

**Submission to the House of Commons
Standing Committee on Justice and Human Rights
respecting
An Act to Amend the Youth Criminal Justice Act
(Bill C-4)**

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- On March 16, 2010, the federal government introduced Bill C-4, *An Act to amend the Youth Criminal Justice Act (YCJA) and to make consequential and related amendments to other acts*, also referred to as Sébastien's Law. The amendments proposed in the Bill will have a serious negative impact on outcomes for youth in conflict with the law.

The *YCJA* recognizes "protection of the public" and "rehabilitation of youth", as interdependent pillars of the Canadian youth criminal justice system. The proposed amendments appear to put these objectives into conflict. In addition to the introduction of deterrence and denunciation as principles of sentencing, the changes would also result in an increase in pre-sentencing detention for youth, the establishment and use of an extrajudicial measures registry in any subsequent judicial proceeding, and the broadening of judges' discretion to lift the publication ban on the names of young offenders.

- The introduction of this Bill follows a Canada-wide *YCJA* review launched in November 2007. In the course of this review, provincial and territorial governments, stakeholders, partners and interested Canadians were invited to help identify areas of concern and improvements regarding the provisions and principles of the *Act*, in order to guide any future legislative changes.

Findings of this consultative process were tabled before the Standing Committee on Justice and Human Rights on Thursday, December 9, 2010. The consultation report points out that "the perceived flaws are not in the legislation; the flaws are in the system"¹, hence the need to improve public education and focus on preventive measures, and "evidence-based policy and research on what works"². In other words, the perceived flaws are in how the *YCJA* is carried out, not its statutory provisions.

¹ Evidence, Standing Committee on Justice and Human Rights, Number 042, 3rd Session, 40th Parliament, Thursday, December 9, 2010.

² Op. cit.

- Public response to isolated incidents of violent crime committed by youth is not an effective basis for changing public policy. Adopting the proposed amendments will not provide the desired public safety outcomes. As recent literature points out, increasing incarceration rates does not work. The United States' experience demonstrates how such an option destabilizes the social and economical foundations of a society³.
- The *YCJA* was introduced in 2003 in order to fix procedural flaws resulting from the application of the *Young Offenders Act (YOA)*. The new *Act*, prompted and strongly influenced by Canada's commitment to implement and uphold the articles of the United Nations *Convention on the Rights of the Child (CRC)*, was proclaimed at a time when Canada had the highest youth incarceration rate in the world. The proposed amendments allow for an increase in the incarceration rate and adult sentences. If the *Act* is amended in this way, Canada is in effect pulling away from some fundamental provisions of the *CRC*.

The proposed amendments erode the original intent of the *YCJA* and undermine the spirit of the *CRC*, by losing sight of the best interests of the child as an integral part of our societal values, focusing on deterrence and denunciation, and allowing for easier access to detention and imprisonment, the most intrusive actions available.

- The *YCJA* has been proven to be highly effective in diverting young people away from custodial environment,⁴ reducing the youth crime rate, and reducing violent youth crime⁵. At the same time, it offers the tools to deal with serious violent offences, including imposing adult sentences to youth, lifting the publication ban on a young person's name and imposing sentences that are proportionate to the seriousness of the offence.

³ SINGER, Leo, "Law & Order", *National* (Canadian Bar Association), 2010, vol. 19, no. 5, p. 16.

⁴ MILLIGAN, Shelly, "Youth court statistics 2008/2009", *Juristat*, Summer 2010, Vol. 30, no. 2.

⁵ "Youth crime severity has generally been declining since 2001.", DAUVERGNE, Mia and John TURNER, "Police-reported crime statistics in Canada, 2009", *Juristat*, Summer 2010, Vol. 30, no. 2, page 23.

