

YOUTH CRIME: FEAR AND RESPONSES

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December 1993

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YOUTH CRIME: FEAR AND RESPONSES

INTRODUCTION

Increasingly, Canadians are experiencing anger, fear and frustration with respect to crime in general, and youth crime and the youth justice system in particular. In response to public anxiety and appeals for protection from victimization by criminals, most of the political parties had criminal justice platforms during the 1993 federal election campaign and most proposed reforms to the *Young Offenders Act*.⁽¹⁾

Without attempting to minimize in any way the hurt, damage and distrust caused by criminal behaviour, criminologists have long noted a chasm between the public's perception of crime levels and actual crime rates. There is a commonly held belief that violent crime is rampant, especially among youth,⁽²⁾ yet it constitutes a small proportion of crime overall. In fact, less than 15% of all crimes committed by young people in 1992 were violence-related.⁽³⁾ Moreover, while the rate of violent youth crime has risen, the recorded increase is largely in minor acts of aggression between peers, which, youth justice analysts posit, would not have resulted in intervention by the criminal justice system 10 years ago. The perceived rate of violent crime by young people has fuelled demands to strengthen the state's response through tougher laws and longer sentences. This raises an important question: are harsher criminal sanctions an effective means to deter and reduce crime?

Over the last 30 years, the number of police officers, lawyers, judges, prison guards, prisons and correctional programs has increased, in reaction to crime; however, this expanded criminal justice system has not created and sustained safer communities.⁽⁴⁾ As a result, there is an emerging awareness that traditional crime control measures alone are inadequate and costly responses to crime and the fear it inspires. The importance of addressing the social and economic circumstances that lead to crime through social development programs and measures aimed at reducing criminal opportunities are gaining currency as criminal justice agencies, like all public institutions, are increasingly being required to cope with shrinking budgets without a corresponding reduction in the number of clients or the demand for service.

These are some of the ideas to be discussed throughout this paper. First, the old *Juvenile Delinquents Act* and its replacement, the *Young Offenders Act*, are briefly described. The youth crime situation in Canada, as revealed in official statistics, is then set out and followed by a discussion on fear of crime. Amendments to the YOA in 1984 and

1992 and further reforms to the Act proposed by federal parties during the recent election campaign are then presented. Finally, two differing approaches to the crime problem, crime prevention and crime control, are examined.

THE YOUNG OFFENDERS ACT: HOW IT DIFFERS FROM THE JUVENILE DELINQUENTS ACT

The *Young Offenders Act* (YOA) came into force in 1984. It governs criminal justice matters as they are related to youth between the ages of 12 and 17 years, inclusive. Its philosophy and provisions represent a significant departure from those of the *Juvenile Delinquents Act* (JDA), which, from 1908 to 1984, regulated the administration of juvenile justice in this country.

Under the *Juvenile Delinquents Act*, deviant children and youth were considered to be products of their social environment who were "misguided and misdirected" and in need of "aid, encouragement, help and assistance." Little distinction was made between young people in conflict with the law and those who were deemed to be unmanageable or neglected and abused by their families. The juvenile court judge considered the "best interests" of the child, rather than guilt or innocence, when passing sentence on a juvenile. In effect, the court took on the role of a benevolent parent; its interventions were intended not to punish but to reform and rehabilitate the delinquent. Section 38 of the JDA expressed the child-welfare orientation of the Act.

This Act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.

Criminal justice analysts and practitioners criticized the JDA for vesting far-reaching and arbitrary power in youth justice authorities. This led to increasing calls during the 1960s for the reform of youth crime policy in this country. According to Bala and Kirvan, the paternalistic orientation of the *Juvenile Delinquents Act* "created a highly discretionary system which gave enormous power to police, judges and probation officers, to do whatever they considered in a child's 'best interests'." (5) Juveniles were denied basic procedural rights and safeguards accorded to adults, such as the right of access to a lawyer and the right of appeal. Youths sentenced to a reformatory were often subject to indeterminate sentences; that is, correctional authorities had the power to keep a juvenile delinquent in custody until the youth was deemed rehabilitated. Moreover, judges who presided over juvenile court proceedings often lacked legal training. A further shortcoming was that there were few

national standards governing the treatment of juveniles. Disparities existed between provinces with regard to the minimum and maximum age of juvenile jurisdiction and in the use of diversion and community-based sentencing programs.(6) The inadequacy of the *Juvenile Delinquents Act* was also evident in its failure to deter youth crime and to rehabilitate juvenile delinquents.(7)

