

**STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS****COMITÉ PERMANENT DE LA JUSTICE ET DES DROITS DE LA PERSONNE****EVIDENCE**

[Recorded by Electronic Apparatus]

Wednesday, March 1, 2000

• 1534 

[English]

**The Chair (Mr. Andy Scott (Fredericton, Lib.)):** I'd like to call the meeting to order, if I may, please. I see a quorum to hear witnesses. We are continuing in hearing witnesses on Bill C-3, an act in respect of criminal justice for young persons and to amend and repeal other acts.

Today we have the good fortune of hearing from four groups: Aboriginal Legal Services of Toronto; Atoskata; the Congress of Aboriginal Peoples; and File Hills Qu'Appelle Tribal Council.

• 1535 

Because it's hard to necessarily distinguish who is with what organization, perhaps everybody could introduce themselves, and then we'll call on the Aboriginal Legal Services of Toronto to be the first presenter. Each presenter has ten minutes, which will be followed by a dialogue with members of the committee.

So first of all, could everybody introduce themselves and indicate their organization, please?

**Mr. Daryl Beadnell (Coordinator, Atoskata):** My name is Daryl Beadnell. I am coordinator of the Atoskata youth restitution program.

**Ms. Bev Poitras (Director, Restorative Justice Unit, File Hills Qu'Appelle Tribal Council):** I'm Bev Poitras, the director of the restorative justice unit at the File Hills Qu'Appelle Tribal Council in Saskatchewan.

**Mr. Jonathan Rudin (Program Director, Aboriginal Legal Services of Toronto):** I'm Jonathan Rudin, program director of Aboriginal Legal Services of Toronto.

**Ms. Marian Jacko (Member of the Board, Aboriginal Legal Services of Toronto):** I'm Marian Jacko, board member of Aboriginal Legal Services of Toronto.

**Mr. Frank Palmater (Vice-president, Congress of Aboriginal Peoples):** I'm Frank Palmater, vice-president of the Congress of Aboriginal Peoples.

**Ms. Jane Dickson-Gilmore (Adviser, Congress of Aboriginal Peoples):** I'm Jane Dickson-Gilmore, professor of law, Carleton University, and adviser to the Congress of Aboriginal Peoples.

**The Chair:** Thank you very much.

First we'll turn to the Aboriginal Legal Services of Toronto, with Mr. Rudin and Ms. Jacko.

**Mr. Jonathan Rudin:** Thank you very much.

We're very pleased to be here today before the Standing Committee on Justice and Human Rights to discuss our perspective on this important piece of legislation. We'd like to thank the committee for this opportunity.

Aboriginal Legal Services of Toronto is a non-profit organization serving Canada's largest urban aboriginal community. ALST operates a wide range of programs. Of particular relevance to our presentation to the committee are three of our activities: our young offender court worker program; our community council program; and our test case litigation activities.

Our aboriginal young offender court worker works with aboriginal youth charged with all manner of offences under the Young Offenders Act. The court worker assists clients to obtain counsel, explains the court process to accused persons and their families, and helps to set up sentencing alternatives and options for clients.

The community council is an adult criminal diversion program. The program has been hearing cases since 1992 and was the first urban aboriginal diversion program in Canada. The program has dealt with over 800 cases since its inception. Community counsel is open to all aboriginal offenders regardless of the number of prior convictions and has taken on cases involving a wide range of offences, from theft and mischief to

arson and criminal negligence. While the community counsel does not currently deal with cases involving young offenders, we hope to begin taking on such cases in the next few months.

Finally, our test case litigation activities are part of the mandate of our legal clinic. ALST has appeared as an intervener in the Supreme Court of Canada in a number of cases. Most relevant to our appearance here today are interventions in the Williams, Gladue, and Wells cases.

Our major submission to the committee is to urge that paragraph 718.2(e) of the Criminal Code of Canada be added to clause 38 of the proposed bill, the clause that addresses restrictions to committal on custody. Paragraph 718.2(e) of the Criminal Code was part of Parliament's comprehensive sentencing reforms passed in 1996 as Bill C-41. The paragraph states that when imposing a sentence,

all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

The paragraph was considered by the Supreme Court of Canada in the landmark case of R. v. Gladue. In their decision, the court noted that Canada's incarceration rate of adult offenders was higher than that of almost all western democracies and was something that should not instil a sense of pride in Canadians.

The court then went on to address the over-incarceration of aboriginal offenders in particular. The court found that one of the purposes of paragraph 718.2(e) was to respond to this over-incarceration. While the court stated that it would not be possible to address all of the causes of overrepresentation through sentencing reforms, they did note that alternatives to imprisonment were particularly necessary for aboriginal offenders.

The court spoke about the need for restorative justice approaches in sentencing and made it clear that such approaches should not be restricted to non-violent offences. The court also made it clear that restorative justice approaches are not necessarily a lighter form of punishment and may be able to accomplish the goals of deterrence and denunciation better than jail sentences.

Why is there a need for paragraph 718.2(e) to be placed in the Criminal Youth Justice Act? Clause 139 of the bill states that the Criminal Code applies to all proceedings involving young offenders except where "it is inconsistent with or excluded by" the act. Given the fact that the act contains its own sentencing provisions, it would appear that judges are precluded from considering paragraph 718.2(e) in their sentencing deliberations even if they would want to. Thus, consideration of the realities of aboriginal youth and the need to examine alternatives to incarceration in all cases are absent from the current bill.

- 1540 

This is a matter of great concern. Clause 38 of the bill, entitled "Restriction on committal to custody", is actually much weaker than paragraph 718.2(e). The clause is written so broadly there can be no expectation that Canada's overreliance on incarceration of young people in general, already twice that of the United States, will be reduced at all.

As with over-incarceration of adults, when we look at the numbers in some detail we find that aboriginal youth are overrepresented among young people sent to jail. It is important that we understand the significance of this reality. One of the reasons that some people urge tougher sentencing provisions for young offenders, and a greater reliance on jail as a response, is that they feel it is only such measures that will reduce adult criminality. When we look at the statistics involving aboriginal people, however, the flaws in this logic are clearly exposed.

For example, in Saskatchewan in 1992, 70% of the youth in custody were aboriginal. In Manitoba in 1990, 64% of the population of the Manitoba Youth Centre and 74% of the Agassiz Youth Centre were aboriginal. In Alberta, the Cawsey report in 1991 estimated that the aboriginal population in youth jails in the province would increase to 40% by 2011.

The incarceration rate of aboriginal youth has been increasing over time. If jailing young aboriginal people was the answer to adult criminality, we would expect to find a decrease in aboriginal adult jail admissions. But this has not occurred. Despite all the discussion and all the studies looking at the issue of overrepresentation, the number of aboriginal offenders in jail keeps rising.

Clearly, placing aboriginal youth in young offender facilities in no way prevents occurrences of criminal behaviour when they become adults. It simply prepares them for life in adult correctional institutions.

Perpetuating a process that will lead to the incarceration of more and more aboriginal youth and that does nothing to address the causes of this criminality is in and of itself a crime. It is important that the Youth Criminal Justice Act contain a provision that will explicitly require judges to look for alternatives to incarceration, particularly with regard to aboriginal youth.

One of the reasons this is such an important issue is that the aboriginal population of Canada is significantly younger than average. Statistics Canada figures from the 1991 census showed that over 56% of the aboriginal population were under 25. Almost 37% were under 15. In contrast, only 35% of the overall Canadian population were under 25, with 21% under 15. In addition, almost half of aboriginal youth lived in urban centres, a trend that is on the upswing.

Aboriginal jail populations often rise faster than the aboriginal population as a whole. It would be a tragedy if the Youth Criminal Justice Act perpetuated or even hastened this trend. It would be especially tragic since paragraph 718.2(e) offers some hope that this trend might be reversed.

It might be said that paragraph 718.2(e) of the Criminal Code is not needed because the proposed act has its own provisions to address this issue.

For example, subparagraph 3(1)(c)(iv) of the bill states:

within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should respect gender, ethnic, cultural and linguistic differences and respond to the needs of young persons with special requirements;

In addition, as previously noted, clause 38 provides a direction as to restrictions on committal to custody. As we have already discussed, clause 38 should not be seen as providing any real restrictions on the jailing of young offenders. This clause is written in such a way that the only people who can be assured of not receiving a jail sentence are first offenders charged with minor, non-violent offences, people who already have no

reason to worry about jail.

As for subparagraph 3(1)(c)(iv), it really says nothing more than what current judicial practice amounts to, in any event. Reliance on this current practice has seen Canada incarcerate young people, particularly aboriginal young people, at an incredible rate. Perhaps subparagraph (iv) is more than a restatement of current judicial practice. Perhaps it does herald a change in the way in which judges will sentence young offenders. Who knows? No one will really know until it's been the subject of judicial scrutiny.

Many commentators have already noted that one of the biggest problems with the Youth Criminal Justice Act is that so much of it is written in vague terms, it will take years for the courts to determine what the various sections mean. On the other hand, paragraph 718.2(e) has a definite meaning. The Supreme Court of Canada in Gladue gave a very clear meaning to the section. Subsequent decisions by the court in such cases as Proulx and Wells have further settled the way in which the section is to be interpreted.

• 1545 

Given the choice between certainty and uncertainty, should not the proposed act opt for certainty? If the purpose of clause 38 is truly to place restrictions on committal to custody, should not youth court judges consider the same issues that judges in adult criminal courts consider?

**Ms. Marian Jacko:** There is another very important issue that must be raised. As we have made clear in our submission, it is our opinion that the provisions of the Youth Criminal Justice Act regarding sentencing, particularly sentencing of aboriginal youth, are markedly inferior to similar provisions in the Criminal Code of Canada. This leads to the absurd result that judges have more legal resources to avoid placing adult aboriginal offenders in jail than they do aboriginal young offenders. This result, however, is more than just absurd; it is a violation of the Canadian Charter of Rights and Freedoms.

