Submission to the Standing Committee on Justice and Human Rights

Study: Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts

Submitted by

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As the Acting Child and Youth Advocate for the province of New Brunswick I would like to take the opportunity to provide the Standing Committee on Justice and Human Rights with my concerns regarding Bill C-10, and specifically the changes proposed therein to the *Youth Criminal Justice Act* (*YCJA*). This submission repeats the concerns shared with parliamentarians regarding the *YCJA* amendments proposed in Bill C-4 in the last Parliament, and also makes new submissions based on the emphasis Parliament should give to the role of families and communities in keeping our streets safe and protecting our children from criminal influences.

Background: The Office of the Child and Youth Advocate (New Brunswick) on Youth Justice Data

The Province of New Brunswick has had a Child and Youth Advocate since October 26, 2006. The mandate of the Advocate is outlined in section 5 of the *Child and Youth Advocate Act* and charges the Child and Youth Advocate's office with ensuring that the rights and interests of children and youth are protected.

As the Acting Child and Youth Advocate for the Province of New Brunswick, I respond to requests for advocacy from, and advocate proactively on behalf of, all children and youth within the province, including those who reside within a provincial public institution. This includes youth who fall under the application of the *YCJA*, and particularly those who are under some form of custodial sentence. It is due to substantive reservations with some of the proposed amendments and their potential effects on these youth that I express the following concerns and suggestions.

During the five years since the first New Brunswick Child and Youth Advocate was appointed, the Office has published several reports following systemic investigations, among which include: *Connecting the Dots: A Report on the condition of youth-at-risk and youth with very complex needs in New Brunswick (*January 2008*);* and *Ashley Smith: A Report of the New Brunswick Ombudsman and Child and Youth Advocate on the services provided to a youth involved in the youth criminal justice system* (June 2008). These reports, as well as the underlying investigations and numerous files that gave rise to them, inform our submissions to Parliament. Our findings point to a pervasive issue within the system where youth are incarcerated not as a result of public safety concerns, but because there is no other safe place for them. This is particularly true for those young persons who struggle with mental health issues or severe behaviour disorders.

I also wish to call to Parliament's attention the recent release of our 4th annual State of the Child report in New Brunswick, and to the publication of our first ever Children's Rights and Wellbeing Framework, in collaboration with the New Brunswick Health Council. This report documents efforts made by Canada and New Brunswick to implement our obligations to children under the UN *Convention on the Rights of the Child*. This report contains a focus on Articles 37 and 40 of the *Convention*, which establish the international law obligations of signatory states such as Canada in governing the application of criminal law provisions and procedures to children. We have sought to measure areas of success and areas in need of improvement in the implementation and enjoyment of these rights by New Brunswick's children and youth. The data gathered shows a troubling patchwork of approaches across Canadian provinces and territories, especially in regards to dealing with youth within the criminal justice system

Looking at the data from Statistics Canada's national reporting on youth crime and youth custody between 2005 and 2009, it is apparent that rates of youth incarceration per population count vary widely between jurisdictions. Some provinces such as BC and Quebec have rates of incarceration of 4.3 or 3.7 youth per 10,000, which are almost half the rate of incarceration as that of Ontario, three times lower than in New Brunswick or 6 to 8 times lower than in Saskatchewan and Manitoba, and nine times lower than in the Northwest Territories. What is more troubling is that while some provinces such as Newfoundland and Ontario have seen a steady decline in the rates of youth incarceration over this period, provinces such as New Brunswick have seen no progress in reducing rates, and others still, like Manitoba, have seen a steady increase in rates. While the overall trend in Canada is a decreasing rate, thanks to the progress made in more populous provinces such as Ontario, Quebec and Alberta, Members of Parliament should be concerned with the lack of progress under the *YCJA* in provinces such as Manitoba and New Brunswick.