The *Young Offenders Act* (YOA), which replaced the JDA, is current federal law governing matters related to youth crime and justice in Canada. Proclaimed in 1984, it created a new legal framework to guide society's response to young people who violate the criminal law. Although the YOA contains elements of the JDA, many of its principles and provisions are based on a legalistic approach emphasizing due process and the accountability of young offenders for their behaviour. The policy direction of the YOA is set out in section 3 of the Act, which includes the following principles: young people must be held responsible for their criminal behaviour, though they are not always as accountable as adults; the Canadian public has a responsibility to prevent crime and the right to be protected from acts that threaten its safety and security; young persons accused of a criminal offence have the right to due process of the law and have special guarantees of these rights; and because of their age and level of maturity, young persons in conflict with the law have special needs and require assistance that is not available in the adult system.

In effect, the Act is an attempt to balance two needs: the need to protect the public from adolescents who breach the criminal law by holding them responsible for their actions and the need to safeguard the rights of young persons in conflict with the law and to assist them to develop into productive, law-abiding adults.(8)

The *Young Offenders Act* established a reformed court and corrections system specifically designated for adolescents between 12 and 17 years, inclusive. In Canada, children under the age of 12 are not considered to be mature enough to understand completely the implications of their behaviour or to engage fully in legal proceedings against them. Youth under the age of criminal responsibility who commit a criminal act come under provincial child welfare and mental health legislation. For ages 12 to 17 inclusive, the Act recognizes criminal responsibility; however, this is less than adult legal responsibility. When a young person reaches his or her 18th birthday, adult rights and responsibilities, including legal competence, are applicable.

Most legal proceedings under the Act are conducted in youth courts that are separate from adult criminal courts. Although youth court trials are open to the public, the media are prohibited by the Act from reporting the identity of the accused or of witnesses who appear. To protect the privacy of young offenders further, access to their criminal records is restricted. Young people have the right to be represented by a lawyer in youth court; however, the Act does not permit a preliminary inquiry or a

trial by jury.

A provision of the YOA allows accused young persons to be dealt with outside the court process through the use of alternative measures. An attempt to avoid the formalities associated with prosecution in youth court, alternative measures are generally used in cases involving first-time offenders who have confessed committing a minor infraction. Alternatives to the formal youth justice process may include participation in community service, restitution or an educational program.

The Act sets out the range of sentences or "dispositions" that may be imposed on a convicted young offender. These include absolute discharges, fines, restitution, community service, treatment by consent, probation and custody combined with community supervision of up to five years.

Accused young persons who are alleged to have committed a serious indictable offence and have reached 14 years of age may be transferred to adult court. A conviction in adult court subjects a young offender to the sanctions that apply to adults. Transfer applications are typically made in cases where the Crown deems that the protection of the public cannot be achieved by the maximum custodial sentence available under the YOA.⁽⁹⁾

YOUTH AND CRIME IN CANADA

A recently released Department of Justice paper on violent youth crime states: "Canadians are more concerned about youth crime now than we have been at times in the past."⁽¹⁰⁾ Indeed, media reports and public opinion surveys suggest many Canadians perceive violent crime to be pervasive and their victimization by an adolescent to be imminent. Widely held perceptions about crime include the following: violent crime is rampant, the laws are too weak, the courts are too lenient and correctional facilities fail to rehabilitate. As a result, legislators and criminal justice authorities are experiencing mounting pressure from the public to introduce criminal justice reforms to enhance public safety.

A. Violent Crime

According to national crime statistics, a minority of young offenders are involved in crimes involving violence. In 1991, 13% of the federal statute charges laid against young people were violence-related.⁽¹¹⁾ Statistics also show an increase in violence-related charges against youth in recent years; from 1986 to 1991, the number doubled. An examination of the type of charges against young offenders reveals, however, that, over the five-year period, the overall increase in violent crimes "was largely due to minor assaults."⁽¹²⁾ In point of fact, almost half of the 1991 violent offence charges against youth were for "level one" assaults; that is, a weapon was not used to commit the offence and

the victim did not suffer serious physical harm. During 1991, approximately one quarter of violent charges against youth involved the more serious offences of aggravated assault (25%) and murder, manslaughter and attempted murder (less than 1%). Between 1986 and 1991, the murder rate (which is the most accurate indicator of serious crime), remained constant for youths.

