STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Report on Part 4 of Bill C-10 (amendments to the *Youth Criminal Justice Act*)
Rachel Grondin
February 22, 2012

Mr. Chair and honourable senators, members of the Legal and Constitutional Affairs Committee

Thank you for inviting me to appear before you concerning Part 4 of Bill C-10.

I would have liked to say something positive about this part of the bill, but the proposed amendments to the *Youth Criminal Justice Act* would make **three fundamental changes that I believe are negative**: they **run counter to the existence of a separate criminal justice system for young people**; they have a **negative effect on the long-term protection of Canadian society**; and they are **inconsistent with Canada's commitments**.

I. First, these amendments **run counter to the existence of a separate youth justice system** as they propose:

Amendments that are more in keeping with the adult justice system. As of 1908, Canada recognized in the Juvenile Delinquents Act that there must be a separate justice system to deal with youth. In its 2008 decision (*R.* v. *D.B.*), the Supreme Court of Canada ruled that "**the principle of a presumption of diminished culpability is one of fundamental justice**" within the meaning of s. 7 of the *Canadian Charter of Rights and Freedoms*. Some provisions of the bill provide for this principle, but others run counter to it. As was the case prior to the Supreme Court decision of 2008, the new legislation would **emphasize the crime** and move away from the diminished moral culpability of the young person. The bill replaces a term in the former legislation that was declared unconstitutional ("presumptive offence") with another term that covers exactly the same offences ("serious violent offence"). The bill **retains the rule of general application regarding orders that young persons are liable to adult sentences** (only in the case of these offences is the Attorney General required to inform the court of the reason why **he does not want** a young person to be liable to an adult sentence) (s. 64(1.1). Liability to an adult sentence must remain **the exception**.

We applaud the proposal that children should be separated from adult detainees, but should an adult sentence be applicable from the moment a certain crime is committed? The age of the individual is an essential sentencing criterion in a system that acknowledges the "diminished moral culpability of young persons."

Young persons cannot be compared to adults. In general, they have not finished developing psychologically, and the ability to foresee consequences is the last thing to develop. By maintaining the fundamental rules of the criminal justice system for **all** youth, particularly those concerning the non-disclosure of their identity, young people have a greater chance of changing, becoming better citizens and playing a positive role in society.

II. Secondly, the proposed amendments have **a negative impact on the long-term protection of society.**

The new section 3 has an **impact on the application of the entire** act. **Why amend section 3 when it is already clear? These amendments would sow confusion by applying the same process as is used for adults, while maintaining that the criminal justice system for young people is separate. Emphasis must continue to be placed on rehabilitation for young people** to ensure the long-term protection of society.

In addition, why stipulate **deterrence** in the sentencing principles when research has shown that deterrence is not effective among young people. You cannot protect society with something that does not work. The fundamental role of the criminal justice system is to protect society over the **long term** by ensuring that there are fewer victims in the future.

III. Thirdly, these proposals run counter to Canada's commitments under the *Convention on the Rights of the Child*, which Canada ratified in 1991.

The proposed legislation applies to young people between the ages of 12 and 18. However, these individuals are children according to the Convention. By ratifying the Convention, Canada undertook to **take "into account the age" of a child accused of or recognized as having infringed the penal law, NOT THE OFFENCE,** and to take into account "the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

In 2007, the Senate unanimously adopted the recommendation of the Standing Senate Committee on Human Rights that Canada **comply with its commitments under the Convention**. The **government also agreed** to ensure its bills comply with the convention.

However, Part 4 of Bill C-10 runs counter to this commitment by **allowing an adult sentence to be imposed** on children (youth) who have committed **certain offences**. **In a separate system, an adult sentence should apply only in exceptional situations in which an offender is involved.**

In addition, article 37 of the Convention provides that **detention shall be used only "as a measure of last resort."** However, as this bill permits adult sentences, it allows **minimum terms of detention to apply automatically to young people, which is inconsistent with the concept of** "a measure of last resort."

As a parent, citizen and professor in the field, I encourage you to ensure the long-term protection of Canadian society by rejecting the amendments proposed under Part 4 of Bill C-10, which history will no doubt view as a regression in the youth criminal justice system in Canada.