

Young offender legislation in Canada: A commentary

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In May 1998, the federal government announced a plan to replace the Young Offenders Act with new legislation. The new legislation, tentatively titled the Youth Criminal Justice Act (YCJA),² presents a series of changes to facilitate Canada's approach to addressing the needs of young offenders. This article provides a brief historical review of Canada's strategy against youth crime and previews the newest recommendation of the YCJA. Although the proposed legislation has numerous positive aspects, this article raises some concerns that could serve as a note of caution prior to its implementation.

The first major review of youth justice legislation in Canada took place in the early 1980s, with the outcome being the federal government's implementation of the Young Offenders Act (YOA) in May 1984. The YOA introduced a substantial change in philosophy in the treatment of young offenders from the Juvenile Delinquents Act (JDA), which had been in effect since 1908. The YOA instituted a move from the child welfare approach, characteristic of the JDA, to an offence-oriented approach. Table 1 shows the evolution of youth justice legislation in Canada.

The YCJA was initiated in response to recommendations of the House of Commons Standing Committee on Justice, which spent a year reviewing Canada's approach to youth justice. The YCJA appears to be a fusing of elements of both the JDA and the YOA. It focuses on both the offender (reflecting the JDA) and the offence (reflecting the YOA); therefore, it is important to have an understanding of both systems before examining the proposed system under the YCJA.

The Juvenile Delinquents Act

The JDA, which came into effect in 1908, had two hallmarks. First, the JDA was one of Canada's initial child-focused pieces of legislation because it established a childhood age, from 6 to 17 years. Before the JDA, children in conflict with the law were not treated differently from adults. The second hallmark was the introduction of an ethic (*parens patriae*) for applying law to children.

This ethic granted a judge the power to act in the best interest of a child, giving a pseudoparental role to the judge.³ The act emphasized court dispositions based on the needs of the young offender, rather than the seriousness of the offence. In the early 1960s, the JDA came under the scrutiny of many Canadian sectors that expressed doubt that this needs-based or child welfare approach to youth crime was satisfactory and began to demand change. The next two decades were witness to increased public awareness and numerous inquiries into the JDA, and consequently, the YOA was proclaimed in Parliament in 1984.

The Young Offenders Act

The YOA has four guiding principles:

1. Young people must assume responsibility for their illegal behaviour;
2. Society has a right to be protected from illegal behaviour;
3. Youths are entitled to traditional legal rights and some additional protections; and
4. Young people, because they are not fully grown or mature, have special needs and should not be held accountable in the same manner or to the same extent as adults.⁴

Table 1

Chronology of Canada's Youth Justice Legislation	
1908 Juvenile Delinquents Act into effect	- Child welfare approach - Significant judicial discretion
1984 Young Offenders Act into effect	- Emphasis on: youth responsibility, protection of society, special rights and youth needs
1986 amendments to YOA	- Technical amendments to custody placements
1992 amendments to YOA	- Increased maximum sentence from 3 to 5 years for murder - Clarified rules for transferring youth to adult court
1995 amendments to YOA	- Increased maximum sentence to 10 years for murder - Created presumption of transfer for 16- and 17-year-olds charged with serious violent offences to adult court - Allowed victim impact statements in court - Supported information sharing among youth justice professionals
1996 (August) Federal-Provincial - Territorial Task Force on Youth Justice Report	- Review of the YOA - Report referred to the House of Commons Standing Committee on Justice and Legal Affairs for consideration
1997 (April) Standing Committee on Justice and Legal Affairs review report	- Review of the youth justice system - 14 recommendations
1997 (August) Meeting of First Ministers	- With exception of Quebec, called for meaningful amendments to the YOA - Committed to improving preventive and rehabilitative programs for young offenders
1997 (December) Federal-Provincial - Territorial Meetings of Ministers responsible for justice	- Proposed amendments to the YOA

1998 (May) Federal Youth Justice Strategy Announced	
Source: Department of Justice, A Strategy for the Renewal of Youth Justice (Ottawa, ON: Department of Justice, 1998)	

