the province.

Mr. Daniel Petit: Okay.

Ms. Sylvie Godin: I know some provinces have them, but perhaps not Quebec.

Mr. Daniel Petit: Okay. Ms. Tupel-Lafond, I know that, in Saskatchewan or other provinces, roughly 10 people, aboriginal in particular, have been put in adult prisons for a given period of time because of a lack of space and facilities.

Do you have other examples that could support our initiative to amend section 21 so that no young person is sent to a prison for adults?

Do you have any figures other than the ones I have? Based on my data, in the other provinces, a maximum of 10 young people have been sent to a prison for adults. Are there other cases we should know about?

[*English*]

Ms. Mary Ellen Turpel-Lafond: First of all, I've had numerous cases in my work in the court in which there are applications to elevate a young person to serving a balance of their sentence in an adult facility because the youth facility was overcrowded or the adolescent sometimes wanted to go to the adult jail, which may not be a very good decision with respect to the future of that adolescent.

In British Columbia this is less frequent, but the challenge is that what is designated as a place of detention for a youth may also be a place of detention for an adult. If we take the case of Ashley Smith, for instance—we're about to have an inquest into the self-harm death of Ashley Smith—I know that as an adolescent she was on several occasions detained in the adult facility. As well, on the pretrial side, RCMP holding cells in rural settings hold both adults and youth.

In terms of serving a sentence following a judicial determination of a sentence, it does happen in Canada. I couldn't say that there are only 10 cases. I certainly am familiar with a number of circumstances—

[*Translation*]

Mr. Daniel Petit: I'm sorry to interrupt, Ms. Turpel-Lafond. But do you agree with saying that no young person who is under the age of 18 years is to serve the sentence in a prison for adults? Are you in favour of this amendment?

Ms. Godin, do you agree with this amendment? Do you agree with specifying that, in Canada, no young person is to be put in a prison...?

Ms. Sylvie Godin: Yes, absolutely.

Mr. Daniel Petit: Okay.

Ms. Turpel-Lafond, do you also agree?

[*English*]

Ms. Mary Ellen Turpel-Lafond: I think it's a very commendable change. It's one of those instances that we think are very commendable clarifications, because the practice is inconsistent from place to place. It's one of those narrow areas that we think is extremely valuable.

[*Translation*]

Mr. Daniel Petit: I have one last question for either Ms. Godin or Ms. Turpel-Lafond. The proposed amendment "would require the Crown to consider seeking an adult sentence for youth convicted of a "serious violent offence"—that is, murder, attempted murder, manslaughter or aggravated sexual assault."

Do you agree with this amendment? It deals with the four most serious offences in the Criminal Code. Do you agree with giving the Crown the power to ask judges to consider passing a heavier sentence when a serious crime is committed? Ms. Godin, do you agree with this amendment that would refer to four specific crimes?

Ms. Sylvie Godin: Yes.

Mr. Daniel Petit: Ms. Turpel-Lafond, do you agree as well?

[*English*]

Ms. Mary Ellen Turpel-Lafond: I think it's important to bring the act into conformity with the decision of the Supreme Court of Canada around that issue. I understand there has been some insight taken in that case of R. v. D.B. to comply with that decision.

I think there are some challenges around the proposed amendments. I'm concerned about the emphasis on adult sentences and whether that will meet the circumstances, and I'm a bit concerned about the redefinition of serious violent offences and what will be covered. I'm certainly not unqualified there, and I think there needs to be more careful review and evaluation of how that will function and operate. I think there are still some concerns there.

[*Translation*]

Ms. Sylvie Godin: I would like to add, if I may, Mr. Petit—

[*English*]

The Chair: *Un moment*. I'm going to turn it over to Mr. Dechert, because he has a question too.

You have two minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, ladies, for your comments here today.

Ms. Illingworth, I want to start with you. I want to first of all acknowledge and thank your organization for the good work you do in assisting victims of crime.

You mentioned in your remarks that your organization frequently hears complaints about the YCJA, especially with respect to violent criminals. I think it's important that we as parliamentarians listen to the concerns and comments of victims. We frequently hear from advocates for offenders, especially in this committee and elsewhere, but we rarely hear from the victims themselves. Can you tell us what you have heard from victims of crime about their concerns with respect to the YCJA?

● (1620)

Ms. Heidi Illingworth: Just to repeat what I've said throughout the brief, many of the families we deal with are concerned about young people with long histories of either extrajudicial measures or previous crimes. They feel that they're released on bail and are pretty much free to do whatever they want—that the person who is responsible for them, a parent or whoever, isn't keeping adequate supervision of them. We've also seen harassment of victims and their families by young offenders who are waiting to go to trial.

There are privacy issues around the publication bans. The identity of many families in which a young person is murdered is also hidden or restricted from being in the media. Family members aren't allowed to talk about that child—who they were or what they were going to be—because the process is ongoing against the accused person, whose identity is protected.

There are many issues that we hear from the families we help, and some of them are outlined in our brief.

Mr. Bob Dechert: Thank you very much.

The Chair: Thank you.

You're out of time. Sorry.

We have time for a round of two and a half minutes apiece. Why don't we start with Ms. Jennings?

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I just have one question, and if there's time left, my colleague Brian Murphy will use it.

We had Professor Jacques Dionne here last week. He mentioned that Quebec is the only place in Canada where an in-depth study is being done on the real, fact-based impacts of the Youth Criminal Justice Act. He also said that the study would take two years.

Are you familiar with this study funded by the Quebec government, and do you know whether other provinces or territories in Canada want to undertake a study like that?

Ms. Sylvie Godin: Yes, I am aware of the study that is underway in Quebec. I was a bit taken aback by the two-year timeframe, but given the nature of the work required to do the study, that's probably very likely. I also think that one of the major challenges is finding data to support the study. It will be interesting to see the outcome of this research.

So yes, in Quebec, we will see some results very soon.

Unfortunately, I don't know whether this type of research is being done in the other provinces.