B. Property Crime

Of the youths charged with a federal statute offence in 1991, 70% were charged with a property offence.⁽¹³⁾ The number of property-related charges involving young people increased by 17% from 1986. The majority of youths involved in a property offence were charged with either theft under \$1,000 (42%) or break and enter (27%).

C. Youth Court Cases

The vast majority of youths charged with violent and property crimes are male. Crime statistics indicate, however, that female involvement in minor assault crimes is increasing.⁽¹⁴⁾

Nineteen percent of the cases heard in youth courts in 1992-93 involved violent offences and 54% involved property offences. The number of property cases decreased by 7% from 1991-92, while the number of violent offence cases increased by 9%. Two-thirds of this increase was due to an increase in minor assault cases.⁽¹⁵⁾

D. Dispositions

Young offenders were sentenced to probation in the majority of violence- and property-related cases that resulted in a conviction in youth court in 1991. Of convicted violent offence cases, 55% received a disposition of probation. In 26% of the cases, violent young offenders were ordered into either secure custody (13%) or open custody (13%). The average sentence length was six months in secure custody and four months in open custody. Not surprisingly, cases with more serious offences resulted in more serious dispositions.⁽¹⁶⁾ In over half (53%) of the property cases with findings of guilt, the youth court ordered probation. Approximately one-quarter of property cases received a custody disposition and the average length of custody was four months.⁽¹⁷⁾ An analysis of youth court cases in the fiscal year 1990-91 found that 54% of cases involved first-time offenders.⁽¹⁸⁾ Of the remaining cases, 18% had one or two prior convictions, 9% had three or four such convictions and 19% had five or more. The majority (67%) of recidivists in youth court were charged with property offences. Of the young offenders charged with a violent crime, 16% were repeat offenders. Having a youth court record increased the likelihood that a young offender would receive a custodial disposition.

FEAR OF CRIME

In recent years, Canadians have expressed more concern and fear about personal safety and security in their homes and in their communities. In a national poll published in January 1993, 50% of Canadians reported that they felt their personal security was more threatened by crime now than five years earlier. Almost two-thirds (64%) of the respondents reported that the behaviour of young people in their community had become worse in the past five years and 66% indicated that over the same period the violent crime situation in their community had worsened.⁽¹⁹⁾ Despite such high reported levels of fear of violence, crime in this country is mainly a problem of property loss and damage. Preliminary national crime data reveal that over half of all *Criminal Code* offences reported in 1992 involved crimes against property and violent offences accounted for 10.8%. The property crime rate actually decreased and the rate of violent crime, while increasing, rose at a slower pace. Over the past 10 years, the rate of reported violent crime has increased an average of 5% per year; in 1992, the rate increased 2% over 1991,⁽²⁰⁾ and the increase is confined mainly to the lowest levels of sexual assault and assault. Rates of serious crimes such as murder, manslaughter and aggravated assault have remained steady or declined over the past decade.

A number of factors fuel the public's fear of crime. It is in part based on overestimates of the level of violent crime in Canadian society. In a 1990 public opinion survey, three-quarters of Canadians stated that violent offences account for 30% or more of all crimes in this country.⁽²¹⁾ In fact, violence-related offences constitute less than 10% of crimes reported to police. As well, as noted above, almost half of the violent charges against youth in 1991 were for minor assaults that did not involve a weapon or result in bodily harm.

