Brief submitted to the Senate of Canada by Marc Bellemare, February 22, 2012

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1. ENACTMENT OF BILL C-10

On May 2, 2011, Canadians elected a majority government that was committed to enacting Bill C-10 within the first 100 days that Parliament was to sit.

On December 5, 2011, the Minister of Justice of Canada stated:

> Canadians gave us a strong mandate to crack down on child sexual offenders and on dangerous drug dealers who sell drugs to children and we are one step closer to achieving this with the passage of Bill C-10 in the House of Commons. *(Agence QMI*, December 5.)

Today, I am addressing you as a lawyer who has been standing up for victims of crime for 32 years. I am also before you as a former Minister of Justice and Attorney General of Quebec and a father who wants his children to live in a safe and pleasant environment.

1.1 The soft on crime lobbies

Since the last general election, the soft on crime lobbies have been descending on Ottawa to try to persuade the federal government to go back on its major criminal justice commitment.

On November 1, 2011, Minister of Justice Marc Fournier addressed the House of Commons Standing Committee on Justice and Human Rights on behalf of the Government of Quebec, to call on the government to abandon C-11. Before launching his attack, the Minister had done no broad consultation with the Quebec public to justify, and most importantly to legitimize, his action.

Frustrated at the refusal with which his effort met, he alleged that democracy had been infringed (Agence QMI, November 17, 2011: *Selon le ministre Fournier : Belon pour C-10 : un bris de démocratie*). He stated that he did not recognize the Canada he knew when he saw that kind of decision (*La Presse*, November 22, 2011), forgetting that a majority of Canadian voters had expressly supported that bill six months earlier.

He failed to mention that C-10 is the result of merging nine bills that up to then had been separate, some of which, like the former C-39, have been under discussion for six years. Others, like C-4 and C-15 concerning young offenders, date from four years ago. Bill S-10, which seeks to impose minimum sentences for serious drug-related offences, had been introduced three times before, in 2007, 2009 and 2010. Former Bill C-54, the Protecting Children from Sexual Predators Act, was passed by the House of Commons and was before the Senate waiting for a roll call vote on third reading when Parliament was dissolved.

The nine bills combined into C-10 were therefore at various stages of the parliamentary process in the last session and the general public, like social groups, members of Parliament and senators, had to be reasonably familiar with them. Several important aspects of those bills had been debated at great length, were publicly examined by committees of the House and the Senate, and had received wide media coverage.

When we look closer, it is clear that the Minister's complaints are unfounded. They seem more like a pretext for generating a fresh conflict with the federal government.

1.2 The Barreau du Québec and the Canadian Bar Association

On March 22, 2011, at the beginning of the last election campaign, Bâtonnier Gilles Ouimet, a criminal lawyer by profession, signed a media release that attacked the federal government's criminal justice legislative agenda. He noted that the Barreau du Québec had made 29 submissions in the previous three years, objecting to the government's bills, except the bills relating to the management of mega-trials.

After the electoral verdict of May 2, 2011, one might have thought that the Barreau would have acknowledged that the proposed legislation had some legitimacy. But no. On October 20, 2011, there was another media release stating: [TRANSLATION] "The Barreau du Québec strongly rejects the measures proposed in Bill C-10." The Barreau took care to note, at the end of the media release:

> [TRANSLATION] The Barreau du Québec is the professional order for 24,000 lawyers. To perform its mission of protecting the public, the Barreau maximizes the relationship of trust between lawyers, the public and the State. ...

As a lawyer and a member of the Barreau du Québec for the last 32 years, I am appalled by this action. How many of those 24,000 members were consulted and voiced an opinion on this? The media release in the middle of an election campaign was lacking in objectivity, and clumsily associated the institution with the positions argued by the Bloc Québécois and the Liberal Party of Canada. The energy the Barreau has put into fighting this since the general election on May 2, 2011, shows a lack of respect for the public's verdict, which validated the direction taken by the government in this area. I find it hard to see how the Barreau can claim to be "performing its mission of protecting the public" when the public itself has chosen a different path.

Nor can the Barreau claim to be speaking for its 24,000 members, as it implies *ad nauseam* in public opinion. The criminal law advisory committee, which the Barreau du Québec echoes, is composed of a mere 20 lawyers who work in this field. Nor does the Canadian Bar Association have any more right to imply that its 40,000 members endorse its criticisms of Bill C-10.