When we compare the approaches in dealing with youth crime to the incidences of youth crime, the data is also revealing. In 2010, police data shows that the incidence of youth crime declined by 7% in Canada in comparison to 2009. Violent youth crime, in particular, was on the decline. There was a 29% decrease in the rate of youth charges for homicide between 2009 and 2010 and Canadian Police reports indicate that the youth crime severity index was down for all provinces and territories without exception in 2010, with Quebec, British Columbia and Prince Edward Island leading the country with the lowest youth crime severity indexes. Interestingly, the provinces with the lowest incarceration rates also have the lowest youth crime severity indexes. It is for this reason that so many experts in this area are urging Parliament not to tamper with the existing formula of the *YCJA*. In addition, policy should focus on both encouraging provinces to better utilize the existing *YCJA* provisions, and providing for programs for youth with mental health or behavioural issues.

The situation in New Brunswick provides insight for explaining the shortfall from the gains Parliament intended at the introduction of the *YCJA* in 2003. We are concerned to note that New Brunswick has not established any of the Community Youth Justice Committees called for under section 18 of the *YCJA*. Nor has New Brunswick provided adequate training to judges and Crown prosecutors or defence counsel on the *YCJA* provisions. Unfortunately, the Province has a policy directing the use of section 19 conferences as a sentencing tool rather than as a means for trial diversion as anticipated under section 19. Further, there are no clear guidelines on the Crown's role in pre-charge screening under section 23 of the *YCJA*. Moreover, there is no adequate distinction in our policing practices or in our Alternative Measures Programs, community based interventions for youth from adult crime diversion programs and practices. The result is that New Brunswick youth are far more likely to end up behind bars than many of their peers nationally, particularly in Atlantic Canada, and this incidence of incarceration bears no relation to the provincial crime severity indices (New Brunswick ranks comparatively well by such measures – 7th out of 13 jurisdictions).

The fact is, in New Brunswick we place many youths behind bars when there is no other safe place for them. Their offending behavior is generally not severe and is often best explained by their mental health condition. Many of the youth we visit regularly in our closed custody

detention centre need clinical intervention, not incarceration. The data in our Children's Rights and Wellbeing Framework in relation to hospital admissions rates in New Brunswick, which are often up to three times the national averages for a variety of youth mental health diagnoses, also speaks volumes regarding our province's inability to meet the needs of youth with complex needs through appropriate clinical interventions within the family and communities. The situation in New Brunswick elucidates a conclusion that may be applicable Canada-wide. The situation of youth crime should be ameliorated by more effectively and comprehensively applying exiting provisions of the *YCJA* and by providing appropriate programs for youth that place an emphasis on family and community support. Until these issues are addressed, we are reluctant to conclude that some of the amendments suggested will improve the situation, and are in fact convinced that it will further aggravate it.

We understand the demands of crime victims, which have moved the federal government to put forward many of the changes in Bill C-10. I applaud in particular the focus on facilitating law enforcement in relation to child pornography crimes, which are dramatically on the rise and which currently outpace efforts in law enforcement. However, my obligation lies in reminding this committee that the needs of Canadian children are diverse and that the needs of New Brunswick children, like those in many other smaller towns and rural regions of Canada, are not the same as those of offending youth in larger urban centres such as Vancouver, Calgary, Winnipeg or Toronto. The greater risk to Canadian youth lies not in the stories of tragic victims of criminal violence like Sébastien Lacasse, but in the stories of young persons with mental health issues who become victims of the criminal justice system like Ashley Smith. When we legislate to allow more youth to be sentenced to more time in jail, we have to be sure of our reasons for doing so, and certain also of the intended impacts and the likely consequences.

This committee must consider the bill before them carefully. It would be reasonable and responsible to undertake an independent Child Impact Assessment of the proposed changes to the *YCJA* to ensure that the rights of children and youth in Canada are not being limited. The UN Committee on the Rights of the Child has frequently urged State Parties like Canada to adopt thorough, independent and transparent methodologies such as Child Impact Assessments whenever significant policy changes are being considered which may impact the rights of children under the *Convention*. Canadian law requires this due diligence when environmental policy is under review, or when the privacy of Canadians is at stake. Surely Canadian children deserve the same due diligence.