A misconception held by one in three Canadians is that the rate of violence in Canada is the same as or worse than that in the United States.⁽²²⁾ In fact, violent crime in the U.S. far exceeds Canadian levels. By way of example, in 1991 there were 753 homicide cases in Canada, compared with 24,000 cases in the U.S. The inordinate level of interpersonal violence south of the Canadian border prompted the U.S. Senate Judiciary Committee, in 1991, to describe the United States as "the most violent and self-destructive nation on earth."⁽²³⁾

The media are often accused of fuelling a climate of fear. It is said that their tendency to focus on sensational and spectacular criminal events and to dramatize egregious acts of violence in television programming distorts the picture of typical criminality, creates the impression that crime is rampant, and heightens public fears.⁽²⁴⁾

Fear is also fostered and reinforced by rising crime statistics. An increasing crime rate, however, may reflect changing reporting patterns rather than increases in criminal activity. According to analysts who

interpret crime data, official crime statistics are influenced by the willingness of both citizens to report offences and of the police to lay charges. For example, over the last decade there has been a significant shift away from public acceptance and tolerance of certain violent crimes involving people who know each other; namely, sexual assault and physical assaults that occur in the home. These crimes now result in charges more frequently than in the past, both because victims are more willing to report violent acts and because the justice system is more willing to process the reports. This change has led to an increase in overall violent crime statistics.

The increase in these statistics is also due, in part, to mounting intolerance of violence in any form. According to youth justice workers, minor acts of aggression are being reported to police with increasing frequency, as indicated by the tendency for school authorities to report youths involved in "school yard fights" to the authorities.⁽²⁵⁾ A decade ago, pushing, slaps and punches between adolescents rarely resulted in criminal justice intervention and were unlikely to become part of crime statistics; currently, minor infractions constitute almost half of the violence offence charges against young people.⁽²⁶⁾

Some analysts suggest that the level of fear currently experienced by Canadians is in part related to economic uncertainty. The high unemployment rate has contributed to a climate of insecurity and vulnerability and spawned social and economic problems that promote a sense of social disintegration.

AMENDMENTS TO THE YOA

Since its passage in 1984, certain provisions of the YOA have been criticized by law enforcers, victims' groups and professionals working in the youth justice system for failing to deter serious youth crimes. In response, the Act was amended to allow for the public identification of young offenders, to raise the maximum sentence for murder and to clarify the intention of the Act with respect to transfers to adult court.

A. Public Identification of Young Offenders

The Act protects the privacy of young persons by prohibiting the media from publicly revealing the identity of accused and convicted young people involved in criminal proceedings. Underlying this provision is the belief that to apply deviant labels to youths for offences committed at an immature age may magnify such activity. Law enforcers were critical of the initial drafting of this provision because it prevented them from alerting the public about youths at large in the community who were considered dangerous. In 1986, amendments to the Act were made to permit the public disclosure of the identity of an accused or convicted young offender if the youth poses a threat to the public and if such disclosure is necessary to assist in an arrest.

B. Maximum Sentence for Murder

In 1992, the Act was amended in response to criticisms that the sentences handed down to young offenders who had committed murder were too low either to deter others or to rehabilitate the offender. The maximum sentence in youth court for murder was lengthened to five years - three years to be served in custody and the last two under supervision in the community. If the youth is considered a threat to public safety, however, he or she may be held in custody longer than three years.

C. Transfer to Adult Court

The Act allows accused young persons 14 years of age and over who are alleged to have committed a serious indictable offence to be transferred to adult court. A conviction in adult court subjects a young offender to the sanctions that apply to adults. In 1992, the intention of the Act was clarified; it now states that if the protection of the public and the rehabilitation of the offender cannot be achieved by sentences available in the youth court, the youth must be transferred to adult court. However, different remedies are still available for young people; young people sentenced to life imprisonment for murder in adult court are not eligible for parole for between five and ten years. As well, the adult court judge has the option of sentencing a convicted youth to a young offender facility.

PROPOSALS FOR FURTHER REFORMS TO THE YOA

In a speech in Edmonton on 30 August 1993, the then Prime Minister, Kim Campbell, announced that the Conservatives intended to amend the YOA after the federal election.⁽²⁷⁾ Proposed reforms to the Act included making youth-court maximum sentences for serious crimes causing personal injury the same as those available for murder and tightening up the supervision of young offenders on conditional release in the community. Ms. Campbell also identified other policy issues related to the YOA that are of concern to Canadians - the minimum and maximum age of youth-court jurisdiction and the publication of the names of young offenders.

