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Coalition on Community Safety, Health and Well-being
Coalition pour la sécurité, la santé et le bien-être des communautés



Report on National Invitational Symposium on Youth Justice Renewal

BACKGROUND

The Canadian Association of Chiefs of Police (CACP), working in partnership with the Child Welfare League of Canada (CWLC) and on behalf of the Coalition on Community Safety, Health and Well-being, entered into a contribution agreement with Justice Canada on 19 March 2008 to convene the National Invitational Symposium on Youth Justice Renewal. The CACP committed to holding a facilitated day-and-a-half session with thirty (30) stakeholders from across the country.

The CACP agreed to “identify what is working and what is not working with the *Youth Criminal Justice Act*, and to identify issues that call for improvement in the youth criminal justice system and the *Youth Criminal Justice Act* in particular”. This consultation would support the issue identification and evidence gathering phase of the comprehensive review of the *Youth Criminal Justice Act*.

The Symposium, funded from Canada’s Youth Justice Fund (Cities and Community Partnerships Component), was held on 27-28 March 2008.

PARTICIPANTS

Thirty-one (31) people attended, representing police (9), child welfare (9), education (1), youth services (1), community development (1), health and mental health (3), corrections (2), recreation (1), Aboriginal youth services (1), youth engagement (1), victim advocacy (1) and the Coalition on Community Safety, Health and Well-being (1). Participants were invited because of their front-line experience at the community level with at-risk youth and young people caught up in the criminal justice system. The collective experience among invitees totaled more than 730 years. (See TAB 1 for list of attendees.)

Two political staff from the Office of the Minister of Justice and Attorney General of Canada attended as observers.

PROCESS

In advance of the Symposium, the following background materials (included at TAB 2) were provided to assist invitees in their preparations:

- “The *Youth Criminal Justice Act*: Summary and Background”, Department of Justice Canada (<http://justice.gc.ca/en/ps/yj/ycja/explan.html>);
- media release from the Minister of Justice and Attorney General of Canada regarding key amendments to the YCJA proposed in Bill C-25;
- excerpts from *Spiralling out of Control: Lessons Learned from a Boy in Trouble, Report of the Nunn Commission of Inquiry (2006)*;
- internal correspondence from the Halifax Regional Police Service regarding the YCJA and the Nunn Commission; and
- correspondence from Child Welfare League of Canada to the Minister of Justice and Attorney General of Canada regarding proposed amendments to the YCJA.

The event followed the agenda found at TAB 3. Participants were assigned to five discussion groups organized to ensure a mix of professions and geographic areas. Sandra Wright welcomed invitees and situated the Symposium in the context of the ongoing work of the Coalition on Community Safety, Health and Well-being.

Dorothy Ahlgren-Franklin of CACP and Peter Dudding of CWLC each spoke on the purpose of the National Invitational Symposium on Youth Justice Renewal: to consult with people experienced with children and youth in a variety of settings, and in particular with youth at risk, children and youth who have been victimized, youth in conflict with the law and youth in the process of reintegration into mainstream society, in order to identify issues of concern. It was stressed that consensus was neither the objective nor the anticipated outcome; rather, the symposium would be a success if a wide range of views were presented and discussed by all participants.

Dennis Gruending, the facilitator, explained the process for the Symposium. One half-day was devoted to each of three themes:

- What is working well with the *Youth Criminal Justice Act*.
- What is not working well with the *Youth Criminal Justice Act* and the youth criminal justice system in general.
- What issues call for improvement in the *Youth Criminal Justice Act* and the youth criminal justice system in general.

Each discussion group tackled each question for approximately ninety minutes, recording on work sheets the interventions made by its individual members. A *rapporteur* from each group then reported in plenary where additional discussion took place. Participants noted gaps in information about certain issues/topics and identified some research needs. This report is a compilation of what Symposium participants communicated through their work sheets, plenary reports, ensuing discussion and evaluation comments. (See evaluation report at TAB 4.)

IDENTIFICATION OF ISSUES and GATHERING OF EVIDENCE

Discussion Group 1:

What is working well with the *Youth Criminal Justice Act*.

Preamble

The rights-based foundation of the legislation and its attention to the interests of victims were endorsed by participants as sound and consistent with Canada's position internationally. Youth are not pigeon-holed as a "justice concern" or a "child welfare concern".

The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.

UN Convention on the Rights of the Child

Recognizing that harsher consequences are proven not to be a deterrent for most youth, the legislation moves the focus away from punishment and towards building positive relationships between youth and their families and communities. In doing so, it encourages Canadians to think deeply about social

issues and to become more aware of the social determinants of crime and victimization, the risk factors or underlying causes of delinquency and the links between causes and circumstances.