Below I raise concerns with a number of the proposed amendments before making two new suggestions to reinforce under Bill C-10 the important role of families and communities in keeping our streets and communities safe.

Bill C-10 Changes to the Youth Criminal Justice Act: General Comments

Bill C-10 proposes several changes to the *Youth Criminal Justice Act*. Some of these are positive, such as: the addition of the presumption of diminished moral blameworthiness, the clarification of some of the terminology, and ensuring that no young person who is under the age of 18 is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary. However, some of the proposed changes seem to be contrary to the original intention of the *YCJA*. This raises serious concerns on whether these amendments impede the

rehabilitation and reintegration of Canada's youth. Given that statistical data indicates that there has been a decline in the number of admissions to youth custody and community correction services since the introduction of the *YCJA*[i], I have serious reservations about amendments that alter the existing focus of the legislation.

Any new amendments brought forward should build on the successes of the *YCJA* and focus on innovating in the fields of prevention, rehabilitation and reintegration, rather than resorting to increased detention. The *YCJA* was introduced at a time in which Canada had the highest rate of youth incarceration in the Western world, and it is not desirable to return to that position. I am concerned that some of the amendments may tip the scales back in that direction.

The proposed changes to the *YCJA* would facilitate pre-trial detention for youth, establish an extra-judicial measures registry, remove the focus of long-term protection of the public, include the concepts of denunciation and deterrence into sentencing provisions, include a wider group of crimes as 'serious' and 'violent' offenses and make it easier to allow for the publication of the names of youth who are convicted of a violent offence. While these changes are motivated by a strong will to punish offenders and to hold youth accountable for violent offences, in particular by denouncing and hopefully deterring such behavior, the evidence world-wide suggests that these approaches will in fact lead to higher rates of incarceration and higher rates of youth crime, making our streets less safe. They also run the risk of net-widening, resulting in more closed custody sentences for youth who would benefit from alternative interventions.

Pre-Trial Detention

The proposed amendments include changes to subsection 29(2) of the *Act* that will alter the process for determining when a youth will be detained. Of concern is the inclusion of subparagraph 29(2)(a)(ii) which opens the door for increased detention to offences 'other than a serious offence, if they have a history that indicates a pattern of either outstanding charges or findings of guilt'. I am concerned that the changes to this section will increase the pre-trial detention of youth, which will in turn further stigmatize them.

Being exposed to custodial experiences at a young age, in my opinion, will only enhance the chance of recidivism. It must be noted that closed custody poses many more challenges for a young person beyond increasing the risk of re-offending. Incarcerated individuals may acquire behaviours, emotions and perspectives (such as drug use, depression, anger etc.) that become detrimental to their health and well-being even though they are not legally documented as recidivating. Law-makers should be reminded when raising the argument of general deterrence in the name of public safety, of each individual whose life is ruined, lost or diminished, not only by succumbing to a life of crime, but also through being prevented from achieving their full potential as contributing members of society. Youth are in a critical stage of moral and psychological development and rehabilitation and reintegration are best served by programs and measures that incorporate the positive influences and support of family and community. Increasing pre-trial detention increases the risk of young persons entering the criminal justice system under the guise of public safety and law enforcement concerns, when in fact the real need may be for a place of safety, adequate social supports and/or mental health intervention.

