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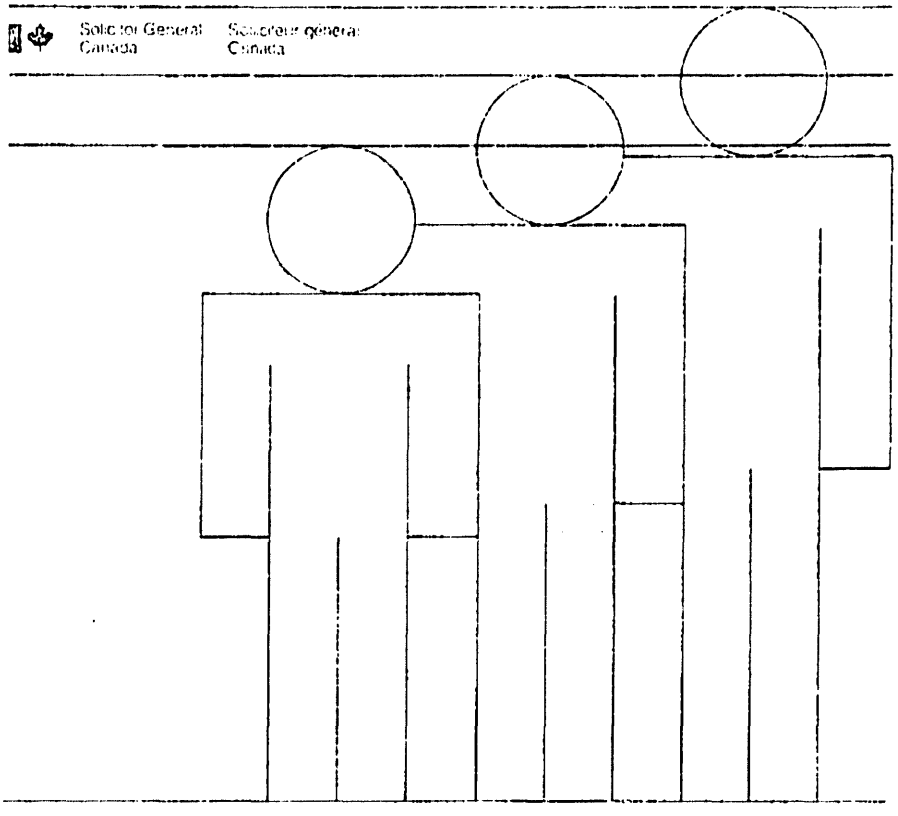
Highlights of the proposed new legislation for young offenders



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Introduction

As the law now stands, young offenders are dealt with under the Juvenile Delinquents Act of 1908, as amended from time to time. The Act establishes special juvenile courts and special procedures for dealing with young offenders. Previously, children had been brought before the ordinary criminal courts. The intent of the 1908 Act was to treat a child "not as a criminal, but as a misdirected child, and one needing aid, encouragement, help and assistance".

In practice, and particularly in view of changing attitudes toward crime and how to deal with it, the 1908 Act has not fulfilled its promise. In the view of many, young persons have not received proper care and treatment, and are not afforded all the basic rights and protections afforded to adults facing a criminal charge. It is also held that existing procedures fail to protect society and fail to bring about the salutary acceptance of responsibility for delinquent acts that should be part of the educational experience of the young offender.

Rather, the 1908 Act with its concentration upon the offence of juvenile delinquency tends to label and stigmatize a child, thereby reinforcing a delinquent self-image and perpetuating delinquent behaviour.

The Solicitor General of Canada is now proposing that the 1908 Act be replaced by new legislation to be known as "The Young Offenders Act".

The new Act would have the following objectives:

— to recognize and give formal effect to the changes and innovations in the treatment of young offenders that have come into being to make good the deficiencies of the 1908 Act;

— to abolish status offences and to deal with the specific offence committed;

— to ensure that young offenders benefit from all the rights and protections enjoyed by adults and to offer certain special guarantees of those rights;

— to encourage acceptance by young offenders of responsibility for criminal acts committed;

— to set up procedures and sentencing practices that will ensure to the young person the protection that a young person needs;

— to protect society from the effects of juvenile crime.

— to ensure that a young offender's experience with criminal justice will tend to turn the young person away from further involvement in criminal activity.

The proposed Act is based upon extensive studies and consultations started in 1973 undertaken by the Ministry of the Solicitor General with the active participation of the Department of Justice and the Department of National Health and Welfare. In 1975 the Solicitor General of Canada published a report entitled "Young Persons in Conflict with the Law", based on these studies and consultations and on a preliminary round of consultations with the provinces.

The Report was then the subject of exhaustive consultations all across the country, involving provincial and territorial governments and interested groups and individuals of all kinds. Countless submissions and briefs were received and considered. The new Act now proposed takes into account to the extent possible the many proposals, suggestions, objections and amendments put forward in the course of these consultations.

Principles of the new legislation

The Young Offenders Act would be built on the following principles.

Young persons who commit offences should bear responsibility for their contraventions and while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, society must nonetheless be afforded the necessary protection from such illegal behaviour.

In affording society protection from illegal behaviour, it is to be recognized that young persons require supervision, discipline and control, but also, because of their state of dependency and lack of maturity, have special needs and require guidance and assistance.

Where not inconsistent with the protection of society, consideration should be given to using alternatives to the formal youth justice process for dealing with young persons who have committed offences which come within the jurisdiction of the Act.

In determining the responsibility of young persons under the Act, it is to be recognized that young persons have rights and freedoms equal to those of adults including those stated in the Canadian Bill of Rights, and in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, as well as special guarantees of these rights and freedoms.

In the application of the Act, the rights of young persons include a right to the least interference with freedom, having regard to the protection of society, the needs of young persons, and the interests of their families.

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Young persons have the right, in every instance where they have rights or freedoms which may be affected by the Act, to be informed as to what those rights and freedoms are.

Parents have primary responsibility for the care and supervision of their children and, therefore, young persons should be removed from parental supervision either partly or entirely only when all other measures that provide for continuing parental supervision are inappropriate; however, if it is necessary so to remove them, they shall be dealt with, in all respects and as nearly as may be, as they would be dealt with if they were under the care and protection of wise and conscientious parents.

Major legislative provisions of the young offenders act

Offences Covered

The proposed legislation would deal only with offences against the Criminal Code and other federal statutes and regulations. The general offence of delinquency would be abolished and offences now included under the Juvenile Delinquents Act such as infractions of provincial statutes and municipal by-laws and status offences would be excluded.

The general intent of this proposal is to exclude from the criminal law less serious misconduct that could better be dealt with by other social or legal means, leaving minor behavioural problems to the provinces under child welfare and youth protection laws.

Ages of Applicability

Under the existing legislation the minimum age of criminal responsibility is seven years as fixed by Section 12 of the Criminal Code. The maximum for treatment under the Juvenile Delinquents Act of 1908 is 16, with provision for the provinces to designate 17 or 18.

Under the proposed Young Offenders Act the minimum age of criminal responsibility would be twelve years. In setting this age, consideration has been given to the stage of development of the child in physiological, mental and emotional terms, particularly as these factors apply to the formulation of a criminal intent. The setting of a precise age is necessarily arbitrary as children vary greatly in their rate of development but it is assumed that deviant behaviour by children under the age of twelve is better and more effectively dealt with under provincial legislation pertaining to child welfare or youth protection.

The Government recognizes the desirability of standardizing a maximum age across the country. However, the consultations which were conducted during 1976 while favouring a uniform age failed to achieve agreement as to what that age should be.

The Young Offenders Act would establish the maximum age of jurisdiction at 18 years although the provinces and territories would have the option of setting the maximum age at either 16 or 17.

The Government continues to support the goal of establishing a uniform maximum age of 18 so that the procedures, practices and services of the juvenile justice process will apply equally to all young Canadians.

Screening and Diversion

One objective of the proposed legislation is that the application of the formal youth court process should be limited to those instances when a young person cannot be adequately dealt with by other social or legal means. To achieve this objective, the proposed legislation contains provisions that would encourage screening and diversion.

The proposals do not contain provisions for the establishment of a formal screening mechanism to guide the diversion process but, rather, set out basic factors to be considered when screening and diversion is practised. For example, the legislation would stipulate that, when considering whether to invoke the formal procedure of the court rather than using alternative social and legal measures, regard shall be had to factors such as the following:

— the seriousness of the alleged offence;

— the previous history of the young person in respect of offences;

— the manner in which the young person has responded to alternative social and legal measures in the past;
— the willingness of the young person to participate in a plan to use alternative social or legal measures.

Detention of Young Persons Prior to Court Disposition

The Young Offenders Act would establish strict guidelines and procedures relating to the detention of young persons upon apprehension by the police, pending and during proceedings of the youth court, as well as before the implementation of a court disposition.

In particular, the proposed legislation specifies that the rules and criteria set out in the Criminal Code including those pertaining to bail, shall be applied to those cases involving young persons. In addition to these criteria, consideration would be given to the necessity of detention to prevent injury to another person, and to whether a young person could be placed in the care of a responsible person to achieve the same ends.

The proposed legislation also requires that parents be given notice of the arrest or detention of a young person and further provides that the judge of

the youth court undertake regular reviews of the need for detention, in accordance with the provisions of the Criminal Code. Finally, the legislation provides that when young persons are held in detention, they are to be kept apart from adults.

Sentencing

The Young Offenders Act would set out a precisely-defined range of sentencing dispositions available to the youth court judge to meet the needs of young persons, to protect society and to take into consideration the rights of the victims of crime. The dispositions contained in the legislation include the performance of community service orders, the making of compensation and restitution, the payment of a fine up to a maximum of $1,000.00, probation and committal to open or secure custody, all for a maximum period of up to three years. In those instances where a young person would be committed to custody, the committal would be for a fixed period of time; in contrast to the provisions contained in the present Juvenile Delinquents Act which allow for indefinite committals to custody.

Review of Dispositions Involving Care and Custody

The progress and welfare of young persons who receive sentences of open or secure custody would be subject under the Young Offenders Act to continuing review by a youth court judge or, at the option of the provinces, a provincially appointed review board. The youth court judge or review board could confirm the original disposition, reduce the degree of custody or release the child to the community under supervision. Under no circumstances could the judge or review board reduce the length of the sentence.

Transfer to Adult Court

Inevitably there will be exceptional cases of such gravity that the provisions of the proposed Young Offenders Act cannot effectively deal with the young offender. In such cases, the proposed Act provides explicit guidelines and procedures for the transfer of the case to the adult court. However, in cases involving a young person aged 12 or 13, an application by the prosecutor to transfer a young person to the adult court must have the approval of the Attorney General.

Legal Representation

The proposed Young Offenders Act recognizes that young persons have all the rights of adults under the Canadian Bill of Rights and the Criminal Code when charged with a criminal offence. Young persons would have their rights explained to them, including the right to retain and instruct counsel as soon as they are detained, arrested or summoned by the police. The proposals provide that a young person must be represented at his trial by a lawyer, unless the judge of the youth court is satisfied that no lawyer is reasonably available. In such instances, the judge would allow a young person to be assisted by a responsible adult.

Federal financial support of the youth justice system

A primary concern in the development of the new federal policy has been the recognition that the federal government should encourage the development of better services and resources to young offenders by increasing the financial assistance it provides to the provinces.

At present, financial assistance to the juvenile justice system is extended through funding programs administered by the Department of National Health and Welfare, the Department of Justice and the Ministry of the Solicitor General.

The Ministry of the Solicitor General provides funds to the juvenile justice system principally through the sponsorship of research and evaluation projects and the funding of innovative and demonstration projects. The Department of Justice provides cost-sharing assistance for criminal legal aid services, a portion of which is spent in the juvenile court system. The Department of National Health and Welfare participates in cost-sharing services to young offenders through the mechanism of the Canada Assistance Plan, limited to care and after-care services and excluding such services as diversion and pre-dispositional assessments which focus on a study of young persons' needs and provision of services to the young person in his own home and community, including probation supervision. Current federal funding is therefore weighted in favour of services that seek the solution to the young person's problems through his removal from his home and community to secure or open custody.

These existing arrangements do not take into account the new proposals advocating a greater reliance on community and social service solutions to the problems of young offenders. The federal government is now prepared to extend the range of juvenile services eligible for cost-sharing to include diversion services, pre-dispositional assessments and reports, and post-dispositional community supervision including probation. Funding would be extended under the framework of the proposed Social Services legislation. Extended federal financial assistance is subject of course to the provincial support of the proposed new legislation and to discussions with the provinces of the details and conditions for cost-sharing.

APPENDIX A
Recommendations for new legislation to replace the juvenile delinquents act

1. PREAMBLE

1 that new legislation incorporate a preamble, containing a declaration of the philosophy, spirit and intent of the legislation, as a guide for its administration

the preamble should be as follows.

(i) Young persons who commit offences should bear responsibility for their contraventions and while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, society must nonetheless be afforded the necessary protection from such illegal behaviour.

(ii) In affording society protection from illegal behaviour it is to be recognized that young persons require supervision, discipline and control, but also, because of their state of dependency and level of development and maturity, young persons have special needs and require guidance and assistance.

(iii) Where not inconsistent with the protection of society consideration should be given to using alternative social and legal measures for dealing with young persons who have committed offences, which come within the jurisdiction of this Act.