Hon. Marlene Jennings: Thank you.

[*English*]

The Chair: It's your turn.

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

I'll just ask this of the panel generally. Clause 18 in Bill C-4 amends section 72, and this has to do with adult sentences. The prosecutors have come forward in three provinces, I believe, with the suggestion that the “beyond a reasonable doubt” standard should not be put in the act, as it is now in Bill C-4, and also the taking into account of background circumstances regarding the seriousness of the offence and the personal circumstances of the young person, such as age, maturity, and character. These are all things that judges generally do, but they like to have the bedrock of legislation.

They seem to be, in part, quite reasonable suggestions. They're suggesting it will be watered down, but there will be no background for the court to draw on. Briefly, what do you think of the prosecutors' suggestion, if I have summarized it well enough for you to comment?

Ms. Mary Ellen Turpel-Lafond: I think there are some issues around the evidentiary requirements in terms of those applications. They've raised some issues.

The issue about the evidence to rebut the presumption is a significant issue, and I think there is some level of impracticality about it that would lead to protracted problems on the ground. This may be another reason it would be valuable to step back and try to be more comprehensive, thorough, and careful with these amendments, so that in fact they'll save those protracted disputes over rebutting presumptions and so on when the proposed bill is not very clear.

● (1625)

The Chair: Thank you.

We'll go to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): No, I would rather let my colleague ask some questions.

[*English*]

The Chair: Monsieur Ménard, you have two and a half minutes.

[*Translation*]

Mr. Serge Ménard: Ms. Illingworth, since you are dealing a lot with the victims, I am curious whether you think that the rehabilitation of young offenders is not consistent with what the victims want.

[*English*]

Ms. Heidi Illingworth: No, I don't, not at all. Victims certainly recognize that most children or most adolescents who are involved with the youth criminal justice system have not committed serious violent crimes. It's only a small minority, and even those who have been impacted as victims, whether it's by young offenders or adult offenders, don't want that person to do it again. That's what we hear most from all survivors. They want no one else to suffer what they have suffered, so rehabilitation is a very important subject for victims and survivors, as is reintegration, because they know that most offenders are coming back into society eventually.

[*Translation*]

Mr. Serge Ménard: Legislation that would reduce youth crime is a good thing for the victims, right?

[*English*]

Ms. Heidi Illingworth: Yes, certainly.

[*Translation*]

Mr. Serge Ménard: Your recommendation number 4, which is rather long to read, but you are obviously familiar with it, basically talks about a multi-jurisdictional strategy for all of Canada. Is there currently any indication that a strategy like that is being developed?

[*English*]

Ms. Mary Ellen Turpel-Lafond: On the proposal to have better coordination in the system for young people with mental illness and behavioural and developmental disabilities, we see some aspects of it in some provinces and territories, often in a single centre, such as a town. We don't see it at the national level. There is a lack of clarity.

For example, I'm reviewing a case at the moment of an adolescent with autism who had a very significant psychotic episode. In the context of that, his father was killed. He was found to be not criminally responsible for that act because of a very significant mental disorder. He had gone to a hospital, but he wasn't certified under the provincial legislation and retained. The parents were very afraid to leave him in an adult psychiatric facility, which was mostly for street-involved adults. He was a very vulnerable person; they brought him home, and his father was unfortunately murdered. He has been completely stabilized and is back in the community and living with the terrible consequences of what happened.

Could it have been prevented? I don't know, but the issue is this: what about the supports for an adolescent who has a developmental disability and a mental health challenge? In crime prevention, do we have a consistent approach and adequate mental health supports for kids with dual diagnoses and kids with special needs? As well, we refer in our brief to fetal alcohol spectrum disorder, so we are not seeing effective national standards and strategies. We see a patchwork—

The Chair: Thank you—

Ms. Mary Ellen Turpel-Lafond: We think there is more work to be done.

The Chair: We'll go to Mr. Dechert for two and a half minutes.

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

Ladies, we had some discussion on Justice Merlin Nunn's report earlier today. I'm sure you're all familiar with it. In the report, he concluded that highlighting public safety as one of the goals or principles of the Youth Criminal Justice Act is necessary to improve the handling of violent and repeat young offenders.

From each of your organizations, starting with Ms. Illingworth, could I get your comments on Justice Nunn's statement and whether or not your organization agrees with that statement?

Could I start with Ms. Illingworth and then Ms. Turpel-Lafond?

● (1630)

Ms. Heidi Illingworth: We agree with the statement. I think I highlighted that in our submission this afternoon.

We feel that public safety must be the most important underlying factor in the bill and going forward. It has to be the top consideration.

Mr. Bob Dechert: Okay. Thank you.

Ms. Turpel-Lafond, would you comment?

Ms. Mary Ellen Turpel-Lafond: I think it's important to put Justice Nunn's comments into complete perspective. While he identified areas for some improvement, he also identified that much of the act was working. He was very concerned about the increased incarceration of vulnerable youth.

I think the advocate from New Brunswick, Mr. Richard, in his written brief to this committee, outlined a concern that the advocates certainly have. It wasn't a suggestion that there be a type of broad change to the act, but there were some very specific issues—for instance, the issue of pretrial detention.

Mr. Bob Dechert: Could I ask you a specific question?

In paragraph 3(1)(a) of Bill C-4, the provision inserts the words “protect the public”. In paragraph 3(1)(a), the wording is “the youth criminal justice system is intended to protect the public”.

Do you agree with that statement? Is it an amendment that you would support? Does the amendment flow from the comments of Justice Nunn?

Ms. Mary Ellen Turpel-Lafond: I think it does. I think public safety is always a very important principle to balance when you're looking at legislation like this.

Mr. Bob Dechert: Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you.

I thank our three witnesses for appearing. Your testimony is helpful as we move forward on our consideration of Bill C-4.

I'll excuse you.

Members, before we suspend for a couple of minutes, could you review the ninth report of our steering committee?