Unless paragraph 718.2(e) of the Criminal Code is placed in clause 38 of Bill C-3, adult aboriginal offenders are receiving a benefit that their younger brothers and sisters are not able to receive. Aboriginal young offenders will be facing discrimination on the basis of age, a violation of section 15 of the charter.

If paragraph 718.2(e) of the Criminal Code is not placed in the Youth Criminal Justice Act, then, following proclamation of the act, Aboriginal Legal Services of Toronto will appear, at our first opportunity, before a youth court judge preparing to sentence an aboriginal young offender and bring a section 15 charter challenge to the sentencing hearing. We are confident that our application will be successful and that this challenge will survive appeals to higher courts.

However, this is not the preferable way in which to resolve this issue. A charter challenge will take years to reach the Supreme Court and will thus have an impact on the sentencing of all aboriginal and non-aboriginal youth in Canada. During the time it will take for an appeal to wend its way through the courts, thousands and thousands of young people will have been sentenced. We urge the committee to amend the bill now and preclude the necessity for a charter challenge.

When important decisions are made in the aboriginal community, we are often reminded by the elders that we must think seven generations ahead. Oren Lyons, faith keeper of the Onondaga Nation, has said:

In our ways of life, in our government, with every decision we make, we always keep in mind the seventh generation to come. It's our job to see that the people coming ahead, the generations still unborn, have a world no worse than ours—and hopefully better. When we walk on Mother Earth we always plant our feet carefully because we know the faces of our future generations are looking up at us from beneath the ground. We never forget them.

We realize that it is often difficult for politicians who must run for re-election every four years to think 10 or 15 years down the line, much less seven generations, but the sad reality, the tragedy, of aboriginal over-incarceration in this country can be at least partially understood by the fact that decision-makers have often not looked at all at the impact of their decisions on aboriginal communities.

We urge you to resist the pressures of those who have no real idea of the realities of youth crime in this country—those who mistakenly believe the answer to any infraction of the law is to lock people up, those who believe the problem of youth justice is that we have not been tough enough.

Resist those pressures, because bowing to them will result in the perpetuation of practices that do not work; practices that lead to the continued over-incarceration of aboriginal people; practices that do nothing to change the behaviour of those who commit offences; practices that, in their short-sightedness, do not increase community safety but rather make communities more dangerous by placing aboriginal young people into the revolving door of the prison system, a revolving door that with each revolution produces angrier people who commit more and more serious offences.

Placing paragraph 718.2(e) of the Criminal Code into clause 38 of Bill C-3 will not, on its own, stop the revolving door totally, and neither will it immediately make our communities safer, but it will start us down that road, a road that we can look back on in a generation or two and say that when we had the chance, we took the steps necessary to make our world a better and safer place.

Thank you. *Meegwetch.*

**The Chair:** Thank you very much.

We'll move to the next group. According to our list, it is the Atoskata.

**Mr. Daryl Beadnell:** Atoskata is a Cree word that means "to work at it". The program is funded under the Department of Social Services in Regina, Saskatchewan. Its concept is to divert the youths who don't commit serious offences. In essence, what they wanted to do with this was find some way in which these youths could do community work within the community and stay out of being incarcerated.

• 1550 

The program was developed by Denis Losie and the Department of Social Services, along with the court system and the city police. They set up the program to allow the youths to be closely supervised by the staff that we have, which numbers three at the moment but is growing at an alarming rate. In the beginning, it started out as a program that wasn't really heard of. It was like a trial program, but it has since grown and has mushroomed into a program that's being recognized almost across Canada.

I started with the program in August of last year and quickly moved up to the coordinator position in October. It was a learning experience for me because of the fact that I had to take on wholly different responsibilities.

In terms of the history of the project, it started out in 1994 because of the fact that youths were being incarcerated at an alarming rate. What we do is get referrals from Social Services, the John Howard Society and the Regina Alternative Measures Program. They send us referrals and we put them in a filing system. We contact the youths, we set up arrangements to have them picked up right after school, and we put them to work for roughly two to three hours at night, doing various job opportunities in and around the community. Our major funder right now is the City of Regina, which allocated \$10,000 towards the project this year.

What we do is take the youths out in vans and the trailer and we go around the city to clean up the alleyways in the north-central and other districts in the city. Other jobs consist of painting decks, cutting lawns, shovelling sidewalks, and any other jobs that we think the youths can handle. In turn for the contracts that we acquire, we bill the people who are involved and we put all the money into what we call a victims' compensation fund. Once a youth has completed his restitutorial order, we in turn disperse the money to the victim in the form of a cheque. Along with that, the youth offers a dream catcher in order to seal over the wrong he has done to the victim.

This has received positive response all over Canada, but right now, due to advertising limits, we're just slowly getting word out about how the project works and the success rate of it.

The Regina Police Service has done a follow-up on the youths that were involved in the program, and the recidivism rate is considerably low. They were quite surprised at this.

We have a very strong cultural component that we deliver to the youths on a daily basis. We have elders come in, we watch movies, and we have different organizations come in and speak to the youth. Sometimes it's the RCMP and the city police services.

The youths who enter the program often have a chip on their shoulder and they have a really tough attitude towards having to work for nothing. By the time they leave the program, though, they have a different outlook. I have visually seen this. They go on to having the self-confidence of being able to work, to acquiring new trades, and to having a sense of accomplishment that they take with them. Many of them go on to complete high school and go on to further endeavours, but we haven't really followed up on that.

- 1555 

The project is continuing to grow. Right now we have about sixty youths on the waiting list, at a processing rate of maybe five per month who graduate. Others who don't graduate end up going through the court system. They go back into that court system and are dealt with accordingly there.

That's my presentation on the program that we offer in Regina.

**The Chair:** Thank you very much.

Next, from the Congress of Aboriginal Peoples, we have Mr. Palmater and Ms. Dickson-Gilmore. Please proceed.

**Mr. Frank Palmater:** Good afternoon. Thank you very much, Mr. Chairman and committee members. My name is Frank Palmater, and I'm the vice-president of the Congress of Aboriginal Peoples. The congress is an elected body that represents approximately 850,000 Métis, registered, unregistered, treaty and non-treaty persons of aboriginal ancestry who live off reserve. I am here to offer you the perspectives of our people on the new Youth Criminal Justice Act, which has the potential to impact heavily and in a very negative way on our youth and families. We appreciate this opportunity to enter into the dialogue on youth justice, and we thank you for opening your hearts and minds to the feelings of our people on the concerns of Bill C-3.

As you may already be aware, aboriginal people generally are caught up in the Canadian criminal justice system at a rate that is grossly disproportionate to their percentage of Canadian society. In comparison to non-aboriginal people, our men, women, and youths are more likely to be charged, be denied bail, and be found guilty, and they are subject to longer terms of incarceration. For example, although aboriginal youths constitute approximately 5% of the youth population in Canada according to the 1997-98 statistics, reporting jurisdictions in Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, and the Yukon indicate that aboriginal youth constituted 34% of male young offenders and 41% of female young offenders. Many more of those young people are in secure facilities than need to be there. Perhaps more troubling is that far too many of them are housed in adult institutions.

As noted by the Child Advocacy Sector Round Table on Youth Justice Renewal on January 17, 2000, the common denominator is that all the faces of the young offenders who are housed in federal provincials are not white. Most of them are aboriginal 16- or 17-year-olds. They are not in for violent offences. Aboriginal justice inquiries in Alberta, Saskatchewan, and Manitoba documented disproportionately high rates of pretrial detention and custody rates for aboriginal youths, suggesting strongly that aboriginal youths receive a different experience of justice than do their non-aboriginal counterparts. For our people, the most pressing problem that must be addressed in the new Youth Criminal Justice Act is this over-involvement of our young people in the youth justice system.

The need for the bill to acknowledge the needs of aboriginal youth, and particularly off-reserve aboriginal youth, is made that much more pressing by the demographic realities of our people. The aboriginal population is a much younger one than the Canadian population generally. Of the aboriginal population in Canada, 40% is under the age of 18, as compared to 24% of the non-aboriginal population. The population of aboriginal youth is expected to increase at a rate of 1.4% annually through the 1996-2011 period.

The combination of the documented experience of the aboriginal population in the Canadian criminal justice system at virtually all levels with a predominantly youthful aboriginal population suggests that any changes to an aspect of the system that impacts especially on young people may be expected to have a greater impact on aboriginal youth than on non-aboriginal youth. Thus, it is imperative that the bill acknowledge and control for any such impacts. There must be some explicit attention paid to the needs of aboriginal youth in this bill, and it must be scrutinized for any aspects that may lead to unintended discrimination against aboriginal youths and their families.

- 1600 

There are two broad areas of focus in the bill that we believe have the potential to impose an unintentional and disproportionate hardship on our youth. These areas are, first, the focus of the bill on the role of the communities and family in the delivery of youth justice services; and second, the emphasis upon the greater formalization of the role of the police in youth justice, particularly with reference to the use of warnings and

cautions.

I would like turn first to the issue of community involvement in the delivery of youth criminal justice. According to the Department of Justice in its description of the new approach underlining the purposes and principles of the Youth Criminal Justice Act, the new youth justice strategy recognizes that people in communities play an important role in finding the most effective solutions to youth crime. It is crucial that those responsible for implementing this strategy appreciate and respect that communities vary in their locations, shape, and membership. Too often in aboriginal policy, discussions of community are limited to discussions of on-reserve populations. This is especially true of aboriginal youth.