(iv) In determining the responsibility of young persons under this Act, it is to be recognized that young persons have rights and freedoms equal to those of adults including those stated in the Canadian Bill of Rights; and in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them as well as special guarantees of these rights

(v) In the application of this Act, the rights and freedoms of young persons include a right to the least interference with freedom, having regard to the protection of society, the needs of young persons, and the interests of their families.

(vi) Young persons have the right, in every instance where they have rights or freedoms which may be affected by this Act, to be informed as to what those rights and freedoms are.

(vii) It is recognized that parents have responsibility for the care and supervision of their children, therefore, young persons should be removed from parental supervision

either partly or entirely only when all other measures that provide for continuing parental supervision are inappropriate; however, if it is necessary so to remove them, they shall be dealt with, in all respects, as nearly as may be, as they would be dealt with if they were under the care and protection of wise and conscientious parents.

2. TITLE

2 that "The Young Offenders Act" be the title of new legislation.

3. INTERPRETATION

3. that new legislation contain an interpretation section to clearly define the meaning of the terms employed such as "youth court", "secure custody", "open custody", "detention", etc.

4. HOW YOUNG PERSONS ARE DEALT WITH

4. that there be a provision that the legislation be liberally construed and interpreted in accordance with the principles enunciated in the preamble.

5. JURISDICTION OF YOUTH COURT (offences)

5. that the jurisdiction of new legislation extend solely to offences against federal statutes and regulations, excluding territorial ordinances.

6. JURISDICTION OF YOUTH COURT (age)

6. that the minimum age of criminal responsibility under the new legislation and in the Criminal Code be set at 12 years of age.

7. that the maximum age under new legislation be set at under 18 years but the provinces could request the Governor in Council to set the maximum age at 16 or 17 years in their respective province or territory.

8 that a person who has committed an offence while under the maximum age of jurisdiction, be subject to being dealt with in the Youth Court until he reaches an age 3 years hence, and thereafter, he is to be dealt with in the adult court

9. that where a person commits an offence while under the maximum age of the jurisdiction, that the jurisdiction of the Youth Court be extended three years beyond the maximum intake age and that services be provided for the same period of time.

7. DETENTION NOT PURSUANT TO DISPOSITION

10. that young persons must be held in detention separate from adults.

11. that, in addition to the requirements set out in the Criminal Code regarding bail, a young person could be detained to prevent injury to another person and if he could not be placed safely with a responsible person to achieve the same end.

12. that the decision to detain a young person prior to his appearance in court may be made by the police but the young person should appear before a Youth Court judge as soon as possible to determine the necessity for continuing the detention.

13. that subsequent to the appearance of the young person in court, the young person is provided the right to appeal detention decisions as set out in the Criminal Code.

8. NOTICES TO PARENTS, RELATIVES OR FRIENDS

14. that a parent, relative or friend be kept aware by means of notices, of the arrest and/or temporary detention, and of the appearance in Youth Court of the young person.

9. ATTENDANCE OF PARENTS

15. that a parent shall be present in Youth Court but, should a parent fail to appear, it would be left to the judge to decide if such an appearance was necessary.

10. SCREENING

16. that when considering whether to invoke the formal procedures of the court rather than using alternative social and legal measures for dealing with young persons who are alleged to have committed offences, regard shall be had to the following:

(a) the seriousness of the alleged offence, the circumstances in which the offence was allegedly committed, and the length of time that has passed since the alleged occurrence;

(b) the previous history of the young person in respect of offences;

(c) the manner in which the young person has responded to alternative social and legal measures in the past;

(d) the willingness of the young person to participate in a plan to use alternative social and legal measures;

(e) any plans put forward by or on behalf of the young person to make amends;

(f) the views of injured parties or of those who have suffered loss from the occurrence, or parents and guardians of such persons;

(g) the civil remedies available;

(h) punishment or loss already undergone by the young person;

(i) the evidence is sufficient to bring the case before the Youth Court;

(j) the danger to the public represented by the young person and the possibility of the repetition of the offence, or of similar or other offences; and

(k) the extent to which public rights or interests are involved and the extent to which private interests are involved;

No proceeding under this Act shall be invalidated because of a failure to comply with the above provisions.

However, when any person or agency is considering whether to invoke the processes and procedures of the Youth Court rather than using alternative social or legal measures for dealing with young persons who are alleged to have committed offences under federal legislation, this Act shall not be construed or applied so as to:

(a) compel the young person to deal or negotiate with a screening agent or agency;

(b) prevent any person from swearing an information or securing the issuance of process in accordance with law;

(c) require any admission or confession as a condition precedent when any alternative social or legal measures are used;

(d) justify an agreement not to prosecute or to compound or conceal an offence;

(e) justify the acceptance of or justify consent to the acceptance of a plea of guilty (to an offence which has not been committed) or to an offence that cannot be prosecuted because it is barred at law;

(f) justify representations to a judge other than in court;

(g) justify any person or agency in failing to perform a duty to swear an information or to issue process in accordance with law;

(h) justify expediency in reducing the workload of a Youth Court or in the disposing of an alleged violation of federal law;

(i) justify the withdrawing of charges or the staying of proceedings for reasons other than those listed;

(j) justify a plea of guilty to a lesser number of charges or to a lesser or included offence;

(k) justify an agreement as to a specific sentence to be recommended to the court.

11. RIGHTS OF YOUNG PERSONS TO ASSISTANCE AND REPRESENTATION

17. that a young person be given the right to retain counsel and instruct him without delay, at all stages of the proceedings in which he is involved.

18. that a young person not be entitled to be represented at his trial by a person who is not a lawyer unless the judge is satisfied that no lawyer is reasonably available.

12. ADMISSIBILITY OF STATEMENTS

19. that any written statement given by a young person without the young person having had explained by a police officer the consequences of making a statement and having been given the opportunity to consult with a lawyer, parent or relative, or in the absence of a parent or relative, a responsible adult, before any written statement is taken, shall be inadmissible as evidence. The admissibility of oral statements would be governed by the present rules of evidence.

13. APPEARANCE OF YOUNG PERSON IN YOUTH COURT

20. that when a young person against whom an information has been laid appears before the court, the judge shall inform him that he is entitled to be represented by a lawyer if

he is not already so represented, cause the information to be read to him and explain to the young person his right to plead guilty or not guilty to the charge.

14. ADJOURNMENTS

21. that the judge may adjourn proceedings at any time and that each such adjournment should not exceed eight days, unless there is consent of both the Attorney General and the young person concerned.

15. SUBSTITUTION OF JUDGES

22. that different judges may preside over different stages of proceedings, but that where a trial has commenced before one judge and an adjudication has not been made, the substituting judge shall recommence the trial.

16. TRANSFER TO ADULT COURT

23. a. that where the young person is charged with a serious indictable offence, except those mentioned in Section 483 of the Criminal Code, the young person may be transferred to the adult court upon a motion from the agent of the Crown or the young person.
    b. that proceedings in adult court be restricted to the offence or offenses for which the young person has been transferred to adult court;
    c. that proceedings before the Youth Court be suspended until proceedings before the adult court and any dispositions resulting therefrom have concluded.
24. that where a motion of transfer is being considered by the agent of the Crown in respect of a young person who had not attained the age of fourteen at the time that the young person was alleged to have committed the offence, approval of the motion shall be required from the Attorney General.
25. that the Youth Court judge should render his decision regarding transfer to adult court after considering a number of factors, including the following:
    a) the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;

b) the age, maturity, character and previous history of the young person;

c) the comparative adequacy of the dispositions available under the Criminal Code, this legislation and any other federal act, for dealing with the case;

d) the nature of any community services rendered to the young person in the past, whether pursuant to this or any other federal or provincial act and his response to these services;

e) the contents of a pre-disposition report; and

f) any representations made by or on behalf of the young person or the Attorney General or his agent.

26. that the judge file written reasons for his decision to transfer a young person to adult court.

17. ADJUDICATION

27. that where a young person admits to an offence and the judge is satisfied that the admission is true, he shall proceed to make a disposition as provided in the act.

28. that where a young person does not admit to an offence, or the judge is not satisfied that the admission of the offence is true, the judge shall proceed to hold a trial and shall

a) if he decides that the evidence is not sufficient to prove beyond a reasonable doubt that the young person committed the offence, he shall find him not guilty and dismiss the young person; or

b) if he decides that the evidence is sufficient to prove beyond a reasonable doubt that the young person committed the offence, he shall find him guilty and proceed to make a disposition as provided in the Act.

18. FINDING AND DISPOSITION

29. that the judge be enabled to give a young person an absolute discharge.

30. that the judge be enabled to impose a fine not exceeding $1,000.00. In doing so, regard shall be had to the young person's present ability to pay or to his ability to earn through employment.

31. that where the young person is convicted of an offence, the court shall order that any property obtained by the commission of the offence be restored to the person entitled to

it, if at any time during the trial the property is before the court or has been detained so that it can be immediately restored to that person under the order.

32. that the judge may order a young person to pay to another person by way of compensation an amount not exceeding $1,000.00, including compensation to a bone fide purchaser after the property has been restored to its owner under paragraph 31. In doing so, regard shall be had to the young person's present ability to pay or to his ability to earn through employment.

33. that the judge may order a young person to perform an appropriate community service. In making a community service order:

    (i) the judge shall be satisfied that the young person is a suitable candidate and may in this determination consider a pre-disposition report;

    (ii) the judge shall secure the consent of the young person to perform the community service, explain the purpose of the order and the consequences of breach;

    (iii) the order shall not be less than 40 hours or more than 240 hours and should be completed within 12 months from the date of the order;

    (iv) the judge shall ensure that the community service order does not interfere with the normal hours of work or education in which the young person is engaged.

34. that the Youth Court judge may impose upon a young person a term of probation not exceeding three years.

35. that the Youth Court judge may impose a combination of two or more dispositions under recommendations 30 to 33.

36. that the Youth Court judge may commit a young person to continuous or, with the concurrence of the provincial authority, intermittent care in either open or secure custody for a period not exceeding three unbroken years from the date of committal.

37. that the judge shall file written reasons for any dispositions involving probation, open or secure custody, and a copy of the decision be given to the young person, his parent, the provincial director, the Attorney General and the lawyer acting on behalf of the young person.

38. that a young person could suffer no greater penalty than the maximum penalty applicable to an adult if committing the same offence.

19. PRE-DISPOSITION REPORTS

39. that a judge shall require a pre-disposition report before making a disposition, if that disposition is to be an order for probation, open or secure custody, in all other cases, a pre-disposition report would be discretionary

40 that the distribution of the pre-disposition report to the young person, his parents, their lawyer(s), the prosecutor, the judge and the provincial director should be mandatory and automatic.

41 that the pre-disposition report shall be in writing and shall contain as much information as is reasonably obtainable and relevant to an order or disposition that may be made in respect of the young person

42 that the pre-disposition report should be prepared by or under the direction of the responsible provincial authority designated for that purpose

43. that where lack of time prevents a pre-disposition report from being committed to writing prior to the disposition, the report may be made orally in the first instance but it shall immediately thereafter be committed to writing and placed in the Youth Court record of the case.

44 that a judge may direct that any part of a pre-disposition report be withheld from the young person, if in his opinion the contents of the report would prove to be harmful to him if disclosed, but in so doing the judge should explain the reason for this as well as circumstances permit, without occasioning the injury which the withholding of the report is meant to avoid.

45. that no statement, made in the course of an investigation for the purpose of preparing a pre-disposition report, by a young person who is the subject of such report, be admissible in evidence against him in any proceeding, whether civil or criminal, except for the purpose of considering an order to proceed against the young person in adult court or in the determination of a disposition.

20. MEDICAL EXAMINATIONS, PSYCHOLOGICAL AND PSYCHIATRIC ASSESSMENTS

46. that the judge may, at any stage of proceedings, order a young person that the judge has reason to believe may be suffering from any physical or mental illness, learning disability

24. TRANSFER OF JURISDICTION

53 that there be a self-contained provision permitting a transfer of charges from one Youth Court to another if both the young person and the Attorney General of the province in which the offence was alleged to have been committed, consent.

25. PROBATION ORDERS

54. that all probation orders contain mandatory conditions for the term of the probation order, requiring that the young person be of good conduct, appear as directed before the court, notify the designated youth worker of changes in his life circumstances as directed, and report to and be under the supervision of the person designated in the probation order.

55 that the judge may stipulate the addition of any or all of the following conditions to the probation order, as he deems relevant to the circumstances of the young person, including that the young person remain within a specific geographical area, assume employment, attend school or another facility for instructional or recreational purposes, and comply with any other reasonable ancillary conditions that may be stipulated in the probation order.

56. that the judge shall read and explain to a young person the contents of the probation order and shall provide him and his parent or guardian with a copy of that order.

57. that the young person should sign a declaration at the end of the probation order stating that he has been explained and understands the content of the order.

26. ASSIGNMENT AND DUTIES OF YOUTH WORKERS

58. that the youth worker may attend the Youth Court proceedings relating to the young person to whom he is assigned.

59. that the function of the youth worker include supervision of the young person in complying with the conditions of any disposition made in respect of the young person including the conditions of any probation. This may also involve supervising or ensuring the payment of a fine or the performance of a community service which may be coupled with a probation order, or after-care when such after-care takes the form of probation following a disposition of open or secure custody.