1.3 Hijacking democracy

The approach taken by the Government of Quebec is at least consistent. It is admitted that all it needs to do is make election promises relating to criminal justice. For example, it has reneged on all the promises it made in this regard in 2003.

First, let us consider holding criminal drivers accountable, something it refused to reinstitute in spite of its firm commitment. Then there is improving the compensation scheme for victims of crime (IVAC), which victims were promised nine years ago, with nothing done. The Quebec government has also never delivered the reform of administrative tribunals that was supposed to reduce waiting times for innocent victims who contested the government's refusal to compensate them properly to six months.

Quebeckers' cynicism about governments is essentially a result of the fact that governments do not keep their election promises. The voter turnout rate in Quebec fell to 57 percent in the last provincial election, on December 8, 2008. For the Quebec Minister of Justice to lecture Ottawa because the government is honouring one of its major commitments to the letter passes all understanding. It speaks volumes about the importance it places on giving its word.

We can agree or disagree with C-10. In a democracy, however, the majority rules. We cannot help but notice a hint of partisan strategy in the Quebec Minister's diatribe: it has always been profitable for the Government of Quebec to start a fight with the federal government on the eve of a provincial election.

This time, he has chosen C-10. As good a way as any to divert attention away from his obstinate refusal to fight corruption in the construction industry in Quebec.

1.4 Quebeckers want the justice system to be tougher in criminals

The federal government is on the right tract. When he appeared before the Commons justice committee on November1, 2011, Robert Goguen, MP, did well to remind Mr. Fournier that in the October 25, 2011, issue of the *Journal de Montréal*, a Léger Marketing poll showed that a strong majority of Quebeckers (77%) believed that criminals were not punished severely enough by the justice system. While the Government of Quebec has chosen to ignore their expectations in this regard, it is wise to note that the Canadian government has listened to them.

1.5 Victims are being heard more

Many studies have concluded that restoring a victim of a crime against the person to normal life truly starts on the day when the criminal receives a sentence that reflects the gravity of the crime committed. If the victim perceives the sentence as trivial, they will experience tremendous frustration and will never achieve the peace they need in order to be rehabilitated.

My experience as a litigator for victims has provided me with a very good understanding of this fundamental aspect of the reality of their daily lives. However, it is completely missing from the discourse of opponents of C-10. In fact, that is the primary virtue of Bill C-10: ensuring that a proper sentence, one that is proportionate to the gravity of the crime committed, is imposed.

In other respects, C-10 gives victims additional rights, for example by expanding the definition of "victim" to include anyone who is responsible for the care or support of the primary victim, if that person is dead, ill or otherwise incapacitated (clause 52). It also permits victims to be informed of the programs in which offenders are participating for the purpose of social reintegration, and of the name and location of the institution to which offenders are transferred and the reasons for the transfer (clause 57).

2. QUEBEC IS SOFT ON CRIME

2.1 The Crown is poorly equipped

A year ago, the Association des procureurs aux .poursuites criminelles et pénales du Québec (APPCP) tried desperately to persuade the Government of Quebec to create 200 additional prosecutor positions to provide the Crown with enough personnel to fight crime. Their goal was to level the playing field between prosecution and defence in the enforcement of penal and criminal laws, an objective that is not always achieved at present.

> [TRANSLATION] Anyone who works on the ground, who is used to the chronic underfunding of Crown prosecutors, is well aware that a majority of the charges laid against individuals have always been bargained down. A guilty plea is assured and thus the workload is reduced, thereby completely distorting reality (second-degree murders become manslaughter, and so on.)
>
> Eric Bergeron, ESSENTIELLE LA REPRESSION, *La Presse*, November 30, 2011)

The Government of Quebec had an opportunity to sign a new employment contract with its Crown prosecutors that would have focused resolutely on fighting crime. It refused, and answered them with special back-to-work legislation. Only 94 prosecutor positions have been created sine then. That proves that the Crown in Quebec is not equipped to fight crime effectively. It also proves that the government is not allocating adequate budgets to achieve this. And most importantly, it proves that combating crime is not a priority for it.

