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THE YOUNG OFFENDERS ACT AND ITS IMPLICATIONS FOR THE NORTHWEST

TERRITORIES

The purpose of this paper is to:

- a) identify the main features of the Young Offenders Act (Bill C-61), and
- b) the major implications for the Government of the Northwest Territories (because the GNWT will be responsible for implementing the Act in the Territories).

Background:

For many years now the Federal Government has been saying that the Juvenile Delinquents Act should be repealed. Bill C-61, The Young Offenders Act, constitutes the Federal Government's proposal to repeal the Juvenile Delinquents Act and for dealing with young persons who break federal laws. The Bill was given second reading in Parliament and was then referred to the Standing Committee and Justice and Legal Affairs for detailed review. During the Committee stage the Minister (Solicitor General) introduced a number of amendments including a proposal to establish a uniform upper age of under 18 years across Canada. The Bill, the proposed amendments, and the Committee's report are now back before Parliament for third reading. The general feeling federally is that the substance of the Bill (as amended in Committee) will not be changed during third reading, which will likely be given before the summer recess. It is expected that the Act will be proclaimed effective April 1, 1983 but those provinces and territories whose upper age is not "under 18" will have until April 17, 1985 to implement that change, this would include the Northwest Territories.

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Underlying Principles of the Young Offenders Act

The Young Offenders Act has incorporated two main principles:

1. A young person must be afforded all the basic rights and freedoms guaranteed to other individuals in our society. This includes the right to the least possible interference with his freedom, having regard to the protection of society.
2. A young person must be held responsible for his/her actions before the law; but in view of the young person's special needs, the processing and resolution of his/her difficulties by other than judicial proceedings should be considered, where not inconsistent with the protection of society.

These principles differ from those underlying the Juvenile Delinquents Act (JDA), which is understandable given that that Act was enacted in 1908, amended in 1929 and has not been changed substantially since then. The JDA established a mechanism for dealing with juvenile delinquents separate and apart from the adult system. It was based on the principle that juvenile delinquents should not be seen as criminals but as misdirected children who required help, guidance and supervision. Essential components in the JDA system were informality, treatment, and indeterminate (unspecified time frame) dispositions.

## Main Features of the Young Offenders

### Act

The YOA contains a number of features which its supporters feel would be an improvement over the current juvenile system. Ironically, although the federal law prescribes what procedures and services shall be implemented, it is the Territories and Provinces who must finance and operate the new system. The main features of this system are:

- .. Age group covered by the Act - YOA will cover young persons who are over 12 years but under 18 years.

- .. Type of offences covered by the Act - YOA is limited to offences under federal statutes, i.e. under the Criminal Code of Canada or other federal statutes.

## Implications For Their Implementation in

and

### The Northwest Territories

1. Territorial policies and programs will need to be revised:

- (a) so that 16 and 17 year olds become part of the "young offenders system" rather than remaining in the "adult correctional system". These changes can be phased in but will have to be in place by April 17, 1985 (i.e. three years from the proclamation of the Charter of Rights) unless Parliament makes other provisions during the Bill's third reading.

Because there are about 30 - 35 male 16 and 17 year olds in Territorial Correctional Centres special secure facilities will have to be built to house them... under the YOA they cannot be mixed with adult offenders.

- (b) so that there is consistency within Territorial legislation in the matter of dealing with 16 and 17 year olds; for example under the Child Welfare Ordinance a "child is a person under 16 years" this should likely be raised to under 18 years.

2. Territorial legislation will be needed to:

- (a) cover offenders under 12 years who commit Criminal Code-type offences or break other federal laws, and
- (b) cover all persons under 18 years who break Territorial or municipal laws/by-laws.

3. Pre-court detention and the circumstances concerning its use are set out in the YOA.

4. The right of the young person to have access to legal counsel at every stage of the proceedings is provided for in the YOA.