60. that the function of the Youth Court worker include preparation or supervision of the preparation of a pre-disposition report when so required by the provincial director.

61. that the function of the Youth Court worker also include such other duties in respect of the young person as are required by the provincial director.

27. PRIVACY OF YOUTH COURT PROCEEDINGS

62. that proceedings in a Youth Court shall take place without publicity or the presence of the general public, except for those persons the judge may admit to the proceedings on the basis that they have a valid interest in the case at hand or in the work of the court.

63. that one or two representatives of the mass media as agreed upon by all such representatives who present themselves, be allowed to be present at proceedings in a Youth Court and additional such representatives in the discretion of the judge

64. that no person may, without the permission of the Youth Court judge, publish or make known any proceedings of the Youth Court which would have the effect of identifying a young person who is charged in the proceedings, or appears as a victim or as a witness.

28. EXCLUSION FROM HEARING

65. that the judge may exclude from the court any person whose presence the judge deems to be unnecessary to the conduct of the proceedings, except the Attorney General or the prosecutor, the young person, his lawyer, parent or other person assisting him, the provincial director and any youth worker, when the judge considers such exclusion to be necessary in the interest of the young person, or that the information presented would be seriously injurious to the young person if presented in the presence of the person so excluded.

66. that the judge may, after making a finding of an offence, exclude from the court the young person and any other person, except the young person's lawyer, when the judge considers such exclusion to be necessary in the interest of the young person, or that the information presented would be seriously injurious to the young person if presented in the presence of the person so excluded

67. that where a judge excludes a young person in order to protect him from damaging information, he shall explain the reasons to the young person.

29. EFFECT OF FINDING OR DISCHARGE

68. that a finding of guilt shall be deemed not to have occurred when a disposition has ceased to have effect or when the young person has been granted an absolute discharge, except that the finding may be considered by a judge for the purpose of bail or a subsequent disposition, and that any disqualification to which the young person is subject under any Act or Regulation of Parliament by reason of such finding be removed.

30. INTERPROVINCIAL ARRANGEMENTS FOR YOUNG PERSONS

69. that where arrangements have been made between provinces, a young person who has been placed on probation, committed to open or secure custody in one province, may be held on probation, or in any place of open or secure custody in the province to which the agreement applies.

31. REVIEW OF DISPOSITIONS INVOLVING CARE AND CUSTODY

70. that the service administrator be authorized to give notice of his intention to decrease the level of intervention of any dispositions involving care and custody, and in so doing be required to advise the young person, the parent, prosecutor and the judge of an intention to amend such a disposition.

71. that upon notice of the service administrator's intention to reduce the level of disposition, the judge may cause a review of the young person's case in the Youth Court and, the judge may grant or deny the proposed amendment after conducting a review.

72. that a young person may be brought back to the Youth Court for review of the disposition during the first six months of the term of the disposition with leave of the judge, or at any time thereafter until the disposition has expired, at the instance of the prosecutor, the judge, the provincial authority, the young person or his parent.

73. that the judge shall conduct a review of a young person committed to care and custody one year after the inception of the disposition, if no earlier review has taken place, or one year after the date of an earlier review.

74. that when a judge conducts a review of the disposition he shall consider a report of the progress of the young person prepared by the provincial director and if the content of

this report suggests the merit of having the young person appear before the court, the judge will so order the young person's appearance. The young person will be given a copy of this report, except, as in the case of a pre-disposition report, contents that would be injurious to him would be withheld.

75. that when a judge has committed a young person to care and custody for a period exceeding two years, the youth worker assigned to the young person will cause the young person to be brought for a review of the disposition on a date two years after the inception of the disposition or two years from the date of an earlier review

76. that the grounds for a review of the disposition at the instance of the young person or his parent relate to the fact that the young person is being detained in a category of custody that was not directed in the disposition, that he has been subjected to unreasonable restrictions in respect of custody, that he has made progress that justifies a change in the disposition, that he is not making satisfactory progress in respect of education, training or otherwise, that the circumstances that led the young person to being committed to care and custody have changed materially, that services are available that were not available at the time when the disposition was made or at the time of the last review, or that there are other grounds that the judge considers to be substantial or relevant.

77. that the grounds for review of the disposition at the instance of the prosecutor, the judge or provincial authority are the grounds provided for review of the disposition at the instance of the young person or his parent, as well as that the young person has failed to comply with a material condition of a disposition or order of probation, that the young person has repeatedly refused to comply with a reasonable direction as to the deportment from a youth worker or the young person's custodian, that the young person has evaded or attempted to evade custody and any other grounds that the Youth Court judge considers to be substantial and relevant.

78. that on an occasion of a review of disposition, the judge shall consider the best interest of the young person and the community, and confirm the disposition, or amend the disposition in a manner which will diminish the effect of its restraint.

79. that the provinces would have the option to endow the responsibilities set out in Sections 69 to 77 inclusive to be carried out by a board appointed by the province for that purpose instead of a judge, except that in Section 76 where a review is initiated by

judge or provincial authority in order to determine if the young person has wilfully failed to comply with the terms of his disposition, in which case an increase in the level of custody or the degree of restraint is possible, the review shall be conducted by the Youth Court judge. Decisions of a provincially appointed review board would be reviewable by the Youth Court judge.

80. that when a review is conducted by a provincially appointed review board, notice of the decision of the board shall be given to the young person, his parent, the prosecutor, the Youth Court judge and the provincial director, and within ten days of the notification, the young person, his parent, the prosecutor, or the Youth Court judge may call for a review of the decision of the review board to be held in the Youth Court, whereupon the Youth Court judge may confirm, alter, or deny the decision of the review board. If the decision of the review board goes uncontested during the 10 day notification period, then the decision of the review board will take effect.

81. no appeal shall lie in respect of a review carried out in the Youth Court.

32. FAILURE TO COMPLY WITH DISPOSITION

82. that where a judge finds during a review of a disposition that the young person has wilfully failed to comply with the disposition he shall either amend the conditions of that disposition or make it more constraining, or alter the form of the disposition to one which would have the effect of providing the next most restraining form of constraint, or in the case of probation to either open or secure custody, but in no event can the total time exceed three years.

83. that the failure to comply with the disposition or condition of the disposition not be a separate offence and only be dealt with under the provisions for judicial review.

33. LIMITATIONS ON FINGERPRINTING AND PHOTOGRAPHING

84. that the taking of fingerprints and photographs by the police would be allowed in the cases of indictable offences as is now permitted under the Identification of Criminals Act subject to the following provisions.

85. that upon conviction of the young person the fingerprints and photographs would be stored in two places;

i) as part of the record of the young person; and
ii) in a central depository controlled by the Commissioner of the R.C.M.P.

86. that the police would have access to fingerprints and photographs of young persons in the central depository for comparative purposes in the investigation of indictable offenses, without permission of the court. Access to the summary of the Youth Court record held in the central depository, would be limited by the provisions governing access to Youth Court records.

87. that where a young person is acquitted, the fingerprints and photographs will be returned to him and all copies destroyed.

88. that anyone making illegal use or improper use of fingerprints or photographs of a young person would be subject to a summary conviction offence.

34. YOUTH COURT RECORDS

89. that the Clerk of the Youth Court shall keep a record of each case separately from all records relating to cases in adult court;

90. that the Youth Court record of a young person, during any proceedings against him before the Youth Court or during the term of any disposition made in the Youth Court should be made available, subject to the qualifications regarding injurious information, to the young person, his parent, his lawyer, a prosecutor, any Youth Court judge or any judge, to a police officer, for the purpose of investigating an offence, to a provincial correctional or social service representative and, subject to the consent of the Youth Court judge, to any person or class of persons whom he considers to have a valid interest in the proceedings against the young person or the work of the Youth Court;

91. that the Youth Court record of a young person where there are no proceedings against him before the Youth Court or when any disposition made in the Youth Court has ceased to have effect, should be available, subject to the consent of the Youth Court judge who shall satisfy himself that the disclosure is desirable in the interest of the administration of justice, to any person or class of persons whom he considers to have a valid interest in such disclosure;

92. that the restrictions mentioned above would be applicable with respect to the dissemination of information in records maintained by police forces; and departments

and agencies of governments engaged in the execution or administration of the law of Canada, including a summary of the youth court record held with fingerprints and photographs in the central depository but excluding the fingerprints and photographs;

93. that any person authorized to have access to a Youth Court record who wilfully discloses any part of the record or any information contained in it, to an unauthorized person, be guilty of an offence punishable on summary conviction;

94. that no person may make or retain a copy of any material in the youth court record or of any transcription thereof without the leave of a judge. It should be provided, however, that, for the material already in writing, no leave of the judge is required to have copies made for the prosecution and defense lawyer as well as for the young person and his parent, except for such reports which the judge has decided to withhold from the young person because it may be injurious to him.

35. APPLICATION OF CRIMINAL CODE PROVISIONS

95. that except to the extent that they are inconsistent with or irrelevant to this legislation, all the provisions of the Criminal Code apply with such changes as may be required in respect to offences charged and proceedings taken under this legislation. In the case of both indictable and summary conviction offences, the proceedings would be by way of summary conviction.

36. FUNCTIONS OF CLERKS OF COURT

96. that a Youth Court clerk should have such powers as are ordinarily exercised by a clerk of the court, and more specifically the power to administer oaths and in the absence of the judge exercise the powers of adjournment.

37. APPEALS

97. that a young person need not obtain any special leave to appeal and that he have the same right of appeal as an adult, and in addition, he would have the right of appeal with respect to transfers to adult court and increases in the level or length of a disposition where wilful failure has been found.

98. that in matters involving an indictable offence, the procedure be the same as provided for in the Criminal Code in relation to indictable offences.

99. that in matters involving summary conviction, an appeal lies in the same manner as if it were an indictable offence except that the appeal is first to a Supreme Court judge and thence to the Court of Appeal.

38. REGULATIONS

100. that the Governor in Council should have the power to make regulations governing procedural matters.

39. AMENDMENT OF CRIMINAL CODE

101. that Section 12 of the Criminal Code is repealed and replaced to provide that no person shall be convicted of an offence in respect of an act or omission on his part while he was under the age of 12 years.

102. that Section 13 of the Criminal Code be repealed.

103. that no adult shall be subject to trial under the new legislation.

104. that consequential amendments, as required, be made to the Criminal Code to provide for instances where adults contribute to the commission of offences by young persons.

105. that a judge be allowed with the consent of the provincial authority involved to sentence a young person who has been transferred to an adult court and, subsequently, tried and convicted by such court, to an institutional facility for young persons for a period of time which will not be three years beyond the maximum age established by the Governor in Council.

40. AMENDMENT OF PAROLE ACT

106. that the definition of "inmate" in the Parole Act be amended so as to exclude a young person subject to the jurisdiction of the Young Offenders Act from the operation of the Parole Act.

41. AMENDMENT OF PRISONS AND REFORMATORIES ACT

107. that the definition of "child" in the Prisons and Reformatories Act be amended so as to

exclude a young person subject to the jurisdiction of the Young Offenders Act from the operation of the Prisons and Reformatories Act.

42. REPEAL OF THE JUVENILE DELINQUENTS ACT

108. that the Juvenile Delinquents Act is repealed at the enactment of the Young Offenders Act.

109. that all proceedings under the Juvenile Delinquents Act, in which a young person is charged with a delinquency, that were commenced by the laying of an information before the coming into force of this Act shall be continued as if that Act were not repealed, except that if no adjudication and disposition have been made under that Act, the proceedings shall be so continued only up to and including the adjudication and thereafter under this Act as if the adjudication were a finding under this Act.

110. that any offence by a young person before the coming into force of this Act in respect of which an information has not been laid before such coming into force shall be dealt with as if the offence had occurred after the coming into force of this Act.