According to Clatworthy and Mendelson, the number of aboriginal youths residing off reserve in predominantly urban settings—roughly 71% of the population—greatly outnumbers their on-reserve counterparts, who constitute 29% of the aboriginal youth. These realities demand that those responsible for framing and implementing this legislation entertain an understanding of community that may be other than the single-nation-based rural group living on reserve. Today when we speak of aboriginal youth, we are most often speaking of an urban population with diverse cultural, political, linguistic, social, and familial backgrounds.

We must also understand and appreciate that many essentially fallacious distinctions have been created between aboriginal people—such as that between status and non-status Indians—and they have a direct bearing upon the access of aboriginal peoples to rights and services that should accrue evenly to all aboriginal people. Too often our people are caught in a jurisdictional tension between the federal government, which bears responsibility for Indians and lands reserved for the Indians, and provincial governments, whose laws of general application apply to Indians insofar as those laws do not deal specifically with issues of Indianness or Indian lands.

The federal position has tended to focus on reserves and the on-reserve aboriginal population and the development and provision of services in that context. Unfortunately, the provisions tend to take the view that off-reserve people seeking services or access to programs should return to their reserves to obtain them, despite a legal obligation to provide those services to off-reserve people. This means that the most significant community of aboriginal people off reserve, meaning urban aboriginal people, often find themselves without meaningful access to services.

To the degree that Bill C-3 focuses not only on communities but on federal-provincial cooperation to ensure that a range of programs and services are available to a renewed youth justice system to both divert youth offenders out of the formal system and make that diversion meaningful, the ability of the new Youth Criminal Justice Act to achieve its goals in regard to aboriginal youth will be greatly impeded. It will be undermined by the bill's apparent inattention both to the changing reality of aboriginal communities and to the historic inability of the federal and provincial governments to work together to ensure that off-reserve aboriginal people have access to the same level of services as their on-reserve counterparts and non-aboriginal youth in general.

• 1605 

The distinction between on-reserve and off-reserve is a spurious one that creates inequality amongst our people. Recently the Supreme Court of Canada voiced its agreement with our position in its decision in the case of John Corbiere et al. v. the Batchewana Indian Band and Her Majesty the Queen. In this decision the court was asked to consider the constitutional validity of the provisions relating to the eligibility of voters in band council elections, most notably those contained in subsection 77(1), which restricted voting rights to persons “ordinarily resident on the reserve”.

It was the opinion of the court that these words had the effect of prohibiting non-resident band members from voting in council elections, and that they were unconstitutional in so far as they discriminated against the equality rights of non-resident band members. The court gave the Department of Indian Affairs until November 20, 2000, to work with councils and communities to arrange new electoral provisions that do not discriminate between on- and off-reserve band members.

While this decision spoke directly to the issue of voting rights, it is reasonable to infer that the shift in focus from on-reserve and off-reserve to “Indianness” and band membership may extend in its impact to other forms of inequality between Indians on the basis of their place of residence.

Thus the new Youth Criminal Justice Act, which relies on communities' involvement, must reflect the reality of the modern aboriginal community and ensure that those programs that are an important part of the bill's focus on extrajudicial measures are equally available to both on- and off-reserve aboriginal people.

For example, many of the extrajudicial measures central to the bill seem better suited to rural reserve communities than to the aboriginal youth population in large urban centres. The bill's proposed emphasis on police-issued warnings and cautions, most notably in clauses 6, 7, and 9, assumes police have the time and are willing to undertake the more onerous job of warnings and cautions. In an urban centre such as Toronto, for example, it is unlikely that police will have the time, energy, or resources to embrace the opportunity to divert aboriginal youth from the system in this fashion.

It is also worthy of note that while urban police officers may lack the time, inclination, and informal social connections that might make warnings and cautions possible in a rural on-reserve context, it is in the urban setting that the range of services might make a caution meaningful, provided off-reserve people are respected in their legal right to those services. Although some aboriginal reserve communities possess and/or are in the process of developing community justice projects such as those envisioned in the bill—youth justice committees and conferences—most of these initiatives are unable to offer the wide range of services required to realize their programs' full impact.

Thus here we have a well-intentioned addition to the bill that may be difficult to put into practice for the majority of the off-reserve aboriginal communities and that will therefore do little to reduce the current problems experienced by our young people in the youth justice system.

The issue I have just raised leads logically to another, which may well be the greatest danger for aboriginal youth created by the bill's concern with community involvement: the danger that the community involvement may become little more than an excuse for downloading tasks and responsibilities the system has proven unable to mount and administer effectively to communities and community groups that are not empowered or supported to perform those tasks better.

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It is encouraging that the government has committed \$32 million to develop and support community-based responses to crime through their national strategy on community safety and crime prevention, part of their overall youth justice renewal initiative. However, given the degree of dependence on communities the bill appears to contain, it is questionable whether this amount will be sufficient to meet community and youth offender needs.

While there are certain other sources from whence funds may come, it is less encouraging that where the youth justice renewal initiative stands as one part of the government's response to the RCAP report, there seems to be no explicit discussion of funding that will be directed to what is unquestionably the most pressing problem for youth criminal justice in Canada: its failure to address the overrepresentation of aboriginal youth in the system or to assist in the effective rehabilitation, reintegration, and healing of the young people.

Let us deal in reality. The off-reserve aboriginal community is one characterized by significant social and familial problems and challenges. Indeed the degree of conflict our youth have with the law is a major symptom of those problems. And there can be no argument with the numbers that show us our youth constitute much of the youth justice problem.

I highlight this portion of my comments, Mr. Chairman. If the government is truly committed to including and empowering communities to take control of their youth crime problems through both prevention and appropriate responses to youth crime, then Bill C-3 must make explicit provision for stable, long-term funding for community justice programs for our aboriginal youth, regardless of whether they reside on or off reserve.

Too often in the past aboriginal people have been the recipients of dubious policy experiments. We need to be sure our communities will be supported to take the responsibilities the bill gives them, which they are willing to undertake. That means providing money for the long term and giving programs a chance to take root and become successful. We need to make sure we don't download problems on a community that doesn't have the wherewithal to help a child.

Our second broad area of concern with the bill resides in the emphasis upon and greater formalization of the role of the police in youth justice, particularly with reference to the use of warnings and cautions. To expand the role of the police in this fashion ignores the reality of the relationship between aboriginal people and the police generally and assumes perhaps too much of the police.

As well, in so far as the police are already involved in diversion—as are the crown and provincial departments of justice—and since aboriginal youth involvement with the system suggests aboriginal youth are less likely to benefit from such measures, this aspect of the bill is unlikely to have a significant impact on aboriginal youth overrepresentation within the system.

In the minds of our people, giving the police a greater role in youth justice without addressing the problematic nature of the relationship with many aspects of law enforcement greatly undermines the potential for warnings and cautions to keep our young out of the youth criminal justice system.

If the youth justice renewal initiative is truly committed to reducing the needless processing of our youth through the formal youth justice system, and if it really believes communities should play a major role in responding to youth in conflict with the law, it makes sense to involve communities more directly with the warnings and the cautions, not just the police. A warning or caution coming from our own people, from people we respect, can reasonably be expected to have more impact on our troubled youth than one from a police officer, who is a representative of a system that has been the source of very little that is good for our people.

I'll hurry up now to the recommendations we make, Mr. Chairman. There are a couple.

- 1615 

First is reduce rather than enhance the role of police in diversion, and provide explicitly in the bill for community people to be involved in warnings and cautions, and compensate them for doing so.

Second is expand the potential for more serious offenders to benefit from diversion. Diversion is already available to youth who have committed less serious non-violent offences. Empower communities to direct their energies to those youth, as well as the more troubled cases who really need their help. Amend the declaration of principles in part 1, extrajudicial measures, to reflect this important involvement of communities in responding to their troubled youth. Give our communities the right and support to take meaningful control of our young people and their problems.

Bill C-3 has many aspects that move us tentatively in this direction. It is up to you to have the vision and the leadership to take the bold steps necessary to help us and our children and families. We are ready and willing to walk beside you as you take those steps, as equal partners in our children's future.

Thank you.

**The Chair:** Thank you very much, Mr. Palmater.

Finally, we go to File Hills Qu'Appelle Tribal Council, Ms. Poitras.

**Ms. Bev Poitras:** I'm very honoured to speak to this committee and explain our community's perspective on the restorative justice initiative as it relates to the Youth Criminal Justice Act, and I'll cross over sometimes to our adult.... It will sort of explain itself as I go on.

This presentation is on behalf of the File Hills Qu'Appelle Tribal Council of Saskatchewan. The tribal council represents 11 first nations, but the justice program includes Touchwood Agency Tribal Council and is responsible for the justice initiatives for 16 first nations. On April 1, Touchwood will administer their own justice program, so we'll be back to 11.

Each community in our tribal council is unique. We are Saulteaux, Cree, Nakota, Lakota, Dakota and everything in between. The File Hills Qu'Appelle Tribal Council has close to 11,000 registered Indians in its membership. The tribal council has an active youth council, and our social development has just developed a child action plan to address poverty, youth development, and capacity building for community workers.

Our status-blind justice initiative has developed through community-based and community-paced directions. This has produced innovative and creative mechanisms to problem solving and conflict resolution. We use sentencing circles, community sentencing, probation committees, community justice forums or family group conferencing, and mediation and mediation panels. The elders have stated they recognize the principles of these tools as effective conflict models, similar to those our grandmothers and our grandfathers used.

Our definition of restorative justice is to restore to our communities the skills, tools, and practices of peacemaking. To come together and restore the balance is our one objective, empowering our communities to deal with our own problems. Restorative justice is simply a different way of thinking about crime and our response to dealing with lawbreakers.