The media, while often sensationalizing youth crime, have provided some positive coverage of the impact of the legislation (e.g., the effectiveness of restorative justice and diversion programs).

Principles and approach

The legislation confirms a distinct criminal justice system for youth and recognizes the difference in age and maturity between young people and adults. There was immediate consensus that the *Act's* definition of a young person is appropriate, as is the emphasis on prevention and intervention, the first principle stated in the statute. This sets the stage for interventions before age 12, during the "seven years of warning" before a child may become a serious, violent offender.

It is appropriate that the *Act* does not include the principles of deterrence and denunciation, since these are proven not to work.

Participants agreed that the spirit and broad principles of the legislation are correct, although not complete; the exception, public safety, was discussed in Discussion Group 2.

The *Act* emphasizes looking at what can be remedied, keeping youth accountable, encouraging them to take responsibility for their actions, and their rehabilitation. Attention is paid to measures that are meaningful for the individual young person and take into account what is going on in their

As a Trustee, I did not have the occasion to carefully examine these issues. This has been an "enlightening" experience for me that I will carry back to my Board, senior administration and teachers.

David Dargie, Upper Canada District School Board

lives. The statute encourages more openness about mental health and substance abuse issues among young people. The specific mention of victims means that they are more likely to be recognized, engaged and heard.

There is more sensitivity to cultural diversity, with programming adapted accordingly, especially for Aboriginal youth both in and outside of custody. Some special schools have been developed to meet the needs of youth which are not being met in the mainstream system (e.g., youth affected by FASD, schools for Black/Aboriginal youth, alternative schools for defiant youth).

The legislation recognizes the importance of the extended family and emphasizes families' involvement with their youth; it also looks at children in the context of caregivers, those "layers of people who are involved in solutions". As a result, the community is now at the table, with greater involvement, improved collaboration and an enhanced sense of ownership in the youth criminal justice system, especially in smaller and rural communities.

The legislation approaches youth crime systematically by broadening discussion beyond the statute and reaching into the protocols and networks of agencies that support it. More work is being done by agencies in partnerships across the "system", with more integrated units and shared strategies to deal with such specific youth issues as child abuse and

gangs. This can translate into greater accountability in the systems designed to address youth issues.

“Front end” of the system

[I have a] better understanding of my partners' issues with the application of the *Act*. Fresh perspective and consensus regarding the need to adequately fund multidisciplinary training, prevention and promotion.

Kathy Tsetso
Dehcho Health and Social Services Authority,
Fort Simpson, NT

The legislation sets the stage for provinces to focus on prevention and other social policies that intersect with the youth criminal justice system (e.g., education), thereby in theory allowing a realignment of resources. It includes the community contribution to the healthy development of young people, along with the child welfare and justice sectors that step in when things are not going well. This recognition of the multi-disciplinary approach has highlighted the gaps in community support services.

Alternative and diversionary measures are positive elements of the *Act*. In fact, the legislation validates the long-time experience in several jurisdictions with extrajudicial measures/sanctions, restorative justice and victim-offender mediation (e.g., Quebec, Nova Scotia, NT). The legislation enjoys most success with easy-to-reach young people, not chronic offenders.

Procedures

The legislation provides a workable framework within which there are many opportunities for intervention with young people and better outcomes through wrap-around services and collaborative approaches.

There is more statistical data about youth crime and more sharing of information about the youth justice legislation, both within and across provinces. The ability of police to share information about young persons with schools, child welfare agencies and other sectors contributes to breaking down silos. At the same time, the protection of identity provisions in the legislation trump the desire for sensational publicity, reducing the likelihood of stigmatization.

Despite discrepancies from jurisdiction to jurisdiction, action taken in response to offending can be more timely when compared to processes under previous legislation. The quality of front-end police interventions has improved, with greater use of discretion. Police are seen in a more positive light, as more approachable and as part of the solution. Crown offices are more innovative, using pre-trial conferencing and diversion programs and building expertise as specialists in youth and mental health issues. Judges in many jurisdictions have overwhelmingly embraced the *Act* and have been innovative in court processes and sentencing.

Sentences

The legislation has generally resulted in reduced numbers of youth in custody; however, there is still a disproportionate number of Aboriginal youth in custody. Up to 60% of young people, those involved in less serious crimes, are diverted from the court system, thereby freeing the courts to deal with more serious crimes.

New sentencing options, such as community supervision, facilitate the transition back into mainstream society. Additional federal and provincial funding has allowed expansion of services to support non-custodial alternatives.

Corrections

Symposium participants spoke positively on the results of the legislation in reducing the numbers of young people in custody. Generally, incarceration occurs at a higher age (i.e., over age 17). The legislation requires a finding of guilt before the young person is transferred to the adult sentencing regime.