APPENDIX B

Legislative proposals and comparison with Solicitor General's committee report and juvenile delinquents act.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
1. Title.	The Young Offenders Act.	The Young Persons In Conflict With The Law Act.	The Juvenile Delinquents Act.
2. Preamble.	A preamble would be incorporated, expressing the philosophy and intent of the legislation as a guide to its administration.	Recommended that a preamble be included in new legislation.	A preamble is not included in the Juvenile Delinquents Act.
3. Jurisdiction (A) Offences.	Provision for offences only against the Criminal Code and other federal statutes and regulations.	Recommended provision for offences only against the Criminal Code and other federal statutes and regulations.	Includes Criminal Code, other federal statutes and regulations, provincial statutes and municipal by-laws. In addition, it includes "status offences", that is sexual immorality or any other similar form of vice.
Jurisdiction (B) Age i) Minimum.	The minimum age would be uniform throughout Canada and set at 12 years. The provinces would continue to have this flexibility to deal with young persons over 12 years under provincial legislation where they deem it inappropriate to use the Young Offenders Act.	A uniform minimum age of 14 was recommended.	The minimum age is governed by the Criminal Code and is set at age 7.
ii) Maximum.	The maximum age would be set at under 18. Provinces could request the Governor in Council to set the maximum age at 16 or 17 years in their respective province or territory.	A uniform maximum age of under 18 was recommended.	The age is not uniform and while pronounced as under 16 in the Act, provinces have been permitted to administer such other ages as under 17 or 18.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
4. Detention Prior to Disposition.	Additional criteria to that of the Criminal Code would apply. Temporary detention could be authorized by the police as per Section 452 of the Criminal Code. The place of detention must be separate from adults and notice must be given to parents by the person detaining. Review of the need for detention is mandatory and the right of appeal from detention decisions is provided.	Similar provisions to the proposals were outlined in the Committee's Report, although the decision to detain would have been authorized only by a Youth Court judge or responsible provincial authority.	The only specific provisions are that detention be separate from adults. No notice is required and no review is provided for.
5. Notices to Parents, Relatives or Friends.	Notification of parents would be required in all cases of arrest, detention, appearance to attend court and issuance of summons or warrant. Proof of notification may be made to the satisfaction of the judge. When a parent is not available, notice would be given to an adult relative or friend.	The Committee's Report recommended similar provisions to those recommended in new legislation.	Only notice of trial must be provided for.
6. Attendance of Parents at Proceedings of Youth Court.	Parents shall be present in Youth Court but upon failure to appear, the judge would decide if such an appearance is necessary.	Attendance of parents would be left to the discretion of the judge.	No obligation on the part of a parent to attend court proceedings.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
7. Screening and Diversion from the Youth Court.	Proposed legislation would not prescribe a specific screening mechanism. A statement of the purpose of diversion would be included in the preamble and the factors to be considered when diverting cases, would be outlined in legislation.	A specific mechanism known as a screening agency was recommended. Standard practices and procedures were required when referring cases to the screening agency although young persons could participate on a voluntary basis.	No specific provisions or formal mechanisms are provided. Diversion can be accomplished by deciding not to proceed with the laying of an information or by withdrawing a charge.
8. (A) Rights of Young Persons with Respect to Representation.	Young persons would have the right to legal representation at all stages of the proceedings. Young persons would be explained their rights to retain counsel as soon as they are detained, arrested or summonsed by the police. A young person is entitled to be represented at his trial by a person who is not a lawyer if the judge is satisfied that no lawyer is available.	Right to representation by counsel at all stages of proceedings or to have parent or adult assist.	Makes no provision giving the right to counsel. Practice varies from region to region and is based on the availability of services as well as the decisions of individual judges.
(B) Rights of Young Persons with Respect to Written Statements.	Young persons must be explained by police consequences of making a statement. Young persons must be given opportunity to consult with a lawyer, parent, relative, or responsible adult, before any written statement is given. Waiver of this necessity must be in writing. Non-compliance would lead to inadmissibility of statements.	In addition to the ordinary rules regarding the admissibility of statements, specific limitations would be placed on the taking of statements from young persons. Young persons would be given an opportunity to consult counsel and statements would be taken in the presence of parent or adult. Restriction on admissibility of statements if non-compliance occurs.	Ordinary rules of admissibility of statements applies.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
9. Appearance of Young Person in Youth Court and Admissions.	When a young person appears before the Youth Court, a judge shall inform him that he is entitled to legal representation, read and explain to the young person his right to plead guilty or not guilty to the charge.	The Solicitor General's Report contained identical provisions.	No reference is made to the appearance of a young person in court respecting his rights to counsel, an explanation of the information, the consequences of making an admission or the necessity of pleading guilty or not guilty.
10. Transfer to Adult Court.	Transfer to adult court would be provided for all young persons in cases involving serious indictable offences. Decision to transfer would be based upon a motion by the Crown or the young person only. In cases involving 12 and 13 year olds, a motion by the Crown requires consent by the Attorney General.	Transfer to adult court provided for young persons over the age of 16 years in cases involving serious indictable offences. Judge could authorize transfer to adult court on his own motion. Young persons could apply to transfer to adult court to be tried by judge and jury.	Transfer to adult court is provided for young persons over the age of 14 years for indictable offences. Judge may authorize transfer on his own motion.
11. Dispositions.	A wide range of dispositions is provided including absolute discharge, a maximum fine of $1,000.00, compensation not exceeding $1,000.00, restitution, community service order, probation, open custody and secure custody up to a maximum of 3 years. Upon pronouncement of a disposition, the Youth Court retains jurisdiction over the young person until it terminates.	A similar range of dispositions to those recommended in proposed legislation were recommended in the Solicitor General's Report. The limit on fines, restitution, etc., was set at $200.00.	The range of dispositions is limited. There is no provision for absolute discharge, community service, compensation or restitution, and fine imposition is limited to $25.00. Probation, open and secure custody are provided for but in most cases, those involve transfer to provincial law resulting in loss of jurisdiction by the court.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
12. Pre-Disposition Reports.	A judge may require a predisposition report before he makes any disposition but he must require a report before considering a transfer to adult court or a disposition of probation, open or secure custody. The distribution of a pre-disposition report to specific persons would be mandatory.	Similar provisions to those recommended in proposed legislation were contained in the Solicitor General's Report.	No mandatory requirements are outlined in the Juvenile Delinquents Act. Reports are optional in all cases.
13. Medical Examinations, Psychological and Psychiatric Assessment.	Provides, at the judge's discretion, for a medical, psychiatric or psychological examination of a young person believed to be suffering from a physical or mental illness, learning disability or mental retardation.	Similar provisions to those recommended in proposed legislation were contained in the Solicitor General's Report.	No direct reference to medical, psychiatric or psychological examination is made in the Juvenile Delinquents Act.
14. Disqualification of Judge.	Provides that a judge, who has made a transfer order to adult court, or who has examined a pre-disposition report prior to making a decision to hold a trial of a young person who does not admit to an offence, has no jurisdiction to conduct or continue the trial of a young person for an offence in respect of which the transfer order was made or the pre-disposition report was prepared. Disqualification may be waived if, in the opinion of the accused and the prosecution, information available to the judge is not likely to prejudice him.	Similar provisions to those recommended in proposed legislation, although provision was not made for waiving of the disqualification on agreement by the accused and the prosecution.	No provision for disqualification of judges appears in the Juvenile Delinquents Act.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
15. Issue of Insanity.	Provides for a judge who, finds that a young person was insane at the time of the commission of an offence or finds that a young person is unfit on account of insanity to stand trial, to refer the young person to the provincial authority for consideration under appropriate provincial legislation.	Similar provisions to those recommended in the proposed legislation were made in the Solicitor General's Report.	There are no specific provisions in the Juvenile Delinquents Act covering cases of insanity.
16. Probation Orders.	Outlines specific mandatory conditions that must be included in probation orders and also includes optional conditions which the judge may include in the probation order. A copy of a probation order would be given to the young person and his parent.	Provisions similar to those recommended in proposed legislation were made in the Solicitor General's Report.	Authorizes a judge to place a young person on probation and prescribe conditions he deems appropriate. Specific conditions are not outlined, discretion is left to the court.
17. Assignment and Duties of Youth Workers.	The term "youth worker" is generic. Generally, the functions of a youth worker would include attending proceedings of Youth Court, supervising the young person in complying with the terms of a disposition, preparing predisposition reports when so directed.	Advocated two major roles of a youth worker. 1. officer of the court 2. advocate for the young person. Duties of traditional probation officer would be expanded and youth worker would be assigned to the case of a young person upon arrest.	No provision for a youth worker but the powers and duties of a probation officer are spelled out. General role is that of officer of the court.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
18. Privacy of Youth Court Proceedings	Proceedings in Youth Court to take place without publicity and the general public is excluded except those persons who the judge feels have a valid interest in the case. Two mass media representatives allowed to attend but only judge may allow additional representatives.	Provisions similar to those recommended in proposed legislation were made in the Solicitor General's Report.	Provides trials without publicity, separate and apart from adults.
19. Effect of a Finding or Disposition.	Provides protections for young persons against the consequences of a criminal record including 1. restricted and controlled access to the records of young persons 2. no recording of a finding of guilt against a young person in the adult criminal record system.	Provisions of proposed legislation were recommended in the Solicitor General's Report.	Does not protect young persons from consequences of criminal record. A juvenile court record forms part of a criminal record which may be used against a young person once an adult. Access to records is not restricted.
20. Review of Dispositions.	Mandatory and periodic review of dispositions provided. Service administrators authorized to decrease level of intervention involving care and custody but must advise parent, Crown and judge or the review board who have right to seek a review. Wilful failure by a young person to comply with a disposition could lead to the application of the next most restrictive disposition.	Mandatory and periodic reviews provided. Judge would have single authority to vary terms or length of a disposition. Wilful failure by a young person to comply with a disposition judge would be authorized to apply the next most restraining form of disposition.	No mandatory review process is provided for. Power is given to the judge in any case, for any reason to have a young person brought back to court until he reaches age 21 and power to impose any disposition in substitution for the original.

SUBJECT	LEGISLATIVE PROPOSALS	SOLICITOR GENERAL'S REPORT	JUVENILE DELINQUENTS ACT
21. Fingerprinting and Photographing.	Taking of fingerprints and photos permitted by police in cases of indictable offences as is permitted under the Identification of Criminals Act. Prints and photos must be returned if young person is acquitted. Summary conviction offence for misuse. Specific procedures set up for the storage of records and access is restricted.	Restrictions on taking fingerprints and photos, allowed in all cases only if judge gives leave and if permitted in the same circumstances for adults.	No provisions, the Criminal Records Act applies.
22. Youth Court Records.	Youth court records would be kept separate from adult records. Restricted access to the records would be provided and any person wilfully disclosing information contained in the record to an unauthorized person would be guilty of offence punishable on summary conviction.	Provisions of the proposed legislation were recommended in the Solicitor General's Report.	Contains no specific provisions regarding the creation, maintenance, confidentiality and accessibility of juvenile court records.
23. Application of Criminal Code Provisions.	All provisions of the Criminal Code would apply in respect of offences charged and proceedings taken pursuant to new legislation, except to the extent that they are not consistent with or relevant to new legislation.	Identical provisions to those recommended in new legislation were recommended in the Solicitor General's Report.	Provides for some parts of the Criminal Code to apply and is unclear in others.
24. Appeals.	Young persons would have the same right of appeal as adults. Appeal procedures as Criminal Code with minor modifications in summary conviction matters.	Same general provisions in new legislation were recommended by Solicitor General's Committee.	Appeals allowed only by special leave of the judge and on special grounds and as per procedure in the Criminal Code.

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The Young Offenders Act

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HIGHLIGHTS OF THE YOUNG OFFENDERS ACT

FOREWORD

It is an awesome challenge which faces legislators who grapple with the task of developing a system of justice for adolescents. They must strike a balance between helping young offenders and protecting society from harmful conduct. They must safeguard the rights of young people in conflict with the law, while discouraging offenders from committing further crimes. The complexity of the challenge is illustrated by the fact that the new Young Offenders Act that I have introduced into the House of Commons has been at least ten years in the making.

Those ten years have not been misspent. During that time there has been extensive consultation with the provinces, which are responsible for administering the law that the federal government enacts. These consultations have produced many changes and modifications in the Act; the federal government recognizes that support of the provinces is vital for the fulfillment of the Act's objectives. Legislation which is so contentious as to make its passage through Parliament impossible or its subsequent administration troubled is of no use to anyone.

I am optimistic that sufficient consensus has now been reached to secure acceptance of the new Young Offenders Act throughout Canada. I am personally very committed to repealing the 73 year old Juvenile Delinquents Act, since it is no longer relevant to the problems presented today by young people who are in trouble with the law.

I believe that the incorporation of several innovative practices into our law is long overdue. The effectiveness of practices such as community service programs and restitution agreements has been demonstrated by those provinces which have developed them. Such practices promote a sense of responsibility in a young offender and give him or her the opportunity to repay society for any damage caused by illegal behaviour. It is time that these advanced practices were implemented throughout Canada.

The juvenile justice system cannot solve all the social problems which young people must cope with today. Factors other than the court — a young person's family, friends, school and community, as well as his or her own personality — influence behaviour. Accordingly a reformed juvenile justice system cannot alone completely wipe out juvenile crime but it can provide a consistent, coherent and balanced process to deal with it, that encourages respect for the law and promotes the well-being of both the young offender and society.

Bob Kaplan, P.C., M.P.,
Solicitor General of Canada

THE YOUNG OFFENDERS ACT

Highlights

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Introduction: The need for reform

Reform of our juvenile justice system is long overdue. The need for such reform has been recognized for several years — years which have seen extensive public discussion, intergovernmental consultation and publication of reports on the topic. The debate has yielded a valuable reappraisal of the principles on which our juvenile justice system operates. The Solicitor General of Canada considers that the time has now come to incorporate the new thinking into law, since there is consensus among professionals in the field on the two major aspects of reform.

First, there is general agreement that the law which underpins today's system is outdated both in theory and practice. At present, young offenders are dealt with under the *Juvenile Delinquents Act*. This Act was passed in 1908 and it has remained substantially unchanged since it was revised in 1929. Up until 1908 a child who broke the law had appeared in the adult courts regardless of his or her age and vulnerability. Children in the early years of this century could expect little benevolence from authority; there were no labour laws to protect child workers, or education acts to ensure minimum schooling.

The 1908 Juvenile Delinquents Act established the state as a kindly parent who would treat a young person in trouble with the law "not as a criminal but as a misdirected child" requiring "help and guidance and proper supervision". This *parens patriae* role was an innovation which was seen as an enlightened break with the practice of the time.