Extra-judicial Measures Registry

The proposed changes include the addition of subsection 115(1.1) which states that: 'the police force shall keep a record of any extrajudicial measures that they use to deal with young persons'. One of the merits of the *YCJA* is the concept of extrajudicial measures and community-based/non-custodial sentencing options. Extrajudicial measures are measures that are taken outside the formal judicial process and allow a young person to be accountable, without subjecting him or her to a sentence or a criminal record. However, these measures are used pre-trial and the police must have "reasonable grounds" to believe that the young person has committed the offense. The *YCJA* presently encourages the use of extrajudicial measures and underscores their effectiveness in terms of rehabilitation. Requiring the police to keep a record of all extrajudicial measures runs counter to the very purpose of such measures. It blurs the line between an extrajudicial measure and a criminal record, to the detriment of the youth. The fact that the content of the registry could subsequently be used to favour a more intrusive method of punishment for a young person is contrary to the intent of those measures. This proposed change also raises serious concerns in relation to the young person's right to be presumed innocent and their right to privacy under Articles 16 and 40.2.(b)(vii) of the *UN Convention on the Rights of the Child* as well as under the *Canadian Charter of Rights and Freedoms*. Parliament's infringement of the privacy rights of young persons may be unjustified in the absence of compelling evidence that urgent public safety objectives will be materially advanced through this type of data collection.

Currently, police are permitted to establish a folder on a young person that includes items such as statements, measurements, fingerprints and photographs. These items, which could potentially be used as evidence at a later date, are not analogous to a record of extrajudicial measures. Extrajudicial measures are the result of an educated guess by police officers and/or the Crown as to guilt. It is extremely prejudicial to consider these measures in relation to subsequent charges or sentences. It is permissible to record extrajudicial *sanctions* as these are sentencing alternatives to incarceration after a young offender has accepted responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed. We would urge that the amendments not conflate extrajudicial measures and sanctions and allow only the consideration of extrajudicial sanctions during the consideration of sentencing.

Long-term Protection of the Public

Bill C-10 proposes that paragraph 3(1)(a) be amended and as part of this amendment, the words 'in order to promote the long-term protection of the public' be replaced with 'to protect the public by'. While to some this may not seem a consequential change, it is concerning that the wording proposed in Bill C-10 appears to lack a predominant focus on long-term impacts. The emphasis on long-term protection implies a recognition that the balance between the principles of rehabilitation/reintegration and protection of the public operate differently in terms of youth as opposed to adults. Youth are still in the process of moral and psychological development. It is crucial, wherever possible, that youth be guided by family and community members in order to become functioning members of society. It is also crucial to divert youth from incarceration when possible in order to avoid exposure to criminal behaviour and habits. It could be argued that incarcerating culpable youth would protect the public in the short-term; however, we must be more forward thinking than that and turn our minds to ensuring long-term protection of the public by rehabilitating these youth, addressing the underlying root causes in order to ensure that the public is protected not just in the short-term but in the long-term. To only look at the

immediate situation is detrimental to public safety and fails to recognize the child's specificity as a human being with a long life ahead of him or her. Bill C-10 would be more impactful and might better reflect Parliament's current intent if paragraph 3(1)(a) were left untouched.

Denunciation and Deterrence

The proposed amendments add the concept of deterrence and denunciation to the sentencing principles. In particular subsection 38(2) will be changed to include the following - 'subject to paragraph (c), the sentence may have the following objectives: (i) to denounce unlawful conduct, and (ii) to deter the young person from committing offences'. There is scant evidence to suggest that the addition of these concepts will increase public safety, but previous experience in other areas suggests that it will almost certainly increase the numbers of youth in custody as well as the length of their sentences.

As has been mentioned by our Office and by other Child and Youth Advocates across the country on previous occasions, including deterrence and denunciation as a sentencing principle runs counter to one of the pillars of the *YCJA*, which is to ensure that the sentence serves the 'interest of the young person'. This proposed amendment is contrary to the legislation's aim of achieving crime prevention by focusing on root causes, working towards a successful reintegration, and providing young persons with meaningful consequences. While deterrence and denunciation exist as principles in the sentencing for adults, they are not included in the *YCJA* because it is recognized that they are not effective in the context of young offenders. Denunciation and deterrence do not recognize that youth have diminished moral blameworthiness or culpability and that the commission of crimes by young offenders is often surrounded by a nexus of circumstances and issues. The predominant focus should be to address these issues and if at all possible rehabilitate and reintegrate the youth.