In September 1993, the Department of Justice released a public consultation paper on violent and repeat young offenders. The provinces, non-governmental organizations, community groups and private citizens from across the country were invited to make their views known to the department on how to respond more effectively to youth crime in Canada. The paper advances particular proposals reflecting public criticism. They include: lowering the minimum age of criminal responsibility under the YOA to 10 from age 12; lowering the maximum age of criminal responsibility to 15 from age 18; automatically transferring juveniles accused of serious offences to adult court; publishing the names of youths convicted of crimes; setting out

criteria in the Act to encourage youth court judges to sentence only dangerous and violent offenders, or serious repeat offenders, to custody terms; and making the treatment provisions in the Act more flexible so as to improve access to treatment services by young offenders. The current Minister of Justice, Mr. Alan Rock, has extended the public consultation until January 1994.

The Liberal Party program(28) includes proposals to increase youth court maximum sentences for first- and second-degree murder; relax the requirement that police records on young offenders automatically be destroyed after fixed time periods; allow disclosure of the identity of certain convicted violent young offenders; expand access to treatment and rehabilitation programs; and create a category of "dangerous youth offender" to be applied to persistent and dangerous young offenders.

The Bloc Québécois has indicated that it will present its position on the *Young Offenders Act* once it has had the opportunity to study the findings of the Department of Justice national consultation.

The Reform Party(29) would lower the minimum age of youth criminal responsibility to 10 years and the maximum age to 15 years; allow the identity of young offenders 14 and over, and in certain cases of 10 to 13-year-olds, to be made public; retain youth records; hold parents legally responsible for the illegal acts of their children; and place emphasis on education, community service, skills training and discipline in custodial settings.

The New Democratic Party(30) proposals call for a review of the overall effectiveness of the YOA and the youth justice system in this country. Specific issues to be scrutinized would include sentencing practices, to ensure that repeat, violent offenders receive sentences proportionate to their crimes, and the provisions in the Act that impose barriers on professional intervention aimed at treating and rehabilitating young offenders.

RESPONSES TO CRIME

Most agree that the incidence of youth crime in Canada, notably offences involving interpersonal aggression, and its associated costs, are cause for concern. Crime harms individuals and the community. It produces fear, costs almost \$8 billion annually to control, and threatens the quality of life in our neighbourhoods, communities and cities.(31) Although there is implicit agreement on the impact of crime, it has proved difficult to arrive at a consensus on its prevention, largely because of differing explanations of the problem.

Laying criminal charges after a criminal act has been committed offers, at best, short-term relief, according to advocates of crime prevention through social intervention. Crime-control measures punish, but fail to address and defuse, the factors that are at the root of interpersonal and

property crimes. In other words, solutions to crime will not be found in punishment or the legal process alone. Clearly, there are violent youths and repeat offenders who, by virtue of the threat they present to public safety and security, must be removed from civil society and, through treatment and education programs in custodial facilities, must be afforded the opportunity to become productive members of society. These measures constitute only one component of a crime prevention strategy, however. Social development proponents recommend measures that target at-risk youth and identify and attempt to alleviate economic, social and psychological problems and thus to prevent youth crime before it occurs.

It is widely accepted among criminologists that there is no single root cause of crime; it is the outcome of the interaction of a host of associated background factors that include: unemployment, physical and sexual abuse and neglect, illiteracy, low self-esteem, substance abuse, glorification of violence and pornography in films, videos and television, poverty, school failure, dysfunctional families and inequality.(32) Damaged children, it has been demonstrated, often develop into dangerous adults. Indeed, an examination of the backgrounds of young violent offenders strongly suggests that being a direct or indirect victim of physical and sexual abuse breeds violence. A 1992 Manitoba study examined 35 sex offenders, all aged 14, who, by the time they entered treatment, had collectively assaulted over 70 children in 750 incidents. On average, the boys were aged twelve and a half when they began committing sexual assaults. Over half of their victims were seven years old or younger. Over 90% of the boys had been sexually abused themselves and came from families in which physical and sexual abuse had occurred for generations.(33) Further, a London, Ontario, study conducted in 1987 found that more than 50% of young offenders charged with violent crimes had witnessed their fathers assaulting their mothers. Another study found the rate of wife-beating was 1,000 times higher for men who had witnessed violence in their childhood than for men who had not.(34) Simon Fraser University professor Steve Hart and University of British Columbia professor Don Dutton concluded from their research on violence that:

Childhood abuse breeds abusers ... abused children are three times more likely than the rest of the population to become violent adults. Physically abused children are five times as likely to be violent as adults towards a family member. Sexually abused children are eight times as likely to be sexually violent as adults towards a family member. And severity of childhood abuse does not predict adult problems ... It's not how badly you were beaten. It's whether you were beaten.(35)

There is evidence that early, positive intervention in the lives of youth experiencing social, psychological and emotional deficits and disadvantages can deter them from embarking on a course of crime

leading to persistent, serious offending.(36) Evaluations of programs that focus on enriched child care, early education, improved parenting skills and reducing violence in the schools have shown that it is prudent, from both an economic and social perspective, to assist children rather than punish offenders.

On the other hand, advocates of crime prevention through tougher laws are of the view that harsh sentences deter crime.(37) Underlying this assumption is the perception that youths breach the law because they have determined that the benefits (i.e., material goods, financial gain, thrills) outweigh the costs (i.e., sanctions) of doing so. Crime control proponents claim that the *Young Offenders Act's* weakness as a deterrent is a major source of young offending and re-offending. They believe significant numbers of young people would be deterred from engaging in crime if illicit behaviour yielded tougher sanctions.

An example of a crime control response is the recent Ontario Ministry of Education policy that directs principals in public schools across the province to report immediately to the police all violent incidents that occur on school property.(38) Both proponents and critics of the directive agree that young people must be taught that interpersonal violence will not be tolerated. They also both believe that a safe learning environment in which students, teachers and school staff are protected from personal harm is crucially important to the integrity of the education system. The reporting policy has been subject to criticism, however, because of its failure to define violence and to distinguish trivial acts from serious violent incidents.(39) Adolescent teens, especially males, technically breach the *Criminal Code* on a regular basis by pushing, shoving and hitting each other, legal practitioners point out. In many cases, the misbehaviour of a school bully is a disciplinary matter that may be dealt with best by informal measures taken by the school administration and parents, or by more formal interventions such as mediation or counselling. A requirement to report all manifestations of aggression to police will, by definition, criminalize these behaviours. In turn, the numbers of violent offence charges laid against young people, statistics on youth violence, the number of cases coming into youth courts, and the costs to the youth justice system will all rise. As well, public anxiety and fear about youth violence will be reinforced, some predict.

In response to the provincial government directive, a number of school boards across Ontario have developed anti-violence policies that include expelling for life any student who uses weapons or commits an assault on school property. According to two specialists on youth violence, a zero-tolerance policy to prevent violence may magnify, rather than deter, future violent behaviour. In situations where youth violence is a reaction to abuse and neglect in the family home or other social problems, support services, rather than legal interventions, or in addition to them, may be more appropriate. As Tullio Caputo and Richard Weiler argue:

Simply kicking kids out of school may result in their becoming increasingly marginalized. Moreover, the underlying factors resulting in violent behaviour are not directly addressed.(40)

A Toronto researcher who recently completed a report on school violence proposes peer counselling, conflict resolution, mediation and violence prevention programs to combat violence in the schools. Jyl MacDougall questions the long-term benefits of life-time expulsions from school.

If you expel a student for life, then what? You end up with roving bands of 14-year-olds out on the street who will never have a chance to be educated.(41)

Most agree that aggressive behaviour as a means of settling disputes on school property or in the streets is a breach of our standards of accepted conduct. As well, there is an emerging awareness among criminal justice analysts and others that youth violence is an expression of something more complex than simply a mocking indifference to a perceived weak law and that positive measures are required to alter young people's reactions to conflict.

There is anecdotal evidence to buttress the position that many youths commit crimes having reasoned that the gains from their illegal activity will be greater than the penalty exacted against them if caught. Criminologists and youth justice practitioners who work with young offenders, however, have found that youth often commit crimes for reasons that have nothing to do with the law. In their view, the majority of young offenders commit isolated and unsophisticated minor property offences that are more an indication of their immaturity, and lack of appreciation for the consequences of their behaviour, than of cunning.

This latter view is embodied in the principles underlying the YOA. While making youth accountable for their crimes, the Act also acknowledges that youth have special needs related to their level of development. As a result, with some exceptions, youth crime is not judged by the same standards as adult crime. The Act is premised, in part, on the belief that most adolescents will outgrow anti-social attitudes and behaviour and develop positive values and relationships as they grow older and more mature. This position, and the fact that harsh penalties may trap young people in a criminal lifestyle, inform the sentencing framework set out in the YOA.