Canadians in general view crime as a crime against the state, and when the law is broken it is the state's responsibility to deal with the offender. Under the restorative justice model, crime is an offence that damages relationships between individuals and directly and indirectly affects the community members rather than the government. Truly restorative is using all three stakeholders in the resolution of crime: the victim, the offender, and the community.

In a safe environment, those who are harmed and those doing the harm are in the best position to provide solutions, and it can truly be called the community. Our tribal council initiative has placed the formation of community justice committees as one of its priorities in the development of community ownership of justice. We have staff to assist these communities that are trained as mediators, community justice forum facilitators, sentencing circle facilitators, and community justice developers. They work closely with elders from the respective communities to provide services to the first nations and its members.

The elders are directing us in many ways in the restorative justice unit at our tribal council. They have become our guides in healing our people. The spiritual elders help us to pray and to have strong minds. The life-experienced elders give us role models to look up to and emulate.

- 1620 

Many of our elders directly and indirectly affect the justice processes we have initiated in the communities. Elders participate in our circles and they consider all circles to be healing. Elders continue to ask about our youth they have met, counselled, or assisted, and informally form circles of support for our youth.

In the past three years, much of the focus of our restorative justice unit has been on bringing awareness, to the traditional justice system and courts, of the resources we have in our first nations—the resources of our elders, our staff, and our first nation institutes. This was a challenge, but has now started to develop partnerships in assisting the paradigm change to restorative, not punitive, justice. Many in the traditional justice system realize their system is not working for aboriginal youth. The judges ask us what can be done, how they can help us to solve our problems.

We are asking for the opportunity to restore our family structures, social values, and practices. The clash of the cultures and influx of new ideas and technologies, loss of self-esteem, and loss of cultural direction all influence the negative and violent behaviours in our communities. We can speak directly to the racism in the youth facilities, the lack of cultural training in the youth facilities, and the racism of police. We can speak to the incidents in Saskatoon, Saskatchewan, where four people are now under investigation for police actions caused by what we would term as racism in the police force.

Today we are experiencing many changes in our communities. The reserves are changing fast, with the monumental task of healing the wounds we have encountered since the loss of our freedom, our lands, and our rights to self-determination. This is a huge undertaking for our restorative justice unit, as many of the crimes that are committed can be directly or indirectly related to the fallout from the atrocities committed for the sake of “civilizing” the first nation citizens.

The economic status of our people, the residential school period, inadequate housing, abuse, poor nutrition, and unhealthy parenting practices all relate to the negative behaviours we experience within our communities. The 1996 census and data on aboriginal peoples of May 1998 mentioned that 72% of the youth in custody in Saskatchewan were aboriginal. Aboriginal offenders accused tend to be younger.

An elder passed this story to us at a conference. He said, you pick a stone out of a fast-flowing river. You clean it, you polish it, and you buff it. You cherish it and it becomes beautiful. It has sparkle and it reflects the light. Then you throw it back into the bottom of the river, into the silt and the mud. This is what we're doing to our youth. We take our youth out of their homes, place them in foster homes or facilities. We work with them, polish them, give them a purpose, and then we return them to the mud of their former environment.

If we want to deal with our youth, we must work with the whole family, not isolate them from their communities and their caregivers. The motto in the first nations community is that it takes the whole community to raise a child. Help us to build those options in our communities, not isolate them with sentences to jails, youth facilities, youth centres, or camps. We are separating our youth from ourselves and not dealing with the problem. Every disciplinary principle we see in the schools, the churches, and the society at large is to separate the problem, but the problem always returns to us.

We must start to heal the family, not just the individual. The data on aboriginal peoples from May 1998 also stated that the violent crime rate on reserve is about five times higher than the Saskatchewan provincial rate. Our youth live in this environment and learn from it. We need resources directly in our first nation communities to deal with the deep-rooted issues.

At one time, our communities used non-stigmatizing shaming and reintegrative shaming to influence our members to behave in an acceptable way. This has a great effect on the behaviour of our people. We would like to retain this by conducting family group conferencing or community justice forums for all our youth who come into conflict with the law.

The youth criminal justice statistics identify the use of extrajudicial measures, and I ask that all youth who come into conflict with the law be eligible for community justice forums. I have personally conducted community justice forums and have seen the results when the community becomes involved in the well-being of their youth.

One example is a case where a young girl stole a car from a nearby town. Before the forum started, the young girl ran from the forum and had to be reassured that she would be safe within the circle. The victim attended the forum and stated she wanted to know why the youth had taken her car. The youth didn't know why she took the car—just said it was there.

- 1625 

The youth felt no one was affected until the agreement phase, when the victim didn't want any form of compensation for the loss of items in her car, but wanted an apology. The community group was inside that circle and they felt this was not enough. They stated that the youth had to attend the local workshops and self-development workshops at the band office. This shows the agreement is not just for the victim, but for the community as well.

Another example is when a very small boy, aged 11, pushed a large headstone over at the neighbourhood cemetery. He was deeply affected by his actions and his mother related that he'd been having nightmares over this incident. His mother also stated at the beginning of the forum that the boy denied he had pushed it over, and said that it wasn't his family.

In the circle the youth was asked by the elder if he had pushed the headstone over and the boy said yes. The mother was surprised by his

confession. Many parents don't hear the whole story, or the youth deny their actions. In the power of a circle the youth feel free to tell their stories, sometimes to the amazement of their parents. In this same forum, the investigating officer felt empathy for the boy and became his supporter. He asked the boy to come to him if he had any problems. The youth became relaxed and accepted his agreement readily.

In another forum, three young girls had removed newspapers and mail from a post office box. The young girls disposed of it in a garbage can at the post office. In the agreement was a personal apology to the postmaster and an apology to the first nations community because their behaviour reflected on the whole band—which is truly restorative.

In one of our training sessions we conducted a block forum. It was an adult workshop, and the adult participants role-played a youth auto theft. Unknown to us, the accused was a gentleman who had just recently been released from prison, and the victim had had her vehicle stolen the previous year. The forum took on a life of its own, and the accused broke down emotionally and stated, "If I had gone through this when I was 17, when I stole my first car, I would never have stolen again." The opportunity for the families to meet with the victims in a safe environment with a procedure and to reach a restorative agreement can be very satisfying.

All youth, regardless of their crimes, should be made to feel the effect that their actions have on others—their family of care, their friends, their supporters, and their communities, as well as the victims. We do a disservice to our youth if they are not presented with the consequences of their actions and shown the effect they have on their families and communities. Many youth, when they start a forum, feel they have brought harm only to themselves and the victims. In the forum, they come to realize they have affected their parents, their families, and their communities. This is powerful and changing behaviour. In Sydney, Australia, they're using forums now for youth murder.

In the present legal system, the youth appear before non-native judges in an alien environment where they experience no effect and walk away less thoughtful. In Saskatchewan, incarceration is not a solution but a problem. The gang problems that exist in our youth facilities are well known. The youth enter youth facilities, which are termed "the high schools of crime", and they're recruited for gangs.

Our elders' philosophy includes the saying: Hurt people hurt people. We must not inflict more hurt on our people, but strive to heal the damaged lives. A bad-behaved person is not a bad person but a broken spirit. A broken spirit is a missing part of their whole and it reflects on their behaviour. The balance of the person is off. A person must be balanced spiritually, mentally, physically, and emotionally. This is how the first nations look at an individual who has committed a wrong act in their community. To right the wrongs, we must find the imbalance and find the solution to mend that broken spirit.

Our bands were independent and self-sufficient and we had processes to deal with an individual's wrong behaviour in the community—

**The Chair:** Ms. Poitras, could you give me some indication of how much you have left so I can....

**Ms. Bev Poitras:** I'm on the last page.

**The Chair:** Okay. Thanks.

**Ms. Bev Poitras:** The principle of many of our procedures revolved around the use of the circle, the pipe, and the community as a resource to deal with problems. The community leaders provided a process to deal with conflict and the community provided the resources. The victim was essential to the resolution of the problem, and the offenders spoke to the offence and carried out the community sentence.

One tradition had the errant individual appear before the men's and the women's elder councils, the chief, and the headmen. The individual's family attended the appearance, but sat with their backs to the individual. This put the individual on notice that the family would support the decisions of the council—when they sat facing away from the council and the wrongdoers—but they also showed support by sitting there.

• 1630 

Many of these processes are buried in our communities, and we have just started to bring them up to be restored. Our elders counselled us: Take from your neighbours all the good ideas they have and throw away the bad. This is the same with our own communities. We must strive to keep the good and throw away the bad.

Thank you for your time.

**The Chair:** Thank you all for your presentations.

Now I'm going to Mr. Cadman of the Reform Party, for seven minutes.

**Mr. Chuck Cadman (Surrey North, Ref.):** Thank you Mr. Chair.

I'd like to thank all the witnesses for coming today to speak with us.

I heard a number of things dealing with the inclusion of something similar to paragraph 718.2(e) into Bill C-3, and a lot in the area of restorative justice, which I think we can all agree is definitely a route we should be looking at. I'm just wondering, are there any other sections of the bill, any particular parts of Bill C-3, that you can give us some views on?

We've heard a lot of testimony dealing with presumptive offences, dealing with seriously violent, non-violent, and violent offences—there's a lot of confusion there—and also about the complexity of the the legislation itself. I just wonder if you have any comments to that effect.

**Mr. Jonathan Rudin:** Yes, actually. Thank you for this opportunity. We didn't have the opportunity in our 10 minutes.

There are a number of sections that cause some concern. First—and this was touched upon, I think, in the presentation by the Congress of Aboriginal Peoples—the issue of extrajudicial measures in clause 4 is very highly limited in regard to the opportunity of people to access extrajudicial measures. First of all, the clause makes a clear distinction between violent and non-violent offences. One of the difficulties in the context of restorative justice is—and this is what Bev was talking about—when you're looking at restorative justice approaches, you're looking at the individual. You're not looking at what they did; you're looking at who they are.