Justice Abella in *R.* v. *D.B*[ii] makes the compelling point that a child has a right under Canadian and international law to a criminal process that looks to the child's potential as much as to his or her misdeeds. This phrase captures the true sense of Article 40.1 of the *UN Convention on the Rights of the Child*. Including the concepts of denunciation and deterrence diminishes Canada's implementation of the *Convention* and this fundamental right of the child.

I believe that the underlying purpose of this proposed amendment, to hold youth accountable for their actions, is an important one. However, it is important for Parliament to recognize that for a large number of young offenders, deterrence and denunciation will not achieve this purpose. If Parliament wishes to achieve this purpose, I would urge that the wording of the amendment be changed. The amendment could be qualified in a way that gives discretion to the trial judge to utilize denunciation and deterrence principles, but only in extreme cases where he/she deems they would be effective and not counter-productive to rehabilitation and reintegration.

Serious and Violent Offenses

The proposed new definitions of 'serious offence' and 'violent offence' will likely have the result of incarcerating more youth. While clarification of definitions is generally of benefit to any piece of legislation, the risk with the proposed definitions is that they may have consequences that should not be encouraged. I agree with the submissions made by Professor Nicholas Bala and the Canadian Bar Association, which were endorsed by Mary-Ellen Turpel-Lafond, the

Representative for Children and Youth in British Columbia, that the definition should include a mental element of intent or recklessness.

Lifting the Publication Ban

The importance of preserving the anonymity of a young person for the purpose of achieving a successful rehabilitation and reintegration cannot be overstated. Subparagraph 3(1)(b)(iii) of the *YCJA* is the principle by which the protection of a young person's identity is and remains protected throughout the judicial process. Amending the *YCJA* to provide exceptions to the publication ban, regardless of the extremity of the circumstances, may have two serious ramifications for youth. It may act increase stigmatization on young offenders and affect their full access to rehabilitation services and reintegration into society; and it may act as an incentive for gang members or other youth who see publication of their names as a 'badge of honour' or a moment of recognition or fame.

The Supreme Court of Canada in *R* v. *D.B.*[iii] pointed out that labeling and identifying youth can create stigmatization, which can have negative consequences. The publication may prevent a young person from being able to fully benefit from the rehabilitation services in the community. Additionally, I have not seen any research that suggests there is a link between lifting the publication ban and the protection of society. Under the proposed amendments it is foreseeable that the instances of publication of a young person's name will increase, therefore interfering with their chances to have a successful rehabilitation and reintegration.

The proposed amendment may even have negative effects in encouraging the commission of crimes by youth who consider publication to be a 'bad of honour'. This issue was addressed in the 3rd session of the 40th Parliament in the Standing Committee on Justice and Human Rights by Ms Cecile Toutant who said:

> When a young person is arrested and lives near the place where he committed his offence, getting his name in the newspaper is very important. I would say it's not only valued by youths who have never had any place in their world, who have always been rejected. I'll cite the example of young people who have been rejected everywhere as a result of their characteristics—I'm not saying they're only victims. They are rejected all their lives for who they are, and, at one point, they see their names in the newspaper. For them, that's a good thing.

In addition to these consequences for youth, selective publication of the nature suggested will create a public misperception of the state of youth crime in Canada. Already there seems to be a disconcerting divide between the perception of youth crime as reflected in public polling on this issue in Canada and the facts and reality reflected in the police data, prosecutions and corrections data. A selective piercing of the veil allowing for the lifting of publication bans in serious of violent offences will only exacerbate the gulf between perception and reality.

Canadian youth expect law-makers to act judiciously where their rights are in play. We would recommend that Parliament not expand the list of offences where publication is possible.