Moreover, there is mounting evidence that dispositions under the YOA are not lenient, especially for those youths who commit crimes involving violence. Contrary to popular thinking, youth court judges do not simply "slap young offenders on the wrist." Law enforcement officers, prosecutors and other youth justice system practitioners have found, in a number of jurisdictions, that judges make liberal use of the

custodial disposition available under the YOA. A Crown counsel for Manitoba Justice youth prosecutions noted at a recent conference on youth violence that the youth correctional facilities in her province are "overflowing." "It's not true that it (the justice system) is a revolving door, that kids just get a slap on the wrist ... The courts are responding to the rise in violent crime. They are imposing custody on these kids,"(42) she stated.

In response to the recommendations made by panellists at the conference, which included lowering the maximum age under the YOA from 18 to 16 and imposing more serious sentences on repeat offenders, a Winnipeg City police sergeant cautioned that toughening up the *Young Offenders Act* might exacerbate the existing problem of overcrowding in youth correctional facilities. He added, " we have to find something in the community that works ... It's a really sad way to deal with our young people to waste their lives in an institution."(43)

In two Ontario studies of court dispositions in the period prior to and following the passage of the YOA, Leschied and Jaffe found that the number of committals to open and closed custody under the *Young Offenders Act* was higher than the number of committals to training schools under the *Juvenile Delinquents Act*.(44) On the basis of their findings, they concluded: "in the midst of competing philosophies in the *Young Offenders Act*, deterrence through punishment as a means of crime control for young offenders has now become a popular concept."(45) Leschied and Jaffe perceive the punishment-orientation of the YOA to be an outcome of society's frustration with crimes perpetrated by young people. Aggressive arrest policies and sentences that ensure more youths are institutionalized for longer periods of time will bring more young people into the criminal justice system. However, they do not anticipate a diminution in public frustration in light of the evidence showing that custodial penalties do not actually reduce crime. Research on crime rates in states in the United States which use a "punishment as deterrence model" to control crime concluded that there were "no discernable changes in crime rates in those states where the justice/crime control model has become popularized."(46) In many respects, the U.S. experience with crime and its control provides a flagrant example of the limited effects that harsh penalties may have on crime. In its report on crime prevention, the House of Commons Standing Committee on Justice and the Solicitor General noted that the U.S. "imprisons its population at a higher rate than any other country for which data on incarceration rates are available," its "annual expenditures on police, courts and corrections exceed \$70 billion," yet in 1990 it "led the world with its murder, rape and robbery rates."(47)

CONCLUSION

A priority social and legal policy issue in Canada is personal and community safety and security. Generally speaking, people fear random acts of violence perpetrated by strangers. It may be of some comfort that

increases in the violent crime rate in Canada have been largely confined to acts of aggression on the low end of the violence scale, between people who know each other, and that, compared to the U.S., Canada is a safe country. Although crime statistics tend not to support the notion that violent crime among youth is rampant in Canada, interpersonal offences are, nonetheless, cause for concern.

The challenge for legislators confronted with mounting pressure to reform the YOA is how to balance the protection of the public from young offenders with the need to foster the positive growth and development of youth in conflict with law. There are two competing perspectives on how best to respond to crime: the offender-based approach, with its focus on arrests, convictions, punishment and rehabilitation of criminals; and the social development approach, with its focus on solving the underlying problems that lead to crime and criminality.

Increasing our ability to punish, through introducing tougher legal sanctions, may ensure that more young offenders are put in detention facilities and kept there longer. The benefit of this measure to society is short-term protection from the offender; the potential costs include increased demands for scarce resources in order to detain and rehabilitate young offenders, and increased criminalization, without a significant reduction in the crime level. Augmenting traditional crime control measures with coordinated and comprehensive crime prevention strategies that both address the underlying causes of crime and reduce criminal opportunities may lower crime rates, enhance personal and community safety and subdue fear.

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(2) P.T. Brode, *Streets of Fear: The Failure of the Criminal Justice System*, The Mackenzie Institute, Toronto, June 1993.

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