We met earlier today and essentially agreed to add two more days to our consideration of Bill C-4 to accommodate more witnesses, which would be on March 21 and March 23. On March 28, we would then go to the draft report on organized crime to see if we can make some headway there. On March 30, we could tentatively deal with clause-by-clause consideration of Bill C-4, including all of the amendments that I'm sure you have ready for us.

You've had a chance to read it. Is there any discussion?

Do we have someone to move adoption?

It's so moved by Monsieur Ménard.

(Motion agreed to)

The Chair: Thank you.

We'll suspend for two minutes.

● (1630)

(Pause)

● (1635)

The Chair: We'll reconvene the meeting. We're continuing our review of Bill C-4.

Returning to us are representatives from the Government of Alberta, the Government of Manitoba, and the Government of Nova Scotia.

From Alberta we have Joshua Hawkes, director of policy appeals, education and policy branch, Department of Justice and Attorney General. From the Government of Manitoba we have David Greening, executive director, policy development and analysis, Department of Justice. The Government of Nova Scotia is represented by Ronald MacDonald, senior crown counsel and criminal law policy advisor for policy, planning and research, Department of Justice.

Gentlemen, you've been asked to come back because since your last appearance before us we've had ongoing correspondence with you. You've made suggestions for some amendments to this bill. We're interested to hear what you have to say. We'll give each of you an opportunity to speak, and then we'll open the floor to questions from the members.

Go ahead, Mr. Hawkes.

Mr. Joshua Hawkes (Director of Policy, Appeals, Education and Policy Branch, Department of Justice and Attorney General, Government of Alberta): Mr. Chair, I wonder if we might reverse the order.

The Chair: Absolutely. We can start with Mr. MacDonald, if that works.

Mr. Ronald MacDonald (Senior Crown Counsel and Criminal Law Policy Advisor, Policy, Planning and Research, Department of Justice, Government of Nova Scotia): Thank you, Mr. Chair. Thank you, again, for the opportunity to explain our concerns about Bill C-4.

The committee has the transcript of our prior appearance. It will remind you of our concerns relating to specific provisions of Bill C-4. They relate to pretrial detention provisions, issues with the definition of deferred custody, and problems relating to the test of having a youth sentenced as an adult.

I again remind the committee, as I did the last time, that we support the general policy directives of the government as stated by Minister Nicholson in Parliament. However, it is our position that the legislative drafting has created the problems we address. I will deal with pretrial detention, Mr. Hawkes will address the adult sentence issue, and Mr. Greening will address the issue of deferred custody.

On the issue of pretrial custody, I remind you that in his report Justice Nunn did not advocate for, and Nova Scotia today is not advocating for, general changes that provide for greater incarceration of youths. Rather, our submissions emphasize that at times there are youths who are out of control, and the courts must therefore have the appropriate tools available to them to protect the public and assist the youth. These tools must, perhaps unfortunately, include at times the practical ability to place the youth in custody, both pretrial—and in particular pretrial—and obviously sometimes post-trial, for the appropriate range of offences and fact circumstances.

Simply put, while it is right to say that in principle we don't want any more youth than necessary in custody, it does not mean the system should have restrictions that effectively block that custody when we suggest it may well be necessary.

After our appearance on June 17 of last year, and further to the request of this committee, we were asked to prepare legislative drafting that we felt would resolve the problems we had identified. We therefore filed a supplementary submission and a chart that outlines that drafting.

I just want to quickly remind you that in its current form, Bill C-4 provides changes to section 29, providing a broader availability for pretrial custody for offences that would net an adult sentence of greater than five years. However, as we stated the last time, it completely precludes the availability of pretrial custody for offences that would net an adult sentence of less than five years.

My colleague, Mr. Greening, referred to those provisions as the "mandatory release" provisions, and I would suggest that is an apt characterization. We are very concerned that without amendment it will create a situation that allows youths to repeatedly commit offences, without any pretrial system that could prevent them from so doing and that could thereby protect the public. In other words, the bill does not preserve the discretion necessary for judges to detain a youth engaged in repeated criminal behaviour that poses a threat to the public or that demonstrates an unwillingness or inability of the youth to comply with conditions designed to protect that community while the youth is awaiting trial.

We have, therefore, filed our suggested changes, which you will find.... I hope you have with you the chart of changes. I will now review it. The suggested wording preserves the courts' discretion while at the same time recognizing that the crown should bear an increased burden when seeking detention for offences not falling within the new definition of "serious offence".

On the left side of the chart, we have the current drafting of Bill C-4, and on the right side, our suggested alternative wording. I've already outlined our concerns with the current drafting. It broadens it for serious offences and precludes it for what are non-serious offences.

What we are suggesting, first of all, is to maintain the connection between section 29 and section 515 of the Criminal Code, which would allow the system to be familiar with the courts and practitioners in the courts. In other words, the bail hearings would still fall within a similar structure. Other than that, what we are saying is that there ought to be a tougher test for the detention of youths who commit non-serious offences. Therefore, we are suggesting that subsection 29(2) should read instead, as stated in the chart: "In considering whether the detention of a young person is necessary...under paragraph 515(10)(b)...a youth court judge or a justice shall presume that detention is not necessary under that paragraph unless the offence is: (a) a serious offence...".

This means there would be no presumption against detention for a serious offence, but, of course, the courts would still have to apply all of the tests that are currently in place with respect to pretrial detention.

● (1640)

You don't simply detain someone unless the crown has met the burden to convince the court that it is necessary for the variety of tests that currently exist under section 515 in the relevant case law.

However, with respect to non-serious offences, what we are saying is that detention would continue, unless—and this is where you go to proposed paragraph 29(2)(b) of our legislative drafting, which deals with the offence being one "where the circumstances of the offence and the youth" and with the circumstances of "the youth's prior conduct".