- The *YCJA* is based on principles that promote an appropriate balance between the protection of the public and meeting the needs of young persons involved in the youth criminal justice system, by offering a variety of rehabilitative and reintegration mechanisms. The *Act* empowers communities, law enforcement officials and service providers with the extrajudicial tools to hold youth accountable while promoting the community-based interventions needed to maximize their chances of becoming law-abiding and contributing citizens.
- Bill C-4 runs the risk of increasing the rate of a different kind of victim, vulnerable minority youth who prematurely receive punitive sentences rather than benefiting from pro-social treatment or rehabilitative measures. It further stands to fuel an increase in the incarceration of racial minorities who are already over-represented in custodial facilities.
- Aboriginal youth are disproportionately involved with the youth criminal justice system, including incarceration. Greater emphasis on deterrence and denunciation will likely impact Aboriginal youth more than any other group in Canadian society.⁶
- Furthermore, the proposed amendments do not address nor do they emphasize the importance of identifying and tackling the underlying roots of criminal behaviour and recidivism. In its current form, the *YCJA* can be a powerful instrument in avoiding the criminalization of behaviour that would otherwise be treatable through concerted efforts outside of the justice system. This is particularly relevant for youth who struggle with mental health issues or severe behavioural conduct disorder. Clinicians as well as the legal community recognize this reality.

In fact, in August 2010, the Council of the Canadian Bar Association passed a resolution underscoring how persons suffering from Fetal Alcohol Spectrum Disorder (FASD) live with neurological and behavioural challenges. The Association called for "all levels of government to allocate additional resources for alternatives to the current practices of criminalizing individuals with FASD"⁷.

⁶ CANADIAN COUNCIL OF CHILD AND YOUTH ADVOCATES, "Aboriginal Children and Youth in Canada: Canada Must Do Better", June 23, 2010 (Position Paper).

⁷ Council of the Canadian Bar Association, Resolution 10-02-A, August 2010.

- Bill C-4 promotes punishment-based measures that are not proven. Applying adult sentences in more cases, establishing and using a mandatory extrajudicial measures registry in subsequent judicial proceedings, enhancing the probability of lifting the publication ban of a youth's identity and broadening the scope of pre-sentence detention will likely lead to a more deeply rooted criminal culture amongst youth. They also threaten the implementation or continuation of treatment plans that can work to reintegrate youth into their communities as productive citizens.
- The changes brought forward in Bill C-4 also fail to consider that a broader approach to crime prevention is needed to efficiently reduce criminal activity and behaviour amongst youth: investing in long-term and enduring solutions to protect the public.
- One of the reasons given for the proposed amendments is that the *YCJA* lacks sufficient options to ensure the public's safety from the threat posed by violent offenders or recidivists. However, there has been a systemic failure to proactively implement the rehabilitative options the *YCJA* offers. The principles set out in the *YCJA* can only be achieved if all stakeholders use the *Act* as a tool rather than an end in itself. Taking full advantage of alternative measures will lead to a constructive and more treatment-focused reintegration strategy.
- Within their respective jurisdictions, the members of the Canadian Council of Child and Youth Advocates are legislatively designated and mandated to promote and defend the rights and interests of children and youth, including youth involved in the criminal justice system. The United Nations' *Convention on the Rights of the Child* serves as an indispensable instrument guiding Council members' individual advocacy work as well as their collegial initiatives. The Convention clearly underscores the need to implement youth justice initiatives that are consistent with the rights and best interests of children and youth.

IN THIS CONTEXT, THE CANADIAN COUNCIL OF CHILD AND YOUTH ADVOCATES RECOMMENDS:

1. That Parliament stay any further consideration of Bill C-4.
2. That the federal government provide evidence that shows that the amendments proposed in Bill C-4 will result in a decrease in criminal activity amongst youth, and increase public safety.
3. That the federal government give full effect to the *YCJA* by adequately funding the non-custodial options provided for in the *YCJA*, by channelling funds to provincial and territorial governments who are charged with the administration of the *YCJA*.
4. That the federal government facilitate a national multi-jurisdictional strategy that responds to the needs of young people with mental illnesses or severe behavioural and developmental disorders, thereby preventing them from becoming mired in a system that is ill-equipped to meet their needs. The strategy should be jointly developed by federal, provincial and territorial authorities and their respective oversight agencies.
5. That the protection of the public and rehabilitation of youth be reinforced as two interdependent objectives, both of which are equally relevant as principles guiding the decision-making process under the *YCJA*.
6. That the federal government ensures that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the UN Convention on the Rights of the Child.
7. That all parliamentarians work towards consensus in order to ensure that an independent Children's Commissioner for Canada be established that respects the distribution of legislative powers.

Respectfully submitted by:

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