3. The GNWT will have to decide whether it proposes to make any significant change in providing for the detention of young persons prior to their appearance in court. At present young persons are placed in the care and under the control of an adult (including the young parents) primarily to ensure that the young person will be available when the court sits.

If experience shows that some type of physical controls are needed then "lock up" kinds of facilities will have to be developed in communities where the greatest need exists. This type of service will be very expensive because of the 24 hour per day supervision required. If the GNWT cannot find or, based on spending priorities, wishes to use the funds for other purposes then it will have to live with occasional critical comments from the courts, the police, and the public which their absence may generate.

4. This will necessitate extending the present Legal Aid program to cover young persons in the 12 and under 16 years age group (those over 16 years are presently covered by the program). It is possible that Native Court Workers can play a helping role in providing basic court-related information. Care will need to be exercised to ensure that persons providing "legal counsel" are qualified lawyers who are licensed to practice in the NWT.

5. Conditions under which non-judicial proceedings may be used in dealing with alleged offenders are set out in the YOA.

5. It is impossible to predict the extent to which young persons in the Territories will be dealt with under the "alternative measures" provision of the YOA. The decision whether to use "alternative measures" will be made by the RCMP in consultation with the crown prosecutor - one consideration being that there is sufficient evidence to proceed with the prosecution of the offence or that the young person acknowledges responsibility for the act. The young person is to be informed of his right to counsel and given the opportunity to consult counsel prior to agreeing to participate in "alternate measures".

Undoubtedly the RCMP will be apprehensive about taking the kinds of informal action they now do (e.g. taking the young person home, talking the matter over with his parents), rather than proceeding to court, because the new Act requires compliance with specific conditions.

Because the process of proceeding informally has been made more complex it is possible that more cases will go to court. If this happens, the spin-off result would be more young persons being sentenced to custody adding to the need for additional places of custody in the Territories.

6. The nature of the dispositions that the Youth Courts may make is more precise:
- (a) sentences must be for definite rather than indefinite periods;
  - (b) the Court will decide whether a young person sentenced to "custody" will be subject to "open" or "secure" custody, and
  - (c) whether the young person may be released from custody on "probation" prior to the expiry of his/her sentence will be decided by the court or by a specially appointed review board.

6. At present, as provided in Section 21 of the Juvenile Delinquents Act, committals by the court in effect become temporary committals to the Superintendent of Child Welfare under the Child Welfare Ordinance. Therefore, at present, it is the Superintendent of Child Welfare, or her delegates, who determine what type of treatment will be accorded committed juveniles. Over the years a variety of resources have been developed by the Department of Social Services to assist these young persons. The number and capacity of these resources has been determined by the Territorial budgetary process.

Under the YOA, however, it will be the Youth Court, through its disposition of cases or sentencing practices, that determines how many "secure custody" and "open custody" beds will be needed. However, it would be most realistic to suggest that the GNWT (Dept. of Social Services) will be hard-pressed to provide the number of "secure" spaces that the courts will require recognizing that there are none for 12 - 15 year olds at present. Secure facilities will also have to be provided for 16 and 17 year olds because, under the YOA, they could not continue to be housed in adult correctional centres.

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FINANCIAL IMPLICATIONS OF THE IMPLEMENTATION OF THE  
YOUNG OFFENDERS ACT IN THE NORTHWEST TERRITORIES

As part of the consultation process, each Province and Territory provided the Department of the Solicitor General with some cost estimates concerning the implementation of the Young Offenders Act. The full costs of implementing the YOA in the Northwest Territories both Capital and O & M are in the process of being estimated in detail. These are likely to be considerable. To a great extent these are costs which are beyond the control of the GNWT. The Solicitor General has expressed hope that at least some aspects of the program will be cost-shared, however, no specific proposals have been made to the Provinces and Territories to date. Those Provinces and Territories that are already receiving cost-sharing for certain aspects of their Juvenile Delinquency Program under the Canada Assistance Plan are concerned that they not lose what they now receive from the Federal Government, and that a cost sharing arrangement for these new services can be developed.













