

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Office of the Provincial Advocate
for Children and Youth**

401 Bay Street
Suite 2200, PO Box 2
Toronto, Ontario M5H 2Y4

Tel.: (416) 325-5669
Toll Free: 1 800 263-2841
Fax: (416) 325-5681
TTY: (416) 325-2648

**Bureau de l'intervenant provincial
en faveur des enfants et des jeunes**

401 rue Bay
Bureau 2200, Boîte Postale 2
Toronto (Ontario) M5H 2Y4

Tél.: (416) 325-5669
Sans frais: 1 800 263-2841
Télééc.: (416) 325-5681
ATS: (416) 325-2648

Attention: Mr. Ed Fast, Chairman
Ms M. Burke, Clerk
Standing Committee on Justice and Human Rights
131 Queen Street East, 6th Floor
Ottawa, ON K1A 0A6

Dear Mr. Fast and Ms Burke,

Thank you for the opportunity to be a witness before the Standing Committee on Justice and Human Rights with respect to Bill C-4. During my presentation on June 3rd 2010 I was asked to provide the Committee some additional information regarding the United Nations Convention on the Rights of the Child (UNCRC). In particular I was asked what countries have signed and ratified the agreement and what specific rights under the UNCRC are of concern in the proposed amendments to the Youth Criminal Justice Act.

The UNCRC was adopted by the United Nations General Assembly on November 20, 1989 and was signed and ratified by all countries with the exception of United States and Somalia. Canada signed on May 28, 1990 and ratified the agreement on December 13, 1991.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children have human rights too especially in the juvenile justice system.

By agreeing to undertake the obligations of the Convention (by ratifying or acceding to it), our government has committed to protecting and ensuring children's rights and have agreed to hold ourselves accountable for this commitment before the international community. All parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

By shifting the focus in the principles of the YCJA from rehabilitation, reintegration and prevention to protection of public safety blatantly violates the obligation of ensuring the best interests of the child in Article 3.1 which states:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Article 9.1 of the UNCRC also requires that the best interests of the child be considered when a young person is placed in detention or sentenced to custody not the protection of the public. Article 37(b) reinforces that “arrest, detention or imprisonment...shall be used only as a measure of last resort and for the shortest appropriate period of time”. It does not include public safety as a consideration.

The proposed amendments to lift the publication ban would allow the court to consider the principles of public safety and deterrence and denunciation. The broad definition proposed for violent offences and the subjective nature of the decision to lift the publication ban would suggest more young people would be subject to the lifting of the publication ban. This labels young people and is detrimental to the rehabilitation and reintegration of young people. It violates Article 40.2(vii) - the right to “have his or her privacy fully respected at all stages of the proceedings”. Article 16 of the Convention is also protection for a child from “arbitrary or unlawful interference with his or her privacy”.

Canada has an obligation to submit regular reports to the Committee on how children’s rights are being implemented. Should this Bill become law the government of Canada will have a moral and ethical responsibility to report violating Articles 3.1, 9.1 16, and 40.2(vii) of the United Nation Convention on the Rights of the Child.

Respectfully,

Irwin Elman
Provincial Advocate - Ontario