At the same time, we recently learned that accumulated surpluses in Quebec's victim assistance fund amount to $36 million (*Journal de* Québec, February 1, 2010, *L'argent dort dans les coffres*). The Government of Quebec, which boasts that crime is on the decline under its jurisdiction, has paradoxically seen the number of victims knocking on the doors at victim of crime help centres rise from 72,746 to 83,845.

That is one more reason to stop looking only at crime statistics. Instead, we should be referring to the statistics about victims and realizing who much crime costs us, socially, medically and financially. The Government of Quebec, which is responsible for most of those social costs, may then perhaps be more interested in tackling the problem seriously.

2.2 Fighting corruption

The same inconsistency exists in Quebec when it comes to fighting organized crime. In spite of pressing demands from 86% of the population, social groups, trade unions, police associations, professional orders and even the criminal prosecutors association, the Government of Quebec has for two years refused to establish a public commission of inquiry into corruption. This is truly shameful.

2.3 Pedophiles on the Internet

Another example of Quebec being soft on crime. On Friday, October 27, 2011, the primetime TVA network's program *J.E.* revealed how easy it is for sexual predators to find their prey in Quebec. On the Internet, the investigation revealed how they lure children with disconcerting ease.

Rather than being outraged and reacting with tangible measures to combat this phenomenon, the Minister of Public Security of Quebec kept his head down and even said he had no intention of watching the program. No measures have been announced since then.

While the Government of Quebec sat on its hands, the entire public was astounded and outraged at what *J.E.* had revealed. A worried father even decided to conduct his own private investigation and publish the identity of a number of predators on the Internet.

A few days later, on November 1, 2011, Mr. Fournier, the Minister who also did not have time to find solutions for tackling pedophiles in Quebec, found time to come to Ottawa to rant against Bill C-10. He made a point of saying:

> … we certainly do not condone sex-related crimes.

You be the judge.

2.4 Rising crime rates

In July 2011, Statistics Canada announced that in spite of a general decline in crime in Canada, child pornography offences had risen by 36%, sexual assaults had risen by 5% and sexual harassment offences had also risen by 5%. *La Presse* reported in its July 22, 2011, issue that in the spring of 2011, the City of Montreal police service had reported a 7.5% increase in the number of sexual assaults in the area under its jurisdiction (an increase of 81).

No tangible measures have been announced by the government to combat this phenomenon. In the Quebec that is soft on crime, they prefer to close their eyes and rant against the federal big brother.

3. MINIMUM SENTENCES ARE ESSENTIAL

There have been minimum sentences in the Criminal Code since 1892. They reflect the level of social disapproval of certain types of crimes, such as sex crimes against minors and the drug trafficking that ravages society. They reassure victims who are considering reporting the people who have attacked them, knowing the minimum sentence the offender can expect. They neutralize the trivial sentences that violate the public's trust in the judicial system. They deter potential attackers, lest they be identified, publicized and constantly talked about in the media.

3.1 Judges' freedom to decide

The soft on crime lobbies, including the Government of Quebec, say that minimum sentences prevent judges from deciding according to their conscience. They criticize the fact that judges may not impose more lenient sentences in certain cases:

> The new minimum sentences are our second concern. Quebec doubts that these sentences will be a deterrent and therefore has expressed misgivings about them. Quebec would far prefer to trust prosecutors and the courts to set the most appropriate sentence. (Jean-Marc Fournier, Minister, House of Commons, November 1, 2011)

In our opinion, that argument is baseless. Parliament has the constitutional authority to legislate in relation to criminal law and to decide whether a minimum sentence should be imposed. On that subject, unlike the Government of Quebec, it has clear and indisputable legitimacy.

3.2 Conditional release at 1/6, 1/3 and 2/3

Curiously, detractors of minimum sentences do not disapprove of conditional release. If minimum sentences limit the sacrosanct freedom of judges to decide, we might ask why the very principle of conditional release does not outrage them. Judges' decisions are regularly thwarted by release at one third or two thirds of sentence. Until Parliament abolished it last year, they were fine with release at one sixth, in spite of that being a very clear denial of judges' authority and freedom to decide.

A study done by Simon Fraser University for the National Parole Board showed that from 1975 to 2002, 481 murders were committed by individuals on parole (http://www.cbc.ca/news/canada/2003/11). The soft on crime lobbies are fine with that, as long as criminals benefit from it.