An approach like this that focuses solely on the offence makes an unnatural distinction—and in our opinion a very dangerous distinction—because what it does is perpetuate the notion that if you're committing a non-violent offence, we'll deal with you in a more sensitive manner, but if you commit a violent offence, the weight of the system will come down on you. And what that means is that we'll put you in jail. That is a distinction

we have never made in any of our restorative justice programs, and we've had great success.

But our success is from focusing on the individual. So certainly I think clause 4 perpetuates a serious mistake in terms of the way to look at extrajudicial measures.

I know Marian has a couple of other sections she wants to talk about.

**Ms. Marian Jacko:** I think one other area of concern is the potential impact of clause 27 and the requirement that parents attend proceedings.

Particularly, the concern is that some parents may be unable to attend, for whatever reason. The concern is with respect to the sanction that could possibly be imposed on parents who do not participate. That's in reference to subclause 27(4), which exposes them to sanctions such as findings of contempt or punishment under the Criminal Code for a summary conviction. I think this will further add to the difficulties that families are experiencing and will likely make the situation worse, not better.

Instead, I think families and communities should be encouraged to participate in the design, development, and delivery of programs and services for aboriginal youth. This will not only empower families and communities to take responsibility, but it offers the potential for culturally appropriate services and resources.

**The Chair:** Is there anyone else from the panel who wishes to respond to Mr. Cadman's question?

Mr. Cadman.

**Mr. Chuck Cadman:** To the gentleman from Atoskata, on page 3—now I may be interpreting this wrong—there's a chart in which I see some of the numbers for the number of youth referred, but the number actually completed seems to be quite low. For instance, for April 1, 1998, to March 31, 1999, 89 were referred and 10 completed. Am I interpreting that wrong? That seems quite low to me. If it is, can you give some explanation of why the numbers are low?

**Mr. Daryl Beadnell:** It's on the basis of the length of time it takes the youth to complete the program.

**Mr. Chuck Cadman:** Okay.

• 1635 

**Mr. Daryl Beadnell:** Sometimes the restitution orders they receive are quite substantial, and what happens is that it takes them almost a year to two years to complete the program itself, depending on their attendance rate. I wasn't—

**Mr. Chuck Cadman:** I'm not trying to put you on the spot.

**Mr. Daryl Beadnell:** No, no—

**Mr. Chuck Cadman:** I'm just trying to get a feel for what those things mean.

**Mr. Daryl Beadnell:** Yes, basically it's the length of time it takes them to complete the program; that's why it's such a low rate at that point.

At the time, there was only one administrator and he was working with six youths, which was what he could handle at one time. Since the expansion this year, the rate will probably be quite a bit higher now, because we'll have two staff supervising a total of 20 youth.

**Mr. Chuck Cadman:** Do I have another minute, Mr. Chair?

**The Chair:** Yes, you do, one minute.

**Mr. Chuck Cadman:** To the Congress of Aboriginal Peoples, I refer to your comment on page 10 of your brief to “reduce rather than enhance the role of police in diversion”, and specifically to the comment about the community, “to be involved in warnings and cautions, and compensate them for doing so”. How do you propose to set up that mechanism?

Right now what we have is that police would catch a young person in the act of doing something and at that point the caution would kick in. How do you propose to set it up if you want to involve community members and compensate them for doing so?

**Mr. Frank Palmater:** Unfortunately we haven't had an opportunity to involve the community members to that level. It's a suggestion of the Congress of Aboriginal People to involve them. At what level, what kind of funding would have to be in place, and how that community gets around this issue is still something that we have to discuss with our grassroots people. I would be a little bit leery as a political leader to step out on a limb right now and say this is how we do it, without actually having gone back and discussed that with the grassroots people.

**Mr. Chuck Cadman:** What I'm concerned about is that normally the caution would take place when somebody's apprehended doing something, so does that mean that if a policeman catches a young person they have to take them in and then call up somebody to say they have somebody here that they want to caution, so they want someone to come down and do it...? I'm just trying to understand how this would work.

**Mr. Frank Palmater:** Basically the principle that you have is a correct one, but how.... Because of the differences of our people right across the country, that process would necessarily be different wherever that policeman or that youth was in conflict; it wouldn't always be the same. One community may decide in connection with that police organization, the policeman, or the criminal justice system, whatever is there, to do it differently from someone else. We would like to have the ability to go back to the community and ask them how they would like to deal with it rather than putting forward a hard, set, concrete example, saying this is how it's done. It may not be appropriate to that community.

**The Chair:** Thank you, Mr. Palmater.

Thank you, Mr. Cadman.

Mr. Bachand.

**Mr. Claude Bachand (Saint-Jean, BQ):** Thank you.

You'll need your translation device because I'll be talking in French.

[*Translation*]

In the first place, on behalf of the Bloc Québécois, I would like to tell you how much we appreciated your presentation, because we seem to support the same premise. I will not ask you any questions about specific provisions of the bill, but I would like to focus on its overall philosophy.

We Quebeckers have always believed that it is much more important to rehabilitate people and return them to society than to incarcerate them. I believe firmly in this philosophy. We do not believe that jailing children or 18-year-olds who have caused trouble for society is a solution, because this is like sending them to a school of crime, and this will only encourage them to commit more crimes. You can therefore understand why we are strongly opposed to this bill.

I also wanted to tell you that I know about Aboriginal people living off-reserve. When I was in Toronto four years ago, I met with the chief of police, who told me that half of Ontario's Aboriginal population live in Toronto. I am therefore afraid that these Aboriginal people are confronted with a major problem. I am among those who believe that healing circles and sentencing circles are important. In Quebec, before handing down a decision, some judges travel to remote communities in order to consult local people. In many cases, their decision matches that of the community, because they realize that it would be unfair to take a 16-year-old 1,000 kilometres from home and to send him to a school of crime. He would be completely cut off from his traditions and his culture, and this would be no way to resolve the problem.

• 1640 

On some reserves, the necessary facilities are available and young people can expect community support. But how can a young person who is arrested in a city like Toronto or Winnipeg draw on the support of a healing circle? How can the magistrates who administer justice be convinced to listen to the community before handing down a sentence? Would Aboriginal friendship centres not have a role to play in ensuring that justice is dispensed to these young people by means of rehabilitation rather than incarceration?

[*English*]

**Mr. Jonathan Rudin:** We in Toronto have been operating the community council, which is an adult criminal diversion program, since 1992. We've specifically been working with that issue.

One thing that's important to realize is that most of the people who come into our program are estranged from the aboriginal community. In fact it's something that people are not always aware of. When the Royal Commission on Aboriginal Peoples went to the Saskatchewan Penitentiary in Prince Albert and to Stony Mountain Penitentiary in Manitoba, they asked the native brotherhood there how many of them had been adopted or in care. Every hand went up.

One of the great predictors of aboriginal criminality is estrangement from the aboriginal community. You're very right: in Toronto there are many people who are aboriginal who have no positive sense at all about what that means.

One of the purposes of our community council program is not to "reintegrate" people into the aboriginal community, because they've never been there, but to "integrate" people into the community. We take the offenders, in this case the adults—and we will be doing this with young people—and have them meet with members of the aboriginal community who sit as members of the community council.

One of the most poignant and saddest moments in a community council hearing I was at involved an aboriginal young person who said he'd never before been in a room with three sober aboriginal people. That's not because it's so rare; it's because that's what he had been taught. He'd been taught that was what aboriginal people were. That's what his adopted parents told him, and when he came to Toronto all he found were people on the street. To see that aboriginals can lead full lives in the city, respecting their traditions, becomes very important.

What we try to do is plug people into the range of aboriginal services and programs that are available for them and to encourage them on that healing journey they're on. I know that people think, well, it must be difficult in an urban area because there isn't the connection, but in fact what we do is connect people. That's the purpose of the project.

I would also like to comment on something you said at the beginning about the importance of rehabilitation. That is very significant. We take people into our program who have 20 or 30 prior convictions. When we go to the crown attorney—because the crown has to consent to people coming to the program—and they say to us, "Well, tell us why we should let you have this person, he has 17 priors", we say, "You've had him 17 times and you haven't been able to change his behaviour at all. Give us a chance."

We've found that we've been able to accomplish great things by taking out coercive measures and by focusing on some of things that Bev and Daryl talked about: focusing on instilling in people a sense of responsibility for their actions, to make them responsible for what they do, to help make them responsible for their healing, and to help them see how they can engage in those activities. Unfortunately, for many of the people who come to our programs, no one has ever given them a positive sense of who they are. They're just so used to getting the negatives.

So there's a great potential in urban areas for alternative justice programs to succeed and to thrive.

**The Chair:** Thank you very much.

I think Ms. Poitras wants to answer this as well.

**Ms. Bev Poitras:** I just wanted to say that in Prince Albert they just built a new courthouse, and inside the courthouse there's a room for sentencing circles so the judges have access; it's right inside the building. It's not something that's impossible for urban areas. In the city of Regina, we have the RAMP program, and I think it's 1,600 cases a year that they work through with alternative measures. So it's not something that's out of the question for developing a community of care inside an urban area and working toward getting our judges to understand what that is.

• 1645 

**The Chair:** Thank you very much.

Peter MacKay.

**Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):** Thank you, Mr. Chair.

I want to thank all of you for being here. You've brought a very unique and important perspective to our deliberations.