Creating a Greater Emphasis on Family and Community

Comment [jmm1]: I made this separate section. Previously it was included in the conclusion.

In the final alternative, if Parliament is intent in proceeding with all the changes proposed without further study or assessment at this time, I would recommend that further consideration be given to strengthening the role of families and communities under the *YCJA*. The *YCJA* was

premised in large part on the history of youth criminal law in New Zealand over the past twenty five years. In the 1980s, New Zealand, like Canada, had a very high youth crime rate and a very high rate of youth incarceration. Today, their rates on both scores are among the lowest in the developed world. They did this in large part by placing ownership and responsibility for addressing problems of youth violence and delinquency where it squarely belongs: with parents and families.

Where New Zealand's practice focuses almost exclusively on families, Canada's has emphasized the particular role of local communities. In New Brunswick we have recently seen significant social and fiscal benefits from an increased investment in Family Group Conferencing in our Child Protection system. By following New Zealand's model and placing families in charge of the solutions to child protection concerns, we have been able to reduce our placement rate of children in guardianship and foster care by 18% year over year, realizing comparable saving in public expenditure on these services. Millions of dollars in savings have been redirected from foster care and guardianship services to other more proactive services for families in need.

We see a huge potential benefit from applying these same family-based solutions to our youth corrections system, the very service in which this Family Group Conferencing model that we have borrowed was originally developed (in New Zealand the family-based process is referred to as the Family Court, and its decisions are enforceable before the courts just as any other judicial process). Very often young persons in Canada run into conflict with the law because of poor choices, bad influences and improper oversight or control by parents. Family Group Conferencing is a process which allows parents and extended family members to step up to the plate and hold the young persons closest to them accountable for any of their misdeeds, and enforce reparations for victims. This process reinforces relationships that matter and achieves true accountability with lasting impacts in cases where traditional criminal justice approaches have been proven to fail. This approach is consistent with traditional Aboriginal justice processes in use in Canada and may prove particularly beneficial in reducing Canada's high rate of incarceration of Aboriginal youth. Family Group Conferencing is possible now under the aegis of section 19 conferences in the *YCJA*. However, more explicit reference to the role of families and extended families in developing an alternative measures program, in implementing it, and in achieving meaningful victim-offender reconciliation would be welcome.

Secondly, in my respectful submission, these family-based processes should be given a clear priority over other extrajudicial measures and sanctions that might be offered at the community level through Youth Justice Committees established under section 18 of the *YCJA*. Finally, while the administration of the criminal law remains a matter of provincial jurisdiction, Parliament should be concerned with the unequal and fragmented implementation of the *Youth Criminal Justice Act* across Canada's several provincial and territorial jurisdictions. Children should not be at a greater risk of incarceration or harsh treatment before the law based upon their province of birth or residence. They should receive the equal benefit and protection of the law wherever they reside in Canada. Therefore, Parliament should take pains in reviewing Bill C-10 to include provisions which will help ensure the equal application of processes such as Community Youth Justice Committees and "Family Court" conferencing in all jurisdictions. Federal financing of such programs could help accomplish this goal and would reduce the strain on youth custodial facilities which provinces seem to be concerned about.

Conclusion

Almost a hundred years ago Polish author and pediatrician Janusz Korczak, a man often regarded as the father of Children's Rights, wrote compellingly on the subject of young offenders as follows:

> The delinquent child is still a child. He is a child who has not given up yet, but does not know who he is. A punitive sentence could adversely influence his future sense of himself and his behavior. Because it is society that has failed him and made him behave this way, the court should condemn not the criminal but the social structure.