They do not question the open sore on society created by parole that has discredited the judicial system for decades in the eyes of victims and ordinary people. In fact, they are after only one thing: fewer sentences, fewer prisons, less severity.

3.3 Minimum sentences do not apply to young persons

The sentencing scheme that applies to young persons is different from the scheme that applies to adults. A young person who receives a specific sentence under the Youth Criminal Justice Act is not subject to the mandatory minimum sentences that apply to adults. Bill C-10 changes nothing in this regard.

In exceptional cases of serious violent crimes where the Crown and the judge agree that the young person should be tried as an adult, the mandatory minimum sentences will apply, and this is entirely proper.

3.4 Respect for the Canadian Charter of Rights and Freedoms

The minimum penalties introduced by C-10 do not, in my opinion, violate section 12 of the Canadian Charter, which prohibits punishment that is cruel and "grossly disproportionate" as

part of a sentence. The federal government must vigorously defend these provisions if they are challenged.

First, they are carefully worded and take into account the serious nature of the offences in question. Their objective is to deter people who are likely to commit crimes that are extremely harmful to society. The disapproval of these crimes voiced by Canadian society calls for these minimum sentences to be applied.

4. MINIMUM SENTENCES FOR SEXUAL PREDATORS

Clauses 10 to 38 of Bill C-10 institute minimum sentences for sexual predators. In fact, it institutes a number of minimum sentences and increases other shorter minimum sentences that are already provided for in the Criminal Code.

For example, it increases the minimum sentences for the offences set out in sections 151(a), 152(a) and 153(1.1(a) of the Criminal Code: sexual touching of a child under the age of 16 years, invitation to sexual touching of a child under the age of 16 years and sexual contact with a young person (between 16 and 18) by a person in a position of authority.

4.1 Social disapproval

I agree with these measures. I believe that social disapproval of persons who commit sexual assaults has reached a peak in Quebec and Canada. Protecting our children, the immense and long-lasting harm that such assaults cause them and their families, and the social costs that result justify these minimum sentences. Regardless of the circumstances, an accused's remorse or the consequences for the victim, the act is sufficiently repugnant to call for a minimum one-year sentence.

4.2 Abusers in a position of authority

For persons in a position of authority (teachers, coaches, child care workers) who commit sexual assaults, I believe the minimum one-year sentence is insufficient. I do not see why incest would be punishable by a minimum of five years in penitentiary when an abuser who is a trainer, a professor or a child care worker should only get one year.

I propose that the five-year minimum apply to them as well. Like a father or mother, a hockey coach is in a position of authority and enjoys the trust of the child. That is their common denominator.

The minimum sentence guarantees uniformity based on similar criminal conduct. It avoids the attorney general having to appeal a sentence they think is unreasonable. It reassures the public that judges will have to abide by what is now considered to be the minimum in Canada.

4.3 Serial abusers

I am appalled that C-10 does not address serial abusers more specifically

On February 10, a judge of the Court of Quebec described the Crown's application to sentence a priest to eight years in penitentiary for abusing 13 former students, aged 12 to 16, between 1973 and 1985, as clearly inappropriate. Fortunately, the Crown immediately announced its intention to appeal the case.

I do not see why Parliament should refrain from preventing judges from imposing sentences lower than what Canadian social values consider to be acceptable. Justice is not simply a matter between lawyers and judges. The public, whose confidence is essential if the system is to work properly, has a say, through its duly elected federal government.

In my opinion, serial sexual offenders should be given special status in the Criminal Code. These crimes are heinous, endemic, often unpunished or reported too late, once the harm has become irreparable. Children who are systematically abused by a person in authority live under constant threat. I find it bizarre that their abusers are not punished more harshly than others who abuse in isolated instances and have no particular power over the child.

4.4 Incest, bestiality and luring a child by means of a computer system

Bill C-10 properly institutes a new minimum sentence of five years for cases of incest committed against a child under the age of 16 years (section 155(2) Cr. Code) and one year for inciting a person under the age of 16 years to commit bestiality (section 160(3) Cr. Code), luring a child by means of a computer system for the purpose of committing a sex offence against a young person

(section 172.1 Cr. Code) and sexual assault against a child under the age of 16 years (section 271 Cr. Code). It increases the minimum sentence for sexual touching of a child under the age of 16 years to one year from 45 days (section 151(a) Cr. Code), invitation to sexual touching of a child under the age of 16 years (section 152(a) Cr. Code) and sexual touching of a young person by a person in authority (section 153(1.1) Cr. Code).