Lower custody rates have allowed the system to analyse common features of the custodial population and develop more targeted interventions for them (e.g., FASD youth who comprise 25% of youth in custody). Intensive rehabilitative custody and supervision orders are being identified for those young persons most needing them. Re-integration into the community as part of the sentence has contributed to greater success through improved planning and supervision.

[The Symposium] has allowed me and my organization an opportunity to see the *YCJA* from a legislative perspective, not just a social service response to the Act.

Corinne Rusch-Drutz, YWCA Canada

Discussion Group 2:

What is not working well with the *Youth Criminal Justice Act* and the youth criminal justice system in general.

Youth Criminal Justice Act

Principles and approach

Protection of society does not currently appear as a clearly stated objective in either the preamble to the *YCJA* or its declaration of principle. Rather, it is alluded to by the provisions relating to “crime prevention, the application of meaningful consequences for youth crime and rehabilitation and reintegration of youth” [A *Guide to the Youth Criminal Justice Act*, Lee Tustin and Robert E. Lutes, Q.C., Butterworths Canada Ltd., 2002]. The main objective of Canada’s youth justice legislation is a reduction in the numbers of incarcerated youth. The statute therefore promotes “equity of outputs” rather than the more desirable “equity of outcomes” for young people.

The name of the legislation gives the perception that youth are criminals already, even before they are charged or convicted.

*Cpl. Jimmy Akavak,
RCMP V Division (Nunavut)*

There is scope to re-examine the basic premise that reserves serious intervention for the most serious crimes. The least intrusive measures may not be in the best interests of the young person, whereas very intrusive interventions may be the ones that will serve the young person best. In addition, the legislation should address the ethics of implementing

programs or approaches that are not proven to be both effective and not harmful to young people. While the concept of “best interest” could include a youth being a danger to others, that interpretation of the legislation is not clearly defined or understood.

The involvement of the family should be the starting point (cf., s. 3(c)(iii)), except when it is not appropriate or in the best interests of the young person.

Awareness

The public, criminal justice system members and social service agencies have differing interpretations of the YCJA and require a better understanding of why it does not focus simply on criminal law, but steps into non-legislative areas. There is a need for cross-sectoral training for service providers on the legislation and its relationship to other components of the system, through common classes and learning events.

[We need to have] more education and training of all involved in the YCJA [and] continue to look at pre-trial detention, risk assessment and dedicated services for youth.

Maggie Lederman, Royal Ottawa Mental Health

The public needs a better understanding of the workings of the legislation and its relationship to the broader context of social and economic systems, in order to perceive more accurately the purpose, functioning, capabilities and limitations of the YCJA. There is a need for a plain language YCJA because youth, their families and responsible persons may not understand the statute.

There is a lack of understanding about the numbers of youth in contact with the criminal justice system. The stigma attached to youth who offend and ethnic/racial stereotyping discourage positive discourse about the legislation. There is a need for informed public education on what “tough on crime” really means, so that there is better understanding of what reduces offending and keeps the community safe. Similarly, there is a need for better parental and community understanding of the stages of brain development of children and youth, and the effects on the brain from exposure to certain substances, injuries and environmental factors in the community and the home.

Because the needs of new Canadians differ from those born in Canada, it is important to orient newcomers on Canadian law and the role of the police as community members who are mandated as resource people for youth.

A communications strategy about the YCJA is needed to inform the public that youth convicted of serious violent offences can be identified and can receive more serious adult sentences. Information needs to be provided about the overall successes of the legislation and the criminal justice system. Such communication would increase public knowledge of and confidence in the system.

Capacity and resources

This federal legislation places expectations on provincial services and local service providers and assumes that all provinces and communities are the same. In reality, incarceration rates differ greatly and for a variety of biological, demographic and socio-economic reasons.

There is more onus on the community to provide services, despite the fact that those services may not be available. Where they are, they need to be more focused; for example, more attention should be paid to the time period between 3:00 and 6:00 PM when young people are most likely to engage in or be the victims of criminal behaviour. Not all communities are resourced to carry out the preventive principle of the legislation. It is difficult to implement Aboriginal-sensitive diversion programs in small, isolated communities. Communities cannot be held responsible if they do not have the resources to provide services to youth.

Provincial funding to community organizations is often more restrictive, or different than what the YCJA intended. Exacerbating this situation is the fact that “have-not” provinces require more resources to bring their service levels up to those of the provinces that have been able to invest more heavily in child welfare/youth justice systems. Economic disparities among provinces are significant and increasing. A differential funding system would level the playing field for jurisdictions and Canada’s youth.