That would allow the court to consider not just their record, but perhaps previous offences committed without their having been found guilty, and Justice Nunn specifically spoke about that. Those circumstances and that conduct would have to "demonstrate on a balance of probabilities"—in other words, the crown would have to show that either the youth "is engaged in repeated criminal behaviour"—so that in effect the crown would have to show, if it's a non-serious offence, that the youth is out of control and is engaged in repeated criminal behaviour—or that there "is a threat to the safety of the public"—which I would suggest makes good sense—or that the youth "has demonstrated an unwillingness or inability to comply with conditions to secure good conduct".

In other words, they've repeated a bunch of offences, you've released them on conditions, and they've demonstrated their unwillingness or perhaps inability to comply with those conditions that were designed to keep them out of trouble and protect society. Essentially, what those clauses are getting at is two things.

One is that they, in our view, capture the current state of the case law of courts that have interpreted the current presumption against detention provisions of the Youth Criminal Justice Act; we have taken that case law and have codified it for the benefit of the court. The other is that they essentially define the out-of-control youths who are committing the non-serious offences.

Let me give some examples. You have a youth who commits a "theft under" the first time, and that's all they've done; they would not meet this test. There's a presumption against detention, and one would hope they would not be detained.

They commit a few more shopliftings here and there, or perhaps they steal a car that's only worth a few thousand dollars, but they haven't done any additional damage. Again, are they engaged in repeated criminal behaviour? That would be for the court to determine, if it has risen to that level. Are they otherwise a threat? It would again be to the court to determine. Have they demonstrated an unwillingness? Again, it is up to the court to determine.

I would suggest that what we've attempted to capture here is our desire to continue a presumption against detention, unless it has risen to the level at which the youth is essentially out of control and the court really should have no option but to hold them.

So, as today, there would still be the presumption against detention. The court would be given clear direction and would have the ability to hold those youths who commit those types of offences that out-of-control youths will commit over and over again, offences that unfortunately we have seen lead them to more serious offences. It would still maintain the current provision of the act that serious offences would not be subject to the presumption.

That's our suggested alternative wording. It would make it harder for the crown to hold them for those offences but would still make it possible, whereas it would not be possible now with the present provisions.

Those are my comments on pretrial detention.

● (1645)

The Chair: Thank you.

We'll go to Mr. Hawkes.

Mr. Joshua Hawkes: The provisions I will speak about are the provisions dealing with the ability to obtain an adult sentence. In the time I have available to recap both our submissions and to provide some explanation for our position in the supplemental submissions, they are as follows.

It is clear that the ability to obtain an adult sentence is an integral part of any youth justice regime. These provisions are used exceptionally and sparingly, but they have been part of Canadian criminal justice and youth criminal justice since 1908. They are a part of virtually every other regime internationally to deal with youth criminal justice. It's critical that they continue to be available and to work in a manner that is functionally satisfactory.

The problem with the bill you have before you is that clause 18 effectively removes that ability. In our review of legislation from Commonwealth countries and from all of the states in the United States, we were able to find no provision anywhere that raised the test to proof beyond a reasonable doubt for obtaining an adult sentence. That's simply because the nature of the factors that must be considered really requires a balancing of factors that aren't susceptible to that level of proof.

You're talking about the maturity of the young person, their development, their background, their history, the nature of the offence—meaning whether it rises to that level of seriousness or not—and whether or not the sanctions that are available under the Youth Criminal Justice Act are of a sufficient length both to bring home a sense of accountability to the young person and to provide the best opportunity for rehabilitation. You're simply not able to prove those things beyond a reasonable doubt.

In the old Young Offenders Act, the Supreme Court of Canada explicitly recognized that and said that these kinds of matters simply aren't susceptible to that level of proof. Subsequent to the adoption of this act, the Ontario Court of Appeal confirmed that this was in fact the case.

You've heard witnesses testify that clause 18 is an attempt to codify what the Supreme Court of Canada required in R. v. D.B. With respect, we take the view that clause 18 goes too far; that D.B. in fact requires the onus to be upon the crown; that D.B. also indicates that proof of aggravating factual circumstances needs to be on the crown. That's already the case in the case law. That's already the case because of the provisions in the Criminal Code, which are well understood, that apply to adults. Although they haven't been codified in the Youth Criminal Justice Act, they're recognized as constitutional principles.

For example, in the case law as it currently exists, if I were to seek an adult sentence and one of the aggravating circumstances that I was relying on was that the accused used a knife and attempted to slash at the victim's face—and this is from a reported case—and the offender denied that, I as the crown would be put to prove beyond a reasonable doubt that this fact occurred. That's how the law operates today, and that is entirely appropriate. There's no need to codify it or to make any changes to the Youth Criminal Justice Act for this to happen, nor was there when, in another circumstance, there was a dispute about whether the person was over the age of 14 at the time the offence occurred. That, of course, is a threshold factual determination that makes an adult sentence available. If they're under 14, it is not available, so the crown was put to strict proof. We had to prove beyond a reasonable doubt the age of the young person at the time of the offence. That's fair enough. Those are factual matters that are susceptible to that level of direct proof. We've always had that burden and we're happy to continue to bear it.

● (1650)

To put the matter in context with respect to adult sentences, realistically what we're talking about with an adult sentence is not the length of incarceration. That's because under the Youth Criminal Justice Act, the maximum periods of incarceration for a youth sentence are fairly similar to the period of incarceration prior to parole ineligibility that will kick in under the Criminal Code. Under the Youth Criminal Justice Act, they are maximums of 10 years or seven years, consisting respectively of six years of custody followed by four years of community supervision or else of four years of custody followed by three years of community supervision.

In the Criminal Code, section 745.1 provides that for an offender under the age of 18, if they're under 16, the period of parole ineligibility varies from five to seven years—and a court will determine within that range—while for first degree murder specifically it is a period of 10 years for a person over 16 and seven years for a person under 16.