However, Canadian society has changed dramatically since then and so have attitudes towards young people, towards crime and towards how to deal with young offenders. The current Act allows the authorities broad discretionary powers in their efforts to provide a juvenile with "aid, encouragement, help and assistance". This flexibility can permit an infringement of what are today recognized as the basic rights of a citizen of any age — the right to due process of law, for example, and the right to participate in decisions affecting that citizen's future. Moreover, the Juvenile Delinquents Act does not sufficiently emphasize the protection of society or the responsibility of young people for their behaviour — two principles which are accorded more weight today than they were when the Act was introduced. And many of the sentences, or "dispositions" as they are called, provided in the Act are unrealistic today. The maximum fine, for instance, is $25.

The practical inadequacies of the Juvenile Delinquents Act stem from its *parens patriae* approach. Three particular features of the way it works have concerned legislators and administrators:

- The Act establishes the condition of delinquency to cover both offences against federal and provincial laws and status offences such as "sexual immorality or any similar form of vice". During the years since the Act was passed, however, the catch-all term delinquent has become as pejorative as the label "criminal" it replaced. Moreover, the fact that the behaviour covered by the status offences is not regarded as criminal for an adult is regarded today as unfair discrimination against young people.
- The intent of the Act is to deal with juvenile offenders as informally as possible, so as to avoid the slur of criminality. In day-to-day application, however, the Act's flexible welfare approach has created the potential for contradictions and injustices. A young person is provided with insufficient guarantees to his or her right to fair and equal treatment before the law when his or her liberty is at stake. Nor does the law specify every important procedure which should be followed when a young person becomes subject to the juvenile justice system. It does not answer important questions such as when a young person is entitled to legal representation, whether a juvenile can be fingerprinted, what happens to juvenile court records.
- In keeping with the Act's treatment-oriented approach, the dispositions which a juvenile court judge may give are frequently open-ended, on the grounds that when the juvenile is sufficiently "treated" the authorities will terminate the disposition. However, it is the provinces rather than the courts which are responsible for administering the Act, and when a juvenile is committed to custody by the court, he or she ordinarily passes out of the court's jurisdiction and into the charge of the provincial authorities. This means he or she is now subject to administrative rather than judicial decisions regarding the length of the disposition. The Act specifies no legal redress to the juvenile court if the juvenile or the parents want to challenge the administrator's decision.

The fact that the system has not resulted in wholesale injustice is a tribute to the discretion and sense of equity which juvenile court judges have exercised in proceedings under the Juvenile Delinquents Act, and provinces have exercised in its administration. Some provinces have already implemented practices similar to those proposed in the new Act.

The second important point on which there is consensus today is that contemporary attitudes and current practices should now be incorporated into federal legislation, so that uniformity of standards and law is extended throughout the country.

Any changes in laws dealing with young people will necessarily provoke debate between those who regard the law as too lax, and prefer young people to be treated as adults, and those who regard the law as too stringent and argue that adolescents should be treated totally differently from adults. The new Young Offenders Act takes an approach to young people which is quite new in Canadian law. On the one hand it provides the same safeguards and guarantees of legal rights as are already provided to adults; on the other hand it establishes a system of youth courts, procedures and dispositions which are separate from those established for adults. In addition, it incorporates into its provisions a concern for the safety of the community and the opportunity for parents to get involved in proceedings which involve their children.

POLICY FOR CANADA WITH RESPECT TO YOUNG OFFENDERS

1. What approach to young offenders does the new Act take?

The philosophy of the new Act is expressed in a policy section. This section will serve as a guide to the Act's spirit and intent for everyone concerned with its administration throughout Canada.

The Act's approach blends three principles: that young people should be held more responsible for their behaviour but not wholly accountable since they are not yet fully mature; that society has a right to protection; that young people have the same rights to due process of law and fair and equal treatment as adults, and these rights must be guaranteed by special safeguards. Thus the Act is intended to strike a reasonable and acceptable balance between the needs of youthful individuals and the needs of society.

In particular, the policy section states:

- Young people should bear more responsibility for illegal acts they commit, although they will not be held accountable in the same way as adults are.
- In order to protect society from such illegal behaviour, young offenders may require supervision, discipline and control.
- Young offenders have special needs because they are dependents at varying levels of development and maturity. They therefore also require guidance and assistance.
- Alternative measures to the formal court process should be considered for a young offender, as long as such a solution is consistent with the protection of society.
- Young people have rights and freedoms, including those stated in the Canadian Bill of Rights. In particular they have:
  — a right to participate in deliberations which affect them
  — a right to the least interference with their freedom which is compatible with the protection of society, their own needs and their families' interests.
  — a right to be informed of all their rights and freedoms.
- Young offenders should only be removed from their families when continued parental supervision is inappropriate. The Act recognizes the responsibility of parents for the care and supervision of their children. Parents will be encouraged and if necessary required to take an active part in proceedings that involve their children.

JURISDICTION — BY OFFENCE AND AGE

2. To whom does the new Act apply?

The new Act will cover only those young people charged with specific offences against the Criminal Code and other federal statutes and regulations. It will not apply to those charged with offences against provincial laws (which cover such offences as traffic and liquor violations), or municipal bylaws. The catch-all offence of "delinquency", which the 1908 Act created to include all juvenile offences including the status offences of "sexual immorality" and "any similar form of vice", will be abolished.

Under the new Act the age of criminal responsibility will be raised from seven to 12 years.

Children below the age of 12 are not considered criminally responsible, which means accountable under criminal law, for any offence they might commit. If a younger child did perform a harmful act, he or she could be dealt with pursuant to provincial law. The Juvenile Delinquents Act, in conjunction with the Criminal Code, specifies seven as the minimum age for juvenile delinquency proceedings, but it is universally agreed that a child of seven is too young to be considered criminally responsible.

Unfortunately there has been no such agreement on a maximum age. The current Act sets the maximum age for juvenile delinquency at under 16, but allows the federal government to establish a different maximum at the request of a province. Quebec and Manitoba have under 18 years as their maximum: British Columbia (and Newfoundland which has its own statute to deal with young people) opted for under 17: the remaining six provinces and two territories have a maximum age of under 16. The choice of different maximum ages reflects not only different opinions on when an individual is considered sufficiently mature to be held fully responsible and dealt with as an adult, but also the valuable variety of programs and resources which the provinces have developed to meet young offenders' needs.

While the federal government would prefer the establishment of a standard maximum age it is reluctant to impose a maximum age on the provinces, given the variety of services and attitudes they offer.

Therefore, under the new Act the maximum age will be under 18 years but at the request of a province the federal government may set under 16 or under 17 as a maximum in that particular province.

DIVERSION

3. Will every young person who breaks a federal law appear in the youth court?

Not necessarily. One of the underlying principles of the new Act is that, for less serious offences, alternative measures to the formal court process might be used. It has been recognized for some time that many young people are brought to court unnecessarily, when other effective ways to deal with them already exist in some provinces. These programs called *diversion programs* may entail community service, involvement in special education programs, counselling or restitution agreements; their common characteristic is that they are all voluntary.

The Act contains built-in safeguards for the protection of young people who are diverted into these programs. If a young person prefers to make an appearance in court to establish his or her innocence of the charge, he or she can of course do so.

PROCEEDINGS IN THE YOUTH COURT

4. What is the procedure once the authorities have decided to take a young person to court?

The new Act establishes strict guidelines on procedures. For the first time the young person's rights from the moment he or she has been arrested or summoned are made explicit. In particular:

- The young person's parents must be notified of all proceedings, encouraged and if necessary ordered to attend. They would be allowed to make known their views on the court's sentence if and when their child has been found guilty.
- The young person has a right to legal representation at all stages of the proceedings, including when diversion rather than a court appearance is being considered.
- The youth court judge is obliged to remind any young people appearing before the court of their rights under the new Act.
- Before he makes any decision, the judge may ask for a predisposition report. This is an assessment of the young person's circumstances and an appraisal of the programs and facilities available to the court to meet the young person's needs. The judge must ask for such a report if he is considering transferring the young person to an adult court, or sentencing an offender to custody.
- If the judge considers that the young person is suffering from a physical or mental illness or disorder, an emotional disturbance, a learning disability or mental retardation, he can ask for a medical, psychological or psychiatric assessment.

DETENTION AND BAIL

5. What happens to a young person if he or she is detained before the court has given its decision?

The new Act defines a precise procedure which police and court authorities must follow when they are considering the detention of a young person. In particular:

- Young offenders have the same entitlement to bail as adult offenders. The youth court will deal with bail applications for young people, using the rules and criteria that are set out in the Criminal Code.
- The young person's parents must be notified.
- Young people must as a general rule be detained separately from adult offenders.
- The youth court will have the power to release a young person into the care of a responsible adult when it appears that the adult can exercise control and guarantee the young person's subsequent attendance in court.

TRANSFER TO ADULT COURT

6. Will the youth court deal with every offence a young person may commit?

Not necessarily. The new Act is expected to be effective in nearly all cases. However, there will be the rare occasion where the gravity of the offence, the circumstances in which it was committed, the needs of the young person and the protection of society require that the case be dealt with in the adult court. Such cases might include serious indictable offences like rape, manslaughter or armed robbery.

Where an application is made to the court, by the Crown or the young person, a youth court judge can decide at a hearing to transfer such a case to the adult court, provided the offence was committed after the young person's 14th birthday. An application for a transfer as well as a decision with respect thereto must be made before the youth court has made a decision on the guilt or innocence of the young person.

The new Act provides criteria to guide the court's decision, and sets out the factors that the judge must take into account. These factors include the degree of seriousness of the alleged offence, the young person's maturity and character, and whether he or she had committed previous offences. The judge must consider a predisposition report and any representations the parents may wish to make before authorizing a transfer.

In view of its serious consequences, a transfer to adult court is considered to be a measure of last resort. The transfer order is subject to appeal.

DISPOSITIONS

7. What sentences can the youth court give?

The range of dispositions (as youth court sentences are called) provided under the new Act is both wide and flexible. Moreover, none of the dispositions are open-ended, in contrast to those contained in the 1908 Act which allowed for indefinite dispositions. Under the current Act, a young person can be put in custody for an indeterminate period.

The dispositions are designed to meet the special needs of young people, to protect society and where possible to take into consideration the rights of the victims of crime.

The dispositions available are:
— an absolute discharge.
— a fine of up to $1,000.
— a restitution or compensation order for loss of or damage to property, loss of income, or special damages which arose because of personal injury to the victim of the offence. A judge who is considering such an order will take into account the young offender's ability to pay or earn.
— an order of compensation in kind or by way of personal service to the victim of the offence.
— a community service order, which would require the young offender to perform a specified amount of work for the community.
— probation for up to two years.
— committal to intermittent or continuous custody for up to two years.
— additional conditions which the judge considers in the best interests of the young offender or society, such as the surrender of illegal goods, or a prohibition against the possession of firearms.
— any combination of these dispositions, as long as the combination does not exceed two years in duration for any one offence.

It should be noted that in no case would a young person be subject to a greater penalty than the maximum penalty applicable to an adult committing the same offence.

COMMITTAL TO AND RELEASE FROM CUSTODY

8. What does a "committal to custody" involve?

A "committal to custody" means that the young offender will be admitted to a specially designated residential facility from which his or her access to the community is restricted. The purpose of this restraint and containment is twofold: to eliminate the likelihood of the young offender committing any more illegal acts, and to give him or her the chance to participate in programs to meet his or her special needs. The custodial facility might be a group home, community residential training centre, childcare institution, training school, detention centre, correctional institution or wilderness camp.

An important new principle which the Young Offenders Act embodies is that the youth court will retain jurisdiction over the young offender until the custodial disposition (or any other disposition) that it pronounced is completed. Under the current Act once a juvenile court has pronounced a custodial sentence, jurisdiction of the case is usually transferred to the provincial authorities. In theory the provincial authorities can then unilaterally alter the juvenile court's decision in any direction which might offer, in their opinion, more "aid, encouragement, help and assistance" — even if it means the premature release of a juvenile whom the court has sentenced to custody.

The new Act recognizes that the youth court is the authority that should decide the extent to which custody and other dispositions are used to ensure the safety of Canada's communities and people. It would therefore be inconsistent if such decisions could be unilaterally altered by provincial authorities without reference back to the youth court.

However, the new Act also recognizes that there must be some built-in flexibility to allow the director of the provincial services to plan and implement effective programs. Therefore, once the youth court has made a custody order, it leaves to the provincial director the administrative decision on the place and level of custody appropriate for the young offender.

The provincial director could move offenders between institutions and programs on his or her own initiative, and could also authorize temporary releases to the community. The new Act allows for two types of temporary release:

- a temporary *leave of absence* up to a maximum of 15 days for medical or humanitarian reasons, or to assist in the re-integration of the young offender into the community.
- a *day release* so the young person could attend school or training, continue employment or take part in a self-improvement program.

The new Act outlines the procedure which the provincial director must follow if he or she decides to initiate the release of a young offender from custody before the full disposition has been served. The director must serve notice of his or her intention to the prosecutor, the young person and the parents. If none of these people asks to have the case reviewed, the youth court judge would formalize the release by placing the young person on probation for the remaining period of his or her disposition.

Custodial dispositions will only be given after very careful consideration, since they represent a radical restriction of the young person's freedom. A youth court judge who is considering custody for an offender must request a predisposition report. If he decides on a custodial disposition, he must then give written reasons for his decision.