[We need] funding that goes beyond pilots, especially focused on youth who are disproportionately represented in youth justice (e.g., FASD, Aboriginal).

Ian Mass, Pacific Community Resources Society, Vancouver

Non-governmental agencies are not resourced to enter into partnerships and support the collaborative working arrangements that are required to address youth issues comprehensively. Limiting the emphasis on pilot projects and providing more core funding for proven programs would free community agencies from the excessive drain on resources from writing funding applications. The inadequacy and instability of funding compromise the positive potential of the legislation.

Definitions

The legislation is complex which means that interpretations vary. Some definitions stand out as particularly problematic.

The current grounds for detaining youth are not satisfactory, in large part because of the ambiguous definition of “violent crime” and the narrow interpretations that result. Judges should be able to determine if a youth poses a risk to society for reasons other than violence, and whether detention is warranted. The definition of “violent” does not capture all situations that present a danger to the public (e.g., drug trafficking, multiple break and enters, car theft). Because the public and legal definitions are not the same, shifting to a standard around “dangerous” rather than “violent” may be more helpful.

What constitutes a “program” under s. 157 may be interpreted as referring only to large programs. Small local programs within the community should also be considered to fall within this provision.

“Front end” of the system

Putting the resource issue aside, service providers need to place more emphasis on child and youth health and mental health issues, such as substance abuse and suicide, so that more timely diagnoses and interventions can take place.

The effectiveness of the legislation in allowing meaningful responses to difficult-to-reach young people was discussed at length. There are many “opt-out” options in the legislation, such as police caution and Crown screening programs, some of which may not be helpful.

Some perceive that the *Act* actually limits, rather than enhances, police discretion. Procedural supports are needed for police when giving warnings to young persons. Diversion requires considerable paperwork on the part of police; thus, if youth do not appear, a predictable occurrence with FASD youth, the police are more inclined to send the file to the Crown than to pursue diversion. There is inconsistency in the application of diversion by Crowns, with various interpretations of the values and principles of that approach.

Pre-trial detention

Pre-trial detention is an area of the legislation that provoked considerable discussion at the Symposium. Practices vary across the country. In rural areas, for example, remand in custody until bail hearings results in young persons being held for up to one week for offences that do not warrant custody.

Preventive detention needs to be narrowly defined because of the danger of re-establishing custody as a solution to social rather than criminal issues. Detention should be more supportive and responsive to the underlying needs of the young person.

[We need to focus on] how to improve the ability of partners to work collectively, share information and plan jointly for and with youth who come into contact with the YCJA. [We need] definitional clarity on actions and behaviours that would require custody awaiting court disposition.

Bryan Kelly, Edmonton and Area Child and Family Services

Section 29 of the YCJA, on interim judicial release (bail), requires closer examination. To be meaningful, programs should be comprehensive and integrated so that the needs of youth can be met without resorting to detention as a social measure or a substitute for protection. This section should be re-examined to consider whether it should be a stand-alone section without the necessity of reference to other statutes or other provisions of the YCJA, as per Recommendation #23 of the Nunn Commission of Inquiry.

Procedures

Many procedures require refinement. Interventions do not always take place on a timely basis that reinforces the link between the offending behaviour and consequences. When youth are in remand, corrections and youth workers are unable to discuss issues and post-custody plans; as a result, when youth are released on time served, those plans are not in place.

Section 34 (medical and psychological reports) is applied inconsistently across communities and jurisdictions and from judge to judge and provides no authority to do psychological assessments pre-charge, post-charge and at bail hearings.

Information-sharing is not addressed satisfactorily. For example, court-ordered psychiatric assessments cannot be shared with police, caregivers, etc. Privacy legislation

often trumps the YCJA, hindering collaboration and decision-making that is in the best interest of the young person. Extra-judicial measures across the country cannot be tracked.

Procedures around record-keeping are inconsistent. The analysis of records allows authorities to discern patterns of behaviour in the young person. Pre-charge records of young persons are often more extensive than the records of their history within the court system. Youth court records could be used as a guide in the context of adult sentencing and to inform society generally about patterns of youth crime and disposition. Disposal provisions are similarly inconsistent; while youth court records are destroyed after a set period of time, pre-charge records can be retained indefinitely.

There is no provision for co-accused adults and young persons to be tried together, although doing so would reduce both the burden on those giving testimony and the costs to the system as well as resulting in a more comprehensive court procedure.

Sentences

[We need to consult further on] where the caps on decision-making for judges and police should be established vis-à-vis sentencing and related decisions and how to strengthen the social system in the delivery of quality services.