The other section of the code that's significant is section 746, which provides that the period of time begins to run from the date the offender is incarcerated, so it counts pretrial custody as part of the sentence, so you'll find that by the time the adult sentence is completed, what we're really talking about is the period of supervision under parole. If the offender is given an adult sentence, they'll be subject to that supervision for life. That's what we're talking about: whether that supervision and assistance is necessary both to protect the public and to rehabilitate the offender. In the rare circumstances in which an adult sentence is appropriate, we think that type of protection for that period of time is necessary, and I would suggest that you haven't heard any witnesses say otherwise. In my review of all the evidence before this committee, there hasn't been anybody who has said the adult sentencing provisions aren't working, that somehow they're either too tough or too lenient. In my submission, they strike the right balance.

What the bill unfortunately does is radically alter that balance. What our suggested wording attempts to do is preserve the balance as it exists today: to arm the courts with the right to consider all the background factors and consider all the circumstances in making the determination as to whether an adult sentence should apply. Essentially, the difference between our suggested wording and the wording currently in the bill is that we include the contextual factors that are removed by the bill and we remove the reference to proof beyond a reasonable doubt. Those are essentially the changes we would suggest. That's the reason we suggest them.

Thank you very much.

● (1655)

The Chair: Thank you.

We go to Mr. Greening.

Mr. David Greening (Executive Director, Policy Development and Analysis, Department of Justice, Government of Manitoba): Thank you.

I will address the issue of deferred custody sentences.

By way of background, paragraph 42(5)(a) of the Youth Criminal Justice Act provides that an offender may receive a deferred custody sentence for any offence “that is not a serious violent offence”. Paragraph 42(2)(p) provides that those sentences cannot exceed a maximum of six months. Essentially, the deferred custody sentences are the equivalent of the conditional sentences that are provided for under the Criminal Code for adults and that the media often refer to as house arrest.

The issue we have is that currently the serious personal injury offence definition is one that focuses on the circumstances of the offence, and its application is to an offender who commits an offence during which he or she causes or attempts to cause serious bodily harm. In our view, this makes good sense, as a deferred custody sentence—a deferred custody offence—allows the youth to effectively serve at home what would otherwise be a custodial sentence and limits the sentence to six months. It's not a sentence that's intended for offences that are serious and violent.

In terms of the concern we have, it appears that there may have been an unintended consequence as a result of the change in the definition of “serious violent offence” in relation to the adult sentencing provisions that are contained in the amendments in Bill C-4. By operation of the new definition in subclause 2(2) of Bill C-4, deferred custody sentences will now be available for all offences except murder, attempted murder, manslaughter, and aggravated sexual assault.

This broadens the availability of these sentences to a wide range of offences for which this type of sentence is not available currently. Basically, a youth would now be allowed or be able to serve their sentence at home, and only for a maximum of six months, for such serious offences as aggravated assault, assault causing bodily harm, criminal negligence causing death or bodily harm, and impaired or dangerous driving causing death or bodily harm. The availability of such a short sentence option for these serious offences is a matter of significant concern.

We also, I think, are concerned that this would appear to be directly contrary to the stated policy objectives of the government in terms of trying to strengthen the provisions of the Youth Criminal Justice Act and reduce barriers to custody for violent and repeat young offenders. It would also appear to be contrary to the policy behind Bill C-16, currently before Parliament, which is designed to remove conditional sentences as an option for serious adult offences.

In our view, there is no justification for allowing the YCJA equivalent of conditional sentences to be available for serious violent offences that are now excluded from consideration. Doing so jeopardizes both public safety and public confidence in the justice system. It is our view that Bill C-4 should be changed to ensure that deferred custody sentences remain unavailable for situations in which a young person causes or attempts to cause serious bodily harm.

In terms of the proposed approach that we've suggested, the fix or the change that we're proposing for Bill C-4 is actually very simple and straightforward and reflects our view that this is an unintended consequence. Essentially, all that we're proposing is that the current wording in paragraph 42(5)(a) be changed, so that instead of relying on the definition of serious violent offence that has been proposed in Bill C-4, we instead use the existing wording that is the status quo right now, basically providing that these types of sentences would not be available for a youth who commits an offence during which he or she causes or attempts to cause serious bodily harm.

The proposed change has been outlined in our chart. You can see in comparison what the change would be. It's a very simple change, but again, in our view, it would be something that's important to remedy what would be an unintended consequence that has serious consequences and could undermine public confidence in the justice system.

● (1700)

As a closing note, I'm not aware of and haven't seen any arguments or evidence in support of a need to reduce the scope of the prohibition on the sentences to the very narrow scope that's contained in the proposed definition of “serious violent offence”.

In summary, it appears that this is an unintended consequence. A very simple change to the bill could be made to address the issue. We ask the committee to give serious consideration to this change.

The Chair: Thank you. That was very helpful.

Go ahead, Ms. Jennings.

Hon. Marlene Jennings: Thank you, Chair.

Thank you so much for your presentations today and for appearing before this committee.

From the briefs you have jointly prepared it's quite clear that you're very familiar with Justice Nunn's commission of inquiry, his report, and the specific recommendations he made with regard to the YCJA. It's also very clear that you've looked very carefully at Bill C-4.

You have noted that there are sections that appear to create unintended consequences, and you propose amendments to fix them. There are other areas of the proposed amendments contained in Bill C-4 where you appear to not consider they should be done. If we take, for instance, adult sentences, there seems to be a real problem with Bill C-4 in that the crown would have to prove “beyond a reasonable doubt”, whereas from a complete reading and understanding of current jurisprudence that has been developed on this issue, it's clearly the aggravating circumstances, as you've just mentioned.

Do you feel that amendments can be brought to Bill C-4 that would correct all of the unintended consequences that you don't believe should happen because they would not be to the benefit of the youth criminal justice system? Can those sections of Bill C-4 that you feel are just wrong be salvaged through the amendments you're proposing? That's my first question.

Second, the federal government—or should I say the Harper government—has not in any way, to our knowledge, caused to be carried out any kind of serious study of the actual impacts of the YCJA across Canada in the different jurisdictions, with the assistance of the provincial governments, in order to have actual empirical data, actual evidence, as to what's working and what's not working. Do you feel that it might have been more appropriate to wait for such studies and the five-year review of the bill before moving on amendments?