I want to begin by saying to you that we are faced with a very important task in drafting this new legislation. I think everyone around this table has the same goal in mind, and we agree that the aboriginal community has brought a great deal to the justice system already in terms of what we see in this legislation that's before us, including a movement toward restorative justice and a greater use of sentencing circles and these types of alternative measures.

I apologize for not being here for all of your presentation.

I would like to pick up on a few of the comments and some of the information that's contained in your brief. With regard to these restorative justice models, and sentencing circles in particular, do you contemplate or can you foresee a system that would use a combination of the traditional justice measures for meting out sentences and the more welcome measures you are putting forward? I say that because I'm responding to the suggestion that we should expand the model to include violent and seriously violent offences. Reference was made to a murder case that was diverted.

One major concern I have is the participation of the victim. In many cases where there has been bodily harm and an intrusion upon a person's well-being, I have a great deal of concern that most victims, I think, in those instances would want to opt out. They wouldn't want to participate. I realize that the community can stand in that person's stead.

Similarly, keeping in mind the examples that were given by Ms. Poitras, I believe, with regard to apologies, I think that's extremely important. Restitution, though, is also very important in terms of an individual who has lost something of real significance. It may not be something that was particularly expensive, but something that meant a great deal to them.

So I see implicit in these models very much an attempt to put the person back in the situation they were in before the offence was committed, which is a noble cause but sometimes impossible when it deals with a person's bodily integrity.

As a final question along the same lines, the concept of shaming, which is very much a part of the approach taken by aboriginal people, is one of the elements of this legislation that has been very controversial when it comes to identifying the person and having their name publicized. Some have indicated to this committee that we should never do that. I'd be interested in your reaction. I tend to lean toward your identification of this as being important, that people need to know what the person has done in order for the holistic community healing to occur and that we shouldn't be shielding someone from responsibility for their actions.

I know that was a lengthy question.

**The Chair:** We're quite accustomed to Mr. MacKay's questions. Go ahead, Mr. Palmater.

**Mr. Peter MacKay:** That's why they're trying to limit the amount of time we have.

**Mr. Daryl Beadnell:** I would like to comment on that question. In my opinion, by publishing the youth's name, it sort of sets a precedent in the community, not only for the youth but also for the family. They will get a sense of what the family is like. They could possibly ridicule the parents. In school they could basically treat the youth as an outcast. I think it will just be detrimental to the youth, the family, and the community itself.

**The Chair:** Does anyone else wish to comment? Ms. Dickson-Gilmore.

**Ms. Jane Dickson-Gilmore:** Thank you.

Very briefly, just to echo what Mr. Beadnell said, I think we must be very cautious about labelling people as criminals. While victims and the community certainly have rights that need to be balanced, we also need to understand that because the stigmatization that results from especially a young person carrying so very great and heavy a label as that of criminal can have such a detrimental effect on their ability to reintegrate successfully into their own community and other communities, we need to be very cautious.

• 1650 

I'd like also to address some of the concerns Mr. MacKay stated with regard to sentencing circles. As a scholar in this area, I would like to interject one slight note of caution in relation to sentencing circles, which is that as yet we really have no adequate evaluations of sentencing circles. We don't really know what they're doing, and we're not really clear on all of the impacts they're having. I know that certainly in scholarly circles dealing with aboriginal and restorative justice, we tend to be a bit cautious around embracing sentencing circles too enthusiastically at this point.

I think victims in sentencing circles, especially with regard to violent offences such as spousal assault, have had some very unpleasant experiences with sentencing circles, and we need to be mindful of that. Indeed, many of us are mindful of that and are working toward the amelioration of that problem.

But I think before we start accepting all of those cautions around sentencing circles, we need to remember that they are a project that both the state and many communities are embracing, so we need to respect them at that level.

We also need to be sure that we do not dwell excessively on violent offences with regard to issues of access to sentencing circles by youth offenders, because in fact the numbers tell us that serious violent crimes perpetrated by young offenders constitute less than 0.1% of the offences with which young offenders are charged. So let's not create and define a system around the smallest percentage of most serious offenders when in fact we have many, many more young people out there who should have the responses to their problems and to their conflicts constructed in a less, how should we say, demanding way, less violent way.

Thank you.

**The Chair:** Thank you very much.

Mr. Rudin.

**Mr. Jonathan Rudin:** Let me briefly touch on those three issues.

The notion of shaming in aboriginal communities is often what's referred to as reintegrative shaming. It's shaming that has a process, which is yes, you are shamed, but then you are welcomed when you're finished. It's not a process that just ends.

I think, as Daryl pointed out, the difficulty with publicizing names is that it is a one-way process. What happens is that the name gets out and the reputation gets out, but none of the other activities happen in the community.

So I would echo the other comments. I think we have to be very careful about thinking that naming someone will create any positive aspect of shaming. It will centre them out, but it won't necessarily have any of the positive impacts.

**Mr. Peter MacKay:** I'd like to pick up on that. So it's shaming, but within closed circles. It's direct shaming.

**Mr. Jonathan Rudin:** Shaming is part of a process. Simply putting the name out there so that the person is embarrassed is not part of a process, and so it's not what shaming is about.

I'll let Jane finish that one.

**Ms. Jane Dickson-Gilmore:** Maybe I can help out a little bit here. Reintegrative shaming is the central aspect of the restorative justice dialogue. What reintegrative shaming involves is saying to a person, what you did is wrong; you hurt this person as the victim, and you hurt the community, because we share the shame for what you did and the pain you caused. But you know what, we're still prepared to have you be among us and be one of us. But in order for you to do that, you have to accept responsibility for what you did, and you're going to have to do something to restore the balance among all of us.

So the youth is not excused for their actions. What they're basically told is, you did something wrong, and yes, you should be ashamed—and in most cases they are ashamed—but we can move on. We accept the shame, and then we move on and use it in a positive way to work productively toward restoring the balance among all members of the community.

**The Chair:** Thank you very much.

We'll now to move to Mr. Grose, for seven minutes.

**Mr. Ivan Grose (Oshawa, Lib.):** Thank you, Mr. Chairman.

Using my usual diplomatic manner, I'd like to ask a question: how many, if any, of the panel are not aboriginal people? Two. Thank you very much. Incidentally, I applaud you, because I'd join you if I could.

I'm absolutely appalled by the number of aboriginal people, especially young people, who are in our prisons. Having toured prisons across the country, through the Maritimes and western Canada especially, I just find it hard to live with the numbers.

I would like to give you what's left of my seven minutes. Ms. Poitras, I hope I pronounced that correctly. You have the same first name as my wife, who finds my French pronunciation appalling. In any case, you did mention reasons. But I would like the rest of you, if you would, please, to use my time to tell me why, why, why so many aboriginal people run afoul of our laws. I know I've heard racial prejudice and so on, but if one walks softly and quietly, one does not run into the arms of the law. That's my perception from having lived in the south of Ontario. Please tell me.

• 1655 

**The Chair:** Mr. Palmater.

**Mr. Frank Palmater:** Thank you very much, Mr. Chairman and Mr. Grose.

Unfortunately, the main reason, we believe, is discrimination that exists out there. It's a truly ugly word that exists among people.

**Mr. Ivan Grose:** That's what I wanted to know.

**Mr. Frank Palmater:** And not discrimination because the individual doing this commanding is white and our people are brown-skinned. It could be systemic discrimination. It could be that the very system that our people are under discriminates against our people. It doesn't allow us to evolve to the same level as someone in an urban environment who is non-aboriginal.

I'll give you a perfect example. In the reserve where I come from in New Brunswick, we refer to the RCMP as the legless Mounties, as all we ever saw was the elbow in the window as they drove by. That's it. We didn't see anything else. We saw their elbows sticking out the window as they went through. It was a small community.

When we got in trouble with the law, and I did, I was an aboriginal person who got a little bit bigger than my britches would allow me to be, and I got in trouble with the law and learned really quickly that you can't win. You can't. It's not possible. There's too many of them and only one of you.

**Mr. Ivan Grose:** You'd already converted.

**Mr. Frank Palmater:** Yes, sir. You can't win. But most of our people don't get an opportunity to see that before they get into the system. Once you get into the system.... We met with a group of aboriginal youths in Regina about a year ago. And there a young fellow approached me, and I never had an answer for his question. He said, "Frank, I have \$1,900 on me right now and I made it in less than an hour on the street. I know your speech was about not doing this stuff because you're going to end up in jail and you're going to end up in a system and part of a system that isn't really good for aboriginal people. But why should I be afraid of jail? Someone's there watching my back. Somewhere's there who's going to feed me and put me in a warm bed in a warm room and going to give me clothes. I'm going to get access to television, maybe an exercise machine. I don't get that if I live on the street. I have to watch where I'm going to sleep tonight. I have to pay somebody to make sure I don't get robbed if I go on the street or if I do this." I didn't have an answer for him. I couldn't answer.

In retrospect, thinking back, if I could have answered I would have said, "Your upbringing...." He was an aboriginal person from urban environment and had never seen a reserve. He didn't know what a reserve was all about. He had no idea. He didn't realize that your grandmother

would be looking at you with shame because you stole a box of 5¢ caps from the five and ten and came home and bragged to her because you didn't get caught. It had nothing to do with her. She didn't steal it, I did, but she was angry. He didn't get that perspective. He didn't receive that because he didn't have that connection to the first nation community that I was lucky enough to have. He didn't have that basic moral value imprinted on him at a very young age. They'd say, "You can't steal; you're not supposed to." Why? "Because it's wrong. It isn't yours."

My grandfather, who's an Indian.... My real grandfather was a white man and that's why my grandmother lost her status, but when my grandmother went back to the reserve, she lived with an Indian who I refer to as my grandfather. He had a story: If you can't buy it and you can't work for it, it's no good to you. You may want it and may need it, but it's no good to you because you didn't earn it.