*Geoffrey Pawson, Ranch Ehrlo Society,
Pilot Butte, Saskatchewan*

There is a widely-held perception that sentences are too lenient since they may not take into account that many young persons commit several offences before they are charged. Sentences are based on the offence rather than the needs of the young person and are often too short for behavioural or attitudinal change to occur during custody. Since pre-charge diversions are not admissible at sentencing, effective case management is

compromised. The legislation contains no authority to compel treatment where there is evidence that it is in the best interests of the young person (i.e., based on the young person's need, risks, etc.) or to allow different criminal justice responses for some youth (e.g., those with FASD).

Victims of serious/violent crime need to be satisfied that the young person has faced serious or meaningful consequences. Victim participation is hindered in some areas and victim impact statements are under- or inconsistently used.

[We need to] strengthen the provisions for serious and violent crime, more inclusion of the victim at all levels (including ensuring their current rights are granted to them), more accountability on all sides, re-evaluation of detention provisions and more emphasis on prevention.

*Krista Gray-Donald, Canadian Resource Centre
for Victims of Crime, Ottawa*

The "responsible persons" provisions of the legislation are not being used as extensively by judges as they were under the *Young Offenders Act*. The YCJA presents responsible persons as a last resort before custody, rather than providing a meaningful role for them at an earlier stage. Young persons should still be obliged to follow the conditions tied to their placement with a responsible person should that individual no longer act in this capacity.

Breaches are not handled effectively, leading young people to disregard the conditions of their release. There is a lack of understanding as to why the conditions are being breached; for example, some youth do not go home because of violence or substance abuse issues there. Too many conditions are vague (e.g., “keep the peace”) or minimal (e.g., being 15 minutes late for curfew) and when they are breached the young person moves deeper into the criminal justice system. There is a perception that staff of youth facilities not only report breaches of youth in care disproportionately, but use them as a means of social control because they have fewer other options.

Decision-making models need to be considered in the legislation, so that all of the circumstances behind the evidence can be understood and taken into account in the disposition of the case.

Corrections

The pendulum has swung from overuse of custody to an inability to use custody when circumstances suggest that it would be appropriate. The conditions for holding youth in secure detention (s. 39) are too restrictive.

The “Gateway to Custody” emerges as a matter that requires further exploration. Also, the need for credible conditions that are developmentally appropriate.

*Peggy Edwards, San Romanoway
Revitalization Association, Toronto*

The effects are numerous. Some young people perceive the youth criminal justice system as lax and society regards the *Act* as too lenient and ineffective. By the time young people are “criminalized” (i.e., qualify for custody under section 39), their offences are more serious and the opportunity for early and meaningful intervention is lost. The significant drop in custody leads to concern about whether young people are in the protective environments they need or more vulnerable to criminal activity because they do not have the supports available in institutional settings.

Intensive Rehabilitative Custody and Supervision orders are judicially driven rather than therapeutically determined. Thus, they may not provide good clinical services and they may not be used enough.

Youth Criminal Justice System

Canada does not adhere consistently to the best practices set out under the *UN Convention on the Rights of the Child*. Canada does not sufficiently take into consideration the social determinants of health as they relate to children and youth, the most vulnerable members of society. Canada is one of the only countries in the developed world without a national child and youth strategy.

[We] need to bring in the economic issues underlying youth violence. Poverty is not at the table here.

Karen Hoeft, The Salvation Army, Winnipeg

Despite the YCJA, the Canadian response to youth issues is more reactive than proactive. For example, Canadians need to recognize the impact of poverty on children and youth and address seriously a situation in which 1 in 6 children and 1

in 4 Aboriginal children live in poverty. Programs for youth need to begin early, so that misbehaviour can be addressed before it becomes a criminal matter. Prevention needs

to be included as a core mandate of government agendas for youth (e.g., mental health) because research and evidence tell us that this is what works.

Structural support is required at all levels in order for the various players involved with children and youth to operate as a “system”. Canada needs child/youth advocates at the highest levels of government in order to promote and facilitate such support. There is a clear need for all orders of government to work together in addressing youth issues, but the lack of direct interplay between provincial statutes (such as child welfare) and the YCJA results in a lack of integration, inconsistency and gaps in services. The criminal justice system needs to be integrated with other “systems” that have an impact on the well-being of youth. Economic policies of government, such as tax, social and health transfers, equalization, income support and employment measures, all have a direct bearing on poverty and other social conditions of families and communities.

The factors that place youth in conflict with the law are multiple and an intersection of service interventions is required in a delivery system. Sufficient core funding is required within the system to ensure seamless in the response to youth who offend and to connect youth to the appropriate evidence-based interventions. The ability to manage teen mental health and substance abuse issues is seriously lacking. There is no system or process to capture the multiple issues presented by the young person or the escalation/sequence of offences. These gaps can result in an incorrect assessment of the young person’s problem and therefore an inappropriate response.