REVIEW OF DISPOSITIONS

9. Can a sentence be changed once it has been given?

Yes, but only by the youth court. The new Act contains an innovative and thorough review procedure to make sure that each disposition is monitored continuously. The procedure has three main objectives:

- to keep the dispositions relevant and geared to the circumstances and progress of young offenders.
- to give everyone involved — the offender, the parents, the provincial director and the Attorney General — the opportunity not only to initiate a review, but also to attend and be heard.
- to protect both the rights of the young person and the interest of society while retaining jurisdiction within the youth court.

The review procedure under the Juvenile Delinquents Act has come under severe criticism for its inadequacies and arbitrary nature. Under the current Act a young person is exposed to double jeopardy — even after young offenders have appeared in the juvenile court, they may be brought back any time before their 21st birthday and given a new disposition or even be transferred to the jurisdiction of the adult court. In practice, the present review system tends to be used only in cases where the young offender has failed to comply with the court's disposition, and therefore the system has come to have a rather negative purpose.

The new review procedure is intended to be a much more positive process. A young offender who has been given a period in custody will have a mandatory review (at least every year, or more frequently by application of any of those involved in the case). The review will be conducted either by the youth court or, at the option of the province, by a provincially appointed review board. The length and basic nature of the custodial disposition could only be changed by the youth court. However, as explained in the previous answer, the provincial director can decide the level of security, the custodial programs and the facility best suited for an individual.

All other types of dispositions would be reviewed by the youth court judge. These reviews would occur from time to time at the request of the provincial director, the young offender, his or her parents, or the Crown prosecutor.

During a review, the judge (or review board in cases of custody) may confirm the original disposition, release the young offender from custody and put him or her on probation, or amend the terms of any other disposition so as to decrease the level of intervention by the authorities. Unless the young offender has deliberately failed to comply with the original disposition, the youth court cannot increase the length or severity of the disposition. However, when he or she *has* failed to comply with the disposition, only the court can impose a stronger sentence.

APPEALS

10. Can a young person appeal against the youth court's decision?

Yes. Young people would have similar rights of appeal from decisions affecting them as adults have under the Criminal Code. The automatic right to appeal is specifically denied to young people under the current Act, which states that juveniles must seek special leave to appeal.

PUBLIC HEARINGS

11. Are youth court hearings open to the public?

Yes. The youth court hearings have been opened up under the new Act, so that justice will not only be done but also will be seen to be done. The current Act specifies that "the trials of children shall take place without publicity and separately and apart from the trials of other accused persons", but over the years experience has shown that such *in camera* hearings are inevitably viewed with suspicion and are more susceptible to potential abuse.

Open hearings ensure public scrutiny and monitoring of the youth court system. This in turn should provide an added guarantee for the protection of young people's rights. However, the judge will have the authority to exclude anyone:

- when the exclusion is, in the judge's opinion, in the interests of public morals, the maintenance of order or the proper administration of justice.
- when information being presented to the court would be "seriously prejudicial or injurious" to any young person present, whether he or she is the accused, the victim or a witness.

Coverage by the press would have to respect the anonymity of any young person involved, whether he or she is the accused, the victim or a witness.

FINGERPRINTS AND PHOTOGRAPHS

12. Can the police fingerprint young people?

Yes, but only with certain safeguards and when serious cases like breaking and entering or theft are being investigated. However, a young person may be fingerprinted or photographed only in the circumstances in which an adult could be subjected to such procedures.

The question of whether the police may fingerprint and photograph young people has never been clearly answered in law. The Juvenile Delinquents Act is silent on the issue, and in recent months the courts have delivered conflicting decisions. In recognition of the need for this information in the detection and investigation of crime, the new Act permits the practice — but specifies that use of the information be limited primarily for criminal justice purposes.

In particular, the Act states:

- the police must destroy any prints and photographs if the young person is acquitted or proceedings against him or her are discontinued.
- there must be special procedures for the storage, control of and access to such information.
- misuse of any fingerprints or photographs is an offence.

YOUTH COURT RECORDS

13. What happens to the records of a young person who has appeared in the youth court?

Although young offenders are intended to take responsibility for their illegal behaviour, the consequences for them are not intended to be as severe as those applied to adults in the ordinary courts. Therefore, when a young offender has completed his or her sentence and committed no further offence for a qualifying period, the record will be destroyed. The young person will thus be given a fresh start when he or she has shown it is deserved. The effect of this provision is that there would "in law" be no conviction against the young person; he or she would not face all the disabilities that flow from having a criminal record.

The Juvenile Delinquents Act contains no such provision, nor does it specify any regulations on the creation, maintenance, confidentiality or accessibility of juvenile court records. Under the present legislation, it is possible for an individual to carry the label "delinquent" for life.

The qualifying crime-free period specified by the new Act will be two years for those who receive summary convictions (offences which ordinarily carry a maximum of six months imprisonment under the Criminal Code) and five years for those who commit the more serious offences known as indictable. During this period the youth court records can be used for bail or parole applications or subsequent sentencing in either youth or adult courts. If there is a further conviction during this period, the offender would of course not qualify for destruction of the record of his or her original offence until he or she has completed an uninterrupted crime-free period.

The new Act lists those people allowed access to the records before they are destroyed. Unauthorized disclosure would be an offence.

CONCLUSION: The role of the federal and provincial governments

The Government of Canada is responsible for creating criminal law. It is also responsible within the juvenile justice system for assuring the same opportunities for justice and legal rights to young people wherever they live and for promoting national standards for the measures and programs developed to meet young offenders' needs. It supports the provinces' commitment to provide an equal level of positive social programs.

The provincial governments have an equal role within the juvenile justice system, particularly since they are responsible for administering the law which the federal government enacts. It is the various professionals, such as family and youth court judges, lawyers, police officers, welfare officers and social workers who are responsible to make the system work. The fact that it is the provinces which administer juvenile justice allows the system to reflect regional and cultural differences, for example in the range of services and programs offered and in the variation of maximum age of young offenders which provinces may select.

Young people are our future. They should, as other Canadians, be guaranteed the same right to justice and given every opportunity to feel that they are members of their communities. The Young Offenders Act represents a significant step in the attainment of this objective.

Solliciteur général Canada
Solicitor General Canada

La Loi sur les jeunes contrevenants

Points saillants
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POINTS SAILLANTS DE LA LOI SUR LES JEUNES CONTREVENANTS

AVANT-PROPOS

Les législateurs qui ont pour tâche de développer un système judiciaire pour adolescents ont un défi de taille à relever. Ils doivent atteindre un juste équilibre entre l'obligation d'aider les jeunes contrevenants et celle de protéger la société contre un comportement nuisible. Ils doivent sauvegarder les droits des jeunes qui ont des démêlés avec la justice tout en décourageant les contrevenants de commettre d'autres crimes. La complexité du défi est illustrée par le fait qu'il a fallu au moins dix ans pour élaborer la nouvelle Loi sur les jeunes contrevenants que j'ai présentée à la Chambre des communes.

Ces dix années n'ont pas été mal employées. Pendant ce temps, il y eut des consultations approfondies avec les provinces qui ont pour tâche d'administrer la loi que le gouvernement fédéral édicte. Ces consultations ont entraîné de nombreuses modifications à la Loi; le gouvernement fédéral reconnaît que l'appui des provinces est nécessaire pour que les objectifs de la Loi soient atteints. Les lois qui sont contestées à tel point que leur adoption par le Parlement devienne impossible ou que leur application subséquente soit difficile ne sont utiles à personne.

Je suis d'avis qu'un consensus suffisant a maintenant été atteint pour que la nouvelle Loi sur les jeunes contrevenants soit acceptée dans tout le Canada. Je souhaite ardemment que la Loi sur les jeunes délinquants, qui remonte à 73 ans, soit abrogée parce qu'elle ne peut plus répondre adéquatement aux problèmes posés par les jeunes qui ont des démêlés avec la justice.

À mon avis, il y a longtemps que certaines pratiques innovatrices auraient dû être insérées dans notre droit. L'efficacité des pratiques comme les programmes de services communautaires et les ententes de restitution a été démontrée par les provinces qui les ont appliquées. Ces pratiques engendrent un sens des responsabilités chez le jeune contrevenant et lui donnent l'occasion de rembourser la société des dommages causés par son comportement illégal. Il est temps que ces pratiques avancées soient appliquées dans tout le Canada.

Le système judiciaire applicable aux jeunes ne peut résoudre tous les problèmes sociaux auxquels les jeunes doivent faire face aujourd'hui. Des facteurs autres que l'élément judiciaire, en l'occurrence la famille, les amis, l'école et l'entourage du jeune de même que sa personnalité sont de nature à influencer son comportement. En conséquence, un nouveau système judiciaire applicable aux jeunes ne peut seul éliminer la criminalité juvénile, mais il peut fournir un processus uniforme, cohérent et équilibré pour traiter du problème de façon à promouvoir le respect de la loi ainsi que le bien-être du jeune contrevenant et celui de la société.

Bob Kaplan, C.P., député,
Solliciteur général du Canada

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Introduction: Le besoin de réforme

Une réforme du système judiciaire canadien applicable aux jeunes s'impose depuis longtemps. La nécessité de cette réforme est reconnue depuis plusieurs années et la question a fait l'objet de discussions publiques approfondies, de consultations intergouvernementales et de publication de rapports. Le débat a entraîné une sérieuse réévaluation des principes qui sous-tendent le fonctionnement de notre système judiciaire applicable aux jeunes. Le Solliciteur général du Canada est d'avis que le moment est maintenant venu de faire de cette nouvelle pensée une loi puisqu'il y a consensus entre les professionnels du domaine sur les deux aspects les plus importants de la réforme.

Tout d'abord, il est généralement admis que la loi sur laquelle repose le système actuel est désuète, tant en théorie qu'en pratique. À l'heure actuelle, les jeunes contrevenants sont traités en vertu de la *Loi sur les jeunes délinquants*. Cette Loi a été adoptée en 1908 et est demeurée fondamentalement inchangée depuis sa révision en 1929. Avant 1908, l'enfant qui enfreignait la loi comparaissait devant les tribunaux pour adultes, quel que fût son âge ou sa vulnérabilité. Au début du siècle, la notion de bienveillance de l'autorité envers les enfants était encore mal connue, il n'existait aucune loi sur le travail pour protéger les enfants qui travaillaient, aucune loi sur l'éducation pour garantir un niveau de scolarité minimal.

La loi sur les jeunes délinquants de 1908 a fait de l'État un bon père de famille qui traite un jeune qui a des démêlés avec la justice "non comme un criminel, mais comme un enfant engagé dans la mauvaise voie, qui a besoin de conseils, d'encouragements, d'aide et de soutien". Ce rôle de *parens patriae* représentait une innovation qui a été perçue comme une coupure heureuse avec l'usage de l'époque.

Cependant, la société canadienne a évolué énormément depuis 1908. Il en est de même des attitudes envers les jeunes, envers le crime et envers la façon de traiter les jeunes contrevenants. La Loi actuelle accordait aux personnes en autorité un large pouvoir discrétionnaire dans leurs efforts pour donner au jeune "conseils, encouragements, aide et soutien". Cette flexibilité peut entraîner une violation des droits qui sont aujourd'hui reconnus comme étant les droits fondamentaux d'un citoyen de tout âge, comme le droit à l'application régulière de la loi et le droit de participer aux décisions touchant l'avenir du citoyen. De plus, la Loi sur les jeunes délinquants n'insiste pas suffisamment sur la

protection de la société ou la responsabilité des jeunes face a leur comportement — deux principes qui sont plus importants aujourd'hui qu'ils ne l'étaient quand la Loi fut introduite. Et nombre de sentences prévues dans la Loi (ou "décisions" comme on les appelle) sont peu réalistes aujourd'hui. L'amende maximale, par exemple, est de $25.00.

Les carences pratiques de la Loi sur les jeunes délinquants découlent de son concept *parens patriae*. Trois caractéristiques qui se dégagent de l'application de ce concept ont retenu l'attention des législateurs et des administrateurs. Tout d'abord, en vertu de cette loi, l'état de délinquance couvre tant les infractions aux lois fédérales et provinciales que les infractions de situation comme "l'immoralité sexuelle ou toute forme semblable de vice". Cependant, depuis l'adoption de la Loi, le terme générique "délinquant" est devenu aussi péjoratif que l'étiquette "criminel" qu'il a remplacée. De plus, le fait que le comportement couvert par les infractions de situation n'est pas considéré comme criminel pour les adultes est jugé aujourd'hui comme une discrimination injuste envers les jeunes.

L'intention de la Loi était de traiter les jeunes contrevenants de façon aussi informelle que possible de façon à masquer la souillure de l'acte criminel. Cependant, cette approche flexible et bienveillante de la Loi a donné lieu, dans son application journalière, à des contradictions et des injustices. Le jeune n'a pas suffisamment de garantie quant à un traitement juste et égal devant la loi lorsque sa liberté est en jeu. La Loi n'indique pas non plus toutes les procédures importantes à suivre lorsqu'un jeune devient assujetti au système judiciaire applicable aux jeunes. Elle ne répond pas à des questions importantes comme celles de savoir quand un jeune a le droit d'être représenté par un avocat, si des empreintes digitales d'un jeune peuvent être prises ou ce qui arrive aux dossiers du tribunal des jeunes.