Korczak's vision of a world where children were equal subjects of law, equal in dignity to the adults who cared for them, would find expression after the war in the 1959 Declaration on the Rights of the Child and eventually in the UN *Convention* itself. In closing, I would urge Committee members to ensure that when reviewing these proposed amendments consideration be given to the *Convention on the Rights of the Child*, to which Canada is a signatory. When deciding whether these changes should go forward, Members of Parliament should consider the following principles found in the *Convention*:

- The best interests of the child is to be a primary consideration when courts of law, administrative authorities or legislative bodies consider actions to be taken regarding children (Article 3(1));
- Unless necessary to ensure the best interests of the child, the latter will not be separated from his or her parents against their will (Article 9(1));
- No child shall be subjected to arbitrary interference with his or her privacy, nor to unlawful attacks on his or her honour and reputation (Article 16(1));
- A child struggling with a mental health issue has the right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23(1));
- No child shall be deprived unlawfully or arbitrarily of his or her liberty (Article 37(b));
- Arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b));
- Every child deprived of his or her liberty will be treated in a manner that takes into account the needs of a person of his or her age (Article 37(c));
- Every child deprived of his or her liberty shall be separated from adults (Article 37(c));
- Where it is alleged that a child has committed a criminal offence or where the child is formally charged with such an offence, he or she will be treated in a manner guided by the child's sense of dignity and worth, taking into account the child's age and the objective of successfully reintegrating the child in society (Article 40(1));
- Throughout this process, the child has the right to have his or her privacy fully respected at all stages of the proceedings (Article 40(2)(vii));
- Extrajudicial measures will be the preferred option whenever possible (Article 40(3)).

I have had the opportunity to review the submissions made by UNICEF Canada, the Representative for Children and Youth for the Province of British Columbia, the Canadian Bar

Association and Professor Nicholas Bala. I urge the Committee to take the necessary time to carefully review the concerns outlined by those individuals and groups.

I respectfully submit that some of the proposed amendments in Bill C-10 are contrary to the intent of the *YCJA*, they risk jeopardizing Canada's commitments under the *Convention on the Rights of the Child* and they do not appear to be based on empirical evidence. I echo the recommendation of UNICEF Canada that the Senate suspend any further consideration of the proposed amendments to the *Youth Criminal Justice Act* until there is **evidence-based research** to demonstrate that the proposed solutions are effective at protecting the public and reducing criminal acts committed by children and youth in the long-term; and that the amendments are consistent with international standards set out in the UN *Convention on the Rights of the Child*.

In my respectful view, the most appropriate course of action at this time would be to postpone further consideration of changes to the *YCJA* under Bill C-10 until proper research can be carried out pointing to the advantages or ramifications in proceeding with the changes proposed. In the alternative, should Government wish to proceed expeditiously in this manner they should at the very least conduct a thorough and independent Child Impact Assessment on the proposed changes before resuming deliberations. This process would also allow time for Parliament and the Provinces to resolve the nascent problem arising with respect to the financial cost and burden of these reforms and who should bear them.

The intended purposes of the amendments of Bill C-10 are important. Youth should be held accountable for their actions and protection of the public is an important principle of the *YCJA*. However, the *YCJA* is good legislation; it is working well and achieving its goals of reducing youth crime while reducing costly prosecutions and custodial services. The *YCJA* recognizes that youth respond differently to sentencing than adults and is uniquely crafted to provide youth with the best chance of rehabilitation and reintegration. There is a large public safety interest in fulfilling these goals. I strongly believe that improving outcomes under the *YCJA*'s can be achieved by putting more emphasis on the role of families and communities, providing better programs for children with mental health and behavioural issues, and enabling better use of all *YCJA* provisions. These solutions have both a substantial social and fiscal benefit.

I urge this Senate Committee to carefully consider the concerns and suggestions I have raised in this submission. We have a law which is achieving intended results. It is imperative that we examine any potential detrimental ramifications for Canadian youth before altering this law. Numerous young lives may be negatively affected otherwise.

Respectfully submitted,

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[i] Statistics Canada, *The Daily*, March 14, 2007
[ii] [2008] 2 S.C.R. 3, 2008 SCC 26
[iii] (2008) S.C.C. 31460