If you tell me that's a political question and you don't feel comfortable answering it, I'll understand completely.

Mr. Joshua Hawkes: You may have anticipated my response to the second question. I'm simply a prosecutor, and I'm trying to stay out of the larger political issues involved. However, I would point out that aspects of the YCJA that are reflected in the bill were noted by federal, provincial, and territorial ministers of justice to be matters of concern in 2007, 2008, and 2009, so there is a history of justice ministers pointing out concerns with respect to the act.

On your first question, I believe that the act can be amended in a way that will address the policy objectives articulated. If I might be immodest, I think we've done that with the proposed changes we have circulated.

With respect, on the difficulties with the adult sentencing provisions, it is almost as though the government were proposing this response immediately after the decision of the Supreme Court in D.B., without considering any of the case law that has occurred subsequently. If this were five minutes after D.B., I could see this interpretation, but we're several years after D.B. Several courts of appeal have pronounced. The Supreme Court of Canada has twice refused leave to appeal in cases in which courts of appeal have said the standard of proof remains the same. In that context, clause 18 is simply erroneous in the face of current case law.

● (1705)

Mr. Ronald MacDonald: I think we all agree with the answer to question one, the answer being that it can be salvaged or amended.

On the second point, I will adopt my friend's position for the most part; however, I would say that the Nunn commission, although not an empirical study on the ground, was certainly an extremely comprehensive study. I listed the number of witnesses in my last statement in June, and many of the points that are in the act flow from Nunn, so in that sense there has been a very comprehensive study.

Mr. David Greening: The only thing that I would add to the response is from a Manitoba perspective. In 2007, Manitoba brought a non-partisan delegation that we called the “mission to Ottawa”. It included not only the then premier and justice minister, but the leaders of both opposition parties and representatives from municipal governments, chiefs of police, and concerned citizens, to advocate for these types of reforms to the Youth Criminal Justice Act.

Hon. Marlene Jennings: I am aware of that. Back in 2007 I was the justice critic for the official opposition. I made a number of public statements, both inside and outside the House, calling on this government to move quickly to implement the recommendations of Justice Nunn's commission of inquiry. In fact, I took steps to ensure that his executive summary was translated into French so that the Quebec Bar Association could actually take cognizance of it. They subsequently wrote to the Minister of Justice in 2008 the first time, with the first apparition of their legislation, and commented on Justice Nunn in their letter. I am aware of that.

The Chair: We're out of time.

Hon. Marlene Jennings: I'm sorry.

The Chair: We'll go to Monsieur Lemay for seven minutes.

[*Translation*]

Mr. Marc Lemay: Thank you very much, Mr. Chair.

I will try to be exact.

Mr. MacDonald, I thought your proposed amendment to section 29 was sensible up to the part about a serious offence or an offence where the circumstances of the offence and the youth, and so on. You also say: "...is engaged in repeated criminal behaviour; is a threat to the safety of the public, including...; has demonstrated an unwillingness or inability to comply with conditions to secure good conduct in the community."

Who is going to define that? There are no problems with defining a repeat offender. The same goes for someone who "is a threat to the safety of the public, including any victim or witness to the offence". But someone who "has demonstrated an unwillingness or inability..." could be mentally challenged. And I'm not sure how you would personally define that.

Could you comment on the wording "has demonstrated an unwillingness or inability to comply with conditions to secure good conduct in the community"?

Am I making myself clear, Mr. MacDonald?

● (1710)

[*English*]

Mr. Ronald MacDonald: Your point is that under proposed paragraph 29(2)(b) of our amendment, a person demonstrating "unwillingness or inability" may capture an individual who has a mental difficulty or a deficiency that way. It may, and I can't deny that. Obviously this term would be open for the court to determine when it should or shouldn't apply. Remember, this would only say that the presumption would be set aside. It wouldn't necessarily mean that the court would have to hold the person, so if it were strictly an issue of a mental deficiency that could be addressed in other ways, I think the other provisions of the act would—

[*Translation*]

Mr. Marc Lemay: I'm sorry to interrupt.

I am reading your proposed wording under paragraph b): "an offence where the circumstances of the offence and the youth, including the youth's prior conduct, demonstrate on a balance of probabilities that the youth:...".

I have no problem with the repeated criminal behaviour, but I am wondering about this last part. You are saying that it should be left to the court's discretion, considering all the circumstances of the case. Is that right?

[*English*]

Mr. Ronald MacDonald: With conditions of a court order, it would have had to have been a previous order they were released on, and they continually demonstrate an inability to comply with those conditions.

[*Translation*]

Mr. Marc Lemay: The text is not clear. I am happy with what you have just told me, but it only became clear after you explained it to me.

[*English*]

Mr. Ronald MacDonald: Okay, fair enough, and that's one good reason to have had us back here. That's certainly what we intend by that, and although we're glad to prepare legislative material, we aren't legislative drafters.

[*Translation*]

Mr. Marc Lemay: No, I most definitely don't want you to think that I am criticizing you. On the contrary, I want you to know that I am very interested in this paragraph. I wasn't understanding subparagraph (iii). It wasn't clear for me.

[*English*]

Mr. Ronald MacDonald: It's intended to mean previous orders that they weren't able to comply with.

[*Translation*]

Mr. Marc Lemay: Okay.

How much time do I have?

The Chair: You still have three minutes.

Mr. Marc Lemay: I have a general question for the three of you. I have read your remarks carefully. We really like section 3 of the current legislation, but not section 3 of the bill. We want to amend section 3 of the bill to include the principles under section 38 of the current act.

I'm not sure you understand me and I don't want to waste your time. That just seems unrealistic to us.

When a sentence is passed, the court looks at this or that aspect. Based on the proposed change to section 3, the principles under section 38 of the current legislation would underlie the youth criminal justice system. Do you understand what I am saying? We don't agree with that.