These principles reflect a divergence from the JDA – the move from a needs-based to an offence-based Act. One principle carried over from the JDA was that young offenders should be dealt with differently from adults. The principal concerns with the YOA can be divided into three categories. First, insufficient attention is allotted to the prevention of youth from entering a life of crime. Second, ways of dealing with the most violent offences are inadequate. Third, the system relies too heavily on custody as a response to youth crime. Acknowledgement of these deficiencies in the Act, specifically those regarding violent offences and custody, is evident as a result of its legislative amendments (see Table 1).⁵ The YCJA was devised to address these limitations of the YOA.⁶

The Youth Criminal Justice Act

The YCJA has three aims: (1) to address the identified limitations of the YOA; (2) to reform the youth justice system and legislation; and (3) to address the root causes of youth crime (i.e., poverty, child abuse).⁷ To implement these aims, it focuses on three complementary areas. These areas, in fact, correspond to the three primary limitations of the YOA outlined above.

1. Prevention: The need to address the root causes of crime, support youth, encourage community efforts to reduce crime, promote crime prevention and introduce effective alternatives to the formal youth justice system.
2. Meaningful consequences for youth crime: The need for specific measures for violent and repeat offenders, to help young offenders understand the impact of their actions and allow them to make good on the harm done to the victim and community.
3. Intensified rehabilitation, especially for violent young offenders: The need for measures for violent and repeat young offenders that are more firm, more controlling, and more effective in providing treatment and support for rehabilitation and reintegration.⁸

These three complementary areas are “put into action” in 14 key strategies, also divided into three categories: (1) public participation and information, (2) prevention, and (3) legislative and supporting programs.⁹ In the next section of this article, a potential concern is highlighted in each area of action as a note of caution toward the implementation of the YCJA.

Public participation and information

The YCJA proposes increased public participation in community-based alternatives to the court system, such as youth justice committees. It also suggests increased government dissemination of accurate information to the public about youth crime,¹⁰ to address the perception that violent youth crime has

risen considerably in recent years (see Sinclair and Dell in this issue).

Consequently, the YCJA allots high priority to violent crime — it is one of the three primary areas of action. The YCJA also, however, acknowledges that violent crime is a small proportion of all crime committed by youth. Thus, the YCJA is addressing an issue that many in society view as a rapidly escalating problem, which, in reality, is not supported by some research.¹¹

Prevention — “Gender limitation”

The YCJA proposes government initiatives to deal with the root causes of crime. Concerns have been expressed that the proposed prevention strategies of the YCJA seem to ignore the unique crime prevention needs of female youth in comparison to male youth. Criminological research often overlooks females. When females have been considered, it has commonly been as an “extension” of the male offender and not as “an entity in their own right.” Neglecting to acknowledge gender as a specific influencing factor in youth involvement in crime has resulted in an absence of gender-focused preventive community programming and services.¹² It is inadequate to apply to females preventive programs that have not been developed to meet their needs. This problem is especially important when we consider that the rate of female youths charged and convicted of violent crime has increased slightly over the past six years, but not for male youths.¹³ Females will continue to be subjected to inappropriate crime prevention initiatives if they are not treated as entities in their own right.

Legislative and supporting program components

The YCJA proposes several legislative and supporting programs congruent with its aims. Two of these components are offender rehabilitation and violent offenders. Offender rehabilitation: Offender rehabilitation is the focus of one of the three areas of the YCJA and is implicit in several of its specific recommendations, such as alternatives to the formal court process, community-based sentences, and treatment of violent and non-violent young offenders. The concept of offender rehabilitation received considerable attention and support in the early 1970s. A severe backlash led by the conservative and liberal justice model perspectives,¹⁴ however, resulted in harsher treatment of offenders. Much was learned from this, and most prominent was that caution must be employed in use of the term offender rehabilitation. The YCJA appears to assume a universal definition. Offender rehabilitation must be specifically defined, since definitions can range from prosocial conformity programs based on positive reinforcement to the “hard” approach currently taken in Ontario, with the young offender boot camp (see Wormith, this issue). If offender rehabilitation is not specifically defined, it becomes too easy to simply claim this component of the YCJA failed.

The violent young offender: The YCJA proposes both rehabilitation and harsher treatment for violent and repeat young offenders. However, some research supports the premise that the most serious or repeat offenders may not require incarceration, but rather, a non-custodial sentence that still protects society, to have the greatest chance of rehabilitation. Proposing harsher treatment of young offenders can have serious implications, both socially and individually, and this must be given great consideration,

particularly as violent youth crime has increased only very minimally in the recent past. The use of harsher treatment on violent offenders may be setting a precedent for the future harsher treatment of non-violent offenders.