Where did he get it from? He got it from the community. He didn't get it from the system. He didn't learn that in jail. And neither did I.

The system that affects aboriginal people is wrong. This process, this bill, works towards—and we say it in our presentation—making it better for off-reserve aboriginal kids. The only mandate I have is to speak on their behalf. It works towards that, but we think you need a little bit more of our perspective. We need the people who are going to put this system in place to work with aboriginal people, side by side, and say, okay, does this work, does that work?

• 1700 

Mr. MacKay mentioned sentencing circles. Where I come from, the jury is still out; we don't know if sentencing circles work. It worked in some cases and in some it didn't; the individual did the same thing all over again. But the basic problem of why more aboriginal people are in correction facilities than the rest of Canadians, why there's a disproportionate amount of people, is that it's easy. Lock them up, put them away. The very Government of Canada has a position, and this position is that Indians are a problem, so how do we deal with the problem?

We're not part of the society—French, English, Chinese, black, yes—but Indians in this country are the only people who have an act. That doesn't make us a part of, doesn't make us equal. We're the only people in this country mentioned in the entire Constitution. There are two linguistic groups mentioned but we are the only people—Indian people. That's because the system isn't reflective of aboriginal people. The system itself discriminates against us. That's why there are more of us in jail than not in jail. It's easy.

**The Chair:** Thank you very much, Mr. Palmater, and thank you, Ivan, for being generous with your time, but it's up. So I'll go back to Mr. Cadman for three minutes. And I'm sure that inspired people to perhaps work this into the continuing dialogue.

We have Mr. Cadman, for three minutes.

**Mr. Chuck Cadman:** Thank you, Mr. Chair.

I want to deal with extrajudicial measures for a moment. I'm not talking about restorative justice, whether we talk about post-adjudication restorative justice or post-sentencing. Rather, I'm asking is there any time when extrajudicial measures should not be appropriate? In other words, what I'm asking is do you feel it's appropriate for any offence or should it—extrajudicial measures—be restricted to dealing with diversion, caution?

**The Chair:** Ms. Poitras.

**Ms. Bev Poitras:** When the individual says they're not guilty.... To me, when a person takes the responsibility, then you can do something about it. If they feel they're not guilty and they want to go through a process, then they should go to the courts. That's just my own opinion.

**Mr. Chuck Cadman:** Anybody else? What I'm looking for are the violent offences, the serious bodily harm offences. Are those appropriate for extrajudicial measures?

**Mr. Jonathan Rudin:** When we take adult offenders into our community council program, we approach the crown in each case. The crown makes consideration of whether there's a public safety concern. But that consideration is made on a case-by-case basis. So I would not say that anyone is inherently ineligible, but I wouldn't say anyone is inherently necessarily eligible; these things have to be looked at on a case-by-case basis. And I think the difficulty is that trying to find this or that becomes very difficult.

One of the problems we had when we first started our programs is we were going to divide things up by offence type and we said this is amenable for diversion and this isn't. However, the police officer at a meeting said we'd better not do that because the minute we do up a list and the police know what's on that list, all the people you want to get into the program will be charged with what's on that list that can't be diverted. The difference between theft and robbery is as little as a push. And the difference between the charges comes up to the discretion of the police officer. So I think focusing solely on the offence without looking at the individual would be a mistake.

**Mr. Chuck Cadman:** Would you include homicide in that?

**Mr. Jonathan Rudin:** I don't know that homicide would be subject to extrajudicial measures.

**Mr. Chuck Cadman:** I personally don't think it should be, but—

**Mr. Jonathan Rudin:** But alternative sanctions, it may be possible.

**Mr. Chuck Cadman:** Okay.

**The Chair:** Thank you, Mr. Cadman.

Over to Ms. Bennett.

**Ms. Carolyn Bennett (St. Paul's, Lib.):** Thank you, Mr. Chair.

I'm interested in the evidence there is on sentencing circles, and certainly what I heard when we were in remote communities in the north, in Nunavut and in the Northwest Territories, is that it's working particularly well. A lot of the problems are sorted out long before the circuit judge has arrived. And then it all gets rehashed again. I think there is certainly some discomfort with that. The other day, we had a judges panel that talked about community justice committees, or whatever they are, that really did view them in some communities as small vigilante groups.

• 1705 

Whether it's the scholarly approach or your own evidence, how do you ensure that a sentencing circle is indeed therapeutic? Is that cultural, or is there more we can learn from taking some of your experience and moving it more broadly into all of Canada in terms of policy?

Secondly, I guess I'd like to know the experience with sentencing circles in an urban setting. I believe 60% of aboriginals are off reserve. If someone has had no experience with their culture, how successful are sentencing circles then?

**Ms. Bev Poitras:** Even in our first nation, not all the people practise their traditions, practise culturally traditional ceremonies, or are in touch. Many of them are Catholics, many of them are Anglicans, they're United, they're of all different kinds of backgrounds. What we've done in our sentencing circles in some of the communities, instead of having an elder, is have the priest or the minister there, someone who is relevant to the individual. That makes the sentencing circle a part of that individual's life. It's then something that affects them or will affect them and make them change their behaviour. The sentencing circle started off as a very spiritual and ceremonial tradition for the first nations peoples and Inuit and other people who are using it, but it can be adapted and it can be used in all different kinds of places, for different people.

**Ms. Carolyn Bennett:** I guess you're saying the jury is still out in some places. The question then is whether or not there is any evidence around about what works and what doesn't work.

**Mr. Jonathan Rudin:** I think it's important to clarify that sentencing circles are one of many different responses. We do not have sentencing circles in Toronto.

I think the issue should be what the community wishes to do. Some communities may wish to have sentencing circles where the judge is empowered to pass upon the decision. In other communities, such as Toronto, we take the case right out of the judicial system and the judge has no say. It's up to each community to determine what it wants.

Our success rate for our program is shown in our compliance. People comply with their community council decisions at a rate of over 70% or 75%. We consider that a very high compliance rate, since over half the people who come into our program have already been in jail before. We have a very high compliance rate, but it's not a sentencing circle.

My only point would be to say that Jane is concerned about sentencing circles, and there are concerns about sentencing circles. There are concerns about all alternative justice programs and how they work, but they are all different. We are having an evaluation of our program that will be finished in a month or two, and it will talk about long-term success rates for a client. That information is starting to come out, but we already know our program has saved lives. On one level, I therefore don't care what the numbers say, because I know what the difference has been in the lives of people I see every day.

**Ms. Jane Dickson-Gilmore:** I just want to reinforce what Jonathan says. As I said and as Jonathan said, there are certainly communities that embrace sentencing circles and see them as a viable way to resolve some of their problems. But I think we also have to be careful to distinguish between sentencing circles and other alternatives like healing circles. A sentencing circle isn't necessarily a healing circle. Those may be different things.

This issue here—and I think it's also one of the things that is a potential in this bill if it's brought forward in the proper way—is that if we're going to involve communities, let's empower communities in a constructive and realistic way so that they can put together the programs that fit with their communities, that fit with their cultures, and that genuinely are designed to meet their needs. If we're not prepared to do that, then the efforts to involve communities in effective youth justice delivery will fail.

• 1710 

**The Vice-Chair (Mr. Ivan Grose):** Thank you, Ms. Dickson-Gilmore.

Mr. MacKay, please. Is it one of your short, blunt questions?

**Mr. Peter MacKay:** Yes, thank you, Mr. Chair. Like you, I'd rather hear from the witnesses than from myself.

I guess what we're getting at is injecting more discretion into the system. That's where we're struggling, because we're trying to have a standardized process that will apply in every community, which is extremely difficult. I realize that the tangible results are often impossible to categorize or to tabulate, because you can't show statistics for the lives you've saved or the crimes you've prevented.

Is there a hybrid system that we can work towards that will incorporate this type of sentencing circle or healing circle? Things can happen after the fact sometimes. I know there are sweat lodges, for example, that take place in penitentiaries. They are very much aimed at healing the individual, and they involve even the community outside the prison walls. Do you envision ways in which we can move in that direction?

**Mr. Jonathan Rudin:** I don't think it's an either/or. Currently we already have a bit of a hybrid system. All the programs—Daryl's program, Bev's program, our program—exist because of discretion exercised by someone at the local level. The danger in and the scary thing about operating programs is that they also survive on that discretion. With a change in judge or a change in crown attorney, these programs, however worthy they are, can get completely stopped.

So one of the difficulties is that we now have a hybrid system, but it's a system in which the aboriginal programs exist essentially on the sufferance of local authorities, and also on the funding available through provincial and federal governments to allow these programs to work. There is room for many options. In Ontario there are seven, eight or nine first nations in urban communities now that want to move into this area. The difficulty is that there are no resources to do it. The problem—

**Mr. Peter MacKay:** So it's education and resources.

**Mr. Jonathan Rudin:** Yes. The problem isn't what we can do. We can do a huge amount if communities are allowed the freedom to determine what they want and to consult with local judicial authorities. There's no reason that you can't have a range of services. Obviously I think that would make the most sense.

**Mr. Peter MacKay:** Thank you.

**The Chair:** Thank you very much.

I think Ms. Dickson-Gilmore wants to speak too.

**Ms. Jane Dickson-Gilmore:** Just as a really quick point, I think we can learn some important lessons from aboriginal policy as it has developed in other areas. A relatively short number of years ago, the child welfare system in aboriginal communities was the source of incredible injustice and violence in the lives of aboriginal children. In many cases, children were removed from homes and decisions were made basically because the culture around families and parenting in non-aboriginal society was different from that in aboriginal society. Non-aboriginal social workers and so on were not able to see the difference, respect the difference, or understand—as Bev was pointing out—that it takes an entire community to raise a child, and that extended families raise children.

What happened with child welfare? Communities were empowered to take control over that. We now have incredible success stories of communities developing the most positive programs for dealing with their own troubled families and with children in need.

What I guess we're saying is that we need to learn from that experience. Empower and respect the abilities of aboriginal communities, who very much want to take control and want to take responsibility. Let them do it. Give them the resources, give them the power, give them the respect, and they'll do it.

**Mr. Peter MacKay:** Thank you.

**The Chair:** Thank you very much, Peter.

Mr. Maloney.

**Mr. John Maloney (Erie—Lincoln, Lib.):** I have a question for you, Bev. You had some concerns about clause 27, which requires the presence of a parent at proceedings. In fact we have heard of one instance in which an individual had seven or eight appearances, and the parent lost her job.

Can you envisage why a responsible parent or a caring parent would perhaps not want to be there? You've indicated that the sanctions will drive the child and the parent away, but why would the parent not want to be there? Under what circumstances, perhaps, would you think it would be proper for a parent not to be there?

**Ms. Bev Poitras:** I can just speak from my own experience about why a parent wouldn't want to be there, but this lady was the one who brought up that concern.

**Mr. John Maloney:** Excuse me. Sorry, Marian.

**Ms. Marian Jacko:** Would you like me to address that?

• 1715 

**Mr. John Maloney:** I'd like to hear Bev's personal experience, and then we'll come back to you, if we could.

**Ms. Marian Jacko:** All right.

**Ms. Bev Poitras:** Having children myself, and being a parent and a grandmother now, seeing my children go to court or having them experience a court is an alien process for me and my family. If a mother or a family of people doesn't go with their children, it would mostly be because of their fear of that system. They don't understand the process that's going to happen to them, so they don't want to be there because of the shaming event. And it is a shaming process.

**Ms. Marian Jacko:** I'd like to respond, and I think I'm going to incorporate a little bit of... My response will also answer the question of Ivan Grose pertaining to the contributing factors or causes of native youth coming into conflict with the law.

One of the things I'd like to stress is that the socio-economic and geographical conditions and factors are very important considerations. A couple of years ago, I did my thesis on the alternative measures program from a national to a community perspective. What I did was question native court workers across Ontario. I handed out a questionnaire, and question 4 on that questionnaire was: What do you feel are contributing factors or causes of native youth coming into conflict with the law? Out of 28 responses, 27 said loss of parental discipline was a concern as one of the contributing factors. I think that's an important consideration.

I was mentioning my concerns about subclause 27(4) and the impact or potential impact that it will have on families, especially in northern communities. I think there are socio-economic and geographical factors that have to be taken into consideration. A lot of the time, parents themselves may be experiencing their own difficulties, so I think that with the way the clause is set up, it's setting up families to fail. That's why I'm concerned about the exposure that parents may have to sanctions such as findings of contempt, or to punishment under the Criminal Code for a summary conviction.

**The Chair:** Thank you very much.

Mr. Cadman has a short question.

**Mr. Chuck Cadman:** Thank you, Mr. Chair.

A few years ago, I was involved in a restorative justice forum back home in B.C. A proposition was put forward about what to do if a young person—or any other person, for that matter—committed an offence. I'll just use an example. Say it was in my home town of Surrey. If alternative measures were decided upon, whether it was a sentencing circle or however you want to put it, it was proposed that the person be allowed to go back to where they came from—in other words, the reserve—to undergo that process there. I would just like your comments on that.

**Mr. Jonathan Rudin:** In our program, for those clients who come into the program who have status and have a reserve to go to, we always give them the option. We always want to know whether they wish to go home, and whether they have resources there and would like to do the work at their home reserve. I guess it has happened twice in about eight hundred cases.

**Mr. Chuck Cadman:** If I could just interject here, there's a problem I have there. Imagine a young person coming from, say, the Canim Lake Reserve in northern British Columbia and committing an offence in my home town of Surrey, B.C. Doesn't that put an incredible burden on the victim? The victim is supposed to be part of that healing process, but now you're asking the victim to travel, to go away from their support network, and to go into an environment that is completely strange to them, yet you expect them to take part in this.

**Mr. Jonathan Rudin:** Our experience with most victims is that the victims and the offenders do not have a personal relationship in an urban centre. We always contact victims if there's violence involved, and we encourage victims to come to the community council, but they generally never come. They don't come because they feel—not necessarily correctly—that they've been a victim of a random act. They feel their opportunity, their chance of being revictimized, is very low. They have a life to live. Their concern is that this does not happen again to someone else. So while we would encourage them to attend, in most cases they don't. Our process happens in any event.

• 1720 

In a situation such as that, if you ask someone who had their house broken into what they want, they want a number of things, but one of the things they would really want is that not to happen to anyone else again. If the person going back to their reserve—if their reserve will have them and if the resources are there—will better accomplish that than leaving them in Surrey, I suspect most victims would be happy with that as a response. It doesn't mean their concerns cannot be communicated back to the program on the reserve and that restitution or other orders can't be given.

**Mr. Chuck Cadman:** Thank you, Mr. Chair.

**The Chair:** Thank you very much, Mr. Cadman.

Ms. Poitras, did you want to respond to this?

**Ms. Bev Poitras:** I just wanted to say that in our communities, our elders got together and discussed this issue. They have a problem also with bringing youth back from the urban centres when a child has not been raised on the reserve. Many of the elders say the youth have elders in their urban centres who they should be contacting to use in the circles or in mediation or in whatever form they use.

They feel that when they raise a child, they see that child all the way through its development. They know a certain time when all of a sudden the father became an alcoholic and all the problems started, and they can deal with those kinds of issues. But they haven't seen the youth in the urban centres. They don't know what they are. They don't know how to deal with their problems.

They're saying communities should be defined as those who have done the hurting and those who are doing the hurting. They're the ones who should decide. There's a victim, and they should decide where it is and what should happen.

**The Chair:** Thank you very much.

Monsieur Saada.

**Mr. Jacques Saada (Brossard—La Prairie, Lib.):** Merci, monsieur le président.

You've gone a bit beyond the scope of this bill, but it has direct impact on its application. Many of you have quoted the sentence "It takes a community to raise a child" or "It takes a village to raise a child". Actually, in the case of a village, the village is a community and the community is a village, whereas when we go into cities, urban centres, it is much more difficult to define what the community is.

Would you have any suggestions or anything to say about the criteria that would preside over the constitution of what we call the community in each one of the specific cases?

**A witness:** You go first.

**The Chair:** Ms. Dickson-Gilmore, I think you've drawn the straw.

**Ms. Jane Dickson-Gilmore:** I don't know whether it was the short straw or the long straw.

Certainly in the restorative justice dialogue, the term used most commonly is "community of interest". When you have a young offender who is seeking some kind of extrajudicial measure, some kind of alternative measure, to deal with the problems, the group that gathers around him or that will be involved will be a community of interest, which in some cases may be people who are not directly related to that person.

It's difficult, and I think it would be misdirected, to attempt to create some kind of static definition of what a community is. The restorative justice literature is certainly moving in the right direction when they focus on a community of interest.

That's another reason the issue of compelling parents to attend may be additionally problematic, because it's entirely possible that in some contexts, the person who is legally the parent of the child or who is biologically the parent of the child is not participating in that child's community of interest, is not active in that child's life, and indeed may be a more significant part of the problem than of the solution.

So we have to respect a very fluid definition of community here and understand this may be very much, again, on a case-by-case basis.

**Mr. Jonathan Rudin:** In our program, again with the community council, we have individuals who are members of the aboriginal community who are committed to work with people in that community. The individuals they work with may not know them, probably don't know them, because they're estranged from that community. But the reason the offenders come in to the program is they want to. There's an understanding that this is someplace they want to be.

We'll construct the hearing around whatever someone wants. If someone speaks an aboriginal language and wants a hearing in that language, we can do that. But generally that's not what we've had. We've had people who simply are saying by coming into the program, "I want to learn. I want to be part of a community. And this is the community I want to be part of, because the community I am currently part of isn't helping me." They're not saying it explicitly, and they would say it afterwards, when they understand what they've done, but that's why it's happening.

• 1725 

You can't necessarily ask their neighbours to attend, because the neighbours don't know who they are. You don't want their friends to attend. We encourage people to bring people with them to their hearings. This builds on what Jane said. So sometimes people will show up with someone who is their friend. The community council meets with people, sometimes collectively and sometimes individually, and often very quickly the community council realizes that person you think is your friend isn't helping. A woman charged with prostitution comes to community council with her boyfriend. That may be her boyfriend; that may be her pimp. That may not be a help.

So part of the idea is to move people, particularly those people who have become enmeshed in the criminal justice system with some frequency, out of that world and to see there's another world. So it is about creating a community and allowing people to move to the community they want to move to. Part of that is opening up to them the understanding that that community will receive them.

One of the realities, as maybe all of you know, is if you become estranged from a community you're part of, you're often embarrassed to go there. People who were raised in a religion and never practise that religion are often the most hesitant to go to that house of worship when they're an adult, because they don't know what they're supposed to do and they're afraid they're going to be embarrassed. So they keep away.

One of the things about the community council process and most restorative justice programs is they're out there to provide the hand, to say "We're here. You needn't be afraid. We'll help you back into the world you want to be a part of."

**The Chair:** Thank you very much.

I believe that brings our discussions to a close. I want to thank all of the witnesses who have helped us in our deliberations on this very important legislation. I would say it's poetic that we would have you here as our final witnesses on this very important legislation, given the nature of that legislation and some of the things it proposes. So thank you very much.

Now I will suspend for five minutes and we'll reconvene in camera for a business meeting.

*[Proceedings continue in camera]*



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