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Presentation to the
Standing Senate Committee on Legal and Constitutional
Affairs

BILL C- 10 *THE SAFE STREETS AND COMMUNITY ACT*

Part IV- Youth Criminal Justice Act

Remarks By: Deputy Chief Christopher J. McNeil

Member – Law Amendments Committee

Canadian Association of Chiefs of Police

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Good morning, I want to thank you for inviting me to appear today. My name is Chris McNeil, and in addition to my role with the CACP, I am a Deputy Chief with the Halifax Regional Police.

The CACP supports the YCJA's more meaningful approach to youth justice and its efforts to reduce the number of youth in contact with the formal justice system. This is why the police community has been at the forefront of championing such initiatives as Restorative Justice.

In addition, the CACP believes that the YCJA is substantially good legislation, but we have two long standing concerns regarding the YCJA and its implementation.

Services for Youth

The youth justice system envisioned by the YCJA needs to be supported with comprehensive services. These services extend well beyond the criminal justice system to education, social services, health, mental health and child welfare. Unfortunately, where these services do exist, there is insufficient capacity.

One of the goals, arguably the primary goal, expressed in the preamble of the YCJA is for a youth criminal justice system which "reduces the over-reliance on incarceration for non-violent young persons". Accepting that there had been an over-reliance on incarceration, it is simplistic to assume that by

changing the legislation and requiring more young person to remain in the community we have solved the problem.

The CACP believes insufficient services to support these young people is at the heart of the problem. The YCJA has compounded the problem by adding more young persons to the community, with no corresponding enhancement of services. Although new funding accompanied the implementation of the YCJA, it was directed to enhancing “youth justice” programs and services. Therefore, services and supports such as, mental health, child welfare, and addiction services were not sufficiently enhanced in preparation for the YCJA enactment.

Young people remain in the community without the necessary support to overcome the very social conditions that brought them in conflict with the law. Their incarceration is inevitable. Until the question of services for youth is addressed, we will continue to struggle to achieve the youth justice system we aspire too.

Public Safety

Although the goal of reducing the over-reliance on incarceration is laudable, the YCJA fails to recognize that there is a small group of incorrigible young people who pose a risk to public safety.

The YCJA is Criminal Law, and it is well accepted that the primary purpose of Criminal Law is for the protection of the public. The YCJA steps away from this principle and gives protection of the public a lower priority.

The YCJA is highly prescriptive legislation with a clear presumption against detention in most situations. It limits the use of custody to “violent” offences. Violent offences are not defined by the YCJA. The Supreme Court of Canada interpreted what constitutes a violent offence very narrowly¹. Defining it as an offence where a young person causes, attempts to cause, or threatens to cause bodily harm.

This definition rejects the notion that behavior which could endanger or likely endanger the public, would attract detention under the YCJA. This left out a broad range of risky, dangerous, and thoughtless behavior which endangers the public but is not a violent offence, such as repeatedly stealing cars and driving them in a reckless and dangerous manner.

It is little wonder that public confidence is shaken when the criminal justice system seems powerless to intervene, because the behavior is not deemed violent, when young people are repeatedly engaging in behavior that endangers their life.

The interpretation of the YCJA requires a purposeful approach, and any interpretation of violent offence is shaped by the Declaration of Principles and the Purpose and Principles of

¹ *R. v. C.D.K.*, 2005 SCC 78

Sentencing. Without raising the profile of public safety in those provisions a more balanced approach to public safety will not be achieved by expanding the definition of violence offence alone.

C-10 Part IV- Amendments to the YCJA

In 2005, by Resolution,² CACP called for amendments to the YCJA to make it clear that the protection of the public is the primary principle in interpreting the YCJA, and to allow for young persons whose criminal behaviour is posing a danger to the public to be committed to custody.

This Bill has addressed those concerns, while still maintaining provisions in the YCJA that balance the need for public safety with the goal of reducing the over-reliance on incarceration for non-violent young persons. We believe this to be an appropriate balance.

It bears repeating that legislative changes will not bring about the youth justice system we desire unless there is a corresponding investment in the services for youth. The CACP urges all levels of governments to ensure adequate funding for services to assist youth with the underlying problems bringing them in conflict with the law.

² CACP Resolution #03-2005

Nunn Commission

I would be remiss, if I did not acknowledge the extent to which my remarks have been influenced by the tragic death of Theresa McEvoy. Theresa McEvoy was killed instantly when her car was struck by another car. The car that collided with Ms. McEvoy's had been stolen, ran a red light, and was being driven at an extremely high rate of speed by a 16-year-old youth A.B.. A.B. had been released from custody two days earlier despite 38 outstanding criminal charges against him.

A Public Inquiry was held by the Honourable Merlin Nunn into the death of Ms. McEvoy. His report³ made a number of recommendations regarding the YCJA and Youth Justice in Nova Scotia. I understand you will hear from Justice Nunn so I will not dwell on his findings. I am pleased you will be able to hear his perspective.

In my view, the death of Theresa McEvoy and the Inquiry that followed highlighted the two fatal flaws in the YCJA and its implementation that I have outlined above.

I would like to leave you with the words of Justice Nunn;

It would be wrong to allow our judgment to be so coloured by the successes of the YCJA that we are blind to its failures. AB was one of its failures. His same criminal behaviour went on, without intervention, until he caused Theresa McEvoy's death. AB's

³ Spiralling out of Control: Lessons Learned From A Boy In Trouble: report of the Nunn Commission of Inquiry, 2006.

pattern of repeat offences, however, is not unique. There may be as many as 100 young persons at any one time acting as repeat offenders in Nova Scotia, with proportionate numbers in other provinces, for whom the Act is failing. We cannot sit back and praise ourselves on the nobility of our aims of rehabilitation and reintegration while not actively engaging those most in need of those very aims. The goals of the Act are worthy, but some detention, where it would contribute to public safety and still be consistent with the goals of the Act, is also worthy.⁴

Thank-you!

⁴ Spiralling out of Control: Lessons Learned From A Boy In Trouble: report of the Nunn Commission of Inquiry, 2006, p 244