

YOUTH CRIMINAL JUSTICE: THE GOOD, THE BAD AND THE UGLY

IT'S TIME TO SADDLE UP – THE YOUTH CRIMINAL JUSTICE ACT WILL COME UNDER REVIEW THIS YEAR. HOW IS THE ACT RESPONDING TO YOUNG OFFENDERS AND WHAT SHOULD CANADIANS EXPECT FROM YOUTH JUSTICE LEGISLATION?

by Peter Jon Mitchell

The climax of a good western is when the cowboy in the white hat finally comes face to face with the villain – the bad guy who has terrorized the town. Few audiences would leave the theatre satisfied if the hero gave the bad guy a stern talking to and sent him off into the sunset with a social worker riding side-saddle behind. But in real-life Canada, what does serving justice mean, especially when it comes to our young offenders?

Historically, Canada has separated young offenders from the adult justice system. And historically, many have argued that too many young cowboys have ridden off into the sunset without paying for their crimes. Is the youth criminal justice system too easy on young offenders? What's really going on with our youth and how is our justice system responding to youth crime?

If our youth justice system were a spaghetti western, it might borrow its title from the Clint Eastwood film, *The Good, the Bad and the Ugly*. There are aspects of the Canadian youth justice system that are working well. The system also has shortcomings that have had ugly consequences for Canadians. But unlike the plot of a classic western picture, youth justice legislation is complex, and requires nuanced reforms rather than dramatic change.

It has been five years since Canada replaced the maligned Young Offenders Act with the Youth Criminal Justice Act. The government promises a review of the YCJA this year. The YOA intended to create a youth justice system that balanced legal processes and penalties with welfare-based interventions. But without clear principles, courts issued inconsistent penalties and sentences. Under the YOA, the incarceration rate for young offenders was higher than many other western countries.¹

Prominent Queen's University professor of law, Nicolas Bala summarized the YCJA's improvements over the YOA, writing in

the early days of the legislation, "the YCJA has a large number of relatively small changes, which cumulatively should result in significant change in the youth justice system."² One of the significant changes was the directive to correct the YOA's over-reliance on custodial sentences and pre-trial detainment. Policy-makers pursued this aim while underscoring the need for meaningful consequences, rehabilitative measures and consideration for the interests of victims.³

The Good

Reducing the use of incarceration is good for young offenders and Canadian society. Studies suggest that incarceration can have a negative impact on youth. There is a risk that teens can be immersed in custody environments that socialize them toward further criminal behaviour.⁴

Teen incarceration also has little impact on reducing and preventing youth crime. Young people frequently behave with a sense of immortality and immunity, engaging in risky behaviour that would invoke second sober thought among mature adults. This does not excuse criminal behaviour, but it might explain why numerous studies suggest incarceration does little to deter young people.⁵

IN SPITE OF THE HIGH-PROFILE VIOLENT CRIME CASES, YOUTH CRIME HAS GENERALLY BEEN DECLINING

Reducing the use of incarceration has been coupled with an increased emphasis on engaging alternative measures for minor crime. These measures encourage community resolution through police warnings and restorative initiatives that invite victims to participate in the process. Family group conferencing allows offenders and their families to meet with victims to discuss the impact of the crime and the actions needed

to restore the damage done. This process requires offenders to willingly admit their mistakes and take ownership for their actions. Studies have indicated that conferencing can be an effective way to prevent young people from continuing in a life of crime,⁶ and can often be a positive experience for victims.⁷

The Bad

When an innocent girl is gunned down on Yonge Street in Toronto; when a teen is assaulted and beaten to death on a golf course in Edmonton;⁸ the tender age of the victims and some of the accused magnifies the shock. It's not hard to argue that criminal activity is bad for teens, bad for communities and bad for society, especially serious violent offenses. However, the truth is that in spite of the high-profile cases, youth crime has generally been declining with the exception of a three-per-cent increase in 2006.⁹ It is too early to tell if this is the beginning of a trend or just a statistical blip. According to Canadian criminologists Anthony Doob and Carla Cesaroni, most youth crime involves minor offenses¹⁰ including property crime and breaches of court orders.

For some young people, criminal behaviour becomes a pattern. Professor Bala states, "not all young offenders can be rehabilitated.

Some youth lack the motivation, at least at some points in their lives, to engage in rehabilitation."¹¹ A couple of summers ago two 16-year-olds led London, Ontario, police on a wild car chase, undeterred by their previous encounters with the law – all 430 of them.¹² A similar incident in Nova Scotia ended in the death of an innocent woman when a teen facing multiple charges crashed a stolen car. The offender had been

criminally charged and released two days before the collision. The incident compelled the province to form a commission of inquiry headed by retired justice D. Merlin Nunn to explore the collision and the events leading to the fateful event.¹³

The Ugly

Nunn's report suggests that the wording of the Act that directs the court to consider pre-trial detention unnecessary except when narrow conditions are satisfied, have led to the quick return of repeat offenders to the street, jeopardizing public safety.¹⁴ This has been an ugly, unintended consequence of the provisions reducing the use of incarceration.

The Act currently deters courts from pre-trial custody if the offender could not be committed to custody if found guilty. Like custodial sentences, pre-trial detention is discouraged unless a young person has committed a violent offence, been in compliance with non-custodial sentences in the past or has a history of guilt under the Act. As the Nunn commission demonstrated, the court considers a history of guilt, not previous pending charges when determining the appropriateness of pre-trial custody.¹⁵ Nunn also noted that the court's understanding of a "violent offence" precludes actions that place the public at risk like high-speed chases.¹⁶

THE YCJA MUST BE REFORMED, BUT RATHER THAN RUSHING THE LEGISLATION WITH GUNS A-BLAZIN', POLICY-MAKERS SHOULD FOCUS ON NUANCED ADJUSTMENTS

In short, Nunn's report establishes that restrictive custody provisions have allowed repeat offenders to continue to put the public at risk.