4.5 Publicity surrounding the new minimum sentences

The deterrent effect of these minimum sentences will be enhanced by publicity about them. Thailand posts the sentences associated with sex offences against minors publicly and permanently. Canada should follow its example.

For the rest, the deterrent effect of imprisonment is indisputable: seeing how hard defence counsel work to desperately avoid prison for their clients, they will certainly be the first to admit it.

4.6 Bargaining guilty pleas to lesser offences

Some have cited the fact that guilty pleas could be entered to a different offence in order to avoid a minimum sentence. Bill C-10 settles that question, to my mind, by imposing minimum sentences for all offences relating to the sexual exploitation of children.

5. REHABILITATION DOES NOT PRECLUDE A SENTENCE THAT IS PROPER AND PROPORTIONATE TO THE GRAVITY OF THE CRIME COMMITTED

Bill C-10 is not opposed to rehabilitation. It strengthens it. Active participation by offenders in achieving the objectives set out in their correctional rehabilitation plan, and progress made in carrying out that plan, will be considered in making decisions regarding conditional release or any other privilege (clause 55).

As well, C-10 expands the category of offenders who are subject to the provisions for keeping an offender in custody beyond the scheduled date of statutory release at two thirds of sentence. I am thinking of offenders convicted of child pornography, luring, breaking and entering to steal a firearm, or aggravated assault of a peace officer (clause 103).

5.1 Unfortunate statement by Mr. Fournier

On November 1, the Minister of Justice of Quebec stated:

> A strategy purely focused on locking up offenders for a time is nothing more than a temporary, superficial solution. It is a springboard to more crime. However, if you teach a young offender acceptable behaviour, you can stop them repeating the same mistakes. Failing to provide offenders with instruction or follow-up on how to behave in society is tantamount to encouraging them to offend again. The solutions proposed in Bill C-10 do not meet the stated goal of making the public safer. They also fail to address effective penalties for offenders or the prevention of crime and recidivism.

That wholly incorrect statement meant that some members of the public wrongly believe that Bill C-10 is inconsistent with rehabilitating young offenders.

5.2 Basic principle preserved by C-10

No provisions of C-10 prevent Quebec from continuing to use its tried and tested approach in dealing with young offenders. The bill preserves the principles of rehabilitating and reintegrating young persons, while will continue to be the cornerstone of the youth criminal justice system in Canada.

The Youth Criminal Justice Act came into force on April 1, 2003, and replaced the Young Offenders Act. It established rules that govern custodial sentences and programs for young persons aged 12 to 17 years, inclusive, who commit offences under the Criminal Code and the Controlled Drugs and Substances Act.

Bill C-10 changes nothing in this regard. It recognizes that young persons are different from adults in terms of needs and development, and it follows in the judicial and legislative tradition that has applied to them in this regard for 100 years.

Over the years, the Canadian government has adopted numerous programs to promote the rehabilitation of young offenders. First, there was the Youth Justice Fund ($5 million), then the Youth Justice Services Funding Program ($177 million), the Intensive Rehabilitative Custody and Supervision Program ($11 million), the National Crime Prevention Strategy ($11 million) and the National Anti-Drug Strategy ($588 million).

If it wishes, Quebec can do more in the area of rehabilitation. The more inmates are rehabilitated, whether young persons or adults, the more they will become good citizens.