[*English*]

Mr. Joshua Hawkes: If I could respond very briefly, I have seen previous testimony and your questions and those of your colleagues with respect to the changes to section 3, so I'm familiar with it. As I read the proposed changes to section 3 of the act, they incorporate many of the things that are currently in section 3.

The only addition is the reference to “protection of the public” explicitly, and also subparagraph (i) under paragraph 3(1)(a). The reference to holding young persons accountable by “proportionate” measures is new. That is also in section 38 of the act. The difference is that this would apply more broadly; it refers not simply to sentences but to measures, so you would have extrajudicial and other measures that would be proportionate.

Now, proportionality isn't a concept that only increases; it is a concept that can decrease as well, based on the circumstances and the degree of responsibility for the young person, so for a serious offence with a low degree of responsibility, proportionality will pull back the severity of the measure that might otherwise apply.

● (1715)

The Chair: Thank you.

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

Mr. Joe Comartin: Thank you, Mr. Chair.

Thank you for being here. Let me say that sincerely. We say that all the time, but in your case we really mean it, because you've raised points here that in my opinion should have been raised by the government. I think we have some consensus, so thank you for the work you've done. We really do appreciate it.

Mr. MacDonald, I have the same problem as Mr. Lemay. When I was reading that, two things popped into my mind when we're referring to the conditions as set out in a court order. You would be comfortable if we added that wording, or something like that?

Mr. Ronald MacDonald: Yes.

Mr. Joe Comartin: Okay.

Then there's a second part that jumped out at me. I practised what we called juvenile delinquency law at the time when we still had that act, and we had a large number, mostly young girls, who got taken into custody because they were incorrigible. They didn't commit any criminal offences, but they weren't keeping curfew at home, they were going out to wild parties, and there was some sexual activity. We had judges saying that they were incorrigible and they would take them into custody for that. When I saw “good conduct”, that was the same thing that jumped to my mind.

Have you thought of any other wording, things along the lines of criminal offences? I don't know, but something that is.... I have a great deal of respect for our judiciary, but they can make mistakes, and that wording, it seems to me, is just too broad to satisfy me.

Mr. Ronald MacDonald: Well, remember, this would be in the context of a criminal offence having been committed—they would be before the court for that—and also in the context, with your clarification, of there having been previous criminal offences committed, although perhaps not a conviction yet. There would have been breaches. I would hope that would show the intent of “good conduct”—to, in other words, not commit further criminal offences.

It would not be that dissimilar from the phrase “keep the peace and be of good behaviour”, which is used, as you know, all the time.

Mr. Joe Comartin: Yes.

Mr. Ronald MacDonald: To be fair, “keep the peace and be of good behaviour” does include more than just a criminal offence, but generally it's interpreted to mean perhaps violation of a provincial enactment, so it wouldn't go so far as to include what used to be “incorrigible behaviour”.

If you could think of wording that would better capture that idea, we certainly wouldn't be opposed to that. That's our intent—simply to ensure that this youth would not continue to commit criminal or other types of quasi-criminal behaviour.

Mr. Joe Comartin: Thank you.

Mr. Hawkes—or perhaps I should ask all three of you—you gave us these proposed amendments in your brief back in the first week of October. I'm not being partisan here; I just want to know if this happened: did you hear from anybody from the Department of Justice? If you did, did they have any concerns that your amendments were off base?

Mr. Joshua Hawkes: No.

Mr. Joe Comartin: You did not hear from anybody. Okay.

Actually, Mr. Hawkes, you answered that in the explanation you gave earlier.

Mr. Greening, I have one problem with your proposed amendment. We have fairly strict rules, which we overrule the chair on, on a regular basis, I have to say. One of them is that an amendment is out of order unless it deals with a paragraph that's in the bill.

Your paragraph deals with paragraph 42(5)(a), and the amendment that's in the bill is proposed paragraph 42(2)(o). I'm just wondering if there's any way your amendment would fit into proposed paragraph 42(2)(o). I don't know if you've looked at it. I know I'm being fairly technical here.

Could we change or amend proposed paragraph 42(2)(o) to encompass what you're proposing? I haven't had enough time to explore that possibility, because I just caught it this afternoon. I hadn't caught it before.

Mr. David Greening: I think it would be something that we'd have to take a look and to try to consider.

I think the point we made with the proposal we have—and I would make again—is that it's not so much that we were trying to wordsmith or come up with wording that was absolutely prescriptive; it was more of presenting the concern and presnting a way of trying to address it.

If there is a way to fit it into another section that might be more appropriate, then it could be done. Certainly it would be something that we would look at, and we could provide a further submission on that.

Mr. Joe Comartin: Okay.

Do I still have time?

The Chair: Yes, you have two minutes.

Mr. Joe Comartin: Mr. Hawkes, we just passed a bill here on, in effect, taking away the right to apply for early parole in the multiple murder situation. Do you know if that bill would...? I haven't looked at it from the perspective of the youth justice bill. Would that take away the provisions if we had a multiple murder committed by youth? For me that would pose some problems with your proposed amendment.

● (1720)

Mr. Joshua Hawkes: To be honest, I haven't looked at the coordinating amendments in that bill, so off the top of my head I can't answer for certain whether it addresses coordinating amendments here. I don't believe it does, but I haven't specifically looked at that aspect.

The other point I would make is that strictly speaking, that's not an application directly for early parole; it's an application to the court for permission to then apply.

That's a long way of saying that I'm not sure; I'm sorry.

Mr. Joe Comartin: Okay. Thank you.

Those are all my questions, Mr. Chair. Thank you.

The Chair: Thank you.

We'll move on to Mr. Woodworth for seven minutes.

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

I want to welcome the witnesses here.

I should say, Mr. Chair, that I took note of Mr. Comartin's mentioning that when he welcomes witnesses, he doesn't always mean it. I would like to disassociate myself from his pluralizing of that.

Voices: Oh, oh!