[We need to consult further on] mental and public health, determinants of health, resources and collaboration.

Lisa Ashley, Canadian Nurses Association

Even within jurisdictions, sectors are often not working with a common purpose. There is a need for more and consistent interagency collaboration and protocols to support cooperation, not only at the agency level but also to allow services to coalesce around youth. Services should be augmented and located where the young persons are to avoid situations in which youth must leave their communities and adjust to the additional stressors of a new environment. There are insufficient programs for youth who have returned to the community, but are not attending or have been expelled from school. This is most severe in rural, remote and Aboriginal communities. Educators are missing

Fund the community programs to provide prevention services at an appropriate and timely level. Reduce pilot projects and short-term programs and provide sustainable funding. We need coordination of information and funding at the federal and provincial levels so that the service gaps we have experienced provincially as a result of the YCJA do not happen in similar situations. Communities need to be involved and funding decisions based on best interest and needs.

Anne Blandford, Children’s Aid Society of Pictou County, NS

opportunities to address behavioural issues that lead to bullying, violence, truancy and other known risk factors.

Interventions are more effective if they are rooted in a system. One-time funded projects and pilots are of questionable value. They are often “flavour of the month” rather than evidence-based. When an effective project cannot be sustained, then the positive results are lost. So too are the

opportunities for evaluation, which must take place over sufficient time in order to determine that interventions are effective and do no harm.

The support systems for youth were overloaded before the coming into force of the *Act*. Now those systems are seriously over-stressed and cannot deal with the larger numbers of youth thrust upon them. A multi-agency approach is recognized as key to an effective response, but funding bodies and governments do not apply this criterion. Funding structures within the system support the silos that result from current mandates; in contrast, a horizontal and comprehensive approach is required.

The strength and sustainability of services for children and youth and their families and communities are at the mercy of the political climate. Demands for greater accountability can result in less collaboration among the various parts of the youth criminal justice system. This is not a recipe for successful prevention, intervention, rehabilitation and reintegration.

Discussion Group 3:

What issues call for improvement in the *Youth Criminal Justice Act* and the youth criminal justice system in general.

Youth Criminal Justice Act

Principles and approach

- 1) Maintain and reinforce the grounding principles of “best interest of youth” and rehabilitation since extensive research has shown that this is the most effective way to protect public safety.
- 2) Expand the interpretation of “best Interest of youth” to include the youth being a danger to others.
- 3) Strengthen the legislative measures that call for family involvement, except in cases where it is not appropriate.
- 4) Make protection of the public one of the primary goals of the *YCJA*, consistent with Recommendation #20 of the Nunn Commission of Inquiry; public safety should exist alongside the other principles of the legislation to permit both the safety and best interest of the young person and the safety of the community to be better addressed.
- 5) Expand the non-adversarial approach to resolving youth criminal justice issues, so that an effective balance is achieved between the best interests of the young person and public safety.
- 6) Expand the capacity of the *Act* to order that the youth be held in custody in the best interest of both the public and the young person in situations where repeated alleged offences are putting the safety of the public at risk.
- 7) Provide in the *Act*, the cornerstone of an array of other instruments and services, a holistic framework of model that promotes multi-disciplinary collaboration, concordant

The legislative changes are the easiest to correct.

*D/Chief Chris McNeil,
Halifax Regional Police Service*

procedures and complementary processes; this approach would encourage concentration on the continuum of prevention-custody-reintegration and would have to be supported by mechanisms to bridge services, as in the drug and homelessness strategies.

Awareness

8) Educate youth about the *YCJA*, in collaboration with the school system.

9) Simplify the forms used in the context of the *YCJA*,

10) Produce a plain language version of the *Act* so that youth, victims and caregivers can understand the law, why a charge is not being laid, the use of diversions and other provisions.

Clear, concise wording so that everyone can understand across the country.

Cpl. Jim Pratt, Regina Police Service

Definitions

11) Clarify the language that provides the gateway to custody, from the overly narrow “violent” offence to a definition better accepted by the public and related to endangerment.

12) Include in an amendment to the definition of “violent offence” in section 39(1)(a) conduct that endangers the life or safety of another person, as per Recommendation #21 of the Nunn Commission of Inquiry.

“Violence”: The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.

*“World Report on Violence and Health”,
World Health Organization*

13) Consider using the World Health Organization definition which is widely accepted.

“Front end” of the system

14) Support the use of extra-judicial measures through the provision of additional police officers, especially in rural and remote communities, and more services for youth and their caregivers.