Cette approche de la Loi, qui est orientée vers le traitement, s'est aussi manifestée au niveau des pouvoirs du tribunal des jeunes: celui-ci a la possibilité de rendre des sentences qui sont souvent d'une durée indéterminée à partir du principe que, lorsque le jeune sera suffisamment "traité", les personnes en autorité mettront un terme à la sentence. Cependant, l'administration de la Loi incombe aux provinces plutôt qu'aux tribunaux et, lorsqu'un jeune est placé sous garde par le tribunal, il tombe normalement sous la juridiction des autorités provinciales plutôt que sous celle du tribunal. Cela signifie qu'il est maintenant assujetti à des décisions administratives plutôt que judiciaires en ce qui a trait à la durée de la sentence. La Loi ne prévoit aucun recours au tribunal des jeunes si le jeune ou les parents veulent contester la décision de l'administrateur.

Si l'application du système n'a pas entraîné d'injustices flagrantes dans tous les cas, c'est grâce à la discrétion et au sens de l'équité que les juges du tribunal des jeunes ont exercés dans les poursuites entamées en vertu de la Loi sur les jeunes délinquants et que les provinces ont aussi exercés en administrant ladite loi. Certaines provinces ont déjà appliqué des pratiques similaires à celles qui sont proposées dans la nouvelle Loi.

Le deuxième point important sur lequel il y a maintenant consensus réside dans la nécessité d'incorporer les attitudes et pratiques courantes dans une loi fédérale de façon à assurer l'uniformité des normes et de la loi dans tout le pays.

Tout changement aux lois concernant les jeunes provoquera à coup sûr un débat entre ceux qui prétendent que la loi est trop souple et préfèrent que les jeunes soient traités en adultes et ceux qui, au contraire, affirment que la loi est trop stricte et que les jeunes devraient bénéficier d'un traitement complètement différent de celui des adultes. La nouvelle Loi sur les jeunes contrevenants préconise une approche envers les jeunes qui est plutôt nouvelle au Canada. D'une part, elle prévoit les mêmes garanties de droits légaux que les adultes possèdent déjà et, d'autre part, elle met sur pied un système de tribunaux, procédures et décisions relatifs aux jeunes qui sont différents de ceux qui existent pour les adultes. De plus, ces dispositions traduisent un souci pour la sécurité de la société et elles offrent aux parents l'occasion de participer aux procédures dans lesquelles leurs enfants sont en cause.

POLITIQUE CANADIENNE À L'ÉGARD DES JEUNES CONTREVENANTS

1. Quelle est l'approche de la nouvelle Loi vis-à-vis les jeunes contrevenants?

La philosophie de la nouvelle Loi est exposée dans un article formant un énoncé de principes, qui servira de guide dans la recherche de l'esprit et du but de la Loi pour quiconque s'intéresse à son application partout au Canada.

L'approche de la Loi est axée sur les trois principes suivants: les jeunes doivent répondre davantage de leurs actes sans en être tenus entièrement responsables vu qu'ils n'ont pas encore atteint la maturité; la société a le droit d'être protégée; les jeunes ont les mêmes droits que les adultes en ce qui a trait à l'application régulière de la loi et à un traitement juste et égal, et ces droits doivent être protégés par des garanties spéciales. Ainsi, la Loi a pour but d'atteindre un équilibre raisonnable et acceptable entre les besoins des jeunes et ceux de la société.

Selon l'énoncé de principes que renferme la nouvelle Loi:

- Les jeunes doivent assumer plus de responsabilité pour leurs actes mais ne doivent pas être tenus d'en répondre de la même manière que les adultes.
- Pour protéger la société contre ce comportement illégal, les jeunes contrevenants peuvent avoir besoin de surveillance, de discipline et d'autorité.
- Les jeunes contrevenants ont des besoins spéciaux en raison de leur état de dépendance et de leur degré de développement et de maturité. Ils ont aussi besoin d'aide et de directives.
- Des mesures de rechange au processus judiciaire officiel devraient être appliquées aux jeunes contrevenants lorsque cette solution est également compatible avec la nécessité de protéger la société.
- Les jeunes jouissent de droits et de libertés, y compris ceux qui sont énoncés dans la Déclaration canadienne des droits. Plus particulièrement, ils ont
  — le droit de participer aux délibérations qui les concernent,
  — le droit de ne subir que le minimum d'entrave à leur liberté qui soit compatible avec le besoin de protéger la société, leurs propres besoins et les intérêts de leurs familles,
  — le droit d'être informés de tous leurs droits et libertés.

- Les jeunes contrevenants ne devraient être soustraits à la surveillance de leurs familles que lorsque la surveillance permanente des parents n'est pas indiquée. La Loi reconnaît la responsabilité des parents en ce qui a trait au soin et à la surveillance de leurs enfants. Les parents seront encouragés et, s'il y a lieu, invités instamment à jouer un rôle actif dans les procédures où leurs enfants se trouvent en cause.

JURIDICTION — SELON L'INFRACTION ET L'ÂGE

2. À qui la nouvelle Loi s'applique-t-elle?

La nouvelle Loi ne s'appliquera qu'aux jeunes qui seront accusés d'infractions précises, à l'encontre du Code criminel et d'autres lois et règlements fédéraux Elle ne s'appliquera pas à ceux qui seront accusés d'infractions à l'encontre de lois provinciales (qui couvrent des infractions comme des violations du code de la route et des dispositions législatives sur l'alcool) ou de règlements municipaux. L'infraction générale appelée "délinquance" que la Loi de 1908 a créée pour inclure toutes les infractions des jeunes, y compris les infractions de situation comme "l'immoralité sexuelle et toute forme semblable de vice" sera abolie.

En vertu de la nouvelle Loi, l'âge de la responsabilité pénale sera porté de sept à 12 ans. Les enfants de moins de 12 ans ne seront pas jugés criminellement responsables, ce qui signifie qu'ils ne pourront être poursuivis au criminel pour les infractions qu'ils pourraient commettre. Si un enfant plus jeune commettait un acte nuisible, il pourrait être pris en charge en vertu de la loi provinciale. La loi sur les jeunes délinquants, en vertu du Code criminel, fixe à 7 ans l'âge minimal que le jeune doit avoir atteint pour être passible de poursuites en délinquance juvénile. Cependant, de l'avis de tous, un enfant de 7 ans est trop jeune pour être considéré comme criminellement responsable.

Malheureusement, on n'a pu s'entendre de la même manière pour fixer un âge maximal. La loi actuelle fixe à moins de 16 ans l'âge maximal pour la délinquance juvénile, mais permet au gouvernement fédéral d'établir un maximum différent à la demande d'une province. Au Québec et au Manitoba, l'âge maximal est de moins de 18 ans; la Colombie-Britannique et Terre-Neuve (qui a sa propre loi relative aux jeunes) ont choisi une limite de moins de 17 ans; les six autres provinces et les deux territoires ont fixé l'âge maximal à moins de 16 ans. Le choix d'âges maximaux différents reflète non seulement des opinions différentes sur l'âge auquel un individu est jugé suffisamment mûr pour être tenu pleinement responsable et traité en adulte, mais aussi l'utile diversité des programmes et des ressources que les provinces ont mis en oeuvre afin de répondre aux besoins des jeunes contrevenants.

Bien qu'il préférerait l'établissement d'un âge maximal uniforme, le gouvernement fédéral hésite à imposer un âge maximal aux provinces, étant donné la diversité des attitudes et des services qu'elles offrent.

Par conséquent, en vertu de la nouvelle Loi, l'âge maximal sera de moins de 18 ans, mais, à la demande d'une province, le gouvernement fédéral pourra fixer cet âge à moins de 16 ou de 17 ans dans la province concernée.

DÉJUDICIARISATION

3. Les jeunes qui violent une loi fédérale doivent-ils tous comparaître devant le tribunal des jeunes?

Pas nécessairement. L'un des principes sous-jacents à la nouvelle Loi veut que, pour les infractions moins graves, on puisse faire appel à d'autres mesures que la procédure judiciaire officielle. Il est reconnu, depuis quelque temps, que la comparution des jeunes en cour est souvent inutile, spécialement lorsque d'autres moyens existent déjà dans certaines provinces pour traiter les jeunes. Ces programmes dits de *déjudiciarisation* peuvent faire appel à des services communautaires, des programmes d'éducation spéciaux, du counselling ou des ententes de restitution; leur caractéristique commune réside dans le fait qu'ils sont tous volontaires.

La Loi renferme des garanties intrinsèques pour la protection des jeunes qui sont dirigés vers ces programmes. Et si un jeune préfère comparaître devant le tribunal pour prouver son innocence, il demeure naturellement libre de le faire.

PROCÉDURES DU TRIBUNAL DES JEUNES

4. Quelle est la procédure suivie lorsque les autorités décident de traduire un jeune devant un tribunal?

La nouvelle Loi fixe des normes strictes sur les procédures à suivre. Pour la première fois, les droits du jeune qui vient d'être arrêté ou qui doit comparaître sont clairement énoncés. Plus particulièrement, la Loi prévoit que:

- Les parents du jeune doivent être avisés de toutes les mesures prises relativement à leurs enfants et on doit les inciter ou les obliger, le cas échéant, à assister aux audiences. Ils ont le droit de faire connaître leur avis sur la sentence du tribunal lorsque leur enfant est déclaré coupable.
- Le jeune a le droit d'être représenté par un avocat à toutes les phases des procédures, y compris lorsqu'on envisage l'application d'un programme de déjudiciarisation plutôt que la comparution devant le tribunal.
- Le juge du tribunal des jeunes est obligé de rappeler à tout jeune qui comparaît devant lui les droits dont il dispose en vertu de la nouvelle Loi.
- Avant de prendre une décision, le juge peut demander un rapport pré-décisoire. Il s'agit d'une évaluation du cas du jeune et d'une appréciation des programmes et services à la disposition du tribunal pour faire face aux besoins du jeune. Le juge doit demander ce rapport s'il envisage la possibilité de déférer le jeune à un tribunal pour adultes ou de le placer sous garde.
- Si le juge est d'avis que le jeune souffre d'une maladie ou de troubles physiques ou mentaux, de troubles émotionnels, d'incapacité d'apprentissage ou de déficience mentale, il peut demander un examen médical, psychologique ou psychiatrique.

DÉTENTION ET CAUTIONNEMENT

5. Qu'arrive-t-il à un jeune qui est détenu avant que le tribunal ait rendu sa décision?

La nouvelle Loi prévoit une procédure précise que la police et les autorités judiciaires doivent suivre lorsqu'elles envisagent la possibilité de détenir un jeune. Ces procédures sont les suivantes:

- Les jeunes contrevenants ont le même droit au cautionnement que les adultes. Le tribunal des jeunes disposera des demandes de cautionnement des jeunes en se servant des règles et critères énoncés au Code criminel.
- Les parents du jeune doivent être avisés.
- En règle générale, les jeunes contrevenants doivent être détenus à l'écart des délinquants adultes.
- Le tribunal des jeunes aura le pouvoir de confier le jeune à la garde d'un adulte digne de confiance s'il apparaît que cette personne peut le surveiller convenablement et répondre de sa présence subséquente devant le tribunal.

RENVOI À UN TRIBUNAL POUR ADULTES

6. Le tribunal des jeunes traitera-t-il de toutes les infractions qu'un jeune peut *commettre*?

Pas nécessairement. La nouvelle Loi est destinée à recevoir son application dans presque tous les cas. Cependant, il y aura des cas exceptionnels qui, en raison de la gravité de l'infraction, des circonstances dans lesquelles elle a été commise, des besoins du jeune et de la nécessité de protéger la société, devront être réglés par le tribunal pour adultes. Il pourra s'agir des cas où une infraction criminelle grave aura été commise, comme le viol, l'homicide involontaire coupable ou le vol à main armée.

Si la Couronne ou le jeune en fait la demande, un juge du tribunal des jeunes pourra décider, à l'audience, de renvoyer le cas au tribunal pour adultes pourvu que le jeune ait eu quatorze ans révolus au moment de l'infraction. La demande d'un tel renvoi ainsi que la décision à ce sujet doivent avoir lieu avant que le tribunal des jeunes ait décidé de la culpabilité ou de l'innocence du jeune.

La nouvelle Loi énonce les critères que le tribunal pourra utiliser pour rendre sa décision ainsi que les facteurs dont il devra tenir compte. Ces facteurs incluent, notamment, la gravité de l'infraction présumée, le degré de maturité et le caractère du jeune ainsi que ses antécédents judiciaires. Le juge doit étudier un rapport pré-décisoire et toute observation que désirent faire les parents, avant d'autoriser un renvoi.

Étant donné ses conséquences graves, le renvoi à un tribunal pour adultes est considéré comme étant un recours ultime. Une ordonnance de renvoi peut faire l'objet d'un appel.

DÉCISIONS

7. Quelles sentences le tribunal des jeunes peut-il rendre?

L'éventail des décisions (c'est-à-dire les sentences rendues par le tribunal des jeunes) prévues en vertu de la nouvelle Loi est aussi large que flexible. De plus, aucune décision ne pourra avoir de durée indéterminée, contrairement à ce que permettait la Loi de 1908. En vertu de celle-ci, un jeune peut être mis sous garde pour une période indéterminée.