5.3 Rehabilitation is consistent with punishment

This is the view stated by Eric Bergeron, a psychologist with the Correctional service of Canada and an expert witness in the Criminal Court of Quebec, published in *La Presse* on November 30, 2011:

> [TRANSLATION] What is noteworthy in this debate is to see how the issue has been perverted by the adherents of dominant ideology. The speech by Minister of Justice Jean-Marc Fournier is the perfect example: we in Quebec are in favour of rehabilitation, not punishment. None of them will explain how these two approaches are mutually exclusive. The dominant ideology needs no justification, however; it affirms and is sufficient unto itself.
>
> For some offenders, punishment is the most useful form of rehabilitation. These are young persons who, from a young age, have been highly criminalized, who exhibit psychopathic personality traits, and all the research clearly shows that treatment has no effect on them.
>
> In those cases, the soft sentences they are given early in their careers are not just ineffective, they operate to reinforce their delinquency. Imagine: two years with incomes of $200,000 (drug trafficking, pimping) versus three months of community service.
>
> As a worker in the system, you find yourself with hardened criminals at age 30 who have just received their first significant sentence, who have no training and no education, with the job of selling them on a $10 an hour job at the corner market.
>
> Saying that punishment is the opposite of rehabilitation is failing to understand that before there can be any rehabilitation, the crime has to be punished, in the case of individuals who exhibit no moral discomfort or self-examination promoted by their actions. The punishment is essential in that case, to place a

> clear limit on individuals who have never had limits in their lives, or who have used violence to break them down.
>
> It is always easy for adherents of the dominant ideology always to accuse people calling for harsher sentences of being opposed to rehabilitation. We see them wrapping themselves in virtue and accusing others of intolerance, one of the year-round sports practised on a daily basis in Quebec.
>
> (Emphasis added)

5.4 Offenders who are minors will not be going to prison

Clause 186 of C-10 provides:

> 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.

The fact that a young offender who is a minor is entirely under Quebec's authority allows for a full range of rehabilitative measures to be used, if the Government of Quebec is concerned about this.

6. ADULT SENTENCES FOR YOUNG OFFENDERS

Since Mr. Fournier made his statement, some Quebeckers have wrongly thought that young persons who are sentenced for a crime will be imprisoned like adults. Other clumsy statements by the Minister have created this perception:

> The rationale for removing the reference to "long-term" could in fact be the starting point for our discussion. I think it is because the Government wants to focus more on jail time than on rehabilitation or reintegration. We are not talking about offenders who are 52 years old and who will be serving a 25-year sentence. We are talking about 15, 16, 17 year-olds, who will undoubtedly be released into society at some point.

As we have seen, clause 186 of C-10 says exactly the opposite. Minors will not be going either to prison or to penitentiary.

6.1 Young offenders aged 15 years

Contrary to what Mr. Fournier said, young persons aged 15 years are not covered by the provisions of de C-10 dealing with adult sentences. The Government of Quebec may use clause 176 to set the age of offenders to whom this measure may be applied at 16 years. That clause provides as follows:

> The lieutenant governor in council of a province may by order fix an age greater than 14 years but not greater than 16 years for the purpose of subsection (1.1).

6.2 An exceptional and discretionary measure

We also have to remember that adult sentencing will not be automatic, contrary to what the Minister again implies here. Judges will still have full discretion (clauses 176 and 183 of C-10). An adult sentence will be imposed only in exceptional cases, on the following three conditions (clause 176, C-10):

a. it is a serious violent offence;

b. the attorney general (in this case, Mr. Fournier) makes the application to the judge; and

c. the judge grants the application.

Once a young person reaches the age of 16 years, the laws in force in Quebec give them the right to work, to consent to organ donation, to have a driver's licence, to leave school and to choose their regular medical care.

Fortunately, that does not mean that they have the right to kill, assault or seriously injure someone. If they do so deliberately, it is entirely reasonable for them to be held accountable and tried as an adult. It will be up to the judge to decide, case by case, based on the circumstances of each case.

6.3 A small percentage of young offenders will be affected

Senator Pierre-Hugues Boisvenu states that 3% of dangerous young offenders will be affected by C-10 *(Le Devoir,* Hélène Buzzetti, November17, 2011).

In Quebec, according to data from the DUC 2 program of the ministère de la sécurité publique from 2010, only one young person who was a minor committed a homicide, two others committed criminal negligence causing death, and three participated in a conspiracy to commit a murder. In addition, 336 committed a sexual assault, 48 committed a kidnapping or unlawful confinement, and 308 committed criminal harassment.

How many of those will be given an adult sentence? Each case is unique and it will be up to the attorney general of each province to decide, based on the circumstances, whether that application will be made to the judge under clause 176. Bill C-10 imposes no requirements in that regard. It merely makes an additional tool available.