Mr. Stephen Woodworth: I also took note, by the way—and I say this with the utmost respect and levity—that Mr. Comartin has admitted that he does think that judges make mistakes, at least when they don't agree with his policy. I appreciate that. I mean that with respect, Mr. Comartin, and you know that.

I want to thank these witnesses in particular, because I regard them as being in a different class, if I may use that word, from many of the witnesses we see.

I'm assuming you are all lawyers, and I see from your credentials that you all hold senior positions. Without imputing too much to your age, I'm going to assume that you've probably all practised law for at least 10 years or more and that you are very familiar with the details of the Youth Criminal Justice Act, which therefore gives you a position of expertise that many of the witnesses we see here don't have.

I would like to just briefly go back to something you said, Mr. Hawkes, because when you were here last, we had an exchange about section 3. I asked you if I was right in my reading of the current section as including protection of the public and in reading the amendments as not changing the fact that there are four factors in section 3, and that paragraph 3(1)(a) has no greater or lesser priority than paragraphs 3(1)(b), 3(1)(c), or 3(1)(d). You did agree with me at that time on those things, and I think today when you said that the amendments add protection of the public to section 3(1)(a), you were misspeaking. In fact, if you look at the existing provision, you'll see that it is there, albeit referring to “long-term protection” rather than just “protection.”

I feel it's important to make that clarification, because so many of the witnesses we have heard from seem to be drinking from water that makes them think that protection of the public isn't already there, and I wish to dispel that notion. However, I would like to ask all of you, as serious and experienced counsel, about what my colleague Derek Lee was talking about earlier.

He was suggesting that somehow there has been creep, which makes the sentencing principles for youth criminal justice or the principles of the Youth Criminal Justice Act come very close to the sentencing principles in the Criminal Code proper. I noticed that at the time, he wasn't actually reading from Bill C-4; he was reading from the existing provisions of the Youth Criminal Justice Act and suggesting that they were already too close to the adult provisions of the Criminal Code.

I would like to get your opinion generally on whether you think that the Youth Criminal Justice Act, with the amendments in Bill C-4, does still preserve the necessary distinction and the necessary separation between youth criminal justice and adult justice principles.

Perhaps, Mr. Hawkes, I'll start with you, since I was picking on you earlier.

● (1725)

Mr. Joshua Hawkes: Thank you very much.

You did catch me; you're quite right. Section 3, as it is now, refers to long-term protection of the public, so the amendment simply moves that up but doesn't substantively change that aspect of it.

Mr. Stephen Woodworth: Sure.

Mr. Joshua Hawkes: With respect to your second question, in my view, context is determinative.

Yes, we can see some of the same or similar language used in some provisions in the Criminal Code that are found in the existing section 38 and in proposals to amend section 38. However, context is king, and the context here is entirely different—not only in the existing act, but we've now also codified in R. vs. D.B. the principle of diminished moral blameworthiness, which is now going to be an explicit part of the act.

Other portions of that case are now explicitly part of the act. Simply to say we have some similar terms and concepts is like looking at Mozart and Lady Gaga and saying that some of the same notes are there.

Mr. Stephen Woodworth: Right.

Mr. Joshua Hawkes: The musical notes may be the same, but context is king

Mr. Stephen Woodworth: I like that analogy. Thank you.

Does either of you gentlemen have anything to add to what I think Mr. Hawkes is saying, which is that even with these amendments, there is still a clear and important separation between youth criminal justice and adult justice?

Mr. David Greening: I would agree with those comments.

Mr. Stephen Woodworth: Thank you.

Would you comment, Mr. MacDonald?

Mr. Ronald MacDonald: I would highlight the provisions—and I'm not quoting them exactly—that talk about custody being the last alternative. Other than that, I wouldn't dare go into any musical analogies.

Mr. Stephen Woodworth: Thank you very much.

I appreciate that. I did want to ask one other thing, but how much time do I have, Mr. Chair?

The Chair: You have two minutes.

Mr. Stephen Woodworth: I noticed in the original submissions from back in June a statement regarding the question of deferred custody sentences.

Since Mr. Greening addressed this aspect, I'm going to ask him this. The availability of such a short sentence option for serious offences is a matter of very significant concern. Time and again, people appear before us and say that sentencing, meaning jail, is not a deterrent and that longer sentences are not a deterrent, particularly with youth.

I happen to agree with you that the change you're addressing is important, but I'd like you to help us articulate what we can say to those folks who are only worried about deterrence. Why do you feel that the short sentence option for serious offences causes serious concern? What is it that brings you to that point?

Mr. David Greening: To clarify the point, it's not the existing provision and the existing period of time, but rather the change in scope that what I would term the unintended amendment or consequence would bring.

Mr. Stephen Woodworth: I'll stop you there and let you know that I understand that by changing the definition of a serious criminal offence we are going to expand the range of offences for which a deferred sentence is available. You don't think that should be happening, and I just want you to articulate why you don't.

Mr. David Greening: I think the issue is that if that's allowed to proceed unchanged, then you will have a different character of youth—a more dangerous character of youth—who would now be able to serve those sentences in the community.

Mr. Stephen Woodworth: Why should they have to serve them in jail?

Mr. David Greening: The two issues are that there would be a determination as to the threat they pose to the community. In some cases, if it's an out-of-control youth or a youth who is violent and can't be managed in the community, custody may be the only option to protect the public. The second issue is public confidence in the justice system.

Mr. Stephen Woodworth: All right.

Mr. David Greening: Maybe I don't need to elaborate on that, but it's the issue that if a youth is charged with a serious offence—an aggravated assault in which somebody has lost an eye, for example—the public will not understand that this youth can walk the street the next day, even though they may be under a form of house arrest. It's just something that completely undermines the faith of the public in the justice system.

Mr. Stephen Woodworth: Thank you very much.

The Chair: Thank you to all of our witnesses. I'm glad to have you back. I think your testimony has been very helpful as we move forward and as we start to plan some amendments to this act.

Thank you.

We are adjourned.

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