Les décisions sont conçues pour répondre aux besoins spéciaux des jeunes, protéger la société et, dans la mesure du possible, tenir compte des droits des victimes du crime.

Le juge poura rendre les décisions suivantes:
— accorder un acquittement total;
— imposer une amende d'au plus $1,000;
— imposer une ordonnance de dédommagement ou d'indemnisation pour des pertes ou dommages matériels, pour une perte de revenu ou pour des dommages spéciaux survenus en résultat de lésions corporelles à la victime de l'infraction. Le juge qui envisage la possibilité de rendre une telle ordonnance doit tenir compte de la capacité de payer ou de gagner du jeune contrevenant;
— ordonner un dédommagement en nature ou par des services personnels à la victime de l'infraction;
— imposer une ordonnance de service communautaire qui exigerait que le jeune contrevenant exécute une quantité précise de travaux pour la société;
— imposer une période de probation d'au plus deux ans;
— ordonner un placement sous garde continu ou discontinu pour une durée maximale de deux ans;
— imposer des conditions additionnelles qui, selon le juge, sont dans le meilleur intérêt du jeune contrevenant ou de la société comme la confiscation de biens détenus illégalement ou l'interdiction de posséder une arme à feu; et
— rendre toute forme combinée de ces décisions, pourvu que la durée n'excède pas deux ans à l'égard de quelque infraction que ce soit.

A noter qu'en aucun cas un jeune ne pourrait être soumis à une peine plus grande que la peine maximale applicable à un adulte ayant commis la même infraction.

PLACEMENT SOUS GARDE ET LIBÉRATION

8. Que signifie un placement sous garde?

Un placement sous garde signifie que le jeune contrevenant sera admis dans un établissement résidentiel spécial d'où l'accès à la collectivité est restreint. Ces entrave et restriction ont deux buts: éliminer la possibilité que le jeune contrevenant commette d'autres actes illégaux et lui donner la possibilité de participer à des programmes qui répondent à ses besoins spéciaux. Cet établissement pourrait être un foyer collectif, un centre d'éducation communautaire, un établissement d'aide à l'enfance, un centre d'éducation surveillée, un centre de détention, un établissement de correction ou un camp en pleine nature.

La Loi sur les jeunes contrevenants consacre un nouveau principe important qui est le suivant: le tribunal des jeunes conservera la juridiction sur le jeune contrevenant jusqu'à ce que la sentence de placement sous garde ou toute autre décision prenne fin. En vertu de la Loi actuelle, une fois que le tribunal des jeunes a prononcé sa sentence de placement sous garde, la juridiction sur le cas est généralement déférée aux autorités provinciales. En théorie, les autorités de bien-être provinciales peuvent alors modifier unilatéralement la décision du tribunal de la façon qui, à leur avis, peut offrir plus "de soutien, d'encouragement, d'aide et d'appui" même si elles doivent, pour cela, libérer prématurément un jeune qui avait reçu une sentence de placement sous garde.

La nouvelle Loi reconnaît que le tribunal des jeunes est l'autorité qui doit décider si une sentence de mise sous garde ou toute autre sentence doit être rendue pour assurer la sécurité des collectivités et des citoyens du Canada. Il est donc inconcevable que ces décisions puissent être modifiées unilatéralement par les autorités provinciales sans être réétudiées par le tribunal des jeunes. Par contre, la nouvelle Loi reconnaît aussi la nécessité de donner au directeur des services provinciaux la latitude nécessaire pour lui permettre d'élaborer et d'appliquer des programmes efficaces. Par conséquent, après le prononcé de la sentence de placement sous garde, c'est le directeur provincial qui aurait le pouvoir de déterminer où et comment il conviendrait de garder le jeune contrevenant.

Le directeur provincial bénéficierait d'une certaine latitude à l'intérieur des programmes et des établissements et pourrait aussi autoriser la mise en liberté temporaire des jeunes contrevenants. La nouvelle Loi autorise deux genres de mises en liberté provisoire:

- un congé provisoire d'au plus 15 jours en vue d'un traitement médical, pour des raisons humanitaires ou pour faciliter la réinsertion sociale du jeune;
- une libération de jour pour permettre au jeune d'assister à des cours, de travailler ou de participer à un programme de développement personnel.

La nouvelle Loi définit la procédure que le directeur provincial doit suivre s'il décide de mettre en liberté un jeune qui a déjà purgé une partie de sa peine. Le directeur doit donner avis de son intention au ministère public, au jeune et aux parents. Si aucune de ces personnes n'a demandé de révision du cas, le juge du tribunal pourra officialiser la mise en liberté en soumettant le jeune à une ordonnance de probation pour le reste de la période sur laquelle porte la décision.

Les ordonnances de placement sous garde ne seront rendues qu'après une étude approfondie du cas car elles constituent une entrave radicale à la liberté du jeune. Le juge du tribunal des jeunes qui envisage la possibilité de rendre une sentence de cette nature devra demander un rapport pré-décisoire. S'il décide de rendre une sentence de placement sous garde, il devra motiver sa décision par écrit.

RÉVISION DES DÉCISIONS

9. Une sentence peut-elle être modifiée une fois qu'elle a été rendue?

Oui, mais uniquement par le tribunal des jeunes. La nouvelle Loi prévoit une procédure de révision complète et innovatrice pour assurer que la sentence fasse l'objet d'une attention suivie pendant la durée de son application. La procédure a trois objectifs principaux à remplir:

- assurer que la sentence soit toujours pertinente et adaptée au cas du jeune contrevenant;
- permettre à toute personne concernée, - le contrevenant, les parents, le directeur provincial et le Procureur général - non seulement de demander une révision, mais aussi d'y assister et d'y être entendue;
- protéger les droits du jeune et l'intérêt de la société tout en conservant la juridiction sous l'autorité du tribunal des jeunes.

La procédure de révision prévue à la Loi sur les jeunes délinquants a été sévèrement critiquée en raison de son caractère inadéquat et arbitraire. En vertu de la Loi actuelle, le jeune est exposé au risque de dualité de poursuites ou de peines: il peut, même après avoir comparu devant le tribunal des jeunes, être ramené devant celui-ci en tout temps avant son 21e anniversaire et recevoir une nouvelle sentence ou être renvoyé devant le tribunal pour adultes. En pratique, on a eu tendance à limiter l'utilisation de la procédure aux cas où le jeune contrevenant ne s'était pas conformé à la sentence et le système a peu à peu revêtu un caractère négatif.

La nouvelle procédure de révision se veut une démarche beaucoup plus positive. Le jeune contrevenant qui aura purgé une partie de sa sentence bénéficiera d'une révision obligatoire (au moins une fois l'an, ou plus souvent à la demande d'une personne concernée). La révision sera faite par le tribunal des jeunes ou, au choix de la province, par un conseil de révision nommé par la province. La durée et la nature de la sentence de placement sous garde ne pourront être modifiées que par le tribunal des jeunes. Cependant, tel qu'expliqué à la réponse précédente, le directeur provincial pourra décider du degré de sécurité des programmes de placement sous garde et de l'établissement qui conviennent le mieux au jeune.

Toute autre espèce de sentence sera révisée par le juge du tribunal des jeunes. Ces révisions auront lieu de temps à autre à la demande du directeur provincial, du jeune contrevenant, de ses parents ou du procureur de la Couronne.

AUDIENCES PUBLIQUES

11. Les audiences du tribunal des jeunes sont-elles ouvertes au public?

Oui. Les audiences du tribunal des jeunes deviendront publiques en vertu de la nouvelle Loi, de façon à ce que non seulement la justice soit rendue, mais qu'elle le soit au grand jour. La loi actuelle stipule que "les procès d'enfants doivent se dérouler à l'abri de toute publicité et à part des procès d'adultes" mais, au cours des années, l'expérience a démontré que ces audiences à huis clos étaient inévitablement considérées avec défiance et pouvaient davantage faire l'objet d'abus.

Les audiences publiques assurent un examen minutieux et une surveillance publique du système judiciaire applicable aux jeunes. Cependant, le juge aura le pouvoir d'exclure toute personne

- si cette mesure est, à son avis, dans l'intérêt de la moralité publique, du maintien de l'ordre ou de la bonne administration de la justice;
- si les renseignements communiqués au tribunal risquent d'être gravement préjudiciables ou injurieux pour un jeune présent, qu'il s'agisse de l'accusé, de la victime ou d'un témoin.

Les organes de diffusion devront respecter l'anonymat de tout jeune concerné, qu'il s'agisse de l'accusé, de la victime ou d'un témoin.

EMPREINTES DIGITALES ET PHOTOGRAPHIES

12. La police peut-elle prendre des empreintes digitales des jeunes?

Oui, mais seulement si certaines garanties sont assurées et uniquement dans les cas concernant des enquêtes sur des infractions graves comme l'introduction par effraction et le vol. Cependant, on peut prendre les empreintes digitales ou la photographie d'un jeune seulement dans les cas où un adulte pourrait être soumis à de telles procédures.

La question de savoir si la police peut prendre des photographies et des empreintes digitales des jeunes n'a jamais été éclaircie par la loi. La Loi sur les jeunes délinquants est silencieuse sur la question et, au cours des derniers mois, les tribunaux ont rendu des décisions contradictoires. Reconnaissant que ces renseignements sont nécessaires pour la détection et les enquêtes sur les crimes, la nouvelle Loi permet cette pratique mais précise que l'utilisation des renseignements doit être principalement limitée aux fins de l'appareil judiciaire criminel.

Plus particulièrement, la Loi énonce que:

- la police doit détruire les empreintes et les photographies si le jeune est acquitté ou que les poursuites contre lui sont interrompues;
- des procédures spéciales doivent être élaborées pour le classement de cette information et le contrôle de sa diffusion;
- l'usage abusif d'empreintes digitales ou de photographies constitue une infraction.

DOSSIERS DU TRIBUNAL DES JEUNES

13. Qu'arrive-t-il au dossier du jeune qui a comparu devant le tribunal des jeunes?

Tout en visant à tenir les jeunes contrevenants responsables de leurs actes illégaux, les législateurs ne désirent pas que les conséquences des sentences prononcées contre eux soient aussi graves que dans le cas des adultes jugés devant les tribunaux ordinaires. En conséquence, lorsqu'un jeune a purgé toute sa sentence et n'a commis aucune autre infraction pendant une période définie, le dossier sera détruit. Le jeune aura l'occasion de recommencer à neuf s'il prouve qu'il mérite cette chance. En conséquence de l'application de cette disposition, le jeune sera censé n'avoir jamais été reconnu coupable de l'infraction et n'aura pas à faire face aux inconvénients qui résultent de l'existence d'un dossier judiciaire contre lui.

La Loi sur les jeunes délinquants ne contient aucune disposition semblable, ni aucune règle sur la création, la tenue et la diffusion des dossiers du tribunal des jeunes. En vertu de la Loi actuelle, le jeune peut porter l'étiquette "délinquant" toute sa vie.

La période exempte d'infraction prescrite par la nouvelle Loi sera de deux ans pour les infractions relevant de la procédure sommaire (infractions qui comportent normalement un emprisonnement maximal de six mois en vertu du Code criminel) et de cinq ans pour les infractions plus graves appelées criminelles. Pendant cette période, les dossiers du tribunal des jeunes pourront être utilisés pour les demandes de cautionnement ou de libération conditionnelle ou pour imposer de nouvelles sentences devant les tribunaux pour jeunes ou pour adultes. Si le jeune est trouvé coupable d'une autre infraction pendant cette période, son dossier relatif à l'infraction initiale ne pourra, bien entendu, être détruit qu'après une nouvelle période ininterrompue sans infraction de sa part.

La nouvelle Loi dresse une liste des personnes qui peuvent avoir accès aux dossiers avant leur destruction. La divulgation non autorisée constituera une infraction.

CONCLUSION: le rôle du gouvernement fédéral et des gouvernements provinciaux

Le gouvernement du Canada a pour rôle de légiférer dans le domaine du droit pénal. Il lui appartient aussi d'accorder aux jeunes, quel que soit l'endroit où ils vivent, les mêmes services de justice et les mêmes droits devant la loi et de favoriser l'application de normes nationales touchant les mesures et les programmes conçus pour répondre aux besoins des jeunes contrevenants. Il aide en outre les provinces à offrir des programmes sociaux constructifs d'une qualité égale.

Les gouvernements provinciaux ont un rôle également important à jouer dans le système de justice pour les jeunes, en ce sens qu'ils sont chargés de faire appliquer les lois que promulgue le gouvernement fédéral. Ce sont les spécialistes du domaine, comme les juges des tribunaux de la famille et de la jeunesse, les avocats, les policiers, les agents des services de bien-être et les travailleurs sociaux, qui s'occupent de faire fonctionner le système. L'administration provinciale des services de justice pour les jeunes permet de tenir compte des variantes régionales et culturelles, comme en font foi la gamme des services et des programmes offerts et les différentes limites d'âge des jeunes contrevenants que peuvent choisir les provinces.

Les jeunes constituent l'avenir. Comme les autres Canadiens, ils devraient se voir garanti le droit d'être traités avec justice et de se sentir membres de leur collectivité. La Loi sur les jeunes contrevenants représente une étape importante vers la réalisation de cet idéal.