7. PUBLICATION OF THE IDENTITY OF A DANGEROUS YOUNG OFFENDER

As a member of the public, I am entitled to decide to live in a safe environment. I am entitled to protect my family and my children from dangerous individuals. I must therefore know who they are and with whom they associate. Julie Surprenant, who was murdered at the age of 16 in Montreal on November 16, 1999, would not be dead if her father had known that his upstairs neighbour was a sex offender.

Jos Jos (fictitious name, real case) would not have been repeatedly raped when he was only seven years old if his mother had known that her neighbour was a sexual predator who was about to murder another child.

7.1 Protecting the public and other young persons

Dangerous criminals are not all adults. This is not the time for sentimentality or for philosophizing about rehabilitating them. We need to be protected from some young people who

are at high risk for reoffending, and in order to do that their identity must be published. This is a matter of protecting the public, and in particular other young persons whom they are likely to be living near.

7.2 Strict conditions

To return to the text of clause 185:

> When the youth justice court imposes a youth sentence on a young person who has been found guilty of a violent offence, the court shall decide whether it is appropriate to make an order lifting the ban on publication of information that would identify the young person as having been dealt with under this Act as referred to in subsection 110(1).
>
> A youth justice court may order a lifting of the ban on publication if the court determines, taking into account the purpose and principles set out in sections 3 and 38, that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk.
>
> The onus of satisfying the youth justice court as to the appropriateness of lifting the ban is on the Attorney General.
>
> (Emphasis added)

The process is clearly circumscribed. Six conditions must be met in order for a young person's identity to be made public:

a. the attorney general (in this case, Mr. Fournier) must make the application;
b. the young person must have been convicted of a violent offence;
c. the young person must be at significant risk of reoffending;
d. there must be a risk of committing another violent offence;
e. it must be necessary to protect the public; and
f. the judge must be satisfied and grant the application.

Here again, Bill C-10 is right on target and meets Quebeckers' expectations. It places the priority on the safety of innocent people above the interest of young violent criminals who are about to reoffend. That is the least of things. Where does Mr. Fournier get his legitimacy for opposing this kind of measure?

Incidentally, there are other measures in C-10 that provide better protection for the public. I am thinking of the one that allows peace officers to arrest an offender who breaches their conditions of release without an arrest warrant (clause 92).

I am also thinking of the provision that gives the Correctional Service of Canada permission to require that an offender wear a monitoring device in order to be released on parole, where there are special conditions of release relating to restrictions on contacts with victims or geographical areas (clause 64).

I am also thinking of the provision increasing the number of reasons that provide a basis for searching vehicles on penitentiary grounds, to prevent the entry of contraband or the commission of an offence (clause 665.)

8. IMPRISONMENT AS A FACTOR IN RECIDIVISM

Quebec falls into the Canadian average for the percentage of convictions leading to imprisonment.

Guilty cases sentenced to custody for the most serious offence in the case, by jurisdiction, 2008/2009

Note: Information from Quebec's municipal courts (which account for approximately one-quarter of federal statute charges in that province) are not yet collected [*sic*]. Coverage for Adult Criminal Court Survey data as at 2008/2009 is estimated at 95% of adult criminal court caseload.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Adult Criminal Court Survey.

Mr. Fournier continues to surprise us when he says:

> Many studies, including some by the Federal Government, have demonstrated that prison sentences do not reduce crime or recidivism. Quite the opposite in fact. Prison may actually serve as crime school, thus encouraging inmates to reoffend.

It is a facile argument. Claiming that imprisonment does not reduce the number of crimes amounts to denying its social utility in terms of protection and its deterrent effect on the general public. I am very surprised that a man with such high-level responsibilities would engage in such bizarre statements.

The decision by a former inmate to reoffend is that person's and theirs alone. While it is impossible to predict that they will reoffend the day they get out of prison, it is just as impossible to make a connection between incarceration and recidivism. We can do statistical comparisons and indulge in demagogic interpretations, but no generalized causal connection can be made between prison and recidivism.

If imprisonment is a factor in recidivism, as the Minister claims, we might well ask what purpose prisons serve in Quebec. We might also wonder why he is not simply arguing for them to be abolished. Prison is used to punish people for a reasonable period of time that is proportionate to the crime. It isolates the inmate and at least protects society during the period of isolation.

There will always be repeat offenders, as there will always be prisons. The objective of any government is for there to be as few as possible.

9. RECOMMENDATIONS

9.1 Minimum sentences for criminal drivers

I would have liked Bill C-10 to institute minimum sentences for criminal driving offences. That will be for another day, I hope. Some of the amendments in force since July 1, 1999, have increased the maximum penalties that apply to reckless drivers, but they have had no significant effect on the decisions of the courts in terms of the severity of sentences.

I think it is unacceptable that still today, criminals who are convicted of hit and run causing death, for example, avoid imprisonment and are handed a community sentence. On March 31, 2010, the Quebec Court of Appeal set aside a judgment of the Court of Quebec sentencing a reckless driver to 30 months in penitentiary for hit and run causing the death of young Bobby St-Hilaire. It reduced the sentence to 23 months in the community (Camiré v. The Queen, March 31, 2010, 200-10-002445-091).

I think that all driving crimes causing deaths (dangerous driving, section 249(4) Cr. Code; 49 (4) Cr. Code; hit and run causing death, section 252(1.3) Cr. Code; drunk driving, section 255(3) Cr. Code, among others) deserve a minimum sentence of at least four years in penitentiary, the equivalent of manslaughter (section 236(a) Cr. Code). Offences causing bodily harm certainly deserve a minimum of one year.

I also call on Parliament to introduce a lifetime prohibition on driving a vehicle into the Criminal Code for any three-time offender convicted of driving while impaired. That measure, which is included in the Ontario Highway Traffic Act, should be applied

everywhere in Canada. It is unacceptable that in Quebec, today, there are reckless drivers on their tenth offence.

9.2 The victim's right to appeal

In addition, I believe the Criminal Code should allow any victim of a crime against the person, or the victim's family if the victim dies of the crime, to appeal a judgment acquitting or discharging the accused or imposing an inadequate sentence.

The attorney general should not be the only one with that right. In the 32 years I practised law representing victims of crime, I have met hundreds of victims who were frustrated by the way the Crown conducted the trial. Others complained about the judgment and the sentence.

The victim must no longer be a mere spectator. They are already denied the right to counsel and they may speak only in the sentencing phase. I think it is elementary that victims be given the right to apply to an appellate court to challenge a judgment that is primarily about them.

9.3 Funding prisons

The detention of three members of the Shafia family - father Mohammad, mother Tooba and their eldest son, convicted of quadruple murder on January 29, 2012 – is a case in point.

On February 4, *La Presse* revealed that one of the three accused, Mohammad Shafia, was the owner of a shopping centre in Laval valued at $2.3 million. Mr. Shafia has been managing it, along with other assets, from the penitentiary where he now resides.

Why is he not required to pay the costs of his incarceration? Why are all inmates who have the resources not asked to pay their share? Why could the government not seize those assets, when the charges are laid, to be reimbursed for a portion, at least, of the costs of incarceration that it has to and will have to pay? I believe that governments should look to Connecticut as a model in this regard.

Other famous inmates, in spite of their comfortable financial situations, have benefited from the largesse of our prison system. I am thinking of Guy Cloutier, for one, a former impresario and producer, who was sentenced on December 20, 2004, to 42 months in penitentiary (paroled after 29 months) for sexually abusing two minor children over several years.

I am also thinking of former judge Robert Flahiff, sentenced on February26, 1999, to 36 months in penitentiary for laundering $1.7 million from drug trafficking when he was a criminal lawyer.

And yet in Quebec, the portfolio of the parents of a young person whose behaviour is dysfunctional will be combed through before the child enters a youth centre, whether or not the child has committed a crime. They will have to pay a monthly bill of at least $500 to defray the costs of housing their child. A grandmother who has limited autonomy will also be billed, to the extent allowed by her resources, while she is living in a seniors' home.

And the inmate? How can we explain that a law-abiding citizen has to fund, through their taxes, the full cost of incarceration, when the inmate has the means to contribute? I hope the federal government will look into this unfair situation without delay.

I WOULD LIKE TO THANK THE SENATE OF CANADA FOR GIVING ME THE OPPORTUNITY TO BE HEARD, AT OTTAWA, FEBRUARY 22, 2010.

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