Holster the six-shooter

The YCJA must be reformed, but rather than rushing the legislation with guns a-blazin', policy-makers should focus on nuanced adjustments. The pre-trial provisions of the Act should be revisited. Bill C-25, an amendment to the YCJA proposed in November 2007, would grant the court wider discretion in applying pre-trial detainment. The proposed amendment directs the court to consider the substantial likelihood of serious bodily harm to another person if the accused were to be released. The bill also proposes to enhance the consideration of previous violations of non-custodial measures in determining pre-trial detention.¹⁷

The bill also addresses sentencing provisions within the YCJA by introducing the principle of deterrence. The architects of the YCJA omitted this principle as many young offenders give little thought to the consequences of being caught. Curiously, the bill neglects to add the principle of deterrence to the declaration of principles found at the beginning of the Act. Though this provision will likely not deter young people from crime, it will result in stricter sentencing. Rather than introducing the principle of deterrence in sentencing, policy-makers

might consider strengthening the principle of public safety throughout the Act. An explicit statement on public safety would provide a more reasonable principle for sentencing and would be in keeping with the nature of the YCJA.

Further amendments should enhance a balance between alternative measures and court proceedings. The Supreme Court is expected to hand down a ruling on the

constitutionality of the adult sentencing provision of the YCJA. This provision allows prosecutors to seek adult sentences for offenders ages 14 and older once a youth has been convicted of a serious crime. Should the court rule against this provision, policy-makers will need to carefully consider sentencing provisions that adequately respond to serious crime and effectively protect the public without hindering the intended balance within the YCJA.

The youth criminal justice system values rehabilitation along with meaningful sanctions. It aims to assist young offenders in making amends and maturing into productive members of society. The alternative measures provisions of the YCJA allow for this process to occur within the community where the offence has taken place. Yes, some offenders require more intervention in the courts.

But in general, the YCJA provides principles and directives for processing youth through the court system in a fair and effective way. Certainly, the YCJA is a complicated piece of legislation that has both strengths and weaknesses. But the Act will serve Canadians well in the years ahead if future amendments provide nuanced adjustments in keeping with the nature of youth justice in Canada.

THE YOUTH CRIMINAL JUSTICE SYSTEM VALUES REHABILITATION ALONG WITH MEANINGFUL SANCTIONS. IT AIMS TO ASSIST YOUNG OFFENDERS IN MAKING AMENDS AND MATURING INTO PRODUCTIVE MEMBERS OF SOCIETY

endnotes

- 1 Department of Justice Canada. (2002, May 27). YCJA Explained: Overview. Retrieved April 11, 2008 from <http://www.justice.gc.ca/eng/pi/yj-jj/repos-depot/over-aper/2010001g.html>.
- 2 Bala, N. (2003). Youth Criminal Justice Law. Toronto: Irwin Law, p. 27.
- 3 Department of Justice Canada, retrieved April 15, 2008 from <http://www.justice.gc.ca/eng/pi/yj-jj/repos-depot/over-aper/2010001g.html>.
- 4 Taylor, C.S. (1996). Growing up behind bars: confinement, youth development, and crime. 1996 Oklahoma Criminal Justice Research Consortium Journal. Oklahoma City: Department of Corrections Oklahoma, p. 2. Retrieved online April 11, 2008 from <http://www.doc.state.ok.us/offenders/ocjrc/96/Growing%20Up%20Behind%20Bars.pdf>.
- 5 Bala, Youth Criminal Justice Law, pp. 84-85.
- 6 Australian Institute of Criminology. (2002). What works in reducing young people's involvement in crime? Retrieved January 14, 2008 from <http://www.aic.gov.au/publications/reports/2002-12-whatworks.pdf>, p. 6.
- 7 Bala, N., Hornick, J.P., Snyder, H.N., Paetsch, J.J. eds. (2002). Juvenile Justice Systems: An International Comparison of Problems and Solutions. Toronto: Thompson Educational Publishing, p. 189.
- 8 CBC News. (2006, June 13). Eight arrested in Jane Creba shooting death. Retrieved March 25, 2008 from <http://www.cbc.ca/canada/toronto/story/2006/06/13/to-creba20060613.html>; and CBC News. (2007, January 16). Golf course owner recalls shock at finding teen's body. Retrieved March 25, 2008 from <http://www.cbc.ca/canada/edmonton/story/2007/01/23/trail-ninatues.html>.
- 9 Statistics Canada. (2007, July 18). Crime statistics 2006 (correction). The Daily. Retrieved January 9, 2008 from <http://www.statcan.ca/Daily/English/070718/d070718b.htm>.
- 10 Doob, A.N., Cesaroni, C. (2004). Responding to Youth Crime in Canada. Toronto: University of Toronto Press, pp. 94-95.
- 11 Bala, Youth Criminal Justice Law, p. 105.
- 12 Kirwin, S. (2006, August 17). 430 times later, youths in trouble. The London Free Press. A.1.
- 13 Nunn, D.M. (2006). Spiralling Out of Control: Lessons Learned from a Boy in Trouble. Report of the Nunn Commission Inquiry. Province of Nova Scotia, p. 15. Retrieved November 19, 2007 from http://www.nunncommission.ca/media_uploads/pdf/109.pdf
- 14 Ibid., p. 241.
- 15 Ibid., p. 289.
- 16 Ibid., pp. 239, 289.
- 17 Bill C-25: An Act to amend the Youth Criminal Justice Act. Retrieved November 20, 2007 from <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3114354&file=4>