15) Create positions of restorative justice coordinators in every community, along the lines of the Youth Justice Boards in the UK, to enhance implementation of the *Act*.

Pre-trial detention

16) Simplify pre-trial detention provisions so that they can be determined without reference to other statutes, such as the *Criminal Code of Canada*, or other provisions of the *YCJA*; consider having this a stand-alone provision, as outlined in Recommendation #23 of the Nunn Commission of Inquiry.

17) Specify a timeframe, in cases where pre-trial custody is ordered, within which the pre-trial custody order is to be reviewed, to determine whether alternative measures to

custody that are both in the best interest of the young person and adequately protect public safety exist.

18) Clarify and strengthen section 29 to permit pre-trial detention where warranted by circumstances (e.g., as per Recommendation #22 of the Nunn Commission of Inquiry, a demonstrated “pattern of offences” or similar wording, as opposed to reliance on a “pattern of findings of guilt”).

Procedures

19) Provide for the joint trial of a co-charged adult and young person while ensuring that the rights of the accused youth are respected within the YCJA.

20) Review and revise records-keeping provisions so that there is consistency of practice, particularly around retention.

Sentences

21) Broaden the sentencing section of the legislation to include custody for a wider range of issues and where circumstances make custody appropriate.

22) Revisit the length of sentences to allow for meaningful interventions that simply cannot take place within a few days.

23) Permit information on all extra-judicial measures to be admissible at sentencing, so that the needs of the youth can be addressed by the judge and a case management plan established.

24) Review and clarify the responsible person release section so that young persons are able to have another responsible person, in cases where the original responsible person cannot meet the supervision order.

25) Ensure that the undertaking of the young person remains in full force, as per Recommendation #24 of the Nunn Commission of Inquiry, if the responsible person no longer serves in this role.

26) Ensure that conditions of release are credible, achievable, accountable and appropriate to the developmental state of the young person, so that they reinforce lessons of good citizenship.

27) Establish community-based panels to which the court could refer young persons within 72 hours in order to deal effectively with the complex, often unrealistic and ultimately counter-productive conditions of release.

28) Establish and manage realistic release conditions that are effective and in the best interest of the young person by encouraging the community-based panels to take into consideration the application of other statutes (e.g., child and family service legislation).

Corrections

29) Clarify and strengthen section 39 to permit detention of youth where warranted by circumstances.

Youth Criminal Justice System

30) Support prevention (s. 3(1)(a)(i)), the first tenet of the *Act*, appropriately in the community so that the overriding goal of protection of society can be met.

31) Recognize and meet the fundamental needs of children and youth (i.e., nutrition, housing, access to recreation, safety in the home and community, education, employment) across the board and from birth, through appropriate public policy interventions so that Canada's disparate services and orders of government function as a prevention system.

[The youth criminal justice system needs:] cross-ministry communication and collaboration; training across all disciplines and services to ensure consistency and that all have the most up-to-date knowledge; comprehensive approach beginning with police-community referral protocols, risk assessment (to properly assess level of risk and need) and gender-sensitive, evidence-based interventions to meet the needs of these children - complex needs.

Dr. Leena Augimeri, Child Development Institute, Toronto

32) Address the issue of inequity and uneven availability of resources among jurisdictions.

33) Use more cost-effective funding models within the criminal justice system itself in order to move away from one-time or pilot projects and towards sustainability of program delivery through core funding that also accommodates the costs of entering into and maintaining operating partnerships.

34) Ensure in the court system the availability of human expertise in the form of dedicated youth court judges, Crowns, legal aid and police liaison officers for youth and schools.

I have observed positive changes in the Crown's approach to youth who offend: pre-trial meetings; participation in youth-community councils; crime prevention; more use of diversion for some very difficult, hard to serve kids; dedicated Crowns.

Maureen Murphy, Church Council on Justice and Corrections/John Howard Society of Waterloo-Wellington

35) Strengthen the relationship between police and judges to enhance the system's ability to respond effectively.

36) Encourage use of advanced video technology equipment for remote and isolated areas.

37) Ensure that courts have access to high quality, evidence-based risk assessments.

38) Provide integrated, multi-disciplinary, youth-focused training for service providers so that the system functions effectively and efficiently.

39) Implement a means of investigating cases in which parents/guardians do not show up at the police station, at court or at bail hearings, in order to determine if the young person is in need of protection.

40) Launch a media campaign to address the social stigma attached to youth who offend, so that parents will be less inhibited about seeking help for their youth.