Conclusion

In the transition from the 1908 JDA, to the 1984 YOA, to the proposed 1998 YCJA, we witness a transition from a child welfare approach, to an offence-oriented approach, to a combination of the two — the apparent “best of both worlds.” Although the proposed legislation has numerous positive aspects, there are concerns that could serve as a note of caution toward the future implementation of the YCJA.

1. 1125 Colonel By Drive, Ottawa, Ontario K1S 5B6. Please note that this article was written in September 1998, before the proposed Youth Criminal Justice Act was considered in Parliament.

2. The introduction of the Young Offenders Act in 1984 influenced the federal Canadian correctional system by significantly decreasing the number of young offenders sentenced as adults (R. Boe, “In the shadow of the Young Offenders Act: Youths admitted into federal custody since 1978–1979,” *Forum on Corrections Research*, 7, 1 (1995)). This article concentrates on the proposed Youth Criminal Justice Act because it too has the potential to have an effect on the federal correctional system.

3. A. Leschied, “The Young Offenders Act in review: A more than modest proposal for change,” *Forum on Corrections Research*, 7, 1 (1995): 37–40.

4. Department of Justice, *A Strategy for the Renewal of Youth Justice* (Ottawa, ON: Department of Justice, 1998).

5. Department of Justice, *A Strategy for the Renewal of Youth Justice*.

6. Other concerns with the YOA include: (1) lack of public confidence; (2) omittance of the role of parents, family and victims from the criminal justice process; (3) inadequate reintegration, rehabilitation and aftercare services and support in the community; (4) minor recognition of female and Aboriginal youth crime; and (5) lapse in time from when an offence is committed and a sentence is imposed (Department of Justice, *A Strategy for Renewal of Youth Justice*).

7. Department of Justice, *A Strategy for the Renewal of Youth Justice*.

8. Department of Justice, *A Strategy for the Renewal of Youth Justice*.

9. The 14 key elements are: Public Participation and Information: (1) participation in community-based

alternatives, and (2) public information, education and accountability; Prevention: (3) initiatives that deal with the root causes of crime (Crime Prevention Initiative, National Children's Agenda, and Response to the Report of the Royal Commission on Aboriginal Peoples); and Legislative and Supporting Programs: (4) new youth justice legislative framework, (5) statement of principles and objectives, (6) alternatives to the formal court process, (7) violent and repeat young offenders, (8) range of community-based sentences, (9) minimum age, (10) alternatives to the courts, (11) publication of names, (12) role of parents and victims, (13) admission of statements and (14) efficient and effective administration.

10. Department of Justice, *A Strategy for the Renewal of Youth Justice*.

11. K. Hung and S. Lipinski, "Questions and answers on youth and justice," *Forum on Corrections Research*, 7, 1 (1995): 6–9 and R. L. Sinclair and C. A. Dell, "Challenging public opinion: Youth involvement in the Canadian criminal justice system."

12. Canadian Association of Elizabeth Fry Societies, *Submission of the Canadian Association of Elizabeth Fry Societies to the Standing*

13. Committee on Justice and Legal Affairs Regarding the Comprehensive Review of the Young Offenders Act — Phase II (Ottawa, ON: April 1996).

14. C. A. Dell and R. Boe, *Female Young Offenders in Canada: Recent Trends*, Report B-18 (Ottawa, ON: Correctional Service of Canada, 1997); and R. L. Sinclair and R. Boe, *Male Young Offenders in Canada: Recent Trends*, Report B-22 (Ottawa, ON: Correctional Service of Canada, 1998).

15. "During the 1970s, the ideological hegemony of the individualized treatment ideal suffered a swift and devastating collapse. Previously a code word for 'doing good', rehabilitation came to be seen by liberals as the euphemism for coercing offenders and by conservatives as one for letting hardened criminals off easily." (D. A. Andrews, I. Zinger, R. D. Hoge, J. Bonta, P. Gendreau and F. T. Cullen, "Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis," *Criminology*, 28 (1990): 369–404.