41) Strike a committee to hold cross-country hearings on the implementation of the legislation and issues arising and related to youth justice and ensure that hearings include groups that may not traditionally come forward or be sought for consultations on youth justice issues (e.g., gay/lesbian/trans-gendered/two-spirited persons, ethnic groups, new Canadians, women's groups, youth groups, parents, public health and mental health practitioners).

42) Create national networks, drawn from federal-provincial/territorial jurisdictions and selected from among those who have direct experience with children and youth at risk and in conflict with society, to address the concerns of children under 12 and youth 12-18.

43) Encourage federal-provincial/territorial-municipal collaboration, not only to deal with short-term and current issues, but to address the long term, cross-jurisdictional issues that affect the development of children and youth.

44) Appoint a federal champion for children and youth, along the lines of other countries and most provinces, to achieve the desired systematic approach.

45) Ensure that governments carry out their obligation to collaborate across jurisdictions, support cross-collaboration across ministries within their jurisdictions and require service providers within each community to collaborate.

Better balance between individual rights and protection of the public. Funding! Get active with creating programs. Make things work.

Dominique Benoit, Sûreté du Québec

46) Encourage the Minister of Justice and Attorney General of Canada to assume a leadership role in approaching other ministries, federally and provincially (e.g., health, education, social services) in order to listen to community needs, create a social context designed to reduce youth

crime, and strengthen the capacity of communities to be responsible for the well-being of children and youth.

AREAS FOR FURTHER RESEARCH AND LEARNING

A recurring theme in the comments of participants was the need for robust research and enhanced learning in a number of areas within the broad topic of youth justice. It was stressed that meaningful research does not come from short-term projects and is beyond the scope of non-governmental organizations and community service providers.

Ideally, I would love to be able to interview youth 18-23 who are some of the first youth incarcerated under *YCJA* serving in minimum/medium/maximum institutions.

Dave Farthing, YOUCAN, Ottawa

The following were identified as topics suitable for further work:

- Focus on the disproportionate number of Aboriginal and FASD youth in the criminal justice system, with a view to identifying effective prevention, treatment, rehabilitation and reintegration approaches.

- Sectors are often working at cross-purposes and would benefit from more multi-disciplinary learning events and discussion opportunities nationally and locally.
- Systematic analysis of youth court records would serve as a useful guide in the context of adult sentencing and to inform society generally about patterns of youth crime and disposition of cases.
- Explore and test the public perception that sentences are too short, in light of the fact that many young persons have committed several offences before they are charged.
- Examine the application of the law in terms of the gender, race and socio-economic conditions of young people, including the impact of poverty on the criminalization of people.
- Investigate why conditions are being breached, in order to gain a better understanding of the situations of young people and to develop conditions that are meaningful and achievable.
- There is a need for more data-gathering, research and evaluation of youth offending and victimization, for the purposes of translating these findings into the design of services and responses to youth.

EVALUATION

An evaluation form was provided to each invitee at the outset of the Symposium. All twenty-eight (28) participants submitted evaluation comments. (See compilation of evaluation input at TAB 3). The following is a synthesis of the responses to the five main questions asked on the evaluation form:

1. Was this symposium worthwhile?

Participants were unanimous in responding that this was an important and worthwhile consultation.

2. Has participation in this symposium increased your understanding of the *Youth Criminal Justice Act* and the youth criminal justice system in general? How?

Twenty-seven participants answered “yes” while one responded “somewhat”. The most common response was that the symposium, because of its broad participation, had permitted them to learn a great deal about other professionals’ perspectives on the strengths and weaknesses of the *Act* and the system. This increased awareness underlined the importance of collaboration by the various parties in the youth criminal justice system in order that youth and their communities be served appropriately. The invitation to participate in the symposium caused them to read the *YCJA* carefully, perhaps for the first time, resulting in a new appreciation for the breadth of impact of this legislation.

3. Do you think further consultations should be held on the *YCJA* and the youth criminal justice system? If yes, what specific areas should be focused

on in subsequent consultations? Who should be invited to participate in such consultations?

There was unanimous agreement that further consultation was desirable. Participants noted the role of the federal government and the need for a formalized approach to consultations on the *YCJA* and the youth criminal justice system.

4. What key changes do you think governments at all levels should make to the youth criminal justice system?

Participants made many suggestions for subsequent consultations. Popular areas for discussion were how to work across jurisdictions, how to share best practices, exploring further collaboration, breaking down government silos at all levels, enhancing training, carrying out further research and increasing public awareness of the provisions of the *YCJA* and the youth criminal justice system.

5. Do you have any further comments?

Participants affirmed the value of having multi-sectoral representation from within the various corners of the criminal justice system as well as from social/community services. They also pointed out that youth and their families should be involved. A key factor in inviting participation should be to ensure that individuals selected are knowledgeable and